BROADCASTING LEGISLATION AMENDMENT (NEWS MEDIA DIVERSITY) BILL 2013

OUTLINE

This Bill, together with the Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013, the Television Licence Fees Amendment Bill 2013, the News Media (Self-regulation) Bill 2013, the News Media (Self-regulation) (Consequential Amendments) Bill 2013 and the Public Interest Media Advocate Bill 2013 form a package of measures representing the Australian Government’s response to two independent reviews conducted in 2011 and 2012 - the Convergence Review and the Independent Inquiry into the Media and Media Regulation.

This Bill responds to matters raised in the Convergence Review in relation to the importance of diversity of media control by introducing a public interest test for transactions involving significant news media voices.

The Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013 responds to matters raised in the Convergence Review in relation to use of the sixth channel of television broadcasting spectrum, Australian content and public broadcasting, and includes certain other measures.

The Television Licence Fees Amendment Bill 2013 provides for the 50 per cent reduction in the licence fees paid by commercial television broadcasters currently specified in regulations to be made permanent in legislation on an ongoing basis.

The News Media (Self-regulation) Bill 2013 and the News Media (Self-regulation) (Consequential Amendments) Bill 2013 respond to matters raised in the Convergence Review and the Independent Inquiry into the Media and Media Regulation relating to standards of media news and commentary.

The Public Interest Media Advocate Bill 2013 creates a new independent statutory office which will perform functions under the News Media (Self-regulation) Bill and the public interest test to be established in new Part 5A of the Broadcasting Services Act 1992 (BSA) by this Bill.

This Bill inserts a new Part 5A in the BSA dealing with news media diversity. Under the new Part changes of control of significant news media voices will require approval by a Public Interest Media Advocate (PIMA) applying a new public interest test. The ACMA will maintain a register of the news media voices regulated by the new Part.

The public interest test to be applied by the PIMA is:

- the change of control will not result in a substantial lessening of diversity of control of registered news media voices; or

- the change of control is likely to result in a benefit to the public, and that benefit outweighs the detriment to the public constituted by any lessening of diversity of control of registered news media voices.
News media voices will include commercial television and radio and subscription television services that provide news or current affairs programs, subscription television platforms (such as Foxtel) that include such services, and print publications and online services that have news or current affairs content.

In order to apply the new Part to significant news media voices only, voices will be registered if their audience or customer base exceeds 30 per cent of the average metropolitan commercial television evening news audience.

**FINANCIAL IMPACT STATEMENT**

The amendments in this Bill are expected to have no significant financial impact on Commonwealth expenditure or revenue.
STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Broadcasting Legislation Amendment (News Media Diversity) Bill 2013

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Bill

This Bill, together with the Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013, the Television Licence Fees Amendment Bill 2013, the News Media (Self-regulation) Bill 2013, the News Media (Self-regulation) (Consequential Amendments) Bill 2013 and the Public Interest Media Advocate Bill 2013 form a package of measures representing the Australian Government’s response to two independent media reviews conducted in 2011 and 2012 - the Convergence Review and the Independent Inquiry into the Media and Media Regulation.

The Bill inserts a new Part 5A in the Broadcasting Services Act 1992 (BSA) dealing with news media diversity. Under the new Part changes of control of significant news media voices will require approval by a Public Interest Media Advocate (PIMA) applying a new public interest test. The ACMA will maintain a register of the news media voices regulated by the new Part.

Human rights implications

The Bill engages the right to freedom of expression.

The right to freedom of expression

Australia is a signatory to the International Covenant on Civil and Political Rights (the ICCPR). This convention is listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011. Article 19(2) of the ICCPR protects freedom of expression, including the right to seek, receive and impart information and ideas of all kinds, and their means of dissemination.

The Bill contains measures placing limits on the ability of companies and individuals to control a registered news media voice or listed news media voice where that ownership is likely to result in a lessening of diversity of controllers of registered news media voices or listed news media voices. The PIMA must approve transactions involving changes of control of registered news media voices or listed news media voices.

In giving its approval, the PIMA must be satisfied that where a transaction will result in a substantial lessening of diversity, it will result in a net benefit to the public and that the benefit will outweigh any detriment associated with a lessening of diversity. The PIMA may
take into consideration undertakings made by the applicant to mitigate the impact of the lessening of diversity.

These measures may limit the rights of natural persons to exercise freedom of expression as outlined in Article 19(2) of the ICCPR by precluding a person from being in a position to control a registered news media voice or listed news media voice. Article 19(3) of the ICCPR, however, emphasises that there are special duties and responsibilities associated with Article 19(2). These duties and responsibilities recognise that an unfettered right to free expression is capable of violating the human rights of others. As a consequence of the nature of the media market in Australia, economies of scale dictate that media ownership tends to result in the concentration and monopolisation of media operations. Such concentration of ownership and control can lead to the dissemination of more limited points of view, with the corollary of limiting citizens’ access to multiple points of view or opinion.

The measures in the Bill are designed to mitigate the risks associated with media concentration. Diversity in the media contributes to a well-functioning democratic society by providing citizens with a range of informed points of view and preventing any one media owner from exercising too much influence over public opinion or the political agenda. The United Nations has noted that it is also of the view that positive measures are in some circumstances necessary to prevent control of the media where that control would lead to interference with the freedom of expression of others (UN Human Rights Committee, General Comment 10, paragraph 2).

**Conclusion**

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

To the extent that the measures may limit the rights of natural persons to exercise freedom of expression, by precluding a person from being in a position to control a registered news media voice or listed news media voice, the measures are reasonable and proportionate to the goal of promoting diversity of media control in order to promote access to diverse sources of news and information.
### ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACMA</td>
<td>Australian Communications and Media Authority</td>
</tr>
<tr>
<td>ACMA Act</td>
<td>Australian Communications and Media Authority Act 2005</td>
</tr>
<tr>
<td>AI Act</td>
<td>Acts Interpretation Act 1901</td>
</tr>
<tr>
<td>BSA</td>
<td>Broadcasting Services Act 1992</td>
</tr>
<tr>
<td>LI Act</td>
<td>Legislative Instruments Act 2003</td>
</tr>
<tr>
<td>Minister</td>
<td>Minister for Broadband, Communications and the Digital Economy</td>
</tr>
</tbody>
</table>
NOTES ON CLAUSES

Clause 1 – Short title

1. Clause 1 is a formal provision specifying the short title for the Act. When enacted, the Bill is to be cited as the *Broadcasting Legislation Amendment (News Media Diversity) Act 2013*.

Clause 2 – Commencement

2. Clause 2 sets out when the provisions of the Act commence. The formal provisions in sections 1 to 3 will commence on the day the Act receives the Royal Assent. The provisions in Schedule 1 will commence on the later of: the day after this Act receives the Royal Assent; and the day section 3 of the proposed *Public Interest Media Advocate Act 2013* commences (but they will not commence at all if section 3 of that proposed Act does not commence).

Clause 3 – Schedule(s)

3. Clause 3 is a machinery provision that provides that each Act specified in a Schedule is amended or repealed in accordance with the items of the Schedule concerned.
Schedule 1 – Amendments

Amendments to the ACMA Act

Items 1 and 2 of Schedule 1 to the Bill amend the ACMA Act to authorise disclosures to be made by ACMA officials to certain public officials, for the purpose of advising the PIMA.

Item 1 – After section 59B

Part 7A of the ACMA Act authorises the disclosure of certain information by the ACMA to the Minister, Departments, government agencies and regulatory bodies.

Item 1 inserts proposed section 59BA into Part 7A of the ACMA Act, to authorise disclosure of ‘authorised disclosure information’ by ACMA officials to the Secretary of the Department or APS employees in the Department (authorised by the Secretary), for the purpose of advising the PIMA. The term ‘authorised disclosure information’ is defined in section 3 of the ACMA Act. This measure will enable the ACMA to assist the PIMA to perform his or her functions, in accordance with clause 7 of the Public Interest Media Advocate Bill 2013.

Item 2 – After paragraph 59D(1)(na)

Section 59D of the ACMA Act provides for the disclosure of ‘authorised disclosure information’ by an ACMA official (authorised in writing by the ACMA Chair) to a number of specified authorities.

Item 2 inserts a new paragraph into subsection 59D(1) of the ACMA Act to include the PIMA as an authority to whom disclosure may be made by authorised ACMA officials. Under subsection 59D(2) of the ACMA Act, the ACMA Chair may impose conditions to be complied with in relation to ‘authorised disclosure information’ disclosed under subsection 59D(1).

Amendments to the BSA

Items 3 to 19 of Schedule 1 to the Bill amend a number of definitions contained in the BSA to take into account the operation of new Part 5A (see Item 20, noted below).

Item 3 – After paragraph 3(1)(c)

Section 3 of the BSA sets out the objects of that Act. This item inserts a new object about encouraging diversity in control of the more influential sources of news and current affairs. The pursuit of the new object is to be facilitated by the regulatory framework set out in new Part 5A (News media diversity), to be inserted by Item 20.
Items 4 and 5 amend the definition of *associate* for the purpose of the BSA’s control provisions. *Associate* is broadly defined, and covers people who act, or are expected to act, in concert in relation to control over a particular media operation. People are associates if they are closely related – for example, related bodies corporate (within the meaning of the *Corporations Act 2001*) are associates, as are commonly controlled companies, or people who have an arrangement to act in concert in relation to the control of the media operation. Similarly, people are associates if they are in a trust or partnership relationship. Individuals closely related by blood or affinity will also be associates.

The presumptions about the types of people who are associates are subject to a ‘case by case’ exception where the ACMA is satisfied that, in fact, the people concerned are not acting together in any relevant dealings relating to a media operation.

The term *associate* is currently defined in relation to control of a *licence* or a *newspaper* or control of a company in relation to a licence or newspaper for the purposes of Part 5 of the BSA and Schedule 1 to that Act.

Items 4 and 5 amend the definition to extend its application to control of a *print publication* or an *online service* or a company more generally. This reflects the broader application of new Part 5A (News Media Diversity) which will apply to companies that are subscription television platforms, print publications and online services, in addition to licences and newspapers.

Item 6 inserts text at the end of the definition of ‘associate’ to provide that the terms *print publication* and *online service* have the same meaning in this definition as they have in new Part 5A, see proposed new section 78AB.

Item 9 amends the definition of *licence* used for the purposes of the control rules and related provisions in the BSA to add the class licence that authorises subscription television narrowcasting services. Item 8 applies the extended definition of *licence* to its usage in new Part 5A of the BSA. These technical changes are needed to give full effect to the extension of the BSA’s news media diversity provisions in new Part 5A in their application to a subscription television platform.
These Items insert or amend defined terms in, or following, section 6 of the BSA.

Each of the definitions concerns subscription television and relates to other measures in the Bill dealing with control rules affecting nationally significant subscription television news voices (see new Part 5A of the BSA, proposed to be inserted by Item 20 of this Bill).

The Bill recognises that certain subscription television services providing news or current affairs (such as Sky News National) are significant news media voices. It also recognises that important subscription television platforms (such as the Foxtel platform) which control the selection of those services which will be supplied to subscribers, should also be treated as significant news media voices.

The key vehicle under the amendments for regulating control of subscription television for the purpose of encouraging diversity in control of the more influential sources of news and current affairs is the subscription television platform, which introduces a new concept in the BSA. Item 14 inserts the defined term subscription television platform, which directs the reader to section 6A of the BSA (inserted by Item 16 in this Bill).

In defining a subscription television platform, the first key concept is a subscription television service.

Item 15 defines a subscription television service. This term refers to a subscription television broadcasting service or a subscription television narrowcasting service.

- A subscription television broadcasting service (defined in section 6 of the BSA by reference to section 16) provides television programs that, when considered in the context of the service being provided, are intended to appeal to the general public, upon payment of a subscription fee.
- A subscription television narrowcasting service (defined in section 6 of the BSA, by reference to section 17) also provides television programs upon payment of a subscription fee. However the reception of those television programs is limited for reasons including conditional access arrangements, or, in the context of the service provided, being targeted to special interest groups or special events.

To complement the introduction of the subscription television service concept, Items 11 and 12 insert definitions of subscription television licence and subscription television licensee, while Item 13 inserts a definition of subscription television narrowcasting licensee (which is used in the definition of subscription television licensee along with the existing defined term subscription television broadcasting licensee).

The concept of subscription television services reflects the current practice of subscription television in Australia, where subscribers pay for access to a bundle of subscription television
services composed of both subscription broadcasting services and subscription narrowcasting services.

As noted above, Item 9 broadens the definition of *licence* to include a class licence to the extent that it authorises the provision of *subscription television narrowcasting services*. This ensures that the person who provides this service is taken into account for the purposes of control inquiries made in accordance with new Part 5A of the BSA (proposed to be inserted by Item 20 of this Bill).

The second key concept is the *branded group of subscription television services*. Item 7 would insert a ‘sign post’ definition of *branded group of subscription television services* in subsection 6(1) of the BSA, which refers the reader to new subsection 6A(1) (see Item 16).

As defined by the amendments made by Item 16, a *branded group of subscription television services* refers to a group of two or more *subscription television services* marketed to the public under a common brand (subsection 6A(1) refers). For example, there are dozens of individual subscription television services that are marketed under the Foxtel brand. Common branding makes all affected subscription television services a branded group of subscription television services. It is also important to note that one subscription television service can be marketed to the public under different common brands – for example, an individual service could be marketed under the Foxtel brand and the TransACT TV brand.

The third key concept is the *subscription television platform*, also defined in Item 16. New subsection 6A(2) provides that the *subscription television platform* means a company that controls the selection of the *subscription television services* that are included in a *branded group of subscription television services* (for example, which channels will be included in the television packages available). More than one company can perform this function, depending on how a particular subscription television business is organised.

The subscription television platform company is not necessarily the same company with which the subscriber has a subscription agreement.

As noted previously, the object of the proposed amendments is to encourage diversity in control of the more influential sources of news and current affairs. Important subscription television platforms (such as the Foxtel platform) which choose the sources of news and current affairs to be supplied to large numbers of subscribers (ie. control the selection of the services), are to be subject to the new rules encouraging diversity of control.

Subsection 6A(3) provides that subsection 6A(2) is subject to subsection 6A(4).
Subsection 6A(4) empowers the Minister to declare, in writing, that subsection 6A(2) does not apply to a specified company.

In addition, under subsection 6A(5), the Minister may declare, in writing, that for the purposes of the BSA, a specified company is a *subscription television platform* for a specified *branded group of subscription television services*. However, the Minister’s power is limited by the fact that a declaration under subsection 6A(5) only applies to a company in relation to a *branded group of subscription television services* if the company is:

- a *constitutional corporation* (defined in section 6 of the BSA) (see paragraph 6A(6)(a)), and
- involved in any or all of the activities set out in paragraph 6A(6)(b).
The specified activities identify a range of significant activities undertaken by a subscription television platform:

(a) The provision of a subscription television service included in a branded group deals with the situation where a subscription television platform is also a subscription television service provider on its own account.

(b) The operation of a subscriber management system for a branded group refers to involvement in managing access by subscribers to the subscription television services that form part of the branded group. This may encompass the provision of the software and hardware system through which a subscriber selects, pays for, and/or accesses their subscription.

(c) The activity of selecting the subscription television services in the group may involve entering into supply contracts with the providers of particular subscription television services. This activity may also involve the organisation of those contracted services into particular subscription packages for subscribers. For example, a number of services may be offered as a ‘basic subscription package’ (a bundle of services that every subscriber gets access to), while other subscription television services are reserved for ‘premium subscription packages’ upon payment of a higher or additional subscription fee.

(d) The activity of acquiring program content may involve the subscription television platform contracting with channel providers or program suppliers for the production or supply of programs for one or more subscription television services included in the branded group.

The mechanisms in subsections 6A(4) and (5) are intended as an anti-avoidance mechanism to enable the Minister to specify a particular company to be the platform if a platform adopts a corporate structure which has the effect of avoiding the operation of the standard rule in subsection 6A(2).

A copy of a declaration made under subsection 6A(4) or (5) must be published on the Department’s website (subsection 6A(7)). A declaration made under subsections 6A(4) or (5) would not be a legislative instrument, as it would merely apply the law in a particular case (subsection 6A(8), which is merely declaratory of the Ministerial instrument’s character rather than an exception to the Legislative Instruments Act 2003).

Item 10 – Subsection 6(1)

This item inserts a definition of the term PIMA in subsection 6(1) of the BSA. PIMA is defined to mean the Public Interest Media Advocate. The legislative note directs the reader to the PIMA’s enabling legislation.

Item 17 – Section 7

Item 18 – Paragraph 7(a)

Item 19 – At the end of section 7

Section 7 of the BSA is an interpretation clause for the word control used in the BSA. As amended by Items 17 and 18, subsection 7(1) directs the reader to Schedule 1 to the BSA. The schedule sets out mechanisms for determining questions of control (including tracing of
company interests) in a licence (as amended by Items 8 and 9, noted above), newspaper, print publication, or online service. The terms print publication and online service have the same meaning as in new Part 5A of the BSA, specifically proposed new section 78AB (see Item 20 of the Bill).

Item 19 adds new deeming provisions to section 7. Subsections 7(2) and (3) deem a person who controls, respectively, a commercial television broadcasting licence or a subscription television licence to control the service(s) provided under the authority of that licence. Similarly, proposed subsection 7(4) deems a person who controls a subscription television platform for a branded group of subscription television services to control each of the subscription television services that belong to the branded group.

Item 20 – After Part 5

Item 20 inserts a new part, Part 5A, consisting of sections 78AA to 78NE.

Part 5A – News media diversity

Part 5A sets out new arrangements for protecting news media diversity, by introducing a public interest test that will apply to transactions between registered news media voices of national significance.

The Convergence Review undertaken in 2011 and 2012 highlighted that Australia’s media and communications sector is characterised by highly concentrated ownership. There is real risk that the economics of the media business will result in a very small number of players controlling the majority of nationally significant news and current affairs voices. The proposed public interest test for media mergers and acquisitions is designed to encourage diversity of ownership amongst Australia’s largest and most influential news media voices.

The new public interest test will be administered by the PIMA, a new independent statutory office. The PIMA will assess whether transactions involving changes of control of registered news media voices will result in a substantial lessening of diversity of control of these voices. The test would only engage with transactions that involve two or more separately controlled news media voices that are above the specified audience threshold.

News media voices with an audience or subscriber figure above the proposed threshold will be registered on the Register of News Media Voices. The register will be maintained by the ACMA.

Prior approval of transactions must be sought by the person seeking a change of control of the registered news media voice. The applicant must satisfy the PIMA that the transaction will not result in a substantial lessening of diversity or the benefit of the transaction outweighs the detriment caused by any lessening of diversity of control of news media voices. Following an assessment, the PIMA will decide whether the transaction can or cannot proceed.

A key element of the transaction assessment process relates to the ability for parties to make and negotiate enforceable undertakings with the PIMA. Undertakings in the context of the public interest test provide a flexible alternative to refusing to approve a transaction when the PIMA believes that a transaction will lead to a substantial lessening of diversity. It is envisioned that undertakings will address diversity concerns whilst simultaneously permitting
the realisation of merger benefits, such as organisational efficiencies or improvements in management. Opportunities to vary undertakings will be also be available and subject to assessment by the PIMA.

The PIMA is provided information gathering powers for the purpose of enabling proper consideration of whether a substantial lessening of news media diversity is likely following a transaction. It is expected that transacting parties will comply with directions from the PIMA, however civil penalties apply to parties that do not comply with requests for information.

The public interest test will be considered in a separate process to the ACCC’s substantial lessening of competition test, the ACMA’s existing media diversity tests, and where necessary, the FIRB’s national interest test. The PIMA will draw on the extensive expertise of the above agencies in order to ensure the effective operation of the public interest test alongside FIRB approvals, mergers and acquisitions approvals, and existing media ownership laws.

Merits review of decisions will not be available due to the nature of the assessment process being undertaken by the PIMA. The process, which will involve elements of both an inquiry and a negotiation, has been designed to ensure transacting parties reasonably engage with the PIMA during the assessment process. The Administrative Review Council Guidelines note that processes that would be time-consuming and costly to repeat on review—as would be the case with consideration of the proposed public interest test and negotiation of associated undertakings—may be exempted from including a merits review process.

Following a decision, the PIMA is required to publish a statement of reasons on the Department’s website.

Interim arrangements have been established to enable the PIMA to assess transactions that occurred before the commencement date that may impact news media diversity. This measure is intended as an anti-avoidance mechanism to reduce the incentive for news media voices engaging in diversity-lessening transactions prior to the Bill’s commencement date.

**Division 1 - Introduction**

*Section 78AA – Simplified Outline*

Section 78AA contains a simplified outline for new Part 5A.

*Section 78AB - Definitions*

New section 78AB provides defined terms that are used in Part 5A, including ‘sign post’ definitions. Most of the ‘sign post’ definitions refer the reader to other provisions in the Part that contain a substantive definition. The ‘sign post’ definition for carriage service refers the reader to the term as defined in section 7 of the *Telecommunications Act 1997*. A carriage service means a service for carrying communications by means of guided and/or unguided electromagnetic energy.

The key definitions contained in section 78AB are explained below. The definitions appear in alphabetical order in the Bill, and are explained here in alphabetical order except where the defined term includes another defined term.
Media-related activities

The defined term media-related activities is fundamental to the application of Part 5A to print publications and online services as categories of news media voices (see section 78GA). A print publication and an online service will only be regulated as a news media voice if, among other conditions set out in section 78GA, the publisher of the print publication or the provider of the online service is wholly or principally engaged in media-related activities.

For the purpose of this Part, media-related activities are defined as the collection, the preparation for dissemination, or the dissemination of material for the purpose of making it available to the public, either in printed form or by means of electronic communications. This concept is intended to distinguish between people whose core business is the media, compared to those people for whom the media is an incidental activity. Examples of the latter include:

- a university produces a newsletter (whether hardcopy or softcopy) that contains news or analysis about the university’s educational and research activities. The university’s core activities are education and research, not media; and
- a retailer produces a newsletter or magazine (whether hardcopy or softcopy) that contains news or opinion about the goods and services that it sells. The retailer’s core activities are to sell particular goods and/or services (which is not the newsletter or magazine, as such). Its media-related activities – being the production of material for public relations purposes – are incidental to its core business.

In short, media-related activities cover various manifestations of the exercise of editorial control over material by a person whose core business is the media.

News or current affairs aggregation service

The defined term news or current affairs aggregation service means a service (including an online service) that does no more than aggregate (defined in section 78AB) material that has the character of news or current affairs, or material that consists of commentary or opinion, or analysis, about news or current affairs. This defined term is used in section 78GA (News media voices) to distinguish between those online services that are subject to the new news media diversity provisions, and those online services that are not (see paragraph 78GA(1)(j)). An online service that is a news or current affairs aggregation service is not a news media voice for the purpose of Part 5A. This is because an aggregation service does no more than link to or compiles a selection of news or current affairs material (including related commentary and analysis) where other people produce that material. As such, the aggregation service is not in a position to influence materially the production or content of news or current affairs material. A service that provides some aggregated content while also providing content that it produces itself will be a news media voice.

News or current affairs content

The defined term news or current affairs content is used for the purpose of identifying news media voices that are subject to the PIMA’s jurisdiction (see section 78GA). The publisher of a print publication, the provider of an online service, subscription television service, commercial radio broadcasting service, or commercial television broadcasting service will
only be considered a news media voice if, among other things, they provide or specialize in news or current affairs content. Such content also includes, in respect of television and radio services, news or current affairs programs.

The term *news or current affairs content* is also used to scope the PIMA’s jurisdiction to accept undertakings, including applications to withdraw undertakings (see section 78DA).

**Online service**

The defined term *online service* is fundamental to the operation of this Part. *Online service* is defined to exclude broadcasting and datacasting services (both defined in section 6 of the BSA). For proposed Part 5A, an *online service* has two alternative meanings, both of which require the use of *electronic communications*.

*Electronic communications* means communications that are carried by means of guided and/or unguided electromagnetic energy.

First, an *online service* is a service that delivers content to persons having equipment appropriate for receiving the content, where the service is delivered by *electronic communications*.

Second, an *online service* is a service that allows end-users to access content using *electronic communications*. Accordingly a service that allows end-users to access content using a particular type of network or application is an online service. An online service includes a website (the definition of *service* refers). Content in a ‘walled garden’ (i.e. where a service provider has control over applications, content, and media on certain platforms and restricts access to non-approved applications or content) would be provided by an *online service* within the meaning of this Part.

For the purpose of this Part, the definition of *online service* must be read in conjunction with the definition of *online service provider* (see section 78NA, noted below).

**Paying customer**

The defined term *paying customer* is critical to identifying an *online service* that is a news media voice (see paragraph 78GA(1)(j)), and also to determining whether an online service, being a news media voice, qualifies for registration on the Register of News Media Voices. Paying customers are also relevant to determining whether a particular broadcasting service or print publication qualifies for registration (see proposed section 78HF in relation to online services that are registrable news media voices).

A *paying customer* refers to one of two things. First, under paragraph (a) of the definition, a subscriber to the online service is a *paying customer*. For example, a person who subscribes to the *Crikey* Daily Mail, or who pays for a ‘Digital Pass’ to access content published by *The Australian* is a *paying customer* of an online service. Under paragraph (b) of the defined term, a person who pays to access particular content that is provided by the online service is a *paying customer*. This second limb of the definition is intended to cover ‘pay per view’ or similar fee based arrangements (other than subscriptions) that govern access to, or delivery of, content provided by an online service.
Print publication

*A print publication* means a newspaper or a periodical that is published at least once each quarter. A publisher of a print publication will be a *news media voice* for the purpose of Part 5A. As a result Part 5A will capture a wider variety of print media than is currently captured in the existing Part 5 of the BSA (which deals with control of *newspapers* that are associated with a commercial television or commercial radio broadcasting service; different publication frequency and circulation thresholds apply in Part 5).

Pre-commencement period and interim period

The defined terms *pre-commencement period* and *interim period* are relevant to the transitional arrangements. Particular notification requirements apply in respect of control events that occur during the *pre-commencement period* (see section 78MD). Similarly, the PIMA has a distinct jurisdiction in respect of control events that occur during the *pre-commencement period* (see section 78EC). The *pre-commencement period* begins from the time when the Bill is introduced into the House of Representatives and ends on the commencement date for Part 5A. The extension of the PIMA’s jurisdiction (and complementary notification provisions) to control events that occurred before the commencement of Part 5A is necessary to create a disincentive for transactions being brought forward to avoid the operation of the new legislation.

The *interim period* begins when the *pre-commencement period* ends (upon the commencement of Part 5A). The *interim period* operates until the earlier of two dates, being the date the Register of News Media Voices is established (which is the *initial Register completion day* determined by the ACMA), or the expiry of six months after the commencement date. The *interim period* performs a similar function to the *pre-commencement period* in that the publisher of a print publication and an online service provider are required to notify the ACMA of their controllers, which facilitates the establishment of the Register.

*Section 78AC – Newspapers*

Proposed section 78AC provides that the current definition of *newspaper* in section 6(1) of the BSA does not apply to Part 5A. This is because the new Part applies to a broader range of newspapers, in accordance with the definition of *print publication* in section 78AB (noted above).

**Division 2 – Control events**

Division 2 of proposed Part 5A defines *control events* and prohibits a person from being a party to them or permitting them unless they occur with the prior approval of the PIMA. A breach of this prohibition will be an offence and incur liability to a civil penalty.

No control event occurs where a person who is not in a position to control a registered news media voice gains control over a single registered news media voice. An event of that nature would increase the diversity of media ownership. Control events only occur when a person gains initial control of two or more registered news media voices, or increases the number or changes the mix of voices they control when they already control two or more voices.
The concept of news media voices is dealt with in Division 7 of new Part 5A (section 78GA). Registrable news media voices are dealt with in Division 8 of new Part 5A (sections 78HA to 78HH). The Register of News Media Voices is required by Division 10 of new Part 5A (sections 78KA to 78KD).

An interim arrangement for dealing with control events that occur before the establishment of the Register of News Media Voices is provided by Division 9 (section 78JA), which identifies the listed news media voices. The PIMA has jurisdiction over control events that occur before or during the interim period in relation to listed news media voices.

*Section 78BA - Control events – registered news media voices*

Each control event involves gaining control of registered news media voices. The control events in relation to registered news media voices are summarized in the following table:

<table>
<thead>
<tr>
<th>Subsection</th>
<th>Starting position Paragraph (a)</th>
<th>Control event Paragraphs (b) to (d)</th>
</tr>
</thead>
<tbody>
<tr>
<td>78BA(1)</td>
<td>A person is not in a position to exercise control of any registered news media voices</td>
<td>The person becomes in a position to exercise control of 2 or more registered news media voices</td>
</tr>
<tr>
<td>78BA(2)</td>
<td>A person is in a position to exercise control of a single registered news media voice</td>
<td>The person becomes in a position to exercise control of one or more additional registered news media voices</td>
</tr>
<tr>
<td>78BA(3)</td>
<td>A person is in a position to exercise control of two or more registered news media voices</td>
<td>The person becomes in a position to exercise control of one or more additional registered news media voices</td>
</tr>
<tr>
<td>78BA(4)</td>
<td>A person is in a position to exercise control of two or more registered news media voices</td>
<td>In related events, the person ceases to be in a position to exercise control of one or more of those registered news media voices and becomes in a position to exercise control of one or more other registered news media voices</td>
</tr>
</tbody>
</table>

*Section 78BB – Control events – listed news media voices*

Section 78BB applies similar rules to those in section 78AB to listed news media voices, which refers to the particular media operations specified in section 78JA. Section 78BB applies to listed news media voices regardless of whether the control event occurs before or after the commencement of the provision.
During the interim period, the decisions of the PIMA will be based on the diversity of control of listed news media voices. After the interim period, the register of news media voices will take effect, and decisions of the PIMA will be based on the diversity of control of registered news media voices.

<table>
<thead>
<tr>
<th>Subsection</th>
<th>Starting position Paragraph (a)</th>
<th>Control event Paragraphs (b) to (d)</th>
</tr>
</thead>
<tbody>
<tr>
<td>78BB(1)</td>
<td>A person is not in a position to exercise control of any listed news media voices</td>
<td>The person becomes in a position to exercise control of 2 or more listed news media voices</td>
</tr>
<tr>
<td>78BB(2)</td>
<td>A person is in a position to exercise control of a single listed news media voice</td>
<td>The person becomes in a position to exercise control of one or more additional listed news media voices</td>
</tr>
<tr>
<td>78BB(3)</td>
<td>A person is in a position to exercise control of two or more listed news media voices</td>
<td>The person becomes in a position to exercise control of one or more additional listed news media voices</td>
</tr>
<tr>
<td>78BB(4)</td>
<td>A person is in a position to exercise control of two or more listed news media voices</td>
<td>In related events, the person ceases to be in a position to exercise control of one or more of those listed news media voices and becomes in a position to exercise control of one or more other listed news media voices</td>
</tr>
</tbody>
</table>

Sections 78BC – Prohibition of transactions that result in a control event occurring in relation to one or more registered news media voices – offence
Sections 78BD – Prohibition of transactions that result in a control event occurring in relation to one or more listed news media voices—offence
Sections 78BE – Prohibition of transactions that result in a control event occurring in relation to one or more registered news media voices – civil penalty
Sections 78BF – Prohibition of transactions that result in a control event occurring in relation to one or more listed news media voices—civil penalty

Sections 78BC and 78BD provide that a person who is a party to, or in a position to prevent, one or more transactions that result in a control event occurring, commits an offence if the transaction(s) that give rise to the control event are not approved by the PIMA under section 78CB. Section 78BC applies to control events that occur after the interim period, while section 78BD applies to control events that occur during the interim period.

The application of these sections is subject to the proviso that the transactions take place after the commencement of the section – this ensures that criminal responsibility is not retrospectively applied.
The elements of the offence are modelled on similar provisions already in the BSA:

- section 66 (dealing with breaches of broadcasting control rules);
- section 61AMB (dealing with unacceptable cross-media control situations); and
- section 61AG (dealing with unacceptable media diversity situations).

The maximum punishment for a person who commits an offence under section 78BC is 20,000 penalty units (currently $3.4 million).

Sections 78BE and 78BF enact civil penalty provisions in similar terms to sections 78BC and 78BD. A person is liable for a civil penalty if they are a party to the transaction(s) or in a position to prevent the transaction(s) taking place.

Under current section 205G of the BSA, proceedings seeking a civil penalty order may be brought only by the ACMA. The proceedings would be brought in the Federal Court (current section 205F of the BSA) and the Court may not make a penalty order with respect to a contravention if the person has already been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention (current section 205L of the BSA). This restriction maintains the substance of the rule against double jeopardy as applied to civil penalties.

Items 21 and 22 (noted below) amend Part 14C of the BSA to allow the ACMA to seek injunctive relief from the Federal Court in respect of an alleged contravention of sections 78BE and 78BF.

**Division 3 – Prior approval of transactions that result in a control event occurring**

This Division sets out the process for obtaining prior approval from the PIMA for proposed transactions that would result in control events.

*Section 78CA – Application for prior approval of transactions that result in a control event occurring*

Section 78CA provides that a person may apply to the PIMA, using the PIMA’s approved form, for prior approval of transactions that would otherwise place the person in breach of sections 78BC, 78BD, 78BE or 78BF.

Section 78CA also provides that the PIMA may make a written request to the applicant seeking additional information. The PIMA’s request must be made within 30 days of receipt of the application.

*Section 78CB – Prior approval of transactions that result in a control event occurring*

Where an application is made under section 78CA, the PIMA must consider it and either approve it, or refuse to approve it.

The criteria applied by the PIMA in making decisions will change after the end of the interim period.
Subsection 78CB(4) sets out the criteria for approval of transactions relating to one or more listed news media voices during the interim period. During this period, the PIMA must not approve a transaction unless either of the following situations:

- the applicant satisfies the PIMA that the relevant control event will not result in a substantial lessening of diversity of control of listed news media voices; or
- the PIMA is satisfied that the relevant control event is likely to result in a benefit to the public which outweighs, or would outweigh, the detriment to the public caused by any lessening of diversity of control of listed news media voices.

Subsection 78CB(3) sets out the criteria for approval of transactions relating to one or more registered news media voices after the end of the interim period. The PIMA must not approve the transaction unless:

- the applicant satisfies the PIMA that the relevant control event will not result in a substantial lessening of diversity of control of registered news media voices; or
- the PIMA is satisfied that the relevant control event is likely to result in a benefit to the public which outweighs, or would outweigh, the public detriment constituted by any lessening of diversity of control of registered news media voices as a result of the relevant control event.

When deciding whether to approve a transaction (either during or after the end of the interim period), the PIMA may have regard to any other relevant matters, including any relevant undertakings given by the applicant and accepted by the PIMA under section 78DA, and not withdrawn (subsection 78CB(5) refers).

Subsection 78CB(6) provides that, where the PIMA approves the transaction, the approval will remain in force until the end of the period specified in the approval.

Subsection 78CB(7) sets out timeframes for the PIMA’s decisions. The expectation is that the PIMA will make its decision within 90 days of receiving the applicant’s complete information (which may include additional information requested by the PIMA).

Subsections 78CB(8) and (9) respectively set out the formal particulars for the PIMA’s notices of approval or refusal of the transaction. The PIMA’s notice, and reasons, must be published on the Department’s website. The PIMA’s duty to publish attracts qualified privilege under the laws of defamation.

The PIMA’s decision is not subject to merits review. Merits review of decisions will not be available due to the nature of the assessment process being undertaken by the PIMA. The process, which will involve elements of both an inquiry with substantial public consultation and potentially a negotiation, has been designed to ensure transacting parties reasonably engage with the PIMA during the assessment process. The Administrative Review Council Guidelines note that processes that would be time-consuming and costly to repeat on review—as would be the case with consideration of the proposed public interest test and any negotiation of associated undertakings—may be exempted from including a merits review process.

Section 78CC – Consultation before making decision

Before making a decision under subsection 78CB(2), the PIMA must undertake public consultation about the proposed decision. The consultation period runs for 28 days after the
publication of the PIMA’s consultation notice on the Department’s website. The PIMA must consider any submissions received during that period.

**Division 4 – Undertakings**

Proposed Division 4 of the new Part 5A deals with voluntary undertakings, which is an important means of securing public benefit when the PIMA considers applications for approval of transactions that may result in reduced diversity of control of registered news media voices. The use of undertakings to secure the achievement of statutory policy objectives has precedent in the BSA. In addition to the general provisions in Part 14D of the BSA, the existing media ownership provisions in Part 5 of the BSA also contain a specific provision for enforceable undertakings (see current sections 61AS and 61AT). The new provisions will allow a person to give an undertaking to the PIMA in connection with an application seeking approval of a change of control regulated by the new Part 5A.

**Section 78DA – Acceptance of undertaking**

Subsection 78DA(1) authorizes the PIMA to accept a written undertaking that the person will take specified action, or refrain from taking specified action, in relation to news or current affairs content provided by a specified registered news media voice, or, during the interim period, by a specified listed news media voice.

It is intended that undertakings will, in the context of an application for prior approval of a transaction, provide a means for maintaining diversity of control of registered (or listed) news media voices. It is intended that undertakings could relate to structural measures to maintain diversity, such as undertakings to dispose of particular assets within particular periods. Undertakings could also extend to behavioural matters, although structural undertakings are more likely to be preferred as they are usually clearer, more certain of implementation, require less administrative burden in terms of regular reporting from the parties involved and require less intensive regulatory monitoring than behavioural undertakings.

The formal requirements for an undertaking are set out in subsection 78DA(2), while subsection 78DA(3) confirms that an undertaking (or particular provisions of it) can be expressed as contingent upon the occurrence of a specified event. Subsections 78DA(8) and (9) recognize that an undertaking may also confer functions and powers on either the PIMA or the ACMA, in which case both the PIMA and the ACMA are authorized to perform those functions or exercise those powers.

For example, an undertaking might be prepared for the situation where a person acquires a 15 per cent share holding in a particular media operation, which results in a control event. To facilitate the PIMA’s approval of this transaction the undertaking might provide that the person will not acquire additional shares in any of the registered news media voices they control without seeking further approval from the PIMA. To the extent that the undertaking confers an additional function and power on the PIMA, this is authorized by subsection 78DA(8).

Similarly, an undertaking might be prepared for the situation where a person takes over a particular media operation, which results in a control event. To facilitate the PIMA’s approval of this transaction the undertaking might provide that the person will dispose of their controlling interest in another media operation within a specified period. The
undertaking may confer on the ACMA the power to issue a certificate of compliance with respect to the disposal action. To the extent that the undertaking confers an additional power on the ACMA, this is authorized by subsection 78DA(9).

Subsection 78DA(4) provides for the applicant to vary or withdraw an undertaking at any time before the PIMA accepts it. Separately, sections 78DB and 78DC provide for the variation or withdrawal of an undertaking after the PIMA has accepted it.

Subsections 78DA(5) and (6) provide that when deciding whether to accept an undertaking, the PIMA must have regard to the need to maintain diversity of control of registered media voices (or, during the interim period, listed media voices). The PIMA can also have regard to any other relevant considerations. Before deciding to accept an undertaking, the PIMA must consult the ACMA (subsection 78DA(7) refers).

If an undertaking is accepted, the PIMA must publish a summary of it on the Department’s website (subsection 78DA(10) refers). The PIMA also has the discretion to publish the entire undertaking on the Department’s website (subsection 78DA(11)), although in practice this decision would need to take into account any issues of commercial confidentiality.

Section 78DB – Variation of undertaking

Section 78DB sets out the process under which a person who has given an undertaking that has been accepted by the PIMA may apply to vary the undertaking. The PIMA has responsibility to consider the variation and to decide whether to accept or reject the proposed variation. The process in this provision mirrors the process set out in section 78DA.

Before making a decision, the PIMA must consult the ACMA and the public, and use his or her best endeavours to make a decision within 90 days of receipt of the variation proposal (subsections 78DB(6) and (7), and section 78DD refer).

The policy objectives for the PIMA’s decision are set out in subsections 78DB(4) and (5). The PIMA must consider the need to maintain diversity of control of registered news media voices (or, during the interim period, of listed news media voices), and such other matters as the PIMA considers relevant.

Subsections 78DB(8) and (9) provide that if the PIMA accepts or rejects the variation, the PIMA must give written notice to the person and the ACMA, and (for acceptance decisions) set out the terms of the variation or (for refusal decisions) set out its reasons.

If a variation to an undertaking is accepted, the PIMA must publish a summary of it on the Department’s website (subsection 78DB(10) refers). The PIMA also has the discretion to publish the entire undertaking on the Department’s website, although in practice this decision would need to take into account any issues of commercial confidentiality.

Section 78DC– Withdrawal of undertaking

Section 78DC sets out the process under which an undertaking may be withdrawn after the PIMA has accepted it. As an undertaking may have been accepted in the context of the prior approval of a transaction resulting in a lessening of diversity of control of registered news media voices, the undertaking cannot be withdrawn unilaterally; the PIMA must consent
(subsection 78DC(2)). Subsections 78DC(3) and (4) set out the formal requirements for an application seeking the PIMA’s consent.

Before making a decision on whether to consent to the withdrawal of an undertaking (subsection 78DC(5)), the PIMA must consult the ACMA and the public, and use his or her best endeavours to make a decision within 90 days of receipt of the application (subsections 78DC(8) and (9), and section 78DD refer).

Subsections 78DC(6) and (7) require the PIMA to consider the need to maintain the diversity of registered news media voices (or, in the interim period, the diversity of listed news media voices), and such other matters (if any) as the PIMA considers relevant.

Subsection 78DC(10) provides that if the PIMA consents to the withdrawal of the undertaking, he or she must give written notice to the person and the ACMA. Subsection 78DC(11) provides that if the PIMA refuses consent to the withdrawal, he or she must give written notice to the person and the ACMA. Where the PIMA consents to the withdrawal, the PIMA must publish the withdrawal on the Department’s website (subsection 78DC(12)).

Section 78DD – Consultation – variation or withdrawal of undertaking

This section sets out the public consultation requirements for the PIMA’s decisions under subsections 78DB(3) (variation of an undertaking) and 78DC(5) (withdrawal of an undertaking).

The PIMA must publish a notice on the Department’s website setting out the proposed decision and inviting persons to make submissions about the proposed decision within 28 days. The PIMA must consider any submissions that are received within the 28 day period.

Subsection 78DD(2) provides that the public consultation requirements do not apply to a minor variation.

Section 78DE – Enforcement of undertaking

Section 78DE empowers the ACMA to take enforcement action in relation to an undertaking that is in force. Where the ACMA considers that the person has breached the undertaking, the ACMA may apply to the Federal Court.

The Federal Court will have power to make any of the following orders:

- an order directing the person to comply with the undertaking;
- an order directing the person to pay to the ACMA, on behalf of the Commonwealth, an amount of money up to the amount of any financial benefit that the person has obtained, directly or indirectly, that is attributable to the breach;
- an order directing the person to compensate any other person who has suffered loss or damage as a result of the breach; and
- any other order that the court considers appropriate.
Division 5 – Remedial directions

This Division empowers the PIMA to issue remedial directions in situations where control events have occurred without the PIMA’s prior approval, as required by new section 78CB. Remedial directions are widely used in the BSA. Generally, under the BSA, where a certain event occurs or a situation exists (e.g. contravention of a licence condition or standard or the existence of an unacceptable media diversity situation), a remedial direction may be issued by the ACMA to specify the action that is required to be taken to ensure that the relevant event or situation ceases or that the event will be unlikely to occur.

Section 78EA – Directions relating to control events that occur after the interim period
Section 78EB – Directions relating to control events that occur during the interim period
Section 78EC – Directions relating to control events that occurred during the pre-commencement period

Section 78EA empowers the PIMA to issue remedial directions in relation to unapproved control events that occur after the interim period, provided the PIMA has regard to the objectives set out in subsection 78EA(7).

The purpose of this power is to enable the PIMA to unwind the effect of transactions that occurred in breach of the requirement for prior approval. The PIMA would give directions to maintain or restore diversity of control of registered news media voices.

The PIMA may direct a person to take specified action to ensure that the person ceases to be in a position to exercise control of the registered news media voice (subsection 78EA(2)). Examples of the different types of remedial directions are set out in subsection 78EA(3). The examples are not exhaustive of the kinds of direction that may be given and subsection 78EA(4) provides that these examples do not limit the general power set out in subsection 78EA(2).

The directions mentioned in subsection 78EA(3) are:
- a direction requiring the disposal of shares or interests in shares;
- a direction restraining the exercise of any rights attached to shares, or interests in shares;
- a direction prohibiting or deferring the payment of any sums due to a person in respect of shares, or interests in shares, held by the person; and
- a direction that any exercise of rights attached to shares or interests in shares be disregarded.

A direction issued by the PIMA must specify a time period for compliance with the direction, provided the period is not longer than 12 months (subsections 78EA(5) and (6)).

Sections 78EB and 78EC empower the PIMA to issue remedial directions in relation to unapproved control events that occur during the interim period or the pre-commencement period. The exercise of the power is subject to substantially the same conditions as are set out in section 78EA.

These sections relate to listed news media voices and will enable the PIMA to unwind the effect of transactions in relation to control of these entities that occur before the register of news media voices comes into effect. This is intended to reduce any incentive to bring...
forward transactions in advance of passage and commencement of the legislation to avoid the 
operation of the new rules.

Where a person receives a remedial direction from the PIMA, that person must comply with 
the requirements of the directions or they risk potential compliance action being taken against 
them (see proposed sections 78ED and 78EE, noted below).

Section 78ED – Breach of direction – offence
Section 78EE – Breach of direction – civil penalty

These proposed sections deal with the situation where the PIMA issues a remedial direction 
to a person requiring them to take specified action(s), but that person does not comply with it.

A person who engages in conduct (defined in section 78AB by reference to acts or 
omissions) that contravenes a remedial direction under section 78EA, 78EB or 78EC, is 
criminally or civilly liable.

Enforcement action can be taken by the Director of Public Prosecutions (in respect of 
offences) and the ACMA (in respect of civil contraventions).

Section 78ED provides that a separate offence is committed on each day on which the 
contravention continues, including the day on which the person is convicted for the offence 
and any later day. The maximum penalty for committing the offence is 20 000 penalty units 
($3.4 million).

Section 78EE provides that a separate contravention of the civil penalty provision is 
committed on each day on which the contravention continues, including a day on which a 
civil penalty order is made or any later day.

Division 6 – Information-gathering powers

This Division sets out the PIMA’s powers to obtain information and documents. The powers 
relate to the operation of Part 5A, including consideration of transactions under Division 3 of 
Part 5A, consideration of undertakings, withdrawal of undertakings and variations of 
undertakings under Division 4 of Part 5A, and remedial directions under Division 5 of 
Part 5A.

Section 78FA – PIMA may obtain information or documents

The PIMA may exercise the powers conferred by section 78FA when the PIMA believes on 
reasonable grounds that a person has information or a document that is relevant to the 
operation of Part 5A.

The PIMA is empowered to issue to any person notices for the production, within a specified 
period and in a specified form, of any such information, documents or copies of documents 
specified in the notice (subsection 78FA(2)). To ensure that a person has sufficient time to 
comply with the notice, the specified period cannot be less than 14 days after the notice is 
given (subsection 78FA(3)).
Subsection 78FA(4) provides that a person must comply with the notice. Failure to comply with a notice may attract a civil penalty (subsection 78FA(5)). However, an individual may refuse to comply with the notice if compliance would incriminate them. Nothing in this Bill is intended to abrogate an individual’s common law privilege against self-incrimination. A company is not entitled to claim the privilege against self-incrimination if it is required to answer a question or give information, or produce a document or any other thing under a Commonwealth law (see section 187 of the Evidence Act 1995 (Cth)).

Section 78FB – Copying documents – compensation

Section 78FB states that a person is entitled to be paid reasonable compensation by the Commonwealth for making and producing copies of documents in compliance with a notice to produce issued by the PIMA under paragraph 78FA(2)(c).

Section 78FC – Copies of documents

Section 78FC provides that the PIMA may inspect a document, and make and retain copies of all or part of a document obtained under section 78FA (subsection 78FC(1)). This power may be required in situations where the PIMA needs to examine many, large, and/or complex documents and information.

The PIMA may also retain a copy of a document produced pursuant to a notice covered by paragraph 78FA(2)(c) (subsection 78FC(2)).

Section 78FD – PIMA may retain documents

The PIMA may take and retain for as long as is necessary an original document produced under subsection 78FA(2).

If the PIMA takes an original document, the person otherwise entitled to possess the document is entitled to be supplied with a true copy, certified by the PIMA, as soon as practicable (subsection 78FD(2)). This rule is intended to ensure that the person providing the original document is not disadvantaged by the PIMA retaining possession of it.

In any court or tribunal proceedings, the certified copy of the document must be admitted as evidence as if it were the original document (subsection 78FD(3)). This ensures that the PIMA’s retention of the original document does not disadvantage the person who provided it. As an additional safeguard, until the certified copy is supplied to the person the PIMA must, at times and places that are appropriate, allow the person to inspect and make copies of all or a part of the document (subsection 78FD(4)).

Division 7 – News media voices

Division 7 sets out the definition of the term news media voices. Certain news media voices are required to be registered under Division 8 of Part 5A.

Section 78GA – News media voices

Subsection 78GA(1) outlines the services, platforms and publications that are included in the term news media voice for the purposes of Part 5A.
The term *news media voice* includes the following:

- **commercial television broadcasting services** that:
  - provide regularly scheduled *news or current affairs programs* (paragraph 78GA(1)(a)(i));
  - specialise in *news or current affairs content* (paragraph 78GA(1)(a)(ii)); or
  - are specified in a legislative instrument made by the Minister (paragraph 78GA(1)(b)).

The term **commercial television broadcasting service** is defined in section 6(1) of the BSA as a commercial broadcasting service that provides television programs. Definitions for *news or current affairs program* and *news or current affairs content* are in proposed section 78AB.

Currently all commercial television broadcasting services provide regularly scheduled news or current affairs programs. However, while these services would be considered to be news media voices, only some commercial television broadcasting services would be regulated by this Part, based on the size of their audience determined in accordance with Division 8 (*registrable news media voices*) and Division 9 (*listed news media voices*).

- **commercial radio broadcasting services** that:
  - provide regularly scheduled *news or current affairs programs* (subparagraph 78GA(1)(c)(i));
  - specialise in *news or current affairs content* (subparagraph 78GA(1)(c)(ii)); or
  - are specified in a legislative instrument made by the Minister (paragraph 78GA(1)(d)).

The term **commercial radio broadcasting service** is already defined in section 6(1) of the BSA as ‘a commercial broadcasting service that provides radio programs’. The terms *news or current affairs program* and *news or current affairs content* are defined in proposed section 78AB.

Currently most, but not all, commercial radio broadcasting services provide regularly scheduled news or current affairs programs, or specialise in news or current affairs content. Not all commercial radio broadcasting services will be news media voices. In addition, even if a commercial radio broadcasting service is a news media voice, only some services would be regulated by this Part, based on the size of the service’s audience determined in accordance with Division 8 (*registrable news media voices*) and Division 9 (*listed news media voices*).

- **subscription television services** that:
  - provide regularly scheduled *news or current affairs programs* targeted to the Australian public (subparagraph 78GA(1)(e)(i));
  - specialise in *news or current affairs content* targeted to the Australian public (subparagraph 78GA(1)(e)(ii)); or
  - are specified in a legislative instrument made by the Minister (paragraph 78GA(1)(f));

A definition of the term *subscription television service* would be inserted into subsection 6(1) of the BSA by Item 15 of the Bill as a *subscription television*
broadcasting service as well as a subscription television narrowcasting service. Both of these terms are already defined in subsection 6(1) of the BSA. The terms news or current affairs program and news or current affairs content are defined in proposed section 78AB.

Only a few subscription television services provide regularly scheduled news or current affairs programs, or specialise in news or current affairs content. Furthermore, even if a subscription television service is a news media voice, the only services regulated by this Part are those that cross the audience threshold audience determined in accordance with Division 8 (Registrable news media voices) and Division 9 (Listed news media voices).

- **subscription television platforms.** The term *subscription television platform* is defined in proposed new section 6A (see Items 14 and 16). A subscription television platform is a news media voice because it controls the selection of subscription television services (including those that specialise in news programs) that are made available to subscribers;

- **print publications.** There are two categories of print publications included in the definition of *news media voice*:
  - paragraph 78GA(1)(h) - a print publication published by a constitutional corporation whose activities are wholly or principally media-related activities:
    - the content of which consists of or includes news or current affairs content;
    - with the content targeted to the public in Australia;
    - where the content is not targeted to a special interest group; and
    - that is intended to be circulated wholly or principally by way of sale.
  - paragraph 78GA(1)(i) - a print publication published by a constitutional corporation and specified in a legislative instrument made by the Minister.

Definitions of the terms print publication, media-related activities and news or current affairs program are included in proposed section 78AB. The term constitutional corporation is already defined in subsection 6(1) of the BSA.

This provision would pick up metropolitan print publications (for example, *The Sydney Morning Herald* or *The Herald Sun*) as well as regional print publications (such as *The Canberra Times* or the *Sunshine Coast Daily*).

However, while these services would be considered to be news media voices, the print publications that would be deemed to be registrable news media voices would be determined under Division 8.

- **online services.** There are two categories of online services included in the definition of *news media voice* (paragraphs 78GA(1)(j) and (k)).
  - a subscription-based service:
    - that delivers or makes available news or current affairs content;
    - provided by a person whose activities are wholly or principally media-related activities;
    - with the content targeted to the public in Australia;
    - where the content is not targeted to a special interest group; and
that is not a news or current affairs aggregation service; and
- a service specified in a legislative instrument made by the Minister
  (paragraph 78GA(1)(k)).

Definitions of the terms online service, news or current affairs program, news or current affairs content, media-related activities and news or current affairs aggregation service are included in proposed section 78AB.

Proposed section 78NA qualifies the types of online services regulated by Part 5A. A provider of an online service is not regulated by this Part merely because:
- the person supplies a carriage service that enables content to be delivered/accessed (for example, an internet service provider); or
- the person provides a billing service or a fee collection service in relation to an online service does not bring the service into the definition of ‘online service’ (for example, a billing service product offered by a telecommunications provider).

The Minister has a reserve power to make a legislative instrument to specify a particular service provider or print publication (see paragraphs 78GA(1)(b), (d), (f), (i) and (k)). This enables certainty as to the particular services or publications, or classes of services or publications, that are news media voices in the event there is doubt on the matter. The legislative note at the end of subsection 78GA(1) refers the reader to subsection 13(3) of the LI Act, which provides that in exercising a power in relation to a matter, a rule-maker may identify the matter by referring to a class or classes of matters.

Exemptions

Subsection 78GA(2) provides that subsection 78GA(1) is subject to the exemptions set out in subsections 78GA(3) to (8).

Subsections 78GA(3) to (8) provide that the Minister may, by legislative instrument, specify that a particular service is not classified as a news media voice for the purposes of Part 5A. These services are:
- a specified commercial television broadcasting service;
- a specified commercial radio broadcasting service;
- a specified subscription television service;
- a specified subscription television platform;
- a specified print publication;
- a specified online service.

The mechanism for a legislative instrument to determine exemptions is included to provide the flexibility to exclude services, platforms or publications that should not be captured by the provision in the event that any anomalies arise in the operation of the provisions. The power will also be able to be used to specifically exclude services, platforms or publications to enable certainty to be provided in the event of doubt.
**Section 38C licences**

Subsection 78GA(9) provides that section 78GA does not apply to a commercial television broadcasting service that is provided under a licence allocated under section 38C of the Act (i.e. services provided with the use of a satellite).

The services provided under this type of licence are excluded from the definition of *news media voice* because the regularly scheduled news programs broadcast by these services originate from other commercial television broadcasting services – the latter services are within the scope of paragraph 78GA(1)(a).

**Division 8 – Registrable news media voices**

Division 8 sets out the methodology for determining the threshold at which a *news media voice* is to be registered on the Register of News Media Voices (see Division 10). The provisions in this Division aim to capture the most significant news media voices by identifying those that have an audience reach that exceeds thirty per cent of the average audience for commercial television evening news programs.

**Section 78HA – Commercial television broadcasting services that are registrable news media voices**

**Threshold audience**

Subsection 78HA(1) sets out the methodology for identifying the threshold at which commercial television broadcasting services that are news media voices (see commentary on paragraphs 78GA(1)(a) and (b), above) are also registrable.

Where the sum of the number that is taken to be the average number of viewers of the commercial television broadcasting service and the number that is taken to be the average number of paying customers of an associated online service (both set out in Eligibility Rules made by the ACMA), is greater than 30 per cent of the average metropolitan commercial television evening news audience, then the commercial television broadcasting service will be a *registrable news media voice*. In these circumstances, the associated online service will also be a registrable news media voice (see subsection 78HF(2) below).

The expression ‘taken to be’ the average number is used as the Eligibility Rules will, in practice, create a methodology to estimate a viewing audience for news or current affairs. The number will not necessarily be based on an average number of viewers for all the programs on the commercial television broadcasting service. It is expected that the ACMA will use the best available mechanism for estimating the audience, such as OzTam rating figures, but will also determine the best way of making an appropriate comparison, for example by using the average number of viewers on week nights of the most popular nightly news program for that service over a specified period.
This methodology can be illustrated as follows:

The number taken to be the average number of viewers of the commercial television broadcasting service, as set out in the Eligibility Rules, made by the ACMA under proposed section 78HH.

If an online service is associated with the commercial television broadcasting service and the online service is a news media voice:

- the number taken to be the average number of paying customers of an online service (as set out in the Eligibility Rules, made by the ACMA under proposed section 78HH).

30% of the average metropolitan commercial television evening news audience (calculated in accordance with section 78HG).

The term *average metropolitan commercial television evening news audience* is defined in section 78AB as having the meaning given by section 78HG (see below for discussion on this provision). The threshold has been set at an audience greater than 30 per cent of the average metropolitan commercial television evening news audience, as this audience was identified as being the most commonly accessed means of acquiring news by Australians.

**Example**

Broadcaster X operates a commercial television broadcasting service in a regional area.

- It operates a digital channel that shows a mixture of general entertainment programming, together with news programs.
- 45 000 is taken to be the average number of viewers (calculated in accordance with the ACMA Eligibility Rules – see proposed section 78HH).
- It has an associated website, with 20 000 paid subscriptions and on average 100 000 users that do not pay to access the website. This website is focused on current affairs content but is not a news or current affairs aggregation service. The service’s content is not targeted to a special interest group.

The average metropolitan commercial television evening news audience (calculated in accordance with proposed section 78HG, below) is 206 000 viewers. 30 per cent of this figure is 61 800 viewers.
Broadcaster X is a *registrable news media voice* because:

- it is a *news media voice* for the purposes of subsection 78GA(1)(a), as:
  - it is defined as a *commercial television broadcasting service* (within the meaning of the definition in subsection 6(1) of the BSA); and
  - it provides regularly scheduled news programs;
- the website is a *news media voice* for the purposes of subsection 78GA(1)(a), as it satisfies the criteria for being an *online service*, as the website:
  - makes available news or current affairs content that is created by Broadcaster X (i.e. it is not an aggregation service);
  - is maintained by Broadcaster X, whose activities are principally *media-related activities* (as defined in proposed section 78AB);
  - contains content targeted to the general public and not directed at a special interest group;
  - has paying customers; and
- Broadcaster X’s viewers for the purposes of section 78HA is 65 000 (i.e. 45 000 viewers of the television service plus 20 000 online subscribers, but not the 100 000 non-paying users) which is greater than 30 per cent of the average metropolitan commercial television evening news audience.

**Exemptions**

Subsection 78HA(3) provides that the Minister may, by legislative instrument, determine that a specified commercial television broadcasting service is not a *registrable news media voice* for the purposes of Part 5A. Subsection 78HA(2) provides that subsection 78HA(1) is subject to this Ministerial power.

It is intended to only include significant news media voices on the register. The mechanism to create exemptions by means of a legislative instrument is intended as a reserve power, to be used if news media voices that are not significant are inadvertently caught by the provisions.

**Section 78HB – Commercial radio broadcasting services that are registrable news media voices**

Proposed subsection 78HB(1) operates in a similar manner as proposed section 78HA(1) but in relation to commercial radio broadcasting services (a term defined in section 6(1) of the BSA) rather than commercial television broadcasting services.

The method for calculating the sum in relation to the commercial radio broadcasting service in subsection 78HB(1) is the same as in subsection 78HA(1), although a number that is taken to be the average number of *listeners* to the commercial radio broadcasting service is used rather than the average number of *viewers* of the commercial television broadcasting service. A number that is taken to be the average number of paying customers of an online service associated with the commercial radio broadcasting service (that is also a news media voice) is included in this calculation. In these circumstances, this associated online service must also be a registrable news media voice (see subsection 78HF(3) below).
The *average metropolitan commercial television evening news audience* is used as the threshold number of viewers in subsection 78HB(1), for the same reasons specified above.

Subsections 78HB(2) and (3) operate in the same way as described in the commentary on subsections 78HA(2) and (3), above.

**Section 78HC – Subscription television services that are registrable news media voices**

Proposed subsection 78HC(1) operates in a similar manner as proposed section 78HA(1) but in relation to subscription television services (a term defined in proposed section 6, see Item 15 of the Bill).

The average number of paying customers of an online service associated with the subscription television service (that is also a news media voice) is included in this calculation. It is noted that, in these circumstances, this associated online service must also be a registrable news media voice (see subsection 78HF(4) below).

The *average metropolitan commercial television evening news audience* is used as the threshold number of viewers in subsection 78HC(1), for the same reasons specified above.

**Exemptions**

Subsections 78HC(2) and (3) operate in the same way as described in the commentary on subsections 78HA(2) and (3), above.

**Section 78HD – Subscription television platforms that are registrable news media voices**

Subsection 78HD(1) provides that a *subscription television platform* for a *branded group of subscription television services* (terms defined in proposed section 6A, see Item 16 of the Bill) is a *registrable news media voice* for the purposes of Part 5A where the sum of the numbers taken to be the average number of viewers of subscription services belonging to the branded group and associated online services exceeds 30 per cent of the average metropolitan commercial television evening news audience.

Subsection 78HD(1) operates in a similar manner as proposed section 78HA(1) but in relation to subscription television services that belong to a branded group of subscription television services.

The average number of paying customers of an online service associated with the branded group is included in this calculation, where the subscription television service and online service are news media voices and the subscription television service belongs to the branded group. In these circumstances, the associated online service will also be a registrable news media voice (see subsection 78HF(6) below).

The *average metropolitan commercial television evening news audience* is used as the threshold number of viewers in subsection 78HD(1), for the same reasons specified above.

Subsections 78HD(2) and (3) operate in the same way as described in the commentary on subsections 78HA(2) and (3), above.
Section 78HE – Print publications that are registrable news media voices

Proposed subsection 78HE(1) operates in a similar manner as proposed section 78HA(1) but in relation to a print publication (a term defined in proposed section 78AB) rather than commercial television broadcasting services. A number taken to be the average number of paying customers of an online service associated with the print publication (that is also a news media voice) is included in this calculation. In these circumstances, the associated online service will also be a registrable news media voice (see subsection 78HF(7) below).

The average metropolitan commercial television evening news audience is used as the threshold number of viewers in subsection 78HE(1), for the same reasons specified above.

Exemptions

Subsections 78HE(2) and (3) operate in the same way as described in the commentary on subsections 78HA(2) and (3), above.

Section 78HF – Online services that are registrable news media voices

Proposed section 78HF includes provisions dealing with online services that are registrable news media voices as well as with associated online services that are registrable news media voices.

Online services – general

Subsection 78HF(1) provides that where an online service is a news media voice (within the meaning of paragraph 78GA(1)(j) or (k)) and the number taken to be the average number of paying customers of the online service exceeds 30 per cent of the average metropolitan commercial television evening news audience, that online service will be a registrable news media voice for the purpose of Part 5A.

This provision operates in a similar manner to the ‘online services’ provisions mentioned above (see commentary on subsections 78HA(1), 78HB(1), 78HC(1), 78HD(1) and 78HE(1) above).

Associated online services

Subsections 78HF(2) to (7) provide that certain associated online services are registrable news media voices. In short, an online service that is associated with another registrable news media voice – that is, a particular commercial broadcasting service, subscription television service, branded group of subscription television services, subscription television platform, or print publication – will be a registrable news media voice in its own right. The association between the online service and the other news media voice is determined in accordance with the applicable provision in subsections 78HA(1), 78HB(1), 78HC(1), 78HD(1) or 78HE(1).

This means that a control event transaction involving an associated online service that is a registrable news media voice will be subject to the PIMA’s prior approval in accordance with Division 3 of Part 5A.
Exemptions

The ministerial determinations in subsections 78HF(8) and (9) operate in the same way as described in subsections 78HA(2) and (3), above.

Section 78HG – Average metropolitan commercial television evening news audience

Subsection 78HG(1) sets out the formula for identifying the number taken to be the average metropolitan commercial television evening news audience. This is worked out as follows:

- identifying the aggregate metropolitan commercial television evening news audience number. This number is established under Eligibility Rules made by the ACMA;
- dividing this number by 15 – this takes into account the five metropolitan licence areas (see clause 2 of Schedule 4 to the Act: the capital cities of New South Wales, Victoria, Queensland, Western Australia, South Australia) and the three major commercial broadcasting networks (i.e. Channel Seven, Channel Nine and Channel Ten).

Subsections 78HA(1), 78HB(1), 78HC(1), 78HD(1) and 78HE(1) (discussed above) all refer to the average metropolitan commercial television evening news audience as the threshold for calculating whether certain news media voices are also registrable.

Subsection 78HG(2) provides that the Eligibility Rules (made by the ACMA) for the purposes of subsection 78HG(1) must have regard to the commercial television broadcasting services provided in the metropolitan licence areas (as indicated above). The ACMA must not have regard to commercial television broadcasting services provided in other licence areas. This subsection recognises that the denominator used in the formula in subsection 78HG(1) is based on the number of metropolitan licence areas.

Section 78HH – Eligibility Rules

Section 78HH enables the ACMA to make Eligibility Rules, which are referred to in Part 5A and are used to identify the threshold for identifying the number that corresponds to the average metropolitan commercial television evening news audience in proposed section 78HG (discussed above). The Eligibility Rules must be in writing and be published on the ACMA website (subsections 78HH(1) and 78HH(2)).

Subsection 78HH(2) declares that the Eligibility Rules are not a legislative instrument. This is because the Rules merely set out an administrative methodology for calculating the aggregate metropolitan commercial television evening news audience number.

Division 9 – Listed news media voices

Section 78JA – Listed news media voices

This provision specifies news media voices that are expected to be on the register of news media voices, once registration is complete. They are separately and specifically listed to give the controllers of those voices notice that:

- they must seek the PIMA’s approval for particular transactions that result in a control event occurring during the interim period (see section 78CB); and
• if a transaction that occurred during the *interim period* is not approved by the PIMA and the PIMA is satisfied that this event substantially lessens diversity of control of listed media voices, the PIMA will have the power to direct the controller to take particular actions with the objective of ‘unwinding’ the transaction (see section 78EB);

• if a transaction results in a control event during the *pre-commencement period* and the PIMA is satisfied that this event substantially lessens diversity of control of listed media voices, the PIMA will have the power to direct the controller to take particular actions with the objective of ‘unwinding’ the transaction (see section 78EC).

The listing of these news media voices will create a disincentive for the controllers of those voices to bring forward transactions before commencement to avoid the operation of the new rules.

The news media voices listed in Division 9 are influential news media voices operating in Australia.

**Division 10 – Register of News Media Voices**

This Division sets out the requirements for maintaining the Register of News Media Voices.

*Section 78KA – Register of News Media Voices*

This provision sets out the requirements for the Register of News Media Voices (the Register). This Register has the following components:

• it is to be maintained, electronically, by the ACMA;

• it will include the entries required by proposed section 78KB;

• it will be made available for inspection on the internet;

• it is not a legislative instrument.

The ACMA must comply with these requirements as soon as practicable or within six months of the commencement of this section.

As the register includes entries for news media voices that meet specified requirements, it does not have the character of a legislative instrument.

*Section 78KB – Registrable news media voices to be entered in the Register etc*

Subsection 78KB(1) provides that, where the ACMA is satisfied that a news media voice is a ‘registrable news media voice’ (in accordance with Division 8, discussed above), it must enter that news media voice in the Register.

Subsection 78KB(2) provides that where the ACMA is satisfied that a news media voice already included in the Register is not a registrable news media voice, it must remove that entry from the Register.
Section 78KC – Corrections of clerical errors or obvious defects

This provision enables the ACMA to alter the Register in circumstances where there are clerical errors or obvious defects in the Register.

Section 78KD – Legislative instrument—further provision about the operation of the Register

This provision provides that the Minister may, by legislative instrument, set out further details on how the Register operates.

Division 11 – Prior opinions by the ACMA

This Division provides the ACMA with the ability to provide an opinion on whether a person is in a position to exercise control of (or, if a specific transaction took place, be in a position to exercise control of) a print publication, online service, subscription television service or subscription television platform. This Division is modelled on Division 10 of Part 5 of the BSA.

Section 78LA – Requests to the ACMA to give an opinion on whether a person is in a position to control a print publication, an online service or a subscription television service etc.

Subsection 78LA(1) provides that a person may apply to the ACMA for an opinion as to whether the person is (or will be, following a certain transaction taking place), in a position to exercise control of a print publication, online service, subscription television service or subscription television platform.

Subsections 78LA(2) and (3) provide that an application must:

- be in the form approved in writing by the ACMA; and
- set out the applicant’s opinion as to whether the applicant is/would be in a position to exercise control of the relevant media.

Where further information is required from the applicant, the ACMA must provide the applicant with written notice of this fact within 30 days of receiving an application (subsection 78LA(4)).

The ACMA must provide its opinion in writing ‘as soon as practicable’ after receiving the application or the additional information. As this provision mirrors the provision in section 74 of the BSA, a specific timeframe has not been inserted (subsection 78LA(5)). However, when read together with subsection 78LA(7), the ACMA has 45 days in which to provide an opinion to the applicant, where the opinion differs from the opinion provided by the applicant in the application.

Where the ACMA is of the opinion that a person is not or will not be in a position to exercise control, neither the ACMA nor any other Government agency (including the PIMA) may take any action against the person, as long as the circumstances on which the opinion is based remain substantially the same (subsections 78LA(6) and (9)).

The ACMA may charge a fee for the provision of an opinion (subsection 78LA(8)).
Section 78LB – Requests to the ACMA to give an opinion on whether an online service is associated with a non-online service or a print publication etc.

Subsection 78LB(1) provides that a person may apply to the ACMA for an opinion as to whether an online service is associated with a non-online service, a branded group of subscription television broadcasting services or a print publication.

Subsections 78LB(2) and (3) provide that an application must:
- be in the form approved in writing by the ACMA; and
- set out the applicant’s opinion as to whether the online service is associated with the non-online service, branded group of subscription television broadcasting services or print publication concerned.

Where further information is required from the applicant, the ACMA must provide the applicant with written notice of this fact within 30 days of receiving an application (subsection 78LB(4)).

The ACMA must provide its opinion in writing ‘as soon as practicable’ after receiving the application or the additional information. As this provision mirrors the provision in section 74 of the BSA, a specific timeframe has not been inserted (subsection 78LB(5)). However, when read together with subsection 78LB(7), the ACMA has 45 days in which to provide an opinion to the applicant, where the opinion differs from the opinion provided by the applicant in the application.

Where the ACMA is of the opinion that an online service is not associated with a non-online service, a branded group of subscription television broadcasting services or a print publication, neither the ACMA nor any other Government agency (including the PIMA) may take any action against the person, as long as the circumstances on which the opinion is based remain substantially the same (subsections 78LB(6) and (9)).

The ACMA may charge a fee for the provision of an opinion (subsection 78LB(8)).

Division 12 – Notification Provisions

This Division sets out notification requirements for certain registered news media voices where there is a change in control or a change in directors. This notification must be provided to the ACMA within specified timeframes. There are currently similar notification requirements in Division 6 of Part 5 of the BSA. This Division includes complementary notification requirements in relation to registered subscription television platforms, subscription television licences, print publications and online services, for which notification obligations do not apply under Division 6 of Part 5A, to provide an information base which will assist the ACMA and the PIMA in performing their functions under this Part.

Subdivision A – Control of registered news media voices

This subdivision sets out the circumstances in which information must be provided when certain news media voices become a registrable news media voice.
Section 78MA – Requirement to notify control and directorships

This provision sets out requirements for certain service providers to notify the ACMA in circumstances where they become registered news media voices.

Notification by subscription television platform

Subsection 78MA(1) provides that if a subscription television platform becomes a registered news media voice, the platform must provide certain details to the ACMA within 28 days of the platform becoming a news media voice. These details include details of the directors and any persons who were in a position to exercise control of the platform company when it became a registered news media voice.

The term ‘control’ is specifically defined in subsection 6(1) of the BSA. However, the main interpretation of the concept of ‘control’ is in section 7 of the Act, which refers to Schedule 1 of the Act (this Schedule sets out mechanisms to be used when deciding whether a person is in a position to exercise ‘control’ and tracing company interests of a person).

Subsection 78MA(2) provides that the details required by subsection 78MA(1) must be provided in the form approved, in writing, by the ACMA.

Subsections 78MA(3) and (4) provide that, if a subscription television platform is a registered news media voice at the end of a financial year, the platform must, within three months after the end of the financial year, give the ACMA details of persons in a position to exercise control of the platform and the directors at the end of the financial year.

Notification by subscription television licensee

Subsections 78MA(5) and (6) operate in a similar manner as subsections 78MA(1) and (2), but apply in relation to a subscription television service that becomes a registered media voice.

In addition to the requirement in subsections 78MA(5) and (6), where a subscription television service is a registered news media voice at the end of a financial year, the licensee who provides the service must provide certain details to the ACMA within three months of the end of the financial year, in a form approved, in writing, by the ACMA (subsections 78MA(7) and (8)). These details include details of the directors and any persons who were in a position to exercise control of the service at the end of the financial year. New subsection 7(3) (see Item 19 of the Bill) deems a person in a position to exercise control of a subscription television licence to be in a position to exercise control of the subscription television service provided under the licence.

Notification by publisher of a print publication

Subsections 78MA(9) and (10) operate in a similar manner to subsections 78MA(1) and (2), but apply in relation to the publisher of a print publication that becomes a registered media voice.
In addition to the requirement in subsections 78MA(9) and (10), where a print publication is a registered news media voice at the end of a financial year, the publisher of the print publication must provide certain details to the ACMA within three months of the end of the financial year, in a form approved, in writing, by the ACMA (subsections 78MA(11) and (12)). These details include details of the directors of the publishers and any persons who were in a position to exercise control of the print publication at the end of the financial year.

Notification by provider of an online service

Subsections 78MA(13) and (14) operate in a similar manner to subsections 78MA(1) and (2), but apply in relation to an online service that becomes a registered media voice. In addition to the requirement in subsections 78MA(13) and (14), where an online service is a registered news media voice at the end of a financial year, the provider of the online service must provide certain details to the ACMA within three months of the end of the financial year, in a form approved, in writing, by the ACMA (subsections 78MA(15) and (16)). These details include details of the directors of the provider and any persons who were in a position to exercise control of the online service at the end of the financial year.

Offence

Subsection 78MA(11) provides that an offence is committed by a person, in circumstances where that person is subject to a requirement in subsections 78MA(1), (3), (5), (7), (9), (11) (13) or (15), if the person omits to do an act (for example, does not provide the required information to the ACMA within the required time period) and that omission breaches the requirement in those subsections.

The term person is defined in the AI Act to include a natural person as well as a body corporate.

The maximum punishment for a person who commits an offence under subsection 78MA(17) is 500 penalty units (currently $85 000).

Proposed section 78MB - Requirement to notify changes in control

Notification by subscription television platform

Subsection 78MB(1) provides that, where a subscription television platform is a registered news media voice, the platform must provide the ACMA with written notice of certain changes in control, within five days of becoming aware that the changes have taken place. These changes are:

- that a person who was not in a position to exercise control of the platform has become in a position to exercise control of the platform; or
- a person who was in position to control the platform has ceased to be in that position.

The comments on the meaning of ‘control’ in the context of new subsection 78MA(1) above also apply here.

Subsection 78MB(2) provides that the details required by subsection 78MB(1) must be provided in a form approved, in writing, by the ACMA.
Notification by subscription television licensee

Subsections 78MB(3) and (4) operate in a similar manner to subsections 78MB(1) and (2), but apply in relation to a subscription television service that is a registered media voice.

Notification by publisher of a print publication

Subsections 78MB(5) and (6) operate in a similar manner to subsections 78MB(1) and (2), but apply in relation to a print publication that is a registered media voice.

Notification by provider of online service

Subsections 78MB(7) and (8) operate in a similar manner to subsections 78MB(1) and (2), but apply in relation to an online service that is a registered media voice.

Offence

Subsection 78MB(5) operates in similar manner to subsection 78MA(11). It provides that an offence is committed by a person in circumstances where that person is subject to a requirement in subsections 78MB(1), (3), (5) or (7), if the person omits to do an act (for example, does not provide the required information to the ACMA within the required time period) and that omission breaches the requirement in those subsections.

The term person is defined in the AI Act to include a natural person as well as a body corporate.

Section 78MC – Person who obtains control must notify the ACMA

Notification by controller of subscription television platform

Subsection 78MC(1) provides that, where a subscription television platform is a registered news media voice, a person who comes to be in a position to exercise control of the platform must provide the ACMA with written notice of the change in control, within five days of becoming aware of the change.

The comments on the meaning of ‘control’ in the context of new subsection 78MA(1) above also apply here.

Subsection 78MC(2) provides that the details required by subsection 78MC(1) must be provided in the form approved, in writing, by the ACMA.

Notification by controller of subscription television licensee

Subsections 78MC(3) and (4) operate in a similar manner to subsections 78MC(1) and (2), but apply in relation to a subscription television service that is a registered news media voice.

Notification by controller of print publication

Subsections 78MC(5) and (6) operate in a similar manner to subsections 78MC(1) and (2), but apply in relation to a print publication that is a registered news media voice.
Notification by controller of online service

Subsections 78MC(7) and (8) operate in a similar manner to subsections 78MC(1) and (2), but apply in relation to an online service that is a registered news media voice.

Offence

Subsection 78MC(9) operates in a similar manner to subsection 78MA(11). It provides that an offence is committed by a person if that person is subject to a requirement in subsections 78MC(1), (3), (5) or (7), if the person does not provide the required information to the ACMA within the required time period.

The term *person* is defined in the AI Act to include a natural person as well as a body corporate.

Subdivision B – Control of listed news media voices

This subdivision provides transitional arrangements setting out notification requirements that apply in relation to transactions taking place during the pre-commencement period and immediately after the commencement of certain provisions and during the interim period. The terms *pre-commencement period* and *interim period* are defined (see commentary on section 78A above).

Section 78MD – Notification of control events that occurred during the pre-commencement period

Proposed section 78MD provides that a person must provide written notification to the PIMA of a control event, within 28 days of the commencement of section 78MD. The circumstances outlined in subsection 78MD(1) relate to transactions that occur during the *pre-commencement period* that are *control events* in relation to one or more *listed news media voices* and apply to a person is a party to the transaction or is in a position to prevent the transactions from taking place.

If a regulated person fails to provide information to the PIMA in accordance with subsection 78MD(2) the person commits an offence with a maximum penalty of 500 penalty units (currently $85 000).

Section 78ME – Notification of controllers of listed news media voices etc.

Proposed section 78ME applies to the current controllers of a listed news media voice at the time section 78ME commences.
Notification by subscription television platform

Subsections 78ME(1) and 78ME(2) provide that a subscription television platform that is a listed news media voice (see subsection 78JA(7)) immediately after the commencement of this section must provide certain written details to the ACMA. The information must be provided in a form approved in writing by the ACMA within 28 days of the commencement of the section (paragraph 78ME(1)(b)). These details include:

- the persons (to the knowledge of the platform) who were in a position to exercise control of the platform immediately after the commencement of section 78ME; and
- the names of each director immediately after the commencement of section 78ME.

Notification by subscription television licensee

Subsections 78ME(3) and (4) provide corresponding notification requirements for a licensee of a subscription television service that is a news media voice (see subsections 78JA(5) and (6)).

Notification by publisher of a print publication

Subsections 78ME(5) and (6) provide corresponding notification requirements for the publisher of a print publication that is a listed news media voice (see subsections 78JA(8) and (9)).

Notification by provider of an online service

Subsections 78ME(7) and (8) provide corresponding notification requirements for the provider of an online service that is a listed news media voice.

Offence

Where a person is under an obligation to provide notifications under subsections 78ME(1), (3), (5) or (7) and the required information is not provided within those timeframes, the requirement will be breached and the person will be subject to a maximum of 500 penalty units (currently $85 000).

Section 78MF – Requirement to notify changes in control

Proposed section 78MF applies in respect of control changes that occur during the interim period. A media entity that is a listed news media voice must notify the ACMA of control changes they are aware of.

Notification by subscription television platform

Subsections 78MF(1) and (2) provide that, during the interim period, a subscription television platform that is a listed news media voice must provide written notification to the ACMA, within five days of becoming aware of certain events taking place. The events that need to be notified to the ACMA are:
• a person who was not in position to exercise control of the platform becomes in a position to exercise control of the platform; or
• a person who was in a position to exercise control of the platform ceases to be in that position.

Subsection 78MF(2) provides that the details required by subsection 78MF(1) must be provided in the form approved, in writing, by the ACMA.

**Notification by subscription television licensee**

Subsections 78MF(3) and (4) provide corresponding requirements for a subscription television service that is a listed media voice.

**Notification by publisher of print publication**

Subsections 78MF(5) and (6) provide corresponding requirements for a print publication that is a listed media voice.

**Notification by provider of online service**

Subsections 78MF(7) and (8) provide corresponding requirements for a provider of an online service that is a listed media voice.

**Offence**

Subsection 78MF(9) provides that where a person is under an obligation to provide notifications under subsections 78MF(1), (3), (5) or (7) and the required information is not provided within those timeframes, the person commits an offence and will be subject to a maximum of 500 penalty units (currently $85,000).

**Section 78MG – Person who obtains control must notify the ACMA**

Proposed section 78MG would require new controllers of a listed news media voice to separately notify the ACMA of control changes that occur during the interim period.

**Notification by controller of subscription television platform**

Subsections 78MG(1) and (2) requires a person who, during the interim period, becomes in a position to exercise control of a subscription television platform (which is also a listed news media voice) to provide the ACMA with a written notice (in the form prescribed by the ACMA, in writing), within five days of becoming aware of the change in control.

**Notification by controller of subscription television service**

Subsections 78MG(3) and (4) provide corresponding requirements for a person who, during the interim period, becomes in a position to exercise control of a subscription television service (which is also a listed news media voice). The person must provide the ACMA with a written notice (in the form prescribed by the ACMA, in writing), within five days of becoming aware of the change in control.
Notification by controller of print publication

Subsections 78MG(5) and (6) provide corresponding requirements for a person who, during the interim period, becomes in a position to exercise control of a print publication (which is also a listed news media voice). The person must provide the ACMA with a written notice (in the form prescribed by the ACMA, in writing), within five days of becoming aware of the change in control.

Notification by controller of online service

Subsections 78MG(7) and (8) provide corresponding requirements for a person who, during the interim period, becomes in a position to exercise control of an online service (which is also a listed news media voice). The person must provide the ACMA with a written notice (in the form prescribed by the ACMA, in writing), within five days of becoming aware of the change in control.

Offence

Subsection 78MG(9) provides that where a person is under an obligation to provide notifications under subsections 78MG(1), (3), (5) or (7) and the required information is not provided within those timeframes, the person commits offence and will be subject to a maximum of 500 penalty units (currently $85 000).

Subdivision C – Notification of registrability

This subdivision sets out the notification requirements for services that are registrable news media voices both at the start of the initial Eligibility Rules completion day and after the start of the initial Eligibility Rules completion day.

Section 78MH – Initial notification of registrability

Proposed section 78MH provides the initial notification requirements for services that are registrable news media voices at the start of the ‘initial Eligibility Rules completion day’.

‘Eligibility Rules’ are made by the ACMA under section 78HH. These rules prescribe various matters for the purposes of proposed Division 8 of Part 5A of the BSA. The term ‘initial Eligibility Rules completion day’ is defined in proposed section 78ND. This is a date set by the ACMA, being the day after the Eligibility Rules come into force.

For each service that is a registrable news media voice at the start of the initial Eligibility Rules completion day, the relevant licensee, platform, publisher or provider must notify the ACMA, in writing, within 28 days after the initial Eligibility Rules completion day that the service is a registrable news media voice.

Section 36 of the AI Act applies to this provision. In particular, the table in subsection 36(1) of the AI Act indicates that:

- where a provision ‘is expressed to begin at, on or with a specified day’, the period of time ‘includes that day’ (item 4 of the table); and
where a provision ‘is expressed to begin after a specified day’, the period of time ‘does not include that day’ (item 6 of the table).

Also, subsection 36(2) of the AI Act provides that where something must be done by a certain day and that day is a Saturday, Sunday or a holiday (defined in subsection 36(3) of the AI Act), that thing may be done on the next day that is not a Saturday, Sunday or a holiday.

Subsections 78MH(1) to (6) provide that where the following services are registrable news media voices as at the start of the initial Eligible Rules completion day, notification must be provided to the ACMA within the 28 day period outlined above:

- Commercial television broadcasting service;
- Commercial radio broadcasting service;
- Subscription television service;
- Subscription television platform;
- Print publication; and
- Online service.

These services are discussed above – see commentary in relation to proposed section 78GA.

**Offence**

Subsection 78MH(7) provides that an offence is committed by a person in circumstances where:

- that person is subject to a requirement in subsection 78MH(1), (2), (3), (4), (5) or (6);
- the person omits to do an act (e.g. does not provide the required notification to the ACMA within the 28-day time period); and
- that omission breaches the requirement in one of those subsections.

The term ‘person’ is defined in the AI Act to include a natural person as well as a body corporate.

The penalty for contravention of subsection 78MH(7) is 500 penalty units (currently $85 000).

**Section 78MJ – Subsequent notification of registrability**

Proposed section 78MJ provides the subsequent notification requirements for services that are registrable news media voices after the start of the ‘initial Eligibility Rules completion day’.

For each service that is a registrable new media voice after the start of the initial Eligibility Rules completion day, written notification must be provided to the ACMA within five days of the licensee, platform, publisher or provider becoming aware that the service is a registrable news media voice.
Section 36 of the AI Act also applies to this provision (see commentary above). In particular, where a provision ‘is expressed to begin after a specified day’, the period of time ‘does not include that day’ (subsection 36(1) of the AI Act).

Subsections 78MJ(1) to (6) operate in the same manner as subsections 78MH(1) to (6), but in relation to services that become registrable news media voices after the start of the initial Eligibility Rules completion day.

Offence

Subsection 78MJ(7) operates in the same manner as subsection 78MH(7), discussed above, but in relation to subsections 78MJ(1) to (6).

Subdivision D – Notification of certain subscription television services

This subdivision sets out the notification requirements for subscription television platforms, in relation to certain subscription television services.

Section 78MK – Requirement to notify composition of branded group of subscription television services

This provision applies to a branded group of subscription television services (defined in proposed subsection 6A(1), discussed above). Where such a group exists immediately after the commencement of this provision, the subscription television platform for that group (defined in proposed subsection 6A(2), discussed above) must provide written details of that group to the ACMA.

Subsection 78MK(1) provides that where a branded group of subscription television services exists immediately after proposed section 78MK commences, the subscription television platform must provide the ACMA with written details of the services within that group. These details must be provided within 28 days after the commencement of proposed section 78MK (the above commentary in relation to subsections 36(2) and (3) of the AI Act also applies here).

Subsection 78MK(2) requires the details to be provided in a form approved by the ACMA, in writing.

Subsection 78MK(3) sets out requirements for the subscription television platform in circumstances where there is a change in composition of a branded group of subscription television services. Written details must be provided to the ACMA by the subscription television platform, within five days of becoming aware of the change (the above commentary in relation to subsections 36(2) and (3) of the AI Act also applies here).

Subsection 78MK(4) requires the details to be provided in a form approved by the ACMA, in writing.
Subsection 78MK(5) provides that an offence is committed by a person in circumstances where:

- that person is subject to a requirement in subsection 78MK(1) or (3);
- the person omits to do an act (e.g. does not provide the required notification to the ACMA within the relevant time period); and
- that omission breaches the requirement in either subsection 78MK(1) or (3).

The term ‘person’ is defined in the AI Act to include a natural person as well as a body corporate. The penalty for contravention of subsection 78MK(7) is 500 penalty units (currently $85 000).

Subsection 78MK(6) provides that where there are two or more subscription television platforms for a branded group of subscription television services, the notification requirements in this section are satisfied if notification is provided by one of those platforms (i.e. a notification is not required from each platform for that branded group).

**Subdivision E – Miscellaneous**

*Section 78ML – Strict Liability Offences*

This section provides that an offence against Division 7 is an offence of strict liability. The note in this provision refers to section 6.1 of the Criminal Code, which defines the term ‘strict liability’.

*Section 78MM – Designated infringement notice provisions*

This section lists the proposed sections in Division 12 that are designated infringement notice provisions. This is relevant for the purposes of Part 14E of the Act, which enables infringement notices to be provided for contravention of designated infringement notice provisions as an alternative to the institution of court proceedings.

**Division 13 - Miscellaneous**

*Section 78NA – Online service provider*

Proposed section 78NA provides rules for interpreting when a person is an online service provider. This provision operates to narrow the class of people who are regulated by new Part 5A. Subsection 78NA(1) excludes from the term online service provider a person who merely supplies a carriage service that enables content to be delivered or accessed. However, this does not preclude a person from being both an online service provider and a carriage service provider (see *Foxtel Management Pty Ltd v Seven Cable Television Pty Ltd* (2000) 102 FCR 555; [2000] FCA 1161). This exclusion of the mere supply of carriage services ensures that Part 5A only applies to those online services that provide content. The fact that an end-user may pay for access to, or use of, a carriage service does not necessarily make the service provider an online service subject to Part 5A.

Subsection 78NA(2) clarifies that a person who merely provides a billing service or fee collection service in relation to an online service, does not provide an online service.
Section 78NA mirrors clause 5 of Schedule 7 to the BSA to maintain consistency.

Section 78NB – When an online service is associated with a non-online service or a print publication etc.

Proposed section 78NB outlines the circumstances when an online service will be considered to be associated with a non-online service (defined in subsection 78NB(1)), a branded group of subscription television services or a print publication, for the purposes of Part 5A.

- An online service will be associated with a non-online service if the public would reasonably believe the services are associated with each other, having regard to the factors set out in subsection 78NB(2).
- An online service and a branded group of subscription television services (a term defined in proposed section 6A) will be associated, where the public would reasonably believe they are associated with each other, having regard to the factors set out in subsection 78NB(3).
- An online service and a print publication (terms defined in proposed section 78AB) will be associated, where the public would reasonably believe they are associated with each other, having regard to the factors set out in subsection 78NB(4).

Section 78NC – Initial Register completion day

Subsection 78NC(1) requires the ACMA to declare, as the initial Register completion day, the day following the day the ACMA is satisfied that all registrable news media voices have been entered in the Register. The declaration under this provision must be made in writing. The declaration is not a legislative instrument because it is not an instrument of a legislative character (subsection 78NC(2)). The instrument must be published on the ACMA website (section 78NC(3)).

The declaration the initial Register completion day may determine the end of the interim period (see commentary on proposed section 78AB above).

Section 78ND – Initial Eligibility Rules completion day

Subsection 78ND(1) requires the ACMA to declare, as the initial Eligibility Rules completion day for the purposes of Part 5A, the day following the day the Eligibility Rules (see proposed section 78HH above) are in force for the purposes of the provisions listed in that subsection. The declaration under this provision must be made in writing. Although this declaration is not a legislative instrument, the ACMA must publish a copy of the instrument on its website (subsections 78ND(2) and (3)).

The initial Eligibility Rules completion day is relevant for the purposes of the initial notification of registrability (see section 78MH) and the subsequent notification of registrability (see section 78MJ).
Section 78NE – Part has effect notwithstanding Competition and Consumer Act

This provision makes clear that the Part has effect notwithstanding the Competition and Consumer Act 2010. This means that this Part of the BSA has an independent operation from the Competition and Consumer Act. For example, a transaction may be prohibited under this Part because it results in a substantial lessening of diversity of control of registered news media voices even though it does not constitute a substantial lessening of competition for the purposes of the Competition and Consumer Act.

Item 21 – Section 205PA
Item 22 – Section 205Q

These two items insert a paragraph in the outline of Part 14C of the BSA (in section 205PA) and insert a reference to proposed sections 78BE and 78BF in section 205Q, to provide the Federal Court with the ability to grant injunctions in relation to transactions that are prohibited under Part 5A.

Proposed section 78BE prohibits transactions that result in a control event occurring in relation to one or more registered news media voices. Proposed section 78BF prohibits transactions that result in a control event occurring in relation to one or more listed news media voices.

Item 23 – Section 205ZA
Item 24 – Paragraph 205ZA(a)
Item 25 – At the end of section 205ZA

Part 14E of the BSA sets up a system of infringement notices for contraventions of designated infringement notice provisions as an alternative to the institution of court proceedings. These items amend section 205ZA to provide the penalty for an infringement notice given a subscription television broadcasting platform, to the publisher of a print publication or the provider of an online service. New designated infringement notice provisions are listed in proposed section 78MM. The level of penalty is consistent with the level currently applying to an infringement notice given to a commercial or subscription television broadcasting licensee.

Item 26 – Subsection 214(1)

Subsection 214(1) of the BSA provides that where there is continuing offence under the BSA, charges against the same person may be joined in the same information, complaint or summons if the charges are founded on the same facts or form or are part of a series of offences of the same or a similar character.

This item amends subsection 214(1) to apply this rule to the continuing offence applying to a contravention of a direction made under proposed section 78EA, 78EB or 78EC.
Item 27 – Subclause 1(1) of Schedule 1
Item 28 – Subclause 1(1) of Schedule 1
Item 29 – Subclause 1(1) of Schedule 1
Item 30 – Subclause 1(1) of Schedule 1
Item 31 – Subclause 1(1) of Schedule 1
Item 32 – Subclause 1(1) of Schedule 1
Item 33 – Subclause 1(2) of Schedule 1
Item 34 – After clause 1 of Schedule 1

Clause 1 of Schedule 1 to the BSA contains a legislative essay about the concept of ‘control’, and the uncertainty inherent in the interpretation and application of the BSA’s control rules. The essay notes the ACMA’s monitoring and investigatory functions, and the capacity to issue binding opinions, which are conducive to offering greater regulatory certainty.

These items make a series of minor textual and cross-referencing amendments to the essay to reflect the measures in the bill that establish control rules for subscription television, print publications and online services for the purpose of the new Part 5A.

Item 35 – After paragraph 2(1)(c) of Schedule 1

Clause 2 of Schedule 1 to the BSA sets out criteria for determining when a person is in a position to exercise control of a licence or company. This item inserts in clause 2 a further criterion for determining when a person, whether alone or with an associate, is in a position to exercise control of a subscription television platform company. These amendments are not exhaustive of the control scenarios for a subscription television platform company. This is because the control scenario in paragraph 2(1)(c) would also apply – that is, a person who can control a significant proportion of the operations of a non-licensee company – such as the subscription platform company – is a controller of that company for the purposes of Schedule 1 to the BSA.

The additional criterion in new paragraph 2(1)(ca) provides that in the case of a company that is a subscription television platform for a branded group of subscription television services, a person is in a position to exercise control of the company if the person is in a position, either alone or together with an associate, to exercise control of the selection of the subscription television services included in the branded group.

Item 36 – At the end of clause 3 of Schedule 1

Clause 3 of Schedule 1 to the Act sets out criteria for determining when a person is in a position to exercise control over a newspaper. This item would add a new subclause 3(4) to make clear that more than one person can exercise control of a newspaper. The addition of this provision ensures drafting consistency with clause 2 (see subclause 2(4) of the Schedule).

Item 37 – After clause 3 of Schedule 1

This item inserts, after clause 3, additional clauses for determining when a person is in a position to exercise control of a print publication that is not a newspaper (new clause 3A), and when a person is in a position to exercise control of an online service (new clause 3B). The extra clauses are needed for the purpose of new Part 5A of the Act, which deals with news media diversity.
The criteria for determining when a person is in a position to exercise control of a print publication are materially the same as the criteria for determining control positions for a newspaper. More than one person can exercise control of a print publication at any time.

The criteria for determining when a person is in a position to exercise control of an online service are materially the same as the criteria for determining control positions for a newspaper or a print publication. More than one person can be in a position to exercise control of an online service at any time.

Item 38 – Subclause 4(1) of Schedule 1
Item 39 – After subclause 4(3) of Schedule 1
Item 40 – Subclause 4(4) of Schedule 1 (after paragraph (c) of the definition of media company)

Clause 4 of Schedule 1 to the Act contains special provisions for authorised lenders (as defined in subclause 4(4)). Subclause 4(1) operates to discount particular loan agreements (as defined in subclause 4(4)) for determining if a person (being the authorised lender or a controller of such a lender) is in a position to control a media company (as defined in subclause 4(4)), or licence or newspaper that is controlled by a media company.

Subclauses 4(2) and 4(3) create exceptions to the general rule subclause 4(1) – in short, a lender, or controller of a lender, will be in a position to exercise control of, respectively, a licence or a newspaper in the specified circumstances.

Item 38 make minor textual amendments to reflect other measures in the bill that establish control rules for subscription television, print publications and online services.

Item 39 inserts additional exceptions to the general rule in subclause 4(1), in order to deal with the specified circumstances in which a lender, or a controller of a lender, is in a position to exercise control of a print publication (new subclause 4(3A)) or an online service (new subclause 4(3B)).

The specified circumstances for control of a print publication are materially the same as those set out in subclause 4(3) regarding a lender’s control of a newspaper.

The specified circumstances for control of an online service are substantially similar to those set out in subclause 4(3) regarding a lender’s control of a newspaper.

Item 40 inserts additional paragraphs into the definition of media company. The extra paragraphs mean that a media company includes a company that publishes a print publication or a company that provides an online service, which complements the amendments made by Items 38 and 39. In addition, the inclusion of a subscription television platform company in the media company definition ensures that clause 4 applies to loan agreements between a subscription television platform company and an authorised lender.