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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

BROADCASTING LEGISLATION AMENDMENT
(CONVERGENCE REVIEW AND OTHER MEASURES) BILL 2013

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Broadband, Communications and the Digital Economy, Senator the Honourable Stephen Conroy)
BROADCASTING LEGISLATION AMENDMENT (CONVERGENCE REVIEW AND OTHER MEASURES) BILL 2013

OUTLINE

The Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013 (the Bill), together with the Broadcasting Legislation Amendment (News Media Diversity) 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.

This Bill responds to matters raised in the Convergence Review in relation to the use of the sixth channel of television broadcasting spectrum, Australian content and public broadcasting, and includes certain other measures.

The Broadcasting Legislation Amendment (News Media Diversity) Bill 2013 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 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 2013 and the public interest test to be established in the new Part 5A of the Broadcasting Services Act 1992.

Limitation on number of commercial television broadcasting licences

The Final Report of the Convergence Review concluded that the sixth multiplex should not be allocated to create a fourth commercial television network.¹ The Bill would repeal sections 35A and 35B of the BSA, and insert a new section 37A to implement the Government’s announcement on 30 November 2012 that no additional commercial television broadcasting licences will be made available to enable a fourth commercial television network.

The amendments implementing these measures are at Schedule 1, items 1 to 3.

¹ The Convergence Review Final Report, pg 95
Australian Content

The Final Report of the Convergence Review recognised the continued importance of the production and distribution of Australian content and discussed the need for Australian content measures to be broadened to a wider range of platforms\(^2\). Recognising that increased local content requirements will incur significant costs for broadcasters, new requirements will be introduced over time.

The Bill contains amendments to the BSA which would:

- directly impose an Australian content transmission quota on commercial television broadcasting licensees that requires Australian content to make up 55 per cent of content transmitted during targeted viewing hours (ie between 6 a.m. and midnight each day) on its core/primary service;
- directly impose an Australian content transmission quota on commercial television broadcasting licensees that applies otherwise than on the core/primary service. This quota requires the broadcast during targeted viewing hours (ie between 6 a.m. and midnight each day) of:
  - 730 hours of Australian programs in 2013;
  - 1095 hours of Australian programs in 2014;
  - 1460 hours of Australian programs in 2015 and each year thereafter;
- provide greater flexibility for Australian content sub-quotas (such as for Australian drama, documentary and children’s programs) under the Australian Content Standard determined by the ACMA to be met by commercial television broadcasting licensees. These sub-quotas may be satisfied by the transmission of a program of the kind specified by the sub-quota on a commercial television broadcasting service provided by the licensee;
- provide that each hour of first release Australian drama programming broadcast by a licensee otherwise than on the core/primary service will count for two hours of Australian content for the purpose of meeting the transmission quota that applies otherwise than on the core/primary service; and
- include a mechanism to enable the Minister to direct the ACMA in relation to its program standards making powers, and its power to define terms for the purpose of the transmission quotas.

The amendments implementing these measures are at Schedule 1, items 4 to 10 and 12 to 14.

Public Broadcasting

The Final Report of the Convergence Review recommended that the statutory charters of the ABC and the SBS should be updated to expressly reflect the range of existing services, including online activities.\(^3\)

Schedule 1 to the Bill contains amendments to the *Australian Broadcasting Corporation Act 1983* and the *Special Broadcasting Service Act 1991* which would:

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\(^2\) The Convergence Review Final Report, pg 65

\(^3\) The Convergence Review Final Report, pg 84
include the provision of digital media services in the Charters of the ABC and the SBS (items 18 to 21, 23 to 26 and 28 to 49);
provide that the ABC or its prescribed companies are to be the only providers of Commonwealth-funded international broadcasting services (item 27); and
require the Minister to have regard to the need to ensure that at least one of the SBS non-executive directors is an Indigenous person (items 15 to 17).

The amendments update the charters to reflect that the ABC and SBS are at the forefront of Australian media’s transition to a new digital environment and their digital engagement can no longer be regarded as a peripheral activity to their traditional broadcasting. The amendments also reflect the Government’s decision that the ABC should have permanent responsibility for providing the Australia Network.

The requirement that the Minister have regard to the need to ensure that at least one of the SBS directors be an Indigenous person is consistent with the SBS’s statutory charter which ensures that the SBS contributes to meeting the communications needs of Australia’s Aboriginal and Torres Strait Islander communities, and the stronger contribution SBS is now making in this regard by broadcasting the National Indigenous Television Service.

Other measures

The Bill repeals a short-term statutory review provision relating to Australian content and captioning of television programs (Schedule 1, item 11). The review is unnecessary given the new and modified Australian content requirements that will be introduced by the measures outlined above, and the extensive reforms to captioning arrangements recently implemented with the passage of the Broadcasting Services Amendment (Improved Access to Television Services) Act 2012. The Government is considering how captioning levels will be increased on multi-channels following digital switchover.

FINANCIAL IMPACT STATEMENT

The amendments in this Bill are expected to have no significant financial impact on Commonwealth expenditure or revenue.

The provision of international broadcasting television services (known as the Australia Network) by the ABC is funded by an existing ten-year agreement between the ABC and the government. The amendments will have no additional impact on the underlying cash balance as funding for services has been allocated over the forward estimates.
STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Broadcasting Legislation Amendment (Convergence Review and Other Measures) 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 responds to matters raised in the Convergence Review in relation to not using the sixth channel for commercial television broadcasting services and the provision of Australian content.

The Bill also proposes amendments to the Charters of the ABC and SBS to recognise their roles as providers of digital media content and, in the case of the ABC, its place as the only provider of Commonwealth-funded international broadcasting services. The Bill also would require the Minister to have regard to the need to ensure that the board of the SBS include at least one non-executive director who is an Indigenous person.

Human rights implications

The Bill engages the following human rights:

- the right to freedom of expression; and
- the rights of equality and non-discrimination.

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.

Part 1 of Schedule 1 to the Bill, General Amendments, contains measures to limit the number of terrestrial commercial television broadcasting services in an area.

The measures that limit the number of terrestrial commercial television services in an area may limit the rights of natural persons to exercise freedom of expression, as outlined in Article 19(2) of the ICCPR, by restricting the availability and delivery of the most popular category of television service.

In Australia, television services are usually delivered using cable, satellite and/or those parts of the radiofrequency spectrum known as the ‘broadcasting services bands’ – that is, the VHF and UHF bands. Historically the most ubiquitous of Australia’s television services have used the UHF and VHF bands, which accommodates the most widely accessible television...
transmission and receiving equipment. This remains the case today with almost all Australian households having a television capable of receiving these ‘free-to-air’ terrestrial television services delivered over the VHF and UHF bands. For the small number of households unable to receive terrestrial services, the Viewer Access Satellite Television (VAST) service offers an alternate form of television reception.

Under the BSA, a commercial television broadcasting service is a free-to-air service that delivers television programs intended to appeal to the general public, where the broadcasting service is funded by advertising revenue and operated for profit or as part of a profit making enterprise. As such, commercial television broadcasting services form part of Australia’s mass media, and such services delivered using the broadcasting services bands are the most popular. Furthermore, these commercial television services have formed networks so that despite local area licensing there are essentially three fairly homogenous commercial television broadcasting networks in Australia.

However, the capacity of the broadcasting services bands is limited, as the amount of spectrum within these bands can only support the delivery of a finite number of television services. Existing broadcasting services, including commercial television broadcasting services, already take up a large part of the available spectrum.

In the context of these constraints, the proposed statutory cap on the number of commercial television broadcasting services in a licence area is designed to ensure that the remaining capacity in the television broadcasting services bands is made available for other types of broadcasting services – including (but not limited to) community television broadcasting services – as well as being available to test new broadcasting technologies as they emerge.

New and innovative content services and communications services that are attractive to consumers require testing and trialling before their introduction. The capacity to do this would be severely limited if no broadcasting services bands spectrum remained available.

The United Nations has noted that measures interfering with the right to freedom of expression for some citizens may be needed to ensure the protection of other citizens’ rights to the freedom of expression. Given the scope of existing commercial television services in Australia, and the limits of available spectrum within the broadcasting services bands, the measures in the Bill to limit the number of terrestrial commercial television services in an area are proportionate and reasonable to achieving the goal of promoting a more diverse range of television and like services, now and in the future.

**Rights to equality and non-discrimination**

The rights to equality and non-discrimination are protected in a number of conventions listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* and to which Australia is a party, as follows.

Article 26 of the International Covenant on Civil and Political Rights (ICCPR) entitles all persons to equality before the law as well as equal protection of the law. It also prohibits any discrimination under the law and guarantees to all persons equal and effective protection against discrimination. Article 26 is not limited to rights provided for in the ICCPR and it

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4 United Nations Human Rights Committee, General Comment 10, paragraph 2.
prohibits discrimination in law or in practice in any field regulated and protected by public authorities.\textsuperscript{5}

Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) prohibits discrimination in the exercise of the economic, social and cultural rights guaranteed in the ICESCR.

The prohibited grounds of discrimination include race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

In addition, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) deals with discrimination specifically on the grounds of race, colour, descent, or national or ethnic origin (see Articles 1, 2, 4 and 5).

However, the United Nations Human Rights Committee has recognised that not all treatment that differentiates individuals or groups on any of the grounds mentioned above will amount to discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate.\textsuperscript{6}

Furthermore, it is recognised that in some circumstances it is legitimate to take measures to assist or recognise the interests of particular groups in the community who may be disadvantaged. The CERD specifically recognises that special measures may be taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals and to ensure their equal enjoyment or exercise of human rights and fundamental freedoms (see Article 1(4) of the CERD). It has also been recognised that special measures may need to be in place for an extended period of time in order to achieve effective and genuine equality.

The Bill contains measures that would require the Minister to have regard to the need to ensure that at least one of the non-executive directors on the SBS Board is an Indigenous person.

The purpose of the creation of a reserved Indigenous position (which would still be filled on the basis of merit) is to ensure that the SBS Board includes a person with the necessary skills and experience to ensure the successful delivery of an Indigenous television service. These measures complement the recent integration of the National Indigenous Television Service (NITV) into SBS.

The creation of a reserved Indigenous position on the SBS Board of directors differentiates between individuals based on their race or descent, as it would affect the right of non-Indigenous persons to work in respect of that director position to the same extent as Indigenous persons.

These measures can be characterised as special measures within the meaning of Article 1(4) of the CERD. Having regard to the historical treatment of Indigenous people and their current socio-economic status in Australia, many Indigenous people currently do not enjoy equally with other racial groups in Australia human rights and fundamental freedoms, relevantly the right to freedom of opinion or expression, the right to work, the right to education and training, and the right to participate in cultural activities. The measures in the Bill would

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\textsuperscript{5} United Nations Human Rights Committee, General Comment No. 18, paragraph 12.

\textsuperscript{6} United Nations Human Rights Committee, General Comment No. 18, paragraph 13.
advance the interests of Indigenous people and are necessary, appropriate and adapted to ensure their equal enjoyment of these rights and freedoms.

**Conclusion**

The Bill is compatible with human rights as it advances the interests of Indigenous people in Australia and it ensures the equal enjoyment by Indigenous people of certain human rights and fundamental freedoms. The Bill also promotes diversity of television services in Australia using the most commonly available technology.
### ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tr>
<td>ABC</td>
<td>Australian Broadcasting Corporation</td>
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<tr>
<td>ABC Act</td>
<td><em>Australian Broadcasting Corporation Act 1983</em></td>
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<tr>
<td>ACMA</td>
<td>Australian Communications and Media Authority</td>
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<td>ACMA Act</td>
<td><em>Australian Communications and Media Authority Act 2005</em></td>
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<td>AI Act</td>
<td><em>Acts Interpretation Act 1901</em></td>
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<td>BSA</td>
<td><em>Broadcasting Services Act 1992</em></td>
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<td>LI Act</td>
<td><em>Legislative Instruments Act 2003</em></td>
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<td>Minister</td>
<td>Minister for Broadband, Communications and the Digital Economy</td>
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<td>SBS</td>
<td>Special Broadcasting Service</td>
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<td>SBS Act</td>
<td><em>Special Broadcasting Service Act 1991</em></td>
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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 (Convergence Review and Other Measures) 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 Royal Assent. The remaining provisions will commence the day after the Act receives the Royal Assent.

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

Part 1 – General amendments

Item 1 – Subsections 26(3), (4), (5) and (6)

Item 1 would repeal several provisions from section 26 of the BSA as a consequence of the amendments contained in Item 2 below. Section 26 deals with licence area planning for broadcasting services that use the broadcasting services bands (BSBs). This includes planning for the delivery of commercial television broadcasting services using the BSBs in a licence area.

The provisions to be repealed pertain to the Minister’s power to direct the ACMA to vary a licence area plan to give effect to recommendations made as a result of a review completed under section 35A of the BSA. These provisions are redundant as a consequence of the repeal of section 35A and 35B.

Item 2 – Sections 35A and 35B

Item 2 would repeal sections 35A and 35B of the BSA.

Section 35A provides for the Minister to cause a series of reviews to be conducted about the matters set out in paragraphs 35A(1)(a) to (d), being:

(a) whether broadcasting services bands spectrum that is, or may become, available for allocation should be used for a particular area or areas of Australia to provide television broadcasting services; and

(b) if additional television broadcasting services are considered appropriate, what variations (if any) are needed to one or more licence area plans in force under section 26 of the BSA; and

(c) whether broadcasting services bands spectrum that is, or may become, available for allocation should be used for a particular area or areas of Australia to provide services other than television broadcasting services; and

(d) if other new services are considered appropriate, what licensing arrangements should apply to those services.

Subsection 35A(1) was intended to facilitate an initial statutory review, and subsection 35A(2) to facilitate subsequent reviews, of the most appropriate use of the available broadcasting services bands spectrum (colloquially known as ‘the sixth television channel’). The initial review was to commence before 1 January 2013. Such a review is no longer necessary as many of these matters have already been considered, including as part of the Convergence Review.

Subsequent reviews are also no longer necessary, given the Government’s announcement on 30 November 2012 that no additional licences or spectrum will be made available to enable a fourth commercial television network using the broadcasting services bands spectrum.

Under section 35B of the BSA the Minister is required to complete a review under section 35A before being able to direct the ACMA to allocate an additional commercial
television licence under section 36 of the BSA (section 36 licences are those that use the broadcasting services bands). In light of the Government’s announcement of 30 November 2012 (noted previously), section 35B is no longer necessary.

**Item 3 – After section 37**

Item 3 would insert new section 37A into the BSA. Section 37A would prevent the ACMA from issuing more than three commercial television broadcasting licences that use the broadcasting services bands in any licence area. This amendment would implement the Government’s announcement on 30 November 2012 that no additional commercial television broadcasting licences be made available to enable a fourth commercial television network.

**Item 4 – Part 9 (heading)**

This item would rename the heading of Part 9 of the BSA to read ‘Content rules, program standards and codes of practice’, in order to better reflect the scope of Part 9 as proposed to be amended.

**Item 5 – Before section 122**

Item 5 would insert new section 121G into the BSA.

Section 121G would require commercial television broadcasting licensees to broadcast minimum levels of Australian content.

Commercial television broadcasting licensees are currently required to provide minimum levels of Australian content in accordance with the Broadcasting Services (Australian Content) Standard 2005 (the ACS), determined by the ACMA in accordance with section 122 of the BSA. Through the operation of subsection 122(7), until switchover occurs throughout Australia these requirements apply only to the core or primary channel provided by the licensee.

Under the ACS, commercial television broadcasting licensees are required to ensure Australian programs (as defined in the ACS) constitute 55 per cent of all programming broadcast in a year between specified viewing hours. Proposed subsection 121G(1) would elevate this obligation from a legislative instrument made by the ACMA into primary legislation. This would increase regulatory certainty and provide greater transparency for the broadcasting and Australian content production sectors. It is appropriate that Australian content requirements are determined by parliament in the context of Australian cultural and content production objectives and aim to foster high quality and innovative programming by commercial television broadcasting licensees.

New subsection 121G(1) would require each commercial television broadcasting licensee to ensure that, for each calendar year from 1 January 2013, the percentage of Australian programs transmitted by the licensee on its core or primary channel during targeted viewing hours (the total hours of Australian programs transmitted during the year) is not less than 55 per cent of all programming transmitted by the licensee on that channel during targeted viewing hours (the total hours of programs transmitted during the year).

Subsection 121G(2) would require each commercial television broadcasting licensee to ensure that, for each calendar year from 1 January 2013, the licensee broadcasts during
targeted viewing hours a minimum number of hours of Australian programs otherwise than on their core or primary channel. The minimum number of hours would be: 730 hours during the 2013 calendar year; 1095 hours during the 2014 calendar year; and 1460 hours annually from 2015 onwards.

Subsection 121G(3) provides an incentive for a licensee to broadcast new Australian adult drama programs other than on the core or primary channel by providing that one hour of each first release Australian drama program shown by a licensee otherwise than on their core or primary channel during the targeted viewing hours counts as two hours of Australian programs for the purposes of the transmission quota prescribed in subsection 121G(2). Subsection 121G(3) would implement the government’s announcement on 30 November 2012 regarding the transmission by licensees of first release Australian drama programs otherwise than on their core or primary channel. Fostering the creation and broadcast of new Australian adult drama will support the achievement of the broadcasting objective to promote a sense of Australian identity, character and cultural diversity.

Proposed subsection 121G(4) would define targeted viewing hours as the hours between 6 a.m. and midnight each day. Where an Australian program consisting of coverage of a sporting event begins before midnight on a particular day (the first day) and ends the next day, that part of the program transmitted between midnight and 2 a.m. the next day would be deemed to be transmitted during the targeted viewing hours on the first day (proposed subsection 121G(5) refers). The reference to targeted viewing hours and the treatment of televised sporting events in subsections 121G(4) and (5) use similar concepts to the ACS.

Proposed subsection 121G(6) would define Australian program for the purposes of section 121G. As a default position, the definition of Australian program would incorporate by reference the existing definitions of ‘Australian program’, ‘Australian official co-production’, ‘New Zealand program’, and ‘Australian/New Zealand program’ as set out in the ACS as in force on 1 January 2013 (paragraph 121G(6)(b) refers).

Subsection 121G(7) would empower the ACMA to vary, by legislative instrument, the default definition of Australian program for the purposes of section 121G. If this occurred, paragraph 121G(6)(a) provides that the ACMA’s new definition would apply in place of the ACS definition. Proposed subsection 121G(7) would also insert a legislative note as an aid to readers, cross referencing the application of section 16 (‘Consistency With CER Trade in Services Protocol’) of the ACMA Act. Section 16 requires the ACMA take specific international obligations into account in carrying out specified functions and exercising specified powers, including its broadcasting functions and powers.

Proposed subsection 121G(8) would define first release for the purposes of section 121G. Subsection 121G(10) would define Australian drama program for the purposes of section 121G. Both definitions would as a default position incorporate the definitions of these terms as set out in the ACS as in force on 1 January 2013. In the case of Australian drama program, subsection 121G(10) would also incorporate an ‘Australian official co-production’, ‘New Zealand program’ and ‘Australian/New Zealand program’ (within the meaning of the ACS) that is a drama program. A drama program would have the same meaning as an Australian drama program within the meaning of the ACS, other than the requirement that the program be Australian (proposed subsection 121G(11) refers).
However, subsections 121G(9) and (12) would empower the ACMA to vary, by legislative instrument, the default definitions of first release and Australian drama program respectively. If this occurred, paragraphs 121G(8)(a) and 121G(10)(a) provide that the ACMA’s new definition would apply in place of the ACS definition.

Proposed subsections 121G(9) and (12) would also insert legislative notes cross referencing section 16 (‘Consistency With CER Trade in Services Protocol’) of the ACMA Act, which applies when the ACMA is defining first release or Australian drama program.

Proposed subsection 121G(14) would empower the Minister to direct the ACMA, by legislative instrument, in relation to the exercise of its powers under section 121G. The power extends to specific as well as general directions. For example, the Minister may direct the ACMA in relation to the timing of the exercise of its power to define the meaning of Australian program, first release or Australian drama program, or in relation to the content of the definitions. Proposed subsection 121G(15) would require the ACMA to comply with a direction of the Minister given under subsection 121G(14).

Proposed subsection 121G(13) would provide a period of grace during which commercial television broadcasting licences allocated under subsection 40(1) of the BSA (ie for services that do not use the broadcasting services bands spectrum) on or after 1 January 2007 would be exempt from compliance with the Australian content transmission quotas imposed by section 121G. The exemption would operate for the calendar year in which the licence was allocated and for any of the following four calendar years. This temporary exemption is consistent with the application of existing subsection 122(9) regarding the application of program standards made by the ACMA (noting that existing subsection 122(9) is to be repealed and restated in a clarified form in proposed subsection 122(11), see Item 9). This exemption is intended to ensure that new services are able to emerge and establish operations in the market before they are required to meet the Australian content transmission quotas.

Item 6 – Subsection 122(1)

Item 6 is a technical amendment to modernise the drafting. Program standards made by the ACMA under subsection 122(1) of the BSA are a legislative instrument within the meaning of the Legislative Instruments Act 2003.

Item 7 – At the end of subsection 122(1)

Item 7 would insert a legislative note cross referencing section 16 (‘Consistency with the CER Trade in Services Protocol’) of the ACMA Act which applies when the ACMA is determining program standards under section 122.

Item 8 – Subsection 122(5)

Item 8 would repeal subsection 122(5) of the BSA.

Subsection 122(5) requires the ACMA to ensure that there is in force under subsection 122(1) a standard that is, or has the same effect as, the standard in section 9 of the Broadcasting Services (Australian Content) Standard 1999 as in force on 4 August 2004. Section 9 deals with quotas for Australian television programs. The repeal of subsection 122(5) is
consequential to the proposed inclusion in the BSA of the transmission quota imposed on the core or primary channel through subsection 121G(1) (Item 5 refers).

A transitional measure related to this item is in Item 12 of Schedule 1 to this Bill.

**Item 9 – Subsections 122(7) and (9)**

Item 9 would repeal existing subsections 122(7) and (9) of the BSA and would substitute the repealed provisions with new subsections 122(7) to (12).

Existing subsection 122(7) provides that program standards for children’s programs and Australian content determined by the ACMA under subsection 122(1) do not apply to a commercial television broadcasting service provided before the end of the final digital television switch-over day, unless that service is the core or primary channel provided by the licensee. With the repeal of subsection 122(7) the ACMA would be empowered to determine program standards under subsection 122(1) in respect of the entire commercial television broadcasting service provided by a licensee (that is, the power is no longer limited to the core or primary channel). These program standards would supplement the Australian content transmission quotas imposed under section 121G. A transitional measure relating to the repeal of existing subsection 122(7) is in Item 13 of Schedule 1 to this Bill.

New subsection 122(7) would empower the Minister, by legislative instrument, to direct the ACMA in relation to the exercise of its powers under section 122. Such a direction may be of a general or specific nature. For example, the Minister may direct the ACMA to determine a different Australian content standard that is to be observed by licensees, or direct the ACMA to refrain from determining a program standard in a particular way. Proposed subsection 122(8) would require the ACMA to comply with a direction of the Minister given under subsection 122(7).

The legislative note to subsection 122(7) advises the reader that a direction of the Minister under proposed subsection 122(7) would not be subject to the disallowance or sunsetting provisions in the *Legislative Instruments Act 2003*.

Proposed new subsection 122(9) would provide that the ACMA must not determine a program standard under subsection 122(1) that has the effect of increasing the transmission quotas imposed by new subsections 121G(1) and 121G(2) respectively (Item 5 refers).

Proposed subsection 122(10) would provide that any transmission by a commercial television broadcasting service licensee of an Australian program of a particular kind may count towards the satisfaction of any Australian content genre quotas in a standard determined by the ACMA under section 122. Such genre quotas relate to particular kinds of programs. This provision is neutrally drafted and does not distinguish between the licensee’s core or primary channel and other channel(s) they may provide.

Programs transmitted otherwise than on the core or primary channel would not count towards meeting the transmission quota imposed on the core or primary channel by subsection 121G(1). Only programs transmitted on the core or primary channel will count towards the transmission quota imposed by subsection 121G(1). Similarly, programs transmitted on a core or primary channel alone would not count towards meeting the transmission quota imposed by subsection 121G(2).
The phrase ‘particular kind’ used in paragraph 122(10)(a) refers to a program’s genre. As an aid to readers, the note under proposed subsection 122(10) provides some examples of a ‘kind of program’, being an ‘Australian drama program’ within the meaning of the ACS, or a ‘C program’ or ‘P program’ within the meaning of the Children’s Television Standards 2009. In other words, the obligation for broadcasters to provide 55 per cent Australian programs on their core or primary channels would still need to be met regardless of the extent to which broadcasters fulfil their genre quota obligations for Australian drama, documentary or children’s programs otherwise than on the core or primary channel.

The inclusion of paragraph 122(10)(b) is designed to compare and contrast the quantitative requirement of a genre standard determined by the ACMA under subsection 122(1) with the transmission quotas imposed by subsections 121G(1) and (2). The transmission quotas imposed by subsections 121G(1) and (2) deal only with the total amounts of Australian programs to be broadcast on the licensee’s various channels, not their genre.

Under proposed subsection 122(12), in considering whether a standard imposed by the ACMA under subsection 122(1) ‘substantially corresponds’ with subsection 121G(1) or (2), any differences in the percentage of a quota, or the relevant viewing hours for calculating that quota, would be disregarded. Therefore, the fact that a standard determined by the ACMA requires broadcasters to transmit not less than 25 per cent, rather than 55 per cent, of Australian content in total would not be material to the question of whether the standard substantially corresponded to subsection 121G(1) or (2). The material consideration is whether the standard purports to determine the total number of hours of Australian programs to be broadcast on the channel.

As a consequence of enacting new section 121G and the amendments to section 122 described above, the ACMA’s standard making power under section 122 must operate within the parameters set by new section 121G. Since section 121G sets out the transmission quotas for Australian programs, the program standards determined by the ACMA may relate to (among other things) particular genres of Australian programs, the amount of genre programming to be broadcast by licensees, and the broadcast times for particular genres of Australian programs. The consideration as to substantial correspondence between a program standard determined under section 122 and the transmission quotas specified in section 121G ensures that while the ACMA has the power to determine a standard that prescribes one or more genre-specific quotas for Australian programs, any one quota, or the sum of those quotas, could not equal or exceed the total number of hours of Australian programs that section 121G requires licensees to broadcast.

Proposed subsection 122(11) would provide a period of grace during which standards made by the ACMA under subsection 122(1) would not apply to commercial television broadcasting licences allocated under subsection 40(1) of the BSA (ie non-BSB licences) on or after 1 January 2007. The exemption would operate for the calendar year in which the licence was allocated and for any of the following four calendar years. This subsection restates and clarifies the previously enacted subsection 122(9), and ensures consistency in drafting with new subsection 121G(13) (which provides a similar period of grace in respect of the transmission quotas imposed by section 121G, see Item 5).
Item 10 – After paragraph 7(1)(a) of Schedule 2

Item 10 would insert new paragraph 7(1)(aa) into Schedule 2 to the BSA. Under proposed paragraph 7(1)(aa) of Schedule 2, the requirements imposed on commercial television broadcasting licensees to broadcast minimum levels of Australian content under section 121G would be enforceable as a licence condition.

Item 11 – Clause 60D of Schedule 4

Item 11 would repeal clause 60D of Schedule 4 to the BSA, which provides for a statutory review of content and captioning rules applicable to multi-channelled television broadcasting services. The government no longer proposes to proceed with this statutory review. The review is unnecessary given the new and modified Australian content requirements introduced by Items 5 to 10 and 12 to 14 in this Schedule to the Bill, and the extensive reforms to captioning arrangements recently implemented with the passage of the Broadcasting Services Amendment (Improved Access to Television Services) Act 2012. The Government is considering how captioning levels will be increased on multi-channels following digital switchover.

Item 12 – Transitional – Broadcasting Services (Australian Content) Standard 2005

Item 12 relates to Item 8. Item 12 provides that the transmission quota imposed by section 9 of the ACS, which deals with transmission quotas for Australian programs, does not apply in relation to programs broadcast after 1 January 2013. This is because after 1 January 2013, transmission quotas for Australian content will instead be imposed by new section 121G.

Item 13 – Transitional – section 122 of the Broadcasting Services Act 1992

Item 13 relates to Items 5 and 9 of the Bill. Item 13 provides that program standards determined by the ACMA under section 122(1) of the BSA only apply to programs transmitted on the licensee’s core or primary channel before 1 January 2013. To date, existing subsection 122(7) of the BSA (to be repealed by Item 9) has limited the application of program standards to only the licensee’s core or primary channel. However, the quotas imposed by new section 121G (see Item 5) would apply on and after 1 January 2013. Item 13 aligns the program standards to section 121G.

Item 14 – Transitional – standards under section 122 of the Broadcasting Services Act 1992

Item 14 is a transitional measure that aligns with proposed subsection 122(10) (see Item 9). Subsection 122(10) would provide that any transmission by a commercial television broadcasting service licensee of an Australian program of a particular kind may count towards the satisfaction of an Australian content quota in relation to programs of that kind imposed in a standard determined by the ACMA under section 122. Item 14 would provide a similar treatment during the interim period. The interim period runs from 1 January 2013 until immediately before the commencement of this item. The genre quotas determined by a program standard in force during that period only apply to the core or primary channel (see subsection 122(5) which is proposed to be repealed by Item 8). This transitional measure provides that notwithstanding the broadcaster being bound in respect of
their core or primary channel, such genre quotas may be satisfied by any transmission by the licensee of a program of that kind.

Subsection 122(10) distinguishes between the quantitative requirement of a genre standard determined by the ACMA under subsection 122(1) and the transmission quotas imposed by subsections 121G(1) and (2). The distinction whether a standard under subsection 122(1) substantially corresponds to subsection 121G(1) or (2) is also made for the purposes of Item 14. However, as the text of subsections 121G(1) and (2) will not be inserted in the BSA until the day after the Act receives the Royal Assent, the question of substantial correspondence with subsection 121G(1) or (2) for the interim period must be determined on the basis that section 121G is assumed to have been in force during that period (paragraph 19(3)(b) refers).

**Special Broadcasting Service Act 1991**

The Government announced in the 2012-13 Federal Budget that it would fund the SBS to establish a new, national digital multichannel dedicated to Aboriginal and Torres Strait Islander content.

Items 15 and 16 would amend the SBS Act to require the Minister to have regard to the need to ensure that the SBS Board includes at least one Indigenous non-executive director. This is consistent with the role that the SBS now plays as the primary provider of Indigenous television in Australia. The Indigenous non-executive director will be appointed through the merit-based selection process in Part 3A of the SBS Act.

**Item 15 – Section 3**

Item 15 would amend section 3 of the SBS Act to insert a new definition of *Indigenous person*. *Indigenous person* would mean a person who is a member of the Aboriginal race of Australia; or a descendant of an Indigenous inhabitant of the Torres Strait Islands.

The phrase ‘member of the Aboriginal race’ encompasses membership of Aboriginal communities, clans, tribes and language groups.

The term ‘descendant of an Indigenous inhabitant of the Torres Strait Islands’ is intended to mean a person one or more of whose ancestors was an indigenous inhabitant of the Torres Straits Islands. There is no requirement that the person is living or has lived on any of the Torres Strait Islands.

When determining whether a person is a member of the Aboriginal race or a Torres Strait Islander, the following criteria may be relevant:

- whether the person is of Aboriginal or Torres Strait Islander descent;
- whether the person identifies himself or herself as being Aboriginal or Torres Strait Islander; and
- whether the person is accepted by the Aboriginal or Torres Strait Islander community.
Item 16 – At the end of subsection 17(2)

Item 16 would insert a new paragraph 17(2)(d).

The effect of this amendment is that, before the Governor General appoints a person as a non-executive director on the SBS Board, the Minister must have regard to the need to ensure that at least one of the Directors is an Indigenous person.

The purpose of this measure is to ensure that the SBS Board of Directors includes a person with the necessary skills and experience for the successful delivery of an Indigenous television service, and it complements the recent integration of the National Indigenous Television Service into the SBS.

Item 17 – Application provision

Item 17 is an application provision and it clarifies that the amendment to subsection 17(2) in Item 16 only applies in relation to the appointment of non-executive Directors after the commencement of Item 17.

Part 2 – Charters of the ABC and SBS etc

Part 2 of Schedule 1 to the Bill, containing Items 18 to 49 inclusive, would amend the ABC Act and the SBS Act.

Amendments to the ABC Act

Items 18 to 35 of the Bill would make amendments to the ABC Act.

The amendments would:

- include the provision of digital media services in the Charter of the ABC;
- prohibit advertising on the ABC’s digital media services, with some exceptions; and
- provide that the ABC or its prescribed companies are to be the only providers of Commonwealth-funded international broadcasting services.

The amendments update the charter to reflect that over time, the ABC has come to provide digital media services as part of its core activities.

The amendments also reflect the Government’s decision that the ABC should have permanent responsibility for providing the Australia Network.

Item 18 - Subsection 3(1)

Item 18 would amend subsection 3(1) of the ABC Act to insert a new definition of digital electronic communications. The defined term is used in the context of the definition of digital media service in proposed new section 3A, which would be inserted into the ABC Act by Items 19 and 20 (noted below).

Digital media communications would mean communications delivered by transmission lines, wires, cable, or similar means (guided electromagnetic energy) and/or delivered wirelessly
(unguided electromagnetic energy) that involve the use of digital technology (rather than analog technology).

**Item 19 – Subsection 3(1)**

**Item 20 – After section 3**

Item 19 would amend subsection 3(1) of the ABC Act to insert a new definition of *digital media service*. This term would have the meaning given by new section 3A, to be inserted by Item 20.

The term *digital media service* would be used in the context of the Charter of the ABC, set out in section 6 of the ABC Act, as amended by Item 21 (noted below).

For the purposes of the ABC Act, proposed subsection 3A(1) defines *digital media service* to mean:

(a) a service that delivers content to persons having equipment appropriate for receiving that content, where the service is delivered by means of *digital electronic communications* (as defined in subsection 3(1)); or

(b) a service that allows end users to access content using *digital electronic communications*.

Broadcasting and datacasting services (as defined in subsection 3(1) of the ABC Act) are excluded from the definition of *digital media service*.

For the purposes of new section 3A, *content* is defined broadly and would include text, data, speech, music or other sounds, visual images or any other form or combinations of forms (see new subsection 3A(2)).

**Item 21 – After paragraph 6(1)(b)**

Item 21 would amend the Charter of the ABC Act in section 6 of the ABC Act by inserting a new paragraph 6(1)(ba) after paragraph 6(1)(b).

This amendment would have the effect of adding the provision of *digital media services* to the functions of the ABC. This change is intended to reflect the range of services provided by the ABC, which now include online services in addition to the ABC’s traditional television and radio services.

**Item 22 – At the end of subsection 6(1)**

Item 22 would add a legislative note at the end of subsection 6(1) of the ABC Act. The note would refer the reader to new section 31AA (see Item 27, noted below). New section 31AA is relevant to the ABC’s functions in paragraph 6(1)(b), which relate to the ABC’s international broadcasting services.

**Item 23 – Subsection 8(2)**

Item 23 would amend subsection 8(2) of the ABC Act to insert a reference to *digital media services*. 
This amendment is consequential to the amendment to the ABC’s Charter in Item 21 (noted above). It would require the ABC’s Board to ensure that consideration is given to any statements of Government policy relating to digital media services relevant to the performance of the ABC’s functions that the Minister requests the Board to consider.

**Item 24 – Before subsection 31(1)**

**Item 25 – At the end of subsection 31(1)**

Items 24 and 25 would amend subsection 31(1) of the ABC Act to insert a sub-heading before subsection 31(1) and add certain words at the end of subsection 31(1), respectively. These amendments are consequential to the amendments in Item 26, noted below.

These amendments would make it clear that the prohibition on the broadcast of advertisements contained in subsection 31(1) would only apply to the ABC’s broadcasting services.

However a corresponding prohibition would be introduced for the ABC’s digital media services (see Item 26, noted below).

**Item 26 – At the end of section 31**

Item 26 would introduce new subsections 31(4), 31(5), 31(6), 31(7) and 31(8) into the ABC Act. Section 31 prohibits the ABC from broadcasting advertisements (with some exceptions).

New subsections 31(4) to (8) provide that the ABC must not have advertisements in any of its digital media services.

New subsections 31(5) and 31(6) would operate in respect of the ABC’s digital media services in a substantially similar way as subsections 31(2) and 31(3) operate with respect to the ABC’s broadcasting services.

New subsection 31(5) provides that the prohibition in subsection 31(4) does not prevent the ABC from having certain content in its digital media services, namely:

- content relating to an activity or proposed activity of the ABC (paragraph 31(5)(a)); or
- content supplied by an organisation or person engaged in artistic, literary, musical or theatrical productions or educational pursuits; or
- content that is supplied by an organisation or person (but not content that is being used as an advertisement); or
- content provided in accordance with a direction by the Minister under new subsection 78(3A) (see Item 28, noted below).

New subsection 31(6) makes it clear that this prohibition would not apply to digital media services that relate to the ABC’s international television service and its associated audio channels, so that, for example, the ABC could include advertisements on websites relating to its international television service, currently known as Australia Network.

New subsection 31(7) would provide that the prohibition in new subsection 31(4) would not apply to eligible electronic publications. This term is defined in new subsection 31(8) to mean any content that:
• consists of an electronic edition of a book, magazine or newspaper, or an audio
recording of the text, or abridged text, of a book, magazine or newspaper; and
• a print edition is or was available to the public in Australia (whether by way of
purchase or otherwise).

This provision is intended to cover electronic publications that correspond to print
publications published or distributed by the ABC. These publication or distribution activities
are authorised by paragraph 29(1)(a) of the ABC Act. For many years the ABC has sold
magazines, including magazines that contain advertising. Magazines are increasingly sold in
electronic or digital editions, including through websites operated by the ABC. The intention
is that the electronic editions be treated in the same way as the corresponding print
publication.

Item 27 – At the end of Part IV

Item 27 would insert a new section 31AA at the end of Part IV of the ABC Act, which deals
with powers and duties of the ABC.

New section 31AA provides that the Commonwealth must not enter into a contract or other
arrangement with a person or body other than the ABC or a prescribed company (as defined
in section 25A of the ABC Act) for the provision of international broadcasting services. The
provision of international broadcasting services forms part of the ABC’s statutory Charter
(see paragraph 6(1)(b) of the ABC Act).

This amendment reflects the Government’s decision announced on 5 December 2011 that
Australia’s international broadcasting service become a permanent feature of the ABC.

The Government’s decision for the ABC to provide international broadcasting services in
perpetuity recognises that, as an important public diplomacy platform, Australia’s
international broadcasting service should be provided by Australia’s national broadcaster, the
ABC, as is the case with comparable operators such as the UK’s BBC World Service and
Germany’s Deutsche Welle.

Item 28 – After subsection 78(3)

Item 28 would amend section 78 of the ABC Act by inserting a new subsection 78(3A),
consequential to the amendment to the ABC’s Charter (see Item 21, noted above).

New subsection 78(3A) empowers the Minister to direct the ABC to provide particular
content on all of its digital media services, or on such of them as they are specified in the
direction, if the Minister is of the opinion that the provision of such content is in the national
interest. The ABC must provide the content free of charge and in accordance with the
direction.

The Minister’s power under new subsection 78(3A) would supplement the Minister’s existing
directions power in subsection 78(1) with respect to the broadcasting of particular matters in
the national interest.
Item 29 – At the end of paragraph 80(a)
Item 30 – After paragraph 80(a)
Item 31 – At the end of paragraph 80(c)
Item 32 – After paragraph 80(c)
Item 33 – At the end of paragraph 80(d)
Item 34 – After paragraph 80(d)
Item 35 – At the end of paragraphs 80(da), (e) and (g)

Items 29 to 35 would amend section 80 of the ABC Act by inserting new paragraphs 80(b), 80(ca) and 80(daa). These amendments are consequential to the amendments to the ABC’s Charter (see Item 21, noted above) and to section 78 of the ABC Act (see Item 28, noted above).

The effect of these amendments is that the ABC’s Directors will be required to include the following matters in each annual report on the ABC prepared under section 9 of the Commonwealth Authorities and Companies Act 1997:

- particulars of each provision of content on a digital media service in accordance with a direction by the Minister under new subsection 78(3A) (new paragraph 80(b));
- particulars of each provision of content on a digital media service in accordance with a direction by the Minister otherwise than under the ABC Act (new paragraph 80(ca));
- particulars of any direction not to provide content on a digital media service that was given to the ABC by the Minister otherwise than under the ABC Act (new paragraph 80(daa)).

These new provisions are consistent with existing provisions for particulars relating to the ABC’s broadcasting services.

Items 29, 31, 33 and 35 would make minor technical amendments to section 80.

Amendments to the SBS Act

Items 36 to 49 of the Bill would make amendments to the SBS Act.

The amendments would include the provision of digital media services in the Charter of the SBS. The amendments update the Charter to reflect that over time, the SBS has come to provide digital media services as part of its core activities.

Item 36 – Section 3

Item 36 would amend section 3 of the SBS Act to insert a new definition of digital electronic communications. The defined term is used in the context of the definition of digital media service in new section 3A, which would be inserted into the SBS Act by Items 37 and 38 (noted below).

Digital media communications would mean communications delivered by transmission lines, wires, cable, or similar means (guided electromagnetic energy) and/or delivered wirelessly (unguided electromagnetic energy) that involve the use of digital technology (rather than analog technology).
Item 37 – Section 3  
Item 38 – After section 3

Item 37 would amend section 3 of the SBS Act to insert a new definition of *digital media service*. This term would have the meaning given by new section 3A, which would be inserted into the SBS Act by Item 38.

The defined term is proposed to be used in the context of the Charter of the SBS, set out in section 6 of the SBS Act, as amended by Item 39 (noted below).

For the purposes of the SBS Act, subsection 3A(1) defines *digital media service* to mean:

- a service that delivers content to persons having equipment appropriate for receiving that content, where the service is delivered by means of *digital electronic communications* (as defined in section 3); or
- a service that allows end users to access content using *digital electronic communications*.

Radio, television and datacasting services are excluded from the definition of *digital media service*.

For the purposes of new section 3A, *content* is defined broadly and would include text, data, speech, music or other sounds, visual images or any other form or combinations of forms (see new subsection 3A(2)).

Item 39 – Subsection 6(1)

Item 39 would amend the Charter of the SBS in section 6 of the SBS Act by replacing the references to “radio and television services” with references to “radio, television and digital media services”.

This amendment would have the effect of adding the provision of *digital media services* to the SBS’s principal function. This change is intended to reflect the range of services provided by the SBS, which now include online and other digital media services in addition to the SBS’s traditional television and radio services.

Item 40 – Paragraphs 6(2)(g) and (h)

Subsection 6(2) of the SBS Act imposes duties on the SBS with regard to the performance of its principal function which is set out in subsection 6(1).

Paragraphs 6(2)(g) and 6(2)(h) of the SBS Act require the SBS to contribute to the overall diversity and range of, Australian radio and television services. Item 40 amends paragraphs 6(2)(g) and 6(2)(h) to make it clear that the SBS’s duties to contribute only relate to radio and television services, and not digital media services. It is unnecessary to specifically apply paragraphs 6(2)(g) and 6(2)(h) to Australian digital media services because these services are already diverse and wide ranging.
Item 41 – Subsection 11(2)
Item 42 – After subsection 11(3)

Items 41 and 42 would amend section 11 of the SBS Act, which deals with the Minister’s power to give directions to the SBS Board.

Item 42 would insert a new subsection 11(3A), which provides that the Minister must not give a direction to the SBS in relation to the content to be provided on a digital media service. This is consistent with subsection 11(3) of the SBS Act, which prohibits the Minister from giving a direction to the SBS in relation to the content or scheduling of programs to be broadcast.

Item 41 would make consequential changes to subsection 11(2), adding a reference to new subsection 11(3A). The effect of this amendment is that the restrictions on the Minister’s power to give directions under section 11(2) (that is, in relation to a prescribed matter or in prescribed circumstances) would be subject to both subsection 11(3) and new subsection 11(3A).

Item 43 – After subsection 12(4)

Item 43 would amend section 12 of the SBS Act, which deals with the Minister’s power to give directions to the SBS in the national interest, by inserting a new subsection 12(4A). This change is consequential to the amendments to the SBS’s Charter (see Item 39, noted above).

New subsection 12(4A) empowers the Minister to direct the SBS to provide particular content on all of its digital media services, or on such of them as are specified in the direction, if the Minister is of the opinion that the provision of such content is in the national interest. The SBS must provide the content free of charge and in accordance with the direction.

The Minister’s power under new subsection 12(4A) would supplement the Minister’s existing directions power in subsection 12(1) with respect to the broadcasting of particular matters in the national interest.

Item 44 – Subsections 12(5) and (6)

Item 44 would make some technical amendments to subsections 12(5) and 12(6) of the SBS Act, consequential to the amendments in Item 43 (noted above).

Item 45 – Section 45 (heading)
Item 46 – At the end of subsection 45(1)

Items 45 and 46 would amend section 45 of the SBS Act to replace the heading for this provision and add certain words at the end of subsection 45(1), respectively. These amendments are consequential to the amendments in Item 47, noted below.

Subsection 45(1) provides that the SBS may broadcast advertisements and sponsorship announcements, subject to the restrictions in subsection 45(2) and section 70C. These amendments would make it clear that this provision would only apply to the SBS’s broadcasting services.
Corresponding provisions would be introduced in relation to advertisements and sponsorship announcements on SBS’s *digital media services* (see Item 47, noted below).

**Item 47 – After section 45**

Item 47 would introduce a new section 45A into the SBS Act, dealing with advertising and sponsorship on the SBS’s *digital media services*. New section 45A would operate in a similar way to section 45.

New subsection 45A(1) provides that the SBS may have advertisements and sponsorship announcements on any of its *digital media services*. New subsection 45A(2) requires the SBS Board to develop and publicise guidelines on the kinds of advertisements and sponsorship announcements that it is prepared to have on its *digital media services*. Such kinds of advertisements and sponsorship announcements may include those identified by reference to products and services (see new subsection 45A(4)). The Board would also be able to develop guidelines on other related matters. New section 45A(3) requires the Board to revise any guidelines developed by it from time to time.

Announcements could be in the form of text (see new subsection 45A(5)).

**Item 48 – After paragraph 73(a)**
**Item 49 – After paragraph 73(b)**

Items 48 and 49 would amend section 73 of the SBS Act by inserting new paragraphs 73(aa) and 73(ba). These amendments are consequential to the amendments to the SBS’s Charter (Item 39, noted above).

The effect of these amendments is that the SBS’s Directors will be required to include the following matters in each annual report on the SBS prepared under section 9 of the *Commonwealth Authorities and Companies Act 1997*:

- particulars of any content provided by the SBS on a *digital media service* because of a direction by the Minister under new subsection 12(4A) (new paragraph 73(aa));
- particulars of any content provided by the SBS on a *digital media service* because of a direction by the Minister otherwise than under the SBS Act (new paragraph 73(ba)).

These provisions are consistent with existing provisions relating to the SBS’s broadcasting services.