THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

BROADCASTING LEGISLATION AMENDMENT (BROADCASTING REFORM)
BILL 2017

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Communications
Senator the Honourable Mitch Fifield)
The Broadcasting Legislation Amendment (Broadcasting Reform) Bill 2017 (the Bill) forms part of a comprehensive and historic package of reforms announced by the Government on 6 May 2017 that will improve the sustainability of Australia’s free-to-air broadcasting sector. The other Bill forming part of package is the Commercial Broadcasting (Tax) Bill 2017 (the Tax Bill).

The Bill comprises the following measures:

- reforming outdated media regulation contained in the Broadcasting Services Act 1992 (BSA) to better reflect the contemporary digital media environment, including repealing the ‘75 per cent audience reach rule’ and the ‘2 out of 3 cross-media control rule’;
- amending and introducing some additional local programming obligations under the BSA for regional commercial television broadcasting licensees, where, as a result of a change in control, their licences become part of a group of commercial television licences whose combined licence area populations exceed 75 per cent of the Australian population;
- amendments to the anti-siphoning scheme under the BSA and the anti-siphoning notice;
- permanently abolishing annual television and radio licence fees, and datacasting charges payable by commercial broadcasters;
- removing apparatus taxes payable by commercial broadcasters;
- establishing tax collection and assessment arrangements for the new interim transmitter licence tax and establishing a statutory review of new tax arrangements in 2021 consistent with the broader review of spectrum pricing underway;
- establishing a transitional support payment scheme for 19 commercial broadcasters to ensure that there is no commercial broadcaster that will be worse-off during the first five years as a result of the transition from a revenue-based licence fee and charge arrangement to new interim transmitter licence tax arrangements.

**Media Ownership Reform & Local Programming Requirements**

The Bill will amend the BSA to repeal outdated media ownership and control laws – the ‘75 per cent audience reach rule’ and the ‘2 out of 3 cross-media control rule’ to better reflect the contemporary digital media environment.

The Bill also introduces new local programming obligations for regional commercial television broadcasting licensees where a change in control, known as a trigger event, results in a licence forming part of a group of commercial television broadcasting licences whose combined licence area populations exceed 75 per cent of the Australian population.

The Bill adopts changes proposed by Recommendation 1 of the Senate Environment and Communications Legislation Committee’s ‘Broadcasting Legislation Amendment (Media Reform Bill) 2016 [Provisions]’ report, tabled on 5 May 2016. This recommendation related to the definition of a trigger event.
The Bill does not alter the remaining control and ownership rules in the BSA — the 5/4 rule, and the one-to-a-market and two-to-a market rules (platform specific licence limits).

- The 5/4 rule provides that at least five independent media groups must at all times be present in metropolitan commercial radio licence areas and four such groups in regional commercial radio licence areas.

- The platform specific licence limits provide that a person (either in their own right or as a director of one or more companies) must not be in a position to exercise control of more than one commercial television licence in a licence area (i.e. one-to-a-market), and a more than two commercial radio licences in a licence area (i.e. two-to-a-market).

Mergers and acquisitions in the media sector will continue to be subject to Australia’s general competition regulation under the *Competition and Consumer Act 2010*, under which the Australian Competition and Consumer Commission (ACCC) has a significant enforcement role. Foreign ownership of Australian media assets is also regulated by the *Foreign Acquisitions and Takeovers Act 1975* and the *Foreign Acquisitions and Takeovers Regulations 2015*. Under this framework, businesses in the media sector are prescribed as ‘sensitive businesses’. As such, all foreign investment at least 5 per cent in an entity that carries on an Australian media business must be notified to the Treasurer, who may then take actions in relation to the investment (e.g. prohibiting the investment) if necessary to protect Australia’s national interests.

**75 per cent audience reach rule**

The BSA prevents a person, either in their own right or as a director of one or more companies, from being in a position to exercise control of commercial television broadcasting licences whose combined licence area populations exceed 75 per cent of the population of Australia. This rule is known as the ‘75 per cent audience reach rule’.

The rule has the practical effect of preventing mergers between any of the predominantly metropolitan commercial television broadcasting licensees (Seven, Nine and Ten) and any of the regional commercial television broadcasting licensees (Prime, WIN and Southern Cross) because such a transaction would result in a person controlling commercial television licences whose combined licence area populations substantially exceeded the 75 per cent population threshold.

This rule does little to support media diversity as regional viewers receive essentially the same commercial television programming as metropolitan viewers, due to affiliation or content supply agreements. In addition, two metropolitan licensees now stream versions of their services across Australia, including in regional markets.

Schedule 1 to the Bill will repeal this rule which would, subject to competition law and other relevant laws, allow consolidation within the commercial television sector and greater scale in operations, thus allowing commercial broadcasters to compete in an environment where audiences can readily access premium content online.
2 out of 3 cross-media control rule

The ‘2 out of 3 cross-media control rule’ prohibits a person controlling more than two out of three regulated media platforms (that is, a commercial television broadcasting licence, a commercial radio broadcasting licence and an associated newspaper) in any one commercial radio licence area.

This rule regulates the traditional media platforms of commercial television, commercial radio and associated newspapers and does not take into consideration the changed media landscape, where consumers access news and other content from alternative sources, such as online. In this context, the ‘2 out of 3 cross-media control rule’ is ill-suited to a contemporary media environment. Accordingly, Schedule 2 to the Bill proposes to repeal it.

Local programming

Schedule 3 to the Bill would insert new Division 5D in Part 5 of the BSA which sets out new local programming requirements for regional commercial television broadcasting licensees.

Currently, the BSA, together with the Broadcasting Services (Additional Television Licence Condition) Notice 2014, requires regional commercial television broadcasting licensees in aggregated markets and Tasmania to provide approximately 120 points of material of local significance per week to local areas within the licence areas. Material of local significance is material that is broadcast to a local area and relates directly to either the local area or the licence area. The aggregated markets include the following licence areas: Northern New South Wales, Southern New South Wales, Regional Victoria, Eastern Victoria, Western Victoria, and Regional Queensland.

Under the current points system, 1 minute of material of local significance is worth 1 point and 1 minute of news that relates directly to the local area is worth 2 points. In the absence of a trigger event, the practical effect of these provisions, including the existing 720 point requirement over a 6-week timing period, will be maintained under the amended local programming obligations contained in the Bill.

Main changes to be introduced by Schedule 3

The main changes that will apply as a result of Schedule 3 are described below.

Six months after the occurrence of a trigger event, the Bill will:

- increase local programming requirements for affected regional commercial television broadcasting licensees in aggregated markets and Tasmania by 30 points per week (new subsection 61CW(1)); and
- introduce local programming requirements for affected regional commercial television broadcasting licensees in non-aggregated markets. These include the following licence areas: Broken Hill, Darwin, Geraldton, Griffith and Murrumbidgee Irrigation Area (MIA), Kalgoorlie, Mildura/Sunraysia, Mount Gambier/South East, Mt Isa, Remote and Regional WA, Riverland, South West and Great Southern, and Spencer Gulf. A new Section 61CX will require licensees to provide approximately 60 points of material of local significance per week to each local area, with a minimum of 45 points per week.
Broadcasts to remote areas of Australia will be excluded given the large geography and lack of large population centres.

The Bill will introduce a new local programming points system for licences affected by a trigger event whereby each minute of local news programming that depicts people, places or things in the relevant local area (i.e. is filmed in the local area) will be allocated 3 points (item 1 in the table in new Subsection 61CY(3)). Otherwise the local programming points system will replicate the current material of local significant points system.

The Bill will require licensees to provide the Australian Communications and Media Authority (ACMA) with an initial report on their compliance with the obligations 18 months after a ‘trigger event’ and a second report one year later. In order to evaluate the extent to which the Bill achieves its objective, the ACMA will review the operation of the new local programming provisions within two years following the commencement of the additional obligations.

**Transitional arrangements for the new requirements**

The new local programming requirements will be phased in as follows.

The old local programming requirements under section 43A of the BSA, and the *Broadcasting Services (Additional Television Licence Condition) Notice 2014*, will continue to apply in respect of any ‘timing period’ operating during the 6 months following Royal Assent (following which they are repealed by Part 2 of Schedule 3) to allow the ACMA time to develop certain details of the new scheme under new section 61CZ. Timing periods are generally 6 weeks in duration.

In relation to regional aggregated commercial television broadcasters:

- if no trigger event occurs, during any timing period beginning more than 6 months after Royal Assent, the licensee must broadcast to each local area approximately 120 points per week of material of local significance under the new Division 5D requirements (new subsection 61CW(3));

- if a trigger event occurs during the 6 months after Royal Assent, the licensee must broadcast to each local area:
  - approximately 120 points per week of material of local significance under the old section 43A requirements during any timing period operating during the 6 months following Royal Assent;
  - approximately 120 points per week of material of local significance under the new Division 5D requirements during any timing period beginning more than 6 months after Royal Assent and operating during the remainder of the 6 months after the trigger event (new subsection 61CW(2)); and
  - approximately 150 points per week of material of local significance under the new Division 5D requirements during any timing period beginning more than 6 months after the trigger event (new subsection 61CW(1));
• if a trigger event occurs more than 6 months after Royal Assent, the licensee must broadcast to each local area approximately 150 points per week of material of local significance under the new Division 5D requirements during any timing period beginning more than 6 months after the trigger event (new subsection 61CW(1)).

In relation to regional non-aggregated commercial television broadcasters:

• if a trigger event occurs, the licensee must broadcast to each local area approximately 60 points per week of material of local significance under the new Division 5D requirements during any timing period beginning more than 6 months after the trigger event (new subsection 61CX(1)).

**Anti-siphoning**

The anti-siphoning scheme in the BSA allows the Minister for Communications to specify, by legislative instrument, a list of events that the Minister considers should be available free to the general public. If an event is specified on this list, the BSA prevents subscription television broadcasting licensees from acquiring the right to televise the event until a free-to-air broadcaster (a national broadcaster or a commercial television broadcasting licensee) has a right. Events are taken to be removed from the list within a period specified in the BSA unless the Minister intervenes to retain an event on the list.

The Bill will amend the measures contained in the BSA that relate to the anti-siphoning scheme to better reflect the commercial realities of broadcast rights acquisition, and remove outdated and redundant provisions by:

• extending the automatic delisting period under subsection 115(1AA); and

• removing the multi-channelling restrictions in Part 4A of Schedule 4.

The Bill also includes measures to update the *Broadcasting Services (Events) Notice (No. 1) 2010* (the anti-siphoning notice), by replacing the existing Schedule to the notice with a new Schedule containing a reduced list of anti-siphoning events.

These changes will enable the scheme to operate more effectively in a digital media environment while ensuring that events of national and cultural significance continue to be available on free-to-air television.

**Extending the automatic delisting period**

Subsection 115(1AA) of the BSA stipulates that events contained in the anti-siphoning notice are taken to be automatically removed from the notice (‘delisted’) 2,016 hours (12 weeks) before they commence. The purpose of this provision is to provide subscription television broadcasters with some opportunity to acquire the rights to events that free-to-air broadcasters could be considered not to be interested in acquiring if they have not done so by that time.

However, this period does not currently align with the commercial reality of rights acquisition, where the majority of major sports rights contracts are settled between six months and two years from the commencement of the first event to be played as part of a competition or tournament.
Accordingly, the Bill will extend the automatic delisting period to 4,368 hours (26 weeks). This will loosen the regulatory restrictions imposed on subscription television broadcasters under the scheme and enable them to acquire rights at any time within 26 weeks of an anti-siphoning listed event taking place. This measure recognises the reality of sports rights deals, while ensuring that free-to-air broadcasters retain the opportunity to acquire the rights first.

The capacity under the BSA for the Minister to prevent automatic delisting and retain a particular event on the anti-siphoning notice if they believe that a free-to-air broadcaster has not had a reasonable opportunity to acquire rights to the event in question will not be affected by the Bill. Neither will the Minister’s ability to remove an anti-siphoning event from the notice, or amend the notice.

**Removing the multi-channelling rule**

Part 4A of Schedule 4 to the BSA prevents events on the anti-siphoning notice (anti-siphoning events) from being premiered on a free-to-air digital multi-channel (i.e. ONE, GEM, 7mate) unless they have already been premiered (or will be shown simultaneously) on a primary (main) channel. This applies regardless of whether the event has been automatically delisted in accordance with subsections 115(1AA) or (1B). This rule is known as the ‘multi-channelling rule’.

The multi-channelling rule has led to free-to-air broadcasters regularly requesting that the Minister temporarily remove (‘delist’) events from the notice to enable them to utilise their multi-channels to provide first-run (and often live) coverage of these events. Since 2010, events have been delisted on at least 90 occasions, and free-to-air broadcasters will continue to request such de-listings while the rule remains in place.

The rationale behind the introduction of the rule in 2006 was to prevent consumers who had yet to make the switch to digital television, or for whose areas digital television had yet to be rolled out, from being disenfranchised by events being televised on digital-only channels which they were unable to receive. With the completion of digital switchover in 2013, this rule is now redundant.

Repealing the multi-channelling rule will provide flexibility for free-to-air television broadcasters to optimise television coverage of listed events to the benefit of audiences across the country.

**Amending the anti-siphoning notice**

The *Broadcasting Services (Events) Notice (No. 1) 2010* (the anti-siphoning notice) is a legislative instrument made by the Minister under subsection 115(1) of the BSA, specifying the events which should, in the opinion of the Minister, be available free to the general public.

The anti-siphoning notice has been amended a number of times since it was first made in 1994, with events added and removed. However, changes have generally been incremental rather than substantial. To date, all events listed in the notice have been sporting events and at present, the notice encompasses between 1,200 and 1,300 events per year spanning 12 categories of events: Olympic and Commonwealth Games, horse racing, Australian rules football (AFL), rugby league, rugby union, cricket, soccer, tennis, netball, golf and motor sports.
While the broadcast rights to the majority of sports listed in the anti-siphoning notice continue to be acquired by free-to-air broadcasters and garner high audiences, this is not the case across the board. For some events, the history of rights acquisition by broadcasters, and audience viewing patterns, no longer warrants their inclusion on the notice. Some are not televised on free-to-air television, or do not command audiences of any meaningful size. Others have little identifiable national or cultural significance. Some events, or parts of events, are no longer being held.

This Bill will repeal and replace the Schedule to the current anti-siphoning notice to implement targeted reductions to the list, creating a list that is more streamlined and more reflective of contemporary audience patterns and rights acquisitions. The new list will ensure that the rights to events with widespread public appeal will remain available for acquisition by free-to-air television broadcasters before the subscription television sector.

**Abolition of Commercial Television and Radio Licence Fees & Datacasting Charges**

The Bill will permanently abolish broadcasting licence fees and datacasting charges, giving effect to a measure contained in the 2017-18 Budget. This fee reduction recognises that the Australian media market has changed significantly since broadcasting licence fees were first introduced, with the move to online and on-demand content fragmenting the market for media services and increasing competition. In this environment, the imposition of fees and charges on commercial broadcasters is no longer warranted or sustainable, particularly as their competitors face no such fees.

Specifically, Schedule 5 to the Bill would repeal the following licence fee and charges Acts:

- **Television Licence Fees Act 1964** (TLF Act);
- **Radio Licence Fees Act 1964** (RLF Act);
- **Datacasting Transmitter Licence Fees Act 2006** (DTLF Act); and
- **Datacasting Charge (Imposition) Act 1998** (Charges Imposition Act).

It will also make consequential amendments relating to the administration of broadcasting licence fees and datacasting fees in the BSA.

Commercial television and radio licensees are required under the TLF Act and RLF Act, respectively, to pay broadcasting licence fees. These are levied on an annual basis as 75 percent of an amount determined as a sliding percentage of the licensee’s gross earnings for the particular year.

For television, fees are set between 0.1875 and 1.31249 per cent of earnings up to (but less than) $5 million, rising over a series of 9 steps to a maximum of 3.375 per cent for earnings of $100 million or more. For radio, fees also set between 0.1875 and 1.31249 per cent of earnings up to (but less than) $5 million, rising over a series of 6 steps to a maximum of 2.4375 per cent for earnings of $11.5 million or more.
Under Part 14A of the BSA, licensees are required to keep accounts and pay fees owed to the Australian Communication and Media Authority on 31 December each year (relating to the previous financial year unless a different account keeping period has been permitted).

Datacasting charges are imposed by the Charges Imposition Act on commercial television broadcasting licensees who are using their transmitter licences to provide datacasting services under a datacasting licence. Instruments associated with this Act specify the amount and account keeping and administration obligations on those liable to pay datacasting charges.

The Channel A Datacasting Act requires holders of Channel A datacasting transmitter licensees to pay licence fees under similar arrangements to the other fees and charges, although there currently no Channel A datacasting transmitter licences in force.

**Tax Collection and Assessment**

The Commercial Broadcasting (Tax) Bill 2017 would impose an interim tax relating to transmitter licences issued under section 102 of the *Radiocommunications Act 1992* (Radcomms Act) that are associated with commercial broadcasting licences under Part 4 of the BSA. Schedule 6 to this Bill would establish related tax collection and assessment arrangements for the new tax. The tax would be applied on the issue, or anniversary of a licence. The Tax Bill would come into legal operation on a retrospective basis on 1 July 2017, but only if this Bill is also passed and receives the Royal Assent.

The due date for payment of a tax liability is determined by reference to when the copy of the ACMA’s assessment is given to the person. For the transition period, the ACMA will issue assessment notices by 1 December 2017 and after 1 December, the obligation on the ACMA to make and issue an assessment will arise on the issue, anniversary or the cessation of the transmitter licence. Late payment penalties are proposed to apply to unpaid interim tax liabilities at a rate of 20 per cent, or another lower amount that the ACMA determines. It would be an offence for a broadcaster, either alone or together with one or more other persons, to enter into or carry out a scheme for the purpose of avoiding the tax. There is also an ancillary contravention provision for persons that aid the avoidance of the tax, such as advisers. A civil penalty of up to 2,000 penalty units would apply for corporations (and up to 400 penalty units for any other person who is not a corporation). However, the Bill would confer additional power on the Federal Court to make penalty orders for up to twice the amount of tax that has been avoided. The Government will actively monitor compliance with the new tax laws, and the use of the radiocommunications licensing framework. If it is determined to be necessary, further measures may be taken at a later date to preclude arrangements (including the use of transmitter licences authorising the re-transmission of broadcasting services) that may form part of arrangements to avoid or minimise the interim tax.

Schedule 6 would also amend the *Radiocommunications (Transmitter Licence Tax) Act 1983* (R(TLT) Act) to disapply the taxation arrangements in respect of commercial broadcasters who hold a transmitter licence issued under section 102 of the Radcomms Act, and that licence was allocated under Part 4 of the BSA. The amendment will also disapply the taxation arrangements in respect of holders of a pre-Licence Area Plan (pre-LAP) licences issued under section 100 of the Radcomms Act.

Schedule 6 also amends the *Radiocommunications Taxes Collection Act 1983* (RTC Act) to provide the ACMA the ability to provide refunds if there has been an overpayment. Pro-rata
refunds may also be provided if there has been an upfront tax payment imposed under the R(TLT) Act.

**Transitional support payments**

Under the new taxes imposed on commercial television and radio broadcasters under the Commercial Broadcasting (Tax) Bill 2017, the vast majority of broadcasters will see a significant reductions in taxes. However, with the change to a *per transmitter* tax from an annual revenue-based annual licensing fee approach, a small number of broadcasters in regional areas are projected to experience an increase in their tax liability. To provide these broadcasters with time to adjust to the new tax arrangements, the Government will provide transitional support payments over five years. The proposed payments are based on the difference between broadcasting licence fees paid for the 2015-16 financial year, and the amount of tax projected to be paid under the proposed new interim tax.

Transitional support payments will also be provided to a small number of broadcasters where the application of a standardised pricing formula is projected to result in an unreasonably high amount of taxes for the populations in the commercial broadcasting licence areas which they served.

Part 2 of Schedule 6 to the Bill enables these transitional support payments. These payments are to be made to companies specified in the table in item 3 of this schedule. The payments will be made on 1 November 2017, and 1 July in the financial years 2018-19 to 2021-22.

As a condition of the payment, the companies must retain their broadcasting licences for the financial years that these payments are in effect and declare at the end of each financial year in which they received payment that they have spent the money in connection with the provision of broadcasting services authorised by the commercial broadcasting licence. In addition, the Secretary of the Department, or a delegate, must be satisfied that it is likely that the company will hold the licence from the payment day to the end of the financial year.

If the company ceases to be the holder of a broadcasting licence after the payment has been made, the company will repay the Commonwealth the amount pro-rated on the number of days in the non-licence period.

The company may give the Secretary a written notice before 1 November 2017 if it does not want to receive any payments. This ensures the payment arrangements are voluntary, and eligible companies which do not elect to opt out of the payments will be taken to have agreed to the conditions.

**Statutory Review of taxation arrangements etc**

Schedule 7 to the Bill would inserts new section 216AA into the BSA to allow the ACMA to conduct a review into whether the *Commercial Broadcasting (Tax) Act 2017* should be repealed or amended on or before 1 July 2022. The proposed review would need to commence after 30 June 2019 and be completed before 1 July 2021. The Minister would be permitted, by notifiable instrument, to determine one or more matters that the ACMA must also review, as long as those matters relate to commercial broadcasting licensees and the use of spectrum for the purposes of providing commercial broadcasting services. In conducting the review, the ACMA would be required to hold public consultations. The completed report
would be need to be completed and given to the Minister by 30 June 2021 and the Minister would be required to table it in Parliament within 15 sitting days of receipt.

The proposed review will help ensure that taxation arrangements (and any future replacement spectrum use charging pricing arrangement) remain appropriate and consistent with the broader review of spectrum pricing currently underway by Government.
FINANCIAL IMPACT STATEMENT

The measures in this Bill are estimated to have the following impact on underlying cash:

Abolition of commercial television and radio licence fees, and datacasting charges (Schedule 5)

<table>
<thead>
<tr>
<th></th>
<th>2017-18</th>
<th>2018-19</th>
<th>2019-20</th>
<th>2020-21</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue loss ($m)</td>
<td>127.0</td>
<td>96.9</td>
<td>96.9</td>
<td>96.9</td>
</tr>
</tbody>
</table>

Transitional support package (Part 3, Schedule 6)

<table>
<thead>
<tr>
<th></th>
<th>2017-18</th>
<th>2018-19</th>
<th>2019-20</th>
<th>2020-21</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expense ($m)</td>
<td>4.6</td>
<td>4.6</td>
<td>4.6</td>
<td>4.6</td>
</tr>
</tbody>
</table>

The above revenue loss does not take into account the new revenue stream from the proposed new tax imposed under the Commercial Broadcasting (Tax) Bill 2017, which is estimated to be $43.5 million per year.
STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Broadcasting Legislation Amendment (Broadcasting Reform) Bill 2017

The Broadcasting Legislation Amendment (Broadcasting Reform) Bill 2017 (the 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

The Bill forms part of a comprehensive package of reforms announced by the Government on 6 May 2017 that will improve the sustainability of Australia’s free-to-air broadcasting sector. The other Bill forming part of package is the Commercial Broadcasting (Tax) Bill 2017 (the Tax Bill).

The Bill comprises the following measures:

- reforming outdated media regulation contained in the Broadcasting Services Act 1992 (BSA) to better reflect the contemporary digital media environment, including repealing the ‘75 per cent audience reach rule’ and the ‘2 out of 3 cross-media control rule’;
- amending and introducing some additional local programming obligations under the BSA for regional commercial television broadcasting licensees, where, as a result of a change in control, their licences become part of a group of commercial television licences whose combined licence area populations exceed 75 per cent of the Australian population;
- extending the period in subsection 115(1AA) of the BSA for the automatic delisting of events from the Broadcasting Services (Events) Notice (No. 1) 2010 (the anti-siphoning notice) prior to commencement of the event from 2,016 hours to 4,368 hours;
- removing the multi-channelling rules which prevent free-to-air broadcasters from premiering events on the anti-siphoning notice on their digital multi-channels under Part 4A of Schedule 4 to the BSA;
- repealing and replacing the Schedule to the anti-siphoning notice to create a reduced and streamlined list of events which reflect trends in acquisition and broadcasting of particular events;
- permanently abolishing broadcasting licence fees and datacasting charges, and making amendments to the BSA and the Australian Communications and Media Authority Act 2005 consequential the abolition of these fees and charges, and to provide for the administration of the tax to be imposed by the Tax Bill;
- providing transitional support payments to some commercial broadcasters over five years to allow these broadcasters to adjust to the new taxation arrangements and ensure no broadcaster is worse off; and
• providing for a statutory review by the conduct a review by the Australian communications and Media Authority (ACMA) into whether the Commercial Broadcasting (Tax) Act 2017 should be repealed or amended on or before 1 July 2022 and any other matter notified by the Minister relating to commercial broadcasting licensees and the use of spectrum for the purposes of providing commercial broadcasting services.

Detailed Measures

Schedules 1 & 2 – Media Reform

The ‘75 per cent audience reach rule’ under the BSA prevents a person, either in their own right or as a director of one or more companies, from being in a position to exercise control of commercial television broadcasting licences whose combined licence area populations exceed 75 per cent of the population of Australia.

This effectively prevents mergers between any of the predominantly metropolitan commercial television broadcasting licensees (Seven, Nine and Ten) and any of the regional commercial television broadcasting licensees (Prime, WIN and Southern Cross). However, due to affiliation and content supply arrangements between the organisations, and the introduction of live, nationwide internet streaming services by metropolitan licensees, this rule does little to support media diversity.

The ‘2 out of 3 cross-media control rule’ prohibits a person controlling more than two out of three regulated media platforms (that is, a commercial television broadcasting licence, a commercial radio broadcasting licence and an associated newspaper) in any one commercial radio licence area.

This rule regulates the traditional media platforms of commercial television, commercial radio and associated newspapers, but does not take into consideration the changed media landscape, where consumers access news and other content from alternative sources, such as online.

These rules are ill-suited to the contemporary media environment. Accordingly, Schedules 1 and 2 to the Bill will repeal these rules which would, subject to competition law and other relevant laws, allow consolidation within the media sector where appropriate, greater scale in operations, promotion of better competition and increased access to quality content.

Schedule 3 – Local Programming

Currently, the BSA, together with the Broadcasting Services (Additional Television Licence Condition) Notice 2014, requires regional commercial television broadcasting licensees in aggregated markets and Tasmania to provide approximately 120 points of material of local significance (i.e. material that is related to the local/licence area) per week to local areas within the licence area. Under the current points system, 1 minute of material of local significance is worth 1 point and 1 minute of news that relates directly to the local area is worth 2 points.

The Bill will increase the current local programming obligations that apply in aggregated markets (and Tasmania), and introduce new local programming obligations in non-aggregated markets, for regional commercial television broadcasting licences affected by
a ‘trigger event’. A ‘trigger event’ occurs where, as a result of a change in control, a regional commercial television broadcasting licence becomes part of a group of commercial television broadcasting licences whose combined licence area populations exceed 75 per cent of the Australian population. Affected licensees would be required to commence broadcasting any additional local programming required six months after the relevant trigger event.

The Bill will introduce a new local programming points system for licences affected by a trigger event whereby each minute of local news programming that depicts people, places or things in the relevant local area (i.e. is filmed in the local area) will be allocated 3 points (item 1 in the table in new subsection 61CY(3)). Otherwise the local programming points system will replicate the current material of local significance points system.

Broadcasts to remote areas of Australia will be excluded given the large geography and lack of large population centres.

The Bill will require licensees to provide the Australian Communications and Media Authority (ACMA) with an initial report on their compliance with the obligations 18 months after a ‘trigger event’ and a second report one year later. In order to evaluate the extent to which the Bill achieves its objective, the ACMA will review the operation of the new local programming provisions within two years following the commencement of the additional obligations.

Schedule 4 – Anti-siphoning

The anti-siphoning scheme in the BSA allows the Minister for Communications to specify, by legislative instrument, a list of events that the Minister considers should be available free to the general public. Such events are currently specified in the Broadcasting Services (Events) Notice (No. 1) 2010 (the anti-siphoning notice). Events are taken to be removed from the list within a period specified in the BSA (currently 2,016 hours i.e. 12 weeks) unless the Minister intervenes to retain an event on the list.

If an event is specified in the notice, the BSA prevents subscription television broadcasting licensees from acquiring the right to televise the event until a national broadcaster, or a commercial television broadcaster (other than section 38C or subsection 40(1) licensee) with more than 50% Australian population reach, has acquired the right to televise those events on their services.

The BSA also imposes restrictions on the ability of a free-to-air broadcaster to televise events that appear on the anti-siphoning notice on their digital multi-channels (regardless of whether the event has been automatically delisted).

The Bill will amend the BSA to extend the automatic delisting period to 4,368 hours (i.e. 26 weeks), remove the multi-channelling restrictions, and repeal and replace the Schedule to the anti-siphoning notice to reduce the list of anti-siphoning events.

These amendments will ensure the anti-siphoning scheme better reflects the commercial realities of broadcast rights acquisition, and enable the scheme to operate more effectively in a digital media environment while ensuring that events of national and cultural significance continue to be available on free-to-air television.

Schedule 5 – Abolition of Licence Fees & Datacasting Charges
The Bill will permanently abolish broadcasting licence fees and datacasting charges currently imposed on holders of commercial radio broadcasting licences and commercial television broadcasting licences (commercial broadcasters). This is intended to recognise the fact that the Australian media market has changed significantly since broadcasting licence fees were first introduced, and that many of the broadcasters’ competitors operate solely online and are not subject to these fees.

Specifically, the Bill will repeal the Television Licence Fees Act 1964, the Radio Licence Fees Act 1964, Datacasting Transmitter Licence Fees Act 2006, the Datacasting Charge (Imposition) Act 1998, and the Broadcasting Services (Datacasting Charge) Regulations 2001. It will also make consequential amendments to provisions relating to the administration of broadcasting licence fees and datacasting fees in the BSA and Australian Communications and Media Authority Act 2005.

Schedule 6 – Taxation and Transitional Support Payments

Commercial broadcasters will still be required to hold and pay for a transmitter licence under section 102 of the Radiocommunications Act 1992 (Radcomms Act). However, the Bill will dis-apply the transmitter licence tax imposed under the Radiocommunications (Transmitter Licence Tax) Act 1983 to commercial broadcasters. This tax is intended to be replaced by a new transmitter licence tax under the Tax Bill.

Under the new arrangements the vast majority of broadcasters will see significant reductions in financial liability to the Government. However, a small number of broadcasters in regional areas would see an increase. To provide these broadcasters with time to adjust to the new taxation arrangements, the Bill will allow for the provision of transitional support payments to these broadcasters over five years. These payments will fully compensate these identified broadcasters for any additional liabilities incurred and ensure they are no worse off under the new arrangements.

Schedule 7 – Review of Taxation Arrangements etc

The Bill will provide for the ACMA to conduct a review into the new taxation arrangements implemented by this Bill and the Tax Bill in five years. This will ensure that broadcasting spectrum taxing arrangements remain appropriate and consistent with the review of spectrum pricing and the broader reform of the spectrum management framework that is currently being undertaken separately.

Human rights implications

Relevant Rights

Australia is a signatory to the International Covenant on Civil and Political Rights (the ICCPR), the International Covenant on Economic, Social and Cultural Rights (the ICESCR), and the Convention on the Rights of Persons with Disabilities (CRPD). These three conventions are listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

This Bill does not engage any applicable human rights or freedoms. In coming to this conclusion, specific consideration was given to the following human rights relevant to broadcasting:

- right to enjoy and benefit from science and culture (Article 15 ICESCR);
right to freedom of expression (Article 19 ICCPR);
right of ethnic, religious or linguistic minorities to enjoy their own culture (Article 27
ICCPR);
right to access for persons with disabilities to new information and communications
technologies (Article 9 CRPD);
right of all persons with disabilities to freedom of expression (Article 21 CRPD); and
right of all persons with disabilities to participate in cultural life (Article 30 CPRD).

Effects of the Amendments on Human Rights

Schedules 1-3 – Media Reform & Local Programming

Article 19(2) of the ICCPR recognises the right to freedom of expression, including the right
to receive and impart information and ideas of all kinds through any media.

The measures contained in Schedules 1-3 of the Bill directly relate to regulating commercial
television broadcasting licensees, which are corporations, rather than individuals.
Accordingly, the Bill’s amendments to the BSA do not have a direct impact on human rights.
However, the effect of the local programming obligations on regional commercial television
broadcasting licensees does engage the right to freedom of expression.

By requiring regional commercial television broadcasting licensees to broadcast a minimum
level of material of local significance, the Bill promotes the freedom to receive information
and ideas of local significance, disseminated through television programmes to people living
in regional areas of Australia.

Schedule 4 – Anti-Siphoning

Article 15 of the ICESCR recognises the rights of all people to take part in cultural life.
Articles 19(2) and 27 of the ICCPR also respectively:

- recognise the right to freedom of expression, including the right to receive and impart
  information and ideas of all kinds, regardless of frontiers, either orally, in writing or
  in print, in the form of art, or through any other media of a person’s choice; and
- provide that ethnic, religious or linguistic minorities shall not be denied the right to
  enjoy their own culture.

The UN Committee on Economic, Social and Cultural Rights has given a very broad
interpretation to the term ‘culture’. This could potentially include the ability to access or
participate in sporting events through viewing these events live or on television. The current
and amended anti-siphoning notice consists entirely of sporting events. There are otherwise
no limitations on events which could be added to the list, other than that the Minister must be
of the opinion that those events should be available free to the public. Arguably, the adding of
events to the list promotes both the right to receive information and to take part in culture.

The measures in the Bill would result in the removal of some of the current sporting events
from the notice, particularly those which do not occur in Australia (or New Zealand) and/or
do not involve Australian representative teams. The Bill would also result in subscription
broadcasters being able to acquire the exclusive rights to televise events at an earlier point in
time than they currently can. This potentially engages the right to take part in cultural life or
enjoy culture in the form of sport.
However, the anti-siphoning regime does not currently require the Minister to add events to the list, and does not guarantee that any particular events will actually be broadcast even if they are added to the list. Rather, it seeks to ensure that certain events, if they are added to the list, are more likely to be available on free-to-air television by giving free-to-air broadcasters first opportunity to acquire the rights to an event.

Removing some events from the anti-siphoning notice and lengthening the automatic delisting period may, in fact, result in greater coverage of some events by making it more commercially feasible and attractive for subscription broadcasters to acquire rights to those events.

Further, the lifting of the multi-channelling restriction also gives free-to-air broadcasters greater freedom to televise content in an optimal fashion and provide better coverage of those events. The multi-channelling restriction was originally introduced to ensure the viewers who did not yet have the technology to receive a digital television signal could still view events, but this is no longer relevant due to the completion of digital television switchover in 2013.

The anti-siphoning measures in the Bill therefore do not engage or limit any applicable human rights or freedoms.

*Schedules 5-8 – Removal of Licence Fees & Datacasting Charges; Taxation and Transitional Support Payments; and, Review of Taxation Arrangements*

Article 15 of the ICESCR recognises the right to enjoy culture, including taking part in cultural life. Article 19 of the ICCPR provides a general right to freedom of expression, which includes the freedom to receive and information and ideas through any other media of a person’s choice.

The abolition and replacement of the current tax regime applicable to commercial broadcasters in relation to transmitter licences, and the transitional arrangement for worse-off broadcasters, will not change the policy intent of either the BSA or the Radcomms Act, nor will these measures infringe on either of the relevant human rights listed above.

The direct effects of these aspects of the Bill are limited to holders of commercial broadcasting licences and have no direct impact on any natural persons, as only qualified companies are eligible to hold such licences.

Although the changes in taxation arrangements are not expected to have the capacity to directly affect the right of people in regional and remote areas to take part in cultural life and receive information if those measures inhibit the ability of certain broadcasters to continue to deliver services into those areas, If there were to be any unintended indirect effect on such rights, the transitional support package and a review arrangements would mitigate any such impact. Specifically, the Bill provides for financial relief over five years to select broadcasters to ensure no broadcaster is worse off, and for the ACMA to conduct a review after 2019 of the new taxation arrangements and any other matter notified by the Minister related to commercial television and radio broadcasting licensees and the use of the spectrum by those licensees to provide commercial broadcasting services.

These measures promote the continued enjoyment of the right to enjoy and take part in culture by ensuring broadcasters are not financially inhibited in providing their service by the Tax Bill measures, and that the effects of the measures can be monitored over time.
Conclusion

This Bill is compatible with human rights as it does not raise any human rights issues.
REGULATION IMPACT STATEMENT

MEDIA OWNERSHIP AND LOCAL PROGRAMMING OBLIGATIONS

CONTEXT

Media control and ownership rules

The regulatory framework governing the control and ownership of Australia’s media was developed in an analogue media environment that was dominated by three platforms: free-to-air television, free-to-air radio and print. The current control and ownership rules regulate these three platforms, and are based on a common geographical area within which diversity can be measured – the commercial radio licence area. This arrangement allowed the development of numerical tests as a proxy for diversity.

The current framework, established under Part 5 of the Broadcasting Services Act 1992 (BSA), is essentially comprised of five rules which limit the ‘control’ of commercial broadcasting services (television and radio) and newspapers associated with their licence areas.

• The media ownership and control rules are based on the concept of ‘control’, not ownership per se. If a person has company interests exceeding 15 per cent, they are regarded as being in a position to exercise control of the company. However, holding company interests is not the only way to be in a position to exercise control. Other examples of control are if the person: is the licensee; can control the selection or provision of a significant proportion of the licensee’s programming; can control a significant proportion of the operations of the company; can appoint, secure or veto the appointment of at least half of the board of directors; or can exercise direction or restraint over any substantial issue affecting the management or affairs of the licensee or company. Similar criteria apply to newspapers, their publishers and persons exercising control of them.

• An ‘associated newspaper’ is one that is ‘linked’ in terms of circulation with the relevant licence area. Importantly, this excludes the national newspapers, The Australian and the Australian Financial Review, and as a consequence, the ownership of these papers is not regulated through the media control rules.

‘5/4’ rule (the ‘minimum voices rule’)

• At least five independent media ‘voices’ must be present in metropolitan commercial radio licence areas (the mainland state capital cities), and at least four in regional commercial radio licence areas.

- A ‘voice’ is a commercial television broadcasting licence, a commercial radio broadcasting licence or an associated newspaper (a ‘media operation’), or a group of two or more media operations (a ‘media group’). A standalone media operation and a separate media group each count for one ‘point’ under the ‘minimum voices rule’.
‘2 out of 3’ rule (the ‘cross-media ownership rule’)

- Mergers cannot involve more than two of three regulated media platforms (commercial television, commercial radio and associated newspapers) in any commercial radio licence area.

‘75 per cent audience reach’ rule

- A person, either in their own right or as a director of one or more companies, must not be in a position to exercise control of commercial television broadcasting licences whose total licence area population exceeds 75 per cent of the population of Australia.

‘One-to-a-market’ rule

- A person, either in their own right or as a director of one or more companies, must not be able to exercise control of more than one commercial television broadcasting licence in a licence area.

‘Two-to-a-market’ rule

- A person, either in their own right or as a director of one or more companies, must not be able to exercise control of more than two commercial radio broadcasting licences in the same licence area.

Media transactions are also subject to other regulatory assessments in relation to competition under the *Competition and Consumer Act 2010* and foreign investment under the *Foreign Acquisitions and Takeovers Act 1975* and Australia’s Foreign Investment Policy.

Local programming in regional Australia

Between 1989 and 1992 some smaller regional commercial television licence areas that had received television services from single providers were aggregated into larger areas or ‘aggregated markets,’ these being:

- Regional Queensland;
- Northern New South Wales;
- Southern New South Wales; and
- Regional Victoria.

These services were aggregated to provide three commercial television services to major regional areas in Australia so that the number of services available would be comparable to metropolitan areas, and also to promote competition and establish more viable regional television markets.

Following concerns about the level of local programming being broadcast in these aggregated markets, the *Broadcasting Services (Additional Television Licence Condition) Notice 7 April 2003* (the 2003 licence condition) was introduced by the Australian Broadcasting Authority (the industry regulator, and predecessor to the Australian Communications and Media Authority). The 2003 Licence Condition required regional commercial television broadcasting licensees to provide minimum levels of material of local significance in local areas within the four aggregated markets. Note that, ‘material of local significance’ (referred
to hereafter as ‘local programming’) is defined in the relevant licence condition to be material that is broadcast to a local area if it relates directly to the local area, or the licensee’s licence area.

During broader media ownership reforms in 2006, Parliament introduced section 43A into the BSA. Section 43A requires the Australian Communications and Media Authority (ACMA) to make and maintain a licence condition to require commercial regional broadcasters to provide minimum levels of local programming to local areas within licence areas in aggregated markets. The scope of the obligations was also extended to include Tasmania.

The obligations provided under section 43A currently operate as a licence condition – the Broadcasting Services (Additional Television Licence Condition) Notice 2014 (BSN). Under the BSN, licensees in the aggregated markets and Tasmania are required to provide minimum levels of local programming to specified local areas, with the minimum required levels set by a points system. Points are accumulated by licensees through broadcasting local programming during eligible periods (6:30 am to midnight Monday to Friday, and 8am to midnight on weekends) for timing periods defined in the BSN. Points are accumulated on a ‘per minute’ basis, i.e. 1 point for 1 minute of qualifying programming, with local news programming incentivised through being allocated 2 points per minute broadcast.

Specified licensees are required to meet minimum quotas of:

- an average of 720 points per six-week period; and
- a minimum requirement of 90 points per week.

Information supplied to the ACMA by relevant licensees up until 2014 indicates that many licensees subject to the BSN obligations significantly exceed their programming requirements, while some broadcasters operating in non-aggregated regional markets provide local programming despite there being no regulatory obligation to do so, indicating that there are commercial drivers for providing local programming in some markets. This compliance information is no longer supplied to the ACMA.

THE PROBLEM

The legislative framework governing the Australian media is no longer appropriate for the modern media environment. The current media control and ownership laws were developed in the analogue era and only apply to traditional platforms, namely: commercial television, commercial radio and associated newspapers. Collectively, these rules restrict traditional media companies from optimising the scale and scope of their operations and from accessing resources, capital and management expertise available in other media sectors. Under the current rules, established media operators do not have the flexibility to respond to increasing financial pressures by adapting to the changing media landscape including through mergers with other television broadcasters or other associated newspapers or radio broadcasters.

Current media rules are outdated

The current media ownership and control framework was set in a time when traditional media companies dominated the delivery of audio, audio visual and news content to audiences and the opportunities for advertisers to reach those audiences. Within this dynamic, predictable numerical tests (performed through the media control and ownership rules outlined above) could act as a proxy for media diversity. This is no longer the case as the modern media
environment consists of more than the three regulated platforms. For example, Foxtel, Australia’s most profitable media company, is not regulated under the media ownership rules, nor are online sources of content, such as popular streaming service Netflix.

Internet platforms and services: the Internet and IP-based technologies have provided opportunities for new platforms and business models, and the pressure on established operators has increased significantly. The impact of the Internet can be seen in the shift of advertising revenue by platform. As shown in Figure 1, online platforms have grown from having a 6.1 per cent share of the Australian advertising ‘pie’ to achieving the largest share of advertising revenues, capturing 42.5 per cent in 2015. Over the same period, television and radio shares have declined modestly (to 27.6 per cent and 7.8 per cent respectively), while newspapers have plummeted from 37.5 per cent to 13.3 per cent.

*Figure 1 - Share of total advertising by media platform*

![Graph showing share of total advertising by media platform](image)

While traditional media platforms remain profitable and attract significant audiences (with some exceptions), consumers are moving to new sources of video, audio and news content. Newspaper circulations have shrunk significantly in recent years and while digital subscriptions continue to grow, they are not replacing the hard copy readership. Weekly print readership of titles including *The Sydney Morning Herald, The Daily Telegraph, The Age* and *The Herald Sun* fell between 22 and 48 per cent between 2003 and 2015. Digital revenues remain low, making up 12.8 per cent of total print revenues in 2015. Online sources of news are widespread, with consumers having access to both local and international online sources. Over half of all Australians (52 per cent) actually identify online sources of news, including social media, as their main source of news, ahead of the more traditional platforms. Local online-only or predominantly online sources now include *The Conversation, Crikey, New Matilda, The Huffington Post, The Daily Mail, The Guardian Online* and *BuzzFeed*, and online aggregators such as *Google News* and Apple’s *News* app.

The business of commercial broadcasting is hinged on the capacity to amass viewers for advertisers. At an aggregate level, the majority of viewing time remains devoted to broadcast television on in-home sets, and commercial television audiences have been relatively resilient over the past decade; between 2003 and 2015, the total evening audience for the metropolitan commercial free-to-air television broadcasters has declined modestly from 3.691
million to 3.386 million viewers.\(^{vi}\) However, more dramatic declines were evident in 2015, with free-to-air audiences for the metropolitan broadcasters falling by 5 per cent compared with 2014,\(^{vii}\) and the average number of hours of broadcast television viewed on in-home sets falling to 86 hours per month (or less than 3 hours per day) in the first quarter of 2016.\(^{viii}\) The first decline below the 90 hours per month level occurred in the first quarter of 2015, when hours were at 89.3 per month, nearly a full 3 hours more than the figure in the first quarter of 2016.\(^{ix}\)

Audience stability at the industry-wide level also masks significant divergence between the main networks, as seen in Figure 2: the Seven Network posted modest growth in its average evening audiences of 4 per cent over the 13 years to 2015; the Nine Network recorded a decline of 11 per cent over this period; while Network Ten’s total evening audience has fallen by some 25 per cent, with the primary channel audience dropping by close to 50 per cent.\(^{x}\)

**Figure 2 - Commercial free-to-air television audiences**

Furthermore, industry analysts IBISWorld and PricewaterhouseCoopers (PWC) are predicting a decline in revenue for free-to-air television in real terms, which is consistent with a linear trend analysis of Free TV Australia revenue data, as shown in Figure 3.
Radio audiences have also been relatively stable over recent years, although this does not necessarily translate to revenue. Metropolitan commercial radio audiences grew by between 1 and 3 per cent per annum from 2009 to 2013, and 6.2 per cent from 2013 to 2015. However, audience growth has also been strong online. Research from Nielsen indicates that Australians are now listening to a significant amount of online audio content online per week (8.4 hours in 2015), alongside 8.0 hours per week of terrestrial radio listening.

There is also significant fragmentation within the radio sector. Metropolitan commercial radio services attract larger audiences than their regional counterparts simply due to the differences in market size. However, in all areas, there is a stark divide between AM and FM stations. Consistent with generally poor ratings, regional AM revenues have dropped 46.1 per cent in real terms between 2000 and 2014 (4.3 per cent per annum), while revenues for the metropolitan AM broadcasters have declined 18.8 per cent over the same period (1.5 per cent per annum). At the same time, FM broadcasters – metropolitan and regional – have increased revenues at close to 1 per cent per annum. This is demonstrated in Figure 4.
Figure 4 – Free-to-air commercial radio revenue by modulation

Source: ACMA Broadcast Financial Results, various years

Notes: Figures are adjusted for inflation using the GDP implicit price deflator. Based on service revenue (which includes advertising revenue, other licence fee revenue and other revenue)

In the audio visual market, the changing dynamic is centred on the proliferation of video and audio on demand and streaming services, most notably the Australian launch and rapid consumer take-up of US-based streaming service Netflix in March 2015. As at May 2016, almost 5 million Australians aged over 14 had access to a Netflix subscription.\textsuperscript{xiv} Pay-based television services more broadly are also growing, with 3.1 million Australian households subscribing to one or more services as at 30 June 2015.\textsuperscript{xv} This includes Foxtel, as well as new Subscription Video On Demand (SVOD) services (such as Netflix, Stan and Presto) and IPTV providers such as Fetch TV. A similar situation exists in the audio market, where ad-supported and subscription audio services are available to Australians from Spotify, iTunes Radio and Pandora, among others, for relatively low cost ($10 to $12 per month). Spotify has over 30 million paying subscribers and more than 100 million active users across 59 markets worldwide, including Australia.\textsuperscript{xvi} With so many market players, audiences have an unprecedented variety to choose from for accessing news and entertainment.

Free-to-air television and radio broadcasters have not been standing still amidst these changes and have sought out new revenue streams.

- **SVOD**: two on-demand streaming services involving free-to-air television broadcasters were launched in early 2015: Stan (a joint venture with Nine Entertainment and Fairfax Media) and Presto (a joint-venture between Seven West Media and Foxtel)

- **Catch-up**: All of the free-to-air television networks have online catch-up services, where audiences can watch video content online after its initial broadcast on television: PLUS7 (Seven Network), 9Now (Nine Network) TENplay (Network Ten), iView (ABC) and SBS on Demand (SBS).
• **Streaming**: Seven West Media and Nine Entertainment Co have commenced live-streaming of their television channels (Seven Network and Nine Network respectively), while many commercial radio broadcasters stream their terrestrial services. Australian Radio Network (ARN) operates iHeartRadio, which allows listeners to access any of network’s stations or create customised stations.

Although these developments are notable, the extent to which broadcasters will be able to successfully diversify into the new media space and compete with online providers remains unclear.

• While Stan and Presto launched in Australia at approximately the same time as Netflix, they have been taken up by 0.9 and 0.4 million Australians respectively, as at June 2016, compared with 5 million for Netflix. Broadcasters are clearly seeing these services as complementary rather than as profit drivers. David Gyngell, former CEO of Nine, stated it would remain to be seen whether Stan would turn a profit, and that rather than being a “saviour” of the company, Stan is “an adjunct to content acquisition and original content deals.”

• Radio broadcasters looking to develop audio streaming services face a crowded market, with competition from international players such as Spotify, Apple and Google. Consolidation is the overwhelming trend as smaller players are absorbed, a recent example being Nova’s exit from its joint-venture in streaming service Rdio shortly before Rdio declared bankruptcy and had its assets acquired by US-based internet radio service Pandora.

• The experience in overseas markets, where subscription video and audio streaming services are more mature, suggests that online only providers have the capacity to rapidly gain a dominant market position. For example, in the United States, Netflix had 46 million subscribers as of July 2016 and accounted for 35 per cent of internet traffic, and its growth has exacerbated the ‘cord cutting’ or cancellation of traditional cable television services by consumers.

It is clear that free-to-air commercial television and radio broadcasters and print newspapers are under increasing and unprecedented commercial pressure. Their operating environment has changed substantially, and is likely to continue to do so over the coming 5 to 10 years. The current media control and ownership rules constrain the capacity of Australian media operators to optimally structure their businesses to deal with change underway in the industry, through increasing the scale of their operations and providing new opportunities for growth and diversification into new services.

**Availability of local programming**

Local programming is valued by regional Australians and provides them with access to news, information and commentary relevant to them and the areas in which they live. It also supports jobs and investment in regional communities, particularly where such programming is produced locally. While there are clear benefits associated with services that provide local programming, there are also significant costs and investment outlays associated with it, and market forces alone may not ensure that local programming is provided at optimal levels. In particular, local programming may be at risk where regional television broadcasters merge with metropolitan operations and there are strong expectations of cost savings from the merger or acquisition.
Increasingly, domestic businesses are placed at risk by their inability to compete with unregulated media businesses, and regulatory frameworks originally designed to protect diversity are now impeding the capacity of local businesses to continue to provide quality professional journalism and reporting. The drive for efficiencies within the constraints of regulation has been seen with the closures of news rooms and cessation of local news bulletins by regional commercial television. In 2015 WIN closed TV newsrooms in Mackay and Mildura, and this was followed by job losses from Prime7 in Wagga Wagga and Tamworth as that organisation also rationalised its operations.

As noted above, many regional commercial television broadcasting licensees subject to the local programming obligations significantly exceed their programming requirements, while some broadcasters operating in non-aggregated regional markets provide local programming despite there being no regulatory obligation to do so. This suggests that there are commercial drivers for providing local programming in some markets, and that the pressure to realise efficiencies may not result in cuts to local production and content provision.

However, the high costs of providing local programming relative to other programming (outlined in the options section below) suggest there is a clear risk that the drive for rationalisation of local programming and facilities will be a reality for commercial broadcasters in smaller markets. This local programming is valued by local audiences. While emerging services and platforms are offering regional Australians new, additional means of accessing news and information, the value of television compared to other media has been described by the ACMA as being unique in providing moving visual images of people and events in local communities with accompanying audio, compared to other platforms. For instance, the ACMA note that some competing services provide audio only (e.g. radio), some services are not as efficient in providing up-to-date information (e.g. newspapers), and some do not provide a significant amount of local programming (e.g. online/streaming services).

In addition to being valued by audiences, local programming provision by traditional media outlets also has an economic role. The administration and production facilities of commercial broadcasters provide employment and opportunities for Australians living in these areas: the WIN Network claims to employ over 1400 staff across six states of Australia and the ACT, while Prime Media Group states that it is a significant employer of regional Australians with offices stretching from the Gold Coast, throughout many major cities and towns in regional NSW and Victoria, and across Western Australia to Geraldton.

Local advertising also has a role in facilitating economic activity more broadly in regional markets, enabling local businesses to reach their local customers and stimulate sales. Although advertising revenues for commercial television broadcasting has declined in real terms over recent years, it remains significant, with industry body Free TV Australia reporting over $389.5 million earned by regional commercial broadcasters for the January – June 2016 period.

While there are clear, identifiable benefits associated with services that provide local programming, market forces alone may not ensure that such programming is provided at optimal levels. The availability of local programming will be under pressure in smaller or more geographically-dispersed regional markets in particular.
THE NEED FOR GOVERNMENT ACTION

There is a clear need for government action to address the problems outlined above, comprised of two key parts:

**Repeal of regulatory impediments to business:** Aspects of the existing regulatory framework are out-dated and are preventing regional television broadcasters from restructuring and rescaling their operations to better address competition from unregulated platforms, particularly over the Internet. Repeal of these regulatory impediments will help modernise the media ownership and control framework, and will provide businesses with opportunities to strengthen their businesses, with likely flow-on benefits for consumers in the form of higher-quality services being available to them.

**Establishment of effective support for regional Australians’ access to the local programming they value, where the market fails to deliver this:** Providing local television programming is a high cost activity and will not always be commercially feasible for regional broadcasters on their own to pursue, particularly in large geographic areas with relatively dispersed populations. Subsequently, while regional Australians value programming relevant to them and the areas in which they live, in the absence of regulation the market will not always be an effective mechanism for providing it. The significant scale and efficiency benefits available through mergers with metropolitan broadcasters will better position regional broadcasters to sustainably supply local programming and ensure a return to local communities from the repeal of the 75 per cent audience reach rule.

As these obligations are based in legislation Government action is required to deliver the intended reforms.

As articulated above, the current rules constrain the capacity of Australian media operators to optimally structure their businesses to deal with change underway in the industry and increase the scale of their operations. These constraints on scale and structure are not an anomaly or by-product of the rules but are, in fact, an explicit aim: they operate to stop consolidation beyond certain limits within and across the traditional media platforms of commercial broadcasting and certain newspapers.

Increasingly, domestic businesses are placed at risk by their inability to compete on a level playing field, and regulatory frameworks originally designed to protect diversity are now impeding the capacity of local businesses to continue to provide quality professional journalism and reporting. Regional commercial television broadcasters face particular challenges, for two reasons:

- Their lack of bargaining power for content. Regional broadcasters enter into programme affiliation agreements with metropolitan networks that require significant affiliation fees in return (between 32 and 39 per cent of their revenues). In late 2015, WIN television risked ‘going black’ over its affiliation agreement with the Nine network, with reports that Nine was increasing affiliation fees from 39 per cent to 55 per cent of revenue.

- Moves by the metropolitan networks – including Seven and Nine – to provide live online streaming of their content, which effectively allows them to penetrate regional licence areas. Over time, this is likely to result in the erosion of regional audiences and advertising revenue. It is notable that in February 2016 WIN launched legal action
against Nine in relation to its live streaming service, indicating the significance of such services to the players involved.

It is doubtful whether this targeting of the traditional media is sustainable given the financial pressures being brought to bear on these operators as a result of audience fragmentation and increasing competition for viewers and audience. While there is no case for shielding incumbent media operators from competitive disruption, it is important to ensure that regulatory frameworks are not impeding their capacity to compete effectively in the global media market place against media firms that, in many instances, are not regulated to the same extent as commercial broadcasters.

However, any reform of the control and ownership rules to permit greater scale and efficiencies in the operations of transitional media companies will need to balance these benefits with the policy objectives of media diversity and the provision of local programming. The Government has and will continue to have a role in this regard, as broadcasters may not otherwise provide the level of local programming that is optimal for local communities. As noted above, the high costs of local programming production and the structural changes underway in the media more broadly will continue to create incentives for broadcasters to achieve further efficiencies, placing pressure on the continued supply of local television at current levels.

**OPTIONS AND ANALYSIS**

**Option 1: No change**

*Description*
Leave existing media ownership and control rules and local programming provisions unchanged.

*Analysis*
In the current media environment, as described above, the control rules are hindering competition by preventing traditional media companies from adapting to the changing nature of the industry and building scale to compete with unregulated media companies. No new or additional regulatory requirements would apply to industry under this option. The costings for this option are zero.

<table>
<thead>
<tr>
<th>Change in costs ($ million)</th>
<th>Business</th>
<th>Community organisations</th>
<th>Individuals</th>
<th>Total change in costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total, by sector</td>
<td>$ 0</td>
<td>$ 0</td>
<td>$ 0</td>
<td>$ 0</td>
</tr>
</tbody>
</table>

*Assessment*
There are significant short-comings to a ‘do-nothing’ option. The current rules are no longer relevant in the contemporary media environment and unnecessarily constrain the capacity of regulated Australian media operators to optimally structure their businesses to deal with change underway in the industry. Without reform, financial pressures being brought to bear on traditional media operators as a result of audience fragmentation and increasing
competition for viewers and audience will continue to mount. The regulatory framework will become increasingly antiquated and impede media companies’ capacity to compete effectively in the global media marketplace.

**Option 2: Repeal outdated media ownership rules, while leaving existing local television programming rules unchanged.**

**Description**
Repeal the ‘75 per cent audience reach’ rule and the ‘2 out of 3’ rule, while leaving the existing local television programming rules provided at section 43A of the BSA unchanged.

**Analysis**
Retention of ‘75 per cent audience reach’ rule and the ‘2 out of 3’ rule is increasingly difficult to justify when consumers are using online sources of news as often if not more than traditional platforms, and where there are no media-specific restrictions on consolidation or industry structure of online media, beyond general competition laws. The implications of removing these rules are outlined below.

The ‘75 per cent audience reach’ rule

- This rule effectively prevents the owners or controllers of any one of the major metropolitan commercial networks (Seven, Nine and Ten) from gaining control of (or merging with) any one of the regional commercial networks (Prime, WIN and Southern Cross Austereo), as the metropolitan networks are currently close to the permitted maximum reach of 75 per cent of the Australian population. Removal of this rule will allow consolidation of control between metropolitan and regional broadcasters – noting that a range of possible scenarios could occur depending on commercial considerations.

  - One such example of a consolidation, which has been the subject of media speculation, could be Nine Entertainment Co. acquiring the assets of Southern Cross Austereo.

- In a practical sense, the rule is redundant as viewers in regional areas already receive the same number of commercial television services, and substantially the same commercial television programming, as their metropolitan counterparts due to affiliation agreements, including many news services. If consolidation occurs, local advertising arrangements would be expected to be maintained because they support local markets (and local revenue sources).

- Any mergers between metropolitan and regional broadcasters would be unlikely to result in a reduction in the diversity or number of voices in the affected markets. On a practical level, programming provided within a licence area that was involved in a merger or acquisition would be unlikely to change, at least in the short term. This is because any such merger or acquisition activity will generally involve the replacement of one voice with another, because metropolitan and regional networks for the most part operate in separate licence areas.
The ‘2 out of 3’ rule

- This rule assists in maintaining media diversity by preventing a person that controls two regulated media platforms in a licence area from acquiring control of a third platform in the same licence area.

  - For example, Fairfax Media cannot currently control a commercial television licence in Sydney or Melbourne unless it divests its commercial radio or associated newspaper holding in the relevant licence area. Without this rule, Fairfax Media would be allowed to control a television, radio and associated newspaper licence in the Sydney and/or Melbourne licence area.

- In most licence areas, the 2 out of 3 rule is not in play as no single entity controls media assets from two of the three regulated platforms in these areas. If the rule is removed, the great majority of regional and remote licence areas of Australia would see little change as the retention of the 5/4 minimum voices rule would ensure preservation of existing levels of media diversity. Given the greater number of media outlets and levels of media diversity in metropolitan areas, consolidation in these larger markets may not raise particular diversity concerns.

- Even if potential transactions complied with the proposed revised media ownership and control rules, they may not proceed for other reasons: the Australian Competition and Consumer Commission (ACCC) may prohibit mergers that substantially lessen competition under the *Competition and Consumer Act 2010* (the proposed reforms will not alter the ACCC’s role); or they may not have sufficient commercial merit and industry participants may opt not to acquire additional media assets.

From a costing perspective, the repeal of the ‘2 out of 3’ and ‘75 per cent audience reach’ rule would have a zero regulatory cost (and deregulatory cost). These measures are deregulatory in nature, removing current constraints on media market corporate activity, in relation to mergers and audience reach. The repeal of the ‘2 out of 3’ rule will provide the possibility for media operations in certain markets to merge, which may provide economies of scale in their operations. There are no new reporting or administrative obligations arising from this proposal, and there is no removal of administrative overhead associated with existing arrangements.

<table>
<thead>
<tr>
<th>Option 2: Average annual regulatory costs (from business as usual)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Change in costs ($ million)</td>
</tr>
<tr>
<td>Total, by sector</td>
</tr>
</tbody>
</table>

*Assessment*

Removal of the ‘75 per cent audience reach’ rule and the ‘2 out of 3’ rule would be effective in modernising the media control and ownership framework and allowing media companies to compete in the current media environment. This option would also involve retention of
existing regulated amounts of local programming in aggregated markets, ensuring a minimum requirement is maintained regardless of control changes in the television industry.

However, there could be expected to be changes in the actual amounts of local programming in regional areas. Where changes in control of an organisation lead to the business rationalising its operations, there is a possibility that this may involve a reduction in the amount of local programming to the minimum levels required by the current obligations in relevant licence areas. Regional advocates have expressed concerns that mergers or other consolidation in this sector may result in reduced local programming being available in regional areas, particularly in markets not currently subject to local television programming obligations. As such, this is not the preferred option for reform as it does not strike the right balance between giving media companies the freedom they need to remain competitive and ensuring the provision of local programming.

**Option 3: Repeal outdated media ownership rules, while updating local television programming rules.**

Repeal outdated media ownership rules to facilitate a more competitive media sector, while establishing a new framework to support the continued availability of minimum levels of local television programming in regional Australia, particularly when changes of control occur.

*Description*

Remove the ‘75 per cent audience reach’ rule and the ‘2 out of 3’ rule, and introduce local programming obligations for certain commercial regional broadcasters.

Local programming obligations

- To support the proposed media ownership and control reforms outlined above, it is proposed that new obligations be established in conjunction with the proposed media ownership reforms, so as to support the availability of minimum levels of local programming on regional commercial television.

- As noted previously, the majority of commercial television licensees in aggregated markets and Tasmania are currently required to meet local programming obligations under section 43A of the BSA. The aggregated markets include much of regional New South Wales, Queensland and Victoria. Licensees in these markets and in Tasmania must provide between 60 and 120 minutes of local programming (such as news) per week. In all other regional and remote licence areas, there is no obligation to provide local programming (though some is provided in some areas).

- The proposed local programming obligations described below would be linked specifically to business activities which result in certain changes of control. They would apply to regional commercial television licences forming part of a commonly-controlled group of licences that collectively reach more than 75 per cent of the Australian population as a result of a change in control relevant to one or more of those licences (a ‘trigger event’ for the new obligations).

An approach to implementing local programming obligations in regional areas is outlined in below.
**New programming obligations for regional commercial broadcasters – basic outline**

The most effective approach to establishing programming obligations for regional commercial broadcasters is to establish a new, tailored framework that requires commercial regional broadcasters to meet enhanced local programming obligations where a ‘trigger-event’ occurs.

**Benefits**
- Design would be tailored to problem
- Flexibility for different broadcasters and licence areas would be provided
- Would ensure minimum levels of local programmes are available across regional Australia
- New regulatory requirements would only apply to licensees as a trade-off for the opportunity to exploit new opportunities and improve the efficiency of their operations

**Shortcomings**
- Some broadcasters may incur additional costs as a result of the proposal

**Analysis**
As discussed in Option 2, retention of the ‘75 per cent audience reach’ and ‘2 out of 3’ rules is increasingly difficult to justify. Option 3 is to remove these outdated rules (for the reasons outlined in option 2), while revisiting local television programming rules to ensure the availability of valued television programming.

The element of Option 3 which proposes to strengthen obligations for the minimum levels of local programming in regional Australia will have a moderate cost impact on industry. These costs will be incurred by licensees in both aggregated and non-aggregated regional licence areas, and the costs will vary significantly between broadcasters and licence areas. However, as outlined earlier, these costs would only arise when a trigger event has occurred, and any decision to undertake such a transaction (and trigger additional local programming obligations) is solely a commercial judgement for free-to-air broadcasters.

It is reasonable to assume that any decision by broadcasters to change control of one or more commercial television licences would take all factors into account and determine it was in the interests of their shareholders. The deregulatory benefits of any such mergers (such as economies of scale in programming, marketing and distribution) do not fall within the scope of the Regulatory Burden Measurement (RBM) framework. However it is expected that these benefits would materially outweigh any costs that fall within the scope of the RBM. For this reason it is important to put the RBM costs in context and note that Option 3 remains deregulatory in net terms.

In estimating costs under the RBM the Department has used a variety of information sources.

This includes:
- Compliance data about the levels of content currently provided in aggregated licence areas
• Assumes three mergers will occur over a five year period if the proposal was to come into effect
• Research and analysis on the costs of providing local programming
• An analysis of the business as usual costs to acquire content (in the absence of a regulatory obligation).

<table>
<thead>
<tr>
<th>Option 3: Average annual regulatory costs (from business as usual)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Change in costs ($ million)</td>
</tr>
<tr>
<td>Total, by sector</td>
</tr>
</tbody>
</table>

**Assessment**
Removing the ‘75 per cent audience reach’ and ‘2 out of 3’ rules, while establishing a new framework to support the availability of local television programming in regional Australia is considered to be the optimal option for achieving the intended objectives. In regards to supporting the availability of local television programming in regional areas, the option described above removes out-dated media ownership rules while ensuring continued diversity in the ownership and control of media services in Australia. Additionally, it ensures that where the repeal of current media ownership rules results in significant changes to the scale and structure of some media organisations’ business operations, this will not be at the expense of regional communities and their ability to access the local programming that these communities value.

Essentially this option is about finding a balance which continues to benefit local communities, but which is not overly burdensome for business, and only occurs when the benefits of business consolidation become available for broadcasters.

While there are costs for broadcasters associated with the local television programming obligations element of the proposal, the obligations are only triggered for commercial television broadcasting licensees where they become part of a group of licences that reach more than 75 per cent of the population. Media organisations will choose to become subject to the obligations because there is greater benefit or opportunity for them doing so than there is cost incurred by the additional obligations.

Additionally, while producing local programming comes at a financial cost to broadcasters, there is also an associated financial and reputational return. Broadcasters in some regional areas not subject to existing local programming obligations already provide local television programming in the absence of any obligation to do so – while the extent may vary, there are clearly some commercial or other less tangible incentives for providing local programming.
DESCRIPTION OF PREFERRED OPTION

New local television programming requirements for regional commercial television licensees

As noted above, the preferred approach to supporting the availability of local television programming in regional Australia is establishing a new framework. This framework would be established through legislation that amends the BSA to remove the existing s43A arrangements and provide for new, tailored local programming obligations.

The key features of this approach to implementing new local programming obligations for regional commercial television licensees is described below. Obligations would apply to regional commercial television licences forming part of a group of commercial television licences whose combined licence area populations exceed 75 per cent of the Australian population, as a result of a merger, acquisition or other change in control.

The obligations specified under these arrangements would not apply to commercial television broadcasts to remote areas of Australia, or to holders of section 38A and 38B commercial television licences. Section 38A and 38B licences are allocated by the ACMA to existing licensees to ensure that regional audiences receive all three main television networks, where there are less than three broadcasters in the licence area. To place local programming obligations on section 38A and 38B licences would represent an unrealistic financial burden on the original ‘parent’ broadcaster/s in each regional licence area. Similarly, broadcasts to remote areas of Australia will be excluded from the new local programming obligations as their diverse, sparse populations dispersed over a large geographical area mean that local programming is economically unsustainable.

Regional aggregated markets and Tasmania

- New legislation would set a minimum amount of local programming per week which must be broadcast by licensees to applicable local programming areas.

- Where there is no trigger event this would be the same as the existing amounts specified in the Broadcasting Services (Additional Television Licence Condition) Notice 2014 which is an average of 120 minutes per week over a six week period, and a minimum of 90 minutes per week over the same period.

- Where a trigger event occurs these amounts would increase to 150 minutes on average over a six week period with a minimum of 120 minutes per week. The increased amount reflects the greater resources available to broadcast groups with the scale to reach over 75 per cent of the population.

- The increased local programming obligation for aggregated markets and Tasmania equates to 900 points under the current system in the Broadcasting Services (Additional Television Licence Condition) Notice 2014. Analysis indicates that some, but not all, licensees already provide a quantity of local programming that is commensurate or above the proposed quantity to be provided under the new obligations.
Non-aggregated markets

- In the case of regional non-aggregated markets, certain licensees (section 36 licensees) that become subject to a trigger event would be required to broadcast an average of 60 minutes of local programming per week over a six week period, with a minimum of 45 minutes per week over the same period.

- Local television programming is already provided in some non-aggregated markets despite no existing regulatory obligations to do so. Analysis indicates that some, but not all, licensees in these areas already provide a quantity of local programming that is commensurate with or above the quantity to be provided under the proposed new obligations.

Incentivising local production

- As noted above it is important to ensure a strong relationship between the local programming and the local area it is intended to serve. Where amended media ownership and control rules facilitate consolidation across media enterprises and services, the resulting potential for centralisation of business operations may be expected to weaken the link between broadcasters and the regional areas they serve. As such it is proposed that the local programming obligations include a mechanism to provide an incentive for local programming to be filmed within the local area it is relevant to.

- This incentive would be built into the points system that broadcasters will be subject to in meeting their local programming obligations under the new framework. Under the proposed arrangements,
  - each minute of the legislated amount of local programming that relates to the licence area would accumulate one point,
  - each minute of local programming that comprises news specific to the local area would accumulate two points, and
  - each minute of local programming that both comprises news specific to the local area, and is filmed within the local area, would accumulate three points.

- An illustration of how the proposed points system would work follows:
The proposed points system is the most straightforward method of incorporating an incentive for filming in local areas into the local programming obligations, and is based on the similar points system that commercial broadcasters in aggregated markets are already familiar with.

The proposed arrangements would also mitigate against overly centralised approaches to local news, for example news broadcasts being filmed out of central locations without significant engagement with the local area in which it is broadcast.

The legislation would require the ACMA to determine a definition of ‘filmed in the local or licence area’, however at a minimum the definition would include within its scope both pre-recorded footage and live broadcasts or ‘crosses’ to the local programming or licence area. The ACMA would need to consider how ‘file footage’ should be treated, for example reusing the same footage of local schools or the main street.

The legislation would require regional commercial broadcasting licensees to provide reports on their compliance with the obligations twelve months after a ‘trigger event’, and at yearly intervals for two years after this.

**Role of the ACMA**

Under this proposal the ACMA would determine a new Local Programming Notice which includes the following elements:

- Identifies the local programming licence areas for aggregated markets, and the number of local programming areas served within each licence area;
- Defines, ‘material of local significance’, and ‘filmed within the local or licence area’;
- Sets the hours, if any, during which the material of local significance must be broadcast;
- Sets other limits, for example limiting repeats, community service announcements;
- Sets the 48 week timeframe during which the material of local significance must be broadcast, including sub periods (e.g. 6 week reporting periods);

---

### Local production and points framework

<table>
<thead>
<tr>
<th>Content Type</th>
<th>Points</th>
<th>Examples</th>
</tr>
</thead>
</table>
| Licence area content                 | 1      | • A show about fishing on Fraser Island broadcast anywhere in the Regional QLD Licence Area  
|                                      |        | • A news story about a car accident on the Sunshine Coast broadcast in Cairns.         |
| Local area news                      | 2      | • A news story about a car accident on the Sunshine Coast broadcast into the Sunshine Coast. |
| Locally produced local area news     | 3      | • A news story about a car accident on the Sunshine Coast broadcast into the Sunshine Coast that features vision gathered from the Sunshine Coast (e.g. footage of the aftermath of the accident, interviews on camera with eye-witnesses and police). |
• Compliance and reporting requirements, and
• Provide interpretative guidance as required.

The ACMA would also be required to review the operation of the local programming provisions within two years following its commencement, or as otherwise directed by the Minister in accordance with below.

Minister’s reserve powers

It is proposed that the legislation specifically empower the Minister to give directions to the ACMA in relation to its powers under the new provisions. This could include aspects of the local programming notice, or to direct the ACMA to undertake a review of the provisions earlier than the two year timeframe set out above. This is designed to allow the ACMA to determine key parameters and specifics of the local programming arrangements whilst at the same time preserving a level of control for the Minister. A similar provision exists in section 121G of the BSA in relation to Australian programming obligations.

Commencement

The new local programming provisions would commence six months following Royal Assent to the amending legislation and after the commencement of legislation which repeals the ‘75 per cent audience reach’ rule and the ‘2 out of 3’ rule.

The delayed commencement will allow the ACMA sufficient time to make the new local programming notice before the commencement of the new obligations. Existing obligations for aggregated markets and Tasmania would continue until the new local television programming obligations commence ensuring that there is no reduction in local programming obligations for these markets.

It is important to note that licensees would not be required to meet local programming obligations until six months following a trigger event, regardless of the commencement provisions associated with Royal Assent. This will allow affected licensees to undertake the necessary preparatory activity and investment in order to meet the obligations.

Benefit of preferred approach

This approach to establishing local programming obligations is the most effective and efficient way of addressing the key problems associated with minimum levels of local programming being available to regional Australians, as described earlier in this paper. This approach is the most effective way of providing for regional Australians to share in the benefits of improvements in the way media businesses operate, and strikes the right balance between business and consumer objectives. Additionally, the approach is flexible for broadcasters and effective for consumers in achieving the intended outcomes. This approach provides that the design of new obligations will be tailored to the problems identified, including that

• minimum levels of local programming will be required to ensure regional Australians have access to the programming that they value;
• these obligations would be linked to changes of control, allowing businesses to capture the benefits of the more flexible media ownership rules;
• the amount of local programming required will vary between areas and will have regard to different broadcasters’ circumstances, but will also reflect the increased scale and efficiency of broadcasters afforded by ownership and control rule changes; and
• a strong link between local programming and the area it serves will be incentivised through the points system that will underpin broadcasters’ compliance with their local programme obligations, with more points allocated per minute for programming filmed in the local area than for other programming.

The new regulatory requirements will only apply to licensees as a trade-off for the opportunity to exploit new opportunities and improve the efficiency of their operations.

CONSULTATION

The Minister for Communications has engaged in extensive consultations directly with industry stakeholders, including regional and metropolitan broadcasters amongst other industry participants, continuing conversations begun by the former Minister for Communications in 2014. These consultations have identified that there will be some level of support for the proposals, though the nature of support will vary in relation to different elements of the proposals, and may vary between stakeholders.

Consultations with stakeholders in relation to repealing the 2 out of 3 rule indicated that Nine Entertainment Co, Ten Network Holdings, Prime Media Group, Southern Cross Austereo, WIN and Fairfax Media were strongly supportive of its repeal. APN News and Media were also supportive. Seven West Media were indifferent and opposed to ‘standalone’ repeals without broader media reform. Similarly Foxtel and News Corp Australia were opposed to the repeal of any media control rules in isolation.

Consultations with stakeholders in relation to repealing the 75 per cent reach rule indicated that Nine Entertainment Co, Ten Network Holdings, Prime Media Group, Southern Cross Austereo, WIN and Fairfax Media were strongly supportive of the proposal. Seven West Media was indifferent and opposed to ‘standalone’ repeals and argued that this repeal would in fact reduce local content in the regions. Foxtel and News Corp were again opposed to the repeal of any control rules in isolation.

In relation to the proposed additional local content obligations Prime Media Group, Southern Cross Austereo and WIN indicated their support for the local content and local filming proposal as long as they are contingent on a trigger event. The Department notes that Seven West Media and Nine already provide local content in some of their markets and Ten does not own a regional licence.

Not all stakeholders were consulted on all issues.

The possibility and effects of changes to media control and ownership rules have been a significant subject of discussion in the media in recent times. Media analysis and stakeholder input to that discussion has been extensive, with the feasibility and appropriateness of various reform options for media ownership reform having been the subject of significant analysis.

Regional Australians’ views on local programming have been considered as part of a local content investigation undertaken by the ACMA in 2013. As noted previously, research that informed the investigation suggests that regional Australians are likely to be strongly...
supportive of any measure that facilitates their access to local television programming and services. Such programming is highly valued in these areas. The closure of WIN’s Mildura and Mackay newsrooms in 2015 provoked ‘shock and disappointment’\(^1\) from local communities. Ten staff news staff were impacted in Mackay\(^2\) with Mildura news staff advised to apply for vacancies at other WIN bureaus in regional Victoria\(^3\). Further, in Mildura, sixty locals set up the ‘Save Sunraysia TV News’ group aimed at examining alternatives to receiving regional news, including surveying local businesses to establish what their advertising spend is in order to entice another provider of local news into the region.\(^4\)

**STATUS OF THIS REGULATION IMPACT STATEMENT**

The first key decision point for the Government was to consider and determine its response to stakeholder concerns about the continued appropriateness of existing media ownership and control rules. A policy response option was developed and progressed as part of a cabinet submission designed to address this issue. An interim RIS was developed to support the cabinet submission process and to assist in informing deliberations at the relevant cabinet meeting.

An early assessment version of this RIS was then prepared to set out the options that were considered during the development of the proposed media reform measures and, based on available information about the likely impacts of the proposed options, set out which option is preferred and why. This version of the RIS was provided to Office of Best Practice Regulation (OBPR) for review and feedback.

This current version of the RIS has been refined in response to the review and feedback provided by OBPR, and is designed to address issues raised by them as part of the early assessment process.

**CONCLUSION**

The current media control and ownership laws were developed in the analogue era and only apply to traditional platforms such as commercial television, radio and some newspapers. Collectively, these rules restrict traditional media companies from optimising the scale and scope of their operations and from accessing resources, capital and management expertise available in other media sectors. Financial pressures on established media operators continue to build and they must have the flexibility to compete and adapt in the changing media landscape if they are to continue to play a significant role in Australian society and communities in the future.

Removing the ‘2 out of 3’ and ‘75 per cent audience reach’ rules would reduce the regulatory burden on the media industry and enable them to better compete in the modern media environment.

---

\(^1\) www.sunraysia daily.com.au/story/3097986/sad-news-shock-aired-online/?cs=1511
\(^4\) www.abc.net.au/local/photos/2015/06/02/4247047.htm
To ensure local programming continues to be provided in regional Australia, new programming obligations for commercial regional television broadcasters will avoid problems associated with creating complex, unwieldy rules through amending the existing framework. This approach will facilitate the design of an appropriate framework that is tailored to the problem and to the different needs of affected stakeholders.

The approach described above directly responds to potential effects of the proposed media ownership and control reforms discussed above, and takes into account that the effects of those changes might be different in different licence areas. The arrangements are flexible for licensees, and proportional to the different areas in which they operate. Importantly, it will ensure that a minimum level of local programming will be available to regional areas.

It is expected that there will be costs for broadcasters associated with the local programming obligations element of the proposal, however the obligations are only triggered for regional commercial television broadcasting licensees where they have selected to consolidate or restructure their operations. Media organisations will choose to become subject to the obligations because there is greater benefit to them doing so than there is cost incurred by local programming obligations. Additionally, while producing local programming comes at a financial cost to broadcasters, there is also an associated financial return. Broadcasters in some regional areas already provide local programming in the absence of any obligation to do so – while the extent may vary, there is clearly some commercial incentive for providing local programming.

---

6 OzTAM 2015, Primetime Audience for the Free to Air channels Wks 1-52 2003-2015, Sun-Sat 1800-2400, 5 City Metro, Total People, Consolidated (2003 to 2009 live only), Commissioned research. May not be reproduced, published or communicated (electronically or in hard copy) without the prior written consent of OzTAM.
7 Ibid.
10 OzTAM 2015, Primetime Audience for the Free to Air channels Wks 1-52 2003-2015, Sun-Sat 1800-2400, 5 City Metro, Total People, Consolidated (2003 to 2009 live only), Commissioned research. May not be reproduced, published or communicated (electronically or in hard copy) without the prior written consent of OzTAM.
12 Commercial Radio Australia, *Record numbers tune into commercial radio in 2015, 01 February 2016.*
14 Roy Morgan 2016, *Five million Australians now have Netflix; Stan and Presto are still well behind, but growing*, 15 June, press release.
17 Seven West Media 2015, *Seven is the first broadcaster to extend live and free television to any connected device on the go*, press release, 19 August.
18 Sydney Morning Herald 2015, *Nine to stream all channels live online*, 26 October.
21 Business Insider Australia, *Nine boss David Gyngell says it will take time to see if Stan can be a ’profitable’ Netflix alternative*, 27 August.

CNBC 2016, *Netflix posts earnings of 9 cents a share vs. 2 cents expected*, 18 July (accessed 17 August 2016)

Variety 2016, *Netflix chews up less bandwidth, as Amazon video streaming surges*, 22 June (accessed 17 August 2016)

Research from Futuresource Consulting, reported in Digital TV Europe, *UK SVoD subscriptions to double by 2019*, June 18, 2015.


REGULATION IMPACT STATEMENT

REFORM OF THE ANTI-SIPHONING SCHEME

CONTEXT

The Broadcasting Services Act 1992 (BSA) provides the legislative framework for the anti-siphoning scheme. Established in 1994, the scheme regulates the acquisition of broadcast rights for sporting and other events of cultural significance or national importance, and seeks to ensure that they remain freely available to Australian viewers.

MAIN ELEMENTS OF THE SCHEME

The main elements of the anti-siphoning scheme are outlined in section 115 of the BSA, which includes a power for the Minister for Communications to list in a formal notice (known as the anti-siphoning list), events that should, in the opinion of the Minister, be available free to the general public.

The basic rule

The anti-siphoning scheme operates as a licence condition imposed under paragraph 10(1)(e) of Schedule 2 to the BSA on subscription television broadcasting licensees, preventing them from acquiring a right to televise an event on the anti-siphoning list unless a free-to-air (FTA) television broadcaster (either national or commercial) has a right. In this way, the scheme considers FTA broadcasting to be the medium by which listed events should be ‘freely available’, and provides FTA broadcasters the first opportunity to acquire rights to events on the list without (in theory at least) competition from subscription television.

The list

The Broadcasting Services (Events) Notice (No. 1) 2010 – known as the anti-siphoning list – is a legislative instrument made by the Minister specifying the events regulated under the scheme. The list has been amended at various points since it was first made in 1994, with events added and removed. However, changes have generally been incremental rather than substantial. To date, all events on the list have been sporting events and at present, the list includes between 1,200 and 1,300 events per year spanning 12 sports: Olympic and Commonwealth Games, horse racing, Australian Rules Football (AFL), rugby league, rugby union, cricket, soccer, tennis, netball, golf and motor sports.

Automatic delisting

Under subsection 115(1AA) of the BSA, events are automatically removed (‘delisted’) 2,016 hours (12 weeks) before they commence to provide subscription television broadcasters with some opportunity to acquire the rights to events that FTA broadcasters have no interest in acquiring. However, the Minister can prevent automatic delisting and retain a particular event on the anti-siphoning list if they believe that a FTA broadcaster has not had a reasonable opportunity to acquire rights to the event in question.

Multi-channelling restriction
Under Part 4A of Schedule 4 to the BSA, events on the anti-siphoning list cannot be premiered on a FTA digital multi-channel (i.e. ONE, GEM, 7mate) unless they have already been premiered (or shown simultaneously) on a primary (main) channel. This has led FTA broadcasters to request that the Minister temporarily remove (‘delist’) events from the list for a particular period of time, to enable them to utilise their main channels to provide first-run (and often live) coverage on their multi-channels. Since 2010, events have been delisted on at least 90 occasions, and FTA broadcasters will continue to request such delistings while the multi-channeling rule remains in place.

SPORTS RIGHTS AND COVERAGE

The importance of televised sport for audiences

Sport (particularly live sport) continues to remain very popular with Australian audiences. Live sporting events consistently dominate the most popular programs on both FTA and subscription television.

As shown in Table 1, in 2016 (calendar year), seven of the top ten rating programs on the FTA main channels were sport or sport-related, including both the AFL and National Rugby League (NRL) grand finals. Even excluding related programming (AFL presentations, post-match and on the ground), sporting events constituted six of the top ten events. Over 40 per cent of the top 50 rated programs and close to 30 per cent of the top 500 programs on FTA broadcasters’ primary channels in 2016 were sport or sport-related.

Table 1 – Top Ten FTA programs, primary channels, 2016

<table>
<thead>
<tr>
<th>Rank</th>
<th>Network</th>
<th>Audience 5 City Metro</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>AFL GRAND FINAL: PRESENTATIONS</td>
<td>Seven</td>
</tr>
<tr>
<td>2</td>
<td>AFL GRAND FINAL: SYDNEY V WESTERN BULLDOGS</td>
<td>Seven</td>
</tr>
<tr>
<td>3</td>
<td>RUGBY LEAGUE GRAND FINAL</td>
<td>Nine</td>
</tr>
<tr>
<td>4</td>
<td>RUGBY LEAGUE STATE OF ORIGIN: 1ST MATCH</td>
<td>Nine</td>
</tr>
<tr>
<td>5</td>
<td>AFL GRAND FINAL: POST MATCH</td>
<td>Seven</td>
</tr>
<tr>
<td>6</td>
<td>RUGBY LEAGUE STATE OF ORIGIN: 2ND MATCH</td>
<td>Nine</td>
</tr>
<tr>
<td>7</td>
<td>THE BLOCK -WINNER ANNOUNCED</td>
<td>Nine</td>
</tr>
<tr>
<td>8</td>
<td>AFL GRAND FINAL: ON THE GROUND</td>
<td>Seven</td>
</tr>
<tr>
<td>9</td>
<td>MOLLY: PART 1</td>
<td>Seven</td>
</tr>
<tr>
<td>10</td>
<td>MY KITCHEN RULES: WINNER ANNOUNCED</td>
<td>Seven</td>
</tr>
</tbody>
</table>

OzTAM Pty Limited. Sun-Sat, 5 City Metro, Wks 1-52, 2016, Total People, Audience (ranked) Consolidated, Repeats Excluded. Data © OzTAM Pty Limited 2016. The Data may not be reproduced, published or communicated (electronically or in hard copy) without the prior written consent of OzTAM.

For subscription television, and excluding the audience figures for repeat screenings, all of the top 500 programs screened in 2016 in terms of audience – including the top ten and top 50 – were sport or sport-related programming. As highlighted in Table 2, even when audiences for...
repeat screenings are included, nine of the top ten rating programs were sport or sport-related last year, with sports programming making up more than 85 per cent of the top 500 programs.

Table 2 – Top Ten STV programs, 2016

<table>
<thead>
<tr>
<th>Rank</th>
<th>Program Description</th>
<th>Channel</th>
<th>Audience</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>AFL PRELIMINARY FINAL #1: GWS V BULLDOGS</td>
<td>Fox footy</td>
<td>543,000</td>
</tr>
<tr>
<td>2</td>
<td>NRL STORM V SHARKS</td>
<td>Fox sports 1</td>
<td>499,000</td>
</tr>
<tr>
<td>3</td>
<td>AFL PRELIMINARY FINAL #2: GEELONG V SYDNEY</td>
<td>Fox footy</td>
<td>468,000</td>
</tr>
<tr>
<td>4</td>
<td>AFL QUALIFYING FINAL #2: GEELONG V HAWTHORN</td>
<td>Fox footy</td>
<td>448,000</td>
</tr>
<tr>
<td>5</td>
<td>AFL ELIMINATION FINAL #2: WEST COAST V BULLDOGS</td>
<td>Fox footy</td>
<td>447,000</td>
</tr>
<tr>
<td>6</td>
<td>AFL SEMI FINAL #2: HAWTHORN V BULLDOGS</td>
<td>Fox footy</td>
<td>441,000</td>
</tr>
<tr>
<td>7</td>
<td>AFL QUARTER FINAL #1: SYDNEY V GWS</td>
<td>Fox footy</td>
<td>440,000</td>
</tr>
<tr>
<td>8</td>
<td>GAME OF THRONES</td>
<td>Showcase</td>
<td>432,000</td>
</tr>
<tr>
<td>9</td>
<td>AFL SEMI FINAL #1: SYDNEY V ADELAIDE</td>
<td>Fox footy</td>
<td>413,000</td>
</tr>
<tr>
<td>10</td>
<td>NRL PRELIMINARY FINAL: #1 STORM V RAIDERS</td>
<td>Fox sports 1</td>
<td>400,000</td>
</tr>
</tbody>
</table>

OzTAM Pty Limited. Sun-Sat, National STV, Wks 1-52, 2016, Total People, Audience (ranked) Consolidated. Data © OzTAM Pty Limited 2016. The Data may not be reproduced, published or communicated (electronically or in hard copy) without the prior written consent of OzTAM.

Despite declining audience numbers for FTA television more broadly (prime time evening audiences for the FTA television broadcasters in the mainland capital cities fell by almost nine per cent over the four years to 2016)\(^5\), audiences for sports like AFL have remained fairly consistent since 2009.\(^6\) For other sports, such as rugby league State of Origin, audience numbers have increased against their multi-year average.\(^7\) A 2014 report found that 96 per cent of Australians consume sport, spending on average 2.9 hours a week watching sport on television.\(^8\) However, audience popularity has not been maintained for all sports.\(^9\)

- All three golf events included on the current anti-siphoning list receive low audience figures, and these numbers have (with some exceptions) been in decline over the past

---

\(^5\) OzTAM Pty Limited. Sun-Sat 1800-2400, 5 City Metro, Wks 1-52, 2013 to 2016, Audience, Total People, Consolidated. Data © OzTAM Pty Limited 2016. The Data may not be reproduced, published or communicated (electronically or in hard copy) without the prior written consent of OzTAM.

\(^6\) OzTAM Pty Limited. Sun-Sat, 5 City Metro, Wks 1-52, 2009 to 2016, Audience, Total People, Consolidated. Data © OzTAM Pty Limited 2016. The Data may not be reproduced, published or communicated (electronically or in hard copy) without the prior written consent of OzTAM.

\(^7\) Ibid.


\(^9\) All audience numbers included in the following points are sourced from OzTAM Pty Limited. Sun-Sat, 5 City Metro, Wks 1-52, 2009 to 2016, Audience, Total People, Consolidated. Data © OzTAM Pty Limited 2016. The Data may not be reproduced, published or communicated (electronically or in hard copy) without the prior written consent of OzTAM.
eight years. The United States Masters tournament has seen average daily viewing audiences over the past eight years of around 100,000 (including 77,000 in 2015 and 61,000 in 2016). The Australian Open has also seen relatively low audience numbers, with audiences for the tournament on days 1-2 averaging less than 200,000 viewers between 2009 and 2016. Audience numbers for the Australian Masters tournament were similar through until 2015, although the event was not held in 2016.

- For the Rugby League World Cup, there is significant disparity in audience numbers between matches played Australia / New Zealand and matches played elsewhere. This generally reflects time zone differences and coverage in Australia falling outside of prime time. For example, audiences were significant for matches of the 2008 World Cup (played in Australia): average audiences for group matches and the semi-final involving Australia were over 500,000, and the final over 1,000,000. In 2013, with the tournament played in the United Kingdom and France, audiences for matches were less than 200,000 and the final less than 250,000.

- Audiences for matches of the FIFA World Cup involving Australia have been very high. In 2010 (South Africa) and 2014 (Brazil) matches involving Australia generally commanded audiences of around 1 million viewers on average. However, audiences have been significantly lower for matches not involving Australia. For example, non-finals matches not involving Australia averaged less than 200,000 viewers in 2014.

A similar pattern of generally low (and in some cases declining) audiences for events played overseas, and international events not involving Australian representation, can be seen with international rugby league and rugby union test matches, the Rugby Union World Cup, the International Cricket Council (ICC) Cricket World Cup, the ICC World Twenty20 (T20) Cricket World Cup and Davis Cup tennis.

*The importance of sports rights for broadcasters and sports bodies*

Sports programming has always been important for the business models of both FTA and subscription television broadcasters, and this importance appears to be increasing in a digital media environment. As consumers take up streaming services such as Netflix, Stan and other online outlets to watch films and drama programs, broadcasters are becoming increasingly reliant of live, event-based programming to attract audiences, which includes sport. This is evident in the fierce competition for the acquisition of the media rights (broadcast and digital) to major sporting codes, and the growth in prices paid for such rights.

- In 2015, the AFL signed a six year deal for the broadcasting rights with the Seven Network, Foxtel, and Telstra for $418 million per season, beginning in 2017. This was a substantial increase from the 2012 to 2016 deal, which was worth $250 million per season.

- In 2015, the NRL signed a five year deal for the rights with the Nine Network, Foxtel, and Telstra for $1.8 billion, beginning 2018, a 70 per cent increase on the current deal of just over $1 billion for the five years through until 2017.

- Internationally, the Football Association in England sold the 2016 to 2019 English Premier League broadcasting rights to their local market for over £5.1 billion to Sky and BT Sports, a substantial increase from the £3.0 billion they received for the 2013 to 2016
period. In this instance, Sky reportedly bid higher than they anticipated for the rights, but decided that the football broadcasting rights were fundamental to attracting and keeping subscribers.¹⁰

- In 2017, global spend on sports media rights is expected to hit $45 billion.¹¹

Figure 3 demonstrates this growing cost of sport rights in overseas markets. This trend is persisting despite the pattern of declining profits for many broadcasters. The commitment and willingness shown by broadcasters and media companies to spend on media rights for sports stresses the importance of live events on television. Broadcasters are now competing not only among themselves, but also trying to protect their content and audiences from new media organisations.

Figure 3

Major sport leagues domestic broadcasting rights inflation

Ampere Analysis *Ballon d’More: How much longer can sports rights values continue to inflate?* 9 March 2017

As seen above, media rights make up a significant and growing source of revenue for sports bodies. For example, the AFL received 46 per cent of their total revenue from broadcasting arrangements in 2016.¹² Over recent years, the AFL has experimented with their match schedule to maximise television audiences and subsequently increase the value of future broadcasting deals (for example, 2017 will see eight Thursday night fixtures).

Sports bodies and media companies (including broadcasters) are also looking to re-orient and re-package their content to meet changing consumer preferences and, in particular, to make

¹² Figure derived by the Department from publicly available information in the AFL’s 2016 Annual Report.
their sports more accessible to passive consumers who may have a passing interest in their sport. Twenty20 cricket is an example of this, with the short form of the game is more appealing to consumers who may not see themselves as cricket fans. Twenty20 cricket has had great success both locally and abroad, with the Big Bash League rating highly in Australia. This success has made cricket more commercially successful, and other sports, such as tennis and athletics, are following cricket’s lead.

This forms part of a broader growth in the market for online and mobile sport rights. Both in Australia and internationally, the nature of sports rights are changing, as over the top, online and telecommunications providers are beginning to offer live coverage of sports.

In 2015, Optus surprised the market when it beat Foxtel to the broadcast rights for the English Premier League, paying $63 million per season for three seasons beginning with 2016/17. This was a significant increase on the previous deal, where Foxtel was believed to have paid between $20 and $25 million per season. Optus will broadcast all games through a mobile app, their website, and through their set top box, all exclusively to Optus customers. This is similar to BT Sport’s coverage of the sport in the UK, although BT Sport has fewer games.

However, in Australia to date, new media coverage has tended to be complementary to broadcast coverage, rather than a replacement for it. The major sporting codes in Australia still generally consider online rights to be complementary to broadcast rights, with Telstra typically acquiring rights packages that sit alongside the broadcast rights. Examples of this are recent AFL and NRL agreements.

- The AFL rights agreement for 2017 to 2022 will see Seven Network broadcasting between 3 and 4 matches per round nationally in all states and territories (although this may vary in states). Fox Sports will broadcast all matches live on all devices, including cable, satellite, IPTV, tablets and smart phones. Telstra will broadcast all matches live on mobile via the AFL app for subscribers. This is broadly consistent with the arrangements in place for 2012 to 2016.

- The NRL rights agreements for 2018 to 2022 split rights between Nine Network, Fox Sports and Telstra. Nine will provide 3 live matches per week, Fox Sports will broadcast all matches live on all devices, including cable, satellite, IPTV, tablets and smart phones, while Telstra will telecast game on its mobile network as well as replays and highlights on its new Telstra TV platform. The previous rights agreement for 2013 to 2017 saw the same broad arrangement.

The other trend evident in Australia is for broadcasters themselves to take up online and mobile rights.

- The Nine Network partnered with Cricket Australia (CA) to develop CA’s official app. Subscribers are able to stream select cricket games, but unlike Telstra’s broadcast of the NRL and AFL, the broadcast is a direct simulcast of Nine’s coverage, and includes advertisement breaks. This is complementary to the television broadcast, as it gives

---

audiences the option to watch cricket on the go, but it is expected audiences will watch on their television if they are able to.

- The Seven Network integrated online media to their coverage of the 2016 Rio Olympic Games. Audiences were able to watch live coverage online and on their mobiles. Seven also had an agreement with Twitter, where clips of key moments such as Australian gold medals were shown on the social network, while also integrating Seven’s sponsors.

Research conducted in 2014 demonstrated that television is still the primary source of sports consumption, with 96 per cent of sports consumers in Australia engaging with television coverage of their preferred sports. While mobile engagement is increasing, it still only attracts 41 per cent of sports consumers. Mobile coverage is used for more than just streaming live play, and is often employed to compliment television coverage. For example, apps can provide live statistics and in-game analysis, or fans can discuss events through social media channels as they happen. This is particularly prominent in the US, and sports in Australia are increasing this kind of complementary mobile engagement.

In sum, to date there is little evidence at this time of sports rights migrating exclusively to online platforms. Sports rights largely continue to be negotiated with both FTA and subscription broadcasters, with FTA broadcasters generally taking up rights to some or all of these events.

THE PROBLEM

The anti-siphoning scheme dates to an analogue era of media regulation. It contains outdated and redundant provisions which serve little purpose in a contemporary media environment. The list is also long and in need of reform.

The multi-channelling rule

As described above, the multi-channelling rule prevents FTA broadcasters from televising events first, or exclusively, on their digital multi-channels. The rule was introduced in 2006 to prevent consumers who had yet to make the switch to digital television, or for which digital television had yet to be rolled out in their area, from being disenfranchised by events being televised on digital-only channels. With the completion of digital switchover in 2013, this rule is now redundant. It effectively restricts the ability of FTA television broadcasters to optimally televise listed events without achieving any demonstrable consumer benefit.

The automatic delisting provisions

The automatic delisting rule permits subscription television broadcasting licensees to acquire the rights to events 12 weeks prior to their commencement. This doesn’t align with the commercial reality of rights acquisition, where the majority of major sports rights contracts are settled between six months and two years from the commencement of the first event to be played as part of the competition or tournament.

The length and scope of the list

The anti-siphoning list is long by any measure, covering between 1,200 and 1,300 events in any given year (not including the individual sports comprising the Olympic and Commonwealth Games). While the broadcast rights to the majority of sports on the list continue to be acquired by FTA broadcasters and garner high audiences, this is not the case across the board.

For some events, the broadcast rights have not been acquired by a FTA broadcaster over recent years (for example, the United States Open tennis tournament). For other events, the competition itself has not been held, as is the case with the Australian Masters golf tournament. Low audiences have also been evident for a number of competitions, particularly those events or parts of events played overseas where there is little or no involvement of Australian individuals or teams. While there may have been reasonable grounds for the inclusion of these events on the anti-siphoning list in the past, it is questionable whether this rationale persists today.

**THE GOVERNMENT’S POLICY OBJECTIVES**

The Government is seeking to uphold the following principles in considering potential reforms to the anti-siphoning scheme and list.

- Ensuring that Australians continue to have free access to nationally important and culturally significant events
- Removing outdated or ineffective elements of the scheme
- Minimising the impact of the scheme where the inclusion of events under the under the scheme is no longer warranted

When the anti-siphoning scheme was first established in 1994, ‘freely available’ equated to FTA television. While there are now a number of ways Australians can freely view sport (including through online platforms), FTA television remains the most easily accessible and popular platform for live sports consumption. It is therefore the Government’s view that the anti-siphoning scheme should continue to play a role in ensuring Australians can access iconic events on FTA television. However, aspects of the anti-siphoning scheme are outdated and are adding to the regulatory burden on business, without providing any particular benefit to the Australian public. The anti-siphoning list is also long and given the impact that the scheme has on the subscription television sector (discussed below), reform is warranted. The Government is committed to addressing these identified issues.

While the Government does not consider a wide reform agenda to be the right course of action at this point in time (for reasons outlined below), there are a number of areas where it would be possible to consider some form of regulatory or other intervention.

- The anti-siphoning scheme does not force FTA broadcasters to acquire rights to televise events on the anti-siphoning list (this remains a decision for the broadcasters themselves). It is possible to mount an argument that if FTA broadcasters are given ‘preferential access’ to acquire the rights to anti-siphoning events under the scheme, they should be made to acquire those rights, or lose that preferential access.
• The anti-siphoning scheme does not oblige FTA broadcasters to provide any particular level or type of coverage of anti-siphoning events. Again, this remains a matter for broadcasters. It would be possible to consider the imposition of coverage obligations, which forced broadcasters to meet certain minimum thresholds for the amount of live coverage provided, or the extent of coverage.

• The anti-siphoning scheme does not regulate the acquisition of rights to anti-siphoning events. As noted, the market for sports coverage is changing rapidly, and the rights packages for most sports contain some form of online or mobile rights. It may be possible to introduce a new anti-siphoning scheme designed to prevent rights migrating exclusively to paid, online platforms, and no longer being ‘freely available’.

While these issues have been identified over recent years, it is not clear that the benefits of intervening to correct them, or address a perceived concern, would outweigh the costs at this time.

• Forcing FTA broadcasters to acquire the rights to anti-siphoning events, or to provide certain levels of coverage of such events could, for example, impose regulatory costs on these broadcasters if such rules were to materially distort the decisions they might otherwise make regarding rights acquisition and coverage.

• Restricting the capacity of sports rights holders to make rights available to online media providers might impose opportunity costs on these parties if it were to erode the value they could otherwise extract from those rights in the absence of the rule.

Moreover, it is not clear that regulatory or other intervention would be warranted in relation to issues that might be considered as part of a ‘root-and-branch’ review of the anti-siphoning scheme.

• While there may have been instances of FTA broadcasters acquiring but not televising anti-siphoning events in the past, there have been no allegations of this taking place over recent years. Broadcasters appear to generally use what they acquire.

• The type and extent of coverage of anti-siphoning events by FTA broadcasters has also improved with the commencement of digital television multi-channels between 2008 to 2010 (the use of which has been made possible by temporary delistings to avoid the impact of the multi-channelling restriction).

• While mobile sports rights are becoming an integral part of the media rights landscape for sports, there are no instances of anti-siphoning events migrating exclusively to online or mobile platforms, and no longer being freely available to Australian audiences. To date, mobile and online rights have been complementary to broadcast rights.

These are obviously areas that will need to be closely monitored, particularly in the new media space. However, it is unclear whether the imposition of regulations or other form of intervention would be justified at this point in time.

In addition, the difficulty of achieving meaningful change to the anti-siphoning scheme should not be underestimated. The anti-siphoning scheme is highly contested, and has been since its introduction. The FTA and subscription television sectors hold diametrically opposed
views on the scheme, with the former arguing that it remains important in ensuring FTA coverage of key events and the latter arguing that it is anti-competitive and unduly favours the FTA sector. Most sports bodies have also argued that the scheme impedes their ability to maximise the value of their product.

In short, and for the reasons outlined above, reform of the scheme and list will need to be incremental and progressive.

**OPTIONS**

The following options have been considered in relation to the three issues noted above.

<table>
<thead>
<tr>
<th>Issues</th>
<th>Options</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. The multi-channelling rule</strong></td>
<td>1a – No change to current arrangements</td>
</tr>
<tr>
<td></td>
<td>1b – Remove the rule</td>
</tr>
<tr>
<td><strong>2. Automatic delisting</strong></td>
<td>2a – No change to current arrangements</td>
</tr>
<tr>
<td></td>
<td>2b – Extend the period to 26 weeks</td>
</tr>
<tr>
<td></td>
<td>2c – Extend the period to 52 weeks</td>
</tr>
<tr>
<td><strong>3. The list</strong></td>
<td>3a – Maintain the current list</td>
</tr>
<tr>
<td></td>
<td>3b – Implement targeted reductions</td>
</tr>
</tbody>
</table>

**ANALYSIS**

This section examines the estimated costs and impacts of the various options on businesses, community organisations and individuals. This analysis includes consideration of compliance, administrative and delay costs, and (where appropriate) opportunity costs and indirect costs. None of the options considered involve the imposition of any new regulations. In all cases, they entail either the maintenance of existing arrangements, or the scaling back of these regulations.

**The multi-channelling rule**

Option 1a – retaining the multi-channelling rule

*Regulatory cost*

The multi-channelling rule does not, in itself, impose any regulatory costs on businesses. Compliance with the rule by FTA broadcasters does not require these businesses to make or keep records, notify the Government of activities, make applications or requests to Government, or procure permits or professional services. There are also no delay costs associated with applications to, or approvals from, Government. Retaining this rule would require no change to the BSA and the current absence of regulatory cost for businesses, consumer organisations and individuals is likely to be maintained.
Opportunity costs

Opportunity costs are the value of opportunities that cannot be realised because of the regulatory intervention. They are one of a number of costs that are excluded from the Office of Best Practice Regulation’s Regulatory Burden Measurement framework and generally not required to be considered in a regulatory costing, although a qualitative analysis is within the remit of a standard form RIS. In large part, this is because they can be very difficult to quantify due to the complexity of accurately predicting what a business would do in response to the removal or lessening of a regulation. To the extent that it is feasible, these costs are discussed below.

The multi-channelling rule is likely to impose some level of opportunity cost on FTA broadcasters by restricting the degree to which they can fully utilise their digital multi-channels. In the absence of delistings, FTA broadcasters are required to either provide coverage of listed events on their primary channels and displace other programming, or to maintain other programming and provide delayed coverage of anti-siphoning events (or no coverage at all) on their primary channels. Although it is not feasible to provide an estimate of this impact, it is reasonable to expect that this will curtail to some extent the capacity of FTA broadcasters to maximise their overall audience and therefore advertising revenue across all of their channels.

Consumers would also face some opportunity costs with the multi-channelling rule in place. Where the operation of the rule leads broadcasters to choose to delay coverage of sporting events on their primary channels, or provide far less comprehensive coverage (being restricted to the one channel), there would be some erosion of consumer benefits, particularly for segments of the audience that are passionate sport fans. Although this potential impact is not able to be quantified, it is clear from representations made to Government over a number of years and through public discourse that lack of coverage of sport by FTA broadcasters can disappoint and aggravate some viewers.

Indirect costs / impacts

Indirect costs are those that may arise indirectly from the impacts of regulatory changes, including changes to market structure and competition impacts. As with opportunity costs, indirect costs are not generally required to be considered in a regulatory costing or for a standard form RIS. However, for completeness, it is worth noting that the multi-channelling rule may provide some indirect benefit for the subscription broadcasting sector.

Where both subscription and FTA broadcasters hold rights to a particular anti-siphoning event, and FTA broadcasters are restricted to using their primary channels to provide coverage, this may confer on subscription broadcasters some measure of competitive advantage to the extent they can provide more fulsome or attractive covering using one or more channels. Any such indirect benefit is likely to have been factored in to the negotiations with the relevant sports body for rights and reflected in the price paid by subscription broadcasters for their rights. However, the fact remains that the regulation itself does affect the competitive dynamic between FTA and subscription broadcasters.

---

Option 1b – removing the multi-channelling rule

Option 1b is essentially the reverse of Option 1a, as described above. This option is deregulatory in nature, and would involve legislative amendment to remove the multi-channelling rule (Part 4A of Schedule 4 to the BSA) from the anti-siphoning scheme. This would involve some change in the regulatory, opportunity and indirect costs imposed on businesses and consumers.

Regulatory cost

As noted above, there is no regulatory cost directly associated with the multi-channelling rule. However, its removal is expected to result in some regulatory cost savings for FTA broadcasters. For these broadcasters to actually use their multi-channels to provide first run or exclusive coverage of an anti-siphoning event – in effect, to avoid the outdated rule – it is necessary for the Minister for Communications to temporarily remove the event in question from the anti-siphoning list. As noted above, delistings of this nature have been common since 2010, although generally only at the request of the relevant FTA broadcasters (if a broadcaster doesn’t intend to make use of their multi-channels to provide coverage, there is little point in temporarily delisting the event).

There is an administrative cost associated with FTA broadcasters applying to have certain events temporarily delisted from the list. This includes the time required to assess their programming schedule and determine the possible use of multi-channels, prepare and submit the requisite delisting request (outlining broadcast time and proposed channel usage in affected licence areas), and to respond to any requests for additional information.

The removal of the multi-channelling rule would remove these regulatory costs, which are expected to be in the order of $8,000 per annum across the sector. This is based on an estimate of the time take to prepare and submit a delisting request (three hours) at an estimated cost of $200 per hour.17 On average, there have been 13 delistings per year since 2010. See Appendix A for further details.

<table>
<thead>
<tr>
<th>Change in costs ($ million)</th>
<th>Business</th>
<th>Community organisations</th>
<th>Individuals</th>
<th>Total change in costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total, by sector</td>
<td>($8,000)</td>
<td>$</td>
<td>$</td>
<td>($8,000)</td>
</tr>
</tbody>
</table>

As noted in Table 3, community organisations and individuals are unlikely to incur any regulatory costs under this option.

Opportunity costs

---

17 This figure of $200 per hour is based on an assumption of the rate per hour (at full cost) of one senior staff member who is familiar with regulatory and government affairs.
It is expected that the removal of the multi-channelling rule would moderate any opportunity costs arising from the restriction on the use of multi-channels by FTA broadcasters. This would arise from FTA broadcasters being able to optimise their use of channels to provide coverage of anti-siphoning events and other programming, and in turn maximise advertising revenue. Consumers would also benefit from the removal of the rule, and it is likely to result in more extensive coverage and more live coverage of events. This has been attested by the enhanced coverage of anti-siphoning listed sports on multi-channels since 2010 permitted by the temporary delisting of these events.

Indirect costs / impacts

The potential competitive advantage conferred on subscription broadcasters by the multi-channelling rule (outlined above) could be expected to be eroded with its repeal. This potential advantage exists where both subscription and FTA broadcasters hold rights to an anti-siphoning event, and FTA broadcasters are restricted to using their primary channels to provide coverage, while subscription broadcasters can provide more fulsome or attractive coverage using one or more channels. While subscription broadcasters may still be in a position to provide more attractive and / or fulsome coverage than their FTA competitors due to their larger range of channels, this advantage would no longer be due to the multi-channelling restriction.

The automatic delisting period

Option 2a – make no change to the current regulatory arrangements

Option 2a would maintain the existing arrangements and involve no change to the BSA. As such, the impact of the rule on businesses, consumer organisations and individuals is likely to be maintained.

Regulatory costs

Under subsection 115(1AA) of the BSA, events that remain on the list 12 weeks before their commencement are automatically removed from the list, unless the Minister declares (via legislative instrument) that the event continues to be on the list after that time. Any regulatory costs imposed on subscription broadcasters through this automatic delisting process would be negligible, and contained to monitoring the timing of an event before entering into any agreement to purchase rights. There are also no delay costs associated with applications to, or approvals from, Government.

Opportunity costs

As outlined above, opportunity costs represent the value of opportunities that cannot be realised because of the regulatory intervention. They are difficult to quantify and although not required for this analysis, a description of possible costs – in general terms – is provided.

Sports bodies and subscription broadcasters may incur some level of opportunity cost as a result of the current arrangements. Major sports rights contracts are normally settled and announced between six months and two years before the first events to be played as part of the competition, tournament or series take place. Among other things, this enables sports bodies and broadcasters to bed down coverage and scheduling arrangements and promote the
events to audiences and subscribers. Under the current scheme, where no FTA broadcaster is interested or willing to acquire a right to an anti-siphoning listed event, subscription broadcasters are still unable to acquire a right until three months from the event taking place. This can be expected to compress the contracting process for both sports bodies and subscription broadcasters, and will necessarily limit the extent to which sports programming and packages can be promoted to audiences.

Consumers may also incur some opportunity costs should sports programming not be acquired by a broadcaster. Twelve weeks may not be enough time for subscription broadcasters to reach an agreement with rights holders and schedule camera, studio, playout and other resources to cover the event, particularly if it coincides with other sporting events. The effect of this would be that consumers would not have access to view those sports on any Australian broadcast platform. Although there is no indication that this has occurred in recent years, the potential impact would nonetheless remain.

Option 2b – extend the automatic delisting period to 26 weeks

This option would lengthen the automatic delisting period to 26 weeks before events take place. This would require amendment to subsection 115(1AA) of the BSA.

Regulatory costs

Negligible, as per Option 2a. The automatic delisting rule should not impose any material regulatory costs on businesses, community organisations or individuals, and a change to the delisting period is unlikely to change this situation.

Opportunity costs

To the extent that subscription broadcasters and sports bodies face some opportunity costs from the current automatic delisting period (being restricted in when they can acquire rights to events under the scheme where no right is acquired by a FTA broadcaster), these costs would be moderated by a longer automatic delisting period. Similarly, to the extent that the 12 week period risks some rights not be acquired at all, a longer automatic delisting period should reduce that risk, with consequential benefit for consumers. It is not possible to provide any meaningful quantification of these potential cost reductions.

Option 2c – extend the automatic delisting period to 52 weeks

The regulatory and opportunity cost impacts of extending the automatic delisting period to 52 weeks are similar to Option 2b. There are no anticipated regulatory costs, and the potential opportunity cost mitigation for subscription broadcasters and sports bodies would be greater than for Option 2b. However, there is a risk that an automatic delisting period of 12 months may undermine the operation of the anti-siphoning rule. There have been numerous examples over recent years of the broadcast rights to sporting events being settled and announced between six and 12 months from the first event of the competition, tournament or series taking place.

- On 17 December 2015, the Australian Rugby Union announced a rights agreement covering rugby union fixtures for the period 2016 to 2020 involving Network Ten and Fox
Sports. The first match covered by this agreement was played between Australia and England on 11 June 2016.

- On 13 February 2015, Network Ten announced a rights agreement with Formula One Management to broadcast the F1 Championship between 2016 and 2019, and also incorporating the final year of an existing agreement for 2015. This Australian Grand Prix of the 2016 F1 season took place on 20 March 2016.

- On 18 December 2014, the Netball World Cup (NWC) announced a rights agreement covering the 2015 NWC involving Network Ten and Fox Sports. The first match of the NWC involving the Australian team was played on 7 August 2015.

- On 4 June 2013, Cricket Australia announced a rights agreement with the Nine Network covering cricket fixtures for the period 2013-14 to 2017-18. The first test match of the 2013-14 Summer was played between 21 and 25 November 2013.

- On 21 August 2012, the Australian Rugby League Commission announced a rights agreement with the Nine Network and Fox Sports covering rugby league fixtures for the period 2013 to 2017. The first match covered by this agreement was the round 1 match of the 2013 NRL Premiership played between the Sydney Roosters and South Sydney Rabbitohs on 7 March 2013.

- On 1 June 2005, the Seven Network announced a rights agreement covering rugby union fixtures for the period 2006 to 2010. The first match covered by this agreement was played between Australia and England on 11 June 2006.

This pattern of rights acquisitions suggests that, in the future, at least some rights negotiations won’t be settled until between six and 12 months from the affected events taking place. A 12 month automatic delisting period would enable subscription television broadcasting licensees to acquire rights without restriction during this period; potentially before a rights deal involving a FTA network might otherwise be settled.

The list

Any assessment of the composition of the anti-siphoning list is, in part, an assessment of the impact of the scheme as a whole. Only by including events on the list are subscription television broadcasters subject to the licence condition that they not acquire a right until a FTA broadcasters has a right. There have been numerous reviews of the scheme over that past two decades.

In 2000, the Productivity Commission’s (PC) review of broadcasting considered, among a range of matters, the anti-siphoning scheme. The Commission concluded that the scheme was exclusionary and gave FTA broadcasters a competitive advantage over subscription broadcasters and increased their revenue. Additionally, it disadvantaged sport organisations by decreasing their negotiating power in marketing their products.

---

19 Ibid., pp. 434–35.
The PC came to a similar conclusion in 2009, as part of its annual review of regulatory burdens on business. The PC found the scheme to be anti-competitive, imposing a protracted negotiation process on subscription television broadcasters and reducing the bargaining power and potential revenue of sports bodies.\(^{20}\)

Anti-siphoning was also discussed in the report of the Independent Sports Panel. This report (the Crawford Report) argued that that the scheme limited the earning potential for sports and reduced the quantity and quality of sports coverage on television by incentivising FTA broadcasters to acquire rights to popular sports (to the exclusion of less popular sports).\(^{21}\)

None of these reviews and assessments attempted to quantify these impacts on businesses, (or community groups and individuals), and this RIS does not attempt to do so. As noted previously, it is very difficult, and in many cases impossible, to quantify opportunity costs due to the complexity of accurately predicting what a business would do in response to the removal or lessening of a regulation. Suffice to say, reductions to the anti-siphoning list will, if nothing else, reduce any potential adverse impacts of the scheme on broadcasters and sports bodies. Indeed, in 2009, the PC concluded that shortening the list would alleviate some of the problems it had identified, with the option to abolish the list also worthy of exploration.\(^{22}\)

Moreover, the potential effects of the scheme on sports organisations and broadcasters need to be considered alongside the broader aim of enhancing the viewers’ experience of major sporting and other events. Notwithstanding the rapid changes underway in the media market, the FTA and subscription television broadcasting remain the two platforms on which the vast majority of sports viewing takes place in Australia. If the aim of the scheme is to ensure the free availability of nationally important and culturally significantly events, then protections in favour of the FTA platform are one mechanism to achieve this ‘social equity’ objective.

Option 3a – make no changes to the current list

Maintaining the current the list would involve no change to the Broadcasting Services (Events) Notice 2010, which currently covers around between 1,200 and 1,300 events per year. As such, the existing impact of the rule on businesses, consumer organisations and individuals is likely to be maintained.

**Regulatory costs**

The regulatory costs of including events on the list are expected to be negligible. The listing of an event does not require businesses to make or keep records, notify the Government of activities, make applications or requests to Government, or procure permits or professional services. There are also no delay costs associated with applications to, or approvals from, Government. Similarly, there are unlikely to be any regulatory costs imposed on community organisations or individuals.

**Opportunity costs**

---


As noted above, the anti-siphoning scheme restricts sports bodies’ choice of purchasers for the broadcast rights to listed events before the automatic de-listing period. Before that time, sports rights owners are effectively required to make their rights available to FTA broadcasters, with subscription television operators excluded from negotiations. This can be expected to affect the price and the nature of those broadcast rights to some degree, and subsequently the type of public exposure the listed sports receive. These opportunity costs are recognised although not quantified in this RIS, for the reasons outlined previously.

*Indirect costs*

To the extent that the scheme alters the negotiation process for sports rights, it is likely to impose some indirect costs on sports organisations and subscription broadcasters. Broadcasters such as Foxtel have suggested that the scheme stunts industry growth and puts FTA broadcasters in charge of sports rights negotiations, while sports bodies have argued that it restricts their power to negotiate the best deals for their product.

**Option 3b—targeted reductions to the list**

This option would seek to reduce the scope and the impact of the list. This could be achieved by legislative amendment or by the making of a legislative instrument amending the *Broadcasting Services (Events) Notice 2010*. Reducing the list in this way would have two, overlapping effects.

- It would reduce the impact of the scheme on sports bodies and subscription television broadcasters.
- It would rationalise the list to focus on those events that, in a contemporary setting, possess some demonstrable national interest qualities.

In regard to the latter, it should be emphasised that there is no simple or uniform set of rules that enables an unambiguous decision on whether an event should be included on the list. Each competition and event is generally quite unique, and an assessment of the case for its inclusion on the list will require a balancing of factors.

Audiences for a given sport are an obvious criterion, and have the advantage of being quantifiable and independently verifiable. However, even audience numbers need to be considered in context. For example, a sport with an average audience across the five mainland capital cities of less than 200,000 viewers (low) provides a prima facie case for its removal from the list. However, this rule can’t be applied to all sports, and other factors may be relevant. While netball fixtures generally fall short of this audience threshold, for example, it needs to be considered that netball is the only exclusively female sport on the list.

The proposed reductions to the list put forward as part of this option are derived from the application of the following criteria.

- Whether there is a history of broadcast rights being acquired by a FTA broadcaster.
- Where the rights have been acquired by a FTA broadcaster, the nature and extent of the coverage provided (i.e. whether live or delayed, full or partial).
- The size of the FTA audience where events have been televised by an FTA broadcaster.
- Whether the event in question would be considered to have some degree of ‘national significance’ (for example, where it involves an Australian representative team).

The proposed changes are outlined in Table 4. A more detailed outline of the rationale for the changes provided at Attachment B.

<table>
<thead>
<tr>
<th>SPORT</th>
<th>COMPETITION</th>
<th>RECOMMENDED LISTING</th>
<th>EFFECTIVE REDUCTION</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>FOOTBALL</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rugby League</td>
<td>International Tests (matches with Aus, played in Aus, NZ or UK)</td>
<td>Matches with Aus played in Aus or NZ</td>
<td>Matches with Aus played against the UK in the UK, or against other countries in the UK</td>
</tr>
<tr>
<td></td>
<td>World Cup (matches with Australia)</td>
<td>Matches with Aus played in Aus, NZ or PNG</td>
<td>Matches with Aus played in countries other than Aus, NZ or PNG</td>
</tr>
<tr>
<td>Soccer</td>
<td>FIFA World Cup (each match of the finals tournament)</td>
<td>Matches with Australia and the final</td>
<td>Matches not involving Aus, other than the final</td>
</tr>
<tr>
<td></td>
<td>FIFA World Cup Qualifiers (each match involving Aus)</td>
<td>Matches involving Aus played in Aus</td>
<td>Matches involving Aus, played outside of Aus</td>
</tr>
<tr>
<td></td>
<td>English FA Cup Final</td>
<td>Remove</td>
<td>Each match</td>
</tr>
<tr>
<td>Rugby Union</td>
<td>International Tests (matches with Aus, played in Aus, NZ, South Africa or Europe)</td>
<td>Matches with Aus played in Aus or NZ</td>
<td>Matches with Aus, played in South Africa or Europe</td>
</tr>
<tr>
<td></td>
<td>World Cup (matches with Aus, qtr-finals, semi-finals and final)</td>
<td>Matches with Aus and the final</td>
<td>Matches not involving Aus, qtr-finals and semi-finals</td>
</tr>
<tr>
<td>CRICKET</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---------------------------------</td>
<td>------------------------------------------------</td>
<td>------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td><strong>Limited Overs</strong></td>
<td>Cricket World Cup</td>
<td>Matches with Aus, semi-finals and final when played outside Aus and NZ</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(matches with Aus, semi-finals and final)</td>
<td>Semi-finals not involving Aus, when played in Aus or NZ</td>
<td></td>
</tr>
<tr>
<td></td>
<td>T20 World Cup</td>
<td>Matches with Aus and final played in Aus or NZ</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(matches with Aus and the final)</td>
<td>Matches with Aus and final when played outside Aus and NZ</td>
<td></td>
</tr>
<tr>
<td><strong>Tests</strong></td>
<td>International Tests</td>
<td>Matches with Aus, played in Aus, and Ashes tests played in UK</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(with Aus, played in Aus and UK)</td>
<td>Matches with Aus played in the UK, but not against the UK (against another side)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>GOLF</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Australian Masters</td>
<td>Remove</td>
<td>Each tournament</td>
</tr>
<tr>
<td>(each round)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Australian Open</td>
<td>Remove</td>
<td>Each tournament</td>
</tr>
<tr>
<td>(each round)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>United States Masters</td>
<td>Remove</td>
<td>Each tournament</td>
</tr>
<tr>
<td>(each round)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TENNIS</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Wimbledon</td>
<td>Remove</td>
<td>Each tournament</td>
</tr>
<tr>
<td>(men’s and women’s singles quarter-finals, semi-finals and finals)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>United States Open</td>
<td>Remove</td>
<td>Each tournament</td>
</tr>
<tr>
<td>(men’s and women’s singles quarter-finals,</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Regulatory costs

The regulatory costs of removing events from the events are expected to be minimal. Sports bodies and broadcasters will need to ensure they are aware of whether particular events are included or removed from the list, although the proposed consultation on the new list (outlined below) will support this awareness. Moreover, sports rights contracts normally span multiple years and as such, the composition of the list will only have relevance to broadcasters and sports bodies at the time the particular rights next come up for acquisition.

In terms of specific regulatory costs, removing events from the list will not require businesses to make or keep records, notify the Government of activities, make applications or requests to Government, or procure permits or professional services. There are also no delay costs associated with applications to, or approvals from, Government.

There would be no regulatory costs imposed on community organisations and individuals under this option.

Opportunity costs

To the extent that the anti-siphoning scheme adversely effects sports organisations and subscription broadcasters, the removal of events or parts of events can be expected to mitigate any such impacts for the sports bodies and broadcasters concerned. Although this is likely to represent some reduction in opportunity cost, any such reduction is not quantified in this assessment.
For consumers, the removal of events from the list may be perceived as reducing their availability on FTA television. However, the practical impacts of the proposed changes may be more muted.

- For some of the proposed delistings, the events either no longer take place (Australian Masters golf tournament), or over recent years have not been available on FTA television (United States Open tennis tournament). Their removal will have no impact on their potential availability on the FTA platform.

- For other events, including golf tournaments and rugby union, rugby league and cricket fixtures played overseas or not involving Australian representation, audience numbers are generally low and should rights to these events no longer be acquired by a FTA broadcaster, the number of affected viewers is likely to be small.

In considering the consumer impact of removing events from the anti-siphoning list, it also needs to be noted that FTA coverage of events on the list has generally improved over recent years. Enabled by the temporary delistings (outlined above), FTA broadcasters have typically acquired a broader range of rights to a number of events on the anti-siphoning list. Coverage has generally been more fulsome than it was prior to the commencement of digital multi-channels, with more extensive live coverage. This has been seen in particular with coverage of the Australian Open tennis tournament and the Olympic Games.

*Indirect costs*

To the extent that the scheme affects the market for sports rights and the competitive position of the FTA and subscription broadcasting sectors, the removal of events from the list can be expected to reduce any such effects. The acquisition of rights to events or parts of events that are removed from the list would no longer be subject to restriction under the scheme, and both subscription and FTA broadcasters could seek to acquire rights at any point in time, rather than sequentially.

**CONSULTATION**

There has been extensive consultation with industry and other groups over recent years in relation to the three problems being addressed as part of this package of reforms, and on the scheme as a whole. Change in these areas is generally well anticipated, although stakeholders have (and will continue to have) differing views on any particular reforms.

The most recent consultations were undertaken in late 2016 and early 2017, with the Minister for Communications seeking the views of industry stakeholders, including regional and metropolitan FTA broadcasters and subscription television broadcasters, regarding the anti-siphoning scheme and list. This continued conversations initiated by the former Minister for Communications in 2014.

Through these processes representatives of both the FTA and subscription broadcasters indicated that the multi-channeling rule should be removed, although the subscription sector argued that such a change should only take place as part of wide-ranging reform to media policy (including the anti-siphoning scheme). Views on the automatic delisting were mixed, with Foxtel arguing for the period to be extended to 52 weeks – along the lines of option 2c – while the FTA sector would prefer a period of 16 weeks.
Representatives of both FTA and subscription broadcasters have also put forward their own changes to the list. Both sectors concede that some reductions to the list are warranted and neither has proposed any additions. In its most recent iteration, FTA broadcasters indicated their support for modest reductions to the list, generally targeting a limited number of rugby league, rugby union, soccer, tennis and golf events (or parts of events) played outside of Australia. The subscription sector has argued for more significant reductions, including cuts to the domestic football codes (AFL and NRL) and wide ranging reductions to events played overseas or not involving Australian participants. Through various reviews undertaken over recent years, and in consultations with Government, sports bodies have consistently called for cuts to the list.

It is proposed that further consultation be undertaken with stakeholders before the proposed measures are finalised, particularly the changes to the anti-siphoning list.

**EVALUATION AND PREFERRED OPTIONS**

The following options are recommended:

- 1b – removing the multi-channel rule from the anti-siphoning scheme
- 2b – extending the automatic delisting period to 26 weeks
- 3b – targeted reductions to the list.

All three options are deregulatory in nature.

*Multi-channelling* – Option 1b would remove an outdated and unnecessary regulation that serves little purpose in a contemporary media environment. This is expected to reduce regulatory costs incurred by FTA broadcasters and may also mitigate potential opportunity costs imposed on these business and on television audiences. This will also provide more transparency on the Government’s position in relation to the use of digital multi-channels. In contrast, retaining the current rule – Option 1a – would maintain these regulatory and opportunity costs without providing any demonstrable benefits to business, community organisations or individuals.

*Automatic delisting* – extending the automatic delisting period to 26 weeks (Option 2b) would loosen the regulatory restrictions imposed on subscription television broadcasters under the scheme and enable them to acquire rights at any time within six months of an anti-siphoning listed event taking place. This can be expected to moderate any opportunity costs imposed on the sector and on sports bodies, enabling them to enter into rights agreement at an earlier point in time, bed down coverage and scheduling arrangements, and promote the events to audiences and subscribers. Retaining the existing rule would not alleviate any such impacts, and is generally out of synch with the timeframes for broadcast rights negotiations. Extending the automatic delisting period to 52 weeks would be welcomed by the subscription television sector. However, this has the potential to undermine the main provision of the scheme by weakening protections for the acquisition of rights to events by FTA broadcasters. There are numerous examples over recent years of rights agreements involving FTA broadcasters not being settled and announced until between 6 and 12 months of the first event of a competition, tournament or series taking place.
The list – Option 3b would make a number of targeted reductions to the list to remove events or parts of events that are no longer being held, that are not televised on FTA television, or that do not command audiences of any meaningful size. For this reason, the proposed reductions are expected to have only a minimal impact on audiences. In addition, this option effectively reduces the breadth of the scheme and therefore its impact on subscription broadcasters and (in turn) sports organisations. This may mitigate opportunity costs imposed on these parties arising from the scheme’s restrictions on the way in which they deal with broadcast rights. The alternative of retaining the current list – Option 3a – would not yield any such cost reductions and would maintain a list that includes events with little identifiable national or cultural significance.

IMPLEMENTATION

Legislative amendments would be required to implement the proposed changes, as follows.

- Removing the multi-channelling rule would require the repeal of relevant provisions of Schedule 4 to the BSA, primarily those contained in Part 4A.

- Extending the automatic delisting period would require amendment to subsection 115(1AA) of the BSA.

- Removing events from the list would involve either legislative amendment or the making of legislative instrument amending the Broadcasting Services (Events) Notice (No. 1) 2010.
APPENDIX A
REGULATORY BURDEN MEASUREMENT REPORT

Cost per entity equals total cost per segment divided by total number of entities within the segment.

Summary report
Proposal name Reform of the Anti-Siphoning Scheme
Reference number 22046

Problem
Reform of the anti-siphoning scheme is well overdue. In addition to favouring free-to-air television broadcasters, there are a number of other features of the scheme that have drawn criticism from stakeholders.

The government’s policy objectives are to ensure Australians have freely available access to significant events, to reduce regulatory impediments to business and to reduce the impact of the scheme for business.

Explanatory information
Not applicable

Segments affected
Business

Option 1
Option name The multichannelling rule
Option description Remove the multichannelling rule for business.
Business affected 6

<table>
<thead>
<tr>
<th></th>
<th>Cost per business</th>
<th>Total cost for all business</th>
</tr>
</thead>
<tbody>
<tr>
<td>Start up cost</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Ongoing compliance cost</td>
<td>-$1,000</td>
<td>-$8,000</td>
</tr>
<tr>
<td>Start up time</td>
<td>0 hr</td>
<td>0 hr</td>
</tr>
<tr>
<td>Ongoing compliance time</td>
<td>0 hr</td>
<td>0 hr</td>
</tr>
</tbody>
</table>

Notes
1. An assessment of compliance costs in itself do not provide an answer to the most effective and efficient regulatory proposal. Rather, it provides information that needs to be considered alongside other factors when deciding between policy.
2. Negative dollar figures present a cost saving.
3. If ‘See PV’ appears in a cell you can refer to the present value report for more information.
All references to audiences are based on OzTAM data.\textsuperscript{23}

\textit{Rugby league}

<table>
<thead>
<tr>
<th>Competition (&amp; details of listing)</th>
<th>Proposed removal</th>
</tr>
</thead>
<tbody>
<tr>
<td>International tests</td>
<td>Matches with Aus played against the UK in the UK, or against other countries in the UK</td>
</tr>
<tr>
<td>(matches with Aus, played in Aus, NZ or UK)</td>
<td></td>
</tr>
<tr>
<td>World Cup (matches with Australia)</td>
<td>Matches with Aus played in countries other than Aus, NZ or PNG</td>
</tr>
</tbody>
</table>

The recommended changes would leave international test matches with Australia played in Australia or New Zealand on the anti-siphoning list. Audiences have generally been strong for international tests, although the bulk of the matches making up these averages were played in Australia or New Zealand. There is a case for cutting the listing back to only these fixtures, as UK fixtures are irregular and have much lower audiences given the time zone differences. For example, in 2016, the average audiences for the Four Nations tournament (played in the UK) were 112,000 on the main channels and 92,000 on the GEM.

In relation to the rugby league World Cup, the recommended change would leave matches with Australia played in Australia, New Zealand or Papua New Guinea on the anti-siphoning list. There is a significant disparity between matches played in Australia / New Zealand, and those played in the northern hemisphere.

- For example, audiences were significant for matches of the 2008 World Cup (played in Australia): average audiences for group matches and the semi-final involving Australia were over 500,000, and the final over 1,000,000.

- In 2013, with the tournament played in the United Kingdom and France, audiences for round matches were less than 200,000 and the final less than 250,000.

\textit{Soccer}

<table>
<thead>
<tr>
<th>Competition (&amp; details of listing)</th>
<th>Proposed removal</th>
</tr>
</thead>
<tbody>
<tr>
<td>FIFA World Cup</td>
<td>Matches not involving Aus, other than the final</td>
</tr>
</tbody>
</table>

\textsuperscript{23} OzTAM Pty Limited. Sun-Sat 1800-2400, 5 City Metro, Wks 1-52, 2009 to 2016, Total People, Consolidated. Data © OzTAM Pty Limited 2016. The Data may not be reproduced, published or communicated (electronically or in hard copy) without the prior written consent of OzTAM.
The recommended change would leave FIFA World Cup matches with Australia on the list. Audiences for the games involving Australia have been very high: around 1 million viewers on average in 2010 (South Africa) and 2014 (Brazil). Audiences for the final have also been significant (over 800,000). However non-finals matches not involving Australia command small audiences (less than 200,000 in 2014). While quarter- and semi-finals matches not involving Australia generate reasonable ratings (around 300,000 viewers on average), it is difficult to mount the argument that these fixtures are nationally significant given the absence of national team participation.

The recent history of rights acquisition in relation to these events is also pertinent. SBS acquired exclusive rights to the 2018 tournament, but in March 2016 decided to sub-license the rights to Optus. Under this deal, Optus has live rights to all 64 matches of the tournament, including 39 exclusive, along with rights to the 2017 FIFA Confederations Cup and the 2019 FIFA Women’s World Cup. For the 2018 tournament, SBS has retained shared rights to 25 matches, including 1 live match per day, all Socceroos games, 4 matches from round of 16, 2 quarter-finals, both semi-finals and the final.

In relation to FIFA World Cup qualifiers, the recommended change would leave matches involving Australia played in Australia on the list. Audiences for FIFA World Cup qualifying matches involving Australia have varied significantly over the past four years. In 2012 and 2013, ahead of the 2014 World Cup, audiences gradually increased as the team progressed. The first match had an audience of 14,000, and the final match had an audience of 1,159,000. However, in the lead up to the 2018 World Cup, audience have to date (early 2017) been modest. In 2015, matches averaged only 97,000, while in 2016 this picked up to 202,000. There is also a clear disparity between matches played in Australia and those played overseas, reflecting time zone differences and hence telecast times. In 2016, matches played in Australia averaged 302,000 viewers, while matches played overseas averaged 88,000 viewers.

There has also been some fluidity in terms of the rights. SBS held FTA broadcast rights to the qualifying matches of the FIFA World Cup involving Australia that were played before 1 September 2016. However, no FTA broadcaster held the rights to matches played on 1 and 6 September 2016, and hence the only coverage was on Foxtel. Filling this gap, close to the commencement of the event, Nine acquired from the Asian Football Confederation the rights to the remaining Round 3 qualifying matches involving Australia through until October 2017.

The recommended change for the FA Cup final would see its removal from the anti-siphoning list. Audiences for this event have been consistently poor and in decline over the past 7 years, attracting only 66,000 viewers in 2016. It is also difficult to argue that an event that occurs overseas, involving no Australian participants or teams, is nationally significant, and therefore does not warrant inclusion on the list.

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
<tbody>
<tr>
<td>FIFA World Cup Qualifiers</td>
<td></td>
</tr>
<tr>
<td>(each match involving Aus)</td>
<td></td>
</tr>
<tr>
<td>English FA Cup Final</td>
<td>Each match</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(each match of the finals tournament)</th>
<th>Match involving Aus, played outside of Aus</th>
</tr>
</thead>
</table>
Rugby Union

<table>
<thead>
<tr>
<th>Competition (&amp; details of listing)</th>
<th>Proposed removal</th>
</tr>
</thead>
<tbody>
<tr>
<td>International tests</td>
<td>Matches with Aus, played in South Africa or Europe</td>
</tr>
<tr>
<td>(matches with Aus, played in Aus, NZ, South Africa or Europe)</td>
<td></td>
</tr>
<tr>
<td>World Cup</td>
<td>Matches not involving Aus, qtr-finals and semi-finals</td>
</tr>
<tr>
<td>(matches with Aus, qtr-finals, semi-finals and final)</td>
<td></td>
</tr>
</tbody>
</table>

The recommended change would leave international rugby union test matches with Australia played in Australia or New Zealand on the list. Test rugby union is, for the most part, live and available through a combination of primary and multichannel coverage. Audience numbers for tests involving Australia and New Zealand are strong (around half a million viewers). They are also strong for matches against other rugby playing nations (such as England), when played in Australia. However, audience numbers for fixtures not played in Australia are much lower (generally around or less than 200,000).

In relation to the rugby union World Cup, the recommended change would leave matches with Australia and the final on the list. Rights to all listed matches have been acquired by FTA broadcasters and generally televised live. Audiences for the 2007 (France) and 2011 (New Zealand) tournaments were sound, although they were lower for 2015 (held in England). The 2011 final (NZ v France) had a significantly higher audience (1,220,000) due to the favourable time zone. Notably, the audiences for the quarter- and semi-finals that don’t involve Australia are generally quite low (less than 250,000 in 2007 and less than 100,000 in 2015, although higher in 2011 due to it being played in NZ).

Cricket

<table>
<thead>
<tr>
<th>Competition (&amp; details of listing)</th>
<th>Proposed removal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cricket World Cup</td>
<td>Matches with Aus, semi-finals and final when played outside Aus and NZ</td>
</tr>
<tr>
<td>(matches with Aus, semi-finals and final)</td>
<td>Semi-finals not involving Aus, when played in Aus or NZ</td>
</tr>
<tr>
<td>T20 World Cup</td>
<td>Matches with Aus and final when played outside Aus and NZ</td>
</tr>
<tr>
<td>(matches with Aus and the final)</td>
<td></td>
</tr>
<tr>
<td>International Tests</td>
<td>Matches with Aus played in the UK, but not against the UK (against another side)</td>
</tr>
</tbody>
</table>
The recommended change would leave matches of the ICC World Cup involving Australia and the final, played in Australia or New Zealand on the list. Audiences for ICC World Cup matches involving Australia are generally strong, particularly when played in Australia (2015) but also reasonable in overseas locations (2003, South Africa; 2007, West Indies; and 2011: India et al). However, audience numbers drop away significantly for matches and finals not involving Australia. In 2007, finals matches not involving Australia were not televised on FTA.

The recommended change for the T20 World Cup would leave matches with Australia and the final, played in Australia or New Zealand on the list. This is a relatively new tournament and Australia has only made the finals once (2010). FTA coverage in 2014 was on a multichannel. Although the rights to tournaments for 2009 (England), 2012 (Sri Lanka) and 2014 (Bangladesh) were all acquired by Nine and televised live, Australian audiences were very low. In part, this is likely to be due to time zone differences. Australia is scheduled to host the tournament in 2020, so audience numbers could be expected to be higher at that time.

In relation to international tests, the recommended change would leave matches with Australia, played in Australia, and Ashes tests played in the UK, on the list. Although overall audience numbers are falling, international tests played in Australia and the UK continue to command significant audiences. The subscription sector has suggested a minor reduction to the list, effectively removing any matches in the UK involving Australia and a team other than the UK. This retains matches played between Australia and the UK only, in the UK.

**Golf**

<table>
<thead>
<tr>
<th>Competition (&amp; details of listing)</th>
<th>Proposed removal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australian Masters</td>
<td>Each tournament</td>
</tr>
<tr>
<td>(each round)</td>
<td></td>
</tr>
<tr>
<td>Australian Open</td>
<td>Each tournament</td>
</tr>
<tr>
<td>(each round)</td>
<td></td>
</tr>
<tr>
<td>United States Masters</td>
<td>Each tournament</td>
</tr>
<tr>
<td>(each round)</td>
<td></td>
</tr>
</tbody>
</table>

The recommended change would remove the Australian Masters tournament from the anti-siphoning list. This event was not held in 2016 as the operator of the tournament (IMG Media) is reportedly ‘reimagining’ the event. There is no indication of whether the event will be held in the future. Furthermore, although the event was held in 2012, it was not televised on FTA, and days 1-2 of the 2011 event were also not televised. Average audiences for days 1-2 and 3-4 are generally low, although there is some spike in viewership for the final two hours of play on day 4.
The recommended change for the Australian Open would remove the tournament from the anti-siphoning list. The FTA broadcast rights to this event have shifted between broadcasters, although this has been more stable since 2013 when they were acquired by Seven. Audiences for the tournament on days 1-2 have been consistently poor, averaging less than 200,000 viewers. As with all golf events, average daily audiences are low with increased viewing for the final 2 hours play on day 4 only. It is worth noting that this portion of time represents less than 5 per cent of the 4-day tournament, which is listed in its entirety.

In relation to the United States Masters, the recommended change would remove the tournament from the anti-siphoning list. Audiences for the US Masters are lower than the Australian tournaments, due in part to time zone differences. Average daily viewing audiences over the past eight years have been very poor at 110,000 (including 77,000 in 2015 and 61,000 in 2016). Even during the peak viewing periods of the tournament – the last 2 hours of day 4 – audiences have been less than 150,000 over the last 3 years. The subscription sector has suggested the removal of the US Masters from the list: the event’s location and audience history tends to support this proposal.

**Tennis**

<table>
<thead>
<tr>
<th>Competition (&amp; details of listing)</th>
<th>Proposed removal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wimbledon</td>
<td>Each tournament</td>
</tr>
<tr>
<td>(men’s and women’s singles quarter-finals, semi-finals and finals)</td>
<td></td>
</tr>
<tr>
<td>United States Open</td>
<td>Each tournament</td>
</tr>
<tr>
<td>(men’s and women’s singles quarter-finals, semi-finals and finals)</td>
<td></td>
</tr>
<tr>
<td>Davis Cup</td>
<td>Matches involving Aus, played outside Aus</td>
</tr>
<tr>
<td>(each match of the World Group tournament involving Aus)</td>
<td></td>
</tr>
</tbody>
</table>

The recommended change for Wimbledon would remove the tournament from the anti-siphoning list. Seven has held the rights to Wimbledon since 2011 and has made increasing use of its multi-channels to provide coverage, particularly for the first 1 to 2 hours of play (through to 11:00 pm on the eastern states in Australia). These rights and coverage relate to the entire tournament, not just to the events included on the anti-siphoning list. Audiences have been relatively modest for the past few years, with an average of around 200,000 viewers on the main channel and 230,000 on 7TWO. This rises to over 250,000 for the women’s final and 400,000 for the men’s final on the main channel.

The recommended change for the United States Open would remove the tournament from the anti-siphoning list. The Open has not been shown on FTA television since 2011. The event was removed from the anti-siphoning list for the period 2013 to 2016 given the absence of interest from FTA broadcasters.
In relation to Davis Cup, the recommended change would leave matches with Australia played in Australia, and the final involving Australia, on the list. The World Group is the top tier of the Davis Cup competition, and Australia only qualified for this tier in 2014, reaching the semi-finals stage in 2015. Since this time, audiences have been modest with day 2 and 3 audiences hovering between 100,000 and 200,000 viewers.

Netball

<table>
<thead>
<tr>
<th>Competition (&amp; details of listing)</th>
<th>Proposed removal</th>
</tr>
</thead>
<tbody>
<tr>
<td>International Tests</td>
<td>Each match</td>
</tr>
<tr>
<td>(matches with Aus played in Aus or NZ)</td>
<td></td>
</tr>
</tbody>
</table>

The recommended change would remove international tests from the anti-siphoning list. The history of netball rights acquisition and audiences have been poor over recent years. The FTA rights for test matches involving Australia and the Netball World Cup (2007, in New Zealand; 2011, in Singapore; and 2015 in Sydney) have shifted between Network Ten, the ABC, SBS and back to Ten over the past five years. No FTA broadcaster acquired any rights to test matches in 2012. Reflecting this, average audiences have been low, particularly for international tests. These fixtures have realised an average audience of 71,000 between 2009 and 2016, and numbers are dropping: 37,000 in 2014, 78,000 in 2015 and 39,000 in 2016.

Motorsports

<table>
<thead>
<tr>
<th>Competition (&amp; details of listing)</th>
<th>Proposed removal</th>
</tr>
</thead>
<tbody>
<tr>
<td>V8 Supercars</td>
<td>All races (other than Bathurst)</td>
</tr>
<tr>
<td>(each race)</td>
<td></td>
</tr>
</tbody>
</table>

The recommended change would leave the Bathurst 1000 on the list, and remove all other races held as part of the V8 Supercars series. Strong audiences justify the continued inclusion on the V8 Supercars Championship on the list in some form: an average audience for races excluding Bathurst of over 400,000; and over 1.2 million for Bathurst. However, Network Ten’s current rights agreement (2015 to 2020) only involves full and live rights for 6 of the 15 rounds of the Championship (including Bathurst). For the remaining 9 rounds, Network Ten only has rights to delayed highlights. Irrespective of audience numbers, the fact that the relevant FTA broadcaster only wishes to acquire the full rights to televise 6 of 15 rounds per year provides a reasonable case for reducing the listing.
REGULATION IMPACT STATEMENT

ABOLITION OF COMMERCIAL TELEVISION AND RADIO LICENCE FEES AND DATACASTING CHARGES (SCHEDULE 5, PART 3 OF SCHEDULE 6)

Summary of the measures:

The Bill would:

1. Abolish the broadcasting licence fees paid by commercial broadcasters under both the Television Licence Fees Act 1964 and the Radio Licence Fees Act 1964, from 2017-18 onwards, currently recovering around $125.7 million per year.
2. Abolish the datacasting charges paid by commercial broadcasters under the Datacasting Charge (Imposition) Act 1998, from 2017-18 onwards, currently recovering around $1.1 million per year.
3. Abolish the apparatus licence fees currently paid by commercial broadcasters under the Radiocommunications (Transmitter Licence Tax) Act 1983, currently recovering around $75,000 per year.
4. Create legislation to enable a transitional support package of $4.6 million per year for the first five years to ensure that individual broadcasters are no worse off as a consequence of measures 1, 2, 3 and the new spectrum taxes imposed by the Commercial Broadcasting (Tax) Bill 2017.
5. Require the Australian Communications and Media Authority (ACMA) to undertake and finalise a review of broadcasting pricing arrangements before 30 June 2022.

In addition to the above, the Commercial Broadcasting (Tax) Bill 2017 will impose new spectrum taxes for commercial broadcasters using spectrum in the broadcasting spectrum bands leading to revenues of around $40 million per annum in total.

What are the regulatory impacts associated with these measures?

These measures are expected to have only minor regulatory impacts on businesses. They are not expected to have any impacts on individuals or community organisations.

The measures would simplify reporting requirements from broadcasters to the ACMA. As the commercial television and radio licence fees (determined yearly based on revenue) will be abolished, broadcasters will no longer need to report yearly data to the ACMA.

What are the regulatory costs/savings associated with these measures?

Reporting requirements are reduced for broadcasters. This reduces the time for businesses to complete reporting requests by an estimated 1,710 hours a year, which represents a reduction in annual average compliance costs of $57,225. This is based on assumptions that:

1. 327 returns are provided every year
2. Each return requires an estimated five hours to produce
3. The average hourly wage for an individual in administrative and support services is $35.24

*Regulatory burden estimate (RBE) table*

Average annual regulatory costs (from business as usual)

<table>
<thead>
<tr>
<th>Change in costs</th>
<th>Business ($)</th>
<th>Community organisations ($)</th>
<th>Individuals ($)</th>
<th>Total change in cost ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial broadcasters</td>
<td>-57,225</td>
<td>0</td>
<td>0</td>
<td>-57,225</td>
</tr>
</tbody>
</table>

---

26 Weekly earnings for an individual in administrative and support services is 1,304.7: [http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/6302.0Main%20Features4Nov%202016?opendocument&tabname=Summary&prodno=6302.0&issue=Nov%202016&num=&view](http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/6302.0Main%20Features4Nov%202016?opendocument&tabname=Summary&prodno=6302.0&issue=Nov%202016&num=&view)
ABBREVIATIONS

The following abbreviations are used in this explanatory memorandum.

AIA               Acts Interpretation Act 1901
anti-siphoning notice Broadcasting Services (Events) Notice (No. 1) 2010
ACMA             Australian Communications and Media Authority
ACMA Act         Australian Communications and Media Authority Act 2005
Bill             Broadcasting Legislation Amendment (Broadcasting Reform) Bill 2017
BSA              Broadcasting Services Act 1992
Charges Act      Datacasting Charge (Imposition) Act 1998
DTLF Act         Datacasting Transmitter Licence Fees Act 2006
LA               Legislation Act 2003
Radcomms Act     Radiocommunications Act 1992
RTC Act          Radiocommunications Taxes Collection Act 1983
R(TLT) Act       Radiocommunications (Transmitter Licence Tax) Act 1983
RLF Act          Radio Licence Fees Act 1964
TVLF Act         Television Licence Fees Act 1964
NOTES ON CLAUSES

Clause 1 – Short title

Clause 1 provides that the Bill, when enacted, may be cited as the *Broadcasting Legislation Amendment (Broadcasting Reform) Act 2017*.

Clause 2 – Commencement

Clause 2 provides for the commencement of the Bill.

Clauses 1 to 3 of the Bill, and anything else not covered in the table, will commence on the day the Bill receives Royal Assent. These provisions are introductory provisions.

Schedules 1 and 2; Part 1 of Schedule 3; Schedule 4; items 1 and 6 and Part 2 of Schedule 5; Parts 1 and 3 of Schedule 6; and Schedule 7 to the Bill will commence on the day after the Bill receives the Royal Assent.

Part 2 of Schedule 3 to the Bill will commence on the day after the end of the six-month period that begins on the day after the Bill receives the Royal Assent.

Items 2 and 7 of Schedule 5 to the Bill will commence on 1 July 2016.

Part 2 of Schedule 6 will commence on 1 July 2017.

Items 3 to 5 and 8 to 10 of Schedule 5 to the Bill will commence on 1 January 2017.

Clause 3 – Schedules

Clause 3 provides that legislation that is specified in a Schedule to the Bill is amended or repealed as set out in the applicable items in that Schedule, and any other item in a Schedule has effect according to its terms. There are 7 Schedules to the Bill.

For the avoidance of doubt, the note to this clause explains that the provisions of the *Broadcasting Services (Events) Notice (No. 1) 2010* (the anti-siphoning notice) amended by the Bill, and any other provisions of the notice, may continue to be amended or repealed by a legislative instrument made under section 115 of the BSA, in accordance with subsection 13(5) of the LA.
SCHEDULE 1—ABOLITION OF THE 75% AUDIENCE REACH RULE

The 75 per cent audience reach rule prevents a person, either in their own right or as a director of one or more companies, from being in a position to exercise control of commercial television broadcasting licences whose combined total licence area populations exceed 75 per cent of the population of Australia.

Subsections 53(1), 55(1) and 55(2) of the BSA give effect to the 75 per cent audience reach rule.

Subsection 53(1) provides that a person must not be in a position to exercise control of commercial television broadcasting licences whose combined licence area populations exceed 75 per cent of the population of Australia.

Subsection 55(1) provides that a person must not be a director of a company that is, or of 2 or more companies that are, between them, in a position to exercise control of commercial television broadcasting licences whose combined licence area populations exceed 75 per cent of the population of Australia.

Subsection 55(2) provides that a person must not be both in a position to exercise control of a commercial television broadcasting licence and a director of a company that is in a position to exercise control of another commercial television broadcasting licence, whose combined licence area populations exceed 75 per cent of the population of Australia.

The amendments to the BSA set out in Schedule 1 would abolish the 75 per cent audience reach rule.

Broadcasting Services Act 1992

Item 1 – Subsection 53(1)
Item 2 – Subsection 53(2)
Item 3 – Subsections 55(1) and (2)

Items 1 and 3 would repeal subsection 53(1) and subsections 55(1) and (2) of the BSA, respectively.

Item 2 would make a technical amendment to subsection 53(2) of the BSA, consequential to the repeal of subsection 53(1).
SCHEDULE 2—ABOLITION OF THE 2 OUT OF 3 CROSS-MEDIA CONTROL RULE

The 2 out of 3 cross-media control rule prohibits a person being in a position to exercise control of more than two out of three regulated media platforms (that is, a commercial television broadcasting licence, a commercial radio broadcasting licence and an associated newspaper) in any one commercial radio licence area. This is known as an unacceptable 3-way control situation.

Section 61AEA and Subdivision BA of Division 5A of Part 5 of the BSA give effect to the 2 out of 3 cross-media control rule.

Section 61AEA defines the concept of an ‘unacceptable 3-way control situation’ for the purposes of Division 5A. Under section 61AEA, an unacceptable 3-way control situation exists in relation to a commercial radio licence area (the first radio licence area) if a person is in a position to exercise control of:

- a commercial television broadcasting licence, where more than 50 per cent of the licence area population of the first radio licence area is attributable to the licence area of the commercial television broadcasting licence;

- a commercial radio broadcasting licence, where the licence area of the commercial broadcasting licence is, or is the same as, the first radio licence area; and

- a newspaper that is associated with the first radio licence area (within the meaning of section 59 of the BSA).

Subdivision BA prohibits transactions that result in an unacceptable 3-way control situation coming into existence unless the ACMA has approved the transactions under section 61AMC. Section 61AMC provides that the ACMA may give prior approval for transactions that result in an unacceptable 3-way control situation. If the ACMA approves the transaction it must specify in a notice a time period within which action must be taken by the applicant to ensure that situation does not exist. The period specified must be at least one month, but not longer than 12 months. The ACMA may grant one extension of time for compliance with a prior approval notice.

Subdivision BA also sets out offence and civil penalty provisions that apply to a person that is a party to a transaction or transactions (or is in a position to prevent the transaction(s) taking place) that results in an unacceptable 3-way control situation coming into existence.

The amendments to the BSA set out in Schedule 2 would abolish the 2 out of 3 cross-media control rule.
Broadcasting Services Act 1992

Item 1 – Section 61AA (definition of unacceptable 3-way control situation)
Item 2 – Section 61AEA
Item 3 – Subdivision BA of Division 5A of Part 5

Items 1 to 3 would repeal from the BSA the definition of ‘unacceptable 3-way control situation’ and Subdivision BA, which prohibits certain transactions that result in such a situation coming into existence.

Item 4 – Section 61ANA

Section 61ANA concerns remedial directions with respect to unacceptable 3-way control situations. As the concept of an unacceptable 3-way control situation is being repealed, section 61ANA is no longer required.

Item 4 would repeal section 61ANA of the BSA.

Item 5 – Subsection 61AP(1)
Item 6 – Subsection 61AP(3A)
Item 7 – Paragraph 61AP(6)(c)
Item 8 – Paragraph 61AQ(1)(a)
Item 9 – Subsection 61AR(1)

Items 5 to 9 would make consequential amendments to sections 61AP (Extension of time for compliance with remedial direction), 61AQ (Breach of remedial direction – offence) and 61AR (Breach of remedial direction – civil penalty) of the BSA related to the repeal of section 61ANA (see item 4 above).

Item 10 – Paragraph 61AS(1)(b)
Item 11 – Paragraph 61AS(1)(c)

Paragraph 61AS(1)(c) of the BSA relates to a written undertaken given by a person to the ACMA that they will take specified action to ensure that an unacceptable 3-way control situation does not exist in relation to the licence area of a commercial radio broadcasting licence. As the concept of an unacceptable 3-way control situation is being repealed, paragraph 61AS(1)(c) is no longer required.

Item 11 would repeal paragraph 61AS(1)(c) of the BSA. Item 10 makes a technical amendment as a consequence of item 11.

Item 12 – Subparagraph 61AZ(1)(b)(ii)
Item 13 – Paragraph 61AZ(1)(c)

Section 61AZ of the BSA relates to the requirement for the ACMA to keep a register of controlled media groups. Paragraph 61AZ(1)(c) requires the ACMA to consider whether a newly-formed media group would result in an unacceptable 3-way control situation coming into existence. As the concept of an unacceptable 3-way control situation is being repealed, this will no longer be a relevant consideration for the ACMA.
Item 13 would repeal paragraph 61AZ(1)(c) of the BSA. Item 12 would make a technical amendment as a consequence of item 13.

**Item 14 – Subsection 204(1) (table)**
**Item 15 – Section 205Q**

Items 14 and 15 would remove references to sections contained in Subdivision BA of Division 5A of Part 5 of the BSA, repealed by item 3 above, from the table in subsection 204(1) (Appeals to the Administrative Appeals Tribunal) and section 205Q (Injunctions).
SCHEDULE 3—LOCAL PROGRAMMING REQUIREMENTS FOR REGIONAL COMMERCIAL TELEVISION BROADCASTING LICENSEES

Part 1—New local programming requirements

Broadcasting Services Act 1992

Item 1 – After Division 5C of Part 5

Item 1 would insert new Division 5D into Part 5 of the BSA which sets out new local programming requirements for regional commercial television broadcasting licensees, and relocates existing local programming obligations currently provided for under section 43A of the BSA and the Broadcasting Services (Additional Television Licence Condition) Notice 2014.

The new Division 5D would increase the current local programming obligations that apply in aggregated markets (and Tasmania), and introduce new local programming obligations in non-aggregated markets, for regional commercial television broadcasting licences affected by a trigger event. The new local programming requirements will apply only to regional commercial television broadcasting licences that are affected by a ‘trigger event’ where, as a result of a change in control, they become part of a media group whose combined licence area populations exceed 75 per cent of the Australian population. Affected licensees would be required to commence broadcasting any additional local programming required by Division 5D six months after the relevant trigger event.

For the purposes of new Division 5D, a trigger event occurs where, as a result of a change in control, a regional commercial television broadcasting licence becomes part of a group of commercial television broadcasting licences whose combined licence area populations exceed 75 per cent of the Australian population (see new section 61CV).

The main changes that will apply as a result of Schedule 3 are:

- Proposed section 61CW would increase local programming requirements for affected regional commercial television broadcasting licensees in aggregated markets and Tasmania by approximately 30 points per week (to 900 points in each six-week timing period and a minimum 120 points each week), beginning six months after a trigger event.

- Proposed section 61CX would introduce new local programming requirements for regional commercial television broadcasting licences in non-aggregated markets that are affected by a trigger event. These include the following licence areas: Broken Hill, Darwin, Geraldton, Griffith and Murrumbidgee Irrigation Area (MIA), Kalgoorlie, Mildura/Sunraysia, Mount Gambier/South East, Mt Isa, Remote and Regional WA, Riverland, South West and Great Southern, and Spencer Gulf. Proposed section 61CX will require affected licensees to provide at least 360 points of material of local significance to each local area in each six-week timing period, with a minimum of 45 points per week, beginning six months following the trigger event. The new local programming requirements under section 61CX will not apply to licences granted under section 38A (‘Additional commercial television licences in single markets’) or 38B (‘Additional commercial television licences in 2-station markets’) of the BSA.
Proposed section 61CY would introduce a new 3-point category under the local programming points system for licences affected by a trigger event. Under the points system in proposed section 61CY, each minute of local news programming that depicts people, places or things in the relevant local area (ie. is filmed in the local area) will be allocated 3 points (item 1 in the table in proposed subsection 61CY(3)). The local programming points system will otherwise largely replicate the current material of local significance points system under the Broadcasting Services (Additional Television Licence Condition) Notice 2014.

**Division 5D—Local programming requirements for regional commercial television broadcasting licensees**

**Proposed section 61CU – Definitions**

Proposed section 61CU inserts various definitions that are used in Division 5D.

**Proposed section 61CV – Trigger event**

Proposed section 61CV would set out when a ‘trigger event’ occurs in relation to a regional commercial television broadcasting licence for the purposes of Division 5D. A trigger event will occur where a person starts to be in a position to control a commercial television broadcasting licence and, immediately after that event, is in a position to control two or more commercial television broadcasting licences (including at least one regional commercial television broadcasting licence) with a combined licence area population exceeding 75 per cent of the population of Australia.

In those circumstances the event is a trigger event for each regional commercial television broadcasting licence in the group, and each such licensee will be subject to additional local programming requirements under proposed sections 61CW (for regional aggregated commercial television broadcasting licensees) or 61CX (for regional non-aggregated commercial television broadcasting licensees) which will commence six months after the trigger event.

**Proposed section 61CW – Local programming requirements for regional aggregated commercial television broadcasting licensees**

Proposed section 61CW would set out the local programming obligations that will apply to regional aggregated commercial television broadcasting licences.

The operation of proposed section 61CW in relation to a particular regional aggregated commercial television broadcasting licence will depend on whether a trigger event has occurred in relation to that licence, and when it has occurred.

**Trigger event – ongoing requirements**

Proposed subsection 61CW(1) sets out ongoing requirements that will apply to each timing period that begins more than six months after a trigger event. For each such timing period to which the subsection applies, the licensee will be required to broadcast, to each local area, material of local significance in order to accumulate at least:

- 900 points in each timing period; and
• 120 points in each week included in a timing period.

The 900 point requirement equates to an average of 150 points per week.

Trigger event – transitional arrangements

Proposed subsection 61CW(2) sets out transitional requirements that will apply to each timing period that: begins before the end of the six month period following the trigger event (proposed subparagraph 61CW(2)(c)(i)); does not end before the trigger event (proposed subparagraph 61CW(2)(c)(ii)); and begins more than six months after the commencement of the subsection (proposed subparagraph 61CW(2)(c)(iii)).

For each timing period to which proposed subsection 61CW(2) would apply, the licensee subject to the trigger event will be required to broadcast, to each local area, material of local significance in order to accumulate at least:

• 720 points in each timing period; and
• 90 points in each week included in a timing period.

These levels equate to an average of 120 points per week (equivalent to the current requirements).

This transitional arrangement is intended to cover timing periods that occur between the end of the six months after Royal Assent and before the end of the six months after a trigger event. Where timing periods commence in this period the licensee will be required to meet the requirements of subsection 61CW(2).

Note that for timing periods beginning within six months of Royal Assent the licensee will be required to comply with the current requirements under section 43A, and the Broadcasting Services (Additional Television Licence Condition) Notice 2014, and for timing periods beginning more than six months after a trigger event the licensee will be required to meet the new ongoing requirements in proposed subsection 61CW(1)).

Proposed subsection 61CW(2) would insert a note to clarify that the Broadcasting Services (Additional Television Licence Condition) Notice 2014 imposes local programming requirements for a timing period that begins before the end of the period of six months beginning at the commencement of the subsection.

No trigger event

Proposed subsection 61CW(3) would set out local programming requirements for licensees not subject to a trigger event. In that case the licensee will be required to broadcast, to each local area, during any timing period that begins more than six months after Royal Assent, material of local significance in order to accumulate at least:

• 720 points in each timing period; and
• 90 points in each week included in a timing period.

These levels equate to an average of 120 points per week (equivalent to the current requirements).
Proposed subsection 61CW(3) would also insert a note to clarify that the *Broadcasting Services (Additional Television Licence Condition) Notice 2014* imposes local programming requirements for a timing period that begins before the end of the period of six months beginning at the commencement of the subsection.

**Proposed section 61CX – Local programming requirements for regional non-aggregated commercial television broadcasting licensees**

Proposed section 61CX sets out the local programming obligations that will apply to regional non-aggregated commercial television broadcasting licences that are affected by a trigger event under section 61CV.

In the circumstance that a regional non-aggregated commercial television broadcasting licence is affected by a trigger event, the local programming obligations set out in proposed section 61CX will apply to timing periods that commence after six months following the occurrence of the trigger event.

The local programming obligations require an affected licensee to broadcast, to each local area, material of local significance in order to accumulate at least:

- 360 points in each six week timing period; and
- 45 points in each week in the timing period.

These levels equate to an average of 60 points per week.

Commercial television broadcasting licences granted under section 38A or 38B of the BSA are not subject to the local programming obligations set out in proposed subsection 61CX(1) (see proposed subsection 61CX(2)). Section 38A and 38B licences are allocated by the ACMA to existing licensees to ensure that regional audiences receive all three main television networks, where there are less than three broadcasters in the licence area. To place local programming obligations on section 38A and 38B licences would represent an unrealistic financial burden on the original ‘parent’ broadcaster(s) in each regional licence area.

**Proposed section 61CY – Points system**

Proposed section 61CY would set out the points system that would apply for the local programming obligations under sections 61CW and 61CX. This points system would operate similarly to the current points system for regional aggregated commercial television broadcasting licences under section 43A of the BSA and the *Broadcasting Services (Additional Television Licence Condition) Notice 2014* made by the ACMA.

Proposed subsection 61CY(1) would set out the ‘eligible periods’ for accumulating points (from 6:30 am to midnight on Monday to Friday, and from 8:00 am to midnight on Saturday and Sunday).

Proposed subsection 61CY(2) would set out the ‘timing periods’ during which points are calculated. Timing periods are periods of 6 weeks between the first Sunday in February of a year and the end of the 42nd week after the first Sunday in February (paragraphs (a) and (b)). The period between the end of the 42nd week after the first Sunday in February and the start of the first Sunday in February of the following year is also a timing period (paragraph (c)).
Proposed subsection 61CY(3) would provide a table that sets out how material of local significance accumulates points in a local area, subject to subsections 61CY(4) to (8).

Proposed subsections 61CY(4) to (8) would provide limitations on how points may be accumulated. These limitations reflect current arrangements under the Broadcasting Services (Additional Television Licence Condition) Notice 2014.

Proposed subsection 61CY(4) would set out the period during which points are not able to be accumulated for the purposes of the timing period described in paragraph 61CY(2)(c).

Proposed subsection 61CY(5) would provide that not more than 50 per cent of the points accumulated in a local area during a timing period is to be attributable to material that relates directly to the licensee’s licence area. Proposed subsection 61CY(6) provides a modified limitation for service licence numbers 104 and 106. Proposed subsections 61CY(5) and (6) relate to table items (4) and (5) in subsection 61CY(3). These licences relate to the Regional Victoria aggregated licence area and reflect the current situation where service licence numbers 104 and 106 are only required to serve two out of the four identified local areas, whereas other licensees for Regional Victoria are required to serve all four local areas.

Proposed subsections 61CY(7) and (8) would provide limitations on the accumulation of points in a local area in respect of community service announcements. Points may be accumulated for up to five broadcasts of a community service announcement in a local area, but not more than 10 per cent of the points accumulated in a local area during a timing period can be attributable to material of local significance in the form of community service announcements.

Proposed subsections 61CY(9) and (10) would enable the local programming determination (made by the ACMA under section 61CZ) to modify the timing period arrangements under proposed subsection 61CY(2) or (4) in respect of a regional non-aggregated commercial television broadcasting licence, provided the relevant licensee has given its written consent to the modification. Proposed subsections 61CY(9) and (10) are intended to provide flexibility in the application of the local programming requirements, to ensure that they can be applied in a way that is fair and workable (particularly where new licensees are becoming subject to these requirements for the first time). The consent of the affected licensee is required to ensure that the ACMA would not modify the applications of proposed subsection 61CY(2) or (4) to the detriment of the licensee.

Proposed section 61CZ – Local programming determination

Proposed section 61CZ provides for the ACMA, by legislative instrument, to make a local programming determination. The determination will prescribe various matters required or permitted to be prescribed and relevant to the operation of the local programming requirements in proposed Division 5D, which may include:

- the meaning of ‘local area’ in relation to particular regional commercial television broadcasting licence (proposed section 61CU);
- the meaning of ‘material of local significance’ in relation to a local area (proposed section 61CU);
additional requirements that must be met before news is eligible to receive 3 points per minute of material (subitem 1(d) of the points table at proposed subsection 61CY(3));

modifications to subsection 61CY(2), regarding the timing periods during which points are calculated (subsection 61CY(9)); and

modifications to subsection 61CY(4), regarding when points cannot be accumulated (subsection 61CY(10)).

Subsection 61CZ(2) requires the ACMA to take all reasonable steps to ensure that the local programming determination is in force at all times after 6 months from commencement.

Proposed section 61CZA – Record-keeping requirements

Proposed section 61CZA requires licensees subject to the requirements under proposed section 61CW or 61CX, as described above, to:

- make and keep for 30 days after the end of each timing period (or a longer period if directed by the ACMA) an audiovisual record of material of local significance broadcast by the licensee in its local areas (paragraphs 61CZA(2)(a) and (b));

- provide the record to the ACMA on request (paragraph 61CZA(2)(c));

- comply with any ACMA directions regarding how the record must be made or retained, or what it must cover (subsection 61CZA(3)).

It is intended that the ACMA’s power under proposed subparagraph 61CZA(2)(b)(ii) to direct a licensee to retain audiovisual records for more than the default 30 days would be exercised in circumstances where a complaint about local content had been made and additional time was required for the complaint to be properly investigated. This is consistent with current arrangements under the Broadcasting Services (Additional Television Licence Condition) Notice 2014. It is also intended that ACMA directions under proposed subsection 61CZA(3) as to the scope and type of records kept will provide a mechanism for setting out standard administrative requirements, rather than the final determination of an individual licensee’s rights or obligations.

Proposed section 61CZB – Licensee must submit compliance reports

Proposed section 61CZB requires a licensee of a regional commercial television broadcasting licences subject to a trigger event to provide two compliance reports to the ACMA, each covering a 12-month period. The first report must cover the licensee’s compliance with the local programming requirements in Division 5D during the 12-month period commencing six months after the trigger event, while the second report must cover compliance during the subsequent 12-month period. Each report must be provided to the ACMA within 28 days of the end of the relevant reporting period.

The reports will enable the ACMA to be satisfied that a licensee is properly complying with the new arrangements before the reporting obligation ceases. The first report may also assist in providing information for the review of local programming requirements under proposed section 61CZC.
The ACMA will set out a form which licensees must use for the provision of compliance reports and which specifies the information that the ACMA requires to be included in such reports (subsection 61CZB(4)).

Proposed section 61CZC – Review of local programming requirements

Proposed section 61CZC would require the ACMA to conduct a review of the operation of Division 5D; the associated licence condition at paragraph 7(2)(ba) of Schedule 2; and the local programming determination. The ACMA must prepare and provide a report to the Minister and the Minister must table the report in each House of the Parliament within 15 sitting days.

Proposed section 61CZD – Minister may direct the ACMA about the exercise of its powers

Proposed section 61CZD would provide for the Minister to direct the ACMA by legislative instrument about the exercise of powers conferred on it by Division 5D (other than section 61CZC relating to the statutory review of local programming requirements). The ACMA would be required to comply with such a direction (proposed subsection 61CZD(2))

Item 2 – After paragraph 7(2)(b) of Schedule 2

Item 2 would add a new standard licence condition 7(2)(ba) to subclause 7(2) of Schedule 2 to the BSA, applying to all commercial television broadcasting licences. The new condition requires licensees to comply with local programming requirements under new Division 5D.

The new licence condition is added to subclause 7(2), consistent with the approach taken elsewhere in the BSA in relation to the licence condition requiring regional commercial radio broadcasting licensees to comply with Division 5C of Part 5 (local news and information). Regulatory options available to the ACMA to ensure compliance with the new licence condition in paragraph 7(2)(ba) of Schedule 2 include remedial directions, enforceable undertakings, licence suspension (for up to three months) and/or licence cancellation.

Part 2—Abolition of old local programming requirements

Broadcasting Services Act 1992

Item 3 – Section 43A

Item 3 would repeal section 43A of the BSA, which sets out requirements for the provision of material of local significance by regional aggregated commercial television broadcasting licensees. These obligations are no longer necessary given the new local programming requirements set out in Part 1 of Schedule 3 to the Bill. The repeal will occur six months after Royal Assent.

Item 4 – Revocation of the Broadcasting Services (Additional Television Licence Condition) Notice 2014

Item 4 would provide that the ACMA is taken to have revoked the Broadcasting Services (Additional Television Licence Condition) Notice 2014 immediately after the commencement of this item, and makes clear that the notification and other requirements in subsections 43(2) and 43(3) of the BSA do not apply to the revocation.
Subitem 4(3) is a transitional provision that preserves the effect of the *Broadcasting Services (Additional Television Licence Condition) Notice 2014* in relation to material broadcast during a timing period that began before the commencement of the item (or a week included in such a timing period) as if the revocation had not happened.
SCHEDULE 4—ANTI-SIPHONING

Part 1—Amendments

Broadcasting Services Act 1992

Item 1 – Subsection 115(1AA)

Subsection 115(1) of the BSA allows the Minister to give notice, by legislative instrument (an ‘anti-siphoning notice’) of events that should, in the Minister’s opinion, be available free to the general public (‘anti-siphoning events’). Listing of an event on the anti-siphoning notice triggers a condition on subscription television broadcasting licences; paragraph 10(1)(e) of Schedule 2 to the BSA. This condition prohibits subscription television licensees from acquiring the right to televise the anti-siphoning event on a subscription television broadcasting service, unless:

- a national broadcaster has acquired the right to televise the event on any of its broadcasting services; or
- commercial television broadcasters (other than section 38C or subsection 40(1) licensees) with more than 50% Australian population reach, have the right to televise those events on their services.

Subsection 115(1AA) provides that anti-siphoning events are taken to have been removed from the anti-siphoning notice 2,016 hours (i.e. 12 weeks) before the start of the event (i.e. ‘automatically delisted’), unless the Minister specifies otherwise in a legislative instrument registered before that time. This has the effect of allowing subscription television broadcasting licensees to acquire the rights to televise the event on a subscription television broadcasting service from the time of automatic delisting onwards. Subsection 115(2) also allows the Minister to remove an event from the anti-siphoning notice, by way of legislative instrument, at any time.

Item 1 of Schedule 4 to the Bill would amend subsection 115(1AA) to extend the time at which anti-siphoning events are taken to have been removed i.e. ‘automatically delisted’ from an anti-siphoning notice from 2,016 hours to 4,368 hours (i.e. to 26 weeks). This is intended to bring the provision more in line with the commercial reality of television rights acquisition and allow subscription television broadcasters greater flexibility to acquire the rights to events that free-to-air broadcasters do not wish to acquire.

Item 2 – Paragraph 7(1)(ob) of Schedule 2

Paragraph 7(1)(ob) of Schedule 2 to the BSA requires commercial television broadcasting licensees to comply with any restrictions on the televising of anti-siphoning events imposed by a clause of Division 1 of Part 4A of Schedule 4 to the BSA that apply to the licensee.

Item 2 of Schedule 4 to the Bill would repeal this paragraph, consequential to amendments proposed to be made by items 5-8 of Schedule 4 to the Bill, which would remove all the relevant restrictions.
Part 4A of Schedule 4 to the BSA imposes restrictions on the televising of anti-siphoning events. Specifically, clauses 41E, 41FA, 41K and 41LA restrict commercial television licensees and national broadcasters who provide SDTV or HDTV multi-channelled television broadcasting services from televising anti-siphoning events (or part thereof) on their ‘secondary’ services, unless they have previously televised the event (or relevant part thereof) on their ‘primary’ service in the licence area, or they will be televising the event (or relevant part thereof) simultaneously on their primary and secondary services.

At the time digital multi-channelling was introduced, these provisions sought to ensure the continued accessibility of anti-siphoning events by viewers who were still only able to receive analog signals and could not receive free-to-air broadcasters’ secondary, digital channels. However, following the completion of digital switchover in 2013, this rule is no longer necessary. With all free-to-air broadcasters operating digital services, the rule does little more than impede free-to-air broadcasters from optimising the coverage of anti-siphoning events to the benefit of audiences across the country.

Items 5-8 of Schedule 4 to the Bill would repeal clauses 41E, 41FA, 41K and 41LA to allow free-to-air broadcasters greater flexibility to televise anti-siphoning events they have acquired rights to on their multi-channels in an optimal manner. Item 3 would amend the simplified outline in clause 1 of Schedule 4 to the BSA to reflect the proposed removal of these restrictions.

Part 4A also contains provisions allowing the ACMA to declare a specified service to be a broadcaster’s primary service, and requiring national broadcasters to declare a specified service to be their primary service. These provisions would remain unaffected as the declaration of primary services is relevant to other parts of the BSA. Item 4 of Schedule 4 to the Bill would replace the heading of Part 4A of Schedule 4 to the BSA to reflect that the only provisions that would remain in the Part relate to the declaration of primary services.

**Broadcasting Services (Events) Notice (No.1) 2010**

**Item 9 – Schedule**

Subsection 115(1) of the BSA allows the Minister to specify events which should be available for free to the general public, and as a result, prevents subscription television broadcasters from acquiring the rights to televise these events until free-to-air broadcasters have had sufficient opportunity to do so. The Schedule to the Broadcasting Services (Events) Notice (No. 1) 2010 currently contains the list of events which the Minister has specified for the purposes of subsection 115(1) (‘the anti-siphoning list’).

Item 9 of Schedule 4 to the Bill would repeal and replace the Schedule to the anti-siphoning notice to reduce the number of events on the list. Events which would be removed from the list are those which have a history of not being acquired by free-to-air broadcasters, or having been acquired but having been given poor coverage or having had low viewership, and events
which do not have a degree of ‘national significance’ (e.g. sporting events held overseas that do not involve an Australian representative individual or team).

The removal of these types of events from the list would allow the market greater freedom in relation to the broadcasting of these events, and may result in the better coverage of some events which have received poor coverage in the past. Iconic events of international significance would be retained on the list, despite the fact they may not always involve Australian representatives, such as every event held as part of the Summer and Winter Olympic Games and Commonwealth Games, and the final of the FIFA World Cup.

The proposed amendments to the list are not intended to limit the scope of what the Minister may specify should be available for free to the general public and include on the anti-siphoning list under section 115 of the BSA in future.

Part 2—Transitional

Item 10 – Transitional—subsection 115(1AA) of the Broadcasting Services Act 1992

Item 10 clarifies the application of item 1 of Schedule 4 to the Bill, and provides a transitional rule in relation to events that:
- are specified in the notice under subsection 115(1) of the BSA before the commencement of the item and still specified in the notice at that commencement; or
- are specified in a notice under subsection 115(1) of the BSA at or after the commencement of that item.

Subitem 10(1) would remove any doubt that the new 26-week automatic delisting period will apply to all events listed in the anti-siphoning notice which have not already been either automatically delisted under the current 12-week rule, or expressly removed by the Minister under subsection 115(2) of the BSA. The proposed new 26-week automatic delisting period would apply both to events on the list at the time of commencement of item 1, and to events added at a later time.

However, where the proposed new 26-week automatic delisting period would result in an event being taken to have been delisted prior to commencement of the Bill, subitem 10(2) would have the effect that events of this kind are delisted upon commencement of item 1 (provided the Minister has not taken action under subsection 115(1AA) of the BSA to override automatic delisting).

The following table summarises the relevant automatic delisting dates for events on the anti-siphoning list that would apply as a result of the amendment proposed to be made by item 1.

<table>
<thead>
<tr>
<th>Start Date for Event</th>
<th>Automatic Delisting Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>More than 26 weeks after commencement.</td>
<td>The new automatic delisting period applies, and the event will be delisted 26 weeks prior to the start date.</td>
</tr>
<tr>
<td>Less than 26 weeks after commencement, but more than 12 weeks after commencement.</td>
<td>The event will be automatically delisted from commencement.</td>
</tr>
<tr>
<td>Less than 12 weeks after commencement.</td>
<td>Events of this kind would have been subject to the existing automatic delisting provisions (subsections 115(1AA) and (1B) of the BSA), and will not be affected by the amendments.</td>
</tr>
</tbody>
</table>
SCHEDULE 5—ABOLITION OF LICENCE FEES AND DATACASTING CHARGES

Part 1—Repeals

Division 1 – Repeals

Division 1 of Part 1 to Schedule 5 would repeal three licence fee Acts and one charge Act which impose, respectively, annual licence fees and datacasting charges on commercial radio and television broadcasters. The proposed repeals are consistent with the Government’s announcement of 6 May 2017 and will have retrospective application. As the provisions operate to abolish certain taxes in respect of the 2016-17 financial year onwards, no negative impact arises from the retrospective application. The Division also consequentially repeals a set of Regulations made in reliance on section 217 of the BSA that provide for matters relating to the datacasting charge.

Broadcasting Services (Datacasting Charge) Regulations 2001

Item 1 – The whole of the Regulations

This item would repeal the whole of the Broadcasting Services (Datacasting Charge) Regulations 2001. The repeal of these Regulations would commence on the day after the Bill receives the Royal Assent.

Datacasting Charge (Imposition) Act 1998

Item 2 – The whole of the Act

This item would repeal the whole of the Datacasting Charge (Imposition) Act 1998. The repeal commences retrospectively on 1 July 2016.

Datacasting Transmitter Licence Fees Act 2006

Item 3 – The whole of the Act

This item would repeal the whole of the Datacasting Transmitter Licence Fees Act 2006. The repeal retrospectively commences on 1 January 2017.

Radio Licence Fees Act 1964

Item 4 – The whole of the Act

This item would repeal the whole of the Radio Licence Fees Act 1964. The repeal commences retrospectively on 1 January 2017. This means that for the 2016-17 financial period (or equivalent accounting period) onwards there will be no radio licence fees payable. Any existing regulations made under the Radio Licence Fees Act 1964 would have no legal force once the Act is repealed.
Television Licence Fees Act 1964

Item 5 – The whole of the Act

This item would repeal the whole of the Television Licence Fees Act 1964. The repeal commences retrospectively on 1 January 2017. This means that for the 2016-17 financial period (or equivalent accounting period) onwards there will be no television licence fees payable. Any existing regulations made under the Television Licence Fees Act 1964 would have no legal force once the Act is repealed.

Division 2 – Application provisions

Division 2 of Part 1 to Schedule 5 to the Bill sets out four application provisions. The effect of these application provisions is that the abolition of the specified Acts and regulations do not apply to past financial years. As such, the repeals under Division 1 of Part 1 to Schedule 5 are qualified.

Item 6 – Application – repeal of the Broadcasting Services (Datacasting Charge) Regulations 2001

Item 6 would provide that despite the repeal of the Broadcasting Services (Datacasting Charge) Regulations 2001, the regulations will continue to apply in relation to a charge imposed on a transmitter licence in respect of the financial year beginning 1 July 2015 or an earlier financial year and chargeable datacasting services provided before 1 September 2016. This item commences on the day after the Bill receives the Royal Assent.

Item 7 – Application – repeal of the Datacasting Charge (Imposition) Act 1998

Item 7 would provide that the repeal of the Datacasting Charge (Imposition) Act 1998 does not apply to a charge imposed on a transmitter licence in respect of the financial year beginning 1 July 2015 or an earlier financial year.

Item 8 – Application – repeal of the Datacasting Transmitter Licence Fees Act 2006

Item 8 would provide that the repeal of the Datacasting Transmitter Licence Fees Act 2006 does not apply to a fee payable by a licensee on or before 31 December 2016. The date of 31 December 2016 represents the date upon which datacasting transmitter licence fees relating to the 2015-16 financial year (and equivalent accounting period) were due and payable under the Act (refer section subsection 8(1) of the Act).

Item 9 – Application – repeal of the Radio Licence Fees Act 1964

Item 9 would provide that the repeal of the Radio Licence Fees Act 1964 does not apply to a fee payable by a licensee on or before 31 December 2016. The date of 31 December 2016 is the date upon which radio licence fees relating to the 2015-16 financial year (or equivalent accounting period) were due and payable under the Act (refer subsection 6(2) of the Act).

Item 10 – Application – repeal of the Television Licence Fees Act 1964

Item 10 would provide that the repeal of the Television Licence Fees Act 1964 does not apply to a fee payable by a licensee on or before 31 December 2016. The date of 31 December 2016 is the date upon which television licence fees relating to the 2015-16 financial year (and
equivalent accounting period) were due and payable under the Act (refer section subsection 6(2) of the Act).

Items 8, 9 and 10 each would have retrospective commencement dates of 1 January 2017, in recognition that the liability day for the licence fees relating to the 2015-16 financial year (or equivalent accounting period) was 31 December 2016.

**Part 2—Amendments**

Part 2 of Schedule 5 to the Bill sets out a series of consequential amendments to Part 14A of the BSA and the ACMA Act, which are necessary as a result of the repeal of various Acts relating to licence fees and datacasting charges in Division 1 of Part 1 of Schedule 5. The items in this Schedule commence on the day after the Bill, once passed, receives the Royal Assent.

**Division 1 – Amendments**

*Australian Communications and Media Authority Act 2005*

Section 10 of the ACMA Act sets out the ACMA’s broadcasting, content and datacasting functions. Several subparagraphs under subsection 10(1)(o) of the ACMA Act specify other functions as conferred on the ACMA by the various licence fees Acts which are to be repealed by Division 1 of Part 1 of Schedule 5.

**Item 11—Subparagraph 10(1)(o)(iv)**

Item 11 would provide for the repeal of subparagraph 10(1)(o)(iv), which listed the RLF Act. This change is consequential to item 4 of Schedule 5.

**Item 12—Subparagraph 10(1)(o)(v)**

Item 12 would provide for the removal of the word ‘or’ from subparagraph 10(1)(o)(v).

**Item 13—Subparagraph 10(1)(o)(vii) and (viii)**

Item 13 would provide for the repeal of subparagraph 10(1)(o)(vii) and (viii), which listed the TLF Act and the DTLF Act. These changes are consequential to items 4 and 5 of Schedule 5.

*Broadcasting Services Act 1992*

**Item 14—Subsection 204(1) (table items dealing with subsection 205B(2), subsection 205C(2) and subsection 205D(4))**

Subsection 204(1) of the BSA provides that applications can be made to the Administrative Appeals Tribunal in relation to certain decisions made under the BSA. Item 14 would repeal from the table at subsection 204(1) of the BSA the following provisions which are to be repealed by Item 15 of this Schedule (as discussed below):

- subsection 205B(2) (decision to permit an accounting period ending on another day other than 30 June);
• subsection 205C(2) (decision to issue a notice relating to the amount of licence fee paid); and

• subsection 205D(4) (decision that no additional fee be remitted or that part only of the additional fee be remitted).

Item 15 – Part 14A

Item 15 would repeal Part 14A of the BSA. Part 14A relates to accounts and payment of licence fees, and provides requirements for commercial television and commercial radio broadcasting licensees, and datacasting transmitter licensees, to keep accounts and to notify ACMA of the way in which licence fees are calculated. It also provides for penalties to be imposed on commercial television and commercial radio broadcasting licensees and datacasting transmitter licensees for non-payment of licence fees. With the abolition of the licence fees and datacasting charges, there is no further requirement for Part 14A. However, in respect of prior year fees, special application provisions are included at Items 22-25 to preserve the operation of Part 14A in respect of prior years when licence fees were payable.

Item 16 – Paragraph 7(1)(ia) of Schedule 2
Item 17 – Paragraph 8(1)(ha) of Schedule 2

Schedule 2 of the BSA sets out standard and special conditions of broadcasting licences, including commercial television broadcasting licences and commercial radio broadcasting licences. Paragraph 7(1)(ia) imposes the condition that commercial television broadcasting licensees will comply with section 205B. Item 16 repeals paragraph 7(1)(ia) of the BSA. Similarly, paragraph 8(1)(ai) imposes the condition that commercial radio broadcasting licensees will comply with section 205B. Item 14 repeals that 8(1)(ha) of the BSA. Items 16 and 17 are consequential to the repeal of Part 14A of the BSA by Item 15.

Item 18 – Clause 1 of Schedule 4

Item 18 would omit from the simplified outline text relating to the determination by the ACMA of datacasting charge and the imposition of late penalties. This change is consequential to the repeal of Part 6 of Schedule 4 (refer Item 19).

Item 19 – Part 6 of Schedule 4

As a result of the repeal of the Datacasting Charge (Imposition) Act 1998, the collection arrangements for the charges set out in Part 6 of Schedule 4 to the BSA are no longer required and would be repealed in full by Item 19.

Radiocommunications Act 1992

Item 20 – Section 5 (definition of datacasting transmitter licence fee)

Item 20 would provide for the repeal of the definition of a datacasting transmitter licence fee. This term is now redundant as a result of the repeal of the Datacasting Transmitter Licence Fees Act 2006.

Item 21 – Paragraphs 109A(1)(ba) and (bb)
Section 109A sets out conditions of datacasting transmitter licences. Item 21 would provide for the repeal of paragraph 109A(1)(ba) (which covered a condition to pay amounts of channel A datacasting transmitter licence fee) and paragraph 109A(1)(bb) (which covered a condition that channel A datacasting transmitter licences must comply with the requirements of section 205BA of the BSA).

Division 2 – Application provisions

Item 22 – Application – collection of licence fees

Subitem 22(1) would provide that despite the repeals of section 205A, 205C, and 205D of the BSA by Schedule 5 to the Bill, those sections continue to apply in relation to fees imposed under section 5 of the Radio Licence Fees Act 1964, section 5 of the Television Licence Fees Act 1964 and section 7 of the Datacasting Transmitter Licence Fees Act 2006. The effect of this application provision is that although the various specified Acts are repealed, the whole of sections 205A, 205C, and 205D of the BSA (which relate to accounts and payment of licence fees) will continue to have legal force and effect. This would enable the ACMA, among other things, to issue at any point in the future, assessment notices (or variations to past assessment notices) in respect of financial years in which the fees were payable.

Subitem 22(2) would have the effect of preserving the operation of sections 205A and 205B of the BSA (other than paragraph 205B(1)(c)) in relation to accounts and records for 5 years after the end of the following:

- the 2012-2013 accounting period (or equivalent period);
- the 2013-2014 accounting period (or equivalent period);
- the 2014-2015 accounting period (or equivalent period); and
- the 2015-2016 accounting period (or equivalent period).

Subitem 22(4) defines the four accounting periods as the standard financial years which ends on 30 June 2013, 30 June 2014, 30 June 2015 and 30 June 2016, and any accounting period adopted by the licensee, in accordance with subsection 205B(2) of the BSA, in substitution for each of those four standards financial years. The four periods represent past financial years in which licence fees were payable.

Subitem 22(3) would have the effect of preserving the operation of section 204 of the BSA in relation to a decision made under repealed subsection 205C(2) or 205D(4) of the BSA.

The combined effect of Item 22 is that commercial broadcasters will continue to be required to retain accounts and records relating to the specified accounting periods, and provide them to the ACMA upon direction. This will assist the ACMA to continue to conduct compliance and enforcement activities in relation to fees paid or fee liability for past years.

Item 23 – Application – collection of datacasting charge

Item 23 would provide that despite the repeal of Part 6 of Schedule 4 to the BSA, any determination made under that Part and Part 6 itself will continue to apply in relation to a charge imposed by the Datacasting Charge (Imposition) Act 1998 on a transmitter licence in
respect of the financial year beginning 1 July 2015 or an earlier financial year. This preserves the operation of Part 6 and related determinations made in respect of past financial years in which the charge regime applied.
Division 3 – Refund of overpayments

Item 24 – Refund of overpayments of licence fees

Item 24 would provide that if there is an overpayment of a fee imposed under the following Acts, then the overpayment is to be refunded by the ACMA on behalf of the Commonwealth:

- section 5 of the *Radio Licence Fees Act 1964*;
- section 5 of the *Television Licence Fees Act 1964*; and
- section 7 of the *Datacasting Transmitter Licence Fees Act 2006*.

Item 25 – Refund of overpayments of datacasting charge

Item 25 would provide that if there is an overpayment of charge imposed under the (to be) repealed *Datacasting Charge (Imposition) Act 1998*, the overpayment is to be refunded by the ACMA on behalf of the Commonwealth. This provision would provide a safety net in the event that a commercial broadcaster pays a licence fee or datacasting charge in respect of the 2016-17 financial year (or equivalent accounting period) at any time before the Bill, once passed, receives the Royal Assent.
SCHEDULE 6—TAXATION AND TRANSITIONAL SUPPORT PAYMENTS

Part 1 – General Amendments

Australian Communications and Media Authority Act 2005

Item 1 – At the end of paragraph 9(h)
Item 2 – Subparagraph 10(1)(o)(ii)

Item 1 would amend paragraph 9(h) of the ACMA Act to add a subparagraph including a reference to Part 14AA of the BSA. Item 2 would make a consequential amendment to subparagraph 10(1)(o)(ii) of the ACMA Act to exclude Part 14AA of the BSA. These amendments, taken together, would provide that the ACMA’s functions relating to collection of the interim tax are spectrum management functions, rather than broadcasting, content and datacasting functions. This is because the proposed new tax relates to the use of the spectrum (broadcasting services bands).

Broadcasting Services Act 1992

Item 3 – Subsection 6(1)

Item 3 would provide for the insertion of two new definitions in subsection 6(1) of the BSA, the terms ‘interim tax’ and ‘transmitter licence’.

The term ‘interim tax’ refers to the new tax that would be imposed by the Commercial Broadcasting (Tax) Act 2017. The taxes that would be imposed by section 6 of that Act are imposed on the issue, anniversary, cessation and holding of transmitter licences that are associated with a commercial broadcasting licence. If this Bill is not enacted, the new interim tax would not be imposed (refer clause 3 of the Commercial Broadcasting (Tax) Bill 2017).

The term ‘transmitter licence’ would have the same meaning as it has in the Radcomms Act. A transmitter licence is an apparatus licence issued under that Act that authorises the operation of specified radiocommunications transmitters, or of radiocommunications transmitters of a specified kind. Commercial broadcasting services, and re-transmission of these services, are generally provided through the use of a radiocommunications transmitter licensed under the Radcomms Act.

Item 4 – Subsection 204(1) (after table item dealing with subsection 146D(4))

Item 4 would amend subsection 204(1) of the BSA. Part 14 of the BSA, and subsection 204(1) in particular, provides for certain decisions under the BSA to be reviewable by the Administrative Appeals Tribunal (AAT). The amendment in this item would provide that a refusal under proposed new subsection 205AF(3) (described below) to remit the whole or part of a late payment penalty is one of these reviewable decisions. The person liable to pay the penalty is the only person who may make an application for the review of such a decision.

Review by the AAT would be conducted in accordance with the Administrative Appeals Tribunal Act 1975, noting in particular Part IV of that Act. More information about the AAT is available on its website at www.aat.gov.au.
Item 5 – After Part 14

Item 5 would insert a new Part 14AA – Collection and recovery of interim tax into the BSA. This new Part would cover new provisions related to the collection and recovery of the new interim tax, namely, new sections 205AA, 205AB, 205AC, 205AD, 205AE, 205AF, and 205AG into the BSA. Proposed section 205AA would set out a simplified outline of new Part 14AA.

Proposed section 205AB—Assessments

Proposed section 205AB would impose an obligation on the ACMA to make a written assessment on, or as soon as practicable after, the below-mentioned date(s) in circumstances where interim tax is imposed, and to notify the person to whom that assessment relates. It would also enable the ACMA to vary assessments it has made.

Proposed subsection 205AB(1) would provide that if interim tax is payable by a person in relation to the issue of a transmitter licence, the ACMA must make a written assessment setting out the interim tax payable by the person on the later of the following days (or as soon as practicable after):

- the day the licence was issued; or
- 1 December 2017.

Proposed subsection 205AB(2) would provide that that if interim tax is payable by a person in relation to the anniversary of a transmitter licence, the ACMA must make a written assessment setting out the interim tax payable by the person on the later of the following days (or as soon as practicable after):

- the anniversary; or
- 1 December 2017.

Proposed subsection 205AB(3) would provide that if interim tax is payable by a person in relation to a transmitter licence ceasing to be in force, the ACMA must make a written assessment setting out the interim tax payable by the person on the later of the following days (or as soon as practicable after):

- the day the licence ceased to be in force; or
- 1 December 2017.

Proposed subsection 205AB(4) would provide that that if interim tax is payable by a person in relation to the holding of a transmitter licence, the ACMA must make a written assessment setting out the interim tax payable by the person on (or as soon as practicable after) 1 December 2017.

The timing of the making and provision of the assessment required by these provisions, and proposed subsection 205AB(5) described below, is important because the due date for payment of a tax liability is determined by reference to when the copy of the ACMA’s assessment is given to the person (see new section 205AC). The date of 1 December 2017 has been chosen as it is expected that the ACMA will require time to update existing systems.
to calculate the new taxes and then issue assessments. It is anticipated that the ACMA will be in a position to make and issue assessments from 1 December 2017. After 1 December, the obligation on the ACMA to make and issue assessment will arise on the issue, anniversary or the cessation of the transmitter licence.

Notification of assessment

Proposed subsection 205AB(5) would require the ACMA to, as soon as practicable after making an assessment under this section of interim tax payable, give a copy of the assessment to the person to whom it relates. See proposed section 205AC below, which would provide that tax becomes due and payable on the 28th day after this is done.

Variation of assessment

Proposed subsections 205AB(6) and (7) would provide that the ACMA can vary an assessment made under this section by making alterations and additions as it thinks necessary even if the interim tax has already been paid in respect of an assessment. Unless the contrary intention appears, a varied assessment would be taken, for the purpose of this Part, to be an assessment under this section.

This power is intended to be used if there has been an error when calculating the tax liability for a holder, or former holder, of a transmitter licence. This power could also be used where there has been a variation to the licence that impacts on the amount of tax owed by the holder, or former holder, and that was not included in the original assessment.

Proposed section 205AC—When interim tax becomes due and payable

Proposed section 205AC would provide that interim tax become dues and payable on the 28th day after a copy of the assessment is given to the person to whom the assessment relates. Where a varied assessment is given to the person, the amount of the varied assessment is to become due and payable on the 28th day after a copy of the varied assessment is given to the person.

Proposed section 205AD—Recovery of interim tax

Proposed section 205AD would provide that interim tax is a debt due to the ACMA on behalf on the Commonwealth and that it may be recovered by the ACMA on behalf of the Commonwealth in the Federal Court, Federal Circuit Court, or a court of a State or Territory that has jurisdiction in relation to the matter.

Proposed section 205AE—Refund of overpayment of interim tax

Proposed section 205AE would provide that if there were to be an overpayment of interim tax, the overpayment would be refunded by the ACMA on behalf of the Commonwealth. It is intended that this will be used in circumstances where the written assessment by the ACMA has resulted in an overpayment of tax by the person, it provides that the ACMA must, on behalf of the Commonwealth, refund to the person the amount of the overpayment. For example, if the tax were assessed on the licence conditions which included a high power transmitter, but six months later, the licence was varied to reduce the power to a medium power transmitter, the ACMA can refund the difference in the tax liability.
Proposed section 205AF—Late payment penalty

Proposed section 205AF would provide for late payment penalties for amounts of interim tax that are not paid on time.

Proposed subsection 205AF(1) would provide that if an amount of interim tax that is payable by a person remains unpaid after the day on which it is due the person is liable to pay a penalty on the unpaid amount for each day until all of the interim tax has been paid (called the late payment penalty).

Proposed subsection 205AF(2) would provide that the late payment penalty rate is 20 per cent per year, or such lower rate as the ACMA determines in writing for the purposes of this subsection. The penalty rate will be imposed on a daily basis.

Proposed subsection 205AF(3) would provide that the ACMA may remit the whole or part of a late payment penalty that person is liable to pay under subsection 2. This is a discretionary power for the ACMA to determine whether, in the circumstances of the particular case, to remit the whole or part of the late payment penalty. For example, the ACMA may decide to exercise this power where the delayed payment of the penalty were due to circumstances outside of the control of the licence holder. A refusal to remit the whole or part of a late payment penalty would be reviewable by the AAT, due to the consequential amendment to section 204 of the BSA by item 4 of this Schedule.

Proposed subsection 205AF(4) would provide that the late payment penalty for a day is due and payable at the end of that day. This makes it clear that the late payment penalty is worked out on a daily basis, and is due and payable at the end of that day.

Proposed subsection 205AF(5) would provide that a late payment penalty is a debt due to the ACMA on behalf on the Commonwealth and it may be recovered by the ACMA on behalf of the Commonwealth in the Federal Court, Federal Circuit Court, or a court of a State or Territory that has jurisdiction in relation to the matter.

Proposed subsection 205AF(6) would provide that if the amount of the late payment penalty for a day is not an amount of whole dollars, the late payment penalty is rounded to the nearest dollar (rounding 50 cents upwards). This is a mechanical provision which ensures that late payment penalty amounts are to be calculated to the nearest dollar.

Proposed subsection 205AF(7) would require the ACMA to refund (on behalf of the Commonwealth) any overpaid amounts of the late payment penalty.

Proposed subsection 205AF(8) would provide that a determination under subsection 205AF(2) is a legislative instrument. A determination made under subsection 205AF(2) will be subject to the disallowance regime in Part 2 of Chapter 3 of the LA.

Proposed section 205AG—Anti-avoidance

Proposed section 205AG would provide for anti-avoidance measures in relation to the interim tax.

Proposed subsection 205AG(1) would provide that the holder of a transmitter licence must not enter into, begin to carry out, or carry out a scheme if it would be concluded that the holder of the transmitter licence did so for the sole or dominant purpose of avoiding the
application of the Act imposing the interim tax. The avoidance could relate either to the holder of the transmitter licence or to the holder of any other transmitter licence. The concept of a scheme is defined broadly by proposed subsection 205AG(4), as explained below. This prohibition would apply to the holder acting alone or together with one or more other persons.

Civil penalty provision

Proposed subsection 205AG(2) would provide that subsection (1) is a civil penalty provision. Civil penalty provisions under the BSA are enforceable under existing Part 14B of the BSA, which provides for the payment of pecuniary penalties for contraventions of such provisions on an order by the Federal Court. The penalty arrangements for this civil penalty provision would be provided for by proposed subsection 205F(5A), to be inserted by item 9, as described below.

Existing section 205E of the BSA provides a further civil penalty provision for ancillary contraventions of proposed subsection 205AG(1). Subsection 205E(1) is also a civil penalty provision. Proposed subsection 205F(5B) would provide that the same penalty would be payable for a contravention of section 205E of the BSA as would be payable if the person had contravened proposed section 205AG(1). Subsection 205E(1) would relevantly prohibit a person from any or all of the following:

- attempting to contravene proposed subsection 205AG(1);
- aiding, abetting, counselling or procuring a contravention of proposed subsection 205AG(1);
- inducing, whether by threats or promises or otherwise, a contravention of proposed subsection 205AG(1);
- being in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of proposed subsection 205AG(1);
- conspiring with others to effect a contravention of proposed subsection 205AG(1).

Validity of transactions

Proposed subsection 205AG(3) would provide that a contravention of subsection 205AG(1) does not affect the validity of any transaction. This provision reflects a common feature of specific tax anti-avoidance provisions, namely, that their application is premised upon the transactions under the scheme being effective other than for the operation of proposed subsection 205AG.

Scheme

Proposed subsection 205AG(4) would provide that a scheme, for the purposes of this section, means any agreement, arrangement, understanding, promise or undertaking, whether express or implied, as well as any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

The Government will actively monitor compliance with the interim tax, and the use of the radiocommunications licensing framework. If it is determined to be necessary, further measures may be taken at a later date to preclude arrangements (including the use of
transmitter licences authorising the re-transmission of broadcasting services) that may form part of arrangements to avoid or minimise the interim tax.

**Item 6 – Subsection 205F(4)**
**Item 7 – Subsection 205F(5)**
**Item 8 – After subsection 205F(5)**

Items 6 to 8 would amend section 205F of the BSA to provide for the maximum pecuniary penalties payable by a person who contravenes the interim tax anti-avoidance civil penalty provision in proposed subsection 205AG(1) described above, or ancillary contraventions of that provision under existing subsection 205E(1) of the BSA.

Subsections 205F(4) and (5) of the BSA provide for the maximum pecuniary penalty for the contravention of civil penalty provisions under that Act, which is tied to the corresponding criminal offence provision. As there is no offence provision that corresponds with proposed subsection 205AG(1), item 8 would insert two subsections, namely proposed subsections 205F(5A) and (5B), into section 205F to provide directly for the maximum penalties for contraventions and ancillary contraventions of that standalone civil penalty provision. Items 6 and 7 make consequential amendments to the existing penalty arrangements to carve out proposed subsection 205AG(1).

For both primary and ancillary contraventions, the maximum penalty for a body corporate is 2,000 penalty units, and the maximum for other persons is 400 penalty units. This mirrors the effect of subsection 4B(3) of the *Crimes Act 1914*, which applies to the penalties payable for offences under the BSA (eg breach of a licence condition) and accordingly the corresponding civil penalty provisions under that Act by virtue of subsections 205F(4) and (5).

In addition, the Federal Court is empowered to make penalty orders up to 200 per cent of the amount of any interim tax that has been avoided as a result of the scheme. This penalty may be imposed on holders of transmitter licensees who are found to have contravened proposed section 205AG and any other persons that have contravened section 205E(1) (ancillary contraventions), such as advisers, whether or not those persons have themselves avoided the tax.

*Radiocommunications Act 1992*

**Item 9 – Section 5**

Item 9 would amend section 5 of the Radcomms Act to insert a definition of ‘interim tax’, being the tax that would be imposed by the *Commercial Broadcasting (Tax) Act 2017*. The taxes imposed by section 6 of that Act are imposed on the issue, anniversary, cessation and holding of transmitter licences that are associated with a commercial broadcasting licence.

Due to the operation of section 3 of the RTC Act, the expression ‘interim tax’ would also have the same meaning for the purposes of that Act.

**Item 10 – After subsection 100(3B)**

Generally, licences for transmitting commercial broadcasting services in the broadcasting services bands are issued under section 102. However, in certain circumstances, licences for transmitting or re-transmitting these services are issued under section 100, for example, to self
help providers such as local government bodies which are providing the re-transmission for
the sole or principal purpose of obtaining or improving reception in a community located in
an area. Item 10 would insert two subsections into section 100 of the Radcomms Act, the first
comprising a new limit on the issue of certain transmitter licences under that section, and the
second comprising a definition for the purposes of the new limit.

Proposed subsection 100(3BA) would prohibit the ACMA from issuing a transmitter licence
under section 100 for transmitting a commercial broadcasting service if it has reasonable
grounds to believe the application for the licence is part of a scheme entered into or carried
out for the sole or dominant purpose of avoiding the application the Act imposing the interim
tax. However, this prohibition does not apply if the applicant satisfies the ACMA that the
application for the licence is not part of such a scheme.

Proposed subsection 100(3BB) would provide that a scheme, for the purposes of subsection
100(3BA), means any agreement, arrangement, understanding, promise or undertaking,
whether express or implied, as well as any scheme, plan, proposal, action, course of action or
course of conduct, whether unilateral or otherwise.

Schemes of this nature would also be prohibited by proposed section 205AG of the BSA
(refer item 6 above). The Government will actively monitor compliance with the interim tax,
and the use of the radiocommunications licensing framework. If it is determined to be
necessary, further measures may be taken at a later date to further preclude arrangements
(including the use of transmitter licences authorising the re-transmission of broadcasting
services) that may form part of arrangements to avoid or minimise the interim tax.

**Item 11 – After subsection 100(5)**

Item 11 would insert a new subsection 100(5A) into section 100 of the Radcomms Act. This
subsection would require the ACMA to have regard to certain matters when deciding whether
to issue a transmitter licence under section 100 authorising the operation of a
radiocommunications transmitter for transmitting a commercial broadcasting service. As
discussed above, licences for transmitting these services are generally only issued under
section 100 in certain limited circumstances (and are usually instead issued under section
102).

In relation to the issue of a transmitter licence which would authorise the operation of a
radiocommunications transmitter within a part of the spectrum designated under subsection
31(1) or (1A), and at a particular location, proposed subsection 100(5A) would require the
ACMA to consider whether:

- the commercial broadcaster previously operated a transmitter to transmit or re-transmit
  the commercial broadcasting service in the same location, or a location that is
  substantially similar to the particular location; and
- there is a commercial arrangement between the broadcaster and the applicant for the
  transmitter licence either for the application or the transmission of the commercial
  broadcasting service in the same, or a substantially similar, location.

This provision is intended to require the ACMA to consider whether the transmitter licence
would be used to transmit commercial broadcasting services in the broadcasting services
bands without having to pay the interim tax, even if this is not as part of a tax avoidance
scheme for the purposes of proposed subsection 100(3BA) and proposed section 205AG of the BSA. This recognises that there may be legitimate arrangements for the re-transmission of commercial broadcasting services by a person other than a broadcaster (e.g. blackspots).

The term ‘commercial arrangement’ is intended to be given its ordinary broad meaning, and will capture various types of arrangements between parties. It could capture arrangements, for example, where a commercial broadcaster makes some payment or non-monetary contribution to a party who would be eligible to apply for a re-transmission licence which is not subject to the interim tax in return for some commitment or undertaking by that other party in respect of the section 100 application. If it appears to the ACMA that the commercial arrangement was entered into for the purposes of avoiding or minimising the amount of tax payable under the Commercial Broadcasters (Tax) Act 2017, this may be a factor that weighs in favour of not issuing the transmitter licence.

These proposed additional two matters would be additional to a range of existing matters under section 100 to which the ACMA would have regard when deciding whether to issue a transmitter licence.

**Item 12 – At the end of paragraph 107(1)(c)**

Item 12 would amend section 107 of the Radcomms Act to add subparagraph 107(1)(c)(iii), to make obligations (if any) to pay amounts of interim tax a condition on transmitter licences. This is the same treatment afforded to obligations to pay apparatus licence tax (see subparagraph 107(1)(c)(ii)) that the interim tax is replacing.

Section 107 does not apply to transmitter licences issued under section 102 of the Radcomms Act. Accordingly, an equivalent condition is being placed on section 102 transmitter licences by the amendment to section 109 of that Act, as described below.

**Item 13 – At the end of paragraph 109(1)(b)**

Item 12 would amend section 109 of the Radcomms Act to add subparagraph 109(1)(b)(iii), making obligations (if any) to pay amounts of interim tax a condition on transmitter licences issued under section 102 of that Act. This is the same treatment afforded in respect of obligations to pay apparatus licence tax (see subparagraph 109(1)(b)(ii)) that the interim tax is replacing.

**Radiocommunications Taxes Collection Act 1983**

**Item 14 – After section 4**

Item 14 would insert proposed new section 4A into the RTC Act. This section would provide that the question whether a transmitter licence is ‘associated with a commercial broadcasting licence’ is to be determined in the same manner as that question is determined for the purposes of the Commercial Broadcasting (Tax) Act 2017. This expression is used to determine which licensees would be entitled to a pro-rated refund of tax paid in the transition from the transmitter licence tax to the interim tax, under proposed new sections 10C and 10D of the RTC Act.

**Item 15 – After subsection 7A(1A)**
Item 15 would insert a new subsection 7A(1B) into the RTC Act, to require the ACMA, on behalf of the Commonwealth, to refund any overpayments of penalties on unpaid tax. This provision is being inserted for consistency with proposed section 10B.

**Item 16 – After section 10A**

Item 16 would provide for additional collection arrangements in respect of certain transmitter licences associated with a commercial broadcasting licence for the transition from the transmitter licence tax to the interim tax. The item would insert proposed sections 10B, 10C, 10D and 10E into the RTC Act.

**Proposed section 10B—Refund of overpayments**

Proposed section 10B would provide that if there is an overpayment of tax collected under the RTC Act (relevantly, the transmitter licence tax), the overpayment is to be refunded by the ACMA on behalf of the Commonwealth.

From 1 July 2017, transmitter licence tax would no longer be imposed in relation to certain transmitter licences associated with a commercial broadcasting licence, as interim tax will be imposed instead. In the event that this Bill is enacted after 1 July 2017, any transmitter licence tax that has been imposed on or after that date, but before the enactment of this Bill, would be retrospectively terminated. Proposed section 10B would ensure that any amount of tax overpaid may be refunded.

**Proposed section 10C—Pro-rata refund of tax imposed on the issue of a transmitter licence**

Proposed sections 10C and 10D would provide for the pro-rata refund of transmitter licence tax paid in relation to the days after 1 July 2017 that a section 100 or 102 transmitter licence issued before that date is in force that relates to a commercial broadcasting service.

Proposed section 10C would provide for the refund of such licences where the tax was imposed on the issue of the licence. Proposed subsection 10C(1) would set out the criteria and the amount of the refund. The criteria are that:

- a transmitter licence was issued under section 100 or 102 of the Radcomms Act before 1 July 2017; and
- the transmitter licence is associated with a commercial broadcasting licence; and
- the transmitter licence was in force at the start of 1 July 2017; and
- transmitter licence tax was imposed (upfront) by subsection 6(1), (2),or (7) of the R(TLT) Act on the issue of the licence; and
- the tax has been paid.

The amount of the refund is to be worked out using the following formula, and paid by the ACMA on behalf of the Commonwealth:
For the purposes of this formula, the expression ‘days in post-1 July 2017 period’ means the number of days in the period beginning at the start of 1 July 2017 and ending at the end of the period of the transmitter licence. Accordingly, the refund is pro-rated as the proportion of the tax paid that relates to the days that the licence was in force from 1 July 2017.

Proposed subsection 10C(2) would set out the criteria and the calculation for the refund where a tax was imposed on the issue of a licence under subsections 6(3) or (8) of the R(TLT)Act. The criteria are that:

- a transmitter licence was issued under section 100 or 102 of the Radcomms Act before 1 July 2017; and
- the transmitter licence is associated with a commercial broadcasting licence; and
- the transmitter licence was in force at the start of 1 July 2017; and
- transmitter licence tax was imposed by subsection 6(3) or (8) of the R(TLT) Act on the issue of the licence; and
- the tax has been paid.

The amount of the refund is to be worked out using the following formula, and paid by the ACMA on behalf of the Commonwealth:

\[
\frac{\text{Days in post-1 July 2017 period}}{\text{Days in period of transmitter licence}} \times \text{Amount of tax paid}
\]

For the purposes of this formula, the expression ‘post issue period’ means the number of days beginning at the issue of the licence, and ending on the end of the anniversary of the day the transmitter licence came into force that occurs during the financial year ending on 30 June 2018. The term, ‘days in post-1 July 2017 period’ means the number of days in the period from 1 July and ending at the end of the anniversary of the day the transmitter licence came into force that occurs during the financial year ending on 30 June 2018.

Proposed subsection 10C(3) would provide that for the purposes of this section, Division 6 of Part 3.3 of the Radcomms Act, and Part 10 of the BSA are disregarded in working out the period of a transmitter licence. Division 6 of Part 3.3 of the Radcomms Act deals with the cancellation of transmitter licences (excluding those issued under section 102 of that Act). Part 10 of the BSA deals with the cancellation of licences under the BSA, which, due to the operation of subsection 103(4A) of the Radcomms Act, would result in the cancellation of transmitter licences issued under section 102 of the Radcomms Act. The effect of this subsection would be that any cancellation of a transmitter licence (after 1 July 2017) would not affect the entitlement to refund provided for by this section.
Proposed section 10D—Pro-rata refund of tax imposed on the anniversary of the day a transmitter licence came into force

Proposed subsection 10D(1) would provide for the pro-rata refund of transmitter licence tax paid in relation to the days after 1 July 2017 that a section 100 or 102 transmitter licence related to a commercial broadcasting service. The provision would provide for the refund of such taxes where the tax was imposed on the anniversary of the licence. Proposed subsection 10D would set out the criteria and how to calculate the refund. The criteria would be that:

- a transmitter licence was issued under section 100 or 102 of the Radcomms Act before 1 July 2017; and
- the transmitter licence is associated with a commercial broadcasting licence; and
- the transmitter licence was in force at the start of 1 July 2017; and
- transmitter licence tax was imposed on the anniversary of a licence by subsections 6(3) or (8) of the R(TLT) Act on the anniversary of the day the transmitter licence came into force that occurred during the financial year ending on 30 June 2017; and
- the tax has been paid.

The amount of the refund is to be worked out using the following formula, and paid by the ACMA on behalf of the Commonwealth:

\[
\frac{\text{Days in post-1 July 2017 period}}{\text{Post-anniversary period}} \times \text{Amount of tax paid}
\]

For the purposes of this formula, the expression ‘days in post-1 July 2017 period’ means the number of days beginning at the start of 1 July 2017 and ending at the earlier of the following: the anniversary of the day the transmitter licence came into force that occurs during the financial year ending on 30 June 2018; or the end of the period of the transmitter licence.

For the purposes of this formula, the expression ‘post-anniversary period’ means the number of days in the period starting on the anniversary of the day the transmitter licence came into force that occurred during the financial year ending on 30 June 2017, and ending at the earlier of the following: the anniversary of the day the transmitter licence came into force that occurs during the financial year ending on 30 June 2018; or the end of the period of the transmitter licence.

Proposed subsection 10D(2) would provide for the pro-rata refund of transmitter licence tax paid in relation to the days after 1 July 2017 that a section 100 or 102 transmitter licence related to a commercial broadcasting service. The provision would provide for the refund of such taxes where the tax was imposed on the holding of the licence. Proposed subsection 10D would set out the criteria and how to calculate the refund. The criteria would be that:

- a transmitter licence was issued under section 100 or 102 of the Radcomms Act before 1 July 2017; and
- the transmitter licence is associated with a commercial broadcasting licence; and
- the transmitter licence was in force at the start of 1 July 2017; and
• transmitter licence tax was imposed on the holding of a transmitter licence by subsections 6(5) or (11) of the R(TLT) Act on the anniversary of the day the transmitter licence came into force that occurred before 1 July 2017; and

• the tax has been paid.

The amount of the refund is to be worked out using the following formula, and paid by the ACMA on behalf of the Commonwealth:

\[
\text{Refund Amount} = \frac{\text{Days in post-1 July 2017 period}}{\text{Post-anniversary period}} \times \text{Amount of tax paid}
\]

For the purposes of this formula, the expression ‘days in post-1 July 2017 period’ means the number of days beginning at the start of 1 July 2017 and ending at the end of the period of the transmitter licence. The expression ‘post-anniversary period’ means the number of days in the period starting at the anniversary on which the holding tax was imposed, and ending at the end of the period of the transmitter licence.

Proposed subsection 10D(3) would provide that for the purposes of this section, Division 6 of Part 3.3 of the Radcomms Act, and Part 10 of the BSA are disregarded in working out the period of a transmitter licence. Division 6 of Part 3.3 of the Radcomms Act deals with the cancellation of transmitter licences (excluding those issued under section 102 of that Act). Part 10 of the BSA deals with the cancellation of licences under the BSA, which, due to the operation of subsection 103(4A) of the Radcomms Act, would result in the cancellation of transmitter licences issued under section 102 of the Radcomms Act. The effect of this subsection would be that any cancellation of a transmitter licence (after 1 July 2017) would not affect the entitlement to refund provided for by this section.

**Proposed section 10E—Set-off**

Proposed section 10E would enable the ACMA to set off amounts of amounts of interim tax, against refundable amounts under sections 10B, 10C or 10D. This provision enables the ACMA to avoid the administrative burden of providing refunds to each transmitter licensee, instead reducing the liability of the transmitter licensee to pay the interim tax. The provision does not in any way affect the amount of the person’s tax liability.

**Part 2 – Termination of the liability of commercial broadcasters to pay transmitter licence tax**

*Radiocommunications (Transmitter Licence Tax) Act 1983*

**Item 17 – After section 4**

Item 17 would insert proposed new section 4A into the R(TLT) Act. This section would provide that the question whether a transmitter licence is ‘associated with a commercial broadcasting licence’ is to be determined in the same manner as that question is determined for the purposes of the *Commercial Broadcasting (Tax) Act 2017*. This expression is used to determine which licensees have their liability to pay transmitter licence tax terminated, in the transition to the interim tax, under amendments to section 6 of the R(TLT) Act.
Items 18 to 37 would amend section 6 of the R(TLT) Act to not impose the transmitter licence tax on transmitter licences that are associated with a commercial broadcasting licence, where the licence was issued on or after 1 July 2017, or has an anniversary on or after 1 July 2017. This is due to the imposition, from that date, of the interim tax instead of the apparatus tax.

These items would also amend the section to exclude the application of various elections that may be made under section 6 of the R(TLT) Act prior to 1 July 2017 and other administrative provisions relating to payment of tax in respect to those licences, and to make other minor consequential amendments.

These provisions will take effect from 1 July 2017. If the Bill is enacted after 1 July 2017, then the relevant taxes would be terminated retrospectively, and any repayments of overpaid tax would be made in accordance with proposed new section 10B of RTC Act, as described above.
Part 3—Transitional support payments

Part 3 would establish a financial transitional Support Payment arrangement. This proposed statutory entitlement arrangement is designed to ensure that no individual free-to-air commercial broadcaster in any given commercial television licence area and commercial radio licence area is financially worse-off by no more than $2,000 each year under the new taxation arrangements during the first five years of operation of the new transmitter licence tax arrangements. The financial support that is proposed to be provided under arrangement should:

- enable the eligible commercial radio and television broadcasters to re-evaluate their business practices and make changes to operate more efficiently and effectively; and
- ensure that these eligible broadcasters are put on a level playing field with other broadcasters not otherwise adversely impacted by the new tax interim arrangements.

The timeframe of five years for the transitional support package aligns with the statutory review by the ACMA on broadcast spectrum pricing arrangements (proposed for inclusion in the BSA by Schedule 7 to this Bill). This review will inform government decisions on any new arrangements by July 2022. Recipients of the transitional support payments would be encouraged to provide submissions and input to this review.

The recipients of the payment have already been identified by Government by comparing their last broadcast licence fee payment with other spectrum related fees, against the anticipated tax liability under the proposed new interim tax. The proposed payments have been set at an annual payment to provide certainty to recipients for business planning and will not be indexed. It is expected that eligible broadcasters who receive the payment will use to be used for the purposes of commercial broadcasting, and will offset the increased liability to government.

Item 38- Definitions

Item 38 would set out the five core definitions used in the Schedule.

The term, ‘broadcasting service’ would have the same meaning as in the BSA.

The term, ‘commercial radio broadcasting licence’ would have the same meaning as in the BSA. Similarly, the term, ‘commercial television broadcasting licence’ would have the same meaning as in the BSA. A broadcasting licence authorises the operation of transmitters in the broadcasting services bands for broadcasting programs and engineering tests for stations intended to be used to broadcast television or radio programs.

The term ‘designated day’ is a critical term; it is the day upon which the Secretary of the Department must determine each year whether the companies listed in the table at item 40 are to be paid the corresponding amount of financial assistance. The first ‘designated day’ is 1 November 2017 and the remaining designated days are 1 July 2018, 1 July 2019, 1 July 2020 and 1 July 2021. The financial assistance is time limited and will not extend beyond 2021.

The term ‘eligible financial year’ means each financial year beginning on the following days:

- 1 July 2017;
• 1 July 2018;
• 1 July 2019;
• 1 July 2020;
• 1 July 2021.

The term ‘Secretary’ means the Secretary of the Department which is responsible for administering the Scheme from time to time. It presently is the Secretary of the Department of Communications and the Arts.

**Item 39 - Transitional support payments**

Under subitem 39(1), unless an eligible broadcaster has opted out of the scheme, the Secretary is required to pay to each eligible commercial broadcaster the amount specified in the table opposite the company’s name in the table at item 40. The timing of the payment is as soon as reasonably practicable after the beginning of the designated day for the particular eligible financial year. There are four criteria for eligibility of payment. First, the company needs to be specified in the table set out in item 40. Secondly, the company must at the start of the designated day for an eligible financial year, hold either a commercial television broadcasting licence or a commercial radio broadcasting licence. Thirdly, the Secretary must be satisfied that the company will likely hold the licence for the entire period of the eligible financial year to which the payment relate. Fourthly, the company must not have provided a notice under subitem 39(2) to the Secretary before 1 November 2017.

The statutory entitlement to a transitional financial payment is conditional.

Under subitem 39(2), any company listed in the table at item 40 may, opt out of the receiving the financial support. If any company does not wish to receive the transitional support payments, they must before 1 November 2017, give the Secretary a written notice stating that the company does not wish to receive any payments under item 39(2). The nature of the notice is intended to be straightforward and issued by a person duly authorised by the company to give such a notice, for example, a director of the Company or the Chief Executive Officer or Chief Financial Officer of the company. Subitem 39(2) is included because notwithstanding Part 3 of Schedule 6 establishing a statutory entitlement to a transitional financial payment, there are conditions attached to the payment so it is necessary to ensure companies have choice. If a company does not give the Secretary notice by the specified date, it will be taken to have agreed to receive the annual payments and accepted the conditions attached to the annual payments. The notice must be given on or before 31 October 2017.

Subitem 39(3) would provide that a determination made under subitem 39(1) is not a legislative instrument. This provision is declaratory and included to assist readers, as the instrument is not actually a legislative instrument within the meaning of subsection 8(1) of the LA.

**Item 40 - Table**

Item 40 would set out the table listing each eligible company and the corresponding annual amount of transitional support payment. This is the table mentioned in item 40 which establishes the entitlement to payment. There are 19 companies listed in the table. The dollar
amount specified under the ‘amounts’ column are fixed and not indexed whatsoever. They represent the annual financial payment amount that is payable to each respective company, subject to eligibility criteria being met and the company not having opted out (refer subitem 39(2)).

The recipients of the payment have already been identified by government by comparing their last broadcast licence fee payment with other spectrum related fees, against the anticipated tax liability under the interim tax. If there was a difference over $2,000 then the recipient was entitled to transitional support.

Some recipients have also been identified through a population density offset. This has occurred where the recipient has a transmitter in a higher population area but it services a lower population area. In this case, the difference in estimated annual tax liability based on a high density area and a medium density area is proposed to be provided to the recipient.

**Item 41 - Conditions of payments**

If at any time during an eligible financial year in which a commercial broadcaster has received a transitional support payment, it ceases to be the holder of a commercial television broadcasting licence or a commercial radio broadcasting licence, in accordance with subitem 41(1), the company would be required to repay to the Commonwealth the amount worked out using the formula:

\[
\text{Days in non-licence period} \times \text{Amount paid}
\]

\[
\frac{\text{Days in financial year}}{\text{Days in non-licence period}}
\]

For the purpose of the formula at subitem 41(1), the term ‘amount paid’ means the amount of the transitional support payment given to the company. The term ‘days in financial year’ means the number of days in the financial year to which the payment relates. The term ‘days in non licence period’ means the number of days in the period which:

- commences at the beginning of the day after company ceased to hold the licence, and
- ends at the end of the particular financial year.

For example, if an eligible company received the support payment in July 2018 and ceased to hold the required broadcasting licence on 31 December 2018, it would be required to repay half of the financial support payment it had received for that year.

Subitems 41(2), (3) and (4) impose conditions on the transitional support payment made to a company under item 41 in respect of a financial year.

The first condition under subitem 41(2) is that the company, before the end of the relevant financial year to which the payment relates, spends the amount of the payment (reduced by any amount payable by the company under subitem 41(1) in relation to the financial year) in connection with the provision by the company of broadcasting services authorised by the commercial television or radio broadcasting licence.
The second condition under subitem 41(3) is that the company gives the Secretary a written statement declaring that the company has complied with the condition set out in subitem 41(2) of this item in relation to the financial year. The statement must be given within 28 days after the end of the financial year.

If any of the conditions to which the payment is subject as set out in subitem 41(2) or (3) are not fulfilled, then the company is required, if determined by the Secretary, to repay to the Commonwealth the amount specified in a determination (subitem 41(4)). The amount cannot be more than the amount of the transitional support payment actually paid to the company in that particular financial year (reduced by any amount payable by the company under subitem 41(1) in relation to the financial year).

Subitem 41(6) specifies that a determination made under subitem 41(4) is not a legislative instrument. This provision is declaratory and included to assist readers, as the determination of liability to pay is not actually a legislative instrument within the meaning of subsection 8(1) of the LA.

Amounts determined by the Secretary under subitem 41(6) to be payable by a company to the Commonwealth will be a debt due by the company to the Commonwealth and are recoverable by the Secretary (on behalf of the Commonwealth) by taking court action in any of the following courts: the Federal Court of Australia; the Federal Circuit Court of Australia; or a court of a State or Territory that has the requisite jurisdiction (refer subitem 41(7)).

**Item 42- Delegation by the Secretary**

Subitem 42(1) would enable the Secretary, by writing, to delegate any or all of his or her powers under Schedule 7 to an SES employee, or acting SES employee, in the Department. This delegation power is for administrative convenience.

A note is included after subitem 42(1) to remind readers that the expressions SES employee and acting SES employee are defined in section 2B of the AIA.

Subitem 42(2) would require any delegate of the Secretary must comply with any directions of the Secretary.
SCHEDULE 7—REVIEW OF TAXATION ARRANGEMENTS ETC.

Broadcasting Services Act 1992

Item 1 – After section 216A

Item 1 provides for the insertion of new section 216AA into the BSA.

Proposed subsection 216AA(1) would provide that after 30 June 2019 the ACMA must conduct a review of whether the Commercial Broadcasting (Tax) Act 2017 should be repealed or amended on or before 1 July 2022, and any other matters specified in an instrument made by the Minister under proposed subsection 216AA(2).

Proposed subsection 216AA(3) would provide that in conducting the review, the ACMA must consider any matters that are specified in a notifiable instrument made by the Minister under proposed subsection 216AA(4) (which would allow the Minister to specify one or more matters for that purpose).

The effect of proposed subsection 216AA(2) would be to place limits on what additional matters the Minister may specify in a notifiable instrument for ACMA review. Namely, the Minister, may only specify matters relating to:

- commercial television and radio broadcasting licensees; and
- the use of the spectrum by those licensees to provide commercial broadcasting services.

The intent of this new statutory review is to provide clear direction on the taxation arrangements within the broader spectrum management framework by 1 July 2022. As the ACMA will be administering the new interim tax and the proposed new Radcomms Act, and is an independent statutory authority, it is best placed to conduct such a review. It is expected that by the time the 216AA review is undertaken, significant changes will have been to the Radcomms Act and consequential changes to the BSA that are, overall, intended to simplify and streamline the legislative framework for users of spectrum (including changes to charges for spectrum use).

Proposed subsection 216AA(3) would provide that the ACMA must consider any matters that are specified in an instrument made under subsection (4). Proposed subsection 216AA(4) would provide that the Minister may, by notifiable instrument, specify one or more matters for the purposes of subsection (3).

Proposed subsection 216AA(5) would provide that in conducting the review the ACMA must make provision for public consultation. This will ensure that a wide range of stakeholder views are canvassed and considered. The ACMA is required to give the Minister a report of the review by 30 June 2021 (proposed subsection 216AA(6)). The Minister would be required to arrange for the report to be tabled in each House of Parliament within 15 sitting days of that House after receiving the report (proposed subsection 216AA(7)).