

Broadcasting Legislation Amendment (Digital Dividend) Bill 2012

Introduced into the House of Representatives on 13 February 2013; before Senate

Portfolio: Broadband, Communications and the Digital Economy

PJCHR comments: [Report 3/13](#), tabled 13 March 2013

Response received: 18 April 2013

Summary of committee view

3.1 The committee thanks the Minister for his response and makes no further comment on this bill.

Background

3.2 This bill seeks to give effect to the government's decision to make available additional broadcasting spectrum, which is to be cleared of all existing services by 31 December 2014. The bill seeks to amend the *Broadcasting Services Act 1992* and the *Radiocommunications Act 1992* in relation to the datacasting licensing regime. Presently, all datacasting service providers must hold datacasting licences, but in order to facilitate the early commencement of some services in the new spectrum, the bill will permit certain users to provide datacasting services in the new spectrum without holding a licence. It does this by limiting the scope of datacasting regulation so that only 'designated datacasting services' – generally only commercial and national broadcasters, and those prescribed by the regulations – will be required to hold a datacasting licence.

3.3 The committee sought clarification as to why different types of broadcasters are being treated differently, with one type of broadcaster requiring a licence to broadcast while others can operate without a licence, and sought clarification as to what effect, if any, this may have on the rights of persons to receive information and ideas. It also sought further information about the criteria to be employed in deciding the designate datacasting services.

3.4 The Minister's response is attached.

Committee's response

3.5 The committee thanks the Minister for his response. It acknowledges that requiring next generation mobile broadband services to be subject to datacasting regulation during the transitional period may be overly burdensome and inhibit the rollout of such services during the interim period. The committee makes no further comment on this bill.



SENATOR THE HON STEPHEN CONROY

MINISTER FOR BROADBAND, COMMUNICATIONS AND THE DIGITAL ECONOMY
MINISTER ASSISTING THE PRIME MINISTER ON DIGITAL PRODUCTIVITY
LEADER OF THE GOVERNMENT IN THE SENATE

Mr Harry Jenkins MP
Chair
Parliamentary Joint Committee on Human Rights
S1.111
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CANBERRA ACT 2600

12 APR 2013

Dear Mr Jenkins

Broadcasting Legislation Amendment (Digital Dividend) Bill 2013

Thank you for your letter dated 13 March 2013 concerning the human rights implications of the Broadcasting Legislation Amendment (Digital Dividend) Bill 2013 (the Bill).

I understand that the Parliamentary Joint Committee on Human Rights (the Committee) has sought clarification regarding the Bill in relation to:

- why different types of broadcasters (or providers of datacasting services) are being treated differently; and
- what criteria the Minister will employ in deciding to designate datacasting services under proposed clause 2A(2) of Schedule 6 to the *Broadcasting Services Act 1992* (BSA).

The *Radiocommunications Act 1992* empowers the Minister for Broadband, Communications and the Digital Economy (the Minister) to designate, by written instrument, parts of the radiofrequency spectrum as being primarily for broadcasting purposes. These designated parts of the spectrum are known as the Broadcasting Service Bands (BSBs).

In June 2010, I announced the Australian Government's intention to release 126 Megahertz of broadcasting spectrum as a digital dividend. It is the government's intention to maximise the value of this spectrum by reorganising or 'restacking' broadcasting services to clear a large contiguous block of spectrum at the upper end of the broadcasting services band portion of the Ultra High Frequency (UHF) Band. The digital dividend spectrum located in the UHF band is expected to be redesignated out of the BSBs once the restack of digital television services has been completed. The government expects this process will be completed by the end of 2014.

The government will auction the digital dividend spectrum in April 2013. Successful bidders will decide how to use the spectrum they acquire. However, a number of likely uses for the spectrum include wireless and mobile broadband services, mobile telephony and energy network services.

The government is aware that successful bidders may be interested in accessing this digital dividend spectrum before the restack is completed nationwide. This will enable them to establish next generation mobile broadband services (LTE services). It is ultimately a question for the Australian Communications and Media Authority (the ACMA) to decide whether to authorise and licence the commencement of LTE services in the BSB spectrum before restack is completed in every area. The ACMA will assess each application from successful bidders in the digital dividend auction on a case-by-case basis.

If the ACMA agrees that a successful bidder may operate LTE services in the digital dividend spectrum before that spectrum is redesignated out of the BSBs, the type of services offered may result in the successful bidder becoming subject to the datacasting regime under Schedule 6 to the BSA.

Section 6 of the BSA defines a 'datacasting service' as a service that delivers content in the form of text, data, speech, music or other sounds or visual images (animated or otherwise), or in any combination of forms to persons having equipment to receive that service, where the delivery of the service uses the BSBs. Schedule 6 to the BSA requires a person to acquire a datacasting licence if they wishing to transmit a datacasting service.

Requiring LTE service providers to comply with the datacasting regime would impose additional obligations during the transitional period between the ACMA authorising access and the redesignation of the digital dividend spectrum from the BSBs. These obligations do not currently apply to similar services offered outside the BSBs. Such additional regulation would be inappropriate, overly burdensome and may inhibit the rollout of new LTE services until the redesignation of the BSBs was complete.

The Bill is designed to remove any potential impediments on the successful bidders establishing new LTE services by generally not requiring them to hold a datacasting licence before the digital dividend spectrum is redesignated out of the BSBs. The Bill will then limit the application of the datacasting regime in Schedule 6 of the BSA to the existing datacasting services already provided by the commercial and national broadcasters. The Bill will not have any impact on the delivery of existing datacasting services as their regulation will remain unchanged.

In the unlikely event that a successful bidder subsequently established an unlicensed datacasting service similar to an existing television broadcasting service, then proposed subclause 2A(2) of the Bill empowers the Minister to specify, by legislative instrument, the kinds of services that should be considered designated datacasting services. This provides the Minister with the flexibility to expand the scope of the datacasting regime in Schedule 6 to the BSA if the circumstances warrant or if an unlicensed service requires further regulation similar to that of existing datacasting services. The government has previously announced that no spectrum or broadcasting licences will be made available to enable a fourth commercial television network.

It is not intended that there will be specific legislated criteria for the Minister to refer to in determining whether to specify a datacasting service as a designated datacasting service. However, the Minister might consider the following issues when exercising that power:

- the content of the unlicensed service;
- whether the service is adequately regulated by the content service provisions of Schedule 7 to the *Broadcasting Services Act 1992*; and
- whether the service is adequately regulated by any other parts of broadcasting legislation.

The Bill does not adversely affect the rights of persons to receive information and ideas as it maintains the regulation that applies to existing datacasting services provided by broadcasters. In addition, it may increase the ability of persons to share and exchange information and ideas by facilitating the potential early commencement of new services in the digital dividend spectrum, such as LTE services prior to that spectrum being redesignated out of the BSBs.

I trust the information contained in this letter satisfies the Committee's request.

Yours sincerely



Stephen Conroy
Minister for Broadband,
Communications and the Digital Economy