

Bills Digest  
No. 82 2000–01

## Broadcasting Legislation Amendment Bill 2000

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INFORMATION AND RESEARCH SERVICES

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Broadcasting Legislation Amendment Bill 2000

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# Contents

Purpose . . . . .	1
Background . . . . .	1
Main Provisions . . . . .	2
Multi-channelling . . . . .	2
Other Technical Amendments . . . . .	3
Datacasting Amendments . . . . .	3
Endnotes . . . . .	4

# Broadcasting Legislation Amendment Bill 2000

**Date Introduced:** 6 December 2000

**House:** Senate

**Portfolio:** Communications, Information Technology and the Arts

**Commencement:** On Royal Assent

## Purpose

This Bill transfers provisions which authorise the national broadcasters (the ABC and SBS) to engage in datacasting from the *Broadcasting Services Act 1992* (BSA) to their enabling legislation namely, the *Australian Broadcasting Corporation Act 1983* and the *Special Broadcasting Service Act 1991*. The Bill also makes a range of minor amendments to provisions in the BSA that were recently inserted by the *Broadcasting Services Amendment (Digital Television and Datacasting) Act 2000* (the Digital Television Act).

## Background<sup>1</sup>

### What is Datacasting?

One advantage of digital television broadcasting over analog broadcasting is that the digital data stream can be compressed enabling more efficient use of the available spectrum. The spare capacity created by digital transmission can be used to provide 'datacasting' services.

The term 'datacasting service' is broadly defined in section 6(1) of the BSA. It is a service which delivers content in the form of text, data, speech, music or other sounds, visual images or in any other form; or in any combination of forms to persons having equipment appropriate for receiving that content. The service must also use the broadcasting services bands.

The framework for regulating datacasting is contained in schedule 6 of the BSA which was inserted by the Digital Television Act. Schedule 6 establishes the licensing system for datacasters and contains a series of restrictions to ensure that datacasters are not seen to be de facto television broadcasters. Datacasting licensees will be subject to 'genre

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conditions'. They will not be able to broadcast a range of material including programs that would be equivalent to a television news, drama, sports, music, weather, documentary, lifestyle or entertainment program, or a commercial radio program. They are allowed to transmit extracts of TV programs, so long as they are no longer than 10 minutes and not strung together so as to constitute a single program.<sup>2</sup>

Datacasters are able to transmit information and education programs, parliamentary and court proceedings, text and still images, interactive computer games and Internet-style services including electronic mail.

The genre conditions have been subject to criticism by potential datacasters<sup>3</sup> such as Fairfax, News Ltd and Telstra who have claimed that the restrictions undermine the viability of datacasting. These companies consequently declined to participate in the trials of datacasting services conducted by the Australian Broadcasting Authority last year.<sup>4</sup> The incumbent free-to-air broadcasters have argued that unrestricted datacasting could undermine their substantial investment in upgrading their technology to facilitate digital transmission. At this stage, datacasting services are not expected to commence until 2002.<sup>5</sup>

Clauses 39 and 40 of Schedule 6 of the BSA permit the ABC and SBS to operate a datacasting service. This Bill will relocate those provisions to the enabling legislation of the national broadcasters. The Bill reflects the view that all the functions of the national broadcasters should be specified in their respective enabling legislation.<sup>6</sup>

## Main Provisions

### Multi-channelling

**Schedule 1** amends the BSA. **Item 1** corrects an oversight in relation to the definition of 'multi-channelled national television broadcasting service'.

Multi-channelling is when a television broadcaster shows two or more separate streams of television programming. Each is a self contained, independent service. Multi-channelling is made possible because digital broadcasting uses spectrum more efficiently.

The BSA substantially restricts multi-channelling by commercial broadcasters reflecting concerns that it could undermine the Pay TV industry.<sup>7</sup> However, the Senate inserted amendments to the Digital Television Bill to allow the national broadcasters to multi-channel a range of programs specified in clause 5A of schedule 4 of the BSA. Currently, this list of programs includes international news programs produced by the ABC but not SBS. **Item 1** corrects this omission.

As introduced into the Parliament, the Digital Television Bill provided for another form of multi-channelling known as 'category B digital program-enhancement content' which would have permitted a broadcaster to provide live coverage of multiple sporting events of

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the same sport at the same venue. For example, a broadcaster would have been able to provide live coverage of several tennis matches at a tournament such as Wimbledon. The Senate deleted provisions of the Digital Television Bill that would have permitted this type of multi-channelling. **Item 2** consequently removes references to 'category B digital program-enhancement content' programming in paragraph 6(8)(ca) and 19(8)(ca)<sup>8</sup> which are redundant.

### Other Technical Amendments

Subparagraphs 37E(2)(a)(i) and 37F(2)(a)(i) of Schedule 4 deal with quotas for high definition television broadcasts. There is a drafting error in these paragraphs in that they refer to broadcasts made in 'SDTV mode'. This expression is not, however, defined in the Act. The term used elsewhere is 'SDTV digital mode' which is defined in clause 4B of schedule 4. **Item 3** amends the paragraphs to ensure consistency with the rest of the BSA.

**Item 4** also corrects a technical error. During debate on the Digital Television Bill the Senate inserted clause 27A of Schedule 6. This clause empowers the Australian Broadcasting Authority to exempt content copied from the Internet from the datacasting regime. Under clause 20AA<sup>9</sup> the genre conditions on datacasting licensees (discussed above) do not apply in relation to material where an exemption order has been made under subclause 27A(1). Subclause 27A(1) currently refers to clause 20A instead of clause 20AA. **Item 4** corrects this mistake.

### Datacasting Amendments

**Item 5** amends the heading of Part 6 of Schedule 6 to reflect the repeal of clauses 39 and 40 by **item 6**. These clauses state that the ABC and SBS have the function of providing datacasting services if they apply for, and are allocated, a datacasting licence.<sup>10</sup> The Government has decided that the functions of the national broadcasters should be contained in their enabling legislation. **Schedules 2** and **3** amend the ABC Act and the SBS Act to achieve this objective.

**Items 1** and **2** of Schedules 2 and 3 invoke the definitions of 'datacasting service' and 'datacasting licence' contained in the BSA for the purposes of the ABC Act and the SBS Act.

**Item 3** of Schedules 2 and 3 inserts a **new section 6A** in each broadcaster's enabling legislation. The proposed sections state that if the broadcaster applies for and is granted a datacasting licence then it has the additional function of providing a datacasting service under the conditions of the licence.

As the explanatory memorandum points out the amendment does not require either of the national broadcasters to become a datacaster. The decision about whether to seek a licence is one that remains the responsibility of the board of each broadcaster.

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If either the ABC or SBS obtains a licence, datacasting will become an 'authorised business' of the broadcaster.<sup>11</sup> This is the case under the current provisions of the BSA dealing with datacasting by the national broadcasters and will be maintained by the amendments proposed in this Bill.

The national broadcasters are empowered to establish subsidiary companies and joint ventures to undertake authorised business activities. The particulars of any activities of any authorised businesses must be disclosed in the broadcaster's annual report.<sup>12</sup>

## Endnotes

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- 1 For an overview of developments on digital television and datacasting see the e-brief by Dr Kim Jackson at the following link <http://www.aph.gov.au/library/intguide/sp/digupdate.htm>
- 2 See Part 3 of Schedule 6.
- 3 The Productivity Commission also argued that the restrictive datacasting regime could stifle innovation in its *Broadcasting Inquiry Report*, p. 256. This report is available at the following link <http://www.pc.gov.au/inquiry/broadcst/index.html>.
- 4 Miles Kemp, 'Digital Disaster', *The Advertiser*, December 2 2000.
- 5 See the website of the industry organisation -Digital Broadcasting Australia <http://www.dba.org.au/>.
- 6 The Hon. Senator Richard Alston, Second Reading Speech, *Senate Hansard*, 6 December 2000, p. 20813.
- 7 See subclause 6(8) of schedule 4. In summary, commercial broadcasters may multi-channel:
  - where the sole purpose of the transmission is to enhance the primary program. For example a second channel may offer different camera angles, player statistics or video highlights.
  - where a designated event (for example a cricket match) overlaps with a regularly scheduled news program; or
  - to provide an electronic program guide.
- 8 Subclauses 6(8) and 19(8) provide for exemptions from the simulcast requirement for commercial and national broadcasters respectively. Broadcasters are required to 'simulcast', that is broadcast programs in analog and digital until at least January 1 2009.
- 9 This clause was also inserted by the Senate.
- 10 The national broadcasters would be subject to the same conditions as other datacasters under Schedule 6 of the BSA.
- 11 Section 25A of the ABC Act and section 52 of the SBS Act.
- 12 Section 80 of the ABC Act and section 73 of the SBS Act.

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