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Broadcasting Legislation Amendment Bill (No. 1) 2002

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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Broadcasting Legislation Amendment Bill (No. 1) 2002

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31 October 2002

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Broadcasting Legislation Amendment Bill (No. 1) 2002

Date Introduced: 25 September 2002

House: Senate

Portfolio: Communications, Information Technology and the Arts

Commencement: On Royal Assent

Purpose

To delay the commencement of high definition television obligations on broadcasters for six months until 1 July 2003.

Background¹

The free-to-air television services that have historically been received by Australians are terrestrial analog broadcasts: the signal is transmitted from towers to home receivers in the form of a continuous wave. With digital broadcasting, the signal is in the form of discrete bits of information. A major advantage of the digital signal is that digital data stream can be compressed. As the available spectrum is used more efficiently, digital broadcasting offers the potential for the development of other services such as interactive television and multi-channelling.² In addition, background noise and interference can be more readily removed to improve video and audio reception. The move to digital requires both broadcasters and viewers to upgrade their technology.

In March 1998 the Government announced the regulatory framework that would apply to the transition to digital television and expressed its commitment to high definition digital broadcasting.³ The initial provisions for the transmission of digital television were inserted in the *Broadcasting Services Act 1992* (BSA) by the *Television Broadcasting Services (Digital Conversion) Act 1998*.⁴

Following a number of reviews of technical and policy matters relating to digital broadcasting, the *Broadcasting Services Amendment (Digital Television and Datacasting)*

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Act 2000⁵ (the DTD Act) was passed which refined arrangements for the introduction of digital television. The most significant of these were:

- the requirement for broadcasters to transmit a standard definition digital television (SDTV) signal at all times and at least 20 hours per week of high definition digital broadcasts (HDTV)⁶ in addition to the existing analog signal,⁷ and
- provisions to enable the ABC and SBS to multi-channel⁸ certain kinds of programs.

Under provisions inserted by the DTD Act all mainland capital city stations had to begin transmitting full-time SDTV services from 1 January 2001, although the analog signals will be simulcast until at least 31 December 2008. The requirement for 20 hours of HDTV is scheduled to take effect from 1 January 2003.

Mandatory HDTV Provisions

The requirement for mandatory HDTV transmission has been widely criticised.⁹ The Productivity Commission in its March 2000 report on the broadcasting industry highlighted many of the points made by opponents of the regulatory regime.¹⁰

The Commission argued that HDTV television sets would be expensive and that HDTV will be a 'premium service for a small number of viewers'.¹¹ It noted however that, the costs of HDTV production, distribution and transmission will be borne by all broadcasters, advertisers and ultimately the community as a whole. The Commission also observed that the mandatory HDTV policy may constrain the emergence of new services because it consumes more spectrum than SDTV and could prolong the conversion process. The Productivity Commission recommended that a new regulatory framework would facilitate consumers' adoption of digital television and, in particular, that:

- HDTV should not be mandated but should be left to the market, and
- multi-channelling by the commercial and national broadcasters should be permitted.

Take up of Digital Television

The take-up of digital television has not been rapid. Industry sources state that since digital broadcasting commenced around 20 000 to 30 000 'digital devices' have been sold.¹² This term is used to describe set top boxes which are capable of decoding SDTV or HDTV digital transmissions¹³ and televisions that include a digital receiver.¹⁴ According to the Explanatory Memorandum around 16 000 high definition set top boxes have been sold in Australia. To put these figures in some context, it has been estimated that one million television sets are sold annually in Australia.¹⁵ HDTV set top boxes cost between \$800 and \$900.¹⁶ Television sets that are capable of displaying high definition transmissions if they are used in conjunction with a set top box cost around \$4000 to \$5000.

The television manufacturing industry has claimed that take up of HDTV has been hampered by the fact that there are presently very few hours of HDTV being broadcast.

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The Government has stated that the amount of high definition content broadcast by Australian commercial networks has varied between one hour per week to ten hours per week.¹⁷ Manufacturers have argued that in reliance on the Government's stated policy they have made large investments in the technology and related costs. Accordingly, they have called for policy certainty around the implementation of high definition technology in Australia and a commitment from the networks to increasing transmission hours of high definition content.¹⁸

The Government's Election Commitment

In its 2001 election policy *Broadcasting for the 21st Century* the Government acknowledged that broadcasters need flexibility in the transition to digital television. To further this objective the Government stated that it would consider legislative amendments to:

- enable broadcasters to meet their 20 hour per week HDTV requirement on annualised basis (ie 1040 hours per year), and
- include advertising time in the quota.¹⁹

On 27 August 2002 the Minister announced that the deadline for the commencement of the HDTV quota would be extended. The Minister stated that it was:

now highly unlikely that any legislative amendments to provide the flexibility committed to by the Coalition can be put in place before the HDTV quota obligation comes into effect for some broadcasters.²⁰

Despite the delay the Minister has stated that the Government remains 'strongly committed to HDTV'.

Opposition Position

Clause 60A of Schedule 4 BSA requires that a review of the operation of the HDTV quota should be completed by 1 January 2004. During the last election campaign the ALP called for this review of the, scheduled to be, to be brought forward. The Government has rejected this proposal on the grounds that HDTV needs to be assessed over a longer time frame. The Shadow Minister for Communications Mr Lindsay Tanner MP has been critical of HDTV commenting that:

High definition television consumes large amounts of digital spectrum, inhibits multi-channelling and interactive digital services and requires very expensive consumer television equipment. International take up of high definition television has been very limited.²¹

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On 1 May 2002 Mr Tanner called on the Government to suspend the HDTV quota requirement:

A temporary suspension of the high definition requirement will provide the networks some breathing space before they spend any further money on this technology. It will allow full reconsideration of all the issues involved in fixing the Government's digital TV mess, and minimise the extent to which the networks are forced to spend money honouring an obligation which may later be abandoned.²²

Main Provisions

Part 4 of Schedule 4 of the BSA sets forth the digital television format standards.

Clause 37E sets out the HDTV quotas for commercial television broadcasting licensees in non-remote areas. It provides that in non-remote areas the regulations must determine standards which require each commercial television broadcasting licensee to transmit in SDTV and HDTV and meet a specified quota of HDTV programs.

Subclause 37E(2) provides that standards must be directed towards ensuring that:

- HDTV broadcasting begins as soon as possible but in any event within 2 years after the licensee begins to broadcast in SDTV; and that
- Within two years licensees are transmitting at least 20 hours per week in HDTV.

The national broadcasters (ABC and SBS) are subject to similar HDTV quotas under clause 37F.

To give effect to clauses 37E and 37F the Broadcasting Services (Digital Television Standards) Regulations²³ were made in November 2000.

Items 1 and 2 amend clause 37 so as to require that standards are directed towards ensuring that commercial licensees commence HDTV broadcasts within the 'phase-in period' and that at the end of the phase-in period licensees are transmitting at least 20 hours per week in HDTV.

Item 3 defines the 'phase-in period' as the period ending at the later of 30 June 2003 or 2 years after the broadcaster began transmitting in SDTV.

Item 4 makes a consequential amendment to subclause 37EA(7) so that HDTV demonstration programs are not to be included in assessments of whether the licensee is complying with the requirement to broadcast 20 hours of HDTV after the phase-in period.

Items 5–8 effect changes to the HDTV regime for the national broadcasters that mirror the measures relating to commercial broadcasters contained in items 1–4.

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Concluding Comments

So far consumers have been reluctant to embrace HDTV technology. Two factors that have contributed to this lack of enthusiasm are undoubtedly the high price of receiving equipment and the limited amount of high definition programming being transmitted by broadcasters. These factors are mutually reinforcing in that broadcasters are reluctant to invest in HDTV programs if there is no audience for them and people will be unwilling to pay for expensive new technology if there is little to watch.

The mandatory HDTV quota was intended break this deadlock and act as a major driver of the transition to digital television.

Despite the imminent commencement of the quota, broadcasters have delayed making investments in HDTV programming. In part this may be attributed to uncertainty surrounding the regulatory regime for digital television. It was reported earlier this year that the Government was considering a proposal to remove the HDTV quota obligation in order to free up spectrum for multi-channelling.²⁴ Such a change was strongly opposed by the Pay TV industry as well as the Nine and Ten Networks.

Since that time the Government has affirmed its commitment to HDTV. Recently the Minister announced that the Government would legislate to defer the review of the HDTV arrangements—due to be completed by January 2004—until July 2005. The Minister stated that ‘deferring this review will mean that it will be able to take into account the experience of HDTV programming over a sensible period of time.’²⁵

This Bill gives broadcasters time to meet the HDTV quota requirements. However it may be that further measures need to be taken to accelerate the transition to the digital television. In the United States where the take up of HDTV has also been sluggish the Federal Communications Commission is currently considering whether it should be mandatory to include HDTV receivers²⁶ in all new television sets sold.²⁷ The Minister has indicated that this is one option that will be considered by the Government.²⁸

Endnotes

- 1 For further information on the development of policy in this area see Dr Kim Jackson, ‘Digital Television and Datacasting’, [e-brief](#), Department of the Parliamentary Library, January 2002.
- 2 Multi-channelling is when a television broadcaster shows two or more separate streams of television programming. Each is a self contained independent service.

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- 3 Senator the Hon. Richard Alston, 'Digital – A New Era in Television Broadcasting', *Media Release*, 24 March 1998.
- 4 For more information on this legislation see Bills Digest [No. 178](#) 1997/1998
- 5 For more information on this legislation see Bills Digest [No. 179](#) 1999/2000.
- 6 The technical requirements of 'SDTV' and 'HDTV' are not specified in the *Broadcasting Services Act*. The terms are given their normal in the broadcasting industry.
- SDTV is essentially a widescreen version (16 x 9) of the existing broadcast system. It has picture quality similar to DVD with Stereo sound. SDTV offers program enhancements such as a choice of camera angles or TV guides. In a 7 megahertz channel it is possible to multi-channel up to 4 standard definition programs.
- HDTV has a higher picture resolution and superior sound quality compared to SDTV. It does requires more spectrum however which effectively precludes multichanneling.
- For detail on SDTV and HDTV see Sony, Phillips and Panasonic 'Digital Television in Australia', [Briefing Paper](#), September 2002.
- 7 This is known as the simulcasting requirement.
- 8 Under the *Broadcasting Services Act 1992* commercial broadcasters generally must not, during the simulcast period, broadcast a program in SDTV unless it also broadcasts in analog.
- 9 See Senate Environment, Communications, Information Technology and the Arts Committee, [Report on the Broadcasting Services \(Digital Television and Datacasting\) Bill 2000](#), June 2000.
- 10 A copy of the report is available at the following website
<http://www.pc.gov.au/inquiry/broadcst/finalreport/index.html>
- 11 Productivity Commission, *Broadcasting Inquiry Report*, March 2000, p. 252.
- 12 Selina Mitchell, 'Digital TV: just slow off the mark or dead in the water?', *The Australian*, 17 September 2002.
- 13 HDTV set top boxes can also decode SDTV transmissions.
- 14 Currently there is only one model of television set available for sale that includes an integrated standard definition receiver. This set retails for \$3999. No sets with integrated high definition receivers are generally available for sale at present.
- 15 Selina Mitchell, 'Digital TV: just slow off the mark or dead in the water?', *The Australian*, 17 September 2002.
- 16 *Explanatory Memorandum* p. 5.
- 17 *ibid.*
- 18 Sony, Phillips and Panasonic, op.cit.
- 19 Liberal Party of Australia, '[Broadcasting for the 21st Century](#)', October 2001. On 15 October the Minister announced the Government would, as foreshadowed in its election policy,

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legislate to annualise the HDTV programming quota. See Senator the Hon. Richard Alston, 'HDTV election commitments to be implemented', *Media Release*, 15 October 2002.

- 20 Senator the Hon. Richard Alston, 'Commencement of High Definition Quota', *Media Release*, 27 August 2002.
- 21 Lindsay Tanner MP, 'Digital TV Regime Unravels', *Media Release*, 27 August 2002.
- 22 Lindsay Tanner MP, 'Government should suspend high definition television requirement' *Media Release*, 1 May 2002.
- 23 A copy of the regulations is available at the following link:
<http://scaletext.law.gov.au/html/pastereg/3/1639/top.htm>
- 24 Steve Lewis and Aaron Patrick, 'Networks braced for digital U-turn', *Australian Financial Review*, 3 May 2002.
- 25 Senator the Hon. Richard Alston, 'HDTV election commitments to be implemented' *Media Release* 15 October 2002.
- 26 These are televisions that contain all components necessary to receive and display digital transmissions. A set top box is not required.
- 27 The preference of the Federal Communications Commission is for voluntary action by the industry but manufacturers of televisions have been reluctant to commit themselves. It has been estimated that the mandatory inclusion of digital tuners could increase the price of televisions by up to \$US100. An overview of the US approach can be found on the FCC's website <http://www.fcc.gov/dtv/>.
- 28 Maria Hawthorne, 'Mandatory digital TV considered', *The Australian*, 2 October 2002.

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