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No. 88 2002–03

## Broadcasting Legislation Amendment Bill (No. 3) 2002

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INFORMATION AND RESEARCH SERVICES

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Broadcasting Legislation Amendment Bill (No. 3) 2002

Mark Tapley  
Law and Bills Digest Group  
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# Broadcasting Legislation Amendment Bill (No. 3) 2002

**Date Introduced:** 12 December 2002

**House:** Senate

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

**Commencement:** Royal Assent

## Purpose

To make a number of amendments to the high definition television quota for digital television including:

- changing the quota from a weekly to an annual quota
- allowing advertising and promotional material to count towards the quota and
- delaying the commencement date for the statutory review of HDTV quota arrangements.

## Background<sup>1</sup>

### What is Digital TV?

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.<sup>2</sup> 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.

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## Development of the Digital Television Regulatory Regime

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.<sup>3</sup> 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*.<sup>4</sup>

Following a number of reviews of technical and policy matters relating to digital broadcasting, the *Broadcasting Services Amendment (Digital Television and Datacasting) Act 2000*<sup>5</sup> (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)<sup>6</sup> in addition to the existing analog signal,<sup>7</sup> and
- provisions to enable the ABC and SBS to multi-channel<sup>8</sup> 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 was initially scheduled to take effect from 1 January 2003 but was postponed by 6 months in December 2002 (see below).

## 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.<sup>9</sup>

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.<sup>10</sup>

On 25 September 2002, the Government introduced the *Broadcasting Legislation Amendment Bill (No.1) 2002* to delay the commencement of high definition television

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obligations on broadcasters for six months until 1 July 2003. The legislation received Royal Assent on 10 December 2002.

Since that time the Government has affirmed its commitment to HDTV. In October 2002 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.’<sup>11</sup>

### **Mandatory HDTV Provisions**

The requirement for mandatory HDTV transmission has been widely criticised.<sup>12</sup> The Productivity Commission in its March 2000 report on the broadcasting industry highlighted many of the points made by opponents of the regulatory regime.<sup>13</sup>

The Commission argued that HDTV television sets would be expensive and that HDTV will be a ‘premium service for a small number of viewers’.<sup>14</sup> 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. In September 2002 it was reported that since digital broadcasting commenced around 20 000 to 30 000 ‘digital devices’ have been sold.<sup>15</sup> This term is used to describe set top boxes which are capable of decoding SDTV or HDTV digital transmissions<sup>16</sup> and televisions that include a digital receiver.<sup>17</sup> According to the Explanatory Memorandum to the Broadcasting Legislation Amendment Bill No.1 2002 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.<sup>18</sup> HDTV set top boxes cost between \$800 and \$900.<sup>19</sup> 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. 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.<sup>20</sup>

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## Opposition Position

The ALP has expressed opposition to the measures contained in this Bill. In particular, the Shadow Minister for Communications Lindsay Tanner MP has argued that annualising the HDTV will mean that:

consumers are not guaranteed to receive regular weekly streams of high-definition content. Consumers with expensive high-definition television equipment could be waiting months to get feeds of high definition from their favourite stations.

There is a strong suspicion that commercial networks will simply push all their high-definition quotas into sporting programs such as test cricket and football.<sup>21</sup>

The Opposition has also criticised the proposed changes to allow advertising to count in the HDTV quota expressing concern that foreign advertisements will be used to facilitate compliance with the quota.

Clause 60A of Schedule 4 BSA requires that a review of the operation of the HDTV quota should be completed by 1 January 2004. The Bill proposes to postpone the review until 1 July 2005. During the last election campaign the ALP called for this review to be brought forward. The Government has rejected this proposal on the grounds that HDTV needs to be assessed over a longer time frame.

## 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 the 'phase in period'; and that
- Within the 'phase in period' licensees are transmitting at least 20 hours per week in HDTV.

The phase-in period is defined as the period ending at the later of 30 June 2003 or 2 years after the broadcaster began transmitting in SDTV.

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

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To give effect to clauses 37E and 37F the Broadcasting Services (Digital Television Standards) Regulations<sup>22</sup> were made in November 2000.

**Items 2 and 6** delete references to commercial and national broadcasters transmitting '20 hours of HDTV per week' and instead substitute a requirement to broadcast the 'HDTV quota.'

This term is defined for commercial and national broadcasters by **proposed subsections 37E(2B) and 37F(2B) (items 3 and 7)**. The HDTV quota applies at the end of the phase-in period. Generally speaking the quota for each calendar year is 1040 hours. The quota is adjusted on pro-rata basis depending on when the phase in period expires.

**Items 4 and 8** ensure that HDTV demonstration programs are not to be included in assessments of whether the licensee is complying with the requirement to broadcast the HDTV quota after the phase-in period.

Clause 37L defines 'high-definition television programs' for the purposes of determining HDTV quotas. A different definition applies depending upon whether it relates to a commercial television broadcaster or a national broadcaster. For commercial licensees a high definition television program is a program that was originally produced in:

- high-definition digital video format, or
- a non-video format (eg 16mm or 35mm film) and subsequently converted to high-definition digital video, provided that the conversion has not resulted in a significant reduction in picture quality (**proposed subclause 37L(1)**).

This type of program is described as a 'true HDTV program'.<sup>23</sup>

For the national broadcasters, the high-definition television program definition additionally includes SDTV programs that have been converted to a high definition digital video format and programs that have been converted from analog video to SDTV and then to a high definition digital video format.<sup>24</sup>

**Item 10** repeals the existing definition and substitutes a **new clause 37L**. There are two principal differences between the old and the new definition.

Firstly the new definition deals with the extent to which non-HDTV material (archival material) may be included in the HDTV quota if it is included within a HDTV program. Such material may only be included in the quota if 'it amounts to an insubstantial proportion of the television program or incidental material'. The archival material must also have been produced before 1 July 2003 or a later date determined in writing by the Minister. The explanatory memorandum gives the example of 'flash-backs' to historic material in a HDTV documentary as the type of material that would be included in the HDTV quota under the proposed regime.

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**New clause 37L** also ensures that incidental material is included when considering whether a licensee has complied with the quota. **Proposed subclause 37L(6)** provides that incidental material includes:

- advertising or sponsorship material (whether or not of a commercial kind); or
- a promotion for a television program or a television broadcasting service; or
- community information material or community promotional material; or
- a news break or weather bulletin; or
- any other similar material.

**Item 11** amends clause 60A of the BSA giving effect the Government's decision to postpone the review of the HDTV quota system until 1 July 2005.

## 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 to break this deadlock and act as a major driver of the transition to digital television.

This Bill gives broadcasters more flexibility to meet the HDTV quota requirements. However it may be that further measures need to be taken to accelerate the transition to digital television. In the United States where the take up of HDTV has also been sluggish the Federal Communications Commission has recently decided to require the inclusion HDTV receivers<sup>25</sup> in nearly all television sets by 2007.<sup>26</sup> The Minister has indicated that this is one option that will be considered by the Government.<sup>27</sup>

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## Endnotes

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- 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.
- 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 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, legislate to annualise the HDTV programming quota. See Senator the Hon. Richard Alston, 'HDTV election commitments to be implemented', *Media Release*, 15 October 2002.
- 10 Senator the Hon. Richard Alston, 'Commencement of High Definition Quota', *Media Release*, 27 August 2002.
- 11 Senator the Hon. Richard Alston, 'HDTV election commitments to be implemented' *Media Release* 15 October 2002.
- 12 See Senate Environment, Communications, Information Technology and the Arts Committee, [Report on the Broadcasting Services \(Digital Television and Datacasting\) Bill 2000](#), June 2000.
- 13 A copy of the report is available at the following website <http://www.pc.gov.au/inquiry/broadcst/finalreport/index.html>
- 14 Productivity Commission, *Broadcasting Inquiry Report*, March 2000, p. 252.

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- 15 Selina Mitchell, 'Digital TV: just slow off the mark or dead in the water?', *The Australian*, 17 September 2002.
- 16 HDTV set top boxes can also decode SDTV transmissions.
- 17 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.
- 18 Selina Mitchell, 'Digital TV: just slow off the mark or dead in the water?', *The Australian*, 17 September 2002.
- 19 Broadcasting Legislation Amendment Bill No.1, *Explanatory Memorandum* p. 5.
- 20 *ibid.*
- 21 Lindsay Tanner MP, 'High-Def Digital Tv Shambles Unfolds', *Media Release*, 11 December 2002.
- 22 A copy of the regulations is available at the following link:  
<http://scaletext.law.gov.au/html/pastereg/3/1639/top.htm>
- 23 Broadcasting Services Amendment (Digital Television and Datacasting) Bill 2000, Explanatory Memorandum, p.101.
- 24 According to the Explanatory Memorandum to the DTD Bill, the difference in definition reflects the fact that a major source of programming for SBS and, to a lesser extent the ABC, is Europe where few 'true' HDTV programs are produced at present.
- 25 These are televisions that contain all components necessary to receive and display digital transmissions. A set top box is not required.
- 26 Federal Communications Commission, 'FCC introduces phase-in plan for dtv tuners: plan minimizes costs and allows consumers to access dtv signals' *Media Release* 8 August 2002. See [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-225221A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-225221A1.pdf).
- 27 Maria Hawthorne, 'Mandatory digital TV considered', *The Australian*, 2 October 2002.

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