



Broadcasting Legislation Amendment (Digital Television Switch-over) Bill 2008

Rhonda Jolly
Social Policy Section

Paula Pyburne
Law and Bills Digest Section

Contents

Purpose.	2
Background.	2
Development of digital television policy.	3
Criticism of digital television policy.	3
House of Representatives inquiry.	5
Current digital television policy.	5
Regional flexibility.	6
Statutory reviews.	8
Position of significant interest groups/press commentary.	8
Party positions/commitments.	9
Committee consideration.	10
Financial implications.	10
Main provisions.	10
Schedule 1.	10
Schedule 2.	11
Commercial television.	12
ABC and SBS television.	14
Simulcasting requirements.	15
Application provisions.	15
Concluding comments.	15

Broadcasting Legislation Amendment (Digital Television Switch-over) Bill 2008

Date introduced: 24 September 2008

House: Senate

Portfolio: Broadband, Communications and the Digital Economy

Commencement: Sections 1–3, on the day of the Royal Assent; Schedule 1, on the day after the Royal Assent; Schedule 2 on the 60th day after the Royal Assent.

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

The purpose of the bill is to amend the *Broadcasting Services Act 1992* (the BSA) to allow for a staggered, region-by-region digital television switch-over timetable. In addition, the bill amends the timing of the two statutory reviews which are required under the BSA.

Background

As the government noted in the second reading speech for this bill, the switch-over to digital-only television will represent the most fundamental change in broadcasting since analog¹ television was introduced in the 1950s.² The transition to digital television has been described elsewhere as a ‘transition from a world of spectrum scarcity, dumb terminals, and one-way services, to a world of on-demand programming, intelligent terminals, and abundant channels’.³

-
1. The authors of this Bills Digest, have chosen to use the word ‘analog’ rather than ‘analogue’ in order to remain consistent with the wording of the *Broadcasting Services Act 1992*.
 2. Senator J. Ludwig, ‘Second reading speech’, Broadcasting Legislation Amendment (Digital Television Switch-Over) Bill 2008 Senate, *Debates*, 24 September 2008, p. 1–2.
 3. H. Galperin, *New television, old politics: The transition to digital TV in the United States and Britain*, Oxford University Press, Oxford, 2004, p. 3.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Digital television produces more authentic reproductions of original images than analog television. It does this by converting information about the elements of a picture to an on/off code that can identify false data, which a digital receiver is able to correct. Digital pictures are therefore more authentic reproductions of images than analog pictures which vary in accordance with the colour and brightness of elements of the original and which are subject to impairments in the transmission process that cannot be removed. A major advantage of using digital television signals is that the digital data stream can be compressed to use available spectrum more efficiently. As a result, digital broadcasting offers the potential for the development of other services, such as interactive television and multi-channelling.

Digital television data requires decoding by a specifically designed television set or a standard television set which uses a set-top data conversion box.

Development of digital television policy

In 1993, a Specialist Group was established in what is now known as the Australian Communications and Media Authority (ACMA) to consider the introduction of digital terrestrial television in Australia.⁴ In its final report published in 1997 this group considered that a possible date for commencement could be as early as 2000.⁵ ACMA supported the specialist group's finding, recommending that government worked towards an early introduction of digital television.

In response to this recommendation the Howard Government introduced its initial digital television legislation in 1998. Under this legislation spectrum was loaned to commercial and national free to air broadcasters who were then required to simulcast analog and digital television formats for a period of eight years. Digital broadcasting was to commence in metropolitan areas by 1 January 2001 and in regional areas from a date to be determined. All areas were to have digital services by 1 January 2004.⁶

Criticism of digital television policy

The Howard Government strategy for the introduction of digital television was criticised almost from the outset. A Productivity Commission inquiry in 2000 reflected some of this

4. ACMA was established on 1 July 2005 by the merger of the Australian Broadcasting Authority and the Australian Communications Authority.

5. Australian Broadcasting Authority, *Final Report of the Australian Broadcasting Authority Digital Terrestrial Television Specialist Group*, Canberra 1997.

6. There were a number of other requirements under the legislation including that broadcasters transmit a minimum number of hours of HDTV (high definition television) following the digital commencement date and that local content rules continued to apply. See K. Jackson, *Television Broadcasting Services (Digital Conversion) Bill 1998*, [Bills Digest No. 178](#), Parliamentary Library, Canberra, 1997–1998.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

criticism when it suggested that at least certain aspects of the digital conversion plan may actually curtail consumer benefits and increase conversion costs for broadcasters.⁷ The Commission labelled a prohibition on multi channelling imposed on commercial broadcasters and a requirement which prohibited the allocation of new commercial television licences, for example, as detrimental to a successful transition. The Commission considered also that it was crucial to expedite the switch-off of analog transmissions to deliver certainty to consumers and broadcasters and to free up the use of spectrum for other purposes. It concluded that a ‘firm and final date’ of 2009 should be set for both metropolitan and regional areas for the switch-off of analog television, and argued that this approach to a switch-over would particularly benefit regional broadcasters who would no longer need to pay the cost of simulcasting services.⁸

Widespread criticism along similar lines to that of the Productivity Commission—that various restraints built into the digital television transition regime jeopardised its success—have continued to be raised. The Howard Government responded to these in a number of ways beginning in 2000 with the introduction of legislation ‘to refine arrangements for the introduction of digital television’.⁹

In its 2001 election policy the former government also acknowledged that broadcasters needed more flexibility to allow them to cope with the transition to digital television.¹⁰ It made efforts throughout 2001 and 2002 to respond to the demands of various broadcasters and at the same time to encourage the public to embrace digital television, but its transition plans were consistently hampered by these two factors.

By November 2002, only 35 000 set top boxes had been sold and the government was forced to launch a digital television education campaign.¹¹ This had had no discernible effect by mid 2003 when the *Sydney Morning Herald* commented that the government’s vision for digital television had ignored the ‘potential pitfalls’ of the conversion process. The *Sydney Morning Herald*’s editorial considered that the ‘blunt club’ of shutting down analog television would be ineffective and that the ‘smarter outcome solution would have

7. Productivity Commission, Broadcasting, Inquiry Report No.11, 3 March 2000, http://www.pc.gov.au/data/assets/pdf_file/0003/26598/broadcst.pdf, accessed on 25 September 2008.

8. *ibid.*

9. M. Tapley and K. Jackson, Broadcasting Services Amendment (Digital Television and Datacasting) Bill 2000, *Bills Digest No. 179*, Parliamentary Library, Canberra, 1999–2000.

10. R. Alston, Minister for Communications, Information Technology and the Arts, *Broadcasting for the 21st Century*, media release (of policy paper), Parliament House, Canberra, 2001.

11. S. Lowe, ‘Networks to blame for poor takeup of digital TV—Alston’, *Sydney Morning Herald*, 7 November 2002.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

been to encourage an individual player to take the digital TV ... or to allow new entrants, whose revenue would be entirely dependent on making a go of digital technology'.¹²

House of Representatives inquiry

In 2005 the government initiated a House of Representatives inquiry into the take up of digital television. The inquiry concluded that the original timeframes for the switch off of analog television were unrealistic. This was not only due to factors such as the lack of consumer enthusiasm for digital television, but also because it was thought that equivalent digital services were likely not to be available in some areas by the proposed switch off date. The inquiry therefore recommended that the government extend switch off timing to 1 January 2010.¹³

Following the House of Representatives inquiry, the government consulted with broadcasters before the then Minister for Communications, Information Technology and the Arts, Senator Helen Coonan, released a revised plan for digital television conversion in November 2006.¹⁴ The plan was intended to accelerate the transition by relaxing earlier restrictions including the prohibition of multi channelling by free to air broadcasters. The plan also involved commissioning research into the impediments to digital take up and providing detailed information to consumers about digital television and the government's implementation plans for digital switch over. The switch over date was revised under the plan to some time between 2010 and 2012.

Current digital television policy

After Labor's election victory in November 2007 the new Minister for Broadband Communications and the Digital Economy, Stephen Conroy was also confronted by a situation where only around 40 per cent of homes had converted to digital television.¹⁵

-
12. Editorial, 'Digital TV in the dark', *Sydney Morning Herald*, 28 May 2003, p.14.
 13. House of Representatives, Standing Committee on Communications, Information Technology and the Arts, *Digital Television: Who's buying it?* February 2006, <http://www.aph.gov.au/house/committee/cita/digitaltv/report/fullreport.pdf> accessed on 25 September 2008.
 14. Department of Communications, Information Technology and the Arts, Ready, Get Set, Go Digital. A digital Action Plan for Australia, November 2006, http://www.archive.dcita.gov.au/_data/assets/pdf_file/0009/53496/Digital_Action_Plan_web.pdf, accessed on 26 September 2008.
 15. The actual figure was 41.8 per cent, Australian Communications and Media Authority (ACMA), *Digital television in Australian homes 2007*, ACMA, 2008, http://www.acma.gov.au/webwr/_assets/main/lib100068/digital_tv_in_aust_homes_2007.pdf, accessed on 26 September 2008.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Like its predecessor the new government needed time to convince people to adopt digital technology. As a consequence, the Minister Stephen Conroy announced that the Rudd Government would extend the timeframe for the completion of digital switch over to the end of 2013.

In seeking to meet this deadline the new government sought comment on a number of issues which it raised in a legislative framework discussion paper. These included introducing legislation which would allow for the option of shortening the analog/digital simulcast period for some areas that may possibly be ready for full conversion earlier than others. Another option was to introduce legislation that may deliver more flexibility to areas to accommodate those experiencing difficulty in achieving switch-over readiness and a staggered switch-over for smaller geographical areas within the wider television licence areas for commercial television broadcasting services.¹⁶

Regional flexibility

The measures in this bill propose to amend the BSA to provide for this type of approach to digital switch-over in regional and metropolitan areas to accommodate not only the individual needs of various local geographical areas but also to fit within an overall national digital transition implementation timeframe.

The approach may be particularly important in a number of regional television licence areas which were aggregated under provisions in the *Broadcasting Amendment Act 1987*. Aggregation involved the creation of larger - and what were considered more viable - regional television markets, by combining existing licence areas so that they could be served by three commercial services. At the time this legislation was introduced, it was argued that the larger service areas provided through aggregation would provide an opportunity for licensees to expand and develop regional content and that the preferences of viewers would provide an incentive for regional licensees to produce local programs.

By 2001, however, a decline in local radio and television programming had been noted as a result of aggregation. In response to this decline, additional licence conditions were imposed in aggregated areas to ensure that local content was maintained.¹⁷ While this in

-
16. Digital Switch-over Taskforce, Legislative framework for implementing a digital switch-over timetable', Department of Broadband, Communications and the Digital Economy, May 2008, http://www.dbcde.gov.au/_data/assets/pdf_file/0004/84109/Legislative_framework_-_Digital_television_switchover_timetable_Discussion_Paper.pdf, accessed on 26 September 2008.
 17. Australian Broadcasting Authority (ABA), Adequacy of news and information programs on commercial television broadcasting services in regional and rural Australia. Solus operator and two operator markets, ABA, Sydney, June 2004, http://www.acma.gov.au/webwr/_assets/main/lib310197/localcontent-june04.pdf, accessed on 26 September 2008.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

itself is not the subject of the current bill, it does illustrate the importance of localism when making policy that addresses regional broadcasting. In this case, the proposed measures appear to adopt a similar approach in accommodating the needs of individual areas in terms of catering to local market conditions.

Apart from introducing changes to licence conditions to preserve local content on rural television, the former government had also acknowledged the different conditions that apply to regional areas as part a National Television Conversion Scheme which commenced on 2 February 2000 and a Commercial Television Conversion Scheme which commenced on 9 June 1999. These conversion schemes require ACMA under Schedule 4 to the BSA to plan so that the ultimate outcome of digital conversion for broadcasters will be that they achieve the same level of coverage as they had previously enjoyed in analog mode as soon as is practicable after the commencement of a simulcast period in a particular area. Each scheme is divided into two parts; Part A which deals with metropolitan and regional areas and Part B which deals with remote areas. The legislation provides that ACMA may determine which areas are defined as remote. In February 2001, ACMA determined eight licence areas to be remote for the purposes of conversion to digital broadcasting.¹⁸ Similarly, the 2000–01 Budget included a financial assistance package under the Regional Equalisation Plan to facilitate the provision of digital television (and datacasting) services by commercial television broadcasters in regional and remote licence areas.¹⁹

The BSA therefore already recognises that special considerations may apply to different regions and that strategies which are appropriate for one area are not necessarily so for another. Part B of the conversion plans for example recognises that delivering services to small, scattered populations is likely to involve additional costs for commercial broadcasters.²⁰

-
18. These are the licence areas of ITQ Mt Isa, IMP and QQQ Remote Central and Eastern Australia, WOW Regional and Remote Western Australia, WAW Remote Western Australia, VEW Kalgoorlie, GTW Geraldton and SSW South West and Great Southern Western Australia. ACMA, *ABA determines remote areas licences for digital television*, press release, ABA NR8/2001, 22 February 2001, http://www.acma.gov.au/WEB/STANDARD/pc=PC_91214, accessed on 30 September 2008.
 19. Australian Government, Budget Paper No.2, *Budget Measures 2000–01*, Part 2: Expense Measures', Commonwealth of Australian, Canberra, 2000–01, http://www.budget.gov.au/2000-01/papers/bp2/html/part3.htm#P529_22048, accessed on 30 September 2008.
 20. See J. Chowns, 'Broadcasting Legislation Amendment Bill (No1) 2005', *Bills Digest No.26*, Parliamentary Library, Canberra, 2005–06 for more details on remote area measures in the legislation.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

This bill appears also to fit comfortably within a framework already established under which ACMA consults with stakeholders and guides digital television implementation plans that take into consideration differing regional conditions.

Statutory reviews

This bill also amends the legislation to vary the timing of two statutory reviews to reflect the government's intention to complete the switch over to digital television by 31 December 2013. These reviews are:

- to the operation of subsection 35A(1) of the BSA. This review will consider whether new commercial television licences should be allocated to particular areas and what variations to licence area plans would need to be made to accommodate such allocations. (Licence area plans, which are maintained by ACMA, determine the characteristics, including the technical specifications, of the broadcasting services that are available in various areas), and
- to the content and captioning rules applicable to standard definition and high definition multi channel commercial broadcasting services under subclause 60C(1) of Schedule 4 of the BSA.

The BSA sets captioning quotas for commercial and national free-to-air broadcasters which require that all prime time programs (that is programs broadcast between 6 pm and 10 pm) and all news and current affairs programs are captioned once stations commence broadcasting in digital format.²¹ At present captioning provisions do not apply to community broadcasters or to subscription television or to multi channels unless a program has previously been broadcast with captions.²²

Content rules set minimum levels of Australian content to be broadcast by free to air broadcasters, as well as minimum amounts of first release Australian drama, documentaries and children's programs as well as requiring pre-school programming to be Australian. However, these rules currently apply only to the core commercial television services of licensees, not to a multi-channel service.

Position of significant interest groups/press commentary

There appear to have been no recent concerns about this bill raised by relevant interest groups. This may be, as noted, because the measures continue a framework which already

21. Media Access Australia, 2008, 'Free to air television', <http://www.mediaaccess.org.au/>, accessed on 1 October 2008.

22. While captioning does not apply to multi-channels it does apply to simulcast channels. A simulcast channel provides the same content as an analogue program but in a digital format; a multi-channel broadcasts different content. For example, ABC 2 provides different content to ABC1.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

acknowledges that conversion to digital will require approaches that recognise the different needs of various regions. This may also be because the government has sought to address any concerns through consultation with a non-statutory industry advisory group it has established to support its digital transition strategy. Amendments regarding the statutory reviews also only change timing, not their proposed purpose. The membership of this advisory group is:

- Kim Dalton, Director of Television, ABC Television
- Bruce Meagher, Director of Strategy & Communications, SBS Television
- Scott Briggs, Regulatory Affairs Manager, Nine Network
- Annabelle Herd, Network Manager, Broadcast Policy & Strategy, Network Ten
- Kate Fitzgerald, Acting Manager, Regulatory & Business Affairs, Seven Network
- Debra Richards, CEO, Australian Subscription Television & Radio Association
- Julie Flynn, CEO, Free TV Australia
- Shirley Brown, Secretary, Regional Broadcasters Association
- Andrew Brine, President, Australian Community Television Alliance
- Ross Henderson, Chairman, Australian Electrical & Electronic Manufacturers' Association
- Colin Doyle, Technical Director, Consumer Electronics Suppliers Association
- Michael Lonie, E-Commerce & Tenancy Services Director, Australian Retailers Association
- Clive Morton, Terrestrial Media Services Director, Broadcast Australia
- James Shaw, General Manager, Analysis & Coordination Division, Australian Communications & Media Authority
- Jackie Zelinsky, representing the National Community Titles Institute.²³

Party positions/commitments

In June 2008, the Shadow Minister for Broadband, Communications and the Digital Economy, Bruce Billson labelled the government's deadline for digital switch-over as a 'naïve, political chest beating exercise' that did not ensure the future of community television. Billson argued that one of the reasons the previous government had not adopted a policy of setting a firm switch-over date was that it was working towards sorting out critical issues such as the place of community television in a digital broadcasting

23. S. Conroy, *Industry and government charting digital TV switchover*, media release, Parliament House, Canberra, 9 April 2008, http://www.minister.dbcde.gov.au/media/media_releases/2008/022, accessed on 30 September 2008.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

world and that the government's imposition of a fixed switch-over date was 'reckless'.²⁴ There appears to be no other comment from the political parties in relation to digital television conversion in recent months.

Committee consideration

At its meeting of 25 September 2008, the Selection of Bills Committee resolved to recommend that the bill be referred immediately to the Senate Environment, Communications and the Arts Committee for inquiry and report by 25 November 2008.²⁵ The Environment, Communications and the Arts Committee has set a time limit of 24 October 2008 for receipt of submissions from interested parties.

Financial implications

According to the Explanatory Memorandum, the bill is expected to have minimal impact on Commonwealth expenditure or revenue.²⁶

Main provisions

Schedule 1

Existing subsection 35A(1) of the BSA provides for a review about the allocation of new commercial television broadcasting licences 'before the earliest digital television switch-over day'.²⁷ **Item 2** amends the provision so that the Minister must cause that review to be conducted before 1 January 2012.

Existing subclause 60C(1) of Schedule 4 of the BSA provides for a review of content and captioning rules applicable to multi-channelled commercial television broadcasting services 'at least one year before the earliest digital television switch-over day'. **Item 3**

-
24. B. Billson, Conroy must outline his digital 'bail out' plan for community television', media release, Parliament House, Canberra, 13 June 2008, http://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/YPAR6/upload_binary/ypar60.pdf;fileType=application/pdf#search=%22media/pressrel/ypar6%22, accessed 30 September 2008.
 25. Selection of Bills Committee, *Report No. 12 of 2008*, 25 September, 2008, paragraph 2.
 26. Explanatory Memorandum, p. 2.
 27. Section 6 of the BSA defines the term '*earliest digital television switch-over day*' as the earliest day on which a simulcast period ends. The simulcast period is set to finish in metropolitan licence areas on 31 December 2009 and in non-remote regional licence areas by 31 March 2011 or 31 December 2011 (depending on the licence area).

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

amends the provision so that the Minister must cause that review to be conducted before 1 January 2010.

Item 1 of Schedule 1 repeals the definition of ‘*earliest digital television switch-over day*’ in existing subsection 6(1) of the BSA. Following the amendments in items 2 and 3 above, the term is no longer referred to in the BSA.

Schedule 2

Item 4 of Schedule 2 of the bill inserts **proposed clause 5F** into Schedule 4 of the BSA. **Proposed subclause 5F(1)** provides that the Minister²⁸ may, by legislative instrument:²⁹

- determine that a specified area is a ‘local market area’ and
- determine that the area becomes a ‘digital-only local market area’ at a specified time.³⁰

The time specified in the determination must be within the simulcast period: **proposed subclause 5F(3)**.

Proposed subclause 5F(4) provides that the determination is irrevocable. However **proposed subclauses 5F(5)–(10)** do allow for variation of the initial determination by the Minister under proposed subclause 5F(1) as follows:

- it must not be varied retrospectively: **proposed subclause 5F(6)**
- the time specified in the varied determination must not be more than three months before the time specified in the initial determination: **proposed subclause 5F(7)**
- similarly the time specified in a varied determination must not be more than three months after the time specified in the initial determination: **proposed subclause 5F(8)**.

The three month time restriction imposed by **proposed subclause 5F(8)** does not apply in the following circumstances:

-
28. In accordance with section 19A of the *Acts Interpretation Act 1901* a reference to ‘the Minister’ is a reference to the Minister for Broadband, Communications and the Digital Economy.
 29. The *Legislative Instruments Act 2003* defines a ‘legislative instrument’ as an instrument of a legislative character that is, or was, made under a delegation of power from Parliament’. A legislative instrument is put before the Parliament and may potentially be subject to disallowance.
 30. The reference to the terms ‘*digital-only local market area*’ and ‘*local market area*’ are inserted into the definitions section of Schedule 4 of the BSA by **items 2 and 3** of Schedule 2 of this Bill respectively.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

- the time specified in the initial determination would be likely to result in significant difficulties of a technical or engineering nature for a commercial television broadcasting licensee in the licence area, or a national broadcaster: **proposed paragraph 5F(9)(a)**, and
- those difficulties could not reasonably have been foreseen by the commercial television broadcasting licensee or the national broadcaster as at six months before the time specified in the initial determination: **proposed paragraph 5F(9)(b)**.

Under **proposed subclause 5F(11)** the Minister must consult with the ACMA before making or varying a determination under **proposed subclause 5F(1)**.

Existing clause 7 of Schedule 2 of the BSA provides that commercial television broadcasting licences are subject to prescribed conditions. Existing paragraph 7(1)(m) contains the condition that where there is a simulcast period for a licence area, the licensee must not broadcast a television program in SDTV digital mode³¹ *in that area* during the simulcast period, unless the programme is broadcast simultaneously in analog mode.³²

Item 1 of Schedule 2 of the bill amends paragraph 7(1)(m) by omitting the words ‘in that area’ and substituting ‘*in so much of that area as is not a digital-only local market area*’. The effect of this amendment is that, once the Minister has made a determination under proposed subclause 5F(1) that an area is a ‘digital-only local market area’, the requirement to broadcast simultaneously in digital and analog modes in that digital-only local market area ceases to be a condition of a commercial television broadcasting licence.

Commercial television

Part 2 of Schedule 4 of the BSA relates to **commercial television**.

Subclause 6(1) is located in Part 2. It provides that the ACMA must formulate a scheme for the conversion over time of the transmission of commercial television broadcasting services from analog to digital mode. Subclause 6(2) provides that the *commercial television broadcasting scheme* must deal with both areas that are *remote licence areas* and areas that are not remote licence areas.

Item 5 repeals existing subparagraph 6(3)(c)(ii) and substitutes **proposed subparagraphs 6(3)(c)(ii) and (iia)**. The effect of this amendment is that the simulcast period will be:

-
31. Clause 4B of Schedule 4 of the BSA states that a program or a television broadcasting service is broadcast or transmitted in *SDTV digital mode* if the program or service is broadcast or transmitted in digital mode in a standard definition format.
 32. Clause 3 of the BSA states that a program or service is broadcast or transmitted in *analog mode* if the program or service is broadcast or transmitted using an analog modulation technique.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

- for a metropolitan licence area – nine years or such other period as determined under proposed subclause 6A(1), and
- for a regional licence area – eight years or such other period as determined under proposed subclause 6A(2).³³

Items 6 and 7 are in identical terms. That is, the words ‘in that area’ and are substituted with ‘*in so much of that area as is not a digital-only local market area*’. The amendments facilitate the setting of different analog switch-off dates in different parts of a licence area.

Item 8 inserts **proposed paragraph 6(3)(ga)** into Schedule 4 of the BSA confirming that one of the policy objectives of the commercial television conversion scheme is that during the simulcast period for a licence area, transmissions in analog mode are not required to be made in an area which has been determined to be a digital-only local market area.

Item 10 inserts **proposed paragraph 6(3)(ja)** into Schedule 4 of the BSA. The proposed paragraph sets out a further policy objective of the commercial television conversion scheme. The amendment makes clear that after a local market area becomes a *digital-only market area*, the transmission of a commercial television broadcasting service in SDTV digital mode should have the same level of coverage and reception quality as was achieved by the transmission in analog mode to that area.

Item 12 of Schedule 2 of the bill inserts **proposed clauses 6A and 6B** into Schedule 4 of the BSA. Proposed clause 6A allows for a determination of the simulcast period in *metropolitan licence areas* and *regional licence areas* as follows:

- the Minister may, by legislative instrument, determine the simulcast period for a metropolitan licence area: **proposed subclause 6A(1)**
- the Minister may, by legislative instrument, determine the simulcast period for a regional licence area: **proposed subclause 6A(2)**
- in both areas the simulcast period must end before the end of 31 December 2013: **proposed subclauses 6A(3) and (4)**
- in both areas the determination is irrevocable: **proposed subclauses 6A(5) and (6)**

However, **proposed subclause 6A(7)** does allow for the Minister to vary the determination by legislative instrument providing that:

- the variation is not made retrospectively: **proposed subclause 6A(8)**

33. Matters relating to a determination under subclause 6A(1) and 6A(2) are detailed in item 12 of this digest.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

- the end of the period specified in a varied determination must not be earlier than three months before the end of the period specified in the initial determination: **proposed subclause 6A(9)**
- the end of the period specified in a varied determination must not be a date after the earlier of the following:
 - the end of 31 December 2013, or
 - three months after the end of the period specified in the initial determination: **proposed subclause 6A(10)**

Proposed subclause 6A(11) contains an exception to the requirement that a determination of the simulcast period in *metropolitan licence areas* and *regional licence areas* must end at the end of 31 December 2013. The exception applies if the following conditions are satisfied:

- the end of the period specified in the initial determination would be likely to result in significant difficulties of a technical or engineering nature for a commercial television broadcasting licensee for the licence area, or a national broadcaster, and
- those difficulties could not reasonably have been foreseen by the commercial television broadcasting licensee or the national broadcaster, as at six months before the end of the period specified in the initial determination.

In any event, however, **proposed paragraph 6A(11)(e)** provides that the end of the period specified in the varied determination must not be later than the end of 30 June 2014. Before making or varying a determination, the Minister must consult with the ACMA: **proposed subclause 6A(13)**.

Proposed section 6B provides that the ACMA must not determine that the simulcast period for a *remote licence area* ends after 31 December 2013 except in those circumstances which the Minister has specified in the legislative instrument.

ABC and SBS television

Part 3 of Schedule 4 of the BSA relates to **ABC and SBS television**.

Subclause 19(1) is located in Part 3. It provides that the ACMA must formulate a scheme for the conversion over time of the transmission of national television broadcasting services from analog to digital mode. Subclause 19(2) provides that the *national television broadcasting scheme* must deal with both areas that are *remote coverage areas* and areas that are not remote coverage areas.

Item 13 amends existing paragraph 19(3)(c) by omitting ‘in that coverage area’ and substituting *‘in so much of that coverage area as is not a digital-only local market area’*. The effect is to amend the policy objective so that national broadcasters operating in a

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

coverage area during the simulcast period would be required to transmit in both analog mode and digital mode except in those parts of the coverage area that have been specified as digital-only local market areas.

Item 14 amends existing paragraphs 19(3)(f) and (g) so that the policy objectives under the national television conversion scheme to which those paragraphs relate need only be achieved in that part of the coverage area that is not a digital-only local market area.

Item 15 inserts **proposed paragraph 19(3)(ga)** into Schedule 4 of the BSA. The proposed paragraph sets out a further policy objective of the national television conversion scheme. The amendment makes clear that after a coverage area becomes a digital-only local market area, the transmission of a national television broadcasting service in analog mode in that area is not required.

Item 17 inserts **proposed paragraph 19(3)(ja)** into Schedule 4 of the BSA. This item also sets out a further policy objective of the national television conversion scheme, that after a local market area becomes a digital-only local market area, the transmission of national television broadcasting service in SDTV digital mode should have the same level of coverage and reception quality as was achieved by the transmission in analog mode to that area.

Simulcasting requirements

Items 18–20 amend subclause 35(1) of Schedule 4 of the BSA which relates to simulcasting requirements for national broadcasters. Under the proposed amendments national broadcasters would be required to broadcast simultaneously in digital mode and analog mode only in those areas that are not a digital-only local market area.

Application provisions

Items 21 and 22 are application provisions designed to clarify the commencement of various provisions in Schedule 2 of this bill.³⁴

Concluding comments

This bill provides for a variable approach to the switch off of analog television in metropolitan and regional areas. The Minister can determine timetables for the switch off of analog television in local markets within wider television licence areas that take into account readiness for a transition to digital only television. While the legislation cites a six

34. Application provisions serve to remove uncertainties and solve problems as to the manner in which a new law is to affect the variety of complete and incomplete situations and transactions existing at the moment in time that a law comes into force. G C Thornton, *'Legislative Drafting: third edition'*, Butterworths, London, 1987, p. 166.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

month 'window' as the norm for a switch over process for identified areas, it also allows for extra flexibility at the Minister's discretion in 'exceptional circumstances'.

There appears to have been no criticism of the proposals in this legislation. What criticism that has emerged in relation to the government's overall digital conversion plan appears to be directed more at the intention to impose a more rigid national digital switch over timeframe than had been adopted by the previous government.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

© Copyright Commonwealth of Australia

This work is copyright. Except to the extent of uses permitted by the *Copyright Act 1968*, no person may reproduce or transmit any part of this work by any process without the prior written consent of the Parliamentary Librarian. This requirement does not apply to members of the Parliament of Australia acting in the course of their official duties.

This work has been prepared to support the work of the Australian Parliament using information available at the time of production. The views expressed do not reflect an official position of the Parliamentary Library, nor do they constitute professional legal opinion.

Feedback is welcome and may be provided to: web.library@aph.gov.au. Any concerns or complaints should be directed to the Parliamentary Librarian. Parliamentary Library staff are available to discuss the contents of publications with Senators and Members and their staff. To access this service, clients may contact the author or the Library's Central Entry Point for referral.

Members, Senators and Parliamentary staff can obtain further information from the Parliamentary Library on (02) 6277 2434.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.