



Broadcasting Legislation Amendment (Digital Television) Bill 2010

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ABC	<i>Australian Broadcasting Corporation</i>
ACMA	<i>Australian Communications and Media Authority</i>
ALP	<i>Australian Labor Party</i>
BSA	<i>Broadcasting Services Act 1992</i>
Copyright Act	<i>Copyright Act 1968</i>
DTH	<i>Direct to home</i>
HDTV	<i>High definition television</i>
NITV	<i>National Indigenous Television</i>
SBS	<i>Special Broadcasting Service</i>
SDTV	<i>Standard definition television</i>
TVBSP	<i>Television Black Spots program</i>
VAST	<i>Viewer Access Satellite Television</i>

Broadcasting Legislation Amendment (Digital Television) Bill 2010

Date introduced: 18 March 2010

House: House of Representatives

Portfolio: Broadband, Communications and the Digital Economy

Commencement: Sections 1 to 3 on the day of Royal Assent and Schedule 1 on the day after Royal Assent.

Links: The [links](#) to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bills page, 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 Broadcasting Legislation Amendment (Digital Television) Bill 2010 (the Bill) is to amend the *Broadcasting Services Act 1992* (BSA) and the *Copyright Act 1968* (Copyright Act) to enable the delivery of digital television by means of a satellite service to areas of Australia which are unable to receive terrestrial signals for the digital television services licensed to broadcast in those areas.

Background

Analogue and digital

Since its introduction in Australia in the 1950s, television has been delivered by analogue signals. Analogue signals vary in accordance with the colour and brightness qualities of the original pictures broadcast, and are subject to interference, which results in reduction in the quality of pictures received. Analogue broadcasting also uses a significant amount of broadcasting spectrum.

Digital television, which will replace analogue in the near future, on the other hand, is transmitted as bits of data information. Digital television pictures are therefore not subject to signal interference and can be more authentic reproductions of original images. Indeed digital television not only delivers superior images, it also provides better audio quality and makes more efficient use of broadcasting spectrum.

Converting digital data to pictures requires viewers to have a specifically designed television set, or a standard television set attached to a set-top data conversion box.

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Conversion

Australia began the process of conversion from analogue to digital television in the early 1990s with a series of discussions, investigations and recommendations relating to the system Australia would adopt and how the transition would progress. The Howard Government introduced the first digital conversion legislation in 1998.¹ This legislation set the original parameters for conversion and required free-to-air broadcasters to commence digital terrestrial broadcasting in metropolitan areas by 1 January 2001. The Australian Communications and Media Authority (ACMA) later determined broadcasters in regional areas would be required to begin digital transmission by January 2004. It was recognised, however, that the transition to digital broadcasting would necessarily need to be different in remote areas. Consequently, unique conversion parameters were put in place under Part B of a Commercial Television Conversion Scheme.² These are discussed further, later in this digest.

Parameters for conversion in non remote areas have been discussed at length elsewhere and some of these, such as the loan of additional spectrum and the requirements to simulcast programs in analogue and standard definition, have been the subjects of substantial criticism.³ They are not relevant to this digest except in the context that they contributed to the lack of industry enthusiasm for digital conversion. Combined with a corresponding lack of consumer interest, they led to the conclusion in 2005 that original timeframes for the final switch off of analogue television were unrealistic.⁴

The Howard Government revised plans for total switch off of analogue broadcasts and proposed a gradual transition process that would take place between 2010 and 2012 before its electoral defeat in 2007.

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1. The *Television Broadcasting Services (Digital Conversion) Act 1998*, http://www.austlii.edu.au/au/legis/cth/num_act/tbsca1998513/ and *Datacasting Charge (Imposition) Act 1998*, viewed 19 March 2010, http://www.austlii.edu.au/au/legis/cth/num_act/dca1998274/
 2. The variation and consolidated version of the NTC scheme is available on the ACMA website at: http://acma.gov.au/WEB/STANDARD/pc=PC_91843
 3. Ross Kilmurray summarises a number of the criticisms in R Kilmurray, *Digital TV—lost in space*, Current issues brief, no. 19, 1997–98, Department of the Parliamentary Library, Canberra, 1998, viewed 29 March 2010, <http://www.aph.gov.au/library/pubs/CIB/1997-98/98cib19.htm#A>
 4. House of Representatives, Standing Committee on Communications, Information Technology and the Arts, *Digital Television: Who's buying it? Inquiry into the uptake of digital television in Australia*, House of Representatives, Canberra, February 2006, viewed 19 March 2010, <http://www.aph.gov.au/house/committee/cita/digitaltv/report/fullreport.pdf>

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The Rudd Government extended the timeframe set by its predecessor to the end of 2013. In making this announcement, the Minister for Broadband, Communications and the Digital Economy, Senator Stephen Conroy, argued this would ensure the benefits of digital television were maximised for all Australians.⁵

Digital take up has accelerated across Australia in recent times and it appears that the 2013 switchover date may be achievable.⁶ Nonetheless, there remain a number of problem areas to be addressed, before this is possible. This Bill aims to address one of these—the inability of terrestrial television services to deliver digital television to certain groups of Australians.

Black spots

The issue of inadequate television reception, known as television black spots, for some communities is not new. In 2000, the Howard Government provided funding for an analogue television black spots program with proceeds from the partial sale of Telstra. The Television Black Spots Program (TVBSP) identified 574 analogue black spots and provided funding to over 200 retransmission sites. A supplementary program, the Television Black Spots Alternative Solutions Program was also introduced in 2002 to remedy black spots that could not be addressed under the TVBSP. Under this program, funding was provided until June 2009 for retransmission of the local free-to-air digital television services and for direct-to-home (DTH) satellite equipment for individual householders.⁷

While regional and remote areas represented by far the majority of sites assisted under these programs, during the lifetime of these programs an ACMA spokesperson noted that reception was as much an issue in Sydney for example, as it was for rural New South

5. S Conroy (Minister for Broadband, Communications and the Digital Economy), *Digital switchover date confirmed*, media release, 18 December 2007, p. 32, viewed 22 March 2010, http://www.minister.dbcde.gov.au/media/media_releases/2007/003

6. According to the Digital Switchover Taskforce report for the fourth quarter of 2009, 61 per cent of households across Australia were digital enabled. This was an increase from 47 per cent in the first quarter of 2009. Digital Switchover Taskforce, *Digital Tracker: report on quarter 4 September to December 2009*, Department of Broadband, Communications and the Digital Economy (DBCDE), 2009, viewed 23 March 2010, http://www.digitalready.gov.au/media/DigitalTrackerReport_Qtr_4_2009.pdf

7. DBCDE, *Report on Digital Television Transmission and Reception*, DBCDE, May 2009, viewed 30 March 2010, http://www.dbcde.gov.au/_data/assets/pdf_file/0018/115083/Transmission-Blackspots-Report-May-2009.pdf

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Wales.⁸ One article made a similar point citing suburbs such as Rockdale and Clovelly in Sydney as well as villages in the Blue Mountains and on the Hawkesbury River, including Brooklyn and Berowra Waters, as analogue black spot areas.⁹

Digital concessions for the bush

Remote and very remote areas make up 86 per cent of Australia, but contain less than three per cent of the population;¹⁰ so, as noted above, digital conversion necessarily requires an approach that takes into account low population density and vast spaces.

The Howard Government's 1998 digital television legislation conceded this was the case. A new Schedule 4 was inserted into the BSA providing for the ACMA to determine two schemes to assist Australia to convert from analogue to digital mode. These schemes aimed to achieve the same level of digital coverage and reception quality for viewers as had been delivered by analogue services. The schemes, known as Commercial Television Conversion Scheme and the National Television Conversion Scheme, however, were divided into two parts to take into account population and geographical variances. Part A concerned television services in metropolitan and regional licence areas, whereas Part B dealt with services in remote areas.

Part A, for example, set rules regarding a simulcast period in which television programs had to be broadcast in analogue and digital mode in metropolitan and regional areas. Simulcast periods for remote areas were a matter for the ACMA to decide. Indeed, clauses 14 and 28 of Schedule 4 directed the ACMA to consider the special circumstances that apply to the transmission of television broadcasting in remote areas.¹¹ As such, the ACMA was given significant latitude in promoting conversion in remote areas.

The added dimension—self help and direct to home (DTH) sites

The scope for remote communities in general in the BSA conversion schemes did not apply to self help retransmission or direct to the home sites, however. It seemed in fact

8. L Morris, 'A clear signal from TV blackspots - switch us on', SMH.com, 9 October 2002, viewed 29 March 2010, <http://www.smh.com.au/articles/2002/10/08/1034061209305.html>

9. Ibid.

10. From Australian Bureau of Statistics information—actual geographic area considered remote or very remote is 85.8 per cent and the population for this area is 2.3 per cent.

11. The *Broadcasting Services Act 1992*, viewed 22 March 2010 can be found at: http://www.austlii.edu.au/au/legis/cth/consol_act/bsa1992214/sch4.html

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that these sites had been forgotten in conversion planning, and as late as June 2007 it was noted that policy and regulatory arrangements for their conversion had yet to be decided.¹²

Self help retransmission facilities are licensed by ACMA for those sites which currently are unable to receive adequate analogue television signals. Generally the sites are in remote areas, but some metropolitan and regional 'black spot' reception areas, as noted earlier in this digest, do not receive maximal analogue television coverage.¹³ There has been no obligation under digital conversion schemes to ensure that these communities receive the same level of digital coverage they receive at present.¹⁴

The Howard Government released a discussion paper which considered the issue of digital conversion of retransmission sites. Updated ACMA statistics on these sites indicate that there are currently 177 sites with one or more self help retransmission services located in metropolitan and regional licence areas. Of these sites, 37 are located in metropolitan areas and 140 in regional licence areas. Approximately 22 000 households are served by self-help retransmission facilities in metropolitan areas, and 48 000 households in regional areas. ACMA estimates that there are 303 self help analogue terrestrial retransmission sites in remote central and eastern Australia and 180 in the remote and regional Western Australia. These sites serve an estimated 50 000 households in central and eastern Australia remote licence areas and an estimated 35 000 households in Western Australia.¹⁵

In 2007 apart from self help transmission sites there was also DTH satellite reception equipment installed in approximately 74 000 households. In some cases the installation of

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12. Digital Broadcasting, *Digital conversion of self-help television retransmission sites: discussion paper*, Department of Communications, Information Technology and the Arts, June 2007, viewed 22 March 2010, http://www.dbcde.gov.au/_data/assets/pdf_file/0006/70278/Digital_conversion_of_self-help_television_retransmission_sites_-_discussion_paper.pdf
 13. Reception difficulties can occur when a community is situated too far from a transmitter, or is shielded from broadcast signals by obstacles such as hills or mountains. Residents in highly populated areas may also experience reception problems due to signals being blocked by tall buildings or electrical interference. Providing their own low power rebroadcasting transmitter or cable system has enabled communities to reduce the need for individual households to install large expensive antenna systems.
 14. DBCDE, Report on Digital Television Transmission and Reception, May 2009, op. cit.
 15. DBCDE, *Report on Digital Television Transmission and Reception*, February 2010, viewed 29 March 2010, http://www.dbcde.gov.au/_data/assets/pdf_file/0006/125709/Transmission_Blackspots_Report_Feb10.pdf

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this equipment had involved gaining approval from the ACMA to access satellite services outside a licence area.¹⁶

The 2007 discussion paper suggested that options for digital terrestrial conversion may not be viable for self help sites and some submissions commenting on the paper agreed. Imparja television for example noted that self help systems were low power, robust, reliable and able to be installed by relatively untrained and unskilled operators. Digital transmitters on the other hand required expensive receivers and specialised knowledge to install and support.¹⁷ As a consequence, the option to convert these sites to digital was most likely beyond the capabilities of many self help communities. The Balonne Shire Council in remote Queensland agreed that sufficient expertise was not available to self help communities to make terrestrial conversion a solution; it advocated instead for expansion of the DTH option.¹⁸

Indeed, there appeared to be a reasonable amount of support for some type of satellite solution to the self help sites dilemma. Southern Cross Broadcasting argued that it had undertaken extensive technical and financial modelling on several models for digital conversion of self help sites and concluded it would be best achieved by DTH.¹⁹ However, the option of expanding access to satellite services which operated outside remote licences areas was criticised because it would mean the loss of local content, which is particularly vital to remote communities.

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16. Commercial broadcasting services are only permitted to serve the specific geographic area prescribed with their licence. While reception outside of the licence area can occur with terrestrially based broadcasting services, it cannot occur with commercial satellite services as the signal is encrypted and reception can only be obtained when the satellite broadcaster enables the receiver decoder if the viewer is within the licence area or out-of-area reception has been approved. Without ACMA approval, the reception of free-to-air commercial satellite television in a commercial terrestrial licence area is not permitted. Commercial satellite broadcasters can apply to the ACMA to be given permission to provide their services to a household with poor or no reception that is within a commercial terrestrial licence area.
 17. Imparja television, submission to *Digital conversion of self help television retransmission sites*, op. cit., viewed 24 March 2010, http://www.dbcde.gov.au/_data/assets/pdf_file/0010/74476/47_Imparja.pdf
 18. Balonne Shire Council submission to *Digital conversion of self help television retransmission sites*, op. cit., viewed 24 March 2010, http://www.dbcde.gov.au/_data/assets/pdf_file/0008/74438/12_Balonne_Shire_Council.pdf
 19. Southern Cross Broadcasting, submission to *Digital conversion of self help television retransmission sites*, op. cit., viewed 26 March, 2010, http://www.dbcde.gov.au/_data/assets/pdf_file/0010/74485/55_SCB.pdf

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In addition to support for the satellite solution, there were calls for subsidies to assist communities to convert. Lithgow Council in New South Wales noted, for example, that in addition to technical issues and the cost of actual conversion, there were ongoing costs that would be prohibitive, particularly considering that television broadcasting was not ‘core’ council business.²⁰

Adopting the satellite solution

The Howard Government did not respond to the digital conversion paper before the 2007 election and a solution to the dilemma of how best to deal with self help sites was left to the new Australian Labor Party (ALP) administration.

In December 2007, the Rudd Government announced that it would revise the digital television switchover date for metropolitan areas to 2009 and confirmed it would legislate to make 2013 a final digital switchover date for all areas. A switchover timetable was released by October 2008.²¹ In January 2009, the Minister for Broadband, Communications and the Digital Economy, Senator Stephen Conroy, announced a package of measures for a digital switchover pilot for the Mildura/Sunraysia region in Victoria which was to operate from 1 January to 30 June 2010. Following the pilot, it is intended that digital switchover will be progressively implemented in regions across Australia from 1 July 2010.²²

Conroy’s January 2009 announcement recognised that self help transmission sites in Mildura/Sunraysia were likely to experience problems in the digital switchover process. The switchover package therefore would include a new satellite service.²³

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20. City of Lithgow Council submission to *Digital conversion of self help television retransmission sites*, op. cit., viewed 26 March 2010, http://www.dbcde.gov.au/_data/assets/pdf_file/0004/74443/16_City_of_Lithgow_Council.pdf
 21. S Conroy (Minister for Broadband, Communications and the Digital Economy), *Digital switchover date confirmed*, media release, 18 December 2007, viewed 29 March 2010, http://parlinfo.parlInfo/download/media/pressrel/7GCP6/upload_binary/7gcp61.pdf;fileType=application/pdf#search=%22digital%20television%22
 22. See the switchover timetable, viewed 29 March 2010, at: http://www.minister.dbcde.gov.au/_data/assets/pdf_file/0006/88098/Digital_TV_Timetable_by_Region.pdf
 23. S Conroy (Minister for Broadband, Communications and the Digital Economy), *Package to drive digital television transition*, media release, 29 January 2009, viewed 29 March 2010, http://www.minister.dbcde.gov.au/media/media_releases/2009/003

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In August 2009, Anthony Albanese, the Minister for Infrastructure, Transport, Regional Development and Local Government noted further:

The Government is currently examining options for maximising viewer access to digital television services where the signals provided by broadcasters prove to be deficient. The costs and technical aspects of conversion are also being investigated and the Government will consider all facets, including any possible assistance programs, in the decision making process...Information in relation to the switchover timetable and related issues, such as the conversion of 'black spot' television transmitters [self help transmission sites] to digital, will be made available publicly once all issues and factors have been addressed ... to ensure a smooth transition from analog (sic) to a digital environment for viewers.²⁴

The Government promised to release a discussion paper on the self help satellite solution. However, as the Opposition spokesperson on Broadband, Communications and the Digital Economy, Senator Nick Minchin, observed in September 2009 the paper had yet to be released and this prevented discussion of the pros and cons of the satellite proposal.²⁵ No paper has subsequently been released.

In January 2010, the Government announced that a decision had been made on what to do about digital conversion for self help sites and DTH households. Following discussion with television broadcasters it had been agreed that they would upgrade 100 existing analogue self help sites to operate in digital mode. Minister Conroy praised the constructive approach to digital conversion adopted by the broadcasters which would mean 100 communities would 'simply need to install a high definition set-top-box to access a full suite of digital television channels'.²⁶ For those communities not covered under the agreement the Government intended to provide a satellite conversion subsidy to

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24. A Albanese (Minister for Infrastructure, Transport, Regional Development and Local Government), answer to Question in writing: Digital television transmitters, (Questioner W Truss) House of Representatives, *Debates*, 27 August 2008, viewed 26 March 2010, http://parlinfo/parlInfo/genpdf/chamber/hansardr/2008-08-27/0200/hansard_frag.pdf;fileType=application%2Fpdf
25. N Minchin, (Shadow Minister for Broadband, Communications and the Digital Economy), *Rudd Government must provide digital television certainty*, media release, 1 September 2009, viewed 29 March 2010, http://parlinfo/parlInfo/download/media/pressrel/3BKU6/upload_binary/3bku60.pdf;fileType=application/pdf#search=%22digital%20switchover%22
26. S Conroy (Minister for Broadband, Communications and the Digital Economy), *Digital television Australia-wide*, media release, 5 January 2010, viewed 29 March 2010, http://www.minister.dbcde.gov.au/media/media_releases/2010/001

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eligible households currently served by 'self-help' transmission sites which were not to be upgraded to digital by the broadcasters.²⁷

As this Bill illustrates, digital conversion under the satellite solution must necessarily involve substantially more than a subsidy to deliver digital services to those in digital black spots. From the onset, it will involve the creation of three new commercial satellite television licences and licence areas.²⁸ Further, in attempting to deliver on the government's service promise for rural Australians, it will require satellite licensees in the new licence areas to provide an equivalent number of channels to viewers as are enjoyed by metropolitan audiences. This requirement, in turn, will involve negotiation with terrestrial broadcasters, affiliation and supply arrangements with metropolitan licensees. It will also involve making legal provision in the event that equivalency in programming cannot be achieved through commercial means.

Moreover, the satellite solution must deal with the thorny issue of how to ensure 'localism' - that is, the provision of local content, including coverage of matters of local significance, for regional and remote audiences - is maintained. In attempting to do so, the legislation proposes that satellite operators will not be required to broadcast the exact content of the metropolitan channels they are required to carry. Instead, they will have flexibility to transmit local events and advertising. In two of the licence areas, a dedicated local news channel will need to operate. The channel will 'aggregate' local news from terrestrial regional broadcasters in these licence areas.²⁹ The terrestrial broadcasters will be required under their licence conditions to provide local material to the satellite broadcaster.

In April 2010, during the period in which this Bill was under consideration by a Parliamentary committee, the Government announced that an agreement had been reached to establish a joint venture company, Viewer Access Satellite Television (VAST), to deliver the satellite solution. The participating broadcasters were to be Southern Cross Media and Imparja. The VAST service would deliver programming in standard definition

27. Ibid.

28. The new licences areas will be in Northern Australia, encompassing the Northern Territory and Queensland, South Eastern Australia, encompassing the Australian Capital Territory, New South Wales, Tasmania and Victoria and Western Australia.

29. The legislation will not require aggregation of news services in the Western Australia licence area as the satellite licence area will be geographically the same as the existing terrestrial remote licence area.

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from the Seven, Nine and Ten networks and their new digital channels, as well as all ABC and SBS channels and high definition channels.³⁰

The VAST service is to operate in northern and southern time zones, providing standard definition services for viewers in Queensland and the Northern Territory based on Brisbane time and for viewers in New South Wales, Victoria, South Australia and Tasmania based on Sydney time. High definition services are to be provided in a combined zone which has yet to be defined. As at April 2010, negotiations to deliver the satellite service in Western Australia were underway with Prime and WIN television.

The Government had decided that a \$400 subsidy would be paid to eligible households to convert to the new satellite service. This is to assist viewers to purchase a satellite set top box with an access 'smart card', a satellite dish and cabling.

Committee consideration

On 18 March 2010 the Senate referred the Broadcasting Legislation Amendment (Digital Television) Bill 2010 to the Senate Standing Committee on Environment, Communications and the Arts for inquiry and report by 12 May 2010.

Details of the inquiry are at:

http://www.aph.gov.au/senate/committee/eca_ctte/digital_tv_2010/index.htm

Position of significant interest groups/press commentary

In welcoming the announcement of a satellite solution, Free TV Australia's Chief Executive Officer Julie Flynn observed that broadcasters had worked closely with the Government 'to provide certainty for viewers'. According to Flynn, regional broadcasters had also sought to identify areas where digital terrestrial solutions would be viable.³¹

Although his comments were not made directly in the context of comment on the satellite announcement, Broadcast Australia Technology Director, Stephen Farrugia makes a case for the hybrid digital conversion solution the Government has adopted. Farrugia argues:

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30. S Conroy (Minister for Broadband, Communications and the Digital Economy), *Landmark agreement to deliver Digital TV to Remote, Regional and Blackspot viewers*, media release, 14 April 2010, viewed 20 April 2010, http://www.minister.dbcde.gov.au/media/media_releases/2010/032
 31. Free TV Australia, *Free TV welcomes solution for regional digital TV blackspots*, media release, 5 January 2010, viewed 30 March 2010, http://www.freetv.com.au/media/News-Media_Release/2010-0001_MED_Free_TV_welcomes_solution_for_regional_digital_TV_blackspots.pdf

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It will rarely be possible or practical ... to service 100 percent of a population terrestrially, and an element of satellite coverage will always be warranted. The end result is a hybrid coverage model, where satellite coverage is used as a safety net. For example, direct-to-home satellite might be more viable for communities of only around 30 homes; whereas terrestrial services might be justifiable for remote communities of around 500 homes.

Ultimately, the approach taken to addressing digital black spots will vary from country to country, depending on government policy, spectrum availability and other market factors.³²

Concerns have been expressed that the Government has not allowed enough time for satellite services to be available especially for those in the Mildura/Sunraysia area where it was recently announced with some fanfare that the countdown to switchover from 100 days had begun. According to one source as specifications for satellite set top boxes have not been released, installers cannot order them and this may mean that up to 1000 people will have no television reception after 30 June 2010.³³

In response, a spokesman for the Digital Switchover Taskforce claims not only will upgrades to self help transmitter sites be completed by 30 June 2010, but the new satellite service will also be available to viewers well before switchover in Mildura/Sunraysia.³⁴

There has also been concern expressed about the issue of price for those who will be forced to take the satellite option. Christopher Zinn from Choice wonders whether there will be some people who might not be able to afford to watch television under the new system. It modifies the expression free-to-air television, Zinn claims, as it will be free for some whilst there will be a capital cost attached for others.³⁵

32. S Farrugia, 'Tackling the digital black spots', Onscreen Asia website, viewed 30 March 2010, <http://www.onscreenasia.com/article-5885-tacklingthedigitalblackspots-onscreenasia.html>

33. Steve Petshcel from Teletune, quoted by J Allan-Gange, 'Farmers in the bush may struggle with digital tv', *Mildura rural report*, transcript, Australian Broadcasting Corporation (ABC), 5 March 2010, viewed 30 March 2010, <http://www.abc.net.au/rural/regions/content/2007/s2837139.htm>

34. Allan-Gange, op. cit.

35. 'Federal Government begins \$40 million plan to upgrade regional TV to city standards', [heraldsun.com.au](http://www.heraldsun.com.au), 5 January 2010, viewed 30 March 2010, <http://www.heraldsun.com.au/news/federal-government-begins-40-million-plan-to-upgrade-regional-tv-to-city-standards/story-e6frf7jo-1225816344304>

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Previously, one Indigenous community network, PAW Media and Communications, expressed similar sentiments about cost should self help facilities completely disappear and satellite services become the norm for remote areas. The point made iterates Zinn's concern about equity:

Costs of receiving TV will be transferred to householders in communities already dealing with poverty and low incomes. Given the highly mobile home occupation patterns of people in Aboriginal communities it is also problematic as to whether anyone would want to invest in a satellite receiver on any given house...

It is to be noted that people in regional areas and the cities are not being required to carry any of the costs of the digital conversion other than the purchase of a set top box or digital TV.³⁶

National Indigenous Television (NITV) has raised concern there is no guarantee that it, and other similar narrowcast services, will be able to continue operation once the satellite solution is in place.³⁷ NITV is not listed as a service that will be included on the new satellite and it argues that the Optus Aurora platform which hosts the service will close in the medium term.³⁸ NITV believes that, as a service which fills a significant gap in the Australian media landscape by informing, entertaining and educating Indigenous Australians, it rightfully should be included on the new satellite service.

36. It should be noted that this comment is dated and there appears to be no more recent reference to this issue by PAW Media and Communications. Indigenous Community News Network, *Digital Conversion of TV: troubling times for remote communities*, 23 March 2009, viewed 30 March 2010, <http://icnn.com.au/breaking-news/digital-conversion-of-tv-troubling-times-for-remote-communities/>

37. National Indigenous Television (NITV) is a not for profit public company that provides a nationwide Indigenous television service by cable, satellite and terrestrial transmission means and selected online audio visual content. The content for these services is primarily commissioned or acquired from the Indigenous production sector. NITV reaches over 8 million Australians. Narrowcasting services are defined in sections 17 and 18 of the *Broadcasting Services Act* as broadcasting services whose reception is limited by: being targeted to special interest groups; intended only for limited locations; provided during a limited period of time; because they provide programs of limited appeal; or for some other reason. Narrowcasting services operate under a broadcasting class licence regime, with minimum levels of regulation. Subscription narrowcasting services differ from open narrowcasting services in that they are made available only on payment of subscription fees.

38. National Indigenous TV Limited (NITV), Submission to the Senate Environment, Communications, and the Arts Committee Broadcasting Legislation Amendment (Digital Television) Bill 2010, viewed 6 April 2010, http://www.aph.gov.au/senate/committee/eca_ctte/digital_tv_2010/submissions.htm

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The Special Broadcasting Service (SBS) has expressed concern about access to services.³⁹ It claims it will not be available on a number of upgraded digital terrestrial sites which will carry the ABC and commercial broadcasters. Consequently, if audiences wish to view SBS they will need to connect to the satellite service. According to SBS, this situation 'will be a disincentive for viewers to access SBS's services'.⁴⁰ It seeks a government commitment that additional transmitters will be installed at the affected terrestrial sites.⁴¹

Coalition/Greens/Family First/independent policy position/commitments

In January 2010, Nationals' Leader Warren Truss criticised the Government's intention to convert a minority of the self help retransmission sites.⁴² Truss claimed that the omission will leave thousands of people with 'blank screens' when analogue transmissions close. He maintained that the satellite broadcast of local news will mean people in country areas will lose local community service announcements and special programs and they will 'have to get used to watching their news service late at night or make a choice between local news and their favourite program being broadcast during their news slot'.⁴³

In addition, Mr Truss is concerned that people in the country will have to pay for the installation of satellite dishes. This is despite the fact that the Government expects to make millions of dollars from the sale of the broadcasting spectrum which will be released with the switchover to digital and it is spending \$66 million on digital conversion advertising. The Government would not treat people in metropolitan areas with the same contempt, according to Truss.⁴⁴

39. Special Broadcasting Service (SBS) (Submission to) *Inquiry into the provisions of the Broadcasting Legislation Amendment (Digital Television) Bill 2010*, 6 April 2010, viewed 7 April 2010, http://www.aph.gov.au/senate/committee/eca_ctte/digital_tv_2010/submissions.htm

40. Ibid.

41. According to SBS areas affected include Balranald and Brewarrina in New South Wales, Coober Pedy in South Australia, St Helens in Tasmania, Lorne in Victoria and Cloncurry, Weipa and Thursday Island in Queensland and Kambalda and Merredin in Western Australia.

42. W Truss, *ALP's digital TV plan will turn off local content for thousands in rural areas*, Australian Conservative website, 6 January 2010, viewed 29 March 2010, <http://australianconservative.com/2010/01/alps-digital-tv-plan-will-turn-off-local-content-for-thousands-in-rural-areas/>

43. Ibid.

44. Ibid.

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In 2008, the Opposition succeeded in having an amendment to a digital television switch-over Bill accepted to insert a provision that required the Government to identify and report on efforts to rectify digital transmission black spots.⁴⁵ Senator Minchin continued to seek the release of a discussion paper on the satellite option. He also demanded that the government provide a guarantee of federal government support for the installation of upgraded equipment.⁴⁶ The Government's failure to release a discussion paper on the satellite option has also been raised by the indigenous narrowcaster NITV. NITV maintains that this legislation therefore does not reflect an appropriate and open consultative process and leaves a number of aspects relating to the operation of the satellite services and consumer access unresolved.⁴⁷

The current Opposition spokesman, Tony Smith, has argued since taking over the shadow communications portfolio that while the new satellite service may be welcomed by some, people in regional areas would need to remain cautious and 'hold their champagne corks until they see the actual evidence and delivery'.⁴⁸ In their concluding remarks in the Senate Committee report referred to above, Coalition Senators said:

In the absence of sufficient evidence or cost-benefit analysis, Coalition Senators remain concerned that the use of a satellite broadcasting service may not be the most

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45. The Bill amended the *Broadcasting Services Act 1992* to allow for a staggered, region-by-region digital television switch-over timetable. See the following Bills digest for further information on the Bill, R Jolly and P Pyburne, *Broadcasting Legislation Amendment (Digital Television Switch-over) Bill 2008*, Bills digest, no. 35, 2008–09, Parliamentary Library, Canberra, 2008, viewed 29 March 2010, <http://www.aph.gov.au/library/pubs/bd/2008-09/09bd035.pdf> and Liberal Party of Australia, *Coalition amends digital-TV Bill*, media release, 5 December 2008, viewed 29 March 2010, <http://www.liberal.org.au/Latest-News/2008/12/05/Coalition-Amends-DigitalTV-Bill.aspx>
46. Liberal Party of Australia, *Rudd Government must provide digital television certainty*, media release, 1 September 2009, viewed 29 March 2010, <http://www.liberal.org.au/Latest-News/2009/09/01/Rudd-government-must-provide-digital-television-certainty.aspx> and Liberal Party of Australia, *Conroy plays catch-up on community television*, media release, 4 November 2009, viewed 29 March 2010, <http://www.liberal.org.au/Latest-News/2009/11/04/Conroy-plays-catchup-on-community-television.aspx>
47. NITV, Submission to the Senate Environment, Communications, and the Arts Committee, op. cit.
48. T Smith (Shadow Minister for Broadband, Communications and the Digital Economy), *Better TV access for the bush: Labor must convert talk into action*, media release, 5 January 2010, viewed 29 March 2010, http://www.tonymithmp.com/index.php?option=com_content&view=article&id=187:better-tv-access-for-the-bush-labor-must-convert-talk-into-action&catid=42:media-releases&Itemid=18

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satisfactory or appropriate or cost-efficient means to address the issue of digital television black spots.

We worry about potentially significant out-of-pocket preparatory expenses for rural and regional digital reception, exacerbated by uncertainty about whether they will access digital TV from terrestrial or satellite means.

Coalition Senators consider that television viewers in remote, rural and outer-metropolitan areas deserve equivalent access to equivalent television services as their city counterparts, ideally through upgraded terrestrial services where practicable.⁴⁹

In the Senate Committee report, the Australian Greens considered that the ‘concerns of National Indigenous Television (NITV), the Rural Health Education Foundation (RHEF), the Western Australian Government's Westlink service, and other narrowcasters and community broadcasters in a similar position’ about their financial ability to secure access to the satellite service had been adequately addressed by the Government.⁵⁰

Financial implications

According to the Explanatory Memorandum, the Bill ‘creates a framework for a new satellite service to allow the provision of digital television to all Australians’. The Bill itself will not have any financial impact. As the Explanatory Memorandum notes further, however, the Government is negotiating with commercial and national broadcasters to fund the satellite service. As a result there will be financial implications from the passage of this Bill. The Government has said that it will commit \$40 million each year for four years to build and operate the service.⁵¹

Key issues

An important issue with which this Bill deals is that of equity of access to broadcasting services. As noted elsewhere in this digest, there is some suggestion that the satellite solution for self help facilities that will not be upgraded for DTH households creates two categories of free-to-air viewers—those with real free-to-air services and those who need to pay capital costs.

49. Environment, Communications and the Arts Legislation Committee, *Broadcasting Legislation Amendment (Digital Television) Bill 2010 [Provisions]*, Commonwealth of Australia, Canberra, May 2010, p. 36, viewed 19 May 2010, http://www.aph.gov.au/senate/committee/eca_ctte/digital_tv_2010/report/report.pdf

50. *Ibid.*, p. 37.

51. Conroy, Digital television Australia-wide, *op. cit.*

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Paw Media and Communications have pointed out that in many cases, it is those least able to afford the capital cost who will be affected. Another problem, which may surface in Aboriginal communities where home-occupation-patterns are ‘highly mobile’, may be that people are reluctant to invest in a satellite receiver on one house.⁵² The Government will provide a subsidy for those households which will need to access digital television through the satellite, but in April 2010 it is not clear exactly what proportion of the actual installation cost that will be.

The Government has also introduced an assistance package so eligible viewers in regional areas will receive a free high definition set top box, installation and necessary upgrade to cabling and antennas to enable them to receive digital terrestrial television.⁵³ There is potential for any satellite subsidy to be increased to accommodate eligible households in the new satellite areas fully, but it will be difficult to address the needs of exceedingly mobile communities.

There is some justification in these arguments, and the question could be asked whether the alternatives suggested in the Howard Government’s 2007 discussion paper should have been given greater consideration to enable more self help sites to be converted for digital reception. It could be argued that the cost of upgrading 100 self help sites will not be overly onerous for broadcasters, who have benefited substantially from government largess in the digital switch over process.⁵⁴

But at the same time, as Stephen Farrugia maintains, it would be almost impossible to guarantee a 100 per cent terrestrial broadcast coverage. The alternative to a satellite solution could well have been no pictures at all.

A further crucial issue in the Bill is that of the provision of local content for regional and remote audiences. ‘Localism’ has long been an objective of broadcasting regulation in Australia and providing local content to communities is an important object of the BSA.⁵⁵ However, since the 1980s, concerns have been raised at various times about the decline in

52. Paw Media and Communications, op. cit.

53. Information about the Household Assistance Scheme is available on the Digital Switchover Taskforce website, ‘Are you ready for Digital TV?’, viewed 19 May 2010, http://www.digitalready.gov.au/household_assistance.aspx

54. Regional broadcasters for example have benefited from funding of \$260 million over 13 years to assist them to convert under the Regional Equalisation Plan.

55. Section 3 (1) of the BSA: The objects of the Act are (ea) to promote the availability to audiences throughout Australia of television and radio programs about matters of local significance and (g) to encourage providers of commercial and community broadcasting services to be responsive to the need for a fair and accurate coverage of matters of public interest and for an appropriate coverage of matters of local significance.

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local content in regional markets and government has been forced to intervene to ensure viewers in the bush are informed about local events and news. Following the closure of a number of regional news bureaux in 2002, the Howard Government imposed a minimum local content licence condition on regional television broadcasters in Queensland, New South Wales and Victoria.⁵⁶

A key aim of the Bill is deliver the same access in a digital broadcasting environment to local news and events to viewers who are unable to receive regional terrestrial television. It could be perceived that conditions proposed by the legislation under which terrestrial news will be aggregated and then delivered ‘as soon as practicable’ (proposed **clause 7(d)**) after the terrestrial licensee begins broadcast of the material gives the satellite broadcasters too much leeway. That is, their interpretation of what is ‘practicable’ may amount to the delivery of information hours after a broadcast on terrestrial television and, at the least, at an inconvenient time for audiences.

Main provisions

Items 1–6 of the Bill insert into existing subsection 6(1) of the BSA, those definitions which are relevant to the creation of satellite licensees.

Amendments to Part 4 of the BSA

The Bill amends existing Part 4 of the BSA to create four new Divisions which will be an aid to navigating Part 4.

Allocation of licences

Item 11 inserts the heading of **proposed Division 1**—about the allocation of licences.

Existing section 38B provides that additional (digital only) licences can be allocated in licence areas where only two commercial television broadcasting licences (called *parent licences*) are in force. Where the parent licence holders form a joint-venture company, the additional licences can be allocated to the joint-venture entity. The reason for this is so that there is no breach of sections 53—56A of the BSA which limit media ownership. **Items 13–25** amend existing section 38B so that the ACMA will be able to invite the parent licence holders to submit a notice of intention about an application for an additional

56. Southern Cross Broadcasting closed bureaux in Canberra, Cairns, Townsville, Darwin and Alice Springs and local news bulletins were dispensed with in Canberra, Newcastle and Wollongong by Prime TV. ACMA, *Adequacy of local news and information programs on commercial television services in Regional Queensland, Northern NSW, Southern NSW and Regional Victoria (aggregated markets A, B, C and D)*, Sydney, August 2002, viewed 31 March 2010, <http://www.acma.gov.au/webwr/assets/main/lib310197/regionalnewsrpt.pdf>

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(digital only) licence for the same area to which the parent licences apply. This amendment is an acknowledgement that areas which are served by only two commercial television broadcasting licences are under-served.

Item 26 inserts **proposed section 38C** which establishes commercial television broadcasting licences where services are provided with the use of a satellite (a satellite licence). The amendments in **item 26** are an acknowledgement that areas which are serviced by satellite are also under-served.

Specifically, the table in **proposed subsection 38C(1)** details the three proposed licence areas, namely:

- South Eastern Australia, being the area consisting of New South Wales, Victoria, South Australia, Tasmania, the Australian Capital Territory and the Jervis Bay Territory
- Northern Australia, being the area consisting of Queensland and the Northern Territory, and
- Western Australia, being the area consisting of Western Australia.

In addition, column three of the table specifies those existing licensees which are eligible to form joint ventures to hold licenses in those areas. **Proposed subsections 38C(2)–(10)** set out the procedure by which a joint venture company or a special purpose company⁵⁷ may make an application to the ACMA for a commercial television broadcasting licence for those licence areas—and the requirements of the ACMA to allocate the satellite licence. Where the ACMA receives applications from two or more special purpose companies, the commercial television broadcasting licence is to be allocated to one of the companies based on a price-based system which is set out in **proposed subsections 38C(11)–(14)**.

Proposed subsection 38C(15) sets out the circumstances in which the ACMA **must** cancel a satellite licence, including contravention of a condition set out in either **proposed clause 7B**⁵⁸ or **7C**⁵⁹ of Schedule 2 of the BSA which are inserted by **item 72** of this Bill. Where the ACMA is satisfied that the contravention was not due to technical or unforeseen circumstances beyond the licensee's control, or circumstances specified in the regulations, it must notify the licensee in writing that if the contravention continues for 30

57. A '*special purpose company*' is a wholly-owned subsidiary of an eligible joint venturer and is registered as a company under Part 2A.2 of the *Corporations Act 2001*: **proposed paragraphs 38C(6)(b) and (c)**.

58. Clause 7B of Schedule 2 of the BSA sets out the conditions about the provision of core/primary commercial television broadcasting services.

59. Clause 7C of Schedule 2 of the BSA sets out the conditions about the provision of non-core/primary commercial television broadcasting services.

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days the satellite licence will be cancelled. The ACMA **must** cancel the satellite licence 30 days after the notice is given if the contravention has continued.

Proposed subsections 38C(17)–(24) set out the conditions under which the ACMA must advertise and then allocate a commercial television broadcasting licence under section 38C if it was previously allocated and then cancelled.

Services authorised by licences

Item 27 inserts the heading for a new Division 2—about the services which are authorised by licences.

Commercial television broadcasting licences in force immediately **before 1 January 2009**, are authorised under existing subsection 41B(1) to provide a core commercial television broadcasting service, a high definition television (HDTV) multi-channelled commercial television broadcasting service, and a standard definition (SDTV) multi-channelled commercial television broadcasting service during the simulcast period. By comparison, existing subsection 41B(2) authorises commercial television broadcasting licences allocated on or **after 1 January 2009** to provide a HDTV multi-channelled commercial television broadcasting service and two SDTV multi-channelled commercial television broadcasting services.

Item 29 inserts **proposed subsections 41B(2A)–(2E)**. In particular **proposed subsection 41B(2E)** introduces two new terms. An *eligible parent licence* is a commercial television broadcasting licence allocated under existing section 38A of the BSA: **proposed paragraph 41B(2E)(d)**. An *eligible section 38B licence* is one of the additional (digital only) licences which have been awarded to a joint venture entity under amended section 38B: **proposed paragraph 41B(2E)(e)**. Essentially the amendments in **item 29** will authorise an *eligible parent licence* and an *eligible section 38B licence* (which operate in under-serviced areas) to provide the same number of services as are available in metropolitan licence areas—that is, three. However, the services will be in standard definition mode.

Item 32 inserts **proposed section 41CA** so that a satellite licence authorises the provision of commercial television broadcasting services that correspond to services provided by a commercial television broadcasting licensee in a *related terrestrial licence area*, or in a *metropolitan licence area*. There is no requirement that the program content be exactly the same as provided in those areas, only that the program content be substantially the same. **Proposed subsection 41CA(2)** provides that certain matters, including but not limited to the following, can be ignored in deciding if content is ‘substantially the same’:

- advertising, community information, weather bulletins
- news programs

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- programs which, if broadcast, could breach an order or direction of a court or be in contempt of court
- programs broadcast in circumstances set out in regulations.

Proposed subsection 41CA(3) allows for coverage of one anti-siphoning event to be substituted for another anti-siphoning event.⁶⁰ This means that the inclusion of local content which is significant to viewers in the relevant area can be broadcast without breaching this requirement.⁶¹

Licence conditions

Item 33 inserts the heading for a new Division 3 into Part 4—about licence conditions.

Existing section 43A imposes conditions about the minimum amount of material of local significance which a licensee holding a *regional aggregated commercial television broadcasting licence*, must broadcast. A list of the areas covered by these licences is contained in existing subsection 43B(2) of the BSA.

Item 38 inserts **proposed subsection 43A(3A)** which imposes an additional licence condition on a *regional aggregated commercial television broadcasting licence* if the area covered by that licence overlaps the area covered by a satellite licence. The regional licensee must provide any material of local significance that it broadcasts under its licence conditions, to the satellite licensee. **Proposed paragraph 43A(3A)(b)** requires that the material of ‘local significance’⁶² must be provided to the satellite licensee either, simultaneously with, or as soon as practicable after, the regional licensee broadcasts the material in its licence area. In addition, it must be provided to the satellite licensee by transmitting it in digital mode: **proposed subsection 43A(3B)**.

Item 41 inserts **proposed sections 43AA–43AC**. Broadly speaking these are licence conditions imposed where the area covered by a regional commercial television broadcasting licence area, a metropolitan commercial television broadcasting licence area or a remote terrestrial licence area respectively, overlaps a satellite licence area. In that case those licensees are required to provide to the satellite licensee local news and information programs, and commercial television programs simultaneously with, or as ‘soon as practicable’ after, they broadcast that material in their own licence area. No

60. According to the Explanatory Memorandum, a program broadcasting an NRL premiership could be substituted for a program broadcasting an AFL premiership match. Explanatory Memorandum, p. 36.

61. The program content rules in **proposed section 41CA** mirror those which are contained in **proposed clause 7J** of Schedule 2 to the BSA.

62. As defined in subsection 43A(1).

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guidance is given on the issues that can be taken into account in determining what is practical in this context.

Proposed section 43AD is an acknowledgement that such a licence requirement might amount to a constitutional acquisition of property and requires payment of a ‘reasonable amount’ of compensation by the satellite licensee should that be the case.⁶³

General provisions

Item 42 inserts the heading for a new Division 4 into Part 4. **Items 43–45** amend existing section 45 of the BSA so that the duration of a satellite licence is ten years, subject to the operation of any specific cancellation provisions contained within the BSA.

Amendments to other Parts of the BSA

Items 57–61 amend existing section 122 of the BSA which empowers the ACMA to determine standards for children’s programs and Australian content. The effect of the amendments is that these standards only apply to primary commercial television broadcasting services⁶⁴ provided by a satellite licensee.

63. Note that **item 50** amends subsection 98D(2) of the BSA to exclude an acquisition of property under **proposed sections 43AA–43AC** from the general compensation provisions in section 98D of the BSA. This means that the Commonwealth will not be liable if those sections do operate so as to create an acquisition of property other than on just terms.

64. **Primary commercial television broadcasting services** are formally defined in clause 41G of Schedule 4 to the BSA. The introduction of multi-channelling has created a two-track regulatory system for commercial television broadcasting services, in which a number of obligations apply to the analogue service and its digital simulcast, but not to the other streams of programs transmitted by the same licensee in digital mode.

During the period in which each analogue service and its digital equivalent in a licence area must be simulcast, the concept of a ‘core commercial television broadcasting service’ (core service) is used by the legislation to identify the service to which certain regulatory provisions of the BSA apply. Generally, the legislation identifies the core service as the digital simulcast service of the analogue service.

If a commercial broadcasting licensee does not provide an analogue service, this legislative approach is not available. This is the case after the end of a simulcast period for a licence area when analogue television services have ceased or upon commencement of multi-channelling in the case of the small number of services provided by digital-only licences. In these instances, the ACMA may declare one of the standard definition multi-channels provided by a commercial television broadcasting licensee to be the primary commercial television broadcasting service for the licence. Further information is available on the ACMA website, viewed 19 May 2010, http://www.acma.gov.au/WEB/STANDARD/pc=PC_312120

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Items 62 and 63 amend Part 9A of the BSA which relates to technical standards. **Proposed section 130AC** will empower the ACMA to determine technical standards that relate to the transmission in digital mode of services provided by satellite. The ACMA will also be empowered to determine technical standards for domestic reception equipment that is to receive services provided by satellite. **Proposed subsection 130BB(2)** creates a criminal offence which attracts a maximum penalty of 1 500 penalty units (\$165 000) if a person supplies such equipment and that equipment does not meet the standard set by the ACMA. **Proposed subsection 130BB(3)** creates a civil penalty provision in similar terms. Exemptions to criminal offence and civil penalty provisions can be made by the AMCA via legislative instrument.

Item 64 inserts **proposed Part 9C** into the BSA about access to commercial television broadcasting services provided with the use of a satellite. As a starting point Part 9C defines three categories of reception areas:

- category A in **proposed subsection 130ZB(3)** relates to remote terrestrial licence areas in which people are unable to receive adequate reception of terrestrial digital television services, includes people who access a commercial television service licensed for a remote licence area because they are entitled to the benefit of an ‘out of area’ permit held by the remote terrestrial broadcaster.
- category B in **proposed subsection 130ZB(4)** caters for known signal deficient reception areas, that is, where adequate reception of services is intermittent⁶⁵
- category C in **proposed subsection 130ZB(7)** is any area that is not a category A or B area where viewers will be able to seek access to the satellite broadcasting service on a case by case basis.

Proposed Part 9C creates a conditional access scheme which sets out the rules about the access to be provided under a satellite licence.⁶⁶ Under the scheme, viewers in category A and B areas will have access to broadcasts provided by a satellite licensee. Viewers in category C areas may apply to the scheme administrator, being either a body or association which represents commercial television broadcasting licensees, or the ACMA itself, for a *reception certificate* where the viewer is of the opinion that they do not have ‘adequate reception’.⁶⁷ The scheme administrator must deal with the application within 14 days without requiring payment of a fee or expenses from the applicant: **proposed subsection 130ZB(12)**. Where a scheme administrator refuses to issue a reception certificate, the

65. According to the Explanatory Memorandum, category B viewers currently rely on self-help or re-transmission facilities. Explanatory Memorandum, p. 42.

66. **Proposed section 130ZE** requires the ACMA to maintain an electronic register of conditional access schemes.

67. **Proposed section 130ZFA** provides that the ACMA may make a determination, by legislative instrument, about the meaning of ‘*adequate reception*’.

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applicant may make a complaint to the ACMA about the matter and the ACMA, upon investigation of the complaint, may direct a scheme administrator to issue a reception certificate: **proposed section 130ZF**. **Item 67** amends section 204 of the BSA so that decisions to refuse to issue, or to revoke, a reception certificate may be reviewed by the Administrative Appeals Tribunal.

Item 68 inserts **proposed section 211A** which sets out the procedure to be followed where a satellite licence area covers more than one time zone. It will allow a satellite licensee to give written notice to the ACMA of a place within the licence area. Once the nomination is in force, the provisions of the BSA, all program standards, regulations and codes of practice will apply to programs broadcast in all parts of the licence area as if the programs were broadcast at the time that is the legal time in the nominated place.

Amendments to Schedule 2 of the BSA

Items 69–74 amend Part 3 of Schedule 2 of the BSA which broadly sets out the conditions for commercial television broadcasting licences.

The amendments insert a **new Division 2** into Part 3 of the Schedule specifically in respect of the conditions of satellite licences. Those conditions complement the conditions set out in **items 33–42** of this Digest, as outlined above. For example, **proposed clause 7A** contains common conditions such as:

- transmission must be in digital mode
- the services are to be provided by means of a satellite
- there is to be a conditional access scheme registered under Part 9C, and
- the satellite licensee must comply with the technical standards set out in section 130AC.

Similarly **proposed clause 7D** provides that a satellite licensee which is supplied with local news programs and material under proposed subsections 43A(3A) (item 38) or 43AA(1) (item 41) must broadcast those programs and that material as soon as practicable after it begins to be broadcast in the related terrestrial licence area.

Proposed clauses 7E and **7F** provide some limited exemptions from compliance with the licence conditions to satellite licensees where provision of new commercial television broadcasting services are not technically feasible or where it would cause duplication.

Proposed clause 7H sets out the start dates for the satellite licence areas as follows:

- for South Eastern Australia TV 3—the ACMA may declare a start date by legislative instrument. However, it must not be later than 90 days after the day the satellite licence is allocated

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- for Northern Australia TV3 and for Western Australia TV3—the ACMA may declare a start date by legislative instrument. However, it must be at least three months before the end of the earliest applicable terrestrial digital television switch-over date for the licence area.

Matters related to program content are contained in **proposed clause 7J**.⁶⁸

Amendments to Schedule 4 of the BSA

Items 75–132 amend Schedule 4 of the BSA which relates to the transition from analogue to digital broadcasting. Schedule 4 was inserted into the BSA by the *Television Broadcasting Services (Digital Conversion) Act 1998* to regulate the conversion of transmission of broadcasting services from analogue mode to digital mode.

Essentially these amendments are designed to exclude a satellite licence granted under proposed section 38C from the operation of Schedule 4 so that ‘satellite commercial broadcasting services are disregarded for the purposes of the conversion scheme for terrestrial television transmitters from analogue to digital’.⁶⁹

Item 98 inserts **proposed subclause 6(7KA)**, to clarify that clause 6 which sets out the commercial television conversion scheme does not apply to a commercial television broadcasting licence allocated under section 38C (a satellite licence). Similarly **items 99–101** exclude a commercial television broadcasting licence allocated under section 38C from the existing requirement to make digital implementation plans or submitting them to the ACMA. Nor is a satellite licence subject to the HDTV quota obligations: **proposed clause 37DAA**.

Items 103–113 amend the captioning rules in Schedule 4 of the BSA. The basic rule is contained in existing subclause 38(1)—that is, each commercial television broadcasting licensee, and each national broadcaster, must provide a captioning service for:

- television programs transmitted during prime viewing hours,⁷⁰ and
- television news or current affairs programs transmitted outside prime viewing hours.

68. The program content rules in **proposed clause 7J** mirror those which are contained in **proposed section 41CA** of the Bill.

69. Explanatory Memorandum, op. cit., p. 59.

70. *Prime viewing hours* are defined in clause 37M of Schedule 4 to the BSA as (a) beginning at 6 pm each day or, if another time is prescribed, beginning at that prescribed time each day, and (b) ending at 10.30 pm on the same day or, if another time is prescribed, ending at that prescribed time on the same day.

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However, there are a number of exceptions.⁷¹ These items will extend the exceptions to the basic captioning rule to add services provided under a satellite licence which are not primary satellite commercial broadcasting services.

Items 114–121 amend existing Part 4A of Schedule 4 of the BSA to exclude satellite licences from the operation of clauses 41A–41D which relate to restrictions on broadcasting anti-siphoning events by commercial television broadcasting services. According to the Explanatory Memorandum, these amendments are required ‘because there is no simulcast period applicable to satellite commercial broadcasting services licensed under section 38C of the BSA’.⁷² Importantly though, **item 122** inserts **proposed clauses 41FA and 41FB** which will regulate the way SDTV, and HDTV, multi-channelled commercial television broadcasting services under a section 38C licence, are to broadcast events on the anti-siphoning list.

Similarly **items 127 and 128** amend existing Part 4A of Schedule 4 to exclude national television broadcasting services from the operation of clauses 41J and 41K which relate to restrictions on broadcasting anti-siphoning events by national television broadcasting services. Importantly, **item 130** inserts proposed **clauses 41LA and 41LB** which will regulate the way SDTV, and HDTV, multi-channelled national television broadcasting services under a section 38C licence, are to broadcast events on the anti-siphoning list.

Amendments to the Copyright Act

Items 135–144 amend the Copyright Act. In particular **item 141** inserts a new **Part VD**, about re-broadcasts by satellite licensees, into the Copyright Act. Part VD sets up a statutory licence scheme regulating two separate copyright issues:

- use of copyright in a broadcast, and
- use of underlying copyright in the television program material—script writing, music, recorded sounds, artworks .

Proposed section 135ZZG introduces two new terms:

- *eligible program* refers to the television program material which is supplied by a commercial television broadcaster to a satellite licensee under the conditions imposed by subsection 43A(3), or sections 43A, 43AB or 43AC of the BSA.
- *original broadcaster* of the eligible program is the commercial television broadcaster which has been required to provide material to the satellite licensee.

71. For example, a captioning service is not required in relation to a television program that is not in English or mainly not in English, non-vocal music-only programs and live sport coverage with unscheduled extended coverage that displaces a news program.

72. Explanatory Memorandum, op. cit., p. 64.

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Proposed subsection 135ZZZI(1) deals with the underlying copyright in television program material so that copyright in a work, sound recording or cinematograph film is not infringed by a satellite licensee which is re-broadcasting an eligible program, if the following conditions are satisfied:

- the eligible program is re-broadcast by a satellite licensee
- the eligible program is re-broadcast on a service authorised by the satellite licence
- the re-broadcast of the eligible program complies with the conditions of the satellite licence set out in Schedule 2 of the BSA
- a *remuneration notice*⁷³ given by the satellite licensee to the *relevant collecting society*⁷⁴ is in force
- the original broadcaster of the eligible program was specified in the remuneration notice, and
- the satellite licensee complies with the requirement in section 135ZZZL to maintain a record system of each eligible program that is broadcast by the original broadcaster and re-broadcast by the satellite licensee.

Proposed subsection 135ZZZI(2) deals with copyright in a broadcast of an eligible broadcast so that the copyright will not be infringed if the following conditions are satisfied:

- the eligible program is re-broadcast by a satellite licensee on a service authorised by the satellite licence
- the re-broadcast of the eligible program complies with the conditions of the satellite licence that are set out in Schedule 2 to the BSA and any of the following conditions is satisfied:
 - there is an agreement in force between the satellite licensee and the owner of the copyright in the broadcast of the eligible program as to the amount payable by the satellite licensee to the owner of the copyright for the re-broadcast of eligible programs
 - if there is no agreement—there is a determination of the Copyright Tribunal under section 153RA of the Copyright Act about the amount payable by the satellite licensee to the owner of the copyright

73. **Proposed section 135ZZZJ** provides for a satellite licensee to give written notice to a collecting society that it will undertake to pay equitable remuneration to the society for re-broadcasts of eligible programs.

74. Under **proposed section 135ZZZF**, *relevant collecting society* in relation to a remuneration notice, means a collecting society for owners of copyright in the same kind of work or other subject-matter as that to which the remuneration notice relates.

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- if there is no agreement or determination—the satellite licensee has given the owner of the copyright in the broadcast of the eligible program a written undertaking to pay to the owner of the copyright such amount as is subsequently determined by the Copyright Tribunal
- the eligible program is re-broadcast by the satellite licensee during the period specified in the relevant agreement or determination.

The amount of equitable remuneration is generally agreed between the satellite licensee and the collecting society, or failing agreement, determined by the Copyright Tribunal. Where the Copyright Tribunal has made a determination **proposed subsection 135ZZZK(2)** provides that either the satellite licensee, or the collecting agency, may apply for a new determination 12 months after the date of the original determination.

Proposed sections 135ZZZO–135ZZZS are about collecting societies. Essentially a body may apply to the Minister to be declared a collecting society for all, or only a specified class of, copyright owners. The Minister may:

- declare the body to be a collecting society by way of notice published in the Gazette
- refuse to declare the body a collecting society, or
- refer the application to the Copyright Tribunal—which may subsequently declare the body a collecting society.

Where the Minister or the Copyright Tribunal has declared a body to be the collecting society for a specified class of copyright owners, **proposed subsection 135ZZZO(8)** empowers the Minister and the Copyright Tribunal to refuse to declare another body as the collecting society for that same class of copyright owners unless they are satisfied that it would be in the best interest of those copyright owners. Where a declaration has been made that a body is a collecting society, that declaration can be revoked by notice published in the Gazette: **proposed section 135ZZZP**. Collecting societies must prepare an annual report as soon as practicable after the end of each financial year and provide a copy to the Minister. The Minister must table a copy of the report in each House of the Parliament within 15 sitting days of that House after the receipt of the report: **proposed section 135ZZQ**.

Proposed sections 135ZZT–135ZZZX set out interim arrangements in circumstances where no collecting society has been declared. The interim arrangements operate as follows:

- the Minister may, by written notice in the Gazette, appoint a person to be a *notice holder*: **proposed section 135ZZZT**
- a satellite licensee may, at any time before the declaration of a collecting society has been made, give to the notice holder an undertaking to pay equitable remuneration to a collecting society when it is declared: **proposed section 135ZZZV**

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- once the undertaking has been made to the notice holder, the underlying copyright in television program material being copyright in a work, sound recording or cinematograph film is not infringed by a satellite licensee which is re-broadcasting an eligible program: **proposed section 135ZZZU**
- once the collecting society has been declared, the notice which was given to the notice holder is taken to be a remuneration notice to the collecting society: **proposed section 135ZZZX**.

Item 142 inserts a **new Subdivision GA** into Division 3 of Part VI of the Copyright Act which will confer new jurisdiction on the Copyright Tribunal as a consequence of the amendments in this Bill. The Copyright Tribunal will be empowered to consider the following matters:

- an application by the satellite licensee or the copyright owner for an order determining the amount payable by the satellite licensee for a re-broadcast by the satellite licensee: **proposed section 153RA**
- an application for a determination of the amount of equitable remuneration payable for re-broadcasts of eligible programs: **proposed section 153S**
- an application to determine a record system: **proposed section 153T**
- an application for a body to become a collecting society, on reference from the Minister: **proposed section 153U**
- a question whether the declaration of a body as a collecting society should be revoked, on reference from the Minister: **proposed section 153V**, and
- a review of the arrangements adopted by, or proposed to be adopted by, a collecting society for distributing the amounts it collects in a period: **proposed section 153W**.

Concluding comments

The intention of this Bill is to ensure that people in communities which will not have access to terrestrial digital television broadcasting after the analogue signal is switched off in 2013 will not be disadvantaged. There has been some criticism of aspects of the planned satellite solution, the legal framework for which this Bill will introduce. Essentially, criticism refers to the failure to convert more terrestrial self help sites to digital and to the issue of how equitable it is that some Australians must purchase satellite equipment to broadcasts which are free to others. There has been some concern raised that satellite services, as well as self help site conversions, will not be fully functional by the analogue switch off date. In addition, it has been suggested that the potentially delayed timing of the

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broadcast of local news and content aggregated from terrestrial licensees could be problematic, depending on the interpretation of some wording in the Bill.⁷⁵

On the whole however, despite criticism that the Bill creates some supplementary issues in relation to equity, it is in fact an attempt to ensure equitable outcomes in a digital environment for those Australian communities who have been denied comparable analogue television services. As such, it appears the benefits of the legislation generally outweigh its shortcomings.

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75. Specifically, the wording of **proposed paragraph 43A(3A)(b)**.

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