



Broadcasting Legislation Amendment (Digital Dividend and Other Measures) Bill 2011

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Law and Bills Digest Section

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Broadcasting Legislation Amendment (Digital Dividend and Other Measures) Bill 2011

Date introduced: 24 February 2011

House: House of Representatives

Portfolio: Broadband, Communications and the Digital Economy

Commencement: The day after the Royal Assent

Links: The links to [the Bill, its Explanatory Memorandum and second reading speech](#) can be found on the Bill's home page, or through <http://www.aph.gov.au/bills/>. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at <http://www.comlaw.gov.au/>.

Purpose

The main purpose of the Broadcasting Legislation Amendment (Digital Dividend and Other Measures) Bill 2011 (the Bill) is to amend the *Broadcasting Services Act 1992* (the Broadcasting Services Act) and the *Radiocommunications Act 1992* (the Radiocommunications Act) to accommodate a planned reorganisation of digital television channels and so realise the 'digital dividend.'

The Bill also makes amendments to the regulatory framework for television delivered via satellite.

Background

Digital television broadcast signals require significantly less radiofrequency spectrum¹ than analog broadcast signals.² The phrase 'digital dividend' refers to the broadcast spectrum available for other uses as a result of the commencing of digital television broadcasting and the cessation of analog television broadcasting.³

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1. The radiofrequency spectrum consists of that part of the electromagnetic spectrum which can carry radio signals. In Australia, the Australian Communications and Media Authority (the ACMA) regulates the use of the radiofrequency spectrum between 3 KHz (Kilohertz) and 300 GHz (Gigahertz). 'Hertz' (Hz) is a unit of frequency, or cycles per second of a radio signal.
 2. Digital broadcast signals transmit data in a stream of discrete packets or 'bits'. Analog signals transmit data in the form of waves.
 3. For a comprehensive history of digital television policy in Australia, including a discussion of digital dividend policy, see: R Jolly, *Going digital: tracing the transition to digital terrestrial television in Australia*, Research paper, no. 7, 2010-2011, Parliamentary Library, Canberra, 2010, viewed 9 March 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fpub%2F381338%22>

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In Australia, the digital dividend spectrum is 126 MHz in the frequency range between 694 MHz to 820 MHz (the 700 MHz band). This part of the radiofrequency spectrum is valuable due to its propagation properties: signals broadcast in this band can penetrate buildings and carry large amounts of data, and are therefore suitable for a variety of uses including television broadcasting and provision of mobile communications services and wireless broadband.

The government announced the release of the digital dividend spectrum on 24 June 2010.⁴ In order to realise the digital dividend, the Australian Communications and Media Authority (the ACMA) will undertake a three stage process consisting of:

- cessation of analog broadcasting and transition to digital broadcasting by 31 December 2013 (the digital switchover)
- reorganisation of the digital channels currently occupying the digital dividend spectrum to create a contiguous block of spectrum (the re-stack), and
- re-allocation of the contiguous block of spectrum (spectrum reallocation).

The provisions in **Schedule 1** of the Bill relate to the second element of the process, the 're-stack'.⁵ Once the digital dividend spectrum has been re-stacked, the Government intends to auction the digital dividend spectrum in the second half of 2012.⁶

The provisions in **Schedule 2** of the Bill relate mostly to the satellite service established under the *Broadcasting Legislation Amendment (Digital Television) Act 2010*.⁷

ACMA's regulatory powers with respect to the digital dividend

In July 2010 Minister Conroy made the Australian Communications and Media Authority (Realising the Digital Dividend) Direction 2010 (the Direction).⁸ Amongst other things, the Direction requires the ACMA, when performing its spectrum management functions under section 14 of the *Australian*

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4. S Conroy (Minister for Broadband, Communications and the Digital Economy), *Size and location of the digital dividend*, media release, 24 June 2010, viewed 2 March 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FC15X6%22>
 5. Details are available at: Australian Communications and Media Authority, *Spectrum reallocation in the 700 Mhz digital dividend band*, discussion paper, ACMA, October 2010, viewed 1 March 2011, pp. 7-9, http://www.acma.gov.au/webwr/_assets/main/lib311973/ifc34_2010_spectrum_reallocation_700mhz_digital_dividend_band.pdf
 6. S Conroy (Minister for Broadband, Communications and the Digital Economy), *Size and location of the digital dividend*, op. cit.
 7. For further information, see: R Jolly and P Pyburne, *Broadcasting Legislation Amendment (Digital Television) Bill 2010*, Bills Digest, no. 145, 2009-2010, Parliamentary Library, Canberra, 2010, pp. 24-25, viewed 28 February 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillsdgs%2FSPRW6%22>
 8. Australian Communications and Media Authority (Realising the Digital Dividend) Direction 2010, viewed 28 February 2011, <http://www.comlaw.gov.au/Details/F2010L01990>

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Communications and Media Authority Act 2005 (the ACMA Act) to act in accordance with the following Commonwealth communications policy objectives:⁹

- (a) that the part of the broadcasting services bands comprising the frequencies 694 to 820 megahertz inclusive (the **digital dividend spectrum**) is to be cleared, over time, of broadcasting and datacasting services;
- (b) that the clearance of the digital dividend spectrum be completed as soon as possible after the final digital television switch-over day.

Consultations and exposure draft legislation

Both the ACMA¹⁰ and the Department of Broadband, Communications and the Digital Economy (DBCDE)¹¹ have carried out public consultation on digital dividend policy. The consultations covered broad policy and technical issues associated with the digital dividend but did not specifically cover the amendments proposed by the Bill.

On 24 June 2010 Minister Conroy released an exposure draft of the Bill.¹² Six submissions on the exposure draft were received raising a number of technical and policy issues.¹³ The Bill as presented differs only in minor respects from the exposure draft. One submission raised concerns that the exposure draft process did not give stakeholders a fair opportunity to make comments.¹⁴

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9. Under section 14(1) of the ACMA Act the Minister may give written directions to the ACMA in relation to the performance of its functions and the exercise of its powers. Under section 14(2) such a direction can only be of a general nature if it relates to ACMA's broadcasting, content and datacasting functions and powers.
 10. Australian Communications and Media Authority, *Spectrum reallocation in the 700 Mhz digital dividend band*, discussion paper, ACMA, October 2010, viewed 1 March 2011, http://www.acma.gov.au/webwr/assets/main/lib311973/ffc34_2010_spectrum_reallocation_700mhz_digital_dividend_band.pdf. Submissions are available at: http://www.acma.gov.au/WEB/STANDARD/pc=PC_312285
 11. S Conroy (Minister for Broadband, Communications and the Digital Economy), *Digital dividend green paper*, media release, 5 January 2010, viewed 2 March 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F2JMV6%22>
A copy of the digital dividend green paper can be viewed at: http://www.dbcde.gov.au/consultation_and_submissions/digital_dividend/digital_dividend_green_paper/digital_dividend_green_paper_pdf_324_kb
 12. S Conroy (Minister for Broadband, Communications and the Digital Economy), *Size and location of the digital dividend*, op. cit. A copy of the exposure draft can be viewed at: http://www.dbcde.gov.au/data/assets/pdf_file/0020/132059/Exposure_draft-Broadcasting_Legislation_Amendment-Digital_Dividend_and_Other_Measures-Bill_2011.pdf
 13. Submissions can be viewed at : http://www.dbcde.gov.au/television/digital_television_switchover/broadcasting_legislation_amendment_digital_dividend_bill_2011

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The submission from the Australian Mobile Telecommunications Association (AMTA) raised concerns about the designated re-stack day.¹⁵ These concerns were not addressed in the Bill as presented and were raised again by AMTA in its submission to the Senate Environment and Communications Legislation Committee (the Senate Committee). The submission from Broadcast Australia raised concerns about exemptions from digital transmission requirements and the availability of an election to broadcast in standard definition only.¹⁶ These concerns were not addressed in the Bill as presented and were raised again by Broadcast Australia in its submission to the Senate Committee. Concerns raised by Free TV Australia regarding the definition of **underserviced area** appear to have been partially addressed in the Bill as presented.¹⁷ The remainder of the issues raised by Free TV Australia were not repeated in its submission to the Senate Committee.

Committee consideration

On Thursday 3 March 2011 the Senate Selection of Bills Committee referred the Bill to the Senate Environment and Communications Legislation Committee for inquiry and report by 21 March 2011.¹⁸

Issues raised in submissions to the Senate Committee are discussed under the 'main issues' heading below.

Policy position of non-government parties/independents

The Coalition, the Australian Greens and the independent Members and Senators have not, at the time of writing this Bills Digest, expressed any specific positions in relation to the Bill.

Position of major interest groups

In its submission to the Senate Committee inquiry into the Bill, Regional Broadcasting Australia, which represents commercial free-to-air broadcasters operating in regional and remote areas, states:

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14. AUSTAR United Communications Limited, *Submission to Department of Broadband, Communications and the Digital Economy*, viewed 15 March 2011, http://www.dbcde.gov.au/_data/assets/pdf_file/0020/132761/AUSTAR_submission.pdf
 15. Australian Mobile Television Association, *Submission to Department of Broadband, Communications and the Digital Economy*, 14 January 2011, viewed 17 March 2011, http://www.dbcde.gov.au/_data/assets/pdf_file/0003/132762/AMTA_Submission.pdf
 16. Broadcast Australia, *Submission to Department of Broadband, Communications and the Digital Economy*, viewed 17 March 2011, http://www.dbcde.gov.au/_data/assets/pdf_file/0004/132763/Broadcast_Australia_submission.pdf
 17. Free TV Australia, *Submission to Department of Broadband, Communications and the Digital Economy*, 19 January 2011, viewed 17 March 2011, http://www.dbcde.gov.au/_data/assets/pdf_file/0006/132765/Free_TV_submission_updated.pdf
 18. Selection of Bills Committee, *Report no. 2 of 2011*, Senate, Canberra, 3 March 2011, viewed 9 March 2011, http://www.aph.gov.au/Senate/committee/selectionbills_ctte/reports/2011/rep0211.pdf

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Regional Broadcasting Australia, on behalf of its member broadcasters operating in regional and remote licence areas, strongly supports the passage of the DD Bill, in order that the significant work now under way and shortly to commence to deliver Australia a substantial digital dividend be allowed to proceed without undue delay.¹⁹

Julie Flynn, Chief Executive of Free TV Australia, which represents the commercial TV broadcasters, was reported as stating that the restack will be 'challenging for all concerned'.²⁰ Nonetheless, the submission from Free TV Australia is also strongly supportive of the Bill:

Free TV strongly supports the Bill and believes it is essential to efficiently facilitate the transition to digital television and the digital dividend this will allow.²¹

The Australian Mobile Television Association (AMTA), which represents the mobile communications industry, raised concerns about the **designated re-stack day**, being 31 December 2014—the day that the re-stack is intended to be completed (see discussion of **item 6** of **Schedule 1** below).²²

Financial implications

According to the Explanatory Memorandum, the amendments in the Bill will not, of themselves, result in any direct financial impact on the government.²³

Main issues

Designated re-stack day

The Australian Mobile Telecommunications Association (AMTA) notes in its submission to the Senate Committee that the **designated re-stack day** is 31 December 2014, a year after the cessation of analog broadcasting. The AMTA considers that this delay will result in opportunity costs to mobile operators intending to operate in the digital dividend spectrum band, and that digital dividend spectrum should be made available immediately upon analog broadcasting ceasing on 31 December

19. Regional Broadcasting Australia, *Submission to the Senate Standing Committee on Environment and Communications*, March 2011, viewed 9 March 2011,

http://www.aph.gov.au/senate/committee/ec_ctte/digital_dividends/submissions.htm

20. J Chessell and M Franklin, 'Conroy hoping to make a killing on analog', *The Australian*, 6 January 2010, p. 2, viewed 1 March 2011,

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2FEZKV6%22>

21. Free TV Australia, *Submission to the Senate Standing Committee on Environment and Communications*, 9 March 2011, viewed 10 March 2011, http://www.aph.gov.au/senate/committee/ec_ctte/digital_dividends/submissions.htm

22. Australian Mobile Telecommunications Association, *Submission to the Senate Standing Committee on Environment and Communications*, 9 March 2011, viewed 9 March 2011,

http://www.aph.gov.au/senate/committee/ec_ctte/digital_dividends/submissions.htm

23. Explanatory Memorandum, p. 5.

2013.²⁴ The AMTA also suggests that the Minister should consider the interests of new licensees of digital dividend spectrum alongside the interests of broadcasters.

The VAST satellite service

Several submissions to the Senate Environment and Communications Legislation Committee raise the issue of the adequacy of broadcasting services in rural and regional areas, in particular the issue of the VAST satellite service as an alternative to converting existing analog self-help re-transmission sites to digital.²⁵

A submission from Winton Shire Council raises the issue of self-help retransmission sites, commenting that:

The government has clearly indicated through their actions, or lack thereof, that their preference is for councils to abandon self-help retransmission and migrate to VAST. It is our belief that this is not necessarily in the best interests of the people, nor does it provide a 'metropolitan equivalent' service.²⁶

Several submissions from regional councils are critical of digital television policy generally without raising specific concerns about the provisions of the Bill.²⁷

A submission from the Remote Area Planning and Development Board (RAPAD), which represents seven regional councils in central western Queensland, raises concerns about the provision of the Bill exempting broadcasters from obligations to broadcast in digital in areas which lack adequate analog services (see discussion of **items 47** and **52** of **Schedule 2** below). RAPAD notes that the cost of purchasing equipment to access the VAST service is greater than the cost of purchasing equipment to access terrestrial digital signals.²⁸

The submission from the Local Government Association of Queensland supports the RAPAD submission, and raises similar concerns regarding the cost and inconvenience for viewers required to

24. Australian Mobile Telecommunications Association, Submission to the Senate Standing Committee on Environment and Communications, op. cit.

25. The satellite service is known as the Viewer Access Satellite Television (VAST) service. Further information can be viewed at: <http://www.digitalready.gov.au/what-is-the-switch/satellite.aspx>

26. Winton Shire Council, Submission to the Senate Standing Committee on Environment and Communications, undated, viewed 11 March 2011, http://www.aph.gov.au/senate/committee/ec_ctte/digital_dividends/submissions.htm

27. See, for example, the submissions from Barcaldine Regional Council which can be viewed at: <https://senate.aph.gov.au/submissions/comitees/viewdocument.aspx?id=a72e16fe-afa2-449e-bbf3-f01996e894d1> and Blackall Tambo Regional Council which can be viewed at: <https://senate.aph.gov.au/submissions/comitees/viewdocument.aspx?id=e4c633da-12a5-455c-8d66-93e3ba7baefd>

28. Remote Area Planning and Development Board, Submission to Senate Standing Committee on Environment and Communications, viewed 15 March 2011, http://www.aph.gov.au/senate/committee/ec_ctte/digital_dividends/submissions.htm

access the VAST service, rather than terrestrial digital broadcasting services, as a result of the proposed amendments:

On balance, the Bill will potentially diminish the number of digital terrestrial transmission facilities likely to be rolled out by broadcasters and or the range and quality of the commercial TV channels they are likely to transmit... Hence we believe that these elements of the Bill, when taken in the context of the immediate previous amendments, will have the effect of increasing dependency on the more expensive and less convenient VAST.²⁹

The submission from Broadcast Australia (BA) explored the issue of VAST, as an alternative to terrestrial broadcasting, in some detail. BA submitted that the exemptions from digital conversion obligations contained in **items 47 and 52 of Schedule 2**, and the proposed **declared service-deficient area** provisions in **item 37 of Schedule 2**, appear to proceed from an incorrect assumption that the VAST service is equivalent and substitutable for a terrestrial broadcasting service.³⁰ BA's submission argues at length that this is not the case, given the cost of converting multiple devices for VAST receptions. BA's submission notes that the Government's Satellite Subsidy Scheme currently provides for a co-payment scheme contributing between \$200 and \$350 to convert a single screen device.³¹ Broadcast Australia estimates that the cost of converting additional equipment to receive the VAST signal (given a household with four screen devices requiring conversion) would be between \$1000 and \$1500 per home, after assistance from the Satellite Subsidy Scheme.³²

BA also points out that the underserved area exemption could potentially apply in any area which currently does not receive SBS analog transmissions or receives SBS transmissions only through self-help facilities. BA notes that as SBS transmitters have only been extended to communities of more than 3000 people, this exemption could potentially apply in all communities with fewer than 3000 residents.³³

29. Local Government Association of Queensland, Submission to Senate Standing Committee on Environment and Communications, p. 3, viewed 10 March 2011,

http://www.aph.gov.au/senate/committee/ec_ctte/digital_dividends/submissions.htm

30. Broadcast Australia, Submission to Senate Standing Committee on Environment and Communications, viewed 11 March 2011, p. 2, http://www.aph.gov.au/senate/committee/ec_ctte/digital_dividends/submissions.htm

31. Further information about the Satellite Subsidy Scheme can be viewed at:

<http://www.digitalready.gov.au/government-assistance/satellite-subsidy-scheme.aspx>

32. Broadcast Australia, Submission to Senate Standing Committee on Environment and Communications, op. cit., p. 5.

33. Ibid., p. 8.

Key provisions

Schedule 1

Amendments to the Broadcasting Services Act

Item 1 repeals the existing definition of **broadcasting services bands** in subsection 6(1) of the Broadcasting Services Act, substituting a new definition. Under the existing definition, the term **broadcasting services bands** means that part of the radiofrequency spectrum designated for broadcasting, and that part of the radiofrequency spectrum designated for digital radio broadcasting service and restricted datacasting services in accordance with existing subsections 31(1) and 31(1A) of the Radiocommunications Act respectively; and referred by the Minister to the ACMA for planning. The new definition omits the requirement that broadcasting services bands are referred by the Minister to the ACMA for planning, which duplicates an identical requirement in section 31 of the Radiocommunications Act (see discussion of **item 31** of **Schedule 2** below).

Item 6 inserts **proposed subsections 26(1B)–(1M)** into the Broadcasting Services Act. Under existing subsection 26(1), the ACMA must, by legislative instrument, prepare **licence area plans** determining the number and characteristics, including technical specifications, of broadcasting services transmitted using the broadcasting services bands. **Item 6** effectively replaces the broadly defined planning power granted to the ACMA by existing subsection 26(1) with a series of very specifically defined planning powers designed to give the ACMA greater flexibility to plan and implement the re-stack of the digital television channels.³⁴

Under the proposed sections, the ACMA will have broad powers to prepare new planning instruments to be known as **television licence area plans** (TLAPs). TLAPs will be the key planning instruments for television broadcasting once analog broadcasting ceases. TLAPs will (amongst other things):

- specify the channels available for broadcasting services (**proposed paragraph 26(1B)(a)**)
- allot channels to broadcasters (**proposed paragraph 26(1B)(b)**)
- determine characteristics, including technical specifications, for transmission of broadcasting services (**proposed paragraph 26(1B)(c)**)

Once a TLAP comes into force for a given area, any existing licence area plans made under subsection 26(1) cease to have effect (**proposed subsection 26(1H)**). TLAPs must not come into force before the end of the **simulcast period** or **simulcast-equivalent period**³⁵ (the date when analog

34. Explanatory Memorandum, p. 8.

35. Under **proposed subsection 26(13)**, inserted by **item 7**, **simulcast period** and **simulcast-equivalent period** have the same meaning as in Schedule 4 to the Broadcasting Services Act. The **simulcast period** is the period during which a broadcaster is required to transmit analog and digital signals simultaneously under the commercial television

broadcasting ceases in a given area), and must come into force before the **designated re-stack day** for a given area (**proposed subsection 26(1J)**). The designated re-stack day is 31 December 2014, or a later day specified by the Minister in writing (**proposed subsection 26(1K)**). Under **proposed subsection 26(12)** inserted by **item 7**, a determination under **proposed subsection 26(1K)** is not a legislative instrument. The Minister must not specify a later day unless failure to do so would be likely to result in significant technical or engineering difficulties for a broadcaster (**proposed subsection 26(1L)**).

In exercising its functions and powers in relation to TLAP, the ACMA must have regard to the planning criteria contained in section 23 of the Broadcasting Services Act, and make provision for public consultation in accordance with section 27 of the Broadcasting Services Act (**proposed subsection 26(1M)**).

Item 7 inserts **proposed subsections 26(7)–(13)** into the Broadcasting Services Act.

Proposed subsection 26(7) relates to planning criteria. It provides that the ACMA may disregard the first two of the planning criteria contained in section 23 of the Broadcasting Services Act, which relate to demographics and social and economic characteristics of a licence area. The rationale for the provisions is that because the re-stack is primarily a technical and engineering exercise, these criteria need not be taken into account.³⁶

Proposed subsections 26(8), (9) and (10) provide a temporary power for the Minister to direct the ACMA, by legislative instrument, about the exercise of its powers to make or vary a TLAP. This temporary power ceases at the start of the designated re-stack day. Item 41 of the Table in section 44 of the *Legislative Instruments Act 2003* explicitly provides that a Ministerial direction (such as this) is not disallowable.

Under **proposed subsection 26(11)** determinations made in writing by the ACMA under a TLAP are not legislative instruments.

Item 10 inserts **proposed section 26AA**, which requires commercial television broadcasting licensees and national broadcasters to comply with TLAPs. **Items 15** and **16** amend Part 14C of the Broadcasting Services Act to allow the Federal Court to grant injunctions in relation to contraventions of **proposed section 26AA**. **Items 17** and **18** operate to make compliance with TLAPs a condition of broadcasting licences.

Item 13 inserts **proposed subsections 27(1A) and (1B)**. Existing subsection 27(1) requires the ACMA to make provision for wide public consultation in performing its broadcast service band planning functions. Under **proposed subsection 27(1A)**, subsection 27(1) will not apply where ACMA is preparing or varying a TLAP or performing functions or exercising powers under a TLAP before the

conversion scheme (see note 37 below) or the national television conversion scheme (see note 39 below). If there is no simulcast period for a given area the ACMA may declare a specified period as the **simulcast-equivalent period**.

36. Explanatory Memorandum, p. 10.

designated restack day. However, **proposed subsection 27(1B)** requires the ACMA to make provision for consultation with commercial and community television broadcasting licensees who are likely to be affected by the preparation or variation of the TLAP, national broadcasters and other persons whom the ACMA considers appropriate.

Part 2 of Schedule 4 to the Broadcasting Services Act relates to commercial television. Subclause 6(3) of Schedule 4 contains the policy objectives of the **commercial television conversion scheme**.³⁷ **Item 19** repeals paragraph 6(3)(ha) of Schedule 4, replacing it with **proposed paragraphs 6(3)(ha)–(hc)**. The effect of the amendment is that an objective of the **commercial television conversion scheme** is that commercial television broadcasting licensees will transmit services in digital mode under any TLAP in force, rather than under a **digital channel plan** made under the scheme.³⁸ **Item 21** makes a similar amendment in relation to broadcasters who are providing multi-channel broadcasting services. **Item 25** makes a similar amendment in relation to the **national television conversion scheme**.³⁹

Item 23 inserts **proposed clause 7AA** into schedule 4 to the Broadcasting Services Act. Under **proposed subclause 7AA(1)** a digital channel plan will cease to have effect when the TLAP for a licence area comes into force. Under **proposed subclause 7AA(2)**, the commercial television conversion scheme ceases to have effect when the TLAP for a licence area comes into force. **Item 27** inserts **proposed clause 22AA** into Schedule 4 in similar terms in relation to the national television conversion scheme.

Amendments to the Radiocommunications Act

The purpose of the amendments made to the Radiocommunications Act by the Bill is to accommodate the introduction of the TLAP amendments made to the Broadcasting Services Act.

Under section 31(1), the Minister may, by written instrument, designate parts of the spectrum to be primarily for broadcasting purposes, or restricted datacasting services, or both. **Item 31** inserts **proposed subsection 31(1AA)** authorising the Minister to vary a designation made under subsection 31(1) so as to enlarge or reduce the part of the spectrum covered by the designation. **Item 32** makes a similar amendment in relation to digital radio broadcasting services.

37. Clause 6 of Schedule 4 to the Broadcasting Services Act requires the ACMA to develop the **commercial television conversion scheme**. The scheme regulates the conversion of commercial television broadcasting from analog to digital. See: http://www.acma.gov.au/web/STANDARD/pc%3DPC_91843

38. Under clause 7A of Schedule 4 to the Broadcasting Services Act, the ACMA may make **digital channel plans** under the commercial television conversion scheme. The main function of digital channel plans is to allot channels to holders of commercial television broadcasting licences.

39. Under clause 19 of Schedule 4 to the Broadcasting Services Act requires the ACMA to develop the national television conversion scheme. The scheme is a counterpart to the commercial television conversion scheme. See: http://www.acma.gov.au/WEB/STANDARD/pc=PC_91843

Under Part 2.1 of Chapter 2 of the Radiocommunications Act, the ACMA may make **spectrum band plans** and **frequency band plans**.⁴⁰ **Item 35** amends section 32 of the Radiocommunications Act, under which the ACMA may make frequency band plans. Under subsection 32(2), a frequency band plan made under the section **must** be consistent with any **frequency allotment plan** made under section 25 of the Broadcasting Services Act.⁴¹ **Proposed subsection 32(2A)**, provides an exception to the rule if a direction under section 14 of the ACMA Act is in force requiring the ACMA to act in accordance with digital dividend policy objectives. The item conforms to the Australian Communications and Media Authority (Realising the Digital Dividend) Direction 2010 discussed earlier in this Bills Digest. The effect of the amendment is that the ACMA will be able to make a frequency band plan in pursuit of digital dividend policy objectives which is inconsistent with a frequency allotment plan. The amendment will allow the ACMA to allot the digital dividend spectrum before the Minister excises that spectrum from the broadcasting services bands.⁴²

Items 38-46 contain amendments relating to broadcasting transmitter licences for broadcasters.

Under section 100 of the Radiocommunications Act the ACMA may issue apparatus licences including licences authorising operation of broadcasting transmitters. **Item 38** inserts **proposed section 100AA** which will operate as follows:

- **proposed subsection 100AA(1)**, provides that **NBS transmitter licences** issued under section 100 before the end of the simulcast or simulcast-equivalent period are taken to continue authorising the operation of the transmitter in digital mode after that period⁴³
- **proposed subsection 100AA(2)**, provides that an NBS transmitter licence issued under section 100 when a **BSA television licence area plan** (a TLAP made under the Broadcasting Services Act) comes into force is taken to authorise transmission using the channels allotted under the TLAP⁴⁴ and
- **proposed subsection 100AA(3)**, provides that where an NBS transmitter licence is issued under section 100 where no TLAP is in force, the licence is taken to authorise transmission of channels allotted under the national television conversion scheme or a digital channel plan.

The overall effect of these amendments is that first, NBS transmitter licences issued before the end of the simulcast-equivalent period are taken to continue to authorise transmissions in digital mode

40. Spectrum band plans are made under section 30 of the Radiocommunications Act. Spectrum band plans divide the radiofrequency spectrum into frequency bands. For each of the frequency bands under a spectrum plan made under section 30, the ACMA may make frequency band plans under section 32.

41. Under section 25 of the Broadcasting Services Act, where the Minister has referred a part of the radiofrequency spectrum to the ACMA for planning under section 31(1) of the Radiocommunications Act, the ACMA must prepare a frequency allotment plan. Frequency allotment plans determine the number of channels that are to be available in particularly areas for broadcasting services.

42. Explanatory Memorandum, p. 17.

43. Under section 5 of the Broadcasting Services Act an **NBS transmitter licence** is a transmitter licence used to transmit a national broadcasting service.

44. **Item 30** inserts this definition into the Radiocommunications Act.

after the end of that period, and secondly, a TLAP, when in force, is the instrument under which transmissions of digital broadcasting signals are authorised.

Item 39 inserts **proposed subsection 100B(2C)**, which cancels NBS transmitter licences issued under the national television conversion scheme at the end of the simulcast or simulcast-equivalent period.

Item 42 makes a similar amendment to existing section 102A in relation to transmitter licences issued to commercial television broadcasting licensees under the commercial television conversion scheme by inserting **proposed subsections 102A(6)** and **(7)**.

Item 43 repeals existing subsection 102AC(1), substituting a new subsection. The amendments are similar to those made by **item 38** in relation to NBS transmitter licences. Under section 102, the ACMA issues transmitter licences to holders of broadcasting licences issued under the Broadcasting Services Act. The new subsection effectively allows for a transmitter licence issued under section 102 before the end of the simulcast or simulcast-equivalent period, to continue to authorise transmissions in digital mode in accordance with a TLAP. If no TLAP is in force, the amendments allow for the licence to continue authorising transmissions under the commercial television conversion scheme or a digital channel plan. **Item 46** inserts **proposed section 102AD** which makes similar provision for transmitter licences issued under section 102 after the end of the simulcast or simulcast-equivalent period.

Item 51 amends subsection 153H(1) to ensure that broadcasting transmitter licences are not automatically cancelled as a result of a spectrum re-allocation declaration affecting apparatus licences generally.⁴⁵

Section 153P of the Radiocommunications Act operates to restrict the ACMA from issuing apparatus licences for parts of the spectrum, subject to a spectrum re-allocation declaration. **Items 52** and **53** amend section 153 by inserting **proposed paragraph 153P(2)(db)** and **proposed subsection 153P(4)** respectively, to create an exception to this restriction for broadcasting transmitter licences issued between the commencement of the schedule and the beginning of the designated re-stack day.

Schedule 2

Schedule 2 contains a variety of amendments to the Broadcasting Services Act, mostly related to provision of television services in remote and regional areas. The schedule also contains minor amendments to the *Australian Communications and Media Authority Act 2005* (the ACMA Act), the *Copyright Act 1968* and the Radiocommunications Act.

Item 1 amends section 53(2)(k) of the ACMA Act to allow the ACMA to delegate its power to issue notices under Part 9C of the Broadcasting Services Act. Part 9C, inserted by the *Broadcasting Legislation Amendment (Digital Television) Act 2010*, regulates access to commercial television broadcasting via satellite (the **conditional access scheme**).

45. Spectrum reallocation declarations are made under section 153B of the Radiocommunications Act.

Item 5 inserts **proposed subsections 41B(2DA)** and **41B(2DB)** into the Broadcasting Services Act. The existing section 41B specifies the services, including high-definition television (HDTV) services, which commercial television broadcasting licensees are authorised to provide during simulcast periods. The proposed subsections contain provisions specific to remote licence areas.⁴⁶ The amendments allow broadcasters in remote licence areas to provide multi-channelled broadcasting services in standard definition television (SDTV) only, until the end of the simulcast period, if they choose to do so. A similar amendment in relation to broadcasters in some regional licence areas was made by the *Broadcasting Legislation Amendment (Digital Television) Act 2010*. By allowing broadcasters in remote licence areas to broadcast multi-channelled services in SDTV only, a less expensive exercise than broadcasting in HDTV, the amendment is intended to encourage multi-channel broadcasting in these areas in order ‘to assist in achieving equalisation in the number of multi-channelled digital television services provided by commercial broadcasters in Australia’.⁴⁷

Existing section 130ZB of the Broadcasting Services Act outlines the objectives of the conditional access schemes, including three categories of reception area for determining viewer entitlements to satellite services.⁴⁸ **Items 16** and **17** amend the objectives of the conditional access scheme contained in section 130ZB to ensure that a person who has been issued a satellite reception certificate will not lose access to satellite services if digital television services become available at a later date, as long as they do not move to other premises.

Item 22 inserts **proposed section 130ZZB**, which contains statutory objectives for a conditional access scheme applying specifically to the area covered by the scheme in Western Australia (the Western Australian TV3 licence area).

Section 130ZB of the Broadcasting Services Act, which contains the objectives of the conditional access scheme, currently defines three categories of reception area: category A (in which people are unable to receive adequate reception of terrestrial digital television services), category B (where adequate reception is intermittent) and category C (where viewers may seek access to the satellite broadcasting service on a case-by-case basis).

The key difference between the objectives in existing section 130ZB and the objectives in **proposed section 130ZZB** is the addition of a further category of reception area: **category D reception area**.

Under **proposed subsection 13ZBB(8)**, category D reception areas are areas which receive or are expected to be able to receive, reception of terrestrial digital television services. Residents in such

46. Item 6 inserts the definition of **remote area licence**. A remote area licence is a commercial television broadcasting licence for a remote licence area. Under clause 5 of Schedule 4 to the Broadcasting Services Act, the ACMA may determine that a specified licence area is a remote licence area.

47. Explanatory Memorandum, p. 23.

48. For more detail about the operation of Part 9C, see R Jolly and P Pyburne, *Broadcasting Legislation Amendment (Digital Television) Bill 2010*, Bills Digest, no. 145, 2009-2010, Parliamentary Library, Canberra, 2010, pp. 24-25, viewed 28 February 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillsdgs%2FSPRW6%22>

areas who cannot receive terrestrial digital services as expected, will be able to apply for access to the satellite service after the **designated digital service day**. Under **proposed subsection 130ZB(15)** the designated digital service day is the day upon which digital broadcasting commences in a given area.

Item 23 amends section 130ZC to allow industry to submit to the ACMA, and for the ACMA to register, a conditional access scheme to replace one that has been developed by the ACMA under section 130ZCA. **Item 27** amends section 130ZCAB to allow the ACMA to request an appropriate body or association to develop a conditional access scheme to replace one developed by ACMA under section 130ZCA.⁴⁹

Item 34 inserts **proposed section 130ZEA**, under which the ACMA will be required to maintain a register of designated digital service days, being the days on which the transition to digital broadcasting is complete in the proposed category D reception area (see discussion of **item 22** above).

Item 37 inserts new provisions relating to **declared service-deficient areas**. Under **proposed section 130ZH**, if the ACMA is satisfied that the number of commercial television broadcasting services available in a terrestrial broadcast licence area is less than the number of services available under the satellite service, the ACMA must declare the area to be a service deficient area. Residents in such areas will be able to access the satellite service under **proposed subsection 130ZBB(21)**.⁵⁰

Item 46 repeals clause 6C of Schedule 4 to the BSA. Clause 6C contains an objective of Part A of the commercial television scheme (which applies to non-remote licence areas) intended to encourage conversion of analog self-help transmission sites to digital by commercial television broadcasters.⁵¹ According to the Explanatory Memorandum, a decision by commercial television broadcasters to install a digital re-transmission service in place of analog self-help sites makes the objective unnecessary.⁵²

Item 47 inserts **proposed clause 9A** into Schedule 4 to the Broadcasting Services Act. The proposed clause will allow a commercial television broadcasting licensee to apply to the Minister for an exemption from requirements under the commercial television conversion scheme or an implementation plan to transmit services in digital mode in an **exempt digital transmission area**.⁵³

49. Under **proposed subsection 130ZCAB(2A)** which is inserted by item 31 of Schedule 2 to the Bill, the **appropriate body or association** is a body or organisation that developed a scheme under 130ZC of the Broadcasting Act or the body or organisation that the ACMA is satisfied represents commercial television broadcasting licensees.

50. **Proposed section 130ZBB** is inserted by item 22 of Schedule 2 to the Bill.

51. Self-help transmission facilities are located in regional and remote areas underserved by broadcaster-operated transmission sites. See:

http://www.dbcde.gov.au/television/digital_telemvision_switchover/news/digital_conversion_of_self-help_telemvision_retransmission_sites_discussion_paper

52. Explanatory Memorandum, p. 37.

53. Under clause 20 of Part 4 of the BSA the national broadcasters are required to prepare implementation plans in relation to the national television conversion scheme.

Under **proposed subclause 9A(2)**, the Minister may determine, by legislative instrument, that an area is an **exempt digital transmission area**. **Proposed subclauses 9A(3)–(7)** set out those matters that the Minister must consider in making a determination. In particular, the Minister must not make a determination that a licence area is an exempt digital transmission area unless:

- the specified area does not have coverage of any commercial television broadcasting services in digital mode
- fewer than 500 people reside in the specified area or the area is an underserved area⁵⁴ and
- either a satellite service is available in the area, or there is some other way in which people in the area can receive adequate broadcasting services.

Item 52 inserts **proposed clause 21A** into schedule 4, which contains largely identical provisions applying to national broadcasters.

The amendments will allow broadcasters to avoid converting analog broadcasting transmitters in areas of low population where satellite services are available, or in cases where converting a transmitter would not address a deficit of services in the area. The **proposed clauses 9A** and **21A** were originally proposed by the government as amendments to the *Broadcasting Legislation Amendment (Digital Television) Bill 2010*, but were later withdrawn.⁵⁵

Schedule 3

Schedule 3 to the Bill contains transitional provisions.

Items 6 and **7** excuse the ACMA from undertaking consultation in relation to consequential and transitional matters requiring variations to the commercial television conversion scheme and national television conversion scheme as a result of the amendments made by the Bill.

Item 8 excuses broadcasters from contraventions of certain licence conditions relating to provision of programming to satellite service providers between 30 June 2010 and the commencement of the item by effectively deeming the amendments made the Bill to the relevant provisions to have commenced on 30 June 2010.

Item 9 requires the ACMA, within 30 days of the commencement of the item, to request industry to develop new conditional access schemes for the South Eastern Australia, Northern Australia and Western Australian TV3 licence areas. The replacement schemes are required because of amendments made by the Bill to the schemes' policy objectives.

54. Under **proposed section 9A(5)**, an area is an **underserved area** if an area does not have coverage of one or more commercial or national broadcasting services in analog or digital mode.

55. See Proposed Amendments and Schedule of Amendments at the homepage for the *Broadcasting Legislation Amendment (Digital Television) Bill 2010*:
<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4340%22>

Concluding comments

The general effect of the amendments in **Schedule 1** is that TLAPs made under the proposed amendments to the Broadcasting Services Act will be the key planning instruments for broadcast television once analog transmissions cease. TLAPs will supersede any other arrangements made under the commercial television conversion scheme, the national television conversion scheme, any digital channel plans made under these schemes, and any existing licence area plans in force. Another important amendment is the granting to the Minister of a temporary power to direct the ACMA in the exercise of its functions in making TLAPs.

The main effect of the amendments contained in **Schedule 2** are to provide for transmitter licences issued under the Radiocommunications Act to authorise transmission under TLAPs, and to create new eligibility categories for access to the satellite broadcasting service and exemptions from broadcaster requirements to transmit digital terrestrial signals in certain areas.

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