CHAPTER 1

OVERVIEW

Introduction

1.1 The Broadcasting Services Amendment (Digital Television and Datacasting) Bill 2000 was referred to the Senate Environment, Communications, Information Technology and the Arts Legislation Committee on 10 May 2000 by the Senate (Selection of Bills Committee Report No 6 of 2000). The Committee was required to report to the Senate by 8 June 2000.

The Bill

1.2 The purpose of the Broadcasting Services Amendment (Digital Television and Datacasting) Bill 2000 amends the *Broadcasting Services Act 1992* (the BSA) and the Radiocommunications Act 1992 to make arrangements for the introduction of digital television in Australia and to implement a new regulatory regime for the provision of datacasting services. The changes follow various reviews required to be conducted by Clause 59 of Schedule 4 of the *Broadcasting Services Act 1992* (BSA). The Explanatory Memorandum to the Bill deals in detail with the proposed amendments.[1]

The Committee's Inquiry

1.3 The Committee advertised its inquiry in *The Week-end Australian* and *The Australian Financial Review* and on the Internet. The Committee also wrote to a number of organisations with an interest in television and with a potential interest in datacasting, inviting them to make submissions. The Committee received 38 submissions and a number of supplementary submissions. A list of the submissions received is at Appendix 1. The Committee held two days of public hearings at Parliament House in Canberra on Wednesday 31 May 2000 and Thursday 1 June 2000 and heard from 60 witnesses. A list of the witnesses who appeared before the Committee is at Appendix 2.

Overview of major issues

1.4 The Committee received 38 submissions, 7 of which came from private individuals and 1 from the Government of Western Australia. The majority of submissions came from organisations involved in the television broadcasting industry and from the potential datacasters. Three submissions were exclusively concerned with captioning issues and another 5 (from commercial free-to-air television

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1 Explanatory Memorandum, Broadcasting Services Amendment (Digital Television and Datacasting) Bill 2000.

broadcasters) requested minor amendments to the captioning requirements on the basis of cost. Most of the submissions from individuals expressed concern that the legislation might result in further restrictions in consumer choices in access to information in the digital environment.

1.5 While the Federation of Australian Commercial Television Stations (FACTS) and the regional TV operators, Prime, Southern Cross, Ten Network and WIN were supportive of the broad thrust of the Bill, the majority of submissions sought considerable amendments to the legislation relating to three main issues:

1. **the mandating of HDTV** (and the allocation of free spectrum to the free-to-air (FTA) television stations consequent upon that decision);
2. **the definition of datacasting** (and the consequent restrictions on services that datacasters can provide); and
3. **the issue of multichannelling**.

1.6 Other issues of concern raised in submissions and at the Committee's public hearings were:

- the powers given to the Australian Broadcasting Authority under the Bill;
- the timing of the various reviews required under the Bill;
- the determination of captioning standards to assist the hearing impaired in gaining access to television programs;
- the issue of Australian content for digital television and datacasting services;
- the regulation of standards (for example, an audio standard or for set-top boxes);
- the ability for ABC and SBS to use digital spectrum to simulcast their radio services to those regions that are not currently able to receive those services; and
- the lack of digital spectrum provision to community broadcasters.

1.7 A number of submissions referred to the timeframe for the passage of this Bill. With few exceptions however, there was strong support among witnesses to the Committee's inquiry for Australian television to convert to digital mode within the next year. Those who did not support the move (such as the Australian Consumers Association *(*ACA)) did not object to digital television per se. Rather, the ACA argued that a delay would result in the development of a better policy approach and work in favour of the Australian consumer.[2]

1.8 The issue of conversion to digital television has been canvassed at length in various reports over the last eighteen months. In this report the Committee will focus only on those areas of the Bill that, according to submissions and witnesses to this

2 Australian Consumers' Association, Submission No. 10, p.12

inquiry, are causing the most concern amongst the stakeholders in the television and datacasting industries.

Mandating HDTV

1.9 Under section 37 of the *Television Broadcasting Services (Digital Conversion) Act 1998*, Australia's commercial FTA television stations and the two national broadcasters are required to commence transmission in digital High Definition Television (HDTV) format in State capital cities on 1 January 2001. Each free-to-air television station (the commercial stations and the two national broadcasters) were "loaned" 7 MHz of spectrum free of charge to enable them to broadcast in HDTV while maintaining transmission of their analog signal. HDTV was the only digital standard acceptable under the Act but a minimum quota for HDTV was yet to be determined.

1.10 On 21 December 1999, the Minister for Communications, Information Technology and the Arts announced the Government's decisions in relation to digital television. The Bill before the Committee, the Broadcasting Services Amendment (Digital Television and Datacasting) Bill 2000 is the legislative framework through which the Government seeks to implement those policy decisions.

1.11 The current Bill provides for digital transmission to be in both HDTV and Standard Definition Television (SDTV) formats with the requirement that a minimum of 20 hours per week of HDTV be broadcast after 1 January 2003 by those capital city FTA stations that would have begun their first digital transmission on 1 January 2001. (The HDTV quota requirements for the national broadcasters are slightly different and commercial FTA regional stations are required to meet the minimum 20 hours per week quota two years after their first HDTV broadcast). Since the stations need to simulcast their analog transmission at all times, there will be times after 1 January 2001 when the free-to-air television stations will be transmitting in 3 modes HDTV, SDTV and analog (triplecast).

1.12 In evidence to the Committee, FACTS was strongly supportive of HDTV as a driver for encouraging the take-up of digital television:

> High definition will be very significant in promoting digital television, although we would not expect large numbers of high definition sets to be sold in the very early years …
>
> … We think HDTV will be very important early on to promote digital television generally. We think, without HDTV, we would have a huge uphill battle to get anyone into an electrical goods store. HDTV is going to be the drawcard.[3]

3 FACTS, *Proof Committee Hansard*, 31 May 2000, pp 30 and 37

Other free-to-air commercial TV broadcasters who appeared before the Committee endorsed FACTS' submission.[4]

1.13 However, the majority of submissions and witnesses to the Committee expressed grave doubts about the ability of HDTV to attract enough support to make the move to digital television successful. The representatives of the Pay TV industry were particularly confident that HDTV would fail in the Australian marketplace as it has failed overseas:

> In the USA today HDTV is a bit of a joke … The consumers of America, as has been evidenced here in previous witnesses' information, just have not taken it up. It is far too expensive and it is far too expensive to make. It is in fact a dud.
>
> The UK rejected it altogether. We find that the multiplex model was favoured and HDTV was rejected. We find that Europe has no plans whatsoever for HDTV. We heard yesterday through FACTS that Japan has put HDTV on hold. So what are we saying here? Are we saying that HDTV's last bastion in the world is going to be here in Australia? Yet at yesterday's committee hearing I heard people say, 'No, there won't be production here in Australia, it is too expensive. No, there won't be manufacture, nobody is interested …
>
> … I think there is an overwhelming amount of evidence worldwide that HDTV is a non-goer.[5]

1.14 Those submissions and witnesses who told the Committee that they opposed HDTV because it was bound to fail in the Australian market fell into three categories:

i) those who did so because of the high cost of the equipment to the consumer;

ii) those who believed that only a wide range of new services would encourage the consumer to spend more to switch to digital; and

iii) those whose main concern was with the 7MHz of spectrum that has been freely loaned to the free-to-air television stations to enable them to broadcast in HDTV.

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4 Southern Cross Broadcasting, *Proof Committee Hansard*, 1 June 2000, p.121

5 Australian Subscription Television and Radio Association, *Proof Committee Hansard*, 1 June 2000, p.105

Cost

1.15 Mr Encel, a television retailer told the Committee that HDTV would not be successful with Australian consumers and that it should "simply [be] dropped from the current Triplecast model":

> SDTV will provide nearly all the enhancements that are currently being promoted in the media, such as datacasting, home shopping, interactivity, Internet access etc. From my company's experience, I can advise that "cinema quality" television pictures are not high on most people's TV requirements. Most people would like them but few would pay the premium required. [6]

1.16 According to Mr Encel, the majority of Australian consumers buy "$500 to $800 TVs"[7] while, based on the American experience, HDTV sets would cost considerably more (Mr Encel referred to a figure of $20,000).[8] Most Australian consumers would look to use a set-top box to receive digital television and evidence to the Committee suggested that the cost of a set-top box would, in the current market be around $1000. In relation to HDTV, set-top boxes have the added disadvantage that, while they enable the user to receive the digital signal, the High Definition quality of the picture is not obtained. Only a HDTV set can perform that function.

1.17 In response to Mr Encel's claims about the cost of HDTV sets, FACTS's Mr Branigan told the Committee:

> What do we have to go on in terms of what HDTV equipment will retail for in this country? Very little. The only manufacturer that I can recall providing an estimate of what its equipment would cost is Sony, which told the government late last night that its first HDTV offering here would cost, I think, $8,000 …
>
> We have talked to a number of Chinese manufacturers who are talking about something like half that price. Whether that turns out to be achievable or not is anyone's guess.[9]

1.18 The Committee was of the view that given that digital technology is in its infancy, it would be unwise to close off any options. The Committee notes that there are provisions in the Bill for various reviews that will provide opportunities for reassessment of HDTV and SDTV developments. The experience of the past five years has demonstrated that technological change is occurring very rapidly in this area. The pace of change in the future could see the resolution of many of the current issues.

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6 International Dynamics, Submission No. 1, p.5

7 International Dynamics, *Proof Committee Hansard*, 31 May 2000, p.6

8 International Dynamics, *Proof Committee Hansard*, 31 May 2000, p.6

9 FACTS, *Proof Committee Hansard*, 31 May 2000, p.38

Diversity of program choice and new services

1.19 In evidence to the Committee, the Deputy Chairman of the Productivity Commission's Broadcasting Inquiry stated:

> … on high definition, the commission's position is that high definition television is most unlikely to be a driver of uptake; new services and new players are much more likely to be so.[10]

1.20 This position was supported by a number of other witnesses including the representatives of television manufacturer, Philips. While supporting the move to digital television, they argued against HDTV and suggested that new and exciting offerings (such as interactivity) and more diverse content through multichannelling would be a greater incentive than improved picture and sound quality to encourage large numbers of consumers to move to digital television. Commenting on Mr Encel's evidence to the Committee, the General Manager of Philips Sound and Vision said:

> I think in principle we would share the view that there may not be enough benefit coming down the line in the near term of a digital nature to motivate the consumer to invest in new televisions …
>
> The dilemma that we have struggled with ourselves is that great picture, great sound in itself may not be the motivator that we think it is. Our experience internationally, looking at other markets, would suggest that content, interactivity, is probably, in true terms, a benefit that is not received today that consumers would find motivating.[11]

1.21 The Committee notes that submissions and witnesses from the television industry and potential datacasters were unanimous in the view that the offer of new services and diversified content would be the greatest driver of digital take up. FACTS told the Committee:

> Program enhancements and datacasting will be essential other services to offer viewers in these very early years.[12]

1.22 In arguing for a more flexible definition of datacasting, Telstra put forward the view that:

> … datacasting will assist the driving of digital take-up. Through the provision of new interactive services, it has the potential to drive digital TV. We believe that, without the driving of datacasting, the take-up of digital will take decades.[13]

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10 Productivity Commission, *Proof Committee Hansard*, 31 May 2000, p.55

11 Philips Sound and Vision, *Proof Committee Hansard*, 31 May 2000, p.45

12 FACTS, *Proof Committee Hansard*, 31 May 2000, p 30

13 Telstra, *Proof Committee Hansard*, 31 May 2000, p 48

1.23 The ABC's Managing Director arguing for the ABC to be allowed to multichannel said:

> … we think the two channels operated by the ABC could improve the digital offering and, assuming agreement could be reached for carriage, would make a more attractive proposition in the market for the customer to want to take up digital. [14]

1.24 His view was supported by SBS's Policy Manager, Ms Christine Sharp:

> SBS's view is that content is of primary interest to audiences and that, unless we can offer significantly different content, consumers will not perceive that they are getting very much from digital television. The prospect of improved technical quality alone will not be a driver for audiences.[15]

The issues surrounding the ability for the ABC and SBS to multichannel are dealt with in Chapter 3 of this report.

Access to spectrum

1.25 Of overwhelming concern to witnesses from the Pay TV industry and from the potential datacasters is the issue of access to scarce spectrum (especially while the analog spectrum is still being used). At the heart of this argument is the fact that it is possible to convert to digital via SDTV by using 2 MHz of spectrum. Since those groups are convinced that HDTV will fail and have a limited lifespan, they see each FTA station tying up 5 MHz of extra spectrum capacity that they have obtained free of charge. In its submission to the Committee's inquiry, Cable and Wireless Optus argued:

> There is no policy justification for the FTAs retaining 7 MHz of spectrum at no charge in light of the "downgrading" of HDTV in the digital television regulatory scheme. It is not possible to defend the amendment as an economic and efficient use of the spectrum.
>
> Accordingly, this provision should be deleted from the Amendment Bill and the allocation of 7MHz of spectrum to FTAs for this purpose should be reviewed. In particular, consideration should be given to the returning of at least some of the excess spectrum to the Federal Government where it can be the subject of a competitive auction.[16]

14 Australian Broadcasting Corporation, *Proof Committee Hansard*, 1 June 2000, p.1

15 Special Broadcasting Service, *Proof Committee Hansard*, 1 June 2000, p. 88

16 Cable &Wireless Optus, Submission No. 13, pp 4-5

1.26 In arguing for the proposed review of HDTV quotas[17] to be brought forward, ASTRA also pointed out that dropping HDTV would "free up" valuable spectrum:

> If a review were brought forward and HDTV was canned, did not go ahead, and people realised that it was not the way to go for the digital future, then five-sevenths of the spectrum, I presume, would return to the government for public auction. We took the liberty of doing some research on what that spectrum is worth … Our conservative—and I underline 'conservative'—figures for the five capital cities only put a value on that spectrum of in excess of $2 billion at current market rates.[18]

1.27 In putting forward the case for freeing up spectrum for new players, the Productivity Commission's Professor Snape argued for a certain switch-off date for analog transmissions:

> To get anywhere near the full benefits from the new technologies, it is essential to ensure the rapid switch-off of analog television to free up the spectrum. With the vision of the potential benefits, the commission asked how to drive the take-up of digital television. A certain switch-off date is a key element. Incidentally, the existing legislation in the Act does not provide for a certain switch-off. The commission has recommended the same switch-off date for cities and the country, so as not to disadvantage rural and remote areas.[19]

1.28 Although coming from a different point of view, ntl also was concerned with the issue of access to spectrum for new players. It told the Committee:

> … the physical availability of spectrum for new datacasting services is as important to the future of this industry as the definition of services for datacasting itself … it is surely critical that all spectrum actually be utilised for new services—in other words, a 'use it or lose it' condition for datacasting licences that ensures spectrum hoarding is not permitted. We understand precedence for this exists in the Act—for example, the narrowcasting provisions—and in the bill itself—for example, the solus markets.[20]

1.29 In a supplementary submission to the Committee, ntl made a strong case for the Bill to be amended to clarify whether the ABA has the power to clear spectrum. ntl gave examples of the role it played in assisting with spectrum clearing in the UK. In view of the fact that only one extra 7MHz datacasting channel appears to be available (using conventional tools) in the Sydney market, the Committee sees merit in ntl's suggestion that the applicability of Single Frequency Networks (SFNs) be

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17 Note: The issue of the reviews provided for under the Bill is dealt with in Chapter 4

18 Australian Subscription Television and Radio Association, *Proof Committee Hansard*, 1 June 2000, p.105

19 Productivity Commission, *Proof Committee Hansard*, 31 May 2000, p.55

20 ntl, *Proof Committee Hansard*, 1 June 2000, p 99

considered in Australia. The Committee notes that ntl's view is that such an approach could yield at least three 7MHz channels in the Sydney market and could have similar benefits elsewhere.

1.30 On a further matter related to spectrum clearing, ntl urged the adoption of a national clearance of the DTTB transmission plan similar to the one undertaken in the UK where the costs involved in carrying out the necessary changes to eliminate interference were met by the incoming multiplex licensee (the 'polluter pays' principle).[21] The Committee sees merit in this approach and believes that its applicability to potential datacasters in the Australia context should be investigated.

Recommendation

The Committee recommends that the Australian Broadcasting Authority be given the power to rationalise and clear spectrum particularly for the creation of datacasting channels.

Spectrum provision for community broadcasters

1.31 In its submission to the Committee's inquiry, the Community Broadcasting Association called for Clause 24, Division 3, of Schedule 6 to the Bill to be amended to put an end to the current uncertainty over the availability of digital spectrum for a standard definition television service.[22]

1.32 Community broadcasters are equally concerned about the future of the sixth (analog) channel which they currently have access to until 30 June 2001. The Government of Western Australia supported their call for this issue to be clarified:

> Community broadcasters operate from the invidious position of realising that the scarce radio frequency spectrum could ultimately be reassigned to a future fourth commercial network. The consequences of this would be unfortunate as the community sector promotes diversity and content of local significance which is unlikely to be supported by commercial stations.
>
> The proposed legislation has not assured that the sixth free-to-air channel will remain available as a community/education channel with local focus beyond the end of the parallel transmission period.[23]

1.33 The Committee notes that in its submission to this inquiry and to the Government review on datacasting, ntl proposed that:

> The first allocated datacasting transmitter licence include a "must carry" SDTV provision for community broadcasters.[24]

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21 ntl, Supplementary Submission No. 27a, p.6

22 Community Broadcasting Association, Submission No. 7, p.5

23 Government of Western Australia, Submission No. 15, p.2

Such an approach would put an end to the current uncertainty over the future of community broadcasters' access to spectrum. At the same time it would ensure that available spectrum is used efficiently.

1.34 Finally on the issue of spectrum availability, the College of Biomedical Engineers expressed its concern about the possibility of both the current analog channels 39 and 40 being allocated to broadcasting, narrowcasting and datacasting within the same geographic region. The College argued that such a situation could pose problems for patient safety and called for some spectrum protection for this reason. In particular it wants spectrum to be made available for the operation of medical telemetry systems in Australia.

24 ntl, Submission No. 27, p.9