
The Parliament of the Commonwealth of Australia

Advisory report on the Broadcasting Legislation Amendment (Digital Dividend) Bill 2013

House of Representatives
Standing Committee on Infrastructure and Communications

March 2013
Canberra

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Membership of the Committee

Chair Mr Nick Champion MP

Deputy Chair Mr Paul Neville MP

Members Mr Paul Fletcher MP

Mr Ed Husic MP

Mr Stephen Jones MP

Mr Robert Oakeshott MP

Mrs Jane Prentice MP

Mr Mike Symon MP

Hon Malcolm Turnbull MP*

** supplementary member for this inquiry*

Committee Secretariat

Secretary	Julia Morris
Inquiry Secretary	Thomas Gregory
Research Officer	Leonie Bury
Administrative Officers	Jessica Hargreaves Peter Pullen



Recommendation

1 Broadcasting Legislation Amendment (Digital Dividend) Bill 2013

Recommendation

The Committee recommends that the House pass the bill.

Broadcasting Legislation Amendment (Digital Dividend) Bill 2013

- 1.1 On 13 March 2013, the Committee met and resolved to adopt the inquiry into the Broadcasting Legislation Amendment (Digital Dividend) Bill 2013, which was referred to it by the Hon Anthony Albanese MP, Minister for Infrastructure and Transport. The letter of referral is included at Appendix A. The letter requested the Committee report back to the House by 18 March 2013. The text of the bill is included at Appendix B.
- 1.2 On 13 March 2013, the bill was also referred to the Committee for inquiry and report by the House of Representatives Selection Committee. In its referral, the Selection Committee provided the following 'reasons for referral / principal issues for consideration':

There is concern about bandwidth issues arising from the bill, particularly as it might affect community groups.¹
- 1.3 The Committee received three submissions, which are listed at Appendix C, and available on the Committee's website.²
- 1.4 The Committee held a hearing on 14 March 2013, with witnesses from the Department of Broadband, Communications and the Digital Economy (DBCDE) and the Australian Media and Communications Authority (ACMA). A list of witnesses who is included at Appendix D.
- 1.5 This report contains three sections, addressing:
 - the bill;
 - concerns raised with the Committee; and
 - Committee findings and recommendation.

1 House of Representatives Selection Committee, Report No. 76, 13 March 2013, p. 12.

2 <http://www.aph.gov.au/ic>.

The bill

- 1.6 The Broadcasting Legislation Amendment (Digital Dividend) Bill 2013 was introduced into the House of Representatives by Minister Anthony Albanese on 13 February 2013. The Bill seeks to amend the *Broadcasting Services Act 1992 (BSA)* and the *Radiocommunications Act 1992* with respect to the 'datacasting licensing regime'. The bill makes technical amendments to facilitate the implementation of the broader 'digital dividend' policy.
- 1.7 The bill also provides for a number of consequential amendments.

'Digital dividend' policy

- 1.8 On 24 June 2010, the Minister for Broadband, Communications and the Digital Economy announced that the Australian Government had decided to release 126 Megahertz of broadcasting spectrum as a 'digital dividend'. This spectrum is expected to be cleared of all existing services by 31 December 2014.³ Until that time, it remains part of the 'broadcasting services bands' (BSBs).
- 1.9 Earlier, in January 2010, DBCDE released a green paper on the 'digital dividend',⁴ and received just over 100 submissions in response, including from the Australian Wireless Audio Group (AWAG).
- 1.10 Later the same year, in October 2010, ACMA released a discussion paper titled 'Spectrum reallocation in the 700 MHz digital dividend band',⁵ and received just over 40 submissions in response. AWAG also made a submission to this discussion paper process.

The bill's purpose

- 1.11 The auction of the 'digital dividend' spectrum is due to take place from April 2013, with licences for its use available from 1 January 2015. However, it is anticipated that some of the auctioned spectrum may be available for use before the final clearing at the end of 2014, in which case interim licences may be issued by ACMA. During the interim period, the spectrum would still formally be a part of the BSBs, and hence a telecommunications company wishing to use the auctioned spectrum under an interim licence would (as the law currently stands) be subject to

3 Broadcasting Legislation Amendment (Digital Dividend) Bill 2013, *Explanatory Memorandum*, p. 1.

4 Department of Broadband, Communications and the Digital Economy, *Digital Dividend Green Paper*, January 2010.

5 Australian Communications and Media Authority, *Spectrum reallocation in the 700 MHz digital dividend band*, October 2010.

regulations designed for broadcasting. As detailed by the explanatory memorandum:

To facilitate the potential early commencement of new services in the 'digital dividend' spectrum, while that spectrum remains in the BSBs, the Bill would limit the application of datacasting regulation so that only commercial television broadcasting licensees, commercial radio broadcasting licensees and national broadcasters providing datacasting services would generally be required to hold a datacasting licence under the [BSA].⁶

- 1.12 New users of spectrum – such as telecommunications providers – would be able to use the spectrum without holding a datacasting licence. As explained by DBCDE and ACMA, datacasting licences cost money and impose certain regulatory requirements on the holders, which would be inappropriate:

It is not intended that the datacasting rules would apply to new mobile broadband services. It would be an anomaly to have them apply for what could be only a few months prior to [redesignation] of the spectrum from the broadcasting services bands by virtue of a clearly unintended side effect of the existing legislation.⁷

Concerns raised with the Committee

- 1.13 As noted above, the Selection Committee's referral of the bill was accompanied by concerns about the possible impact of the bill on community groups.
- 1.14 Submissions to the inquiry also raised concerns about how the bill would impact on community groups and others who use wireless audio technology. A wide range of organisations use such technology, including broadcasters, theatre users, performing artists, fitness instructors, education providers, community groups, churches and sporting clubs.
- 1.15 In general, these concerns focus on expected changes to the radiofrequency 'whitespaces' that will be available for their equipment. As explained by the 'digital dividend' green paper:

6 Broadcasting Legislation Amendment (Digital Dividend) Bill 2013, *Explanatory Memorandum*, p. 1.

7 Ms Nerida O'Loughlin, Department of Broadband, Communications and the Digital Economy, *Proof Committee Hansard*, 14 March 2013, p. 2.

[Wireless audio devices] operate in broadcasting services bands spectrum under a class licence using the 'white space' between television broadcasts. Under the licence, all class licensed users operate in the spectrum on a shared basis with other class licensed users and are subject to the conditions of the class licence.

It is a condition of the operation of a device under the class licence that the device does not cause interference to other radiocommunications devices. A device will not be afforded protection from interference caused by other radiocommunications services.

Transmissions from wireless audio devices must not originate in the coverage area of a broadcasting station or datacasting service station operating in the same channel.⁸

[...]

These devices operate in the white space between broadcasting services in the UHF spectrum and users have already invested in equipment that is tuned to work at these frequencies. However, new services that use the digital dividend spectrum may not leave as much white space in which these devices can operate. A restack of digital broadcasting services within the broadcasting services bands may also cause previously utilised frequencies to be no longer accessible to users of these devices.

Operators of these devices may therefore need to move frequencies. There are costs associated with any move, in terms of retuning or development and purchasing new equipment compatible with new frequencies. There is also a risk of disruption to users of these devices.⁹

- 1.16 The Australian Wireless Audio Group (AWAG) expressed general concern about the bill's impact on wireless audio technology users, as a result of the 'Digital Dividend and Restack'. According to AWAG, the bill 'threatens to make a bad situation much worse, much sooner', and expressed particular concern about :
- the dates and timelines on which the bill is predicated;
 - the presumption about spectrum clearing on which the bill is predicated; and
 - changes to the regulatory environment that the bill will enable.¹⁰

8 Department of Broadband, Communications and the Digital Economy, *Digital Dividend Green Paper*, January 2010, pp. 23-4.

9 Department of Broadband, Communications and the Digital Economy, *Digital Dividend Green Paper*, January 2010, p. 28.

10 Australian Wireless Audio Group, *Submission No. 1*, p. 1.

- 1.17 Representatives of DBCDE and ACMA acknowledged these concerns but noted that they have extremely limited relevance to this bill. As discussed above, this bill is of a technical nature – described by DBCDE as ‘housekeeping’¹¹. The bill is part of a much broader policy aimed at changing the use of radiofrequencies. It does not, of itself, implement or foreshadow any particular decision about the allocation of ‘whitespaces’ for use by wireless audio equipment users.¹²
- 1.18 AWAG’s concerns generally go to the implementation of the broader ‘digital dividend’ policy rather than to the substance of the bill. ACMA advised the Committee that wireless audio technology users’ general concerns about whitespaces will be considered as part of its discussion paper *Proposed variation to the Radiocommunications (Low Interference Potential Devices) Class Licence 2000*, submissions to which closed on 13 March 2013. As stated by the discussion paper:
- If the proposed changes are made [to the Low Interference Potential Devices class licence], wireless audio transmitters will no longer be allowed to operate in the digital dividend band after 31 December 2014. The ACMA is investigating ways of supporting wireless audio transmitters beyond the digital dividend.¹³
- 1.19 DBCBE and ACMA acknowledged the present uncertainty around some wireless audio technology, but advised the Committee that the ongoing restacking process will provide clarity around whitespaces for wireless audio. The results of the consultation process discussed above will also provide more information to wireless audio users, and DBCDE and ACMA will continue to work with those users as the licence variation process continues.

Committee findings and recommendation

- 1.20 The Committee has carefully considered the concerns raised by submissions to the inquiry, as discussed above. The Committee acknowledges the efforts made by individuals and organisations to provide submissions, especially in such a limited timeframe.

11 Mr Giles Tanner, Australian Communications and Media Authority, *Proof Committee Hansard*, 14 March 2013, p. 8.

12 Ms Nerida O’Loughlin, Department of Broadband, Communications and the Digital Economy, *Proof Committee Hansard*, 14 March 2013, p. 2.

13 Australian Communications and Media Authority, *Proposed variation to the Radiocommunications (Low Interference Potential Devices) Class Licence 2000 Discussion paper*, December 2012, p. 3.

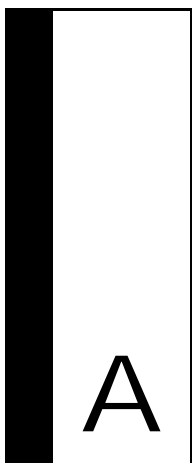
- 1.21 The Committee considers that while these concerns do not attach to the substance of the bill under review, they indicate broader concerns about spectrum reallocation and its impact on consumers. To this end, the Committee looks forward to seeing DBCDE and ACMA making substantial and rapid progress on the following priority areas:
- an education and awareness campaign, with the involvement of AWAG and other wireless audio technology user groups;
 - a formal product-notification warning system, to ensure that purchasers of new equipment know about its possible limited utility after restacking; and
 - the response to submissions to the *Proposed variation to the Radiocommunications (Low Interference Potential Devices) Class Licence 2000*, and the Government's decision about restacking and new whitespace for wireless audio technology.
- 1.22 Taking into account the concerns raised with the Committee, the Committee will keep a watching brief on the progress of the 'digital dividend' process generally, and welcomes the opportunity to receive update briefings from representatives of DBCDE and ACMA as these priority areas are addressed.
- 1.23 Notwithstanding the concerns outlined above, and the opportunities identified for consultation and engagement with consumers and the community in this area, the Committee believes that the bill is an appropriate legislative response to the need identified by DBCDE and ACMA.

Recommendation

The Committee recommends that the House pass the bill.

Mr Nick Champion MP

Chair



Appendix A – Letter from the Minister



The Hon Anthony Albanese MP

Minister for Infrastructure and Transport
Leader of the House

Mr Nick Champion MP
Chair
House of Representatives Standing
Committee on Infrastructure and Communications
Parliament House
CANBERRA ACT 2600

12 MAR 2013

Dear Mr Champion

I am writing to request, under Standing order 215 (b), that the Standing Committee on Infrastructure and Communications conduct a short inquiry into the Broadcasting Legislation Amendment (Digital Dividend) Bill 2013.

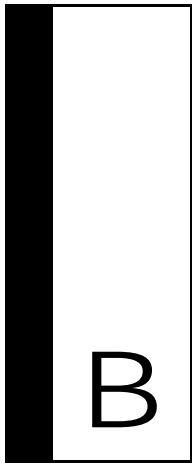
I have held discussions with the Shadow Minister for Communications and Broadband, the Hon Malcolm Turnbull MP regarding this bill.

In order to accommodate his request, I would be grateful if the committee could consider the bill and its implications for current and future spectrum users and report back to the House by 18 March 2013.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A Albanese', written over the printed name.

ANTHONY ALBANESE



Appendix B – Text of the Bill

2010-2011-2012-2013

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Broadcasting Legislation Amendment
(Digital Dividend) Bill 2013**

No. , 2013

(Broadband, Communications and the Digital Economy)

**A Bill for an Act to amend legislation relating to
broadcasting, and for other purposes**

Contents

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1 **A Bill for an Act to amend legislation relating to**
2 **broadcasting, and for other purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Broadcasting Legislation Amendment*
6 *(Digital Dividend) Act 2013*.

7 **2 Commencement**

8 This Act commences on the day after this Act receives the Royal
9 Assent.

10 **3 Schedule(s)**

11 Each Act that is specified in a Schedule to this Act is amended or
12 repealed as set out in the applicable items in the Schedule

1
2

concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Broadcasting Services Act 1992

1 Subsections 34(5) and (6)

Repeal the subsections.

2 Section 215A

Repeal the section.

3 Clause 1 of Schedule 6

Omit:

- Datacasting service providers must hold datacasting licences.

substitute:

- A person who provides a designated datacasting service must hold a datacasting licence.

4 Subclause 2(1) of Schedule 6

Insert:

designated datacasting service has the meaning given by clause 2A.

5 After clause 2 of Schedule 6

Insert:

2A Designated datacasting service

(1) For the purposes of this Schedule, a *designated datacasting service* is a datacasting service that:

- (a) is provided by a person who is:
 - (i) a commercial television broadcasting licensee; or
 - (ii) a commercial radio broadcasting licensee; or
 - (iii) a national broadcaster; or

1 (b) is of a kind specified in an instrument under subclause (2).

2 (2) The Minister may, by legislative instrument, specify kinds of
3 datacasting services for the purposes of paragraph (1)(b).

4 **6 Subclause 36(2) of Schedule 6**

5 Before “datacasting service”, insert “designated”.

6 **7 Division 1 of Part 8 of Schedule 6 (heading)**

7 Before “datacasting”, insert “designated”.

8 **8 Clause 49 of Schedule 6 (heading)**

9 Before “datacasting”, insert “designated”.

10 **9 Paragraph 49(1)(a) of Schedule 6**

11 Before “datacasting”, insert “designated”.

12 **10 Subclause 49(3) of Schedule 6**

13 Before “datacasting”, insert “designated”.

14 ***Radiocommunications Act 1992***

15 **11 Section 5**

16 Insert:

17 *designated datacasting service* has the same meaning as in
18 Schedule 6 to the *Broadcasting Services Act 1992*.

19 **12 Subsection 100A(1)**

20 Before “datacasting”, insert “designated”.

21 **13 Subsection 100A(1B)**

22 Before “datacasting service”, insert “designated”.

23 **14 Subsection 100B(2)**

24 Before “datacasting”, insert “designated”.

25 **15 Subsection 100B(2B)**

26 Before “datacasting service”, insert “designated”.

1 **16 Subsection 102(3)**

2 Before “datacasting”, insert “designated”.

3 **17 Subsection 102(5)**

4 Before “datacasting service”, insert “designated”.

5 **18 Subsection 102A(3)**

6 Before “datacasting”, insert “designated”.

7 **19 Subsection 102A(5)**

8 Before “datacasting service”, insert “designated”.

9 **20 Paragraph 109A(1)(i)**

10 Repeal the paragraph.

11 **21 Section 118M (definition of *content service*)**

12 Repeal the definition, substitute:

13 *content service* means:

14 (a) a datacasting service that is authorised by:

15 (i) a BSA datacasting licence; or

16 (ii) another licence allocated by the ACMA under the
17 *Broadcasting Services Act 1992*; or

18 (b) a datacasting service provided in accordance with a class
19 licence under the *Broadcasting Services Act 1992*;

20 but does not include a service covered by
21 subparagraph 109A(1)(ib)(i) or (ii).

22 **22 Paragraph 125(1)(a)**

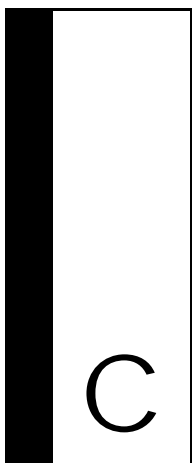
23 Omit “(i),”.

24 **23 Subsection 128C(1)**

25 Omit “(i),”.

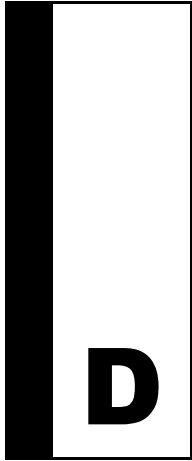
26 **24 Section 128D**

27 Omit “(i),”.



Appendix C – Submissions

- 1 Australian Wireless Audio Group
- 2 Aerobic Microphones Australia
- 3 Glasshouse Port Macquarie



Appendix D – Public hearing and witnesses

Thursday 14 March 2013 – Canberra

Public hearing

Australian Communications and Media Authority

Mr Giles Tanner – General Manager, Digital Transition Division

Mr Allan Major – Acting General Manager, Communications Infrastructure Division

Mr Mark Arkell – Manager, Spectrum Engineering and Space, Spectrum Infrastructure Branch, Communications Infrastructure Division

Mr Nevio Marinelli – Manager, Spectrum Transformation and Government Section, Spectrum Infrastructure Branch, Communications Infrastructure Division

Department of Broadband, Communications and the Digital Economy

Ms Nerida O’Loughlin – Deputy Secretary, Broadcasting and Digital Switchover

Dr Simon Pelling – First Assistant Secretary

Mr Andrew Maurer – Assistant Secretary, Spectrum Treaties and Internet Governance

