

Chapter 1

Referral to the committee

On 25 September 2008, the Senate referred the Broadcasting Legislation Amendment (Digital Television Switch-over) Bill 2008 (the bill) to the Senate Standing Committee on Environment, Communications and the Arts (the committee) for inquiry and report by 25 November 2008.

On 8 October 2008, in accordance with usual practice, the committee advertised the inquiry in *The Australian*, calling for submissions by 24 October 2008. The committee also directly contacted a range of individuals and organisations to invite submissions.

The committee received seven submissions, listed at Appendix 1. It held a public hearing in Canberra on 12 November 2008, and participants are listed in Appendix 2.

Background to the bill

1.1 The current bill implements the government's objective to achieve switch-over to digital television by 31 December 2013.¹

1.2 In March 2008, the government established the Digital Switch-over Taskforce (DST) within the Department of Broadband, Communications and the Digital Economy. The DST will co-ordinate and oversee Australia's transition to digital television, including the development of a timetable for the completion of switch-over before 31 December 2013.²

1.3 On 19 October 2008, Senator the Hon Stephen Conroy, Minister for Broadband, Communications and the Digital Economy, announced the digital TV switch-over timetable. The timetable provides the analog switch-off window for switch-over areas across Australia.³

1 Broadcasting Legislation Amendment (Digital Television Switch-over) Bill 2008, Explanatory Memorandum (EM), p. 1.

2 Digital Switchover Taskforce, *Legislative framework for implementing a digital television switchover timetable*, Discussion Paper, May 2008, p.3.

3 Senator the Hon Stephen Conroy, Minister for Broadband, Communications and the Digital Economy, 'Conroy sets Digital TV switchover timetable', Press release, 19 October 2008.

Purpose of the bill

The bill proposes to amend the Broadcasting Services Act 1992 (the Act) to allow a staggered, region-by-region timetable for switch-over to digital television broadcasting.⁴

The government has proposed the amendment because the Act currently requires all metropolitan and regional areas to switch-over to digital television transmissions at the conclusion of a transitional period (the 'simulcast period'). During the simulcast period, both analog and digital signals will be broadcast. At present, the simulcast period is set to finish in metropolitan areas on 31 December 2009 and in non-remote regional areas by 31 March 2011 or 31 December 2011, depending on the area.⁵

1.4 Regarding this amendment, the Second Reading Speech noted that:

The bill allows the Minister for Broadband, Communications and the Digital Economy to determine, by legislative instrument, local market areas for switch-over, and switch-over dates for those markets . . . This will allow the Government's switch-over program to better reflect local market conditions and circumstances.⁶

1.5 Further, the bill amends the timing of two statutory reviews which are required under the BSA. These reviews are:

- The operation of subsection 35A(1) of the Act. This review will consider whether new commercial television licenses should be allocated to particular areas and what variations to license area plans would need to be made to accommodate such allocations, and
- The content and captioning rules applicable to standard definition and high definition multi channel commercial broadcasting services under subclause 60C(1) of Schedule 4 of the Act.⁷

Outline of the bill

Main provisions of the bill

1.6 The main provisions of the bill relevant to the staged switch-over from analog to digital transmissions are contained mostly in proposed subclauses 5F, 6A and 6B.

Proposed subclause 5F(1) provides that the Minister may, by legislative instrument:

4 R. Jolly and P. Pyburne, Broadcasting Legislation Amendment (Digital Television Switch-over) Bill 2008, Bills Digest No. 35, Parliamentary Library, Canberra, 2008-09.

5 R. Jolly and P. Pyburne, Broadcasting Legislation Amendment (Digital Television Switch-over) Bill 2008, Bills Digest No. 35, Parliamentary Library, Canberra, 2008-09.

6 Senate *Hansard*, 24 September 2008, p. 1.

7 R. Jolly and P. Pyburne, Broadcasting Legislation Amendment (Digital Television Switch-over) Bill 2008, Bills Digest No. 35, Parliamentary Library, Canberra, 2008-09.

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- Determine that a specified area is a 'local market area', and
 - Determine that the area becomes a 'digital-only market area' at a specified time.

Proposed subclause 5F(3) states that the time specified in the Minister's determination must be within the simulcast period.

1.7 The conditions under which variations can be made to the initial determination by the Minister are contained in proposed subclauses 5F(5)-(10). The effect of these amendments is to allow the switch-over date for a local market area to be changed in the event of unforeseeable technical or engineering difficulties.

1.8 Proposed subclause 6A of the bill provides for the determination of the simulcast period in metropolitan licence areas and regional licence areas. Importantly, subclauses 6A(3) and (4) determine that the simulcast period in both metropolitan and regional licence areas must conclude before the end of 31 December 2013.

1.9 Whilst variations to the final date for the simulcast period are allowed under proposed subclause 6A(7), no simulcast period in either a metropolitan or regional licence area may conclude after the end of 30 June 2014. Therefore, this date represents the final date on which any metropolitan or regional licence area may broadcast analog television transmissions.

1.10 The date on which the simulcast period in a remote licence area is to cease is contained in proposed section 6B. The Minister may vary this date in circumstances specified in a legislative instrument. There are no restrictions placed on the Minister's ability to specify these circumstances, in recognition of the different circumstances and technical issues experienced in remote licence areas.⁸

1.11 Subclause 35(1) of the bill relates to simulcasting requirements for national broadcasters. It provides that a national broadcaster must not, during the simulcast period for a coverage area, broadcast a television signal in standard definition digital mode without simultaneously broadcasting the program in analog mode in the coverage area.⁹

1.12 Items 21 and 22 of the bill deal with variations to the commercial television conversion scheme and national television conversion scheme in response to changes to the Act resulting from the bill.

1.13 The current bill confirms the government's policy objectives for digital television switch-over:

The new policy objective would be that, during the simulcast period for a licence area, no commercial television broadcasting services should be

8 Broadcasting Legislation Amendment (Digital Television Switch-over) Bill 2008, EM, p. 14.

9 Broadcasting Legislation Amendment (Digital Television Switch-over) Bill 2008, EM, p. 16.

transmitted in analog mode in any part of the area that has been determined by the Minister to be digital-only local market area.¹⁰

And:

...after a local market area becomes a digital-only local market area, the transmission of a commercial television broadcasting service in standard definition digital mode in that area should achieve the same level of coverage and potential reception quality as was achieved by the analog transmission immediately prior to the switch-over in that area.¹¹

1.14 The main provisions of the bill relevant to the timing of the two statutory reviews required by the Act are as follows:

- The proposed subclause 35A(1) amends the Act so that a review of the allocation of new commercial television broadcasting licences must be conducted before 1 January 2012.
- The timing of the review of content and captioning rules applicable to multi-channelled commercial television broadcasting services is amended by changes to subclause 60C(1). The bill requires that the review must occur prior to 1 January 2010.

Issues raised in submissions

1.15 The committee heard broad support for the legislation from representatives of both free and subscription television. Free TV Australia stated:

Free TV supports the Bill in so far as it provides the legislative framework necessary for a well-planned and coordinated switchover process. Free TV supports a legislative framework which accommodates staged switchover in geographic areas other than licence areas.¹²

Free TV however also raised a number of concerns regarding the bill.

Criteria for analogue switch-off

1.16 Free TV advocated linking switch-off decisions to statutory readiness criteria (such as percentage of households equipped to receive digital television signals). They also wanted a review process that evaluates readiness of an area for switch-off, and they wanted this review process to be entrenched in legislation. Their proposal would include mandatory consultation and publication processes taking place both six months and one month before switch-off.¹³

10 Broadcasting Legislation Amendment (Digital Television Switch-over) Bill 2008, EM, p. 10.

11 Broadcasting Legislation Amendment (Digital Television Switch-over) Bill 2008, EM, p. 11.

12 Free TV, *Submission 3*, p. 1.

13 *Submission 3*, pp 4–8.

1.17 The government and Free TV emphasised different aspects of how the switch-off process should be conducted. The DBCDE submission emphasised ensuring a firm timetable for switch-off, but retaining a capacity to deal with community feedback and unforeseen technical failures.¹⁴ Free TV emphasised a performance-based approach to setting switch-off dates, and sought guarantees of consultation.

1.18 Free TV described their proposal as a 'safety check'¹⁵ to ensure that both consumers and broadcasters are ready for digital television switch-over. Further, Free TV explained that under their proposal should a region be digital ready at the review six months out, the review one month out would be cursory. Free TV emphasised that their proposal is not intended to add unnecessary burden but rather to ensure there is transparency in determining digital readiness so that 'no-one will be left behind'.¹⁶ Free TV's recommendation that digital television switch-over not proceed unless 95 per cent of households in a region have free-to-air digital terrestrial television equipment sought to address this issue.

1.19 The committee notes that the current bill allows for flexibility in the digital switch-over date via two mechanisms. A change to the digital television switch-over deadline of three months can be made in circumstances where consumers in a region are not digital ready or where a region is digital ready ahead of the digital switch-over deadline. A six month change to the date for digital television switch-over in a region can be made where technical or engineering difficulties mean that a broadcaster will be unable to make the switch-over to digital television transmission.

1.20 The DBCDE informed the committee that an independent study in the United Kingdom demonstrated that 16.0% of households would only plan to purchase a digital television if they are told a switch-over date.¹⁷ This suggests that in the absence of a firm date for digital television switch-over, a reasonable proportion of consumers will never purchase digital television equipment and that a firm date is required to prompt these people to become digital ready.

1.21 The committee supports the timetable for digital television switch-over and the flexibility allowed by the bill without the need for performance-based criteria for a number of reasons:

- As identified by Free TV, triple-casting is currently placing a significant additional cost on commercial broadcasters. Switch-off of analog television services will reduce these costs.

14 *Submission 2*, p. 2.

15 Ms Julie Flynn, Chief Executive Officer, Free TV Australia, *Committee Hansard*, 12 November 2008, p. 2.

16 Ms Julie Flynn, Chief Executive Officer, Free TV Australia, *Committee Hansard*, 12 November 2008, p. 2.

17 Digital Technology International and The Generics Group, *Attitudes to Digital Switchover, The impact of digital switchover on consumer adoption of digital television*, 30 March 2004, p. 39.

- Government and commercial broadcasters agree that the timetable announced by the Minister for digital television switch-over is achievable:

We also support the government's timetable for analog switch-off. It is challenging but achievable, and broadcasters have taken positive steps to ensure a successful switch-off process.¹⁸

- No comparable overseas jurisdiction has used performance-based criteria to determine the timing of digital television switch-over.

1.22 The committee is confident that the mechanisms provided in the bill to change the date of digital television switch-over in a region allow sufficient flexibility to ensure that switch-off occurs at an appropriate time in each region, taking into account digital uptake and unforeseen technical or engineering difficulties.

1.23 The committee believes a firm timetable for digital television switch-over is necessary to provide certainty to broadcasters and consumers, and to prompt otherwise reluctant consumers to become digital ready.

Captioning and content requirements for digital television

1.24 Currently, the commercial broadcasters' main channels are subject to captioning requirements, and must meet Australian and children's content standards. Their digital multichannels are exempt from these requirements. Under the Broadcasting Services Act, this exemption for multichannel services expires once the simulcast of analogue and digital signals ends.

1.25 Because the bill will result in different dates for analogue switch-off in different licence areas, '[i]t is possible that different regulatory requirements for content and captioning may operate in different parts of the country in relation to commercial digital multichannels during the switch-over process'.¹⁹

1.26 Free TV was unhappy about this prospect. They argued:

The task of switch-over will be highly complex, resource-intensive and operationally demanding for broadcasters. Differing content requirements across licence areas would create an unjustifiably high compliance burden, for no apparent public policy benefit. A substantial amount of programming is compiled and transmitted on a network basis and significant costs would arise from differing content obligations across different markets.²⁰

1.27 Free TV favoured an approach that would defer any new obligations on multichannel broadcasting until a review, which should take place 'in the year

18 Ms Julie Flynn, Chief Executive Officer, Free TV Australia, *Committee Hansard*, 12 November 2008, p. 1.

19 DBCDE, *Submission 2*, p. 3.

20 *Submission 3*, p. 8.

following complete analogue switch-off.²¹ It appears this would effectively defer the transition in captioning and content requirements to approximately 2014.

1.28 While there may be operational complexities for commercial broadcasters, the Free TV proposal appears to have the effect of putting off the application to multichannel services of captioning requirements, and Australian and children's content standards, by several years.

1.29 The committee notes that the statutory review is likely to examine the timing of content and captioning obligations and that a definite timetable for these requirements is yet to be determined.

1.30 The committee believes it is desirable that the standards for captioning and Australian and children's content be applied in the digital environment in a timely manner, and does not agree that the bill's approach would have 'no apparent public policy benefit'.

Review of the issuing of a commercial TV licence

1.31 Under the Broadcasting Services Act, the government is required to initiate a review of new commercial television licences before the end of simulcast broadcasting in an area. The bill changes this arrangement, to set a deadline for the review of 1 January 2012.²²

1.32 Free TV instead favoured dispensing altogether with any statutory requirement for a review. It did so, however, by arguing that other government policy announcements will make the review superfluous.

1.33 The committee recognises the importance of ensuring that the review takes place. If the government's policy processes were to make the review redundant, the government would not be seeking to reschedule it, as it is doing in the current bill. The committee believes removing the review from the legislation altogether could reduce guarantees of consultation and transparency.

Recommendation 1

1.34 The committee recommends that the bill be passed.

1.35 While beyond the scope of the bill before the committee, two issues to which the committee wished to draw attention were raised in submissions.

21 *Submission 3*, p. 9.

22 *Submission 2*, p. 5.

Digital television reception in high density dwellings

1.36 Mr Ken Fihelly emphasised the problems faced by residents in older apartment buildings in ensuring all residents had access to digital television signals.²³

1.37 The challenge of successfully introducing digital TV reception in high density dwellings is one of which the Digital Television Switchover Task Force is aware, and it has released guidelines to assist bodies corporate and installers with the process of making digital TV signals available in these buildings.²⁴ The government has also funded a \$1 million research program relating to digital reception problems in multi-unit dwellings.²⁵ The committee notes that these kinds of dwellings will be more common in some broadcast areas (eg. the Gold Coast) than others. It hopes that the commitment of both government and industry to ensuring that viewers will have access to digital TV, and the amendments to the bill allowing the creation of variations in the analogue switch-off date for local market areas, will assist in dealing with the particular challenges for regions with large numbers of high-density dwellings.

Digital switch-over in remote areas

1.38 The Committee received submissions from Imparja Pty Ltd (Imparja) and National Indigenous Television (NITV). Imparja is a private, fully commercial television company operating in central and remote Australia. Imparja broadcasts indigenous and locally produced programs, including news and current affairs.²⁶ NITV is a 24 hour television service established by Aboriginal and Torres Strait Islanders. NITV broadcasts programs to inform, entertain, educate and showcase the rich diversity of indigenous cultures and creative talent from all over Australia.²⁷ Though not directly relevant to the provisions of the bill, they raised policy issues relevant to the digital television switch-over.

1.39 In the Minister's press release of 19 October 2008, the date for digital television switch-over in remote areas of Australia was announced for 1 July – 31 December 2013.²⁸ In their submissions, both Imparja and NITV raised concerns with the lack of a clear process for the roll-out of digital television services in remote

23 Mr Ken Fihelly, *Submission 7*.

24 Department of Broadband, Communications and the Digital Economy, *Installing digital television: apartments and offices*, http://www.dbcde.gov.au/_data/assets/pdf_file/0005/81239/Installing_DTV_apartments_and_offices.pdf (accessed 19 November 2008).

25 Department of Broadband, Communications and the Digital Economy, *Legislative framework for implementing a digital television switchover timetable: Discussion Paper*, May 2008, p. 3.

26 Imparja Television, <http://www.imparja.com/content/view/7/8> (accessed 11 November 2008).

27 National Indigenous Television, <http://nitv.org.au/> (accessed 11 November 2008).

28 Senator the Hon Stephen Conroy, Minister for Broadband, Communications and the Digital Economy, 'Conroy sets Digital TV switch-over timetable', Press release, 19 October 2008.

areas and in particular in the Remote Central and Eastern Australia licence area (RC&E).

1.40 At present, television services in the RC&E are transmitted via a combination of broadcaster-owned and community-owned ('self-help') analog transmitters.²⁹ Self-help transmitters are used to re-transmit commercial and national television services to remote locations otherwise unable to receive television transmissions.³⁰

1.41 The Act and the current bill apply only to commercial and national broadcaster-owned transmitters in remote areas and do not extend to self-help transmitters.³¹

1.42 Imparja and NITV believe that the successful switch-over to digital television in remote areas will be dependent, among other things, upon the roll-out of digital transmitters in these areas. In the case of self-help transmitters, it is unclear whether the cost of converting from analog to digital would be borne by the relevant communities or if government assistance would be provided through other means. There is concern that some remote communities, many of which are indigenous, will be unable to bear the costs of conversion and as such may not gain access to new or additional digital television services and further, may lose access to analog services which they currently receive when these are broadcast in digital.³²

1.43 NITV also raised possible difficulties associated with the broadcast of digital television transmissions via terrestrial versus satellite services. The Australian Broadcasting Corporation (ABC) has during 2008 begun terrestrial digital transmission from its transmitters in remote Western Australia and some remote areas in the Northern Territory and Queensland.³³ This means that communities in these remote locations operating off a self-help transmitter are faced with the decision whether to convert to digital terrestrial mode so as to receive commercial free-to-air television in the same format as the ABC.³⁴ Further, if a community operating off a self-help transmitter decides not to convert to digital terrestrial mode but rather to rely on satellite digital services, homes in that area would require a digital terrestrial set-

29 *Submission 5*, p. 2; *Submission 6*, p. 6.

30 *Submission 6*, p.3.

31 Department of Communications, Information Technology and the Arts, *Digital conversion of self-help television transmission sites*, Discussion Paper, June 2007, p. 3, http://www.dbcde.gov.au/_data/assets/pdf_file/0006/70278/Digital_conversion_of_self-help_television_retransmission_sites_-_discussion_paper.pdf (accessed 11 November 2008); R. Jolly and P. Pyburne, *Broadcasting Legislation Amendment (Digital Television Switch-over) Bill 2008*, Bills Digest No. 35, Parliamentary Library, Canberra, 2008-09.

32 *Submission 5*, p. 3.

33 *Submission 6*, p. 7.

34 *Submission 6*, p. 7.

top box to receive the ABC and a digital satellite set-top box to receive other commercial free-to-air services.³⁵

1.44 Imparja stated that:

[T]he implementation of digital broadcasting in RC&E should occur in light of the need to reach full digital take up in less than 4 years from digital start-up, and that this is most unlikely to be achieved in an environment where commercial digital services simply duplicate analogue ones.³⁶

Imparja was of the view that digital take-up in remote areas will not only rely on the roll-out of the necessary transmitters but also on the provision of digital services in addition to those currently available in analog (as an incentive to digital take-up). These additional services could include community-based radio broadcasts.³⁷

1.45 Despite raising concern about digital television switch-over being reliant on the roll-out of necessary transmitting equipment, both Imparja and NITV viewed successful digital conversion in remote areas as an opportunity to reach wider audiences and provide improved services to remote, and particularly indigenous, communities.³⁸

Senator Anne McEwen
Chair

35 *Submission 6*, p. 7.

36 *Submission 5*, p. 2.

37 *Submission 5*, p. 3.

38 *Submission 5*, p. 3; *Submission 6*, p. 6.