



**Australian Government**

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**Department of Broadband,  
Communications and the Digital Economy**

our reference

**Submission to the Senate Standing Committee on Environment, Communications and the Arts in relation to the Broadcasting Legislation Amendment (Digital Television Switch-over) Bill 2008**

24 October 2008

**Introduction**

The Broadcasting Legislation Amendment (Digital Television Switch-over) Bill 2008 (the Bill) amends the *Broadcasting Services Act 1992* (BSA) to implement the Government's policies to achieve a switch-over to digital television by 31 December 2013.

In preparing the Bill, the Digital Switchover Taskforce in the Department of Broadband, Communications and the Digital Economy released a discussion paper on 4 June 2008 on options for a legislative framework for implementing a digital television switch-over timetable. The discussion paper considered the amendments needed to enable a more flexible switch-over timetable to be implemented than is currently permitted under existing legislation, rather than canvassing the likely timing of switchover, in the sense of proposing possible dates for particular regions.

The Department called for submissions to the discussion paper, which were taken into consideration when preparing the Bill. Twelve submissions to the discussion paper were received, five of which did not directly address issues raised in the discussion paper.

**Mechanism for determining switch-over dates**

***Staggered, region-by-region switch-over***

As detailed in the explanatory memorandum, switch-over dates are currently set in relation to the end of the digital-analog simulcast period in particular television licence areas. The simulcast period can only be extended, not shortened.

The Bill will allow the Government to determine a staggered, region-by-region digital television switch-over timetable, based on areas that could be smaller than licence areas, and where dates could be brought forward as well as put back within a six month window.

The Bill does not legislate particular switch-over dates for particular areas. Rather, it provides a mechanism for the Minister to determine switch-over dates in particular parts of Australia, with the flexibility to vary these dates within a six-month window to take into account local circumstances in the lead up to switch-over.

Different local areas are likely to be at different stages of readiness for switch-over, due to specific technical, geographical and market issues. A staggered, region-by-region switch-

over, based on areas that could be smaller than existing television licence areas, will enable the Government to identify specific local issues and manage the deployment of technical and other resources.

Also, if all analog signals are switched off at the same time, or if many areas are switched off at once, there could be significant strain on retailers, equipment suppliers, antenna technicians and the technical and engineering resources of broadcasters. The provisions of the Bill will allow an appropriate staged switch-over timetable to be set so that difficulties such as these would be avoided.

The majority of submissions to the June discussion paper that addressed these issues (including submissions from the national broadcasters, Free TV Australia, Regional Broadcasting Australia and the Australia Digital Suppliers Industry Forum) supported proposed amendments for more flexibility in determining a switchover timetable, both in relation to smaller geographical areas and staggered switchover dates, if considered necessary and appropriate.

The ABC raised the issue that a staggered switchover has the potential to cause some technical difficulties for its state-based operations in relation to regulatory obligations for captioning on multichannels and the high definition quota. These issues are addressed below.

### ***Ministerial determination***

The Bill provides for switch-over regions and switch-over dates to be set by Ministerial determination. Current legislation provides only for the extension of simulcast periods in television licence areas by regulation.

A majority of submissions to the June discussion paper that addressed this issue supported a timetable set by legislative instrument with the Minister as decision-maker.

Setting switch-over dates by Ministerial determination will give the Government flexibility to fine-tune switch-over dates in particular areas, taking into account local market circumstances and community feedback as we get closer to switch-over in those areas. It will also provide flexibility in the event of unforeseen technical failures.

Enshrining switch-over dates in legislation would give the Government little flexibility if the dates set could not be achieved, for example, for unexpected technical or engineering reasons. Dates set in regulation, while providing the Government greater capacity for adjustment than dates in legislation, would nevertheless reduce the Government's ability to respond to emerging local market issues quickly and effectively.

Amendments by the Bill will ensure that a firm, six-month window is determined for all metropolitan and non-remote regional areas, but give the Government room to fine tune the final date for analog switch off in a particular area within that window as circumstances require.

## **Captioning requirements on commercial and national broadcaster digital multichannels, and content standards on commercial broadcaster digital multichannels**

Commercial broadcaster digital multichannels transmitted in a particular licence area are exempt from Australian and children's content standards and captioning requirements until the end of the simulcast period in that licence area (see BSA subsections 122(7) and 122(8) and Schedule 4, subclause 38(4)).

The BSA currently provides for a review of captioning and content regulation of commercial digital multichannels to be conducted one year before "the earliest digital television switch-over day". Amendments by the Bill will establish a firm date of 1 January 2010 by when this review must be conducted.

It 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.

The new date of 1 January 2010 for conducting the review will give the Government sufficient time to adjust regulatory settings in relation to content and captioning requirements for commercial digital multichannels, if appropriate.

Similar requirements in relation to captioning also apply to multichannels provided by the national broadcasters, the ABC and SBS. While the statutory review introduced by legislative changes in 2006 does not include reference to national broadcaster multichannels, it is envisaged that the review to be conducted in 2009 will also examine the regulatory settings in relation to captioning on digital multichannels that apply to the ABC and SBS, and that these settings would also be adjusted, if appropriate.

Where a licence area has different local market areas switching off analog at different times, the simulcast period will continue until all areas within that licence area have switched over. This means that the exemption for commercial digital multichannels from captioning and content rules will continue in a television licence area until all analog signals have been switched off in that licence area.

To have these policy settings change at the local market level during switch-over would cause significant technical difficulties for commercial broadcasters. The Bill provides that these settings would not change until switch-over is complete in each licence area.

The purpose of this Bill is to provide a flexible regulatory mechanism for achieving digital switch-over. The issue of captioning on digital television multichannels is also under active consideration by the Government in its current review into the accessibility of electronic media for people with a hearing or vision impairment and (as noted above) under the Bill will be the subject of a statutory review to be conducted by 1 January 2010.

### **High definition quota**

Commercial and national broadcasters are currently required to provide a minimum of 1040 hours of high definition programming in a particular licence area. This requirement ends at the end of the simulcast period in that licence area (see BSA Schedule 4, Part 4, Division 2).

As stated above, where a licence area has different local market areas switching off analog at different times, the simulcast period will continue until all areas within that licence area have switched over. This means that the high definition quota for commercial and national broadcasters will continue in a television licence area until all analog signals have been switched off in that licence area. To have these policy settings change at the local market level during switch-over could cause technical difficulties for commercial and national broadcasters.

It is possible that different regulatory regimes may apply to the same transmission stream from a national broadcaster. The Government will monitor these regulatory requirements and consult with the national broadcasters during the switch-over program.

A staggered removal of the high definition quota amounts to a relaxation of an existing requirement, as such is unlikely to be a cause for concern for the broadcasters. This is unlike the review of captioning and content requirements mentioned above which may see additional requirements imposed on broadcasters at the end of the simulcast period.

It is envisaged that the high definition quota requirements as they apply to national broadcasters will also be included in the review of captioning and content requirements of digital multichannels, given the effects that a staggered, region-by-region switch-over may have on national broadcaster operations.

### **Switch-over in remote areas**

The Australian Communications and Media Authority (ACMA) will retain its responsibilities and powers in relation to digital television switch-over for remote licence areas. However, a determination by the ACMA about the duration of a simulcast period for a remote licence area would be subject to the end date of 31 December 2013, except in exceptional circumstances.

Remote areas pose a challenge for digital switch-over, as many services there are received as direct-to-home satellite services, or as self-help retransmission services. The BSA gives the ACMA the power to determine the dates for the commencement of digital transmissions and the end of analog transmissions in remote areas. However, the Bill makes clear that switch-over must be completed in remote areas by the end of 2013, in line with switch-over for the rest of Australia.

Given the complex technical issues involved, the ACMA is best placed to administer the digital switch-over timetable for remote areas as part of the Government's overall switch-over program.

### **Variations of the commercial and national television conversion schemes**

It will be necessary for the ACMA to vary the *Commercial Television Conversion Scheme 1999* and the *National Television Conversion Scheme 1999* as a result of these amendments. Due to the technical nature of these changes, and the fact that prior public consultation has occurred, the Bill exempts the ACMA from certain consultation requirements regarding variations made in connection with the amendments made by the Bill.

**Timing of the review into the allocation of new commercial broadcasting services**

Currently, under section 35A of the BSA the Minister must cause a review regarding new commercial television licences to be conducted before the “earliest digital television switch-over day”, which means the earliest day on which a simulcast period (within the meaning of Schedule 4 to the BSA) ends. Subsection 35B(1) of the BSA provides the Government with three years from the completion of the report of the review to consider whether new commercial television broadcasting licences should be allocated. The amendments will set a firm date for this review to be conducted before 1 January 2012, to reflect the Government’s policy that switch-over be completed by 31 December 2013.

**Digitisation of community television**

The Community Broadcasting Association of Australia, in its submission to the June discussion paper, argued for the inclusion of provisions for the conversion to digital of community television services. The Government is currently considering the options available for community television to make the transition from analog to digital.

**Reception issues**

Some submissions to the June discussion paper raised potential reception issues in relation to digital switch-over. These issues are under consideration by the Government and the Digital Switchover Taskforce.