

Chapter 1

Referral to the committee

1.1 On 18 March 2010 the Senate Selection of Bills Committee referred the provisions of the Broadcasting Legislation Amendment (Digital Television) Bill 2010 (the Bill) to the Senate Environment, Communications and the Arts Legislation Committee for inquiry and report by 12 May 2010.¹

1.2 On 24 March 2010, in accordance with usual practice, the committee advertised the inquiry in *The Australian*, calling for submissions by 6 April 2010. The committee also directly contacted a range of organisations and invited them to submit to the inquiry. The committee received 10 submissions, listed at Appendix 1.

1.3 The committee held a public hearing in Canberra on 16 April 2010. The participants are listed at Appendix 2.

1.4 The committee thanks those organisations and individuals that made contributions to the committee's inquiry.

Report Structure

1.5 Chapter 1 of this report outlines the main features of the Bill, including its purposes and key provisions.

1.6 Chapter 2 discusses the principal issues that were raised during the committee's inquiry into the provisions of the Bill.

Purpose of the Bill

1.7 The Minister for Broadband, Communications and the Digital Economy, the Hon Senator Stephen Conroy, announce in December 2007 that all free-to-air television broadcasters in Australia will complete the switch from analog transmission to digital-only transmission by the end of 2013.² The Minister announced the timetable for the digital switchover on 19 October 2008.³ The timetable showing switchover dates for each region in Australia is available at: www.digitalready.gov.au/rolloutmap.aspx. On 30 June 2010, the Mildura Sunraysia region of Victoria will become the first region in Australia to switch to digital TV.

1 Senate Selection of Bills Committee, *Report No.6 of 2010*, 18 March 2010.

2 Senator the Hon Stephen Conroy, Minister for Broadband, Communications and the Digital Economy, *Digital Switchover Date Confirmed*, Media Release, 18 December 2007, at www.minister.dbcde.gov.au/media/media_releases/2007/003 (accessed 27 April 2010).

3 Senator the Hon Stephen Conroy, Minister for Broadband, Communications and the Digital Economy, *Conroy sets digital TV switchover timetable*, Media Release, 19 October 2008, at www.minister.dbcde.gov.au/media/media_releases/2008/077 (accessed 27 April 2010).

1.8 The Bill proposes to amend the *Broadcasting Services Act 1992* and the *Copyright Act 1968*. It seeks to address areas of digital television signal deficiency, or 'black spots', that may arise as a result of the digital switchover, by enabling the provision of a satellite free-to-air digital television broadcasting service (the satellite service).

1.9 Currently, there are a range of ways in which households in black spots are able to view television. There are 698 'self-help' re-transmission sites,⁴ predominantly owned by local councils, which re-transmit analog television signals terrestrially. The committee was informed that approximately 460 of those sites are in remote areas of Australia.⁵

1.10 In places not able to be reached by those terrestrial re-transmission signals, the committee was informed that people will often install large antennas and amplifiers to make the most of weak terrestrial signals.⁶ In those areas where there is no possibility of terrestrial reception, the Remote Area Broadcasting Service currently transmits limited free television services via satellite.⁷

1.11 To coincide with the switch-over to digital television commercial broadcasters propose to convert some existing self-help sites to digital, subject to negotiation with self-help operators.⁸ During the inquiry, the committee was provided with a list of 87 sites which commercial broadcasters are offering to convert, and a further list of

4 Under ACMA's self-help re-transmission arrangements, community groups or local councils purchase and maintain the equipment necessary to receive and locally re-transmit a broadcasting service (radio or television) from either a nearby terrestrial transmitter or a satellite. See Department of Broadband, Communications and the Digital Economy, *Self-help schemes administered by other bodies*, www.dbcde.gov.au/television/self_help_schemes_administered_by_other_bodies (accessed 27 April 2010).

5 Ms Julie Flynn, Chief Executive Officer, Free TV Australia, *Committee Hansard*, 16 April 2010, p. 33.

6 Mr Giles Tanner, General Manager, Digital Transition Division, Australian Communications and Media Authority, *Committee Hansard*, 16 April 2010, p. 52.

7 Mr Andy Townend, Deputy Secretary, Broadcasting and Digital Switchover, Department of Broadband, Communications and the Digital Economy, *Committee Hansard*, 16 April 2010, p. 60.

8 Mr Andy Townend, Deputy Secretary, Broadcasting and Digital Switchover, Department of Broadband, Communications and the Digital Economy, *Committee Hansard*, 16 April 2010, pp 65-6. In a media release on 5 January 2010, the Minister stated that 'broadcasters will upgrade more than 100 existing regional analog 'self-help' transmission facilities to operate in digital'. This figure appears to incorporate both the 87 sites that will be converted and the 44 sites that broadcasters claim will not need to be converted as they will be covered by other terrestrial digital conversions. www.minister.dbcde.gov.au/media/media_releases/2010/001 (accessed 27 April 2010).

44 sites which will not be converted, but whose transmission areas are likely to be covered by other terrestrial digital conversions.⁹

1.12 Despite the proposed conversion of 87 self-help re-transmission sites to digital, witnesses agreed that a complementary satellite solution will still be necessary.¹⁰ Mr Andy Townend, Deputy Secretary of Broadcasting and Digital Switchover, Department of Broadband, Communications and the Digital Economy (the department) explained the need for satellite coverage to address digital TV black-spots:

Why do we need the new satellite service? As you know, most Australians receive their television services from the network of broadcaster owned and operated transmission towers and they will continue to do so after the switch-over to digital...However it is simply not feasible to use terrestrial coverage to serve all Australians. This is already acknowledged by the current arrangements, which allow viewers in analog black spots to receive remote area broadcasting by satellite.¹¹

1.13 Mr Townend summarised the key objectives of the Bill:

The service which was announced by the government on 5 January [2010] sets a new standard of access and equity for free-to-air television in Australia. It is an important and significant element in the mix of ways in which Australians receive their television and it provides national coverage of digital television channels. The legislation provides the legal framework for implementing a service that will begin in time for switch-over in Mildura, which will take place on 30 June 2010.¹²

1.14 Although the national broadcasting services (ABC and SBS) will also be included on the satellite platform, the Bill only deals with arrangements for commercial broadcasters as 'no legislative amendments are required to achieve these national broadcaster satellite arrangements'.¹³

1.15 The main provisions of the Bill seek to:

- establish licensing arrangements for the proposed satellite service;
- set out the conditions of the satellite service;

9 Department of Broadband, Communications and Digital Economy, tabled document, 'Digital television services for self-help retransmission sites', 16 April 2010, available at: www.digitalready.gov.au/media/DTV_services_for_self_hel_retransmission_sites.pdf.

10 Mr Andy Townend, Deputy Secretary, Broadcasting and Digital Switchover, Department of Broadband, Communications and the Digital Economy, *Committee Hansard*, 16 April 2010, p. 62.

11 Mr Andy Townend, *Committee Hansard*, 16 April 2010, pp 55–56.

12 Mr Andy Townend, Deputy Secretary, Broadcasting and Digital Switchover, Department of Broadband, Communications and the Digital Economy, *Committee Hansard*, 16 April 2010, p. 55.

13 Explanatory Memorandum, p. 2.

- set out conditions, authorisations and exemptions for commercial television programming on the satellite service;
- set out local content obligations for commercial television broadcasting licensees in relation to the satellite service;
- provide for the setting of technical standards for the digital transmission and reception of satellite broadcasting services;
- provide for conditional access arrangements for satellite services; and
- alter the licences of existing terrestrial digital television broadcasters to enable the broadcast in regional areas of equivalent commercial services to those available in metropolitan areas.¹⁴

1.16 The Bill also deals with copyright aspects of the new licence conditions to be imposed on commercial television broadcasters and the satellite licensee by the Bill.

Outline of the Bill

1.17 Schedule 1 of the Bill outlines amendments proposed to be made to the *Broadcasting Services Act 1992* (BSA) and *Copyright Act 1968*.

Licensing arrangements for the proposed satellite service

1.18 Item 26 of the Bill inserts a new section—section 38C—into the BSA. Section 38C sets out three licence areas for commercial television broadcasting licences on the new satellite platform:

- South Eastern Australia, comprising New South Wales, Victoria, South Australia, Tasmania, the Australian Capital Territory and the Jervis Bay Territory;
- Northern Australia, comprising Queensland and the Northern Territory; and
- Western Australia.¹⁵

1.19 The table in subsection 38C(1) also sets out those existing commercial television broadcasting licensees eligible to form joint ventures in each licence area. Subsection 2 provides that two or more of the listed eligible joint venturers may apply to the Australian Communications and Media Authority (ACMA) for a satellite television broadcasting licence in the respective area. If they do so, ACMA must allocate a commercial television broadcasting licence to the joint-venture company for the relevant satellite television licence area.¹⁶

14 Explanatory Memorandum, pp 1–24.

15 Broadcasting Services Amendment (Digital Television) Bill 2010, item 26.

16 Broadcasting Services Amendment (Digital Television) Bill 2010, item 26, proposed subsections 38C(3) and (4).

1.20 Subsection 6 provides that if eligible joint venturers in any satellite licence area do form a joint venture company, an eligible joint venturer may apply to ACMA to operate the satellite licence as a special purpose company, which would be a wholly owned subsidiary of the joint venturer formed for the purpose of operating the satellite licence.

1.21 If only one joint venturer applies to form a special purpose company, ACMA must allocate the licence to that company.¹⁷ However, if ACMA receives applications from more than one special purpose company, subsection 9 provides that:

ACMA must allocate a commercial television broadcasting licence to one of those companies for the licence area in accordance with a price-based system determined under subsection (11).¹⁸

1.22 If no eligible company applies for a licence ACMA must advertise for applications for the broadcasting licence.¹⁹ Only companies formed within Australia are eligible to be allocated a commercial broadcasting licence.²⁰

1.23 The Bill also sets out timeframes in which the licences must commence.²¹

1.24 Under the Bill, ACMA will have the power to cancel a licence if a licensee fails to meet any of the proposed standard conditions set out in Schedule 2 to the BSA, and ACMA is satisfied that the contravention was not beyond the licensee's control.²²

1.25 The Bill also provides that a licence allocated under section 38C cannot be transferred for two years after its allocation.²³

Conditions on the satellite broadcasting service licensee

1.26 The Bill sets out a range of conditions for the new satellite licensee. The 'common conditions' for the satellite licensee are set out in proposed Division 2 of Part 3 of Schedule 2 to the BSA, at item 72 of the Bill. The conditions include that:

17 Broadcasting Services Amendment (Digital Television) Bill 2010, item 26, proposed subsection 38C(8).

18 Broadcasting Services Amendment (Digital Television) Bill 2010, item 26, proposed subsection 38C(9).

19 Broadcasting Services Amendment (Digital Television) Bill 2010, item 26, proposed subsection 38C(17).

20 Broadcasting Services Amendment (Digital Television) Bill 2010, item 12, proposed paragraph 37(1)(a).

21 Broadcasting Services Amendment (Digital Television) Bill 2010, item 29, proposed subsections 41B(2A)–(2E).

22 Broadcasting Services Amendment (Digital Television) Bill 2010, item 26, proposed subsection 38C(15). This provision is subject to a 30 day written notice period.

23 Broadcasting Services Amendment (Digital Television) Bill 2010, item 26, proposed subsection 38C(25).

- the licensee may only provide commercial television broadcasting services in digital mode;
- the licensee may only provide commercial television broadcasting services via satellite;
- if a conditional access scheme is registered, the licensee will ensure that their systems comply with the scheme; and
- the licensee will comply with any technical standards set by ACMA.²⁴

1.27 Further conditions of the satellite licensee's licence are that it must broadcast a range of commercial digital television services equivalent to that available in metropolitan areas²⁵ and a local news service.²⁶ These conditions are discussed in detail below.

1.28 The Bill also makes amendments to existing captioning²⁷ and anti-siphoning²⁸ requirements to ensure that the satellite licensee is not made subject to conditions which would be difficult or unfair for it to have to meet. The Explanatory Memorandum states that these amendments are to maintain consistency 'across the satellite and terrestrial transmission platforms' and to 'avoid a situation in which programming provided for transmission on the satellite service...would be required to meet separate regulatory requirements'.²⁹

Content of proposed satellite services

1.29 According to the Explanatory Memorandum:

The intent of the Bill is to enable the new commercial satellite services to provide viewers in signal deficient areas with access to an equivalent range of digital television services to those received by metropolitan viewers.³⁰

1.30 The Bill sets out a range of conditions, authorisations and exemptions for new satellite licensees and existing commercial terrestrial licensees in order to meet this objective.

1.31 The Explanatory Memorandum summarises the intended effect of these provisions:

24 Broadcasting Services Amendment (Digital Television) Bill 2010, item 72, proposed clause 7A of Schedule 2, Part 2, Division 2.

25 Broadcasting Services Amendment (Digital Television) Bill 2010, item 72, proposed clauses 7B and 7C of Schedule 2, Part 2, Division 2.

26 Broadcasting Services Amendment (Digital Television) Bill 2010, item 72, proposed clause 7D of Schedule 2, Part 2, Division 2.

27 Broadcasting Services Amendment (Digital Television) Bill 2010, items 103–113.

28 Broadcasting Services Amendment (Digital Television) Bill 2010, items 114–130.

29 Explanatory Memorandum, p. 14.

30 Explanatory Memorandum, p. 6.

The measures in this Bill do not require the satellite broadcasting service licensees to provide digital television services that are identical to the digital television services provided to metropolitan markets. Instead, the licensees of the satellite services would be authorised to transmit the network-affiliated multi-channelled services provided by remote area commercial broadcasters in the related terrestrial licence area...or, in cases where remote commercial services are not available, a replacement multi-channelled service provided by a commercial broadcaster in a metropolitan licence area.³¹

- 1.32 Accordingly, the Bill sets out that satellite licensees are authorised to provide:
- a core Standard Definition (SD) service with the same, or substantially the same program content as the terrestrial services in the related licence area;
 - a SD multi-channelled service with the same, or substantially the same, program content as a secondary service provided by a related terrestrial licensee, or provided by a commercial licensee for a metropolitan area;
 - a High Definition (HD) multi-channelled service with the same, or substantially the same, program content as an HD service provided by the terrestrial services in the related licence area or a metropolitan licensee;³² and
 - one or more SD multi-channels the program content of which is wholly or mostly local news.³³

1.33 The satellite licensee is also required, as a condition of its licence, to provide some of those authorised services. The Explanatory Memorandum summarises the services which must be provided on the satellite platform:

...the satellite broadcasting service licensees in each of the satellite licence areas must provide digital television services equivalent in range to commercial digital terrestrial television services in metropolitan licence areas.³⁴

1.34 Proposed clauses 7B and 7C of Schedule 2, Part 2, Division 2 to the BSA contain conditions relating to the number of services which must be provided, which varies according to the number of terrestrial services provided,³⁵ and the channels that must be provided.³⁶ In summary, the satellite service must transmit:

31 Explanatory Memorandum, p. 6.

32 Broadcasting Services Amendment (Digital Television) Bill 2010, item 32, proposed section 41CA.

33 Broadcasting Services Amendment (Digital Television) Bill 2010, item 38, proposed subsection 43A(3A).

34 Explanatory Memorandum, p. 7.

35 Broadcasting Services Amendment (Digital Television) Bill 2010, item 72, proposed clause 7B of Schedule 2, Part 2, Division 2.

36 Broadcasting Services Amendment (Digital Television) Bill 2010, item 72, proposed clause 7C of Schedule 2, Part 2, Division 2.

- three different core digital services from the remote commercial broadcasters in the related terrestrial licence area, where three different services are available terrestrially;
- all SD and HD multi-channels provided by remote commercial broadcasters in the related terrestrial licence area;
- a 'replacement' channel from a metropolitan area if fewer than three remote commercial services are available terrestrially, or fewer multi-channel services are available than in metropolitan markets.

1.35 In addition, satellite licensees will be required to provide a 'local news service',³⁷ which is discussed in further detail below.

1.36 The Bill contains exemptions from these conditions for the satellite licensee, for example from providing services which are not technically feasible.³⁸

1.37 The Bill also contains corresponding requirements for the holders of terrestrial broadcasting licences in the area covered by each satellite, to ensure that the program content that the satellite licensee is authorised to provide is available to the satellite licensee. The requirements imposed on terrestrial broadcasters by the Bill include that:

- metropolitan commercial television broadcasters must provide the satellite licensee with any program that is broadcast on an HDTV or SDTV multi-channelled commercial television service, or any program requested by the satellite licensee, either simultaneously with the broadcast of the program on the metropolitan service, or as soon as practicable afterwards;³⁹
- holders of a remote terrestrial broadcasting licence must provide the satellite licensee in the same region with the program material from any HDTV or SDTV multi-channelled service that the remote terrestrial broadcaster broadcasts either simultaneously with the terrestrial broadcast, or as soon as practicable thereafter;⁴⁰ and
- commercial terrestrial broadcasters in regional licence areas must provide material for a local news channel (discussed in detail below).⁴¹

1.38 Certain exemptions to these conditions are also set out in the Bill for practical reasons. For example, if a terrestrial commercial broadcaster provides a service with

37 Broadcasting Services Amendment (Digital Television) Bill 2010, item 72, proposed clause 7D of Schedule 2, Part 2, Division 2.

38 Broadcasting Services Amendment (Digital Television) Bill 2010, item 72, proposed clause 7E of Schedule 2, Part 2, Division 2.

39 Broadcasting Services Amendment (Digital Television) Bill 2010, item 41, proposed section 43AB.

40 Broadcasting Services Amendment (Digital Television) Bill 2010, item 41, proposed section 43AC.

41 Broadcasting Services Amendment (Digital Television) Bill 2010, item 41, proposed section 43AA.

the same, or substantially the same, content as another service which is required to be provided to the satellite licensee, the Minister may determine that the terrestrial broadcaster is not required to provide both services to the satellite licensee.⁴²

Local content obligations

1.39 Item 38 of the Bill proposes to insert subsections 43A(3A)–(3C) which would require holders of regional commercial broadcasting licences to provide the satellite licensee with 'any material of local significance' that they broadcast in the area covered by the satellite licensee. Local programs must be provided simultaneously with the broadcast of the material by the regional terrestrial broadcaster, or as soon as practicable after broadcast.⁴³

1.40 The Explanatory Memorandum describes the resulting broadcast as a 'local news and information' channel,⁴⁴ and explains that:

To ensure the supply of local news and information to satellite viewers, regional broadcasting licensees would be required to provide unique local news and information which they deliver terrestrially to viewers in each of their licence areas either simultaneously or as soon as practicable to the relevant satellite licensees for transmission by satellite in the relevant satellite licence area.⁴⁵

1.41 Free TV Australia raised concerns about the wording of the proposed local content provisions, submitting that:

...the provisions in the Bill do not appear to capture the parameters of the proposed satellite news service...the satellite news service has been developed to deliver the evening news bulletin, or shorter multiple bulletins, that would otherwise have been available to viewers from their local terrestrial news service...On our reading, the provisions of the Bill go further than this, requiring the carriage of any material which meets the (much broader) local content licence conditions.⁴⁶

1.42 Ms Flynn, Chief Executive Officer, Free TV Australia, explained that 'material of local significance' may be interpreted as programs such as *Underbelly* in Victoria.⁴⁷

42 Broadcasting Services Amendment (Digital Television) Bill 2010, item 72, proposed clause 7F of Schedule 2, Part 2, Division 2.

43 Broadcasting Services Amendment (Digital Television) Bill 2010, item 38, proposed paragraph 43A(3A)(b).

44 Explanatory Memorandum, p. 10.

45 Explanatory Memorandum, p. 11.

46 Free TV Australia, *Submission 7*, p. 4.

47 Ms Julie Flynn, Chief Executive Officer, Free TV Australia, *Committee Hansard*, 16 April 2010, p. 38.

1.43 Free TV suggested amendments to the Bill to ensure that only long-form local news programs or multiple short-form news programs (if no long-form local news program is produced) be required to be broadcast by the satellite licensee. Free TV suggested that the Bill specifically exclude from the requirements:

- short segments or headline updates that have the purpose of promoting an upcoming local news program;
- short segments or headline updates that repeat news content that has previously been broadcast; and
- any other material of local significance or local content or local information that is not a news program.⁴⁸

1.44 In response to Free TV's concern, the Department of Broadband, Communications and the Digital Economy stated:

The Government is consulting with broadcasters on this matter and is considering the amendments suggested by Free TV Australia.⁴⁹

Technical standards for transmission and reception of satellite services

1.45 Item 62 of the Bill inserts section 130AC into the BSA, subsection (1) of which provides that:

ACMA may, by legislative instrument, determine technical standards that relate to the transmission in digital mode of either or both of the following services:

- (a) commercial television broadcasting services provided under a licence allocated under section 38C;
- (b) national television broadcasting services provided with the use of a satellite.

1.46 ACMA will also have the power to determine technical standards for domestic digital satellite reception equipment under proposed section 130BB. Such a determination is expressed in the Bill to be a legislative instrument, and subsection 130BB(2) provides that it is an offence for a person to supply reception equipment that does not comply with any standards set by ACMA.

Conditional access arrangements for satellite services

1.47 Item 64 of the Bill proposes to insert Part 9C into the BCA which would establish a conditional access scheme setting out 'rules relating to access to services' provided by the new satellite service.⁵⁰

48 Free TV Australia, *Submission 7*, p. 4.

49 Department of Broadband, Communications and the Digital Economy, answer to question on notice, 16 April 2010 (received 23 April 2010).

1.48 Proposed section 130ZB sets out the objectives for a conditional access scheme, which include:

- specifying 'category A' reception areas, which are areas in which 'people are unable to receive adequate reception of all the applicable terrestrial digital commercial television services', i.e. known areas of signal deficiency;⁵¹
- specifying 'category B' areas, which are areas 'where adequate reception of one or more services is intermittent';⁵²
- enabling households located in category A and B areas to receive commercial television broadcasting services via satellite;⁵³
- providing that any areas within a satellite licence area which are neither category A nor B, are 'category C' areas;⁵⁴
- identifying a company to be the scheme administrator,⁵⁵ and authorising the administrator to issue certificates to persons in category C reception areas 'stating that the person is unable to receive adequate reception of all the applicable terrestrial digital commercial television broadcasting services';⁵⁶
- enabling households in category C areas with reception certificates to receive commercial broadcasting services via satellite;⁵⁷
- providing that applications by householders in category C areas to the administrator must be dealt with within 14 days of receipt without requiring payment;⁵⁸
- enabling the administrator to revoke certificates if a person is no longer eligible;⁵⁹ and

50 Broadcasting Services Amendment (Digital Television) Bill 2010, item 64, proposed section 130ZBA.

51 Broadcasting Services Amendment (Digital Television) Bill 2010, item 64, proposed paragraph 130ZB(3)(a).

52 Explanatory Memorandum, p. 42; Broadcasting Services Amendment (Digital Television) Bill 2010, item 64, proposed subsection 130ZB(4).

53 Broadcasting Services Amendment (Digital Television) Bill 2010, item 64, proposed subsection 130ZB(5).

54 Broadcasting Services Amendment (Digital Television) Bill 2010, item 64, proposed subsection 130ZB(7).

55 Broadcasting Services Amendment (Digital Television) Bill 2010, item 64, proposed subsection 130ZB(8).

56 Broadcasting Services Amendment (Digital Television) Bill 2010, item 64, proposed subsection 130ZB(9).

57 Broadcasting Services Amendment (Digital Television) Bill 2010, item 64, proposed subsection 130ZB(10).

58 Broadcasting Services Amendment (Digital Television) Bill 2010, item 64, proposed subsection 130ZB(11).

59 Broadcasting Services Amendment (Digital Television) Bill 2010, item 64, proposed subsection 130ZB(13).

- providing that persons not in category A reception areas must not be able to receive satellite services earlier than six months prior to the local television market being converted to digital-only.⁶⁰

1.49 Proposed section 130ZC establishes a coregulatory framework for the access regime. Under this section, if ACMA 'is satisfied that a body or association represents commercial television broadcasting licensees'⁶¹ and that body or association develops a conditional access scheme which 'is consistent with the principle that a person in the licence area should have adequate reception' of all relevant commercial broadcasting services⁶² then ACMA must register the scheme.⁶³

1.50 If no conditional access scheme is presented by the broadcasting industry, then ACMA may develop a scheme.⁶⁴

1.51 ACMA is also empowered under the Bill to review reception certificate decisions by the conditional access scheme administrator, and direct the administrator to issue a certificate enabling a person in a category C area to obtain satellite reception.⁶⁵

1.52 ACMA is also empowered under proposed section 130ZFA to determine by legislative instrument what amounts to 'adequate reception' for the purposes of people being eligible to access the satellite service.⁶⁶

1.53 Mr Giles Tanner, General Manager, Digital Transition Division at ACMA explained to the committee that:

What is contemplated in the legislation is what I have colloquially called a coregulatory scheme. It is a scheme where industry has a key role in developing the regulatory arrangements and the ACMA has the role of ensuring that those scrub up and providing some sort of backup in the event that they fail to provide adequate community safeguards.⁶⁷

60 Broadcasting Services Amendment (Digital Television) Bill 2010, item 64, proposed subsections 130ZB(14) and (15).

61 Broadcasting Services Amendment (Digital Television) Bill 2010, item 64, proposed paragraph 130ZC(1)(a).

62 Broadcasting Services Amendment (Digital Television) Bill 2010, item 64, proposed paragraph 130ZC(1)(e).

63 Broadcasting Services Amendment (Digital Television) Bill 2010, item 64, proposed subsection 130ZC(2).

64 Broadcasting Services Amendment (Digital Television) Bill 2010, item 64, proposed section 130ZCA.

65 Broadcasting Services Amendment (Digital Television) Bill 2010, item 64, proposed section 130ZF.

66 Broadcasting Services Amendment (Digital Television) Bill 2010, item 64, proposed section 130ZFA.

67 Mr Giles Tanner, General Manager, Digital Transition Division, ACMA, *Committee Hansard*, 16 April 2010, p. 47.

1.54 Mr Tanner explained the benefits of 'coregulatory schemes':

We get an industry that takes responsibility and we also get some basic safeguards too. So if it is clearly going off the rails, there is a regulator you can turn to...I think the industry needs to be given the room to take the directions from the legislature, operationalise them in discussion with the ACMA and for my authority members to then consider if that passes muster.⁶⁸

Equivalency between regional and metropolitan licences

1.55 Item 14 of the Bill repeals the current prohibition in the BSA on commercial television licensees in single markets from applying for a commercial television broadcasting licence in a two-station market. The Explanatory Memorandum states:

This amendment will enable a broadcaster providing an additional licensed service under section 38A in those smaller regional markets to apply for an additional licence to provide a third, digital-only, commercial television broadcasting licence in the same licence area.⁶⁹

1.56 Items 28 and 29 propose to insert new subsections 1A, and 2A to 2E into section 41B of the BSA. Together, these amendments will enable broadcasters with commercial television broadcasting licences in single markets and two-station markets to provide the same number of digital commercial television services in those underserved markets as may be available in metropolitan licence areas, in SD mode only. Each licensee will be able to provide up to three digital television services during the simulcast period, one of which may be in HD.⁷⁰

1.57 Further arrangements are proposed by items 89 to 96, which are intended to recognise the fact that:

In some regional licence areas the establishment of the new satellite broadcasting service will mean that there will be a more attractive suite of digital television services available by satellite than terrestrially.⁷¹

1.58 These amendments work in conjunction with item 14, which permits additional commercial broadcasting licences in regional areas, to enable broadcasters in one or two licence areas to 'the benefit of any multi-channelling elections they have made' under item 14.⁷²

68 Mr Giles Tanner, General Manager, Digital Transition Division, ACMA, *Committee Hansard*, 16 April 2010, p. 48.

69 Explanatory Memorandum, p. 27.

70 Broadcasting Services Amendment (Digital Television) Bill 2010, item 29, proposed subsections 2A–2E.

71 Explanatory Memorandum, p. 61.

72 Explanatory Memorandum, p. 62.

Copyright arrangements

1.59 The requirement that terrestrial broadcasters provide the satellite licensee with their copyrighted program material necessitates arrangements to compensate terrestrial broadcasters for the acquisition of their intellectual property. The Bill proposes amendments to both the BSA and Copyright Act to achieve this.

1.60 The Explanatory Memorandum explains:

...the satellite broadcasting service licensee would be expected to reach a commercial agreement with metropolitan and regional broadcasters for the provision of programming and content, including local news and information, for broadcast on the satellite service.

Where such an agreement cannot be reached, a statutory licensing scheme would be established in order to provide equitable remuneration to copyright holders.⁷³

1.61 The Bill proposes to amend the *Copyright Act 1968* to establish a statutory licensing scheme to come into effect if commercial negotiations fail. The scheme is based on the existing re-transmission scheme in Part VC of the Copyright Act which applies to subscription TV services re-transmitting commercial broadcasts.

1.62 Item 141 inserts a new Part VD into the Copyright Act which applies to material broadcast by a satellite licensee under proposed sections 43A, 43AA, 43AB or 43AC of the BSA.

1.63 Proposed section 135ZZZI provides that the re-broadcast of programs by a satellite licensee does not infringe copyright, provided that the re-broadcast complies with the conditions of the satellite licensee's licence, and relevant provisions of the BSA, and:

- a remuneration notice given by the satellite licensee to the relevant collecting society is in force; or
- there is an agreement in force between the satellite licensee and the copyright holder; or
- if there is no agreement, there is a determination of the Copyright Tribunal in place; or
- if there is no agreement or determination, the satellite licensee has given the copyright owner a written undertaking to pay such amount as determined by the Copyright Tribunal.

1.64 Proposed section 135ZZZJ provides that the satellite licensee may give a written remuneration notice to the relevant collecting society undertaking to pay equitable remuneration for its re-broadcast. What amounts to equitable remuneration

73 Explanatory Memorandum, p. 13.

is determined by either the Copyright Tribunal or an agreement between the satellite licensee and the collecting society.⁷⁴

1.65 If a satellite licensee decides to use remuneration notices, it has the responsibility to keep records of the programs it re-broadcasts in order to pay the relevant collecting society.⁷⁵

1.66 The Bill provides that a body may apply to the Minister to be declared a relevant collecting society to administer the above licensing scheme.⁷⁶

1.67 In addition to this licensing scheme, the Bill contains what the Explanatory Memorandum refers to as a 'constitutional safety net clause'.⁷⁷ Proposed section 43AD provides that any program material provided to the satellite licences by commercial broadcasters requires the satellite licensee to 'pay a reasonable amount of compensation' to the copyright holder.⁷⁸

1.68 In terms of determining what amounts to 'reasonable compensation', the Bill provides that:

If the licensee and the person [who holds the copyright] do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the licensee of such reasonable amount of compensation as the court determines.⁷⁹

1.69 The Explanatory Memorandum states that this arrangement provides 'a constitutional safety net' to prevent the acquisition of property on other than just terms.⁸⁰

1.70 Item 50 of the Bill also intends to limit the Commonwealth's liability for any acquisition of property on other than just terms from commercial broadcasters required under proposed sections 43AA, 43AB or 43AC, or proposed subsection 43A(3A).⁸¹

74 Broadcasting Services Amendment (Digital Television) Bill 2010, item 141, proposed section 135ZZZK.

75 Broadcasting Services Amendment (Digital Television) Bill 2010, item 141, proposed section 135ZZZL.

76 Broadcasting Services Amendment (Digital Television) Bill 2010, item 141, proposed section 135ZZZO.

77 Explanatory Memorandum, p. 13.

78 Broadcasting Services Amendment (Digital Television) Bill 2010, item 41, proposed subsection 43AD(1).

79 Broadcasting Services Amendment (Digital Television) Bill 2010, item 41, proposed subsection 43AD(2)

80 Explanatory Memorandum, p. 38.

81 Explanatory Memorandum, p. 39.