

The Senate

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Environment, Communications  
and the Arts  
Legislation Committee

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Broadcasting Legislation Amendment (Digital  
Television) Bill 2010 [Provisions]

May 2010

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ISBN 978-1-74229-299-1

This document was printed by the Senate Printing Unit, Parliament House, Canberra

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# Table of Contents

<b>Committee membership .....</b>	<b>iii</b>
<b>Abbreviations .....</b>	<b>vii</b>
<b>Chapter 1 - Referral to the committee .....</b>	<b>1</b>
Report Structure.....	1
Purpose of the Bill .....	1
Outline of the Bill .....	4
<b>Chapter 2 - Key issues .....</b>	<b>17</b>
Cost effectiveness of the proposed black spot solution.....	17
Copyright issues .....	19
Narrowcasters' access to the satellite platform.....	23
Costs and impact of the proposed satellite scheme for households .....	26
Conclusions .....	30
<b>Coalition Senators' Additional Comments.....</b>	<b>33</b>
Alternative Solutions .....	33
Access Regime .....	34
Cost of adoption .....	35
Uncertainty—terrestrial or satellite? .....	35
Concluding Remarks .....	36
<b>Australian Greens' Additional Comments.....</b>	<b>37</b>
<b>Appendix 1 - Submissions, tabled documents, additional information and answers to questions taken on notice .....</b>	<b>39</b>
Submissions .....	39
Tabled documents.....	39
Additional information .....	39

Answers to questions taken on notice .....	39
<b>Appendix 2 - Public hearings .....</b>	<b>41</b>

# Abbreviations

ACMA	Australian Communications and Media Authority
the Bill	Broadcasting Legislation Amendment (Digital Television) Bill 2010
BSA	<i>Broadcasting Services Act 1992</i>
CEO	Chief Executive Officer
the committee	Senate Environment, Communications and the Arts Legislation Committee
DBCDE	Department of Broadband, Communications and the Digital Economy
the department	Department of Broadband, Communications and the Digital Economy
HD	High Definition
HDTV	High Definition Television
NITV	National Indigenous Television
satellite licensee	an organisation granted a licence under proposed section 38C of the <i>Broadcasting Services Act 1992</i> (item 26 of the Bill)
SD	Standard Definition
SDTV	Standard Definition Television





# 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.<sup>1</sup>

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.<sup>2</sup> The Minister announced the timetable for the digital switchover on 19 October 2008.<sup>3</sup> The timetable showing switchover dates for each region in Australia is available at: [www.digitalready.gov.au/rolloutmap.aspx](http://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.

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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](http://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](http://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,<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> In those areas where there is no possibility of terrestrial reception, the Remote Area Broadcasting Service currently transmits limited free television services via satellite.<sup>7</sup>

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.<sup>8</sup> 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

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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](http://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](http://www.minister.dbcde.gov.au/media/media_releases/2010/001) (accessed 27 April 2010).

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

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.<sup>10</sup> 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.<sup>11</sup>

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.<sup>12</sup>

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'.<sup>13</sup>

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;

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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](http://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.<sup>14</sup>

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.<sup>15</sup>

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.<sup>16</sup>

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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.<sup>17</sup> 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).<sup>18</sup>

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

1.23 The Bill also sets out timeframes in which the licences must commence.<sup>21</sup>

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.<sup>22</sup>

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

### ***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:

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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.<sup>24</sup>

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 areas<sup>25</sup> and a local news service.<sup>26</sup> These conditions are discussed in detail below.

1.28 The Bill also makes amendments to existing captioning<sup>27</sup> and anti-siphoning<sup>28</sup> 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'.<sup>29</sup>

### *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.<sup>30</sup>

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:

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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.<sup>31</sup>

- 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;<sup>32</sup> and
  - one or more SD multi-channels the program content of which is wholly or mostly local news.<sup>33</sup>

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.<sup>34</sup>

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,<sup>35</sup> and the channels that must be provided.<sup>36</sup> In summary, the satellite service must transmit:

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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',<sup>37</sup> 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.<sup>38</sup>

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;<sup>39</sup>
- 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;<sup>40</sup> and
- commercial terrestrial broadcasters in regional licence areas must provide material for a local news channel (discussed in detail below).<sup>41</sup>

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

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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.



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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.<sup>42</sup>

### ***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.<sup>43</sup>

1.40 The Explanatory Memorandum describes the resulting broadcast as a 'local news and information' channel,<sup>44</sup> 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.<sup>45</sup>

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.<sup>46</sup>

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.<sup>47</sup>

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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.<sup>48</sup>

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.<sup>49</sup>

### ***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.<sup>50</sup>

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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;<sup>51</sup>
- specifying 'category B' areas, which are areas 'where adequate reception of one or more services is intermittent';<sup>52</sup>
- enabling households located in category A and B areas to receive commercial television broadcasting services via satellite;<sup>53</sup>
- providing that any areas within a satellite licence area which are neither category A nor B, are 'category C' areas;<sup>54</sup>
- identifying a company to be the scheme administrator,<sup>55</sup> 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';<sup>56</sup>
- enabling households in category C areas with reception certificates to receive commercial broadcasting services via satellite;<sup>57</sup>
- providing that applications by householders in category C areas to the administrator must be dealt with within 14 days of receipt without requiring payment;<sup>58</sup>
- enabling the administrator to revoke certificates if a person is no longer eligible;<sup>59</sup> and

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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.<sup>60</sup>

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'<sup>61</sup> 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 services<sup>62</sup> then ACMA must register the scheme.<sup>63</sup>

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

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.<sup>65</sup>

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.<sup>66</sup>

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.<sup>67</sup>

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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.<sup>68</sup>

***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.<sup>69</sup>

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.<sup>70</sup>

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.<sup>71</sup>

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.<sup>72</sup>

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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.<sup>73</sup>

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

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73 Explanatory Memorandum, p. 13.

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

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.<sup>75</sup>

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.<sup>76</sup>

1.67 In addition to this licensing scheme, the Bill contains what the Explanatory Memorandum refers to as a 'constitutional safety net clause'.<sup>77</sup> 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.<sup>78</sup>

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.<sup>79</sup>

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.<sup>80</sup>

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).<sup>81</sup>

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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.





## Chapter 2

### Key issues

2.1 A range of issues relating to the Bill was raised during the committee's inquiry. The key issues related to:

- the cost effectiveness of the proposed black spot solution;
- the proposed copyright scheme;
- narrowcasters' access to the satellite platform; and
- the costs and impact of the proposed satellite scheme for households.

#### Cost effectiveness of the proposed black spot solution

2.2 Both Broadcast Australia and AUSTAR raised questions relating to whether the government adequately examined the full range of possible solutions to digital television black spots, and whether it has reached the most cost-effective solution.

2.3 In its submission, AUSTAR argued that it was 'surprised by preliminary funding estimates to support this project'.<sup>1</sup> The government has estimated its costs for funding the satellite network to be \$40 million per annum, 'for the potential benefit of up to 247,000 households across Australia'.<sup>2</sup>

2.4 Broadcast Australia, which is a commercial owner and operator of approximately 600 terrestrial broadcast facilities,<sup>3</sup> questioned whether the appropriate balance has been reached by the government between the conversion of existing terrestrial sites to digital and the satellite platform. Broadcast Australia's submission argued:

...it is overwhelmingly in TV viewers' interests that digital free to air TV services potentially available to homes from the satellite are made available through local digital terrestrial transmission facilities – unless it can be demonstrated it is simply not cost effective to provide the full range of terrestrial digital transmission facilities to achieve this.<sup>4</sup>

2.5 The committee questioned officers from the Department of Broadband, Communications and the Digital Economy about what other solutions to digital TV

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1 AUSTAR, *Submission 6*, p. 4.

2 The Hon Senator Stephen Conroy, Minister for Broadband, Communications and the Digital Economy, *Digital television Australia-wide*, Media Release, 5 January 2010, at [www.minister.dbcde.gov.au/media/media\\_releases/2010/001](http://www.minister.dbcde.gov.au/media/media_releases/2010/001) (accessed 27 April 2010).

3 Broadcast Australia, *Submission 4*, p. 2.

4 Broadcast Australia, *Submission 4*, p. 1.

black spots had been considered, and the comparative costs and benefits of alternative options. Mr Andy Townend, Deputy Secretary of Broadcasting and Digital Switchover responded:

The government certainly looked at a number of different ways of meeting the problem of signal deficiencies. You have probably heard from most witnesses that any form of solution for signal deficiencies would require a satellite solution. The satellite solution that has been formulated has been designed to provide the maximum number of services to people in the most cost-efficient way.<sup>5</sup>

2.6 Although the department declined to provide the committee with details of the models considered, Mr Townend highlighted a number of times in his evidence that a satellite system would be required regardless of which model was chosen.<sup>6</sup>

2.7 The committee understands that the government has negotiated the rollout of digital television in regional and rural areas through it funding the 'fallback' satellite system, while allowing commercial broadcasters to make commercial decisions about the cost-effectiveness of converting self-help sites to digital. As Mr Townend explained:

...the government has been in negotiation discussions with the commercial broadcasters themselves and not with Broadcast Australia. The government has not had negotiations and discussions with service providers...As I mentioned earlier, any solution for signal deficiencies would involve a satellite element. The government has chosen to fund a satellite element—is a fairly minimal satellite element—which provides the appropriate services to the country without incurring any terrestrial costs, because that has been put on the table by the broadcasters.<sup>7</sup>

2.8 Accordingly, from a cost perspective, Mr Townend explained:

Rolling out additional terrestrial towers would have been incremental to the cost of any satellite service. So it would not reduce costs; it would actually increase the costs. The satellite service we are providing is almost what you would call a de minimis satellite service, without any cost to government of terrestrial rollout.<sup>8</sup>

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5 Mr Andy Townend, *Committee Hansard*, 16 April 2010, p. 62.

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

7 Mr Andy Townend, Deputy Secretary, Broadcasting and Digital Switchover, Department of Broadband, Communications and the Digital Economy, *Committee Hansard*, 16 April 2010, p. 73.

8 Mr Andy Townend, Deputy Secretary, Broadcasting and Digital Switchover, Department of Broadband, Communications and the Digital Economy, *Committee Hansard*, 16 April 2010, p. 63.

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### ***Committee view***

2.9 The committee is satisfied that the government has struck an appropriate balance between terrestrial tower conversion and satellite re-transmission. It recognises that in a country with the size and geography of Australia's there will always be a need for complementary re-transmission infrastructure, sourced from both terrestrial and satellite services.

### **Copyright issues**

2.10 A number of matters related to the statutory copyright licensing scheme proposed by the Bill were raised by Screenrights and Free TV Australia.

2.11 Screenrights, which is a copyright society that currently administers a number of statutory licensing schemes, including that under Part VC of the *Copyright Act 1968*, on which the copyright scheme in the Bill is based, raised two main concerns:

- the backdating of remuneration notices; and
- potential issues with the definition of 'broadcast' proposed in the Bill.

2.12 Free TV raised more significant concerns regarding whether the statutory licensing scheme proposed in the Bill is the most appropriate means of dealing with copyright issues.

### ***Backdating remuneration licenses***

2.13 Proposed paragraph 135ZZZJ(3)(b) permits the backdating of remuneration notices under the statutory licensing scheme, which Screenrights submitted is 'neither desirable nor necessary'.<sup>9</sup> Screenrights explained that the backdating of remuneration notices:

...is not desirable because it permits infringing conduct to be made the subject of a statutory licence retrospectively, at the whim of the infringer. It is not necessary because – consistent with Part VC – interim arrangements are to be enacted in Part VD, Division 4.<sup>10</sup>

2.14 In his evidence to the committee, Mr James Dickinson, Licensing Executive, Screenrights, explained that he suspects the backdating provision was 'picked up by the draftsman' in applying the provisions in the Part VC licensing scheme to the new Part VD scheme.<sup>11</sup> Mr Dickinson argued that the backdating provision in the existing scheme was intended as an alternative to transitional provisions, to ensure that copyright holders would be remunerated for any period in which there was no

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9 Screenrights, *Submission 3*, p. 3.

10 Screenrights, *Submission 3*, pp 3–4.

11 Mr James Dickinson, *Committee Hansard*, 16 April 2010, p. 15.

declared collecting society. Ultimately, however, transitional provisions were introduced for the existing scheme so the backdating provision was not required.<sup>12</sup>

2.15 Accordingly, Screenrights argued that the presence of transitional provisions in the licensing scheme proposed by the Bill make the backdating provision unnecessary:

We see no need for the provision and we do think, perhaps, it gives an unfair advantage in the hands of the satellite rebroadcaster.<sup>13</sup>

2.16 In response to Screenright's concern, the Department of Broadband, Communications and the Digital Economy informed the committee:

The backdating provision in paragraph 135ZZZJ(3)(b) is in the same form as subsection 135ZZL(3) in the statutory licensing scheme for the re-transmission of broadcasts under Part VC of the Copyright Act. The Department is unaware of any agreements made pursuant to subsection 135ZZL(3) of the Copyright Act that have caused detriment to the interests of copyright holders.<sup>14</sup>

2.17 The department also highlighted the fact that:

Under the Copyright Act, a party cannot be forced to agree to a negotiated agreement if that party would prefer to seek a determination of the Copyright Tribunal.<sup>15</sup>

### ***Definition of 'broadcast'***

2.18 The Bill proposes to amend the definition of 'broadcast' in section 10(1) of the Copyright Act such that the satellite licensees are assumed not to have a conditional access system applied to them. In its submission, Screenrights argued that the amended definition may have the unintended effect of treating the satellite broadcasts as 'free to air' broadcasts for the purposes of the Act, which would leave them subject to the same re-transmission arrangements as other free to air broadcasts.<sup>16</sup>

2.19 Mr Simon Lake, Chief Executive of Screenrights explained the practical effect of this:

...while the bill precludes the 38C satellite broadcast licensee from retransmitting, the bill does not prevent the retransmission of a 38C satellite

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12 Mr James Dickinson, Licensing Executive, Screenrights, *Committee Hansard*, 16 April 2010, p. 15.

13 Mr James Dickinson, Licensing Executive, Screenrights, *Committee Hansard*, 16 April 2010, p. 15.

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

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

16 Screenrights, *Submission 3*, pp 2–3.

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broadcast. Such a retransmission would have the effect of allowing the 38C broadcast signals to reach far outside the limited access intended by the conditional access requirements. This retransmission could potentially subvert the existing regional commercial broadcast licenses.<sup>17</sup>

### *Committee view*

2.20 The committee understands that the Bill's intention is not to allow pay TV providers to re-transmit satellite broadcasts. However, the question of whether or not the Bill would inadvertently allow such re-transmission is obviously a complex statutory interpretation matter best resolved between the department and its drafters. The committee recommends that the department consider this issue and, if necessary, amend the Bill accordingly.

### *Appropriateness of statutory licensing scheme*

2.21 Ms Julie Flynn, CEO of Free TV Australia argued that there are more fundamental problems with the proposed statutory licensing scheme. Ms Flynn argued that the statutory licensing scheme is an inappropriate mechanism for managing copyright issues should commercial negotiations fail:

The free-to-air broadcasters hate the retransmission scheme. We do not like it in the pay TV environment and we certainly do not think it is appropriate in this environment.<sup>18</sup>

2.22 Instead of the statutory licensing scheme, Ms Flynn continued:

What we would like to see is a dispute resolution mechanism...The sort of thing we are looking at is something that would say the metropolitan licensees must provide programming content to the satellite licensee upon request. The content will be provided in return for fair and equitable remuneration on reasonable terms as agreed by the parties. If no agreement can be reached, then someone like the Attorney-General, for instance, may appoint an independent arbitrator to determine reasonable terms having reference to all the relevant factors, including existing affiliation agreements and other comparable commercial agreements.<sup>19</sup>

2.23 In its submission, Free TV Australia also commented that one of the key problems with the proposed scheme is that it is 'unnecessarily complex'.<sup>20</sup> Screenrights disagreed with that assessment, and stated that it supports:

...the current mechanism of having the Copyright Tribunal, which is a division of the Federal Court, which is able to hear evidence on any matter

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17 Mr Simon Lake, Chief Executive, Screenrights, *Committee Hansard*, 16 April 2010, p. 11.

18 Ms Julie Flynn, *Committee Hansard*, 16 April 2010, p. 28.

19 Ms Julie Flynn, Chief Executive Officer, Free TV Australia, *Committee Hansard*, 16 April 2010, p. 28.

20 Free TV Australia, *Submission 7*, p. 2.

with regard to valuation. It has proven to be a mechanism which is able to make determinations between parties as to the value of things.<sup>21</sup>

2.24 However, Ms Flynn argued that:

...the Copyright Tribunal is very slow and does not, we think, recognise the value of our services. We do not think that this is a matter for retransmission. This is no different to any affiliation agreement that currently exists.<sup>22</sup>

2.25 In response to this issue, the department agreed with Free TV's assessment that:

Commercial negotiation is the most appropriate and efficient means of securing equitable remuneration for the supply of program content.<sup>23</sup>

2.26 The department also stated that it 'expects' commercial broadcasters to come to an agreement regarding the supply of content to the satellite licensee. However, in respect of the method of resolving disputes between commercial broadcasters and the satellite licensee when commercial agreement cannot be reached, the department contended:

...the Copyright Tribunal, with its expertise and experience in determining the value of the use of copyright material, is the most appropriate independent body to adjudicate disputes between broadcasters where a commercial agreement cannot be reached. The Attorney-General's Department has also advised the Department that it is not aware of any precedent in Australian copyright regulation for appointing an independent arbitrator that is not the Copyright Tribunal.<sup>24</sup>

2.27 Furthermore, the department pointed out that:

...parties are not obliged to use the Copyright Tribunal. They are free to nominate and appoint their own independent commercial arbiter if they wish to do so.<sup>25</sup>

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21 Mr Simon Lake, Chief Executive, Screenrights, *Committee Hansard*, 16 April 2010, p. 15.

22 Ms Julie Flynn, Chief Executive Officer, Free TV Australia, *Committee Hansard*, 16 April 2010, p. 32.

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

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

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

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### *Committee view*

2.28 The committee is satisfied that the model set out in the Bill for determining the remuneration for the satellite licensees' use of content is appropriate and fair. The model clearly prefers commercial agreement to be reached between the satellite licensee and the relevant copyright holder. However, in the absence of such agreement, the committee agrees with the department's view that the Copyright Tribunal is the most experienced and appropriate body to be appointed as an independent arbiter. There appears to be no reason to divert from this established method of resolving disputes between copyright holders and re-broadcasters.

### **Narrowcasters' access to the satellite platform**

2.29 One of the principal concerns raised during the inquiry by a number of submitters and witnesses, was the availability of the proposed new satellite platform to narrowcasters including National Indigenous Television (NITV), Westlink and the Rural Health Education Foundation. The operators of each of those services expressed their concerns to the committee regarding the government's lack of consultation with, and consideration of, narrowcasters in the development of the Bill and its underlying policies.<sup>26</sup> For example, NITV submitted that:

Despite this scale of change, the Bill before the Parliament is largely a construct developed by regional and remote commercial TV free to air broadcasters, DBCDE and the government.

It has not derived from an open consultative process. The Bill has not been guided in any way by the promised Discussion Paper and the range of community and other broadcaster views and ideas such an open process would have engendered.<sup>27</sup>

2.30 Mr Ian McGarrity, Professional Adviser to NITV, explained that NITV's principal concern is the fact that the Bill makes no provision for open narrowcast services to be available on the new satellite platform:

It [the Bill] says not one word about TV open narrowcast services...[G]enerally speaking at this stage there is no clarity from the bill or the explanatory memorandum as to whether NITV could be on the satellite, could get transponder capacity, at what cost and on what terms it could get transponder capacity, whether the regional commercial entity set up to manage this would allow us to be on the electronic program guide and therefore whether NITV could be received through the same set-top box...<sup>28</sup>

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26 See National Indigenous Television, *Submission 1*; Rural Health Education Foundation, *Submission 8*; and Government of Western Australia Department of Regional Development and Lands, *Submission 10*.

27 National Indigenous Television, *Submission 1*, p. 1.

28 Mr Ian McGarrity, Professional Adviser, NITV, *Committee Hansard*, 16 April 2010, p. 4.

2.31 The committee recognises that many open narrowcast services provide valuable services to remote and rural communities. For example, NITV 'provides a nationwide Indigenous television service by cable, satellite and terrestrial transmission means'.<sup>29</sup> Ms Turner explained the importance to Indigenous and non-Indigenous Australians of the service NITV provides:

I honestly believe that we have a significant role to play in reconciliation through the education role that we play, in a way that is probably more powerful than we have ever had in terms of a medium previously, to influence the minds of Australians generally to grow the respect for an understanding of our cultural heritage.<sup>30</sup>

2.32 Similarly, the committee received evidence about the importance of the satellite services provided by the Rural Health Education Foundation. The Foundation produces:

...a number of satellite broadcasts each month, reaching many thousands of rural and remote health professionals and their community members each year, providing them with essential health and medical education, updates and information.<sup>31</sup>

2.33 These and other open narrowcast services are currently available on the Optus Aurora platform, which provides a free-to-air satellite service for homes in television black spots. The committee understands that Optus has indicated that the Aurora network will be shut down in 2013.<sup>32</sup>

2.34 Mr Townend, Deputy Secretary of Broadcasting and Digital Switchover, Department of Broadband, Communications and the Digital Economy, suggested that the likely shutdown of Aurora in 2013 means that there is plenty of time for narrowcasters to explore alternative broadcasting options.<sup>33</sup>

2.35 NITV argued that it is important that narrowcast services be included in the new satellite platform prior to 2013 because otherwise NITV will be 'left like a shag on a rock on the Aurora platform' between now and 2013 as:

...if you wanted to access NITV under this new arrangement you would have to buy a separate set of cables and equipment in order to access one channel.<sup>34</sup>

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29 National Indigenous Television, *Submission 1*, p. 2.

30 Ms Patricia Turner, CEO, NITV, *Committee Hansard*, 16 April 2010, p. 8.

31 Rural Health Education Foundation, *Submission 8*, p. 1.

32 Mr Andy Townend, Deputy Secretary, Broadcasting and Digital Switchover, Department of Broadband, Communications and the Digital Economy, *Committee Hansard*, 16 April 2010, p. 59.

33 Mr Andy Townend, *Committee Hansard*, 16 April 2010, p. 74.

34 Ms Patricia Turner, Chief Executive Officer, National Indigenous Television, *Committee Hansard*, 16 April 2010, p. 5.



2.36 The Rural Health Education Foundation expressed similar concerns:

It is clear that once the new digital satellite is launched and operational, Aurora users will start to migrate to the new service, making Aurora less and less attractive to users and viewers. Although it will not disappear immediately, it will effectively become a very "lonely" place as Australia's digital television switchover gathers pace. It is very unlikely that many satellite consumers (homes or institutions) will wish to utilise two different set top boxes, even if it is technically possible to do so with the same satellite dish.<sup>35</sup>

2.37 Ms Turner argued that:

If this bill goes through the House unamended and without taking into account the matters we have raised, then we are left out of the game. NITV cannot and will not be a part of the new arrangements without difficulty.<sup>36</sup>

2.38 However, officers from the Department of Broadband, Communications and the Digital Economy argued that the concerns of narrowcasters are unfounded as 'there is nothing under the legislation that prevents NITV broadcasting on the platform'.<sup>37</sup> Dr Pelling also highlighted that:

Narrowcast licences...have a much greater degree of flexibility than commercial licences in terms of where they can be provided and so on, and those types of services are already provided as narrowcast services. As we said, there is nothing in that bill [that] will stop narrowcasters.<sup>38</sup>

2.39 Mr Townend also clarified that the design of the satellite platform would not preclude narrowcasters:

It is also worth adding that there are currently no physical constraints on the satellite platform for the carriage of [narrowcasters] either. A deal has not been struck which would preclude NITV or other narrowcasters being carried.<sup>39</sup>

2.40 Mr Townend emphasised that, therefore, the decision by narrowcasters to utilise the new satellite platform, as opposed to Aurora or any other satellite platform,

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35 Rural Health Education Foundation, *Submission 8*, p. 3.

36 Ms Patricia Turner, Chief Executive Officer, National Indigenous Television, *Committee Hansard*, 16 April 2010, p. 3.

37 Mr Andy Townend, Deputy Secretary, Broadcasting and Digital Switchover, Department of Broadband, Communications and the Digital Economy, *Committee Hansard*, 16 April 2010, p. 59.

38 Dr Simon Pelling, First Assistant Secretary, Broadcasting and Digital Switchover, Department of Broadband, Communications and the Digital Economy, *Committee Hansard*, 16 April 2010, p. 75.

39 Mr Andy Townend, Deputy Secretary, Broadcasting and Digital Switchover, Department of Broadband, Communications and the Digital Economy, *Committee Hansard*, 16 April 2010, p. 75.

is a commercial consideration for each organisation.<sup>40</sup> In the case of NITV, its funding level is an issue for the Department of Environment, Water, Heritage and the Arts.

2.41 In this respect, NITV was advised on 16 April 2010 that it would receive an additional \$15.2 million in funding for 2010–11. The government also announced that it would conduct a review of NITV's funding, which would:

...explore options for the carriage of Indigenous broadcasting content on new digital broadcasting platforms, including the Government funded Viewer Access Satellite Television (VAST) service.<sup>41</sup>

2.42 Ms Turner commented that:

I welcome the review from the point of view that there needs to be a properly integrated policy framework for Indigenous broadcasting in this country and I believe that that is what the review outcome should deliver, including a robust future for National Indigenous Television.<sup>42</sup>

### ***Committee view***

2.43 The committee is satisfied that, as the bill deals only with arrangements regarding licensed commercial broadcasters, it neither directly deals with narrowcasters' access to, nor prevents narrowcasters from utilising, the new satellite platform. The committee is of the view that it is appropriate for narrowcasters to negotiate commercial access arrangements with the satellite licence owner.

2.44 The committee urges the Department of Environment, Water, Heritage and the Arts to consider in its review of NITV's future funding, the issues raised by NITV regarding its importance to Indigenous Australians and the broader Australian community, and also any difficulties that NITV accessing the new satellite network.

### **Costs and impact of the proposed satellite scheme for households**

2.45 Among the main concerns raised with the committee regarding the proposed new satellite network was the cost of installing satellite receiving equipment for households in regional and remote Australia. The three key issues relating to households that the committee identified were:

- the cost of installation;

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40 Mr Andy Townend, Deputy Secretary, Broadcasting and Digital Switchover, Department of Broadband, Communications and the Digital Economy, *Committee Hansard*, 16 April 2010, p. 75.

41 The Hon Peter Garrett MP, Minister for Environment Protection, Heritage and the Arts, the Hon Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs and the Hon Senator Stephen Conroy, Minister for Broadband, Communications and the Digital Economy, *\$15 million investment for the continuation of NITV*, Media Release, 16 April 2010, available at: [www.environment.gov.au/minister/garrett/2010/mr20100416.html](http://www.environment.gov.au/minister/garrett/2010/mr20100416.html).

42 Ms Patricia Turner, Chief Executive Officer, National Indigenous Television, *Committee Hansard*, 16 April 2010, p. 3.

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- the amount of equipment required; and
  - how and when people will know if they require satellite equipment.

### ***Cost of equipment and installation***

2.46 The department advised the committee that:

...the government will provide a \$400 satellite conversion subsidy to eligible households, that is, those households currently served by self-help transmission sites which are not to be upgraded by the digital broadcasters. Details of the way in which this subsidy will be administered will be announced in due course.<sup>43</sup>

2.47 The amount of the subsidy was determined on the basis that:

- 'We would not expect...the cost of the set-top box and the card to be more than \$270';<sup>44</sup>
- 'The satellite dish of 65 centimetres in diameter...would not be expected to cost more than \$100';<sup>45</sup> and
- 'The figures that we provided [to the minister] contain the best estimates we can of what that kind of installation might cost', which amounts to approximately \$280 for installation.<sup>46</sup>

2.48 Accordingly households requiring satellites are expected on average to pay \$650 for equipment and installation, of which \$400 will be subsidised by government.<sup>47</sup>

2.49 Ms Rebecca Heap, General Manager, Strategy and Programming, from AUSTAR commented that this estimate:

...is obviously in the right ballpark. Everything depends on the particular vendor and the particular relationships that you have, but this is certainly a cost that feels right to us.<sup>48</sup>

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43 Mr Andy Townend, Deputy Secretary, Broadcasting and Digital Switchover, Department of Broadcasting, Communications and the Digital Economy, *Committee Hansard*, 16 April 2010, p. 56.

44 Mr Andy Townend, Deputy Secretary, Broadcasting and Digital Switchover, Department of Broadcasting, Communications and the Digital Economy, *Committee Hansard*, 16 April 2010, p. 61.

45 Mr Andy Townend, Deputy Secretary, Broadcasting and Digital Switchover, Department of Broadcasting, Communications and the Digital Economy, *Committee Hansard*, 16 April 2010, p. 61.

46 Mr Andy Townend, Deputy Secretary, Broadcasting and Digital Switchover, Department of Broadcasting, Communications and the Digital Economy, *Committee Hansard*, 16 April 2010, p. 61.

47 Mr Andy Townend, Deputy Secretary, Broadcasting and Digital Switchover, Department of Broadcasting, Communications and the Digital Economy, *Committee Hansard*, 16 April 2010, p. 61.

2.50 In addition, the committee was informed that the government is intending to provide satellite equipment free of charge to 'age pensioners and other groups'.<sup>49</sup> When asked about whether a larger subsidy would also be available to more remote households where the cost of installation might greatly exceed \$280, the committee was told:

One of the matters that remain subject to consideration is the level of subsidy in more remote areas and, in particular, in remote Indigenous communities. The government is currently considering the size of the subsidy in those areas.<sup>50</sup>

### *Amount of equipment required*

2.51 The committee also heard concerns that households with existing satellites connected to subscription TV services, such as AUSTAR, which also wish to receive free TV via the new satellite service, will require an additional satellite dish and set-top box. This issue was raised by Ms Heap from AUSTAR, who commented:

We do not want to inconvenience [AUSTAR's existing customers by them] having to pay for a second satellite dish and set-top box, when our set-top box should be completely capable of delivering that to them today.<sup>51</sup>

2.52 Mr Townend, Deputy Secretary, Broadcasting and Digital Switchover, Department of Broadcasting, Communications and the Digital Economy, agreed that the new satellite service would create a situation where householders who wished to receive both the full range of services available on the new satellite network in addition to subscription TV, would require two satellite dishes and two set-top boxes. However, Mr Townend argued that 'that would be their choice, and that would be a completely separate matter'.<sup>52</sup>

### *Notifying households of the need to purchase a satellite receiver*

2.53 The third and final issue of concern raised with the committee relating to the impact of the scheme on householders was how and when householders would be made aware that they reside in a digital TV black spot and will need to install a satellite receiver.

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48 Ms Rebecca Heap, AUSTAR United Communications Ltd, *Committee Hansard*, 16 April 2010, p. 24.

49 Mr Andy Townend, Deputy Secretary, Broadcasting and Digital Switchover, Department of Broadcasting, Communications and the Digital Economy, *Committee Hansard*, 16 April 2010, p. 56.

50 Mr Andy Townend, Deputy Secretary, Broadcasting and Digital Switchover, Department of Broadcasting, Communications and the Digital Economy, *Committee Hansard*, 16 April 2010, p. 63.

51 Ms Rebecca Heap, General Manager, Strategy and Programming, AUSTAR United Communications Ltd, *Committee Hansard*, 16 April 2010, p. 20.

52 Mr Andy Townend, *Committee Hansard*, 16 April 2010, p. 59.

2.54 During its evidence to the committee, the department discussed at length the steps it is taking to inform households about the digital switchover, and to assist them in installing the appropriate equipment. Mr Townend, Deputy Secretary Broadcasting and Digital Switchover, Department of Broadcasting, Communications and the Digital Economy explained that the department:

We have a team of people on the ground in Ouyen and Underbool from 27 April who will be working with the local community to explain to them that their new transmitters will be switching on during May.<sup>53</sup>

2.55 The committee was told that the work being done by the department in Ouyen and Underbool involves:

...local advertising, information campaigns and, more importantly, community outreach activities...

Prior to the switch-over date, task force officers, beginning in about [the beginning of May 2010], and staff from the Australian Communications and Media Authority, supported by broadcasters, will be visiting the Mildura Sunraysia area to run a series of information sessions and will be working closely with local community organisations and antenna installers.<sup>54</sup>

2.56 Furthermore Mr Townend indicated that:

Detailed advice will be provided to householders, business owners, charities, antenna installers and retailers, with a focus on the last few, who may have remaining difficulties switching over to digital reception.<sup>55</sup>

2.57 Mr Townend commented that during his experience with the United Kingdom's digital switchover, he learned that these issues are 'possible to manage with adequate notice'.<sup>56</sup>

2.58 Mr Townend informed the committee that, with the exception of the Sunraysia region, the government anticipates being able to give 'plenty' of notice to

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53 Mr Andy Townend, Deputy Secretary, Broadcasting and Digital Switchover, Department of Broadcasting, Communications and the Digital Economy, *Committee Hansard*, 16 April 2010, p. 71.

54 Mr Andy Townend, Deputy Secretary, Broadcasting and Digital Switchover, Department of Broadcasting, Communications and the Digital Economy, *Committee Hansard*, 16 April 2010, p. 57.

55 Mr Andy Townend, Deputy Secretary, Broadcasting and Digital Switchover, Department of Broadcasting, Communications and the Digital Economy, *Committee Hansard*, 16 April 2010, p. 57.

56 Mr Andy Townend, Deputy Secretary, Broadcasting and Digital Switchover, Department of Broadcasting, Communications and the Digital Economy, *Committee Hansard*, 16 April 2010, pp 71-2.

affected communities as 'the first area to be affected by this would be regional Victoria, which is not switching until the first half of next year'.<sup>57</sup>

2.59 In response to a question on notice, the department indicated that:

It is anticipated that six months notice of conversion will be provided to viewers who will receive their services from a converted self-help facility at switchover.

It has not been possible to provide six months notice to viewers that are reliant on the self-help facility in Underbool as switchover is to occur in Mildura/Sunraysia on 30 June 2010 and broadcasters only agreed to convert the facility early in 2010.

However, whether a self-help facility is to be converted to digital, and the date on which the conversion is to occur, is dependent on decisions made independently by broadcasters and self-help licensees. The Department is working closely with broadcasters and once broadcasters and self-help licensees have determined to convert a self-help facility will seek to advise viewers as early as possible about their switchover options.<sup>58</sup>

### ***Committee view***

2.60 The committee is of the view that the subsidy offered by the government is adequate, noting the special arrangements planned for pensioners and those in remote areas; that the existing satellite pay TV consumers will be able to choose whether or not to install a second satellite dish and set-top box to access the new satellite service; and that the department's, ACMA's and broadcasters' plans to inform consumers of the approaching digital switchover appears to be sufficient.

2.61 The committee encourages the department to continually monitor the level of information and engagement in the Mildura region to ensure that communities are fully informed both during this initial switchover, and that any learnings from Mildura can be utilised in future switchovers in other areas.

### **Conclusions**

2.62 The committee notes the enormous importance of the satellite service enabled by the Bill to rural and regional Australia. All witnesses and submitters were ultimately in agreement on this issue. The satellite platform will, for the first time ensure that there is equity between regional and metropolitan Australia in terms of the free-to-air television services available.

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57 Mr Andy Townend, Deputy Secretary, Broadcasting and Digital Switchover, Department of Broadcasting, Communications and the Digital Economy, *Committee Hansard*, 16 April 2010, p. 71.

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

2.63 The committee notes that it is simply not feasible to provide all Australians with terrestrial digital television, and commends the government for developing an equitable satellite solution, which is also cost-effective to taxpayers as a result of the government's negotiations with commercial broadcasters to fund the conversion of terrestrial broadcasting facilities.

**Recommendation 1**

**2.64 The committee recommends that the Senate pass the Broadcasting Legislation Amendment (Digital Television) Bill 2010.**

**Senator Anne McEwen  
Chair**





## Coalition Senators' Additional Comments

Coalition Senators participating in the inquiry question the implications of the Broadcasting Legislation Amendment (Digital Television) Bill 2010 for households, notably those in rural and regional Australia.

Coalition Senators are concerned that the Department of Broadband, Communications and the Digital Economy could not provide any data to show satellite broadcasting is the most appropriate and cost-effective means to deliver digital television services in black spot areas.

Costs incurred by households to purchase and install satellite receiving equipment and persistent uncertainty surrounding the reach of upgraded digital self-help retransmission towers remain of concern to Coalition Senators.

### Alternative Solutions

Coalition Senators note the concerns of Broadcast Australia and AUSTAR who questioned whether the government adequately examined the full range of solutions to digital television black spots.

Coalition Senators are concerned at the apparent lack of cost-benefit analysis underpinning the Government's policy. As Broadcast Australia noted:

Broadcast Australia is unaware of... any cost benefit study that has underpinned the decision by government to spend \$40 million per annum in 2010 dollar terms for each of the next 4 years (while this is an ongoing commitment the actual future amount has not yet been disclosed) to provide the full range of so called Freeview services from the new satellite platform, compared with rolling out a greater number of digital terrestrial transmission TV facilities.<sup>1</sup>

Broadcast Australia also stated:

The second point I would like to emphasise is that we are not aware of how the balance between terrestrial and satellite has been arrived at by the government.<sup>2</sup>

Austar noted similar concerns:

It seems prudent, however, to ensure that the chosen solution is as cost effective as possible, particularly given the potentially small number of homes likely to benefit from the application. AUSTAR strongly encourages further scrutiny and transparency of the funding arrangements prior to the

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1 Broadcast Australia, *Submission 4*, pp 1-2.

2 Mr Stephen Farrugia, Director of Technology, Broadcast Australia, *Committee Hansard*, 16 April 2010, p. 27.

passage of the Bill to ensure that the most cost effective and appropriate solution is implemented.<sup>3</sup>

In the absence of evidence to the contrary, Coalition Senators are not convinced that the government has chosen the most cost-effective or appropriate solution to meet its objective.

### **Access Regime**

Coalition members of the committee remain concerned about the lack of a framework to govern network access for non-commercial broadcasters (such as NITV, Westlink and the Rural Health Education Fund, as outlined in chapter two of the committee report).

In response to a question on notice, the Department stated:

...it is a condition of the grant deed entered into with commercial broadcasters to deliver the satellite service that the broadcasters must not do anything that would restrict any providers... from negotiating with the satellite platform provider to achieve access to the satellite service.<sup>4</sup>

Coalition Senators are not satisfied that providing that broadcasters 'must not do anything' to restrict access negotiations will guarantee 'access to the satellite service'. Even more remote is any guaranteed access to ancillary equipment, such as the electronic program guide and subscriber management systems.

In a further response to questions on notice, the Department suggested:

The Broadcasting Services Act 1992 does not provide for the guaranteed access of free to air broadcasters, such as narrowcasters or community television, to the Aurora platform. Similarly, there are no provisions in the Bill relating to access for such parties to the satellite transmission platform.<sup>5</sup>

Coalition Senators do not believe the provisions of the *Broadcasting Services Act 1992* should be held out as reason for not providing an access regime to the proposed VAST network.

Coalition Senators question whether an access regime for the publicly funded satellite network (VAST) should be guided by previous considerations for regulation of the privately owned Aurora platform, operated by Optus, a private telecommunications carrier.

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3 Austar, *Submission 6*, p. 5.

4 Department of Broadband, Communications and the Digital Economy, answer to question on notice, (received 23 April 2010), Question No 1 – 10 from Senator Ludlam.

5 Department of Broadband, Communications and the Digital Economy, answer to question on notice, (received 23 April 2010) Question No 1 – 10 from Senator Ludlam.

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## Cost of adoption

Coalition Senators are concerned at the unclear and potentially significant out-of-pocket expenses that may be faced by households seeking access to the satellite network.

Rural and regional communities may incur higher installation and supply charges for satellite-related equipment, due in part to a lack of competing retailers in rural areas.

A number of factors may further inflate the cost of installation for rural households. Factors like the availability of appropriately skilled technicians, obstructions to reception, travel time and the state of existing cabling may inflate costs in remote locations where black spots are more likely prevalent.

## Uncertainty—terrestrial or satellite?

Coalition Senators are concerned at the lack of certainty for rural and regional households who may not know which methods of digital reception will be available prior to switchover.

This will be of particular concern to residents in the vicinity of the forty four self-help towers identified as likely to be made redundant by the extended footprint of other upgraded towers nearby.

As Broadcast Australia told the committee, residents cannot be certain they will be within the new digital coverage footprint:

A more difficult scenario is where you are an existing self-help viewer or you are on the edge of analogue coverage. Until the full suite of digital services are available at those sites, you cannot make an informed decision as to whether you are going to have digital terrestrial or you will need to buy, at a significantly higher cost, digital direct-to-home satellite services.

For example, if you live in an area, say Clare, where the ABC is not there at the moment and the ABC is your first choice viewing channel, you may at the moment feel you need to buy a direct to home satellite receive system. Until the decision is made and the service is established you cannot confirm that you have reliable ABC reception.<sup>6</sup>

Coalition Senators are concerned that while metropolitan viewers have received a period of simultaneous analogue and digital broadcast, certain rural areas currently serviced by self-help towers must wait for the analog switch-off to see whether a terrestrial digital signal will be available.

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6 Mr Stephen Farrguia, Director of Technology, Broadcast Australia, *Committee Hansard*, Canberra, 16 April 2010, p. 27.

Coalition Senators fear this will result in a 'hot-switch' situation, where households will receive an analog signal until switch-off but no digital signal at switch-on.

Coalition Senators are concerned that rural and regional households don't have the certainty required to make educated, informed and cost-effective decisions about how to best prepare to receive digital television, ahead of the switch-off.

Accordingly, some residents will be unable to plan with certainty for the purchase of a new television set or the purchase and installation of satellite reception equipment.

### **Concluding Remarks**

In the absence of sufficient evidence or cost-benefit analysis, Coalition Senators remain concerned that the use of a satellite broadcasting service may not be the most satisfactory or appropriate or cost-efficient means to address the issue of digital television black spots.

We worry about potentially significant out-of-pocket preparatory expenses for rural and regional digital reception, exacerbated by uncertainty about whether they will access digital TV from terrestrial or satellite means.

Coalition Senators consider that television viewers in remote, rural and outer-metropolitan areas deserve equivalent access to equivalent television services as their city counterparts, ideally through upgraded terrestrial services where practicable.

**Senator Mary Jo Fisher**  
**Deputy Chair**

**Senator the Hon Judith Troeth**

## Australian Greens' Additional Comments

The Australian Greens support the effort to ensure that up to 247,000 households in remote areas have access to a similar variety of television programming as their counterparts in metropolitan areas. It is always more difficult to provide equitable access to services in the more distant corners of our country, and it is good to see that this has been given due attention in the context of the switchover to digital television.

Unfortunately, unlike the Senators in the majority, we are not reassured that the concerns of National Indigenous Television (NITV), the Rural Health Education Foundation (RHEF), The Western Australian Government's Westlink service, and other narrowcasters and community broadcasters in a similar position, have been adequately addressed. As reflected in the majority report, the primary concern of these organisations is that the Bill does not make any provision for them to have access on non-discriminatory terms to the new satellite service, and hence to the set top boxes that will be used to receive the commercial and national free to air television services, nor does it provide for open access such that any who seek it may secure access subject only to capacity constraints.

The Department of Broadband, Communication and the Digital Economy (DBCDE) does not quite put the issue to rest by pointing out that the Bill does not exclude narrowcasters and community broadcasters. By leaving their fate to the vagaries of commercial negotiations with the licensees, the Bill leaves open the possibility that they may ultimately be excluded, or they may have to pay for access on terms and conditions which are not equivalent to those applying to commercial and national free-to-air television services. This would be a very peculiar state of affairs—publicly-funded narrowcasters unable to get fair access to publicly-funded satellite transmission so that they can be received for free by the public.

DBCDE points out that the Bill leaves the narrowcasters and community broadcasters in the same situation that they are presently in with respect to their transmission on the Aurora platform. That is, they must negotiate access independently on a commercial basis. However, this response overlooks some important differences between Aurora and the new platform. Namely:

- The new platform is being funded by the public to the tune of \$40 million per year, so the government is perfectly justified dictating a few terms to guarantee access by the narrowcasters it has funded to provide important services to the community. Aurora, on the other hand, is a private business owned and paid for by Optus.
- Optus is in the business of selling access to Aurora, so it has a clear commercial imperative to grant access to whoever can pay. The commercial incentives of the licensees of the new platform are not so straightforward, especially given that they will themselves often be affiliated with broadcasters that may see some current or future access seekers as competition.

As acknowledged in the majority report, the fact that Optus will continue to operate Aurora until 2013 also provides scant comfort to NITV, Westlink and others in their position. With at least four times more commercial and national free-to-air television services available on the new platform than on Aurora, and a need to establish duplicated direct to home satellite reception facilities to all TV sets and recording devices from the satellite dish onwards to view the few channels remaining on Aurora, it is reasonable to assume that NITV et al will lose a significant share of their audiences.

DBCDE advised that:

...it is a condition of the grant deed entered into with commercial broadcasters to deliver the satellite service that the broadcasters must not do anything that would restrict any providers of: national broadcasting services; commercial radio broadcasting services; community broadcasting services; or open narrowcasting broadcasting services from negotiating with the satellite platform provider to achieve access to the satellite service.<sup>1</sup>

This is welcome, but an obligation not to do anything that restricts negotiation leaves open the possibility that negotiation will involve the licensee setting unreasonable terms to prevent the access seeker from gaining access or to exploit its gatekeeper role to extract undue profits.

Further, if it is considered a wise precaution to put the above provision into the grant deed with the licensee, why not put an equivalent provision into the Bill? The grant deed is a confidential, commercial document, it is time-limited, and it only applies to one licensee. By contrast, addressing this issue in the Bill itself would promote greater transparency, reassure the sector, and settle the issue in a more comprehensive and enduring manner.

There is no reason to believe that the government has any interest in precluding narrowcasters or community broadcasters from gaining access to the new satellite platform. They simply appear not to have been considered. This may be due to deficiencies in the consultation process, as suggested by NITV, Westlink and others.<sup>2</sup> Whatever the case, their concerns seem reasonable and the Australian Greens urge the government to look at amendments to ensure that publicly-funded narrowcasters and community broadcasters are able to gain access to the new platform, subject only to satellite capacity constraints.

**Senator Scott Ludlam**  
**Australian Greens**

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- 1 Department of Broadband, Communications and the Digital Economy, answers to questions on notice (final page of response to Senator Ludlam's questions on notice).
  - 2 NITV, *Submission 1*, p. 1; Department of Regional Development and Lands, Government of Western Australia, *Submission 10*, p. 1.

# **Appendix 1**

## **Submissions, tabled documents, additional information and answers to questions taken on notice**

### **Submissions**

- 1** National Indigenous TV Ltd
- 2** Special Broadcasting Service Corporation (SBS)
- 3** Screenrights
- 4** Broadcast Australia
- 5** Australian Subscription Television and Radio Association Inc (ASTRA)
- 6** Austar
- 7** Free TV Australia
- 8** Rural Health Education Foundation
- 9** Western Australian Local Government Association
- 10** Department of Regional Development and Lands,  
Government of Western Australia

### **Tabled documents**

Digital television services for self-help retransmission sites, tabled by the Department of Broadband, Communications and the Digital Economy (public hearing, 16 April 2010, Canberra)

### **Additional information**

Department of Broadband, Communications and Digital Economy – Correction of evidence received 23 April 2010

### **Answers to questions taken on notice**

Department of Broadband, Communications and the Digital Economy (from public hearing, 16 April 2010, Canberra)

Free TV Australia (from public hearing, 16 April 2010, Canberra)

Austar (from public hearing, 16 April 2010, Canberra)

Broadcast Australia (from public hearing, 16 April 2010, Canberra)

National Indigenous Television (from public hearing, 16 April 2010, Canberra)



# **Appendix 2**

## **Public hearings**

*Friday, 16 April 2010 – Canberra*

### **National Indigenous Television**

Ms Patricia Turner, Chief Executive Officer

Mr Paulo Remati, Deputy Chief Executive Officer/Director of Content

Mr Ian McGarrity, Professional Advisor

### **Screenrights**

Mr Simon Lake, Chief Executive

Mr James Dickinson, Licensing Executive

### **Austar**

Ms Rebecca Heap, General Manager, Strategy and Programming

Ms Emma Shackley, Group Manager, Corporate Affairs

### **Free TV**

Ms Julie Flynn, Chief Executive Officer

### **Broadcast Australia**

Mr Stephen Farrugia, Director of Technology

Mr Clive Morton, Engineering and Field Services Director

### **Australian Communications and Media Authority**

Mr Giles Tanner, General Manager, Digital Transition

Mr David Brumfield, Executive Manager, Allocation Coordination and Policy Branch, Digital Transition Division

Mr Christopher Hose, Executive Manager, Technical Planning and Evaluation Branch

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

Mr Andrew Townend, Deputy Secretary, Broadcasting and Digital Switchover Division

Dr Simon Pelling, First Assistant Secretary, Broadcasting and Digital Switchover Division

Ms Ann Campton, Assistant Secretary, Broadcasting and Switchover Policy Branch