

Chapter 3

Broadcasting Legislation Amendment (Digital Television) Bill 2006

Introduction

3.1 The Broadcasting Legislation Amendment (Digital Television) Bill 2006 (Digital Television Bill) further develops the Government's regulatory framework for digital television. The focus of the Digital Television Bill is the provision of additional digital television services to consumers and to increase the take up of digital television technology in Australia.¹

3.2 The transition from analogue to digital television broadcasting began in Australia in 2001, following the enactment of amendments to the *Broadcasting Services Act 1992* (BSA) and the *Radiocommunications Act 1992* in 1998 and 2000.²

3.3 The measures induced by the Bill result from a series of statutory reviews and public consultation conducted by the Department of Communications, Information Technology and the Arts (the Department).

3.4 The Digital Television Bill makes amendments to the regulation of digital television broadcasting with the objective of providing additional digital services to consumers and promoting the up take of digital television in Australia.³ The Digital Television Bill covers the following aspects of the regulation of digital television:

- **multi-channelling:** the immediate removal of genre restrictions on the national broadcasters (ABC and SBS) and permitting multi-channelling by commercial television broadcasters (also known as the commercial free-to-air (FTA) broadcasters) from 1 January 2009;
- **high definition television (HDTV):** removing the requirement, from 1 January 2007, that broadcasters provide a HDTV simulcast of their analogue and standard definition television service (SDTV) and the removing the HDTV quota at the end of the simulcast period;
- **anti-siphoning regime:** the continuation of the anti-siphoning list regime with a review of the regime before 31 December 2009;
- **commercial television broadcasting licences:** the lifting of the moratorium on the grant of new commercial television broadcasting licences in the

1 Explanatory Memorandum, p. 1.

2 See *Television Broadcasting Services (Digital Conversion) Act 1998* and the *Broadcasting Services Amendment (Digital Television and Datacasting) Act 2000*.

3 Explanatory Memorandum, p. 1.

broadcasting services band (BSB) and the introduction of a decision-making role for the Government in the granting of new commercial television broadcasting licences in the BSB;

- **non-broadcasting band television licences:** providing a power of veto for the Minister over the grant of commercial television broadcast licenses in the non-broadcasting services band (non-BSB) where the grant of the licence would be contrary to the public interest;
- **content and program standards:** multi-channels will not to be subject to Australian or children's content requirements and certain standard licence conditions and program standards will not apply to commercial television broadcasters operating in the non-BSB.

3.5 In addition to the measures set out in the Digital Television Bill, the Government has announced its intention, as part of the current media reform package, to allocate two currently unassigned channels of television broadcasting spectrum for new digital services.⁴

3.6 This chapter of the report:

- sets out the legislative and policy background to the Digital Television Bill and the allocation of the two new digital television channels;
- outlines the main provisions in the Digital Television Bill and the key points of the Government's proposal to allocate two new digital television channels; and
- discusses the issues raised in submissions and at hearings in relation to the Digital Television Bill and the allocation of the two new digital television channels.

Policy and Legislative Background

The ABA's Digital Terrestrial Television Specialist Group

3.7 In 1992 the Australian Broadcasting Authority's (ABA's) Digital Terrestrial Television Specialist Group (Specialist Group) was convened. The Specialist Group was made up of representatives of the broadcasting and manufacturing sectors and was tasked with advising the ABA on:

- the technical systems standards and planning implications of digital television broadcast technologies under development world-wide; and

4 See Senator Helen Coonan, 'New Services on Digital Spectrum', tabled in the Senate on 14 September 2006. This document has also been referred to the committee as part of the current inquiry and will be considered in this chapter of the Report.

- the impact on broadcasting spectrum planning of digital television broadcasts, with particular emphasis on their integration into the existing BSB.⁵

3.8 The Specialist Group presented its final report, 'Digital Terrestrial Television Broadcasting in Australia', to the ABA in January 1997. In July 1997, drawing from the recommendations in the Specialist Group's report, the ABA recommended that the Government support the early introduction of digital television in Australia and that digital television be introduced as a HDTV system.⁶

Television Broadcasting Services (Digital Conversion) Act 1998

3.9 The *Television Broadcasting Services (Digital Conversion) Act 1998* (Digital Conversion Act) put in place a regulatory framework for the transition from analogue to digital television broadcasting in Australia. The key features of the regulatory framework were:⁷

- a single technical standard for terrestrial digital television;
- the commencement of digital transmission on 1 January 2001 in capital cities, and then in regional areas. All areas to have digital broadcasting by 1 January 2004;
- the loan of spectrum without additional charge to existing broadcasters to allow the required simulcast of analogue and digital transmissions for eight years or longer in each licence area. This period can be extended by regulation in each area;
- mandatory HDTV transmissions for some portion of transmission time to be determined – effectively a HDTV minimum quota;
- the possibility of multi-channelling by the national broadcasters, but not the commercial broadcasters, subject to review;
- additional 'datacasting' services, to be provided by new entrants and incumbent broadcasters. Datacasting was defined in the Digital Conversion

5 'Digital Terrestrial Television Broadcasting in Australia: Final Report of the Australian Broadcasting Authority Digital Terrestrial Television Specialist Group', Australian Broadcasting Authority, Canberra, 1997.

6 Australian Broadcasting Authority, *Media Release*, 'ABA backs introduction of digital television', 22 July 1997, available at http://www.aba.gov.au/newspubs/news_releases/archive/1997/70nr97.shtml, accessed 22 September 2006. It is not the intention of this report to give a detailed background to the technical aspects of digital television. For this type of information readers are directed to: Productivity Commission 'Inquiry into Broadcasting Report' (Productivity Commission Report), March 2000, in particular pp 222 – 229; and Digital Television Australia, 'What is Digital Television', available at http://www.dba.org.au/index.asp?sectionID=9#What_is_multi-channelling, accessed 20 September 2006.

7 The following points are an abbreviated list drawn from the Productivity Commission Report, pp 230 – 231.

Act as an information service other than a broadcasting service. The details of this definition were left to subsequent review and legislation; and

- no new commercial television licences to be allocated in any licence area before 31 December 2006.

Broadcasting Services Amendment (Digital Television and Datacasting) Act 2000

3.10 In December 1999 the Government announced further details to its digital broadcast conversion policy. In the policy announcement, the Government:

- reaffirmed its commitment to HDTV broadcasts; and
- clarified the definition of 'datacasting' to ensure that the services offered by datacast were distinct from the television services that were currently available.⁸

3.11 In 2000 the *Broadcasting Services Amendment (Digital Television and Datacasting) Act 2000* was passed, implementing the Government's policy announcement from December 1999. The key elements of the Act in relation to the conversion to digital television were:⁹

- the requirement for broadcasters to transmit a standard definition digital television (SDTV) signal at all times and at least 20 hours per week of HDTV;
- provisions to enable the ABC and SBS to multi-channel certain kinds of programs; and
- provisions to permit digital program enhancement content and electronic program guides.

3.12 The legislation also added a new Schedule 6 to the BSA, which established a regulatory regime for datacasting services. In summary, these provisions ensured that datacasting licensees would not broadcast matter that would be equivalent to a television news, drama, sports, documentary, lifestyle or entertainment program, or a commercial radio program. Datacasters were allowed to transmit information and education programs, parliamentary and court proceedings, text and still images, interactive computer games and Internet-style services.¹⁰

8 See Senator the Hon Richard Alston, Minister for Communications, Information Technology and the Arts, 'Digital – new choices, better services for Australians', Media Release 166/99, 21 December 1999.

9 The following points are taken from Kim Jackson, Digital Television and Datacasting, Parliamentary Library E-Brief, 16 June 2003, available at http://www.aph.gov.au/library/intguide/sp/digital_television.htm.

10 This paragraph summarises material contained in Kim Jackson, Digital Television and Datacasting, Parliamentary Library E-Brief, 16 June 2003, available at http://www.aph.gov.au/library/intguide/sp/digital_television.htm.

Statutory reviews of digital broadcasting policy and legislation

3.13 A number of provisions in the BSA required the Minister to conduct reviews into digital broadcasting policy and legislation, with the reports for these reviews due throughout 2005-06. These reviews were done during 2004 and 2005 by the Department as a series of 'thematic' reviews, and covered the following issues:¹¹

- restrictions on programming provided by FTA broadcasters, including multi-channelling;
- whether the prohibition on FTA broadcasters offering other types of services, such as pay TV channels, should be modified;
- the end of the moratorium on the allocation of new commercial TV broadcasting licences on 31 December 2006;
- the Government's intention to give the government of the day responsibility for making decisions about allocating these licences;
- arrangements for the use of datacasting transmitter licences after 2007;
- the efficient allocation of spectrum for digital TV;
- under-served markets (1-2 commercial TV broadcasters);
- HDTV requirements; and
- duration of the digital simulcast period.

House of Representatives Inquiry

3.14 In February 2006 the House of Representatives Standing Committee on Communications Information Technology and the Arts (CCITA) tabled its report 'Digital Television: Who's buying it'. The terms of reference for that inquiry were:

- the rollout process for digital television, including progress to date and future plans;
- options for further encouraging consumer interest in the uptake of digital television;
- technological issues relevant to the uptake of digital television;
- future options.

3.15 The House of Representatives CCITA made 12 recommendations on various aspects of the digital television regime, including:

- the nationwide switch off of the analogue network by 1 January 2010;
- that an independent study be conducted into Australia's spectrum allocation and future requirements;

11 Explanatory Memorandum, pp 22-23.

- removing all multi-channelling restrictions on commercial television broadcasters on 1 January 2008; and
- the maintenance of the HDTV quota until 1 January 2011, with a review of the quota, and whether it needs to be removed, increased or decreased, to be conducted before 1 January 2011.

Meeting the Digital Challenge Discussion Paper

3.16 In March 2006 the Department released a discussion paper, 'Meeting the Digital Challenge: Reforming Australia's media in the digital age' (Meeting the Digital Challenge Discussion paper which canvassed options for media reform to address issues in relation to digital broadcasting and Australia's media ownership laws.¹² Submissions on the discussion paper were invited from the public.

Digital Television Bill

3.17 According to the Explanatory Memorandum, the Digital Television Bill implements the Government's policies in relation to digital television broadcasting in response to those statutory reviews and submissions made on the Meeting the Digital Challenge discussion paper.¹³

Main Provisions

Digital Television Bill

3.18 The Digital Television Bill amends the BSA and the Radiocommunications Act. The Digital Television Bill is divided into three Schedules: Schedule 1 sets out the amendments that commence the day after the Bill receives Royal Assent; Schedule 2 sets out the amendments that commence on 1 January 2007; and Schedule 3 sets out the amendments that commence on 1 January 2009.

Schedule 1 – Amendments commencing on the day after Royal Assent

3.19 The amendments in Schedule 1 of the Digital Television Bill will remove the genre restriction on the national television broadcasters' (the ABC and SBS) multi-channel broadcasts (see **item 10 of Schedule 1**).¹⁴

3.20 Currently, clause 5A of Schedule 4 of the BSA defines 'multi-channelled national television broadcasting service' in a way that restricts the genre of programs that can be broadcast by a national television broadcaster on a multi-channel. The Digital Television Bill will repeal clause 5A of Schedule 4 of the BSA, effectively

12 Meeting the Digital Challenge discussion paper, p. 3.

13 Explanatory Memorandum, p. 1.

14 Explanatory Memorandum, p. 33.

removing the current genre restrictions placed on the national television broadcasters' multi-channels.

3.21 Schedule 1 does introduce one limitation to the programs that can be broadcast by national television broadcasters on their multi-channels (see **item 18 of Schedule 1** which inserts a new Part 4A into Schedule 4 of the BSA). New Part 4A of Schedule 4 provides that events on the anti-siphoning list can not be televised on the national television broadcasters' multi-channel unless:

- the anti-siphoning event has previously been televised on the national broadcasters' simulcast service; or
- the national broadcaster televises the anti-siphoning event simultaneously on the simulcast and multi-channel services.

Schedule 2 – Amendments commencing on 1 January 2007

3.22 The amendments in Schedule 2 can be broadly divided into four categories:

- amendments which impact on broadcasters' HDTV obligations;
- amendments relating to the grant of new commercial television broadcast licences;
- amendments in relation to non-broadcasting services band (non-BSB) licences; and
- amendments in relation to the application of Australian content and children's televisions standards to the commercial television broadcasters' multi-channels.

Amendments in relation to HDTV obligations

3.23 Amendments in Schedule 2 of the Digital Television Bill remove the requirement that commercial television broadcast licensees provide a HDTV simulcast version of their analogue and SDTV services (see **item 16 of Schedule 2**). New section 41A of the BSA authorises commercial television broadcast licensees to provide:

- the core service, comprising either:
 - simulcast in analogue and digital mode; or
 - a single SDTV service (for new digital licences allocated after 1 January 2007); and
- a HDTV multi-channel.

3.24 While new section 41A of the BSA requires that commercial television broadcast licensees provide a HDTV multi-channel service, it does not stipulate that programming on the multi-channel must differ from the core service. Therefore,

licensees may choose to provide the HDTV service as a simulcast of the core service.¹⁵

3.25 **Item 29 of Schedule 2** inserts new paragraphs 7(1)(ma) and (mb) into Schedule 2 of the BSA. These new paragraphs amend the licence conditions for commercial television broadcasting licensees to require them to provide a HDTV multi-channel during the simulcast period (or simulcast equivalent period).

3.26 The amendments in Schedule 2 of the Digital Television Bill will, from the end of the simulcast period, remove the requirement that commercial television broadcast licensees and national broadcasters meet an annual HDTV quota (see items **70 and 74 of Schedule 2**). Currently, broadcasters in non-remote areas are required to transmit 1040 hours of HDTV programming a year (see subclause 37E and 37F of Schedule 4 of the BSA).

Amendments in relation to the grant of new commercial television broadcast licences

3.27 There is currently a moratorium on the Australian Communications and Media Authority (the ACMA) allocating new commercial television broadcasting licences in any licence area until 31 December 2006 (see section 28 of the BSA). The Digital Television Bill repeals section 28 of the BSA (see **item 7 of Schedule 2**).

3.28 Although the moratorium on the grant of new commercial television broadcasting licences will be lifted from 1 January 2007, the Government has previously stated that it considers that a clear case for allocation of a new commercial FTA network has not been established at this stage. Therefore, the Government does not propose to allocate any new commercial television broadcasting licences at the end of the current moratorium period.¹⁶

3.29 Currently, section 36 of the BSA provides that the ACMA is responsible for allocating commercial television broadcasting licences in the broadcasting services band of the spectrum (BSB) using a price-based allocation system. Schedule 2 of the Digital Television Bill contains amendments that would give the Government a decision-making role in the allocation of commercial television broadcasting licences (see **item 8 of Schedule 2**).

3.30 New section 35A provides that, before the end of the simulcast period, the Minister must cause a review to be conducted into (subsection 35A(1)):

- whether new commercial television licences should be allocated and
- if so, what variation should be made to licence area plans.

15 Explanatory Memorandum, p. 46.

16 Meeting the Digital Challenge, pp 20-21.

3.31 The Minister has the power to conduct subsequent reviews, following completion of the report into the initial review conducted under subsection 35A(1) (see new subsection 35A(2)).

3.32 In conducting a review under new subsections 35A(1) or (2) a number of matters must be taken into account, including (new subsection 35A(4)):

- (a) the objects of the BSA;
- (b) where relevant, the planning criteria for the BSB referred to in section 23 of the BSA;
- (c) the availability of radiofrequency spectrum; and
- (d) any other relevant matters.

3.33 New subsection 35A(5) requires that reviews be conducted in a manner that provides for wide public consultation.

3.34 A report of a review carried out under subsections 35A(1) and (2) must be prepared (subsection 35A(7)), and tabled in Parliament within 15 sittings days of completion of the report (subsection 35A(8)).

3.35 New section 35B provides that, if after completion of the report of a review conducted under section 35A, the Minister is satisfied that a new commercial television broadcasting licence should be allocated, the Minister may, within 3 years, give the ACMA a written direction requiring that the ACMA allocate the licence (new subsection 35B(1)).

3.36 The ACMA must comply with a direction by the Minister to allocate a new commercial television broadcasting licence, and the ACMA must not allocate a licence unless directed to do so (new subsections 35B(2) and (3)).

Amendments relating to non-broadcasting services band licences

3.37 Section 40 of the BSA provides that the ACMA may allocate licences for commercial television or radio broadcasting for the non-BSB spectrum.

3.38 The Digital Television Bill inserts additional provisions into section 40 of the BSA, which give the Minister a decision-making role in the grant of non-BSB licences (see **item 15 of Schedule 2**). The amendments provide that, where the ACMA proposes to allocate a commercial television broadcasting licence under section 40 of the BSA, the ACMA must refer the application to the Minister (new subsection 40(5)).

3.39 The Minister must consider the application for the non-BSB licence in terms of the public interest. If the Minister is of the opinion that the proposed television service is likely to be contrary to the public interest, the Minister must direct the ACMA not to allocate the licence (new subsection 40(7)). The ACMA must comply with directions given by the Minister under subsection 40(7).

3.40 If the Minister is of the opinion that the proposed television service is not likely to be contrary to the public interest, the Minister must notify the ACMA that they have no objection to the allocation of the licence (new subsection 40(9)).

Application of Australian content and children's televisions standards to multi-channels

3.41 The amendments in **item 17 of Schedule 2** insert new subsections into section 122 of the BSA, which deals with Australian content and children's television standards. The new provisions provide that standards made by the ACMA under section 122 of the BSA do not apply to a commercial television broadcasting service, unless the service is the broadcaster's core service.

3.42 The Digital Television Bill inserts a new clause 60C into Schedule 4 of the BSA (see **item 88 of Schedule 2**). The new clause 60C requires that the Minister cause a review to be undertaken of the regulation of SDTV and HDTV. The review must be done at least one year before the end of the simulcast period and must specifically consider the application of program and captioning standards to SDTV and HDTV multi-channel services.

Schedule 3 – Amendments commencing on 1 January 2009

3.43 Schedule 3 of the Digital Television Bill deals with:

- the provision of SDTV and HDTV multi-channel television services from 1 January 2009; and
- a review of the anti-siphoning regime.

3.44 The Explanatory Memorandum, in the introduction to Schedule 3, also foreshadows an extension of the simulcast period.¹⁷ Currently, for metropolitan licence areas the simulcast period ends on 31 December 2008, and for other licence areas the simulcast period varies. It is anticipated that changes to the regulations will be made so that the end of the simulcast period will commence in the period 2010-2012.¹⁸

3.45 The Digital Television Bill inserts new sections 41B and 41C into the BSA (see **item 3 of Schedule 3**). New section 41B provides that, from 1 January 2009, during the remaining simulcast period, existing television broadcasting licences will authorise the licensee to provide:

- the core service (comprising either an analogue and SDTV simulcast; or an SDTV service where the licence was granted after 1 January 2007);
- a HDTV multi-channel; and

17 Explanatory Memorandum, p. 61.

18 Explanatory Memorandum, p. 61; and Senator Sandy Macdonald, Parliamentary Secretary to the Minister for Defence, *Senate Hansard*, 14 September 2006, p. 7.

- a SDTV multi-channel.

3.46 New section 41C provides that after the simulcast period, commercial television licences will authorise the licensee to provide:

- one or more HDTV multi-channels; and
- one or more SDTV multi-channels.

3.47 The Digital Television Bill also inserts a new section 115A into the BSA (see **item 4 of Schedule 3**). The new section 115A requires that the Minister cause a review to be undertaken of the operation of the anti-siphoning provisions in section 115 of the BSA. The review must be conducted before 31 December 2009 and must include a review of the operation of Part 4A of Schedule 4 of the BSA (inserted by item 18 of Schedule 1 of the Digital Television Bill, see discussion above at paragraph 3.21).

Allocation of two new digital channels

3.48 Legislation has yet to be introduced into Parliament providing for the allocation of two currently unassigned channels of the BSB spectrum for new digital services. The following summary is taken from the background document 'News Service on Digital Spectrum' tabled in the Senate on 14 September 2006.

3.49 The Government intends to release two channels, 'Channel A' and 'Channel B', as separate national licences. The channels will be allocated through an auction process. Neither channel will be permitted to be used for traditional commercial FTA TV services or subscription TV services.

3.50 Channel A will be authorised to transmit FTA services which can be received on a standard digital TV receivers (an in-home service). Services which can be offered on Channel A include datacasting and narrowcasting. Incumbent FTA broadcasters will be prohibited from bidding for Channel A.

3.51 Channel B will be permitted to be used for a wider range of services, including emerging new digital services such as mobile TV. Incumbent FTA broadcasters will be permitted to bid for Channel B, however, they will not be permitted to use the channel to provide an in-home service.

3.52 The Government states that the allocation process for the licences for Channel A and B will be conducted by the ACMA, and will commence as soon as possible in 2007, subject to the passage of the necessary legislation.

Main Issues

3.53 From submissions and evidence at hearings, the committee understands that many of the issues raised by this Bill are interrelated, and it is difficult to discuss particular issues in isolation. Nonetheless, the committee has considered the issues under the following topics:

- the extension of the analogue switch off date to 2010-2012 and whether the measures in the Digital Television Bill will promote the uptake of digital television services such that this is a feasible timeframe for the switch-off of the analogue network;
- the allocation of two new digital channels on the broadcasting spectrum, in particular who can bid for the new channels and what services can be provided on those channels;
- continuation of the anti-siphoning regime, particularly the proposed "use it or lose it" test and the restrictions on anti-siphoning events being broadcast on FTA broadcasters' multi-channels;
- the removal of genre restrictions from the national broadcasters' multi-channels enabling them to offer more diverse content on their digital channels;
- multi-channelling by the commercial television broadcasters, including the imposition of television licence fees on multi-channels, the restrictions on anti-siphoning events being shown on multi-channels, and the application of content and programming standards and captioning requirements to multi-channels;
- the future for HDTV broadcasting given the removal of the HDTV quota from the end of the simulcast period; and
- the introduction of a role for Government in the decision-making process in relation to the grant of new BSB licences.

Analogue switch off date and the uptake of digital services

3.54 The transition from analogue to digital television is being facilitated through a 'simulcast period' – a period where commercial and national television broadcasters transmit their programs in both analogue and SDTV digital mode. During the simulcast period, broadcasters are also required to transmit a limited amount of HDTV programs.

3.55 In order that broadcasters could meet their obligations for simulcasting in analogue and digital modes, the Government lent broadcasters additional spectrum at no extra charge. Television broadcasters must return the spectrum currently being used for the transmission of analogue services at the end of the simulcast period when the analogue network is due to be switched off.¹⁹

3.56 In metropolitan areas the simulcast period commenced on 1 January 2001. In regional areas the simulcast period commenced at specified dates before 1 January

19 See DCTIA website: 'Broadcasting and Online Regulation, Digital Television, Information for Industry stakeholders: Regulatory Framework', available at http://www.dcta.gov.au/broad/digital_television/information_for_industry_stakeholders/regulatory_framework, accessed 3 October 2006.

2004, so that all areas had digital television by 1 January 2004. Commercial and national television broadcasters are required to continue analogue transmissions in these areas for at least eight years after the start of the simulcast period, for metropolitan areas that is until the end of 2008.

3.57 The Government has announced that the simulcast period will now be extended via regulations, so that the switch-over period will commence in the period 2010-2012.²⁰

3.58 The Digital Television Bill contains several measures, such as removing genre restrictions on the national broadcasters' multi-channels and phasing in multi-channelling for commercial television broadcasters, which are aimed at driving the uptake of digital television which 'will bring significant benefits to consumers and Australian society'.²¹ The committee heard a range of evidence on whether the measures in the Digital Television Bill were sufficient to drive the uptake of digital television to allow for an analogue switch-off date of 2010-2012.

3.59 In its 'Meeting the Digital Challenge' discussion paper the Department estimated that, as of 31 December 2005, only 15.5 per cent of Australian households had FTA digital television capability.²² The House of Representatives CCITA looked at some of the factors which have been cited as contributing to the slow uptake of digital television in Australia, including:²³

- that there were no clear technological benefits of switching to digital television;
- the lack of new content available on digital services;
- poor consumer awareness that digital television would one day replace analogue television;
- the lack of certainty about the analogue switch off date; and
- bad experiences with using digital television equipment.

20 Explanatory Memorandum, p. 61; and Senator Sandy Macdonald, Parliamentary Secretary to the Minister for Defence, *Senate Hansard*, 14 September 2006, p. 7.

21 Senator Sandy Macdonald, Parliamentary Secretary to the Minister for Defence, *Senate Hansard*, 14 September 2006, p. 7.

22 Meeting the Digital Challenge discussion paper, p. 15.

23 See House of Representatives CCITA Report, 'Digital Television: Who's buying it?' pp 33–37.

3.60 Some of these factors, particularly the lack of new content and new services offered by digital television, were also highlighted to the committee by witnesses.²⁴

3.61 Both the Media Entertainment and Arts Alliance (MEAA) and the Seven Network indicated that the Government's current policies were not enough to drive the uptake of digital technology to allow for a switch off date of 2012.²⁵

3.62 Mr Jock Given stated that in his opinion the introduction of Channel B for mobile television would do nothing for the uptake of digital FTA television.²⁶ In contrast, Ms Jane Van Beelen, Deputy Director Regulatory, Telstra, believed that mobile television represented an indirect means of driving take up of digital television in the home because it would encourage the digital content industry and demonstrate the opportunities and the benefits available from new services.²⁷

3.63 The Seven Network was unsure as to whether the gradual removal of restrictions on multi-channelling by the commercial FTA broadcasters in 2007 and 2009, and new datacasting and narrowcasting services on Channel A would drive the uptake of digital television. However, Ms Godwin, Manager of Regulatory and Business Affairs for the Seven Network was certain that allowing the commercial television broadcasters unrestricted multi-channelling from 2007 would ensure that an analogue switch off date of 2012 was achieved:

We cannot see the reason why it would be okay to have unlimited multi-channelling on ABC and SBS and not to allow the same for commercial broadcasters if we are serious about reaching the switchover target of 2012. It is clearly the most effective mechanism to get us to that point.²⁸

3.64 A number of submissions and witnesses before the committee indicated that the end of 2012 was a feasible timeframe for the switch off of the analogue television network.²⁹

24 See Ms Bridget Godwin, Manager, Regulatory and Business Affairs, Seven Network, *Committee Hansard*, 28 September 2006, p. 50; Mr Bruce Meagher, Director, Strategy and Communications Division, Special Broadcasting Service, *Committee Hansard*, 29 September 2006, p. 53; and Mr Jock Given *Committee Hansard*, 29 October 2006, p. 68 who all highlighted the need for new content on digital services in order to drive the take up of digital television.

25 Mr Christopher Warren, Federal Secretary, MEAA, *Committee Hansard*, 28 September 2006, p. 21; and Ms Bridget Godwin, Manager, Regulatory and Business Affairs, Seven Network, *Committee Hansard*, 28 September 2006, p. 50.

26 *Committee Hansard*, 29 September 2006, p. 69; see also Mr Christopher Warren, Federal Secretary, MEAA, *Committee Hansard*, 28 September 2006, p. 23.

27 *Committee Hansard*, 28 September 2006, p. 63.

28 *Committee Hansard*, 28 September 2006, p. 54.

29 See Mr Kim Williams, Chief Executive Officer, Foxtel, *Committee Hansard*, 29 September 2006, p. 39;

Committee view

3.65 In considering the extension of the simulcast period, while the committee accepts the Government is committed to the take up of digital television, it recognises the competing factors in the commercial television market that need to be taken into account.

Allocation of two new digital channels

3.66 In its discussion paper 'Meeting the Digital Challenge', the Government outlined the option of allocating two currently unassigned channels (Channel A and Channel B) of the television broadcasting spectrum for new digital services. In announcing the two new channels, the Minister stated that the allocation of the spectrum is a significant step towards accessing new and innovative digital services. Accordingly, neither of the new channels will be able to be used for traditional in-home commercial television services or subscription broadcasting services.³⁰

3.67 As a preliminary point, the current details of the two new channels outlined in the paper tabled in the Senate on 14 September 2006, differ from options for the unallocated spectrum that had been previously canvassed in the 'Meeting the Digital Challenge' discussion paper. Previously, incumbent FTA broadcasters had been prohibited from controlling licences to use additional datacasting spectrum, and the Government had signalled its preference to continue this probation.³¹ However, in its current form, FTA broadcasters are able to control Channel B.

3.68 At the hearing a representative from the Department indicated that the rationale for this change in policy came down to a balancing of policy considerations in relation to 'the desirability of having more competition for certain types of services vis-à-vis other policy considerations'.³²

3.69 The key issues which the committee considered in relation to these new channels are those of control and use of the channels, specifically access to the new digital channels, and control of the new licences for Channels A and B.

3.70 Channel A is proposed to be used for in-home FTA services such as datacasting and narrowcasting services. Incumbent FTA broadcasters cannot bid for Channel A. At present it is anticipated that Channel B will be permitted to be used for a wider range of services than Channel A, including mobile television services. There are no restrictions on who may bid for the Channel B licence.

30 See 'New services on Digital Spectrum', tabled in the Senate, 14 September 2006.

31 'Meeting the Digital Challenge' discussion paper, pp 22-23.

32 Dr Simon Pelling, Acting Chief General Manager, Content and Media Division, DCITA, *Committee Hansard*, 28 September 2006, p. 125.

3.71 The committee received substantial evidence on how access to the new digital channels should be regulated to ensure that the services provided on these channels are new and innovative. The committee also heard evidence on why certain groups should be excluded from controlling the licences for Channel B.

3.72 The community television sector has a cumulative monthly audience of three million viewers a month.³³ In its submission the Community Broadcasting Association of Australia (CBAA) outlined why converting to digital television was so important to its members:

Over the next 3 years implementation of digital terrestrial broadcasting is a pressing priority for community broadcasters. From the perspective of the CBAA its member stations cannot simply remain analogue broadcasters only. Community broadcasting is not just about FM radio. Add to the mix 7 independent community television services, internet-delivered content and the CBAA's own satellite delivered Digital Delivery Network and you begin to see the scope we have for diversity and strength in digital content production and delivery.³⁴

3.73 Mr Barry Melville, General Manager, CBAA, noted that the Digital Television Bill lacked any substantive provision for the digital rollout of community television.³⁵ Mr Melville pointed out that when the Government announced digital reforms in 1999-2000, it was suggested that community broadcasters would have free carriage on the unallocated spectrum on the back of datacasting services.³⁶ Mr Melville indicated that his organisation would like to see a 'must carry' obligation imposed on the licence of Channel A which would ensure spectrum would be available for the transmission of community television in digital mode.³⁷

3.74 Representatives from the Department indicated that no decision has been made as to where spectrum would come from for the transmission of digital services by community television broadcasters, but there is a range of potential options for community broadcasters obtaining carriage on the unallocated channels.³⁸

Committee view

3.75 The committee is sympathetic to the needs of the community broadcasting sector. Community television broadcasters are keen to make the transition to digital television services, however, as yet, no spectrum has been made available for this purpose.

33 Community Broadcasting Association of Australia, *Submission 42*, p. 2.

34 *Submission 42*, p. 1.

35 *Committee Hansard*, 28 September 2006, p. 82.

36 *Committee Hansard*, 28 September 2006, p. 85.

37 See *Committee Hansard*, 28 September 2006, p. 83.

38 Dr Simon Pelling, *Committee Hansard*, 28 September 2006, p. 126.

3.76 The committee was convinced that there is a strong public demand for the allocation of digital spectrum to community television broadcasters.

3.77 The community television sector comprises seven locally owned, licensed stations in Adelaide, Brisbane, Lismore, Melbourne, Mount Gambier, Sydney and Perth, with more than 260 member groups, 3,200 volunteers and 50 paid staff. The community television sector provides training in all areas of television production to more than 500 Australians every year and has a combined annual turnover of more than \$5 million.

3.78 Over 3.7 million viewers watch community television in Australia, according to Oztam survey results in August 2006. This is a significant proportion of the national viewing market and indications are that this audience is growing.

3.79 Community television broadcasts a diverse array of programming made by and for local and regional communities. As the FTA television broadcasters and viewing audience moves to digital television, it is vital that community television be given the opportunity to retain its audience by also transitioning to digital. Given the limited financial resources of community television, it is essential that a significant lead time be provided, to enable this transition.

Recommendation 1

3.80 The committee recommends the provision of digital television spectrum to community television broadcasters.

3.81 The committee was also interested in why companies might be interested in using Channel B as a mobile television service, given that a number of telecommunications companies provide, or have plans to soon provide, 3G mobile phone services.

3.82 Hutchison noted that it supported the allocation of spectrum for mobile television. However, Hutchison raised concerns that in the absence of appropriate regulatory settings, if a vertically and horizontally integrated telecommunications company or a pay TV broadcaster were to control Channel B, then competition in the supply of important existing and emerging services, such as 3G services would be undermined:

For the short term and medium term - that is, until 2012, when more spectrum will be available, we would expect, with the analogue turn-off - the creation of a monopoly provider for mobile TV is a likely outcome. Under this arrangement, there is the ability to exclude competitors. In the absence of appropriately regulated access requirements, a single monopoly provider of mobile TV services would be in a position to act as a gatekeeper. They will determine whether end users access mobile TV or whether these services may only be acquired by customers of a particular mobile carrier. The industry is at a critical development stage with regard to the take-up of 3G services. If only one mobile carrier is able to offer mobile TV services during this critical phase of the development of 3G networks,

this may have a tipping effect on the various markets that may be impossible to reverse.³⁹

3.83 Mr James Hooke, Managing Director, New South Wales, Fairfax, expressed the view that Channel B will not generate a 'diversity dividend' – that is diversity being generated through allowing new entrants to the media market – if FTA broadcasters, Foxtel, and the owners of Foxtel are allowed to bid on the channel.⁴⁰ Mr Hooke explained why Fairfax believe the issue of control of Channel B is so critical to the balance of the current legislation:

...channel B is the only source through which new content will have a distribution channel ... The only way you will get diversity is if new content is generated. If all you have is the piping down of existing content through a new distribution channel there is no diversity. Yes, there is a diversity of reception point, of handheld device and of screen size, but there is no diversity in the content. Our view from the start has been that, in terms of public policy, it is diversity of content and potential outlet channels for that content that are essential.⁴¹

3.84 Ms Julie Flynn, Chief Executive Officer, Free TV Australia, stated her organisation's view that if FTA television broadcasters were excluded from controlling the licence for Channel B, then all potential providers with access to a content library should also be excluded from controlling that licence.⁴² Mr Kim Williams of Foxtel indicated that his organisation would be happy to be excluded from bidding for Channel B, as long as the FTA broadcasters were not able to access Channel B.⁴³

3.85 News Limited indicated that it opposed allowing FTA broadcasters to bid for the datacasting spectrum while those operators still retained spectrum which they could use for multi-channelling.⁴⁴

3.86 In his supplementary submission, Mr Jock Given proposed the following solution for the concerns raised about access to, and control of, the new channels. Mr Given suggested prohibiting joint control of the transmission and content licences for these frequencies. In Mr Given's view, proposals to impose 'possibly capricious' restrictions on who could bid for these licences may serve immediate commercial

39 Mr Brian Currie, General Manager Regulatory Affairs, Hutchison Telecommunications (Australia) Ltd, *Committee Hansard*, 28 September 2006, p. 69.

40 *Committee Hansard*, 28 September 2006, p. 2.

41 *Committee Hansard*, 28 September 2006, p. 3.

42 *Committee Hansard*, 28 September 2006, p. 60.

43 *Committee Hansard*, 29 September 2006, p. 43.

44 *Submission 23*, p. 1.

interests, but will be less useful as a precedent for the long-term planning of allocation of more spectrum as it becomes available.⁴⁵

3.87 The committee was also interested in the interplay between 3G mobile phone services and mobile television services. The committee noted that there have been reports that Telstra will be rolling out mobile television services to its 3G customers in the next month. To this end, the committee was interested in why Telstra would be interested in the Channel B licence. Ms Jane Van Beelen of Telstra explained that Telstra's interest in the Channel B licence was due to the limited capacity of 3G mobile television services.⁴⁶ Of particular concern to the committee was the possibility that if a provider which operated its own 3G service was to also control the Channel B licence, there would be little incentive for them to develop the Channel B service, because it would compete with the providers 3G service. Ms Van Beelen of Telstra made the following observation on this scenario, citing specifically the limitations on the 3G capacity:

I would have thought that, if anyone had invested in acquiring this licence and, potentially, in the equipment required to supply services using it, then they would be aiming to maximise the return on their investment, which would involve maximising the use of the channel capacity.

... Once demand gets to a certain point, there will be a need for additional capacity to be able to provide services at the right quality, and meet the demand for broadcast video services over 3G.⁴⁷

Committee view

3.88 The committee notes the advice of the Department that it is not technically possible to split up each of the unallocated channels into smaller portions to sell separately. The committee notes that the Department has indicated that an access regime is something that would need to be considered prior to the allocation of the channels. To that end, the Department has had preliminary discussions with the ACCC on rules and competition issues that would apply to the spectrum.⁴⁸

Recommendation 2

3.89 The committee recommends that the Government consider whether access arrangements for 'Channel B' would be appropriate in order to maximise the opportunities for a diverse range of players to provide content on this service.

45 *Submission 25A*, pp 3-4.

46 *Committee Hansard*, 28 September 2006, p. 63.

47 *Committee Hansard*, 28 September 2006, p. 65.

48 See Dr Simon Pelling, *Committee Hansard*, 28 September 2006, pp 125-126.

Anti-siphoning regime

3.90 The anti-siphoning scheme ensures that certain events are available to the whole viewing public by preventing pay TV licensees from acquiring exclusive rights to listed events. The Minister may gazette a list of events, or events of a kind, which the Minister believes should be available free to the general public. The current anti-siphoning list comprises domestic and international sporting events in twelve categories including cricket, tennis, golf, motor sports and the football codes. Pay TV licensees are prevented from acquiring a right to televise a listed event until a right has first been acquired by the ABC, the SBS or commercial FTA broadcasters reaching more than 50 per cent of the Australian population.⁴⁹

3.91 The anti-siphoning regime has been a constant source of tension between those with interests in subscription television services and the FTA broadcasters. Subscription television broadcasters argue the anti-siphoning provisions unfairly advantage the FTA broadcasters and that many listed events are not shown at all or shown as a delayed broadcast. For example ASTRA had the following comments to make about the anti-siphoning regime in its submission:

While the scheme was ostensibly set up to guarantee continued free-to-air coverage of events of national importance and cultural significance, the evidence of the lack of broadcast coverage of listed events by the free-to-air broadcasters proves it has only ever guaranteed an unfair competitive advantage, exploited primarily by the commercial free-to-air networks to the detriment of the growth and potential future development of subscription television in Australia; of sporting codes and their various representative sports bodies and of the Australian viewing public.⁵⁰

3.92 In its submission Free TV expressed its confidence that commercial FTA broadcasters use the listed sports that they acquire, and 'anything else is available to pay TV'.⁵¹

3.93 Currently there are 12 categories of sporting events on the anti-siphoning regime, namely: the Olympic Games, the Commonwealth Games, horse racing, Australian rules football, rugby league football, rugby union football, cricket, soccer, tennis, netball, golf and motor sports. The scope of events listed within each category varies significantly. For example, under horse racing, the only event listed is the Melbourne Cup; for the Olympic Games, the listing is for 'every event held as part of the Olympic Games'; and tennis includes every match of the Australian Open and

49 DCITA website, Broadcasting and online regulation > Television > Anti-siphoning and anti-hoarding, available at http://www.dcita.gov.au/broad/television/anti-siphoning_and_anti-hoarding, accessed 3 October 2006.

50 *Submission 38*, p. 8. See also Foxtel, *Submission 39*, p. 5.

51 Free TV Australia, *Submission 41*, p. 5.

Wimbledon and specific matches from the French Open, the US Open and Davis Cup matches.⁵²

3.94 In its 'Meeting the Digital Challenge' discussion paper, the Government also acknowledged that the anti-siphoning list gave protection to a number of events in their entirety, despite not all of the events being broadcast, particularly tournaments comprising multiple rounds, such as golf or tennis. The Government's preferred option of dealing with this issue is to apply a 'use it or lose it' approach, where, in the event that FTA broadcasters fail to provide adequate coverage of a listed event, the event would be considered for removal from the list.⁵³

3.95 To this end, the committee considered two issues in relation to the anti-siphoning list:

- the proposed 'use it or lose it' approach; and
- the breadth of events covered by the anti-siphoning list.

3.96 Before moving on to those issues however, the committee would briefly like to draw attention to concerns raised by Premier Media Group in its submission and in the course of the hearing. Premier Media Group believe there is a technical oversight in the Bill which would permit anti-siphoning events being shown on FTA broadcasters multi-channels before they were premiered on the FTA broadcaster's main channel.⁵⁴ The committee makes no comment as to whether this matter is a technical oversight or not, however, it believes the Department may wish to further consider the concerns raised by Premier Media Group.

'use it or lose it'

3.97 The 'Meeting the Digital Challenge' discussion paper set out how the Government's proposed 'use it or lose it' approach would work in relation to the anti-siphoning list.

3.98 Commencing 1 January 2006, the 'use' of events on the anti-siphoning list by commercial FTA and national broadcasters would be monitored by the ACMA. Every six months the ACMA would then report to the Minister the events that had been acquired by FTA commercial or national broadcasters, how those rights were used, and whether unused or partially-used rights were offered to other broadcasters, including subscription television. The Government proposes to make use of this information to consider, from 1 January 2007 and on an ongoing basis, the need to

52 See Broadcasting Services (Events) Notice (No. 1) 2004 as amended.

53 Meeting the Digital Challenge discussion paper, p. 32.

54 See Mr Jon Marquard, Premier Media Group, *Committee Hansard*, 28 September 2006, pp 27-28; and *Submission 45*, pp 2-3.

retain events on the anti-siphoning list that may not have been adequately utilised by the FTA broadcasters.⁵⁵

3.99 The Government is considering the following criteria for determining 'adequate usage' of events on the anti-siphoning list:

- what broadcast rights had been acquired by the FTA broadcaster;
- whether the event or events which make up an item were shown by broadcasters able to reach at least 50 per cent of the population;
- an event would be considered to have been broadcast if at least half of the total event was broadcast;
- whether the event or events that make up the item were shown live, or near live (commencing within one hour of the start of the event);
- whether a delay in showing the event or events that make up the item was intended to allow the event to be broadcast at a time of, or in a form, that would provide greater audience interest;
- relevant contractual obligations with the rights holder;
- in cases where FTA rights were not fully utilised, whether those rights were made available to another FTA broadcaster and whether any subscription TV rights held by the broadcasters were made available to a subscription TV operator on a reasonable basis; and
- other matters that may be relevant in individual circumstances.

3.100 There were mixed views amongst witnesses and submitters as to whether the 'use it or lose it' scheme should be backed by legislation. Broadly speaking, those with an association with pay television supported the scheme being included in legislation⁵⁶ and FTA broadcasters did not think the scheme required any legislative backing.⁵⁷

3.101 Representatives from the Department gave evidence that the 'use it or lose it' scheme did not need to be included in the legislation:

The 'use it or lose it' scheme can be implemented under the current act. The minister creates the list and amends the list ...

55 Meeting the Digital Challenge discussion paper, p. 33.

56 See Mr Kim Williams, Chief Executive Officer, Foxtel, *Committee Hansard*, 29 September 2006, p. 37, and Mr Jon Marquard, Chief Operating Officer, Premier Media Group, *Committee Hansard*, 28 September 2006, p. 26.

57 See Ms Bridget Godwin, Manager, Regulatory and Business Affairs, Seven Network, *Committee Hansard*, 28 September 2006, p. 53; Ms Julie Flynn, Chief Executive Officer, Free TV Australia, *Committee Hansard*, 28 September 2006, p. 57, although Ms Flynn did indicate Free TV Australia did not oppose a mechanism where the rules were contained in regulation that was a disallowable instrument, see *Committee Hansard*, 28 September 2006, pp 57-58.

[The 'use it or lose it' scheme does not need legislation to be enacted for it to start-up on 1 January 2007 because] it is entirely a matter for the minister or the government ...

The minister already has all the necessary powers to implement the 'use it or lose it' list.⁵⁸

3.102 The committee also heard evidence on how various stakeholders raised concerns with the criteria for assessing 'use' in the proposed 'use it or lose it' scheme.

3.103 Mr Bruce Meagher, Director, Strategy and Communications Division, SBS, is of the view that the concept of 'use' is difficult to assess in tournaments where there are multiple events or games:

My point was simply that it would be very easy to identify whether, for example, a broadcaster had, having acquired the rights, used the Melbourne Cup. That is just an on-off switch. At the other extreme, with something like the Olympic Games, where there are obviously multiple events under the umbrella of the one larger event, it is very hard to determine. Then in the intermediate phases, like football competitions, where there are multiple games within a round, you have to determine how many games you have to use.⁵⁹

3.104 Ms Julie Flynn of Free TV Australia noted that her organisation believed that in applying the 'use it or lose it' rules, the ACMA should look at the acquisition and use of sporting rights by both the FTA networks and the pay television providers.⁶⁰

3.105 Representatives from the Department indicated that consultation was continuing with stakeholders on the guidelines for the 'use it or lose it' scheme:

In the media reform discussion paper released in March this year, [the Minister] indicated several guidelines for 'use it or lose it', which were obviously, given it was a discussion paper, intended to be for the purposes of discussion. Since the announcement of the government's media reform package in July, the minister has been in discussion with rights holders and broadcasters about those guidelines. That process is continuing.⁶¹

3.106 The committee notes the potential difficulties in determining whether FTA broadcasters have 'used' an event on the anti-siphoning list. The committee is confident that those issues will be taken into account as the Government continues its consultations on the guidelines for the 'use it or lose it' scheme.

58 See Dr Bernard Keane, Acting General Manager, Media Industries Branch, DCITA and Dr Rod Badger, Deputy Secretary, Strategy and Content, DCITA, *Committee Hansard*, 29 September 2006, p. 87.

59 *Committee Hansard*, 29 September 2006, p. 56.

60 *Committee Hansard*, 28 September 2006, p. 56.

61 Dr Bernard Keane, *Committee Hansard*, 29 September 2006, p. 92.

Breadth of the anti-siphoning list

3.107 A number of witnesses commented on the breadth of events covered under some of the categories on the anti-siphoning list. Mr Jon Marquard, Chief Operating Officer of Premier Media Group, cited the Rugby World Cup as an example of how the list is too broadly drafted:

...every single match of the Rugby World Cup is listed, so that a match between Namibia and Canada is caught under the Australian anti-siphoning laws. We say that should be pared back to events involving Australia, semifinals and finals and those sorts of things. That makes much more sense. Do not just capture the entire tournament or event.⁶²

3.108 In contrast to the Australian scheme, Mr Marquard noted that other countries have anti-siphoning lists which only cover events in which a team of that particular country is playing:

If I can just use a very recent practical example: in Italy and France they both have anti-siphoning schemes as well, but Italy's scheme in relation to soccer only lists matches involving Italy and the final, and in France—curiously enough - they cover matches involving France and the final. Yet, in Australia, we cover every single match, and that again goes to the point of depth.⁶³

3.109 Premier Media Group did not propose any changes to the Minister having the discretion to add or remove events from the anti-siphoning list.⁶⁴

3.110 In the course of Free TV Australia giving evidence, the committee's attention was drawn to an anomaly in the extent of the anti-siphoning list. Currently, the list covers each match at the Wimbledon tennis tournament. However, as Ms Julie Flynn of Free TV Australia pointed out, half the matches at Wimbledon are not covered by the host broadcaster, and so are not available to anyone.⁶⁵

Committee view

3.111 The committee accepts the Department's advice that the 'use it or lose it' scheme can proceed from 1 January 2007 without any need for it to be provided for in legislation. Further the committee agrees with the view expressed by Free TV Australia in its supplementary submission that a legislated scheme lacks the flexibility required to deal with complex sports rights negotiations and will inevitably result in events being wrongly delisted.⁶⁶

62 *Committee Hansard*, 28 September 2006, p. 29.

63 *Committee Hansard*, 28 September 2006, p. 30.

64 Mr Jon Marquard, *Committee Hansard*, 28 September 2006, p. 30.

65 *Committee Hansard*, 28 September 2006, p. 58.

66 *Submission 41A*, p. 1.

3.112 The committee recognises the confusion as to what constitutes an 'event' for the purposes of the anti-siphoning regime, particularly with multi-day and multi-round competitions. To this end, the committee recommends that a clarification be made of the definition of 'event' for the purposes of the anti-siphoning list.

Recommendation 3

3.113 The committee recommends that the Minister retain control over anti-siphoning regulations, and that clarification be made in relation to the definition of 'event' for the purposes of the anti-siphoning list.

Removal of genre restrictions on the national television broadcasters' multi-channels

3.114 Currently the national television broadcasters (ABC and SBS) can only broadcast a limited range of programs on their multi-channels. Examples of the types of programs that can be broadcast include: programs which wholly or principally deal with regional matters; educational programs; science programs; religious programs; health programs; and arts-related programs.

3.115 The Digital Television Bill provides that the national television broadcasters will have the genre restrictions lifted from their multi-channels once the Bill receives Royal Assent. The Explanatory Memorandum noted that very little concern was raised in relation to this issue when it was proposed in the 'Meeting the Digital Challenge' discussion paper.⁶⁷ Although this position was reflected in submissions⁶⁸ and evidence to the current inquiry, there are some concerns raised that the committee believe are worth highlighting.

3.116 The ABC welcomed the lifting of the genre restrictions on its multi-channel. In particular the ABC believes that lifting the genre restrictions will allow it to offer viewers greater access to the full range of publicly-funded programs, including archival material.⁶⁹

3.117 However, the ABC believes that sport is a key driver of digital television uptake, and that there are clear consumer benefits to making more live sport available on the ABC's multi-channel. This point is discussed further in this chapter in the section dealing with multi-channelling by commercial broadcasters (see paragraph 3.136).

3.118 SBS noted that it has previously argued for the lifting of genre restrictions. SBS believes that the key driver of digital technology uptake is the availability of new content, rather than improved picture quality. SBS is developing plans for a new

67 Explanatory Memorandum, p. 25.

68 See for example Media, Entertainment and Arts Alliance, *Submission 32*, pp 4-5.

69 *Submission 19*, p. 1.

digital multi-channel service which would include a significant amount of new and original Australian news, drama and entertainment programs.⁷⁰

3.119 However, SBS cautioned that whether its multi-channel would reach its full potential would depend on the provision of adequate funding:

The question really is one of funding ... We believe that to make the multi-channel successful we do need additional funding; we do not have the revenues to fund it to the extent that we would like. Obviously we can get a perfectly good channel up even under existing budgets, but we would like to do a lot more ... In order to get a reasonable quality - obviously if we were given several hundred million dollars we could make a fantastic channel - we are looking at of the order of \$20 million. It obviously depends upon how much we get as to what we could do.⁷¹

3.120 Mr Christopher Warren of the MEAA also highlighted the importance of adequate funding for the national broadcasters to enable them to provide digital services and drive the uptake of digital television.⁷²

3.121 The committee welcomes the removal of genre restrictions on the national broadcasters. The question of funding for the national broadcasters is for the Government to determine in the light of its policy objectives.

Multi-channelling by commercial television broadcasters

3.122 The Digital Television Bill provides for the removal, from 1 January 2007, of the requirement that commercial television broadcasters provide a HDTV version of the analogue and SDTV simulcast service. From 1 January 2009 the commercial television broadcast licensees will be able to broadcast a single SDTV digital multi-channel in addition to the simulcast service and the HDTV multi-channel service.

3.123 The Government states that lifting the prohibition on multi-channelling by commercial broadcasters recognises the need for a balanced approach to reform and ensures industry stability:

This approach recognises that while multi-channelling restrictions have provided a period of stability during the transition period to digital, analogue switchover provides a natural end point for these restrictions ...⁷³

3.124 The Explanatory Memorandum noted that in response to the Government's 'Meeting the Digital Challenge' discussion paper, there had been no clear consensus

70 *Submission 63*, p. 2.

71 Mr Bruce Meagher, *Committee Hansard*, 29 September 2006, p. 54.

72 *Committee Hansard*, 28 September 2006, pp 21 and 24.

73 Explanatory Memorandum, p. 29.

amongst respondents on whether multi-channelling for commercial television broadcasters should be allowed.⁷⁴

3.125 The committee heard a range of views on these proposals. Some of the aspects of concern about the proposal were:

- the imposition of television licence fees on the multi-channels;
- the restrictions on showing anti-siphoning events on multi-channels;
- that content and programming standards do not apply to the multi-channels;

3.126 There was no clear consensus in submissions or amongst witnesses supporting or opposing the multi-channelling proposals for commercial television broadcasters.

3.127 The committee notes the evidence from Free TV Australia that there is a difference of opinion between its members as to whether there was the technical capacity for broadcasters to provide multi-channels while also meeting HDTV obligations.⁷⁵

3.128 Ms Bridget Godwin of the Seven Network explained that, given the potential benefits for viewers from multi-channelling, the commercial broadcasters should be allowed to transmit unrestricted multi-channels from 1 January 2007:

Multi-channelling would offer clear benefits to the community, providing more free content choices for viewers, many of whom would never be able to afford pay TV, and new opportunities for small businesses traditionally unable to access mainstream television advertising. The government has proposed that commercial broadcasters will be able to provide only a single multi-channel from 1 January 2009 and an HD channel from 1 January 2007. Given the clear public policy benefits, we cannot understand why we would not be treated on equal terms with the ABC and SBS, who will be able to provide unlimited multi-channels from 1 January 2007.⁷⁶

3.129 Ms Bridget Godwin referred to the introduction of digital television in the United Kingdom as an example of how SDTV multi-channelling could increase the uptake of digital television services.⁷⁷

3.130 Mr Nicholas Falloon stated that previously Network Ten had supported subscription multi-channelling. Network Ten does not support purely FTA multi-channelling.⁷⁸ The committee notes that although Publishing and Broadcasting Ltd

74 Explanatory Memorandum, p. 23.

75 Ms Julie Flynn, *Committee Hansard*, 28 September 2006, p. 59.

76 *Committee Hansard*, 28 September 2006, p. 50.

77 *Committee Hansard*, 28 September 2006, p. 51.

78 *Committee Hansard*, 29 September 2006, p. 32.

(PBL) did not make a submission to this inquiry, it has previously indicated its opposition to multi-channelling.⁷⁹

3.131 Representatives of the Department noted that the commercial broadcasters were not in agreement about bringing forward multi-channelling. Therefore, the Department's view is that unrestricted multi-channelling by commercial broadcasters should not be brought forward to 2007, as there is no guarantee that all broadcasters would participate in multi-channelling.⁸⁰

3.132 The committee notes that some witnesses and submissions with an interest in subscription television broadcasters oppose relaxing the prohibitions on multi-channelling by the commercial FTA broadcasters, unless the anti-siphoning regime is reformed to enable subscription TV providers to freely compete for sporting rights.⁸¹

Imposition of licence fees on multi-channels

3.133 As set out in Chapter 1, the Television Licence Fees Amendment Bill 2006, which is part of the current package of reforms, amends the definition of 'gross earnings' to include all sources of revenue from commercial television broadcasting when calculating the licence fee.

3.134 The effect of this amendment is that all revenue derived by a commercial television broadcasting licensee from the televising of advertisements (or other matter) on all services provided by the licensee, will be included for the purposes of calculating the licence fees payable for the commercial television broadcasting licence.

3.135 A number of organisations, including Free TV Australia and Channel 7, indicated opposition to the proposal. They argue that as multi-channelling is a new and emerging service, it should be able to establish itself without the constraints of fees:

... a moratorium on licence fees is consistent with the way that other new and emerging services, like pay TV, have been treated from the outset.⁸²

79 See PBL's submission to DCITA's Meeting the Digital Challenge discussion paper, p. 5, available at http://www.dcita.gov.au/_data/assets/word_doc/40099/PBL_submission.doc, accessed 4 October 2006.

80 Dr Bernard Keane, *Committee Hansard*, 28 September 2006, p. 124.

81 See Mr Jon Marquard, *Committee Hansard*, 28 September 2006, p. 29; and News Limited, *Submission 23*, p.3.

82 Ms Bridget Godwin, Seven Network, *Committee Hansard*, 28 September 2006, p. 52.

*Restrictions on showing anti-siphoning events on the multi-channels*⁸³

3.136 A number of witnesses voiced their opposition to the provisions of the Bill which would prevent broadcasters from showing anti-siphoning events on their multi-channels unless it has previously been shown on its main channel, or is simulcast on the main channel and the multi-channel.

3.137 The ABC cited the example of its broadcast of regional and state-based netball competitions as a demonstration of the advantages offered by allowing anti-siphoning listed events to be shown on its multi-channel prior to being made available on the main channel:

For example, in May 2006 the ABC began broadcasting matches from the regional and state-based netball competition live on ABC2 on Friday nights and then replaying them on Saturday afternoons on its main television channel. This allows the Corporation to provide live coverage of the matches while keeping faith with its loyal audiences for longstanding programs on its main channel. The ABC believes it would be appropriate if it was in a position to similarly broadcast the international netball Test matches live on ABC2 prior to their re-broadcast on the ABC main channel. However, the proposed anti-siphoning restrictions on its multi-channel services would prevent this.⁸⁴

Content standards and captioning requirements for multi-channels

3.138 The Digital Television Bill provides that Australian content standards will not apply to the commercial television broadcasters' multi-channels. The legislation also provides for a review to be conducted at least one year before the end of the simulcast period to consider the application of content and captioning standards to multi-channels. The Explanatory Memorandum provides the following explanation for not applying Australian content standards to the multi-channels:

These provisions ensure that the Australian content and children's television quotas cannot be satisfied by programming provided on multi-channels. By excluding multi-channels, the standards will be required to be satisfied by programming provided on the simulcast or main channel, thereby ensuring the free availability of this content to the widest possible audiences during the simulcast period. This will also provide time for multi-channels to be developed and become established before they are subject to the full suite of regulatory obligations.⁸⁵

83 The committee notes that these restrictions also apply to the national broadcasters' multi-channels, and the discussion in this section covers the debate as it applies to ABC and SBS's multi-channels.

84 ABC, *Submission 19*, p. 3. See also Ms Bridget Godwin, Network Seven, *Committee Hansard*, 28 September 2006, p. 50; and Mr Bruce Meagher, SBS, *Committee Hansard*, 29 September 2006, p. 53.

85 Explanatory Memorandum, pp 46-47.

3.139 The Screen Producers Association of Australia (SPAA) stated in its submission that its support for commercial FTA multi-channels was dependent on Australian content requirements being introduced at the same time as the new services.⁸⁶ At the hearing, Mr Geoffrey Brown of the SPAA detailed why his organisation was concerned about waiting until the end of the simulcast period to apply Australian content requirements to the multi-channels:

The idea of revisiting the issue in 2010 or 2012 we think is a bit naive, given the market forces there at the moment and the influence of the networks. The networks are already extremely resistant to the idea of any level of content regulation. The resistance to showing first-run Australian children's programming is there for all to see. We think the only way the government can address it is to establish a regime at the beginning and then perhaps modify that as time progresses—seeing where the economics of these multi-channels take us. But to let it slip at the beginning is problematic.⁸⁷

3.140 Mr Jock Given was of the opinion that the review of the application of content and captioning standards should occur as part of the introduction of the multi-channelling services, and not at the end of the simulcast.⁸⁸ In his submission, Mr Given went on to make the following observation about the volume of Australian content that should be required on the multi-channels:

The standards for multi-channel services need not be the same as those for existing services, but, at the very least, the legislation should make it clear that a substantial commitment to additional, original Australian content is expected from free-to-air broadcasters as part of the additional flexibility they will get in their ability to use their digital capacity.⁸⁹

3.141 Network Seven stated that although it had a strong commitment to local and Australian content, it did not support mandated levels of Australian content on the multi-channels, because those channels will be launched into an uncertain environment.⁹⁰

Committee view

3.142 The committee notes the opposition of some organisations to the relaxation of the prohibitions on commercial broadcasters multi-channelling in the absence of any reform to the anti-siphoning regime. The committee has already considered the anti-siphoning regime and the specific issues that it believes need to be addressed through the Digital Television Bill.

86 SPAA, *Submission 18*, p. 3.

87 *Committee Hansard*, 28 September 2006, p. 89.

88 *Submission 25*, p. 5.

89 *Submission 25*, p. 6.

90 Ms Bridget Godwin, Network Seven, *Committee Hansard*, 28 September 2006, p. 51.

3.143 The committee notes the concerns raised in relation to the imposition of television licence fees on multi-channels.

3.144 The committee supports the Government view that anti-siphoning events should be broadcast first on the commercial television main channels.

3.145 The committee notes that little feedback was received in relation to the captioning requirements for commercial broadcasters' multi-channels. The committee however recognises that the Government intends to review whether and how captioning obligations, Australian and children's content standards and codes of practice should apply to multi-channels. The review should be timed to allow for any necessary changes to the regulation of multi-channels prior to the end of the simulcast period.

High Definition Television

3.146 Compared with SDTV, HDTV is spectrum intensive. On the seven MHz channels that have been allocated to the FTA TV providers it is possible to transmit one HDTV signal or four SDTV signals.⁹¹ The high demand for broadcasting spectrum therefore puts pressure on broadcasters' use of limited spectrum.

3.147 The proposed amendments to the HDTV obligations would require the 1040 hours per year HDTV quota to continue during the simulcast period, but will be removed once the simulcast period ends. Essentially this would allow the market to decide the preferred use of the digital spectrum beyond the simulcast period.

3.148 The Explanatory Memorandum notes that there was no clear consensus amongst respondents to the 'Meeting the Digital Challenge' discussion paper as to whether the quota should be retained.⁹² This lack of consensus was apparent in the evidence and submissions before the committee.

3.149 Submitters in favour of retaining the HDTV quota argued that it provides certainty to consumers and FTA broadcasters should be obliged to provide it as it was the basis upon which they were allocated additional spectrum.

3.150 For example ASTRA, which was critical of the initial allocation of the seven MHz channel for the broadcast of digital terrestrial television stated:

True HDTV must be showcased and promoted by the commercial broadcasters on their primary digital channel. As the overriding reason for the grant of additional 7 MHz of spectrum to each of the free-to-air broadcasters, HDTV should not be 'siphoned' off to a secondary channel via proposed multi-channelling.⁹³

91 Productivity Commission Report, p. 228.

92 Explanatory Memorandum, p. 25.

93 *Submission 38*, p. 7.

3.151 Broadcast Australia also supported the retention of the HDTV quota for the protection of consumers who had already purchased HD equipment:

The continuation of this measure will ensure that Australia gains the benefit from a rapidly emerging global trend towards HD production of television programming, particularly in the US and now also in the UK and elsewhere in Europe. In addition, it is important to recognise that both broadcasters and consumers in Australia have already invested significant sums in HD and HD-capable equipment and that it would be both oppressive and premature for this to be jeopardised while the international television production environment is still in a transitional stage...⁹⁴

3.152 Submitters in support of removing the HDTV quota suggested that by the end of the simulcast period the HDTV market will be sufficiently sophisticated that regulatory control would no longer be required. For example the Seven Network told the committee:

There are many broadcasters who advocate HDTV content and say that they believe that that is what consumers want and they will continue to provide it. We certainly believe that HDTV has a place in the digital television spectrum. But we believe that mandating a quota, firstly, just requires people to do something they say they are going to do anyway in many cases and, secondly, stops the market from operating to let the consumer decide which they would prefer—whether they want more content or whether they want more HD content.⁹⁵

3.153 The Special Broadcasting Service also favoured a consumer driven approach:

We do believe that, over time, there will be increased high definition and that people will come to value high definition. If you look at the UK, it is quite interesting. They started with a model driven by multi-channelling, and now that has been quite well established there are substantial amounts of high definition, and that is often the point of differentiation for channels and providers. But we agree with you that, over time at least, removing the quota obligation would be a sensible move...

[I]ncreasingly, content will be created in high definition, particularly out of Europe. A lot of stuff is coming out now that is just in high definition. I think there will be a pressure on providers to deliver in high definition, but I think the issue over time is whether they are required to do two channels, as we are now—a standard definition channel and a high-definition one—or whether they should not just have one channel with the flexibility, when they have a good quality program in high definition, to show it in that form.⁹⁶

94 *Submission 35*, p. 6.

95 Ms Bridget Godwin, Seven Network, *Committee Hansard*, 28 September 2006, p. 52.

96 Mr Bruce Meagher, SBS, *Committee Hansard*, 29 September 2006, p. 55.

3.154 On a related topic, the committee also heard from a number of witnesses concerned that the current regulatory framework allowed Australian broadcasters to transmit 'substandard' HDTV services. FOXTEL described the problem in the following way:

The Bill...does not specify an internationally accepted HDTV standard and therefore ensures that one of the commercial broadcasters will continue to broadcast in a substandard HDTV standard [576p high definition format]. FOXTEL believes that the Bill should specify an internationally accepted HDTV standard (i.e. 720p or 1080i [high definition format]).⁹⁷

3.155 The particular concern with this issue was that by including the transmission of services that are not HDTV in the quota for HDTV services, effectively allows spectrum which should be used for 'true' HDTV services to be used for other purposes.

3.156 The committee supports the removal of the mandated HDTV quota at switchover.

3.157 The committee notes the concerns expressed regarding the lack of an internationally accepted HDTV standard in force in Australia and draws this to the Minister's attention.

New commercial television broadcast licences

3.158 The Digital Television Bill makes several changes in relation to the grant of new commercial television licences within the BSB. Firstly, the Bill lifts the moratorium on the grant of new commercial television licences in the BSA. Secondly, the Bill transfers the decision-making power in relation to these licences from the ACMA to the Government. Thirdly, the Bill provides for a review to be conducted before the end of the simulcast period into the need for another commercial television broadcast licence.

3.159 According to the Explanatory Memorandum, transferring the decision making powers in relation to the grant of a new commercial television licence could provide the Government with a direct role in addressing the policy questions associated with the allocation of a commercial television licence, while the ACMA would undertake the technical investigations and planning exercises as well as allocating the licence subject to finalisation of the review report by the Minister.⁹⁸

3.160 The committee received some feedback on these proposals, particularly in relation to the transfer of decision-making power from the ACMA to the Government.

3.161 In its submission, Free TV supports the decision to transfer decision making on new licences from the ACMA to a higher level. However, Free TV Australia

97 *Submission 39*, p. 10.

98 Explanatory Memorandum, p. 21.

argues that the decision to grant a new licence should be made by both houses of Parliament, and not the Minister.⁹⁹

3.162 MEAA is opposed to the Government having a role in the grant of TV licences. MEAA are of the view that the grant of licences is central to the ACMA's role as an independent regulator.¹⁰⁰

3.163 The committee notes that the transfer of decision making power in relation to the grant of new commercial television licences for the BSB from the ACMA to the Government represents an election commitment.¹⁰¹ The committee also notes that there are some concerns over this proposal. The committee notes that the proposal to transfer decision making power from the ACMA to the Government, represents a significant change to the process from granting commercial television broadcasting licences. Nonetheless the committee has not been provided with submissions or evidence which it considers provide a persuasive or convincing argument for preventing these amendments being passed by the Senate.

A fourth commercial free-to-air

3.164 Despite the Digital Television Bill lifting the moratorium on the grant of a new commercial television broadcasting licence, the Government has indicated that it does not believe a clear case has been established for a new commercial FTA network to be established at this stage.¹⁰² The committee heard evidence from various stakeholders on the issue of the so-called 'fourth commercial FTA channel'.

3.165 Mr Geoffrey Brown, Executive Director of the Screen Producers Association of Australia (SPAA), stated that his organisation would prefer a fourth commercial FTA channel, instead of the new Channel B. The SPAA believe that a fourth commercial FTA channel broadcasting initially in analogue/digital simulcast, and then only in digital from 2010, could be a driver for digital take up:

There would be a fourth free-to-air network, which would be simultaneous analogue and digital to, say, 2010 and then there would be a switch to digital two years before the incumbents—in other words, it would switch in 2010 and 9, 7 and 10 would cross over in 2012. We think that is a way of addressing the digital landscape Unless we create that awareness out there we are just going to plod along, trying to sell the technology by itself. It is not selling by itself. It has not sold by itself from day one. Content will drive that. An option to channels 7, 10 and 9 that disappears off the

99 *Submission 41*, p. 4.

100 *Submission 32*, p. 6.

101 Explanatory Memorandum, p. 6.

102 Meeting the Digital Challenge, discussion paper, pp 20-21.

analogue service in 2010 tells them that, if they want that service, they should go out and get a digital receiver.¹⁰³

3.166 Mr Kim Williams of Foxtel, noting that his organisation did not have a formal position on whether a fourth commercial television licence should be granted, highlighted the potential for increased competition and content choice resulting from the introduction of a fourth commercial FTA network.¹⁰⁴

3.167 News Limited argued in its submission that there is no basis for the argument that the market cannot support an independently owned fourth commercial FTA network, but can support up to eight new FTA multi-channels.¹⁰⁵

3.168 Network Ten stated in the course of hearings that it does not support the introduction of a fourth commercial FTA channel.¹⁰⁶

3.169 Free TV Australia considered the issue in a much broader context in its submission. Free TV Australia noted that the Government's position that there was no case for the allocation of a new FTA commercial television licence within the BSB at least until the end of the simulcast period. Free TV Australia then extrapolated this reasoning to conclude that there is no case for another FTA licence on any delivery platform. Free TV Australia submitted that any decision to grant a new television licence should be based on a comprehensive review examining the public interest in granting a new licence and should consider the impact on existing FTA broadcasters.¹⁰⁷

3.170 Given the diverse views the committee supports the Government's contention that no clear case has been established for a new commercial FTA network.

103 *Committee Hansard*, 28 September 2006, p. 90. See also Mr Christopher Warren, Federal Secretary, MEAA, *Committee Hansard*, 28 September 2006, p. 21.

104 *Committee Hansard*, 29 September 2006, p. 37.

105 News Limited, *Submission 23*, p. 2.

106 Mr Nicholas Falloon, Executive Chairman, Network Ten, *Committee Hansard*, 29 September 2006, p. 35.

107 *Submission 41*, pp 3-4.

