Broadcasting Services Amendment (Digital Television) Bill 2012

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Broadcasting Services Amendment (Digital Television) Bill 2012

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Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation

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Purpose

The primary purpose of the Broadcasting Services Amendment (Digital Television) Bill 2012 (the Bill) is to amend the Broadcasting Services Act 1992 (the BSA) to provide earlier access for certain defined groups to the Viewer Access Satellite Television (VAST) service. It is intended to achieve this by:

• enabling VAST licensees to provide digital commercial satellite television services to specified external territories and open access areas
• allowing for third party digital retransmission services to be taken into account for administering the conditional access scheme for VAST services, and
• enabling the Minister to vary the date for digital switchover in a licence area or when that area becomes a digital only local market area.

The Bill will also provide for changes to the time based obligations incumbent on broadcasters. It will allow licensees in certain licence areas to nominate multiple places against which their time-based broadcasting obligations will be assessed.

Background

The Parliamentary Library has produced a number of papers which deal with policy background relating to digital television and the legislation which has been introduced to expedite its introduction. A detailed paper Going digital: tracing the transition to digital terrestrial television in Australia provides the history of digital television policy development. It notes the current
government commitment to a firm switchover date for conversion and actions undertaken since late 2007 with the intention of achieving this aim.\textsuperscript{1}

The \textit{Going digital} paper notes that conversion to digital television commenced under the Howard Coalition Government. The fundamental objective of the policy commitment of that government, and the present government, has been to use improved digital technology to deliver a better broadcast experience for Australian audiences and in the process, to free up broadcasting spectrum to be used by new technologies.

There have been a number of problems and complicated issues encountered in the conversion to digital television, however. These have ranged from the need to raise viewer enthusiasm for the potential of the digital experience, to making the conversion process work over vast areas, and within a graduated timeframe.

One particularly persistent and complex problem has been how to find a solution to inadequate television reception experienced in some communities and by some households in licence areas that overall receive adequate services. For a number of years there was considerable discussion about how to resolve this ‘black spot’ problem, which for the most part affects rural and remote communities. The Howard Government funded a number of schemes to deal with black spots. These included funding the retransmission of local free-to-air digital television services and providing direct-to-home (DTH) satellite equipment for individual householders.

Conversion of all the analogue retransmission sites to digital has not been seen as practical or feasible, however (see brief discussion of cost and requirements at Appendix A). So, much discussion and consideration of solutions for dealing with black spots in a digital television environment has taken place over the past few years. Eventually, the Rudd Government resolved to fund a satellite solution to the problem through the VAST service. Detailed discussion of the rationale behind the VAST service and the legislative arrangements for the service can be found in the Library’s Digest for the Broadcasting Legislation Amendment (Digital Television) Bill 2010.\textsuperscript{2}

VAST has been intended to provide an enhanced viewing experienced for people in black spot areas by delivering the same level of service available in metropolitan areas—that is, commercial and national broadcasting services, including multi channels—across three satellite licence areas.\textsuperscript{3} VAST is also intended to provide some level of localism by delivering access to local news broadcast across

\begin{thebibliography}{9}
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regional terrestrial television through a dedicated local news channel. There is potential on the VAST service for later carriage of open narrowcasting and community broadcasting services.  

VAST has been set up so that anyone may apply for, and be authorised to receive, national broadcasting services on VAST—that is, to receive ABC and SBS broadcasts. However, there are specific rules and a conditional access scheme in place which apply in relation to viewer access to commercial television broadcasting services through VAST.

Under the conditional access schemes which apply to central and eastern Australia viewers in remote areas have been able to access commercial VAST satellite services since December 2010. VAST has also been available to viewers in the central and eastern Australia licence areas who have been connected to the Remote Area Broadcasting Service, known as Aurora.

Viewers in regional areas who are unable to obtain adequate reception of terrestrial digital television services that operate in their areas can access VAST. Currently, however, all viewers in an area that has not switched to digital television are only able to access the VAST service six months before the digital switchover date for their area.

The Western VAST service was fully operational on 30 July 2011. Viewers in areas outside predicted coverage of the digital services being established by the commercial television broadcasters in Western Australia are able to apply for VAST services immediately. However, viewers within predicted coverage of sites being established by the commercial broadcasters have been informed that they will only be able to access VAST service if they are unable to receive adequate digital reception once broadcasters establish their transmitters in that area. It is envisaged that some viewers in the Western VAST region who had previously been connected to Aurora may receive digital terrestrial services after switchover.

The Central Eastern VAST service operates in northern and southern time zones—programs for Queensland and the Northern Territory are broadcast on northern zone Queensland time and programs for all other eastern areas broadcast on New South Wales time. Western VAST operates on Western Australian time.

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4. Open narrowcasting services are broadcasting services whose reception is limited in at least one of a number of ways specified in section 18 of the BSA, that is: by being targeted to special interest groups; by being intended for limited locations such as sporting arenas or business premises; by being provided during a limited period or to cover a special event; because they provide programs of limited appeal; or for some other reason. Community broadcasting services are provided by and for the community on a non-profit basis.


6. The Aurora service will continue until switchover is completed in 2013. The VAST service currently operates alongside Aurora.

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Financial implications

As the Explanatory Memorandum to this Bill notes, amendments in the Bill ‘will not of themselves result in any direct financial impact on the Government’. However, it is likely that as a result of the amendments more households will become eligible for the Government’s Satellite Subsidy Scheme and the Household Assistance Scheme and this will have an indirect financial impact. As there is no indication how many households will be eligible for these schemes as a result of the passage of the Bill, it is impossible to calculate the extent of indirect impact, although it is unlikely to be significant.

Main issues and key provisions

The provisions in this Bill deal with three key issues—improving access to VAST satellite digital television services for certain groups, providing assistance for broadcasters to adhere to time based broadcasting requirements which are in place under the VAST requirements and providing flexibility for the Minister in varying the timing of digital switchover in certain circumstances.

Improving access

For external territories

Under section 38C of the BSA rules apply under a conditional access scheme in relation to satellite services provided by commercial television broadcasting in the three licence areas where joint venture providers can provide satellite television services—South Eastern Australia, Northern Australia and Western Australia (see Appendix B for more detail). Under the conditional access rules a conditional access scheme must specify designated ‘category A’ reception areas as those areas in which people are unable to receive adequate terrestrial television reception.

Items 1 to 3 of Schedule 1 to the Bill extend the geographical scope of section 38C licence areas to include the external territories of Norfolk Island, the Coral Sea Islands Territory and the Territories of Christmas Island and Cocos (Keeling) Island automatically. Items 5 and 6 of Schedule 1 to the Bill insert new subparagraphs 130ZB(3)(a) and 130ZBB(3)(a) into the BSA to provide that the external territories referred to in items 1 to 3 are deemed to be ‘category A’ receptions areas.

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8. The Satellite Subsidy Scheme provides a subsidy of between $200 and $350 for eligible households to switch to VAST. The Household Assistance Scheme (HAS) provides assistance to older Australians, veterans and people with disabilities, or their carers. For those eligible, HAS provides a set top box package free of charge.

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For open access areas

In addition, items 5 and 6 propose that the conditional access schemes specify particular areas, identified by the scheme administrator, to be known as open access areas. Open access areas are to be identified by the scheme administrator (either the Australian Communications and Media Authority (ACMA) or another operator as identified by the scheme) as those areas where it is reasonable to expect that once switchover for an area has been achieved people will be unable to receive adequate digital terrestrial commercial television broadcasts. Currently, ACMA is the body authorised under Part 9C of the BSA as the operator of the conditional access schemes. However, there is provision for it to request the development of a replacement conditional access scheme (sections 130ZCAA and 130ZCAB).

New subparagraphs 130ZB(3)(aa) and 130ZBB(3)(aa) propose that the scheme administrator must have regard to certain matters when deciding if an area is to be identified as an open access area. These are identified as:

- the extent to which people in the area have adequate reception of applicable terrestrial digital commercial television broadcasting services
- the extent to which it is predicted that people in the area will have adequate reception of those services at the end of the simulcast period for the simulcast area
- any information provided by a commercial television broadcasting licensee or ACMA about the extent to which people in the area have or will have adequate reception of those services
- any representations made to the scheme administrator by persons who reside in the area and
- any other matters the scheme administrator considers relevant.

The Explanatory Memorandum notes that it is intended that the scheme administrator would identify open access areas on the basis of ‘topographical or technical characteristics’ or as areas in which terrestrial commercial broadcasters do not intend to establish digital services. These areas could range from individual addresses to whole communities.

Effectively, these provisions will allow people in areas that have inadequate commercial television reception, or will be identified as those that will not receive adequate commercial television reception following digital conversion, to access the VAST service immediately. It is difficult to see how there could be any objection to the principle of allowing this early access. However, it could be that there may be problems which occur as the result of bureaucratic assessment of what constitutes an open access area. This may occur, for example, because ACMA or any other administrator will only be tasked with having regard to representations when making its decisions.

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9. The Bill provides that if the Australian Communications and Media Authority (ACMA) is not the administrator of the scheme, then it should be specified that ACMA is notified of open access areas so that these may be published on its website (proposed paragraphs 130ZB(3)(ab) and 130ZBB(3)(ab)).

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Items 10 and 11 of Schedule 1 to the Bill propose to broaden the scope of the definition of an applicable terrestrial commercial television broadcasting service (an applicable service). Currently an applicable service is defined as a commercial television service broadcasting in a licence area in a digital mode. The amendments under these items will provide that an applicable service includes a service that is ‘merely a re-transmission’ of programs in the digital mode (new subsection 130ZG(2)). It is intended that the amendment will apply only if the re-transmission service is provided by the representative of one or more commercial television licensees (new subsection 130ZG(2A)).

This will mean that decisions about the adequacy of services received will be based on whether persons have adequate reception of either a commercial television service or the re-transmission of that service by a commercial television licensee or its representative. The Explanatory Memorandum notes that the decision to make this distinction from retransmission services provided by local councils and community groups is because commercial broadcasters are less likely to cease retransmission services in the future.11

**Timing issues**

**Multiple time based compliance**

Section 211AA of the BSA provides that a commercial broadcaster in remote central and eastern Australia licence areas can nominate a place in their licence area from which it is determined that the licensee has complied with program standards and codes of practice as required. Item 12 of Schedule 1 to the Bill proposes to repeal subsection 211AA(1) and replace it with new subsections 211AA(1A) and (1). These subsections will allow licensees in the areas noted to ‘nominate one or more specified places in the licence area for one or more specified broadcasting services provided in specified parts of the licence area’.

According to the Explanatory Memorandum, the intention of this amendment is to allow broadcasters to accommodate different input feeds for their terrestrial transmitters in different parts of their licence area, without breaching time based obligations.12 These obligations would include those imposed the various programs standards, such as the Children’s Television Standards, which prohibit the broadcast of certain programs during periods nominated as C and P viewing time.13 It should be noted, however, that with regards to Children’s Television Standards, broadcasters would only be able to broadcast programs which have been classified for more mature

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audiences during C and P viewing time to the extent of the time difference between the place where the broadcast originates and the nominated place.

The Explanatory Memorandum maintains:

The measures in this Bill strike an appropriate balance between the best interests of the child, the responsibilities and duties of parents or guardians and television broadcasting companies, and the needs of remote communities to enjoy the fundamental freedoms of communication and cultural participation. While the measures in this Bill may mean that a greater degree of parental awareness and guidance of their child’s television viewing is required, such an outcome is reasonably appropriate and proportionate having regard to the other human rights promoted by these measures. Broadcasters will still classify television programs, and this will assist parents and guardians to assess whether viewing a particular television program is in the best interests of their child.14

In addition, these provisions will allow licensees to nominate one place in their licence area for their primary commercial broadcasting service and others for multi channel services. As obliquely referred to by the Explanatory Memorandum, this provides flexibility for the broadcasters to deliver programs that appeal to the different audiences which comprise the licence areas.15 It is likely that the commercial broadcasters will take advantage of this flexibility when transmitting telecasts of the most popular football codes. For example, Australian Rules football may be broadcast through nominated places in Victoria on a primary broadcast channel and on a multichannel on a nominated feed in New South Wales.

Proposed changes to the BSA introduced in the Senate on 22 March 2012 by the Broadcasting Services Amendment (Anti-siphoning) Bill 2012 will, however, impose other time restrictions on broadcasters. If the anti-siphoning Bill is passed unamended time restrictions in relation to the live, or near live, broadcast of certain events designated as anti-siphoning events will be relevant in relation to the provisions in this Bill. A discussion of the types of events to which these restrictions will apply once the Bill is passed, and the time limitation on their broadcast is available in the Digest for the anti-siphoning Bill.16

Flexible declarations

Under current subclause 5F(1) of Schedule 4 to the Act, the Minister may determine that a particular area is a ‘local market area’ and determine when that local market area becomes ‘digital-only’. Currently the Minister may vary such a determination, including by changing the time at which the


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local market area becomes digital—only area. However, under current subclauses 5F(7) and (8) if the Minister varies that time, the revised time must not be more than three months before, or three months after, the originally specified time.

**Item 15** of Schedule 1 to the Bill proposes to repeals subclauses 5F(7) to (9) in Schedule 4 of the BSA so that if the Minister decides to vary a determination under subclause 5F(1) to provide a revised date at which the area will become digital-only, the revised date is not required to fall within the period of three months before, or three months after, the original date. This will give the Minister greater flexibility to respond to industry needs.

Similarly, **items 16 and 17** of Schedule 1 to the Bill provide that the Minister is no longer limited to changing the date in a determination of a ‘simulcast period’ under clause 6A of Schedule 4 to the Act to a date that is no more than three months before, or three months after, the original date.

The simulcast period is that period in metropolitan and regional areas where both analogue and digital mode is transmitted.

However, these items do not alter the requirement that the Minister still ensure that the end of the simulcast period is no later than 31 December 2013.

**Concluding comments**

This Bill proposes to make a number of changes to the BSA to improve access to digital broadcasting services for certain groups. It also proposes to provide more flexibility for broadcasters to assist them in complying with their time-based broadcasting obligations and for the Minister in varying the timing of simulcast periods and the declaration of local market areas as digital only areas.

The changes made by the Bill should generally enhance the digital experience for people in ‘black spot’ transmission areas and for viewers in Australia’s external territories. They will also allow commercial broadcasters to tailor programming to cater for viewer preferences in different regions within their licence areas. There is some potential for conflict in interpretation of the term ‘open access areas’, but for the most part this Bill appears to be a relatively non-controversial fine tuning of the digital transmission process.

**Appendix A: digital television retransmission options**

In converting to digital television, holders of self-help retransmission licenses have two choices. The first is that they can pay the full cost of converting their self-help tower and all ongoing maintenance costs for the tower. The second choice is they can switch off their tower and their community can access the Government’s Satellite Subsidy Scheme (SSS).

Licensees who choose to convert their self-help towers from analogue to digital at their own cost must apply for a digital broadcasting licence to retransmit their services from the Australian
Communications and Media Authority (ACMA). ACMA’s decision to approve a license request depends on a wide range of technical and regulatory considerations.

Based on industry advice, the basic capital cost of upgrading each self-help tower to retransmit the VAST service in is the order of $150,000. Further, it is estimated that over a ten year period, maintenance costs for the converted equipment could be greater than $200,000.

If a self-help licensee chooses to pursue the conversion option, households that receive television services from the converted tower will not be eligible for assistance under the SSS. This is the case even if households later find they are not able to receive adequate digital reception from the upgraded self-help tower.

A self-help licensee who chooses to upgrade a tower to digital and retransmit the VAST service is required to ensure the viewing experience for households is substantially similar to that of households receiving broadcaster-provided terrestrial digital television services.

ACMA notes providing a substantially similar service essentially:

... entails self-help providers retransmitting all associated terrestrial services that are not otherwise available terrestrially to the viewer. Where broadcasters are not providing any digital television services terrestrially in a location, the self help provider would be expected to retransmit the full suite of available services. Where broadcasters are providing one or more, but not all, digital television services in a location, the self-help provider would only be required to provide the ‘missing’ services. (For example, if all the services from three commercial networks and the ABC are already available terrestrially in the area, the self-help provider would only need to retransmit the ‘missing’ SBS service, although requests to provide additional services would be considered on a case-by-case basis.)

Importantly, providing the same viewer experience as a broadcaster-provided service requires the transmission of service information, such as electronic program guides, channel numbers and closed captioning.

In addition, in deciding whether to make spectrum available to a self-help retransmission ACMA will have regard to matters such as whether use of the spectrum will comply with certain technical specifications.

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### Appendix B: current licence areas under section 38C of the Broadcasting Services Act 1992

#### Licence areas and eligible joint venturers

<table>
<thead>
<tr>
<th>Item</th>
<th>Licence area for a commercial television broadcasting licence allocated, or to be allocated, under this section</th>
<th>Description of the licence area</th>
<th>Eligible joint venturers for the licence area</th>
</tr>
</thead>
</table>
| 1    | South Eastern Australia TV3 | The area consisting of New South Wales, Victoria, South Australia, Tasmania, the Australian Capital Territory and the Jervis Bay Territory. | The commercial television broadcasting licensees for the following licence areas:  
(a) Remote Central and Eastern Australia TV1;  
(b) Remote Central and Eastern Australia TV2;  
(c) Mt Isa TV1. |
<table>
<thead>
<tr>
<th>Item</th>
<th>Licence area for a commercial television broadcasting licence allocated, or to be allocated, under this section</th>
<th>Description of the licence area</th>
<th>Eligible joint venturers for the licence area</th>
</tr>
</thead>
</table>
| 2    | Northern Australia TV3 | The area consisting of Queensland and the Northern Territory. | The commercial television broadcasting licensees for the following licence areas:  
  (a) Remote Central and Eastern Australia TV1;  
  (b) Remote Central and Eastern Australia TV2;  
  (c) Mt Isa TV1. |
| 3    | Western Australia TV3 | The area consisting of Western Australia. | The commercial television broadcasting licensees for the following licence areas:  
  (a) Remote and Regional WA TV1;  
  (b) Western Zone TV1;  
  (c) Kalgoorlie TV1;  
  (d) Geraldton TV1;  
  (e) South West and Great Southern TV1. |
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