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

The Bill will allow the Government to determine a staggered, region-by-region digital television switch-over timetable. It will also amend the timing of two statutory reviews required under the BSA.

At present, the dates for switch-over are set via a transitional period, known as the “simulcast period”, during which national and commercial television broadcasters are required to transmit simultaneously in analog and standard definition digital mode. At the end of the simulcast period analog transmissions will cease and digital-only transmissions will commence. The simulcast period is set to finish in metropolitan licence areas on 31 December 2009 and in non-remote regional licence areas by 31 March 2011 or 31 December 2011 (depending on the licence area).

Television licence areas in many regional areas have been enlarged, by ‘aggregating’ previously localised one-station licences, to enable the provision of a greater number of commercial television broadcasting services. For a more effective switch-over process it may be appropriate to base a switch-over timetable on geographical areas smaller than these larger aggregated television licence areas. This would enable local geographic, technical and market circumstances to be considered when determining dates for analog switch-off.

The proposed amendments to the BSA by the Bill will allow the Minister for Broadband, Communications and the Digital Economy (the Minister) to:

- determine, by legislative instrument, a timetable for the switch-off of analog television transmission in “local market areas” (enabling the setting of different switch-over dates for different geographic areas within a single licence area);
- vary a switch-over date for a particular local market area to a date up to three months before or after the date originally determined (giving the Government the flexibility to identify a six-month window for switch-over in a particular local market area);
- determine, by legislative instrument, the length of the simulcast period for metropolitan and non-remote regional licence areas (currently the simulcast period for such licence areas can be extended, by Regulations made under the BSA, but cannot be shortened); and
- vary the date of the end of the simulcast period for a particular licence area to a date up to three months before or after the date originally determined.
Any part of a licence area that is not determined by the Minister to be a “local market area” will switch-over at the end of the simulcast period.

The Bill provides for a switch-over date for a particular local market area or licence area to be put back more than three months, but only in exceptional circumstances where the determined switch-over date would cause significant technical or engineering difficulties to one or more commercial or national broadcasters in that area, and those circumstances could not have reasonably been foreseen by the broadcaster six months before the switch-over date.

The Bill will confirm 31 December 2013 as the final date on which transmission of analog signals must cease, except in the exceptional circumstances mentioned above.

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

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

The Bill also amends the timing of two statutory reviews in the BSA to reflect the Government’s policy that switch-over will be completed by the end of 31 December 2013. These reviews are:

- a review under subsection 35A(1) of the BSA into the allocation of new commercial television broadcasting licences, and
- a review under subclause 60C(1) of Schedule 4 to the BSA into content and captioning rules applicable to multi-channelled commercial television broadcasting services.

FINANCIAL IMPACT STATEMENT

This Bill is expected to have minimal impact on Commonwealth expenditure or revenue.
ABBREVIATIONS

The following abbreviations are used in this explanatory memorandum:

ACMA: Australian Communications and Media Authority

Bill: Broadcasting Legislation Amendment (Digital Television Switch-over) Bill 2008

BSA: Broadcasting Services Act 1992

LIA: Legislative Instruments Act 2003

Minister: Minister for Broadband, Communications and the Digital Economy
NOTES ON CLAUSES

Clause 1 – Short title

Clause 1 provides for the Bill, when enacted, to be cited as the Broadcasting Legislation Amendment (Digital Television Switch-over) Act 2008.

Clause 2 – Commencement

Clause 2 provides that each provision of the Bill specified in column 1 of the table in clause 2 will commence, or will be taken to have commenced, on the day or at the time specified in column 2 of that table.

Item 1 of the table provides that clauses 1 to 3, and anything in the Bill that is not covered in the table, will commence on the day on which the Bill receives the Royal Assent.

Item 2 of the table provides that Schedule 1 to the Bill will commence the day after the Bill receives the Royal Assent. Schedule 1 to the Bill would amend provisions in the BSA that require the Minister to cause certain reviews to be conducted. The reviews relate to the allocation of new commercial television broadcasting licences and to the content and captioning rules applicable to multi-channelled commercial television broadcasting services.

Item 3 of the table in clause 2 provides that Schedule 2 to the Bill will commence on the 60th day after the day on which the Bill receives the Royal Assent. This 60 day lag period is intended to provide the ACMA with sufficient time to amend the Commercial Television Conversion Scheme 1999 and the National Television Conversion Scheme 1999 to take account of amendments to the BSA made by Schedule 2 to the Bill.

Clause 3 – Schedule(s)

Clause 3 provides that each Act specified in a Schedule to the Bill is amended or repealed as set out in the Schedule concerned. There are two Schedules to the Bill, both of which provide for amendments to the BSA.
Schedule 1 – Amendments relating to reviews

Item 1 – Subsection 6(1) (definition of earliest digital television switch-over day)

Item 1 of Schedule 1 would repeal the definition of “earliest digital television switch-over day” in subsection 6(1) of the BSA. The repeal is a consequence of the amendments made by items 2 and 3 of Schedule 1 to the Bill, discussed below, which remove the only two examples of the phrase “earliest digital television switch-over day” (apart from the definition itself) from the BSA.

Item 2 – Subsection 35A(1)

Item 2 would amend subsection 35A(1) of the BSA to replace “Before the earliest digital television switch-over day” with “Before 1 January 2012”.

Subsection 35A(1) requires the Minister to cause a review to be conducted into the allocation of new commercial television broadcasting licences. Specifically, the review must be about whether one or more commercial television broadcasting licences should be allocated under section 36 of the BSA for a particular area or areas and, if so, what variations should be made to licence area plans in force under section 26.

Currently, the Minister must cause the review to be conducted before the “earliest digital television switch-over day”, which means the earliest day on which a simulcast period (within the meaning of Schedule 4 to the BSA) ends. The Government wishes the timing of the review to reflect the Government’s policy to complete switch-over by the end of 31 December 2013. Accordingly, item 2 would specify 1 January 2012 as the date by which the Minister must cause the review to be conducted.

Item 3 – Subclause 60C(1) of Schedule 4

Item 3 would amend subclause 60C(1) of Schedule 4 to the BSA to replace “At least one year before the earliest digital television switch-over day” with “Before 1 January 2010”.

Subclause 60C(1) of Schedule 4 to the BSA is another provision that requires the Minister to cause a review to be conducted. In this case the review must consider the operation of Part 9 of the BSA, and clause 38 of Schedule 4 to the BSA, as they apply to standard and high definition multi-channelled commercial television broadcasting services. Part 9 contains rules dealing with program standards (eg standards for children’s programs and Australian content) and clause 38 of Schedule 4 contains rules relating to the provision of captioning services.

The Government wishes the timing of the review required under subclause 60C(1) of Schedule 4 to the BSA to reflect the Government’s policy to complete switch-over by the end of 31 December 2013. Accordingly, item 3 would specify 1 January 2010 as the date by which the Minister must cause the review to be conducted.
Schedule 2 – Other amendments

Item 1 - Paragraph 7(1)(m) of Schedule 2

Item 1 of Schedule 2 to the Bill would amend paragraph 7(1)(m) of Schedule 2 to the BSA, which is a standard licence condition applicable to all commercial television broadcasting licences. The licence condition provides that where there is a simulcast period for a particular licence area (the meaning of ‘simulcast period’ is explained below), a licensee must not broadcast a program in standard definition digital mode in the licence area without providing a corresponding analog broadcast.

A simulcast period, broadly, is a transitional period relating to a particular area throughout which national broadcasters and commercial television broadcasting licensees operating in the area must transmit simultaneously in both analog and standard definition digital mode (see Division 7 of Part A and Division 6 of Part B of the Commercial Television Conversion Scheme 1999, Division 6 of Part A and Division 6 of Part B of the National Television Conversion Scheme 1999).

The proposed amendment would carve out “digital-only local market areas” (see item 4 below) from the operation of the standard licence condition in paragraph 7(1)(m). In other words, the prohibition on commercial television broadcasting licensees broadcasting programs in digital mode without a corresponding analog version will not apply in any part of a licence area that has been determined by the Minister to be a digital-only local market area. It would not make sense for the condition in paragraph 7(1)(m) to apply to digital-only local market areas because there will not be any analog transmissions in such areas.

Items 2 and 3 - Clause 2 of Schedule 4

Items 2 and 3 of Schedule 2 to the Bill would insert definitions of “digital-only local market area” and “local market area”, respectively, into clause 2 of Schedule 4 to the BSA. Both definitions refer to proposed new clause 5F (see item 4 below).

Item 4 - At the end of Part 1 of Schedule 4

Item 4 would insert a new clause 5F (“Local market areas and digital-only local market areas”) at the end of Part 1 of Schedule 4 to the BSA.

Proposed new clause 5F is central to the Bill, and to the ability of the Government to provide for a region by region switch-over based on geographical areas other than licence areas. The concepts and regulatory mechanisms introduced by clause 5F are intended to allow multiple switch-over times within a single licence or coverage area, and therefore to facilitate a timetable for switch-over that recognises that a single licence area may contain a variety of local geographic, technical and market circumstances. Any part of a
licence area that is not determined to be a local market area will switch-over at the end of the simulcast period in accordance with proposed clause 6A (see item 12).

Subclause 5F(1) would provide for the Minister, by legislative instrument, to determine that a specified area is a “local market area” (paragraph 5F(1)(a)) and that the area will become a “digital-only local market area” at a specified time (paragraph 5F(1)(b)).

A local market area must be wholly included within a licence area (subclause 5F(2)), and a determination under subclause 5F(1) is irrevocable (subclause 5F(4)). This is intended to provide certainty for industry, in planning for digital switch-over, and also for consumers, in understanding by when they must obtain equipment suitable to receive digital television transmissions. The Minister must consult the ACMA before making or varying a determination under subclause 5F(1) (subclause 5F(11)).

A time specified for a local market area to become a digital-only local market area must fall within the simulcast period for the licence area concerned (subclause 5F(3)). A time specified later than the end of the simulcast period for the licence area concerned would make the determination inconsistent with the relevant simulcast period. In other words, it would not make sense for a local market area to become a digital-only local market area after the end of the simulcast period, because the whole licence area would have already switched to digital-only transmission.

Subclauses 5F(5) – (10) deal with the Minister’s ability to vary a subclause 5F(1) determination. Subclauses 5F(5) and (6) provide that the Minister may vary a subclause 5F(1) determination but must not do so retrospectively. A retrospective variation of a determination would place licensees in inadvertent breach of their obligations under the BSA.

Subclause 5F(7) provides that the time specified in a varied subclause 5F(1) determination must not be earlier than 3 months before the time specified in the original determination. In other words, once the Minister has determined the date upon which a local market area will become a “digital-only local market area”, the Minister will be prevented from bringing that date forward by more than three months.

Subclause 5F(8) operates in a similar way to 5F(7) except that it sets a limit on how far back the date for switch-over specified in a varied determination may be moved. The time specified in a subclause 5F(1) determination as varied must not be later than 3 months after the time specified in the original determination. Therefore, once the Minister has determined for the first time the date upon which a local market area will become a “digital-only local market area”, the Minister will be prevented from pushing that date back by more than three months, except in the limited circumstances set out in subclause 5F(9) discussed below.

The combined effect of subclauses 5F(7) and (8) would restrict the Minister’s ability to vary a determination setting the date on which a local market area become a digital-only local market area to a 6 month window (ie 3 months either side of the date specified in
the original determination). This restriction is intended to strike a balance between, on the one hand, providing sufficient flexibility to take account of changing circumstances and, on the other, providing an appropriate level of certainty for industry and consumers.

The following is a hypothetical example of how the scheme would work. The Minister might determine the date upon which a particular local market area will become a digital-only local market area to be 1 July 2011. At a time closer to switch-over in that area the Minister might vary the switch-over date (for example from 1 July 2011 to 31 May 2011) in response to advice from the Digital Switchover Taskforce and the ACMA that the switch-over process is going well and the area will be ready to switch-off analog towards the beginning of the six month window.

Subclause 5F(9) would set out particular circumstances in which the restriction in subclause 5F(8) (ie on the Minister’s ability to vary a determination to defer the switch-over date for a local market area by a maximum of three months) would not apply. This exception is intended to safeguard against the possibility of significant and unforeseen technical difficulties. Subclause 5F(8) would not apply if:

- the time for switch-over specified in the determination would be likely to result in significant difficulties of a technical or engineering nature for a commercial television broadcasting licensee operating in the licence area concerned or for a national broadcaster; and
- those difficulties could not reasonably have been foreseen by the licensee or broadcaster as at 6 months before the time specified for switch-over in the determination.

If those tests are satisfied then the Minister may vary the determination to push back the switch-over date beyond the 3 month window that would otherwise result from the operation of subclause 5F(8). An example of when the exception in subclause 5F(9) might apply is a lightning strike that destroyed or damaged a transmission tower such that it could not be repaired or replaced in time to meet the switch-over timetable. The exception is not intended to cover, for example, known transmission and reception issues which are expected to be addressed as part of the overall switch-over program.

Subclause 5F(10) provides that subclause 5F(5), which explicitly states that the Minister may vary a subclause 5F(1) determination, does not limit the application of subsection 33(3) of the *Acts Interpretation Act 1901* to other instruments made under the Act. Subsection 33(3) deals with the proper construction of powers to make these instruments.

**Item 5 - Subparagraph 6(3)(c)(ii) of Schedule 4**

Clause 6 of Schedule 4 to the BSA sets out the framework for the making by the ACMA of a scheme for the conversion of commercial television broadcasting services from analog to digital mode. The ACMA has made a scheme as required, the *Commercial Television Conversion Scheme 1999.*
Subclause 6(3) sets out the policy objectives to which the scheme must be directed. One objective, specified in paragraph 6(3)(c), is that there should be a transitional period known as the simulcast period. Subparagraph (ii) provides that the simulcast period should run for 8 years or for such longer period as is prescribed (ie prescribed by Regulation).

Item 5 of Schedule 2 to the Bill would repeal subparagraph 6(3)(c)(ii) of Schedule 4 to the BSA. As a consequence, the Broadcasting Services (Extension of Simulcast Period) Regulations 2007 will also be repealed. Item 5 would substitute the subparagraph with a provision stating that the simulcast period for a metropolitan licence area should run for 9 years, or such other period as is determined by the Minister under proposed subclause 6A(1). It would also insert a new subparagraph 6(3)(c)(iia) stating that the simulcast period for a regional licence area should run for 8 years or such other period as is determined by the Minister under proposed subclause 6A(2). Proposed subclauses 6A(1) and (2) are discussed in item 12 below.

The change from 8 to 9 years duration for the simulcast period in metropolitan licence areas reflects the Government’s temporary extension of the simulcast period under existing legislation to 31 December 2009, achieved by the Broadcasting Services (Extension of Simulcast Period) Regulations 2007, which was intended to allow time for the Digital Switchover Taskforce and industry to develop a detailed switch-over timetable.

Enabling the Minister to determine the length of the simulcast period for a particular licence area, rather than for that length to be prescribed by Regulations, would provide increased flexibility to enable a staggered region-by-region switch-over. The current situation, where the length of the simulcast period can be extended by Regulations but cannot be shortened, limits the ability of the Government to respond quickly to specific issues relating to digital switch-over in local areas.

**Item 6 - Paragraph 6(3)(c) of Schedule 4**

Item 6 of Schedule 2 to the Bill would amend the BSA to prevent paragraph 6(3)(c) of Schedule 4 applying to any part of a licence area determined by the Minister to be a digital-only local market area. The proposed amendment is one of a number of similar amendments to subclause 6(3) of Schedule 4 designed to facilitate the setting of different analog switch off dates in different parts of a single licence area.

As discussed in item 5 above, subclause 6(3) of Schedule 4 to the BSA sets out the policy objectives to be pursued by the commercial television conversion scheme made by the ACMA. One such objective is that there should be a transitional period for a licence area, known as the simulcast period, during which commercial television broadcasting licensees must transmit in both analog and standard definition digital mode.

The effect of the amendment made by this item 6 would be to carve out “digital-only local market areas” (see item 4) from the policy objective specified in paragraph 6(3)(c).
The objective to be pursued by the commercial television conversion scheme, therefore, would be to require commercial television broadcasting licensees operating in a licence area during the simulcast period to transmit simultaneously in analog and digital mode, except in those parts of the licence area specified as digital-only local market areas.

**Item 7 - Paragraphs 6(3)(f) and (g) of Schedule 4**

Item 7 of Schedule 2 to the Bill would amend the BSA to prevent paragraphs 6(3)(f) and 6(3)(g) of Schedule 4 from applying to any part of a licence area that has been determined by the Minister to be a digital-only local market area.

Subclause 6(3) of Schedule 4 to the BSA sets out objectives to be pursued by the commercial television conversion scheme made by the ACMA. Paragraph 6(3)(f) specifies the objective that, during the simulcast period for a licence area, the transmission of a commercial television broadcasting service in standard definition digital mode in a licence area should achieve the same level of coverage and potential reception quality as the transmission in analog mode in that area. Paragraph 6(3)(g) specifies that, as far as is practicable, there should be co-location of the transmitters used for the digital and analog services within a licence area.

The effect of the amendment made by item 7 would be to carve out “digital-only local market areas” (see item 4) from the policy objectives specified in paragraphs 6(3)(f) and (g). In other words, the commercial television conversion scheme need only pursue those objectives in so much of a licence area as is not a digital-only local market area. The amendment would facilitate the setting of different analog switch-off dates in different parts of a single licence area.

**Item 8 – After paragraph 6(3)(g) of Schedule 4**

Item 8 of Schedule 2 to the Bill would insert a new paragraph into subclause 6(3) of Schedule 4 to the BSA (which sets out the policy objectives to be pursued by the commercial television conversion scheme made by the ACMA).

The new policy objective would be that, during the simulcast period for a licence area, no commercial television broadcasting services should be transmitted in analog mode in any part of the area that has been determined by the Minister to be a digital-only local market area. This amendment will ensure that the commercial television conversion scheme reflects the policy that analog transmission should cease at the point at which an area becomes a digital-only local market area.

**Item 9 – Paragraph 6(3)(j) of Schedule 4**

Item 9 of Schedule 2 to the Bill would amend the BSA to prevent paragraph 6(3)(j) of Schedule 4 from applying to any part of a licence area that has been determined by the Minister to be a digital-only local market area.
Subclause 6(3) of Schedule 4 to the BSA sets out objectives to be pursued by the commercial television conversion scheme made by the ACMA. Paragraph 6(3)(j) specifies the objective that, after the end of the simulcast period for a licence area, the transmission of a commercial television broadcasting service in standard definition digital mode in that area should achieve the same level of coverage and potential reception quality as was achieved by the analog transmission immediately prior to switch-over.

The effect of the amendment made by item 9 would be to carve out “digital-only local market areas” (see item 4) from the policy objective specified in paragraph 6(3)(j). In other words, the commercial television conversion scheme need only pursue the paragraph 6(3)(j) objective (that post switch-over digital transmission should achieve the same level of coverage and potential reception quality as was achieved by analog transmission immediately prior to switch-over) in so much of the relevant licence area as is not a digital-only local market area.

Digital-only local market areas do not need to pursue this objective because analog transmission will have already ceased in those areas. Digital-only local market areas would be subject to a new policy objective (see item 10 below).

**Item 10 – After paragraph 6(3)(j) of Schedule 4**

Item 10 of Schedule 2 to the Bill would insert a new paragraph into subclause 6(3) of Schedule 4 to the BSA (which sets out the policy objectives to be pursued by the commercial television conversion scheme made by the ACMA).

The new policy objective would be that, after a local market area becomes a digital-only local market area, the transmission of a commercial television broadcasting service in standard definition digital mode in that area should achieve the same level of coverage and potential reception quality as was achieved by the analog transmission immediately prior to the switch-over in that area.

**Item 11 – At the end of subclause 6(7A) of Schedule 4**

Item 11 would insert a note at the end of subclause 6(7A) of Schedule 4 to the BSA. The note is intended to assist readers by referring them to clause 6B of Schedule 4. Subclause 6(7A) relates to the length of the simulcast period for remote licence areas. Proposed new clause 6B would impose certain restrictions on the ACMA’s ability to determine a period for the purposes of paragraph 6(7A)(b) and so is relevant to any consideration of subclause 6(7A).

**Item 12 – After clause 6 of Schedule 4**

Item 12 would insert new clauses 6A and 6B into Schedule 4 to the BSA.

The new clause 6A would give the Minister power to determine the duration of the simulcast period for metropolitan and regional licence areas, subject to certain
restrictions. The duration of the simulcast period specified by the Minister is a policy objective to which the commercial television conversion scheme made by the ACMA must be directed.

Subclauses 6A(1) and (2), respectively, would provide for the Minister, by legislative instrument, to determine a period for the purposes of subparagraphs 6(3)(c)(ii) and (iiia) of Schedule 4. Subparagraphs 6(3)(c)(ii) and (iiia), discussed at item 5 above, provide that the simulcast period for a metropolitan licence area should run for 9 years, or such other period as is determined by the Minister under proposed subclause 6A(1) and, for a regional licence area, for 8 years or such other period as is determined by the Minister under proposed subclause 6A(2).

Determinations under subclause 6A(1) or 6A(2) would be irrevocable (subclauses 6A(5) and 6A(6)). This would provide certainty for industry in planning for digital switch-over and for consumers in knowing by when they must have equipment suitable to receive digital television transmissions. The Minister would be required to consult the ACMA before making or varying a determination under subclause 6A(1) or 6A(2).

The Minister’s ability to make and vary instruments under subclause 6A(1) or 6A(2) (ie determining the length of the simulcast period to be reflected in the commercial television conversion scheme made by the ACMA) is subject to a number of particular restrictions. The restrictions are similar to those proposed in relation to the Minister’s ability to specify and vary local market areas and digital-only local market areas (see item 4 above).

Proposed subclauses 6A(3) and (4) would provide that a period determined under subclause 6A(1) or 6A(2) must end before the end of 31 December 2013. This implements the Government’s objective of total switch-over by the end of 2013. There are certain circumstances in which the restrictions in subclauses 6A(3) and 6A(4) would not apply, however, and these are discussed below in relation to subclause 6A(11).

Subclauses 6A(7)-(11) deal with the Minister’s ability to vary a subclause 6A(1) or 6A(2) determination. Subclauses 6A(7) and 6A(8) provide that the Minister may vary a subclause 6A(1) or 6A(2) determination but must not do so after the end of the period specified in the determination. This is intended to prevent retrospective variation which could place licensees in inadvertent breach of their obligations under the Act.

Subclause 6A(9) provides that the end of the period specified in a subclause 6A(1) or 6A(2) determination that has been varied must not be earlier than 3 months before the end of the period specified in the original determination. In other words, once the Minister has determined the simulcast period for a metropolitan or regional licence area, the Minister will be prevented from bringing the end of that period forward by more than three months.

Subclause 6A(10) operates in a similar way to subclause 6A(9) except that it sets a limit on pushing back the end of the simulcast period. The end of the period specified in a
varied subclause 6A(1) or 6A(2) determination must not be later than 3 months after the end of the period specified in the original determination (or the end of 31 December 2013, whichever is the earlier). Therefore, once the Minister has determined the end of the simulcast period for the first time, the Minister will be prevented from pushing that date back beyond 3 months, or 31 December 2013, except in the limited circumstances set out in subclause 6A(11) discussed below. By way of example, a simulcast period initially specified to end on 1 July 2013 could be pushed back to 1 October 2013, but a period initially specified to end on 1 December 2013 could only be pushed back to the end of 31 December 2013 (ie not for the full 3 months).

The combined effect of subclauses 6A(9) and (10) would restrict the Minister’s ability to vary a determination setting the end of the simulcast period to a 6 month window (ie 3 months either side of the date specified in the original determination), subject to an ultimate date of 31 December 2013. This restriction is intended to strike a balance between, on the one hand, providing sufficient flexibility to take account of changing circumstances and, on the other, providing an appropriate level of certainty for industry and consumers.

Subclause 6A(11) would set out particular circumstances in which the restrictions in subclauses 6A(3), 6A(4) and 6A(10) (ie on the Minister’s ability to vary the length of the simulcast period specified in a subclause 6A(1) or 6A(2) determination) would not apply. These subclauses prevent the Minister from determining a period under subclause 6A(1) or 6A(2) that ends after 31 December 2013 (subclauses 6A(3) and 6A(4)) and from varying a determination under subclause 6A(1) or 6A(2) to defer switch-over beyond 3 months or the end of 31 December 2013 (subclause 6A(10)).

The exception is intended to safeguard against the possibility of significant and unforeseeable technical difficulties. As such, subclause 6A(11) provides that the restrictions in subclauses 6A(3), 6A(4) and 6A(10) would not apply to a variation of a determination under subclause 6A(1) or 6A(2) in circumstances where:

- the end of the simulcast period specified in the subclause (1) or (2) determination would be likely to result in significant difficulties of a technical or engineering nature for a commercial television broadcasting licensee operating in the licence area concerned or for a national broadcaster;
- those difficulties could not reasonably have been foreseen by the licensee or broadcaster as at 6 months before the time specified for the end of the simulcast period; and
- the date specified in the varied determination as the end of the simulcast period is not later than the end of 30 June 2014.

In circumstances where those tests are satisfied the Minister may vary the determination to push back the end of the simulcast period beyond the end dates that would otherwise be imposed by subclauses 6A(3), 6A(4) and 6A(10).

Although subclause 6A(11) provides a safeguard to guard against significant and unforeseeable technical or engineering difficulties, it also imposes an overriding
restriction that a simulcast period determined in a subclause 6A(1) or 6A(2) instrument must end before the end of 30 June 2014 in all circumstances. As a result, 30 June 2014 is the absolute last date by which total digital switch-over must occur, while noting that only under exceptional circumstances can it be extended past 31 December 2013.

Subclause 6A(12) provides that subclause 6A(7), which explicitly states that the Minister may vary a subclause 6A(1) or 6A(2) determination, does not limit the application of subsection 33(3) of the Acts Interpretation Act 1901 to other instruments made under the Act. Subsection 33(3) deals with the proper construction of powers to make such instruments.

Item 12 of Schedule 2 to the Bill would also insert new clause 6B into Schedule 4 to the BSA. Clause 6B would require the end of a simulcast period for broadcasters in the remote licence areas (ie Remote Western Australia and Remote Central Eastern Australia), as determined by the ACMA, to be no later than the end of 31 December 2013. Under the legislation, the ACMA is responsible for determining the simulcast period and switch-over dates for the remote licence areas. This provision ensures that the remote licence areas are switched to digital-only in a similar timeframe to the rest of Australia.

Subclause 6B(1) sets the date of 31 December 2013 for the completion of switch-over in the remote licence areas.

Subclause 6B(2) provides that the restriction on the ACMA’s ability to determine a period under subclause 6B(1) does not apply in circumstances (if any) specified in a legislative instrument made by the Minister. No restrictions are placed on the Minister’s ability to specify circumstances in which the ACMA would be free to extend the simulcast period for remote licence areas beyond 31 December 2013, unlike the provisions for metropolitan and regional licence area switch-over. This recognises the different circumstances and technical issues experienced in remote licence area broadcasting.

**Item 13 - Paragraph 19(3)(c) of Schedule 4**

Item 13 of Schedule 2 to the Bill would amend the BSA to prevent paragraph 19(3)(c) of Schedule 4 from applying to any part of a coverage area that has been determined by the Minister to be a digital-only local market area.

The proposed amendment is one of a number of similar amendments to subclause 19(3) of Schedule 4 designed to facilitate the setting of different analog switch-off dates in different parts of a single coverage area. The amendments to subclause 19(3), which relate to national television broadcasting services, are similar to the amendments made to subclause 6(3) in relation to commercial television broadcasting services.

Clause 19 of Schedule 4 to the BSA sets out the framework for the making by the ACMA of a scheme for the conversion of national television broadcasting services from analog to
digital mode. The ACMA has made a scheme as required, the *National Television Conversion Scheme 1999*. Subclause 19(3) of Schedule 4 sets out the policy objectives to which the scheme must be directed.

One such objective is that there should be a transitional period for a coverage area, known as the simulcast period, during which each national broadcaster (ie the ABC and the SBS) must transmit in both analog and standard definition digital mode.

The effect of the amendment made by item 13 would be to carve out “digital-only local market areas” from the policy objective specified in paragraph 19(3)(c). The objective to be pursued by the national television conversion scheme, therefore, would be to require national broadcasters operating in a coverage area during the simulcast period to transmit simultaneously in analog and digital mode, except in those parts of the coverage area specified as digital-only local market areas.

**Item 14 – Paragraphs 19(3)(f) and (g) of Schedule 4**

Item 14 of Schedule 2 to the Bill would amend the BSA to prevent paragraphs 19(3)(f) and 19(3)(g) of Schedule 4 from applying to any part of a coverage area that has been determined by the Minister to be a digital-only local market area.

Subclause 19(3) of Schedule 4 to the BSA sets out objectives to be pursued by the national television conversion scheme made by the ACMA. Paragraph 19(3)(f) specifies the objective that, during the simulcast period for a coverage area, the transmission of a national television broadcasting service in standard definition digital mode in a coverage area should achieve the same level of coverage and potential reception quality as the transmission in analog mode in that area. Paragraph 19(3)(g) specifies that, as far as is practicable, there should be co-location of the transmitters used for the digital and analog services within a licence area.

The effect of this amendment would be to carve out “digital-only local market areas” from the policy objectives specified in paragraphs 19(3)(f) and (g). In other words, the national television conversion scheme need only pursue those objectives in so much of a coverage area as is not a digital-only local market area.

**Item 15 – After paragraph 19(3)(g) of Schedule 4**

Item 15 of Schedule 2 to the Bill would insert a new paragraph into subclause 19(3) of Schedule 4 to the BSA (which sets out the policy objectives to be pursued by the national television conversion scheme made by the ACMA).

The new policy objective would be that, during the simulcast period for a coverage area, no national television broadcasting services should be transmitted in analog mode in any part of the area that has been determined by the Minister to be a digital-only local market area.
**Item 16 – Paragraph 19(3)(j) of Schedule 4**

Item 16 of Schedule 2 to the Bill would amend the BSA to prevent paragraph 19(3)(j) of Schedule 4 from applying to any part of a coverage area that has been determined by the Minister to be a digital-only local market area.

Subclause 19(3) of Schedule 4 to the BSA sets out objectives to be pursued by the national television conversion scheme made by the ACMA. Paragraph 19(3)(j) specifies the objective that, after the end of the simulcast period for a coverage area, the transmission of a national television broadcasting service in standard definition digital mode in that area should achieve the same level of coverage and potential reception quality as was achieved by the analog transmission immediately prior to the switch-over.

The effect of the amendment made by this item 16 would be to carve out “digital-only local market areas” (see item 4) from the policy objective specified in paragraph 19(3)(j). In other words, the national television conversion scheme need only pursue the paragraph 19(3)(j) objective (that post switch-over digital transmission should achieve the same level of coverage and potential reception quality as was achieved by analog transmission immediately prior to switch-over) in so much of the relevant coverage area as is not a digital-only local market area.

Digital-only local market areas do not need to pursue this objective because analog transmission will have already ceased in those areas. Digital-only local market areas would be subject to a new policy objective (see item 17 below).

**Item 17 – After paragraph 19(3)(j) of Schedule 4**

Item 17 of Schedule 2 to the Bill would insert a new paragraph into subclause 19(3) of Schedule 4 to the BSA (which sets out the policy objectives to be pursued by the national television conversion scheme made by ACMA).

The new policy objective would be that, after a local market area becomes a digital-only local market area, the transmission of a national television broadcasting service in standard definition digital mode in that area should achieve the same level of coverage and potential reception quality as was achieved by the analog transmission immediately prior to the switch-over.

**Items 18, 19 and 20 – Subclause 35(1) of Schedule 4**

Items 18, 19 and 20 of Schedule 2 to the Bill would amend subclause 35(1) of Schedule 4 to the BSA.

Subclause 35(1) deals with simulcasting requirements for national broadcasters. It provides that a national broadcaster must not, during a simulcast period for a coverage area, broadcast a television program in standard definition digital mode without simultaneously broadcasting the program in analog mode in the coverage area.
The effect of the amendments made by items 18, 19 and 20 would be to carve out digital-only local market areas from the simulcasting requirements set out in subclause 35(1) of Schedule 4. Therefore, national broadcasters would be required to broadcast simultaneously in analog and standard definition digital mode only in so much of a coverage area that is not a digital-only local market area. This is consistent with the goal that analog transmission will cease at the point at which an area becomes a digital-only local market area.

**Item 21 – Variation of commercial television conversion scheme**

Item 21 of Schedule 2 to the Bill is an application provision that applies to variations to the commercial television conversion scheme made by the ACMA in response to the changes to the BSA made by Schedule 2 to the Bill.

More specifically, item 21 applies to variations that deal with transitional and/or consequential matters (in connection with the amendments made by Schedule 2 to the Bill) made before, or within 30 days after, the commencement of item 21. Schedule 2 to the Bill will commence on the 60th day after the day on which the Bill receives the Royal Assent (clause 2) and so item 21 will apply to variations made within 90 days from the day upon which the Bill receives the Royal Assent.

The effect of item 21 on variations to which it applies would be to:

- exclude the operation of clause 18 of Schedule 4 to the BSA, which would otherwise require the ACMA, before varying the commercial television conversion scheme, to consult with the public, commercial television broadcasting licensees, national broadcasters and transmission tower owners/operators; and
- prevent the ACMA from making the variation unless a copy has been made available on the ACMA website for at least 5 business days.

Amendments to the BSA by this Bill would not represent a substantive change in Government policy for the achievement of digital switch-over. Rather, these largely technical and procedural amendments are intended to provide for a more effective switch-over process. Extensive public consultation has already occurred. As such, it is not considered necessary for the ACMA to undertake further consultation under clause 18 of Schedule 4 in relation to consequential variations to the commercial television conversion scheme.

**Item 22 – Variation of national television conversion scheme**

Item 22 of Schedule 2 to the Bill is an application provision. It applies to variations to the national television conversion scheme made by the ACMA in response to the changes to the BSA made by Schedule 2 to the Bill.
Consistent with item 21 above, item 22 applies to variations that deal with transitional and/or consequential matters (in connection with the amendments made by Schedule 2 to the Bill) made before, or within 30 days after, the commencement of item 22. The effect is that item 22 will apply to variations made within 90 days from the day upon which the Bill receives the Royal Assent.

Item 22 has three consequences for variations to the national television conversion scheme of the type specified. It would:

- exclude the operation of clause 32 of Schedule 4 to the BSA, which would otherwise require a variation to be approved in writing by the Minister before taking effect;
- exclude the operation of clause 33 of Schedule 4 to the BSA, which would otherwise require the ACMA to consult with the public, commercial television broadcasting licensees, national broadcasters and transmission tower owners/operators in relation to a variation; and
- prevent the ACMA from making the variation without making a copy available on the ACMA website for at least 5 business days.

Amendments to the BSA by this Bill would not represent a substantive change in Government policy for the achievement of digital switch-over. Rather, these largely technical and procedural amendments are intended to provide for a more effective switch-over process. Extensive public consultation has already occurred. As such, it is not considered necessary for the ACMA to undertake further public consultation in relation to consequential variations to the national television conversion scheme, nor for the variations to receive prior approval from the Minister before coming into effect.