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

No. , 2008

(Broadband, Communications and the Digital Economy)

A Bill for an Act to amend the law relating to broadcasting, and for other purposes
Contents

1 Short title ...........................................................................................1
2 Commencement.................................................................................1
3 Schedule(s) ........................................................................................2

Schedule 1—Amendments relating to reviews 3

Broadcasting Services Act 1992 3

Schedule 2—Other amendments 4

Broadcasting Services Act 1992 4
A Bill for an Act to amend the law relating to broadcasting, and for other purposes

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the Broadcasting Legislation Amendment (Digital Television Switch-over) Act 2008.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.
<table>
<thead>
<tr>
<th>Provision(s)</th>
<th>Commencement</th>
<th>Date/Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table</td>
<td>The day on which this Act receives the Royal Assent.</td>
<td></td>
</tr>
<tr>
<td>2. Schedule 1</td>
<td>The day after this Act receives the Royal Assent.</td>
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</tr>
<tr>
<td>3. Schedule 2</td>
<td>The 60th day after the day on which this Act receives the Royal Assent.</td>
<td></td>
</tr>
</tbody>
</table>

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
Schedule 1—Amendments relating to reviews

Broadcasting Services Act 1992

1 Subsection 6(1) (definition of earliest digital television switch-over day)
   Repeal the definition.

2 Subsection 35A(1)
   Omit “Before the earliest digital television switch-over day”, substitute “Before 1 January 2012”.

3 Subclause 60C(1) of Schedule 4
   Omit “At least one year before the earliest digital television switch-over day”, substitute “Before 1 January 2010”.
Schedule 2—Other amendments

Broadcasting Services Act 1992

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

Omit “in that area”, substitute “in so much of that area as is not a digital-only local market area”.

2 Clause 2 of Schedule 4

Insert:

digital-only local market area has the meaning given by clause 5F.

3 Clause 2 of Schedule 4

Insert:

local market area has the meaning given by clause 5F.

4 At the end of Part 1 of Schedule 4

Add:

5F Local market areas and digital-only local market areas

(1) The Minister may, by legislative instrument:

(a) determine that a specified area is a local market area for the purposes of this Schedule; and

(b) determine that that area becomes a digital-only local market area for the purposes of this Schedule at a specified time.

(2) An area must not be specified under paragraph (1)(a) unless it is wholly included in a licence area.

(3) A time must not be specified under paragraph (1)(b) unless it falls within the simulcast period for the licence area concerned.

(4) A subclause (1) determination is irrevocable.
Variation

(5) The Minister may, by legislative instrument, vary a subclause (1) determination.

(6) The Minister must not vary a subclause (1) determination after the time specified in the determination.

(7) If there is a variation of a subclause (1) determination, the time specified in the varied determination must not be earlier than 3 months before the time specified in the determination as it stood before any variation of the determination was made.

(8) If there is a variation (the current variation) of a subclause (1) determination, the time specified in the varied determination must not be later than 3 months after the time specified in the determination as it stood before any variation of the determination was made.

(9) Subclause (8) does not apply if:
   (a) the time specified in the determination, as it stood before the current variation, would be likely to result in significant difficulties of a technical or engineering nature for:
      (i) a commercial television broadcasting licensee for the licence area concerned; or
      (ii) a national broadcaster; and
   (b) those difficulties could not reasonably have been foreseen by the commercial television broadcasting licensee or the national broadcaster, as the case requires, as at 6 months before the time specified in the determination as it stood before the current variation.

(10) Subclause (5) does not limit the application of subsection 33(3) of the Acts Interpretation Act 1901 to other instruments under this Act.

Consultation

(11) Before making or varying a subclause (1) determination, the Minister must consult the ACMA.

5 Subparagraph 6(3)(c)(ii) of Schedule 4

Repeal the subparagraph, substitute:
(ii) in the case of a metropolitan licence area—to run for 9 years or for such other period as is determined under subclause 6A(1) in relation to that area; and

(iiia) in the case of a regional licence area—to run for 8 years or for such other period as is determined under subclause 6A(2) in relation to that area; and

6 Paragraph 6(3)(c) of Schedule 4

Omit “in that area”, substitute “in so much of that area as is not a digital-only local market area”.

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

Omit “in that area” (wherever occurring), substitute “in so much of that area as is not a digital-only local market area”.

8 After paragraph 6(3)(g) of Schedule 4

Insert:

(ga) the objective that, during the simulcast period for a licence area, no transmissions of commercial television broadcasting services in analog mode are to be made in so much of that area as is a digital-only local market area;

9 Paragraph 6(3)(j) of Schedule 4

Omit “in that area” (wherever occurring), substitute “in so much of that area as was not a digital-only local market area”.

10 After paragraph 6(3)(j) of Schedule 4

Insert:

(ja) the objective that, after a local market area becomes a digital-only local market area, the transmission of a commercial television broadcasting service in SDTV digital mode in the digital-only local market area should achieve the same level of coverage and potential reception quality as was achieved by the transmission of that service in analog mode in the local market area immediately before the local market area became a digital-only local market area;

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

Add:
12 After clause 6 of Schedule 4

Insert:

6A Determination of simulcast period—metropolitan and regional licence areas

(1) The Minister may, by legislative instrument, determine a period for the purposes of the application of subparagraph 6(3)(c)(ii) to a specified metropolitan licence area.

(2) The Minister may, by legislative instrument, determine a period for the purposes of the application of subparagraph 6(3)(c)(iia) to a specified regional licence area.

(3) A period determined under subclause (1) must end before the end of 31 December 2013.

Note: See subclause (11).

(4) A period determined under subclause (2) must end before the end of 31 December 2013.

Note: See subclause (11).

(5) A subclause (1) determination is irrevocable.

(6) A subclause (2) determination is irrevocable.

Variation

(7) The Minister may, by legislative instrument, vary:
          (a) a subclause (1) determination; or
          (b) a subclause (2) determination.

(8) The Minister must not vary:
          (a) a subclause (1) determination; or
          (b) a subclause (2) determination; after the end of the period specified in the determination.

(9) If there is a variation of:
          (a) a subclause (1) determination; or
          (b) a subclause (2) determination;
the end of the period specified in the varied determination must not be earlier than 3 months before the end of the period specified in the determination as it stood before any variation of the determination was made.

(10) If there is a variation of:
   (a) a subclause (1) determination; or
   (b) a subclause (2) determination;
the end of the period specified in the varied determination must not be later than whichever is the earlier of the following:
   (c) the end of 31 December 2013;
   (d) 3 months after the end of the period specified in the determination as it stood before any variation of the determination was made.

Note: See subclause (11).

(11) If there is a variation (the current variation) of:
   (a) a subclause (1) determination; or
   (b) a subclause (2) determination;
subclauses (3), (4) and (10) do not apply, so long as:
   (c) the end of the period specified in the determination, as it stood before the current variation, would be likely to result in significant difficulties of a technical or engineering nature for:
      (i) a commercial television broadcasting licensee for the licence area concerned; or
      (ii) a national broadcaster; and
   (d) those difficulties could not reasonably have been foreseen by the commercial television broadcasting licensee or the national broadcaster, as the case requires, as at 6 months before the end of the period specified in the determination as it stood before the current variation; and
   (e) the end of the period specified in the varied determination is not later than the end of 30 June 2014.

(12) Subclause (7) does not limit the application of subsection 33(3) of the Acts Interpretation Act 1901 to other instruments under this Act.
Consultation

(13) Before making or varying:
   (a) a subclause (1) determination; or
   (b) a subclause (2) determination;
the Minister must consult the ACMA.

6B Determination of simulcast period—remote licence areas

(1) The ACMA must not determine a period for the purposes of paragraph 6(7A)(b) if the period ends after 31 December 2013.

(2) Subclause (1) does not apply in such circumstances (if any) as are specified in a legislative instrument made by the Minister.

13 Paragraph 19(3)(c) of Schedule 4

Omit “in that coverage area”, substitute “in so much of that coverage area as is not a digital-only local market area”.

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

Omit “in that area” (wherever occurring), substitute “in so much of that area as is not a digital-only local market area”.

15 After paragraph 19(3)(g) of Schedule 4

Insert:
   (ga) the objective that, during the simulcast period for a coverage area, no transmissions of national television broadcasting services in analog mode are to be made in so much of that area as is a digital-only local market area;

16 Paragraph 19(3)(j) of Schedule 4

Omit “in that area” (wherever occurring), substitute “in so much of that area as was not a digital-only local market area”.

17 After paragraph 19(3)(j) of Schedule 4

Insert:
   (ja) the objective that, after a local market area becomes a digital-only local market area, the transmission of a national television broadcasting service in SDTV digital mode in the digital-only local market area should achieve the same level
of coverage and potential reception quality as was achieved
by the transmission of that service in analog mode in the
local market area immediately before the local market area
became a digital-only local market area;

18 Subclause 35(1) of Schedule 4
Omit “in that area” (first occurring), substitute “in so much of that
coverage area as is not a digital-only local market area”.

19 Subclause 35(1) of Schedule 4
Omit “for that area” (first occurring), substitute “for that coverage
area”.

20 Subclause 35(1) of Schedule 4
Omit “in that area” (last occurring), substitute “in so much of that
coverage area as is not a digital-only local market area”.

21 Variation of commercial television conversion scheme
(1) This item applies to a variation by the ACMA of the commercial
television conversion scheme if:
    (a) the variation deals with transitional and/or consequential
        matters in connection with the amendments made by this
        Schedule; and
    (b) either:
        (i) the variation was made before the commencement of
            this item in accordance with section 4 of the Acts
            Interpretation Act 1901; or
        (ii) the variation is made within 30 days after the
            commencement of this item.
(2) Clause 18 of Schedule 4 to the Broadcasting Services Act 1992 does not
    apply to the variation.
(3) The ACMA must not make the variation unless a copy of the proposed
    variation was made available on the ACMA’s website for a period of at
    least 5 business days.

22 Variation of national television conversion scheme
(1) This item applies to a variation by the ACMA of the national television
    conversion scheme if:
(a) the variation deals with transitional and/or consequential matters in connection with the amendments made by this Schedule; and

(b) either:

(i) the variation was made before the commencement of this item in accordance with section 4 of the Acts Interpretation Act 1901; or

(ii) the variation is made within 30 days after the commencement of this item.

(2) Clauses 32 and 33 of Schedule 4 to the Broadcasting Services Act 1992 do not apply to the variation.

(3) The ACMA must not make the variation unless a copy of the proposed variation was made available on the ACMA’s website for a period of at least 5 business days.