BROADCASTING SERVICES AMENDMENT (DIGITAL TELEVISION) BILL 2012

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Broadband, Communications and the Digital Economy, Senator the Hon. Stephen Conroy)
The Broadcasting Services Amendment (Digital Television) Bill 2012 (the Bill) amends the Broadcasting Services Act 1992 (the BSA) to improve the regulatory framework for digital television services. This includes:

- facilitating earlier access, in particular circumstances, to the digital commercial satellite television services licensed under section 38C of the BSA (known as the Viewer Access Satellite Television (VAST)) in areas where it is considered viewers will not be able to receive adequate reception of all the applicable terrestrial digital commercial television services at the time of digital switchover;

- allowing for retransmission services provided digitally by third parties who represent commercial television broadcasting licensees to be taken into account by a scheme administrator when administering a conditional access scheme for the VAST services, and by the Australian Communications and Media Authority when it makes a declaration that an area is service-deficient (so that viewers in the area can access the VAST services);

- enabling the VAST licensees to provide their digital commercial television satellite services to specified external Territories of Australia;

- allowing licensees in the Remote Central and Eastern Australia terrestrial licence areas to nominate multiple places in their licence area by which their compliance with time-based broadcasting obligations will be assessed, so that those licensees can accommodate different input feeds from the VAST services for their terrestrial transmitters in different parts of their licence area;

- providing the Minister with greater flexibility to vary the timing of a simulcast period relating to a metropolitan or regional licence area, so that the variation may be more than three months earlier or later than the period originally specified (provided that the date determined as the end of the simulcast period is before 31 December 2013);

- providing the Minister with greater flexibility to vary the timing of when a local market area becomes a digital-only local market area, so that the variation may be more than three months earlier or later than the time originally specified.

**FINANCIAL IMPACT STATEMENT**

The amendments in this Bill will not of themselves result in any direct financial impact on the Government.
STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Broadcasting Services Amendment (Digital Television) Bill 2012

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Bill

The general purpose of the Bill is to make amendments to facilitate the switchover from analog to digital television and facilitate access to digital television.

The Bill makes amendments to the Broadcasting Services Act 1992 to facilitate earlier access, in particular circumstances, to the digital commercial satellite television services known as the Viewer Access Satellite Television (VAST). These services are licensed under section 38C of the Broadcasting Services Act 1992, and a conditional access scheme regulates public access to these services. The amendments allow the conditional access scheme administrator to determine specific areas in which viewers may immediately access the VAST service. Immediate access may be enabled because it is reasonable to expect that viewers in that area will not be able to receive adequate reception of terrestrial digital commercial television services at the time of digital switchover.

The Bill also makes amendments to the Broadcasting Services Act 1992 to allow:

- the VAST licensees to provide their digital commercial satellite television services to specified populated external Territories of Australia;
- digital retransmission services provided by third parties who represent commercial television broadcasting licensees to be taken into account for administering the conditional access scheme for the VAST services. These retransmission services would also be taken into account by the Australian Communications and Media Authority when it makes a declaration that an area is service-deficient (so that viewers in that area can access the VAST services);
- licensees in the Remote Central and Eastern Australia terrestrial licence areas (the RCEA) to nominate multiple places (rather than a single place) in their licence area by which their compliance with time-based broadcasting obligations will be assessed. This will allow those licensees to accommodate different input feeds from the VAST service for their terrestrial transmitters in different parts of their licence area;
- the Minister greater flexibility to vary the date for when digital switchover occurs in a licence area, or for when a specified area within a licence area commences digital-only transmissions (that is, becomes a digital-only local market area). The date specified by the Minister must fall before 31 December 2013.
Human rights implications

The Bill engages the following human rights:

The right to freedom of expression
The right to take part in cultural life

Australia is a signatory to the International Covenant on Civil and Political Rights (the ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). These two conventions are listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011. Article 19(2) of the ICCPR protects freedom of expression, including the right to seek, receive and impart information and ideas of all kinds, and the means of their dissemination. Article 15(1) of the ICESCR protects the right of everyone to take part in cultural life.

A number of the amendments in the Bill engage Article 15(1) of the ICESCR and Article 19(2) of the ICCPR.

The measures contained in the Bill that allow the administrator of a conditional access scheme to identify open access areas will make public access to digital commercial satellite television services easier. The measures are targeted at areas that are unlikely to receive adequate digital terrestrial transmissions. These measures will promote freedom of expression by improving the accessibility of television services that are delivered by means of satellite. Some television viewers in affected areas will also be eligible for government assistance to obtain satellite reception equipment for these television services.

Measures to extend the licence areas for particular commercial television broadcasting services delivered by satellite will facilitate public access to adequate digital television services in several external Territories of Australia. These external Territories do not currently have reliable access to a comprehensive range of high quality digital television services.

Measures to allow licensees in the RCEA to nominate multiple places in their licence area by which their compliance with time-based obligations in the broadcasting regulatory framework will be assessed facilitates those licensees to accommodate different input feeds from the VAST services for their terrestrial transmitters in different parts of their licence area. This will allow broadcasters to choose the most effective means of communication for their broadcasting service, taking into account the different time zones within their licence area, and to do so in a way that would allow for more tailored programming to Australian terrestrial viewers in remote Australia.

These amendments positively engage the rights protected by Article 15(1) of the ICESCR and Article 19(2) of the ICCPR as they will enhance the viewing experience for Australian audiences.
The rights of children

Australia is a signatory to the Convention on the Rights of the Child (the CRC). This convention is listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. Article 3(1) of the CRC provides that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. Article 3(2) provides that a child is to be afforded such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, State Parties shall take all appropriate legislative and administrative measures. Article 5 of the CRC also protects the rights, responsibilities and duties of parents and guardians, while Article 13 protects the child’s right to freedom of expression.

The *Broadcasting Services Act 1992* requires commercial television broadcasting licensees to comply with Children’s Television Standards. Among other things, these standards prohibit licensees from:

- broadcasting during a ‘C period’ television programs that are not ‘C programs’; and
- broadcasting during a ‘P period’ television programs that are not ‘P programs’.

‘P programs’ are television programs that are classified as suitable for viewing by preschool children, while ‘C programs’ are television programs that are classified as suitable for viewing by children (other than preschool children). ‘P periods’ and ‘C periods’ are particular times of day, nominated by or on behalf of the licensee, during which programs of that classification will be broadcast.

The Bill contains measures that allow licensees in the RCEA to nominate multiple places in their licence area for assessing their compliance with time-based broadcasting obligations. Because of these measures, a licensee in the RCEA will not breach the Children’s Television Standards regarding the broadcast of programs during C periods and P periods if the broadcast is consistent with the licensee’s nominations. Within the constraints noted below, a broadcaster could lawfully broadcast in nominated areas during C periods or P periods television programs that are not intended for viewing by young children. (For example, television programs classified ‘G’ are intended for a general audience and may not interest young children, while television programs classified ‘PG’ recommend parental guidance if viewed by children under 15 years of age.)

However, the period of time during which a broadcaster could potentially broadcast higher-classified programs during a lower classification zone is limited to the extent of the time difference between the place where the broadcast originates and the nominated place where the broadcast is received.

Similarly, the measures in this Bill will mean that a broadcast that is consistent with the RCEA broadcaster’s nominations will not breach the Commercial Television Industry Code of Practice as it relates to the prescribed times of day for broadcasting television programs with a particular classification. The current Commercial Television Industry Code of Practice provides that:
• during general viewing periods (‘G periods’), licensees should only broadcast television programs classified P, C, or G. All of these classifications denote that the program is suitable for children to watch;

• during parental guidance periods (‘PG periods’), licensees should only broadcast television programs classified, P, C, G, or PG. The PG classification denotes that the program is suitable for children to watch with adult supervision; and

• programs suitable only for mature audiences (aged 15 years or over) should only be broadcast at particular times of the day (generally between the hours of noon and 3pm, or after 8.30pm and before 5am).

For example, a broadcaster in the RCEA may source its input feed from a VAST service that operates according to the legal time in a place in Victoria, and may therefore nominate a place in its licence area within Victoria for assessing compliance with time-based broadcasting obligations for that particular service. This would mean that when daylight savings time is observed in Victoria, a broadcaster could for a short window of time broadcast on that service programs classified PG during a G classification zone in South Australia (for example on a weeknight from 6:30 pm until 7:30 pm, as this would be 7pm to 8pm in Victoria and therefore a PG classification zone).

The time zone measures in this Bill would engage the rights of children by affecting the way in which the Code and Standard operate to protect the best interests of the child by regulating when programs may be shown, having regard to the times of day when children are more likely to watch television.

Under the current broadcasting regulatory framework, licensees in the RCEA are currently able to nominate a single place in their licence area for assessing their compliance with time-based obligations in the broadcasting regulatory framework, to take account of the fact that the RCEA crosses Australian time zones. A broadcaster could therefore under the current legislation broadcast higher-classified programs during time periods when children are more likely to watch television provided it is in accordance with their nomination.

The measures in the Bill would allow remote broadcasters to nominate additional places in the licence area to facilitate different input feeds from the VAST services for their terrestrial transmitters in different parts of their licence area. In the absence of such a measure, the broadcaster would be constrained about how they can deliver their broadcasting services in accordance with the broadcasting licence. Such a constraint would likely result in a diminished quality of television services delivered to people residing in remote areas of Australia. This in turn would diminish those people’s enjoyment of their rights to communicate freely and to take part in cultural life.

Articles 3 and 5 of the CRC oblige State Parties to respect the duties, responsibilities and rights of the child’s parents or guardians when taking appropriate and necessary administrative and legislative measures in the best interests of children.

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.

Conclusion

This Bill is compatible with human rights because it advances the rights to freedom of expression and participation in cultural life. The measures that affect children’s access to television programs are consistent with the best interests of the child because the measures are reasonable, necessary and proportionate.
NOTES ON CLAUSES

Clause 1 – Short title

1. Clause 1 is a formal provision specifying the short title for the Act. When enacted, the Act is to be cited as the *Broadcasting Services Amendment (Digital Television) Act 2012*.

Clause 2 – Commencement

2. Clause 2 specifies when the Act commences. This Act will commence on the day after the Act receives the Royal Assent.

Clause 3 – Schedule(s)

3. Clause 3 provides that each Act specified in a Schedule to this Bill is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Act has effect according to its terms. Schedule 1 contains amendments to the *Broadcasting Services Act 1992*. 

Schedule 1 – Broadcasting Services Act 1992

4. Items 1 to 17 inclusive would amend the Broadcasting Services Act 1992 (the BSA).

Item 1 – Subsection 38C(1) (table item 1, column 2)
Item 2 – Subsection 38C(1) (table item 2, column 2)
Item 3 – Subsection 38C(1) (table item 3, column 2)

5. These items would amend the descriptions of the licence areas for the licences allocated under section 38C of the BSA. Section 38C authorises the delivery of commercial television broadcasting services by means of a satellite. The amendment would extend each licence area to include specified external Territories. Currently no external Territory of Australia is included in the licence area of a section 38C licensee. This means that licensees are not permitted by their licence to provide their service to an external Territory (unless one of the exceptions to licence area confined services, set out in subclause 7(2A) of Schedule 2 to the BSA, can be established).

6. Item 1 would amend item 1 in column 2 of the table in subsection 38C(1) of the BSA to include Norfolk Island within the South Eastern Australia TV3 licence area.

7. Item 2 would amend item 2 in column 2 of the table in subsection 38C(1) of the BSA to include the Coral Sea Islands Territory within the Northern Australia TV3 licence area.

8. Item 3 would amend item 3 in column 2 of the table in subsection 38C(1) of the BSA to include the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands within the Western Australia TV3 licence area.

9. These items will operate in conjunction with other amendments in this Schedule to the service authorisations for licences allocated under section 38C (see Item 4, which amends section 41CA of the BSA) and the conditional access scheme provisions in Part 9C of the BSA (see Items 5 and 6 in part).

Item 4 – After subsection 41CA(5)

10. Item 4 would amend section 41CA of the BSA to include a new subsection 41CA(5A) to clarify the interaction between the BSA and laws of the Norfolk Island about broadcasting services.

11. New subsection 41CA(5A) would provide that a commercial television broadcasting service licensed under section 38C of the BSA with a licence area that includes Norfolk Island may provide that service despite a law of Norfolk Island about broadcasting services. This new subsection makes clear that if for example a law of Norfolk Island purports to prohibit or limit the provision of a broadcasting service of a kind authorised by a licence under section 38C of the BSA, the service can be provided despite that law.
12. Part 9C of the BSA provides for the registration of a conditional access scheme for each licence area of a section 38C licensee (i.e. the South Eastern Australia TV3, Northern Australia TV3 and Western Australia TV3 licence areas). Each conditional access scheme sets out the rules relating to access to the commercial television satellite services licensed under section 38C in accordance with the statutory policy objectives described in sections 130ZB and 130ZBB of the BSA. Those statutory policy objectives are directed to whether viewers in areas or locations have adequate reception of applicable terrestrial digital commercial television broadcasting services (‘applicable services’).

13. Items 5 and 6 respectively repeal and replace paragraphs 130ZB(3)(a) and 130ZBB(3)(a) of the BSA and insert new paragraphs 130ZB(3)(aa) and (ab) and 130ZBB(3)(aa) and (ab).

14. New paragraph 130ZB(3)(a) would amend the first of the statutory policy objectives for a conditional access scheme relating to commercial television broadcasting services provided by satellite under a licence issued under section 38C for the South Eastern Australia TV3 and the Northern Australia TV3 licence areas. New paragraph 130ZBB(3)(a) would amend the first of the statutory policy objectives for a conditional access scheme relating to commercial television broadcasting services provided by satellite under a licence issued under section 38C for the Western Australia TV3 licence area.

15. The modified statutory policy objectives provide that a conditional access scheme relating to the commercial television services of a section 38C licensee is to specify the external Territory in the section 38C licensee’s licence area as a Category A reception area. A Category A reception area is an area in which people are deemed to be unable to adequately receive all of the applicable services. As a result of this deeming, and in accordance with the scheme’s third policy objective (subsections 130ZB(5) and 130ZBB(5) refer), a person located in that external Territory would be able to access the relevant section 38C licensee’s satellite service immediately.

16. The modified statutory policy objectives also provide that a conditional access scheme would specify as Category A reception areas particular areas (to be known as ‘open access areas’) identified by the scheme administrator. The scheme administrator can only identify an area for the purpose of this objective if it is reasonable to expect that, at the end of the simulcast period for the terrestrial licence area, people will be unable to receive adequate reception of all of the applicable services in that area. Viewers located in an area identified as an open access area would therefore be also able to access the relevant section 38C licensee’s satellite service immediately.

17. Proposed subparagraph 130ZB(3)(aa) and proposed subparagraph 130ZBB(3)(aa) set out the statutory policy objective that each conditional access scheme specify matters the scheme administrator is to have regard to when deciding whether to identify an
area as an open access area. (Section 130ZB is about the conditional access schemes operating in the South Eastern Australia TV3 and Northern Australia TV3 licence areas, while section 130ZBB is about the conditional access scheme operating in the Western Australia TV3 licence area.) In deciding whether to identify an area as an open access area, the scheme must specify that the scheme administrator have regard to:

- the extent to which people in the area have adequate reception of applicable services, and the extent to which it is predicted that people in the area would have access to those services at the end of the simulcast period for the simulcast area;
- any information provided by commercial television broadcasting licensees or the Australian Communications and Media Authority (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 people residing in the area; and
- any other matters the scheme administrator considers relevant.

18. It is intended that a scheme administrator would identify an open access area due to the area’s topographical or technical characteristics that means viewers in the area will not be able to receive adequate reception of the applicable services, or where the terrestrial commercial television broadcasters do not intend to establish terrestrial digital television services in the area.

19. It is intended that areas specified as open access areas could be whole communities, parts of communities, individual streets, individual addresses or otherwise specified geographical areas.

20. Proposed subparagraph 130ZB(3)(ab) and 130ZBB(3)(ab) would also incorporate into the first objective that a scheme should specify that the scheme administrator promptly give the ACMA descriptions of identified open access areas. This would allow the ACMA to publish the details on its website (Item 9 refers).

**Item 7 – Paragraph 130ZBB(3)(b)**

21. Item 7 makes an amendment to paragraph 130ZBB(3)(b) to correct a typographical error.

**Item 8 – Transitional provision – conditional access schemes**

22. This item is a transitional measure relating to Items 5 and 6. Items 5 and 6 would amend the statutory policy objectives for a conditional access scheme. Consequently a conditional access scheme previously registered by the ACMA would no longer meet the statutory policy objectives.

23. Item 8 would require the ACMA to, within 30 days after the commencement of this item, request under section 130ZCAB of the BSA that industry develop replacement conditional access schemes that comply with the statutory policy objectives as amended by Items 5 and 6.
Item 9 – After section 130ZBB

24. This item is consequential to Items 5 and 6 and would insert a new section 130ZBC in the BSA. This section would confer a new function on the ACMA to publish on its website details of any open access areas that have been identified by the scheme administrator in accordance with a registered conditional access scheme.

25. As an aid to readers, the note under proposed section 130ZBC makes clear that this provision would apply whether the scheme administrator for the relevant conditional access scheme is the ACMA or another person (i.e. a body or association representing commercial television broadcasting licensees).

26. If the ACMA is the scheme administrator, it would include details of any open access areas on its website after it identifies an open access area. If the ACMA is not the scheme administrator, it would include the details after being notified by the scheme administrator that an open access area had been identified.

Item 10 – Subsection 130ZG(2)
Item 11 – Subsection 130ZG(4)

27. Item 10 repeals and replaces subsection 130ZG(2) of the BSA and inserts new subsections 130ZG(2A), (2B) and (2C).

28. Subsection 130ZG(2) of the BSA defines an applicable terrestrial digital commercial television broadcasting service (‘applicable service’) for the purposes of Part 9C of the BSA. Subsection 130ZG(2) provides that in respect of a person in a licence area, a service is an applicable service if it is a commercial television broadcasting service provided by a commercial television broadcasting licensee in the licence area in digital mode. Subsection 130ZG(3) excludes from the definition any services provided under a licence allocated under section 38C or subsection 40(1) of the BSA.

29. Item 10 would amend subsection 130ZG(2) to broaden the scope of the definition of an applicable service in respect of a person in a licence area to include a service that is merely retransmitting (in digital mode and in the licence area) a commercial television broadcasting service that is provided by a commercial broadcaster in the licence area and in digital mode, but only where the retransmission service is provided by a person who represents one or more commercial television broadcasting licensees.

30. This amendment would allow only particular retransmission services – being services provided by a person who represents one or more commercial broadcasters – to be taken into account by a scheme administrator when considering if a person has adequate reception of all of the applicable services. Likewise, the ACMA would take into account such services when considering whether an area be declared service-deficient for the purposes of section 130ZH of the BSA. An example of a person who might be declared to represent one or more commercial television broadcasting licensees is Regional Broadcasting Australia (RBA), which is a peak body representing all regional and remote commercial broadcasters.
31. The reason for distinguishing terrestrial digital retransmissions provided by persons who represent one or more commercial television broadcasters, such as RBA, from other retransmission services provided by local councils and community groups is because there is less risk that the former retransmission services will later cease.

32. New subsection 130ZG(2A) provides for the ACMA to make a declaration that a person represents one or more commercial television broadcasting licensees for the purposes of the amended definition. This amendment is intended to assist in identifying those retransmission services that would be considered applicable services. Proposed subsection 130ZG(2B) confirms that the ACMA’s written declaration would not be a legislative instrument. This provision is included to assist readers; it is declaratory of the law and does not amount to an exemption from section 5 of the Legislative Instruments Act. The ACMA’s declaration would do no more than make a declaration of fact about whether a person represents one or more commercial television broadcasters.

33. New subsection 130ZG(2C), and an accompanying note to aid readers, makes clear that for the purposes of Part 9C of the BSA, a service that retransmits the programs of a commercial television broadcasting service in digital mode in the licence area will be taken to be the same service as the commercial television broadcasting service being retransmitted.

34. New subsection 130ZG(2C) clarifies that if a person has adequate reception of either a commercial television broadcasting service, or the retransmission of programs of that particular commercial television broadcasting service, that person will have adequate reception of a single applicable service. This means that for the purposes of administering a conditional access scheme, a person does not have inadequate reception of all of the applicable services because they do not receive both the original commercial television broadcasting service and the retransmission of the programs of that service.

35. Likewise when the ACMA is considering whether an area is service-deficient for the purposes of section 130ZH of the BSA, the original commercial television broadcasting service and the retransmission of that service could not be separately counted as two services.

36. Item 11 would insert a definition of ‘retransmission’ in subsection 130ZG(4). The defined term directs the reader to the meaning of retransmission in section 212 of the BSA.

Item 12 – Subsection 211AA(1)
Item 13 – Subsection 211AA(5)
Item 14 – Saving of nominations under section 211AA

37. Under section 211AA of the BSA, a commercial television broadcasting licensee in the Remote Central and Eastern Australia TV1 and Remote Central and Eastern Australia TV2 licence areas (the RCEA) may nominate a specified place in their licence area. The time in that nominated place provides the basis for determining the licensee’s compliance with the BSA, program standards, codes of practice and other instruments under the BSA. Section 211AA provides a way for an RCEA licensee to
comply with time-based obligations throughout the RCEA, which cross time zones in Australia.

38. Licensees of commercial television broadcasting licences for the RCEA (‘RCEA licensees’) intend to use the satellite services provided by section 38C commercial television broadcasting licensees as input feeds for their terrestrial transmitters. Different input feeds may be used in different parts of their licence area.

39. Although this is intended to provide more tailored programming (such as sport) to terrestrial viewers in the various parts of the RCEA, it will also have implications for the nominations made by the RCEA licensees under section 211AA.

40. This is because, under section 211A of the BSA, a section 38C licensee can nominate different places for the purposes of determining compliance with the time-based obligations described above, depending on whether the service is a HDTV or SDTV multi-channelled service.

41. If the RCEA licensee uses a satellite service licensed under section 38C as an input feed for their terrestrial transmitters, the nomination of a single place under section 211AA may result, in some instances, in the RCEA licensee breaching their time-based obligations. This may occur where the satellite service is operating according to the legal time in a different time zone to that of the particular terrestrial transmitter.

42. Item 12 would repeal subsection 211AA(1) and replace it with new subsections 211AA(1A) and (1). The amendments would allow the RCEA licensees to nominate one or more specified places in the licence area for one or more specified broadcasting services provided under the licence in specified parts of the licence area. As an aid to readers, the note under proposed subsection 211AA(1) makes clear that a nomination made under subsection 211AA(1) may specify one place for all parts of the licence area.

43. Item 13 would repeal and substitute subsection 211AA(5) so that an RCEA licensee’s compliance with the time-based obligations for their broadcasting services would be determined according to the legal time in the place specified for that service. Where the RCEA licensee has specified different places for different parts of its licence area, the compliance would be measured in the various parts of the licence area according to the legal time in the place that has been specified for those parts.

44. The intention is to allow a licensee in the RCEA to accommodate different input feeds for their terrestrial transmitters in different parts of their licence area, without breaching the time-based obligations described above. An RCEA licensee could potentially nominate one place in its licence area for its core/primary commercial television broadcasting service, and another place for its HDTV multi-channelled commercial television broadcasting service and/or its SDTV multi-channelled commercial television broadcasting service, and make that nomination apply to a particular State or Territory within the licence area. Alternatively, the licensee could nominate the same place for all of its services.
For example, it is intended that under the proposed amendments to subsection 211AA(1), an RCEA licensee could nominate a place in Queensland within their licence area (such as Roma), and a place in Victoria within their licence area (such as Ouyen), in respect of its core/primary commercial television broadcasting service. The RCEA licensee could specify a part of their licence area for the Roma nomination (for example, that part of the licence area located in Queensland and the Northern Territory) and another part of their licence area for the Ouyen nomination (for example, that part of their licence area located in Tasmania, Victoria, New South Wales and South Australia). The RCEA licensee’s compliance with time-based obligations in the BSA in respect of its core/primary service would be determined according to legal time:

a. in Roma, for those parts of the licence area within Queensland and the Northern Territory; and
b. in Ouyen, for those parts of the licence area within Tasmania, Victoria, New South Wales and South Australia.

Separately, the licensee might make similar nominations and specifications in respect of its SDTV service, while nominating only a single place in respect of its HDTV service.

Item 14 relates to Items 12 and 13 and provides that a nomination made by an RCEA licensee under section 211AA before the commencement of the amendments to that section will have affect as if the specified place is for all broadcasting services provided by the RCEA licensee and for all parts of its licence area. However, this would not prevent the RCEA licensee from withdrawing their nomination and making a new nomination under amended section 211AA.

Item 15 – Subclauses 5F(7), (8) and (9) of Schedule 4
Item 16 – Subclause 6A(9) of Schedule 4
Item 17 – Subclause 6A(10) of Schedule 4

The BSA currently specifies that there should be a transitional period known as the simulcast period for metropolitan and regional licence areas and corresponding coverage areas (subclauses 6(3) and 19(3) of Schedule 4 to the BSA refer). At the end of the simulcast period, analog transmissions will cease.

The end of the simulcast period for a particular metropolitan or regional licence area is currently determined in accordance with a series of legislative instruments made by the Minister under clause 6A of Schedule 4.

Currently, the Minister may vary the date determined as the end of the simulcast period by up to three months earlier (subclause 6A(9) of Schedule 4 refers) or three months later – provided that the end of the simulcast period is not later than 31 December 2013 (subclause 6A(10) refers). The only exception to the requirement that the simulcast period end by 31 December 2013 would be if this date would be likely to result in significant and unforeseeable difficulties of a technical or engineering nature for a commercial or national broadcaster. In this case, the date can be varied until no later than 30 June 2014 (subclause 6A(11) refers).
51. On 2 November 2009, the Minister made the *Broadcasting Services (Simulcast Period for Metropolitan Licence Areas) Determination (No. 1) 2009*, in which he determined that the simulcast period would end in the Brisbane TV1 and Perth TV1 licence areas on 30 June 2013, and in the Adelaide TV1, Melbourne TV1 and Sydney TV1 licence areas on 31 December 2013.

52. The final switchover dates in all of the metropolitan areas are likely to be subject to significant change. These necessary variations in the switchover dates are to facilitate a staggered approach to the transition to digital television in metropolitan areas to enable both Government assistance schemes and broadcaster engineering resources to be available and appropriately managed to achieve digital switchover by the end of 2013. These dates could not be changed outside the six month window by a variation to the *Broadcasting Services (Simulcast Period for Metropolitan Licence Areas) Determination (No. 1) 2009*, due to the restrictions set out in subclause 6A(9) and 6A(10) of Schedule 4.

53. Items 16 and 17 make amendments to clause 6A so that the Minister may vary a switchover determination relating to a metropolitan or regional licence area pursuant to subclause 6A(7), without being limited to specifying dates that are three months earlier or later than the originally specified end date for the simulcast period. However, the Minister would still be restricted under subclause 6A(10) to limiting the end of the simulcast period to no later than 31 December 2013 (subject to the existing exception in subclause 6A(11) for significant and unforeseen difficulties of a technical or engineering nature).

54. Item 15 makes amendments to clause 5F of Schedule 4 to repeal subclauses 5F(7), (8) and (9).

55. Clause 5F of Schedule 4 gives the Minister the power to determine, by legislative instrument, digital-only local market areas within a licence area. The instrument has two components: the specification of a local market area (paragraph 5F(1)(a) refers) and the specification of the time the local market area becomes a digital-only local market area (paragraph 5F(1)(b) refers). This facilitates a timetable for when analog transmissions cease and digital-only transmissions commence in an area that is based on geographical areas rather than licence areas, recognising that a single licence area may contain a variety of local geographic, technical and market circumstances.

56. The making of a digital-only local market area is subject to the condition in subclause 5F(3) of Schedule 4 that 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.

57. The time specified for a local market area to become a digital-only local market area may be varied by up to three months earlier (subclause 5F(7) refers) or three months later (subclause 5F(8) refers).

58. The only exception to the limitation of a variation is where the end date originally specified would be likely to result in significant difficulties of a technical or
engineering nature for a commercial or national broadcaster that could not have been foreseen by the broadcaster concerned six months before the time originally specified. In this case, subclause 5F(9) provides that the time for a local market area to become a digital-only local market area can be varied to a date later than three months.

59. Item 15 repeals subclauses 5F(7) and (8) so that the Minister may vary the time specified in a determination made under subclause 5F(1) without being limited to specifying a new time that is three months earlier or later than the time originally specified. Item 15 also repeals subclause 5F(9), as this provision would become redundant with the amendment to subclause 5F(8).

60. In some instances, if the simulcast period for the relevant licence area is varied it may be necessary to align the time at which a local market area becomes a digital-only local market area. The amendments made by Item 15 mean that if the variation to the commencement or end of the simulcast period for a licence area is more than three months earlier or later, the timing in a digital-only local market area determination may also be varied outside the six month window if necessary.