

Digital Television Reviews

2004–2005



Contents

Part A Introduction to the reviews

Part B Summaries of the law

- Introduction to the digital television regime
- Simulcast obligations of commercial broadcasters
- Simulcast obligations of national broadcasters
- Retransmission of broadcasting signals
- Multi-channelling
- Fourth commercial television licence
- HDTV
- Spectrum allocation
- Datacasting
- Indigenous broadcasting services
- Future developments

Part C History of legislation and other sources

Part D Extracts of legislation under review



Part A

Introduction to the reviews



Part A – Introduction to the reviews

1. Digital television reviews – 2004-2005

Under the *Broadcasting Services Act 1992 (Cth)*¹ (**BSA** or the **Act**), the Minister of Communications, Information Technology and the Arts (**Minister**) is required, before certain specified dates in 2005 and 2006, to conduct a series of reviews into the implementation of the digital television conversion regime set out in the Act.

1.1 Reviews to be conducted before 1 January 2005 (BSA sch 4 cl 60)

On 10 May 2004 the Minister issued a news release indicating that the Government proposed to group the reviews to be conducted before 1 January 2005 into the following four broad thematic reviews:

Review 1- Multi-channelling

A review of the provision of services other than simulcasting by free-to-air broadcasters on digital spectrum, taking into account:

- whether the requirement that a commercial broadcaster must only broadcast the same program in both analog and digital mode during the simulcast period should be amended or repealed (para 60(1)(B)); and
- whether the prohibition on the provision of subscription television services by commercial or national broadcasters, and of other kinds of broadcasting services currently not permitted, should be amended or repealed (para 60(1)(c)).

Review 2 – Fourth commercial licence

A review of matters relating to the issuance of new commercial television broadcasting licences after expiration of the current moratorium (on 31 December 2006) and on arrangements for the conversion of datacasting licences to other broadcasting types, taking into account:

¹ BSA sch 4 clauses 60, 60A and 60B

- the competitive and regulatory arrangements that should apply to a datacasting transmitter (under a datacasting transmitter licence) to transmit licensed broadcasting services on or after 1 January 2007 (para 60(1)(h));
- the revenues to be raised by the Commonwealth in connection with the operation of datacasting transmitter licences to transmit licensed broadcasting services on or after 1 January 2007 (para 60(1)(i)); and
- the conditions that should apply to commercial television broadcasting licences on or after 1 January 2007 for the provision of commercial television broadcasting services (para 60(1)(j)).

Review 3 – Spectrum allocation

An examination of the efficient allocation of spectrum for digital television, taking into account:

- whether all parts of the broadcasting services bands available for allocation for broadcasting or datacasting services have been identified (para 60(1)(e)); and
- whether all parts of the broadcasting services bands have been efficiently structured (para 60(1)(f)).

Review 4 – Under-served areas

An examination of the legislation relating to under-served licence areas, taking into account:

- whether provisions of the Act relating to additional commercial television broadcasting licences in under-served areas, including the exemptions from HDTV requirements for multi-channelled services, should be amended or repealed (para 60(1)(g)).

Indigenous broadcasting review

The news release also anticipated the review to be conducted before 1 January 2005 into the introduction of an indigenous broadcasting service (the **Indigenous service review**), which will assess:

- the viability of creating an indigenous television broadcasting service and the regulatory arrangements that should apply to the digital transmission of such a service using spectrum in the broadcasting services bands (para 60(1)(k)).

1.2 Review to be conducted by 1 July 2005 (BSA sch 4 cl 60A)

A further review to be conducted under the Act concerns HDTV and must be completed before 1 July 2005 (the *HDTV review*). The review will consider:

- whether Division 2 of part 4 of Schedule 4 to the BSA (dealing with HDTV quotas) should be amended or repealed, including the regulatory arrangements that should apply to commercial and national broadcasters in respect of HDTV transmission in remote areas.

1.3 Review to be conducted by 1 January 2006 (BSA sch 4 cl 60B)

The final digital television review required under the Act must be conducted by 1 January 2006 and concerns the duration of the simulcast period (the *Simulcast period review*).

Part B
Summaries of the law



Part B – Summaries of the law

1. Introduction

This is a summary of digital television laws currently in effect in Australia, focusing on those aspects of the law that are relevant to the government reviews being conducted in 2004 and 2005. It aims to provide a road map to the law set out in the *Broadcasting Services Act 1992* (the **Act** or the **BSA**) for use by both lawyers and non-lawyers and, to this end, does not seek to cover every relevant provision in the Act exhaustively or comprise legal advice. Footnotes are included for readers who wish to refer back to the legislation itself.

In 1998 Federal Parliament introduced a regime to convert commercial and national (ABC and SBS) television from analog to digital transmission mode¹. Most of the law effecting the regime is in Schedule 4 of the Act, which required the Australian Broadcasting Authority (**ABA**) to prepare 'conversion schemes' to implement the Act's policy objectives. The conversion scheme for commercial broadcasters (**CTC Scheme**) commenced in June 1999², while the scheme for national broadcasters (**NTC Scheme**) commenced in February 2000³. The Act was substantially amended in 2000⁴ to accommodate high-definition television (**HDTV**) and datacasting, among other things. It has since undergone several smaller revisions⁵.

Before 1 January 2005 the Minister for Communications, Information Technology and the Arts (**Minister**) must arrange for several reviews to be conducted of issues

¹ *Television Broadcasting Services (Digital Conversation) Act 1998* (Cth) (the **1998 Amendment**)

² *Commercial Television Conversion Scheme 1999* (Cth)

³ *National Television Conversion Scheme 1999* (Cth)

⁴ *Broadcasting Services Amendment (Digital Television and Datacasting) Act 2000* (Cth) (the **2000 Amendment**)

⁵ *Broadcasting Services Amendment Act (No. 2) 1999* (Cth), *Broadcasting Services Amendment Act 2000* (Cth), *Broadcasting Legislation Amendment Act 2001*(Cth), *Broadcasting Legislation Amendment Act (No. 2) 2001* (Cth), *Broadcasting Legislation Amendment Act (No. 1) 2002* (Cth), *Broadcasting Legislation Amendment Act (No. 1) 2003* (Cth) and the *Communications Legislation Amendment Bill (No. 3) 2003*.

relating to the digital television regime⁶. Additional reviews are to be conducted before 1 July 2005⁷ and 1 January 2006⁸. Each review will be the subject of a report to be presented to Parliament within 15 sitting days of the report's completion⁹.

2. Simulcast obligations of commercial broadcasters

Each holder of a commercial television licence must transmit its signal simultaneously in analog and digital mode for a specified period¹⁰ (**simulcast period**), subject to certain exceptions for remote licence areas.

2.1 Nature of the simulcast requirements for commercial broadcasters

Throughout the simulcast period, commercial broadcasters in non-remote areas must transmit their services simultaneously in analog and standard definition digital (**SDTV**) modes¹¹ and are prohibited from broadcasting television programs in SDTV digital mode unless the same programs are simultaneously transmitted in analog¹² (the **simulcast requirement**). At the end of the simulcast period, the broadcaster must cease analog transmissions¹³.

There are some exceptions to the simulcast requirement. A commercial broadcaster may:

- vary the program and advertising content of its SDTV signal, as against its analog signal¹⁴ with ABA permission (that will only be given if the ABA is satisfied that the two versions will be substantially the same¹⁵);
- provide an electronic program guide in digital mode, to assist viewers to find and select the television programs and services they want to watch¹⁶;

⁶ *BSA* sch 4 cl 60

⁷ *BSA* sch 4 cl 60A

⁸ *BSA* sch 4 cl 60B

⁹ *BSA* sch 4 cl 60(2), cl 60(3), cl 60A(2), cl 60A(3), cl 60B(2) and cl 60B(3).

¹⁰ *BSA* sch 4 cl 6(3)(c), cl 6(7) and *CTC Scheme* ss49(2) and 139(2)

¹¹ *BSA* sch 4 cl 6(3)(c), cl 6(7) and *CTC Scheme* ss49(2) and 139(2)

¹² *BSA* sch 2 cl 7(1)(m)

¹³ *BSA* sch 4 cl 6(3)(h) and *CTC Scheme* s57(1)

¹⁴ *BSA* sch 4 cl 6(8)(a)&(b)

¹⁵ *BSA* sch 4 cl 6(11)

- provide program enhancements in digital mode¹⁷ (e.g. different camera angles for sporting events; player ranking and career highlight information), provided the enhancements are closely and directly linked to the primary program¹⁸;
- provide more than one digital service (i.e. multi-channel) to continue the broadcast of a live sporting event, or other event designated by the ABA, which runs over time and would otherwise clash with a scheduled news program¹⁹ (see under the heading **Multi-channelling** below); and
- transmit licensed datacasting services in digital mode in addition to the SDTV and HDTV versions of their analog signals.

Before 1 January 2005, there must be a review of whether the simulcast requirement relating to commercial broadcasters should be repealed or amended²⁰. The *duration* of the simulcast period for commercial broadcasters is the subject of a separate review to be conducted before 1 January 2006 (see under the heading **Duration of simulcast periods for commercial broadcasters** below).

2.2 Duration of simulcast periods for commercial broadcasters

The CTC Scheme formulated by the ABA confirmed the following duration and start dates for commercial broadcaster simulcast periods, consistent with the policy objectives set out in the Act²¹:

- the simulcast periods for licence areas (other than remote licence areas) will run for at least 8 years from their commencement²²;
- for Sydney, Melbourne, Adelaide, Perth and Brisbane²³, the simulcast periods began on 1 January 2001²⁴; and

¹⁶ BSA sch 4 cl 6(8)(e). **Electronic program guide** is defined under BSA sch 4 cl 6(24)

¹⁷ BSA sch 4 cl 6(8)(c)

¹⁸ BSA sch 4 cl 6(14)(k)(i)

¹⁹ BSA sch 4 cl 6(8)(d)

²⁰ BSA sch 4 cl 60(1)(b)

²¹ BSA sch 4 cl 6(3)(c)

²² BSA sch 4 cl 6(3)(c)(ii) and CTC Scheme s49(5)

²³ See definition of **metropolitan licence area** under BSA sch 4 cl 2

²⁴ CTC Scheme s49(3)

- the simulcast periods for regional licence areas all began between 1 January 2001 and 31 December 2003²⁵.

Before 1 January 2006, the Minister must conduct a review into whether the simulcast period for commercial broadcasters should extend beyond the minimum 8 year period prescribed in the Act²⁶. The review requirement was originally inserted by the 1998 Amendment, at which time Coalition MPs noted favourably that the review would allow the government of the day to adjust the regulatory framework depending on whether the take-up of digital services had been faster or slower than expected²⁷. In 2000, Labor Senators moved amendments to bring forward the review of the duration of the simulcast period to 1 January 2005²⁸. However, Coalition and Democrat Senators upheld the original review schedule²⁹.

2.3 Transmitter licences supporting commercial digital transmissions

The CTC Scheme required commercial broadcasters to prepare digital television implementation plans for approval by the Minister³⁰.

On approval of its implementation plan, each commercial broadcaster received a transmitter licence from the Australian Communications Authority (**ACA**)³¹ authorising it to operate one or more transmitters for transmitting its signal in digital modes. So far as possible, the digital and analog transmitters used to transmit a commercial broadcaster's service were to be co-located³².

Commercial broadcasters must operate the transmitters licensed to them in accordance with the CTC Scheme and in a manner that complies with their

²⁵ The start dates for Mildura/Sunraysia, Riverland, Spencer Gulf, Mt Gambier, Broken Hill and Griffith/Murrumbidgee Irrigation Area were 31 December 2003. The start dates for all other regional licence areas was 31 March 2003. Appendix 1 of the ABA's Determination of Simulcast Start Date for Regional Licence Areas and Application Date for Implementation Plans, September 2002.

²⁶ BSA sch 4 cl 6(3)(c)(ii) and cl 60B(1)

²⁷ House of Representatives Hansard 3 June 1998

²⁸ Senate Hansard 28 June 2000

²⁹ Senate Hansard 29 June 2000

³⁰ CTC Scheme Division 3

³¹ Radiocommunications Act 1992 (Cth) s102A

³² BSA sch 4 cl 6(3)(g)

commercial television broadcasting licences³³. The transmitters must not be used to transmit, in digital mode, any commercial broadcasting services that provide radio programs³⁴, subscription radio or television broadcasting services, subscription radio or television narrowcasting services or open narrowcasting radio or television services³⁵, and may only be used by a broadcaster in connection with the broadcaster's satisfaction of its simulcast obligations and to transmit licensed datacasting services and designated teletext services³⁶ (see below under the heading **Datacasting**). The multi-channelling review to be conducted before 2005 will consider whether commercial broadcasters should be allowed use their digital transmitters to distribute other services.

3. Simulcast obligations of national broadcasters

The simulcast obligations of the national broadcasters (the ABC and SBS) are similar but not identical to those applying to commercial broadcasters.

3.1 Nature of the simulcast requirements for national broadcasters

Like commercial broadcasters, the ABC and SBS must transmit their services in all coverage areas in both analog and SDTV digital modes simultaneously³⁷ (subject to certain exceptions for remote areas). At the end of the simulcast period for a coverage area, all analog transmissions of an ABC or SBS service in that area are to cease³⁸.

During the simulcast period, the requirement that national broadcasters transmit identical content in both digital and analog modes³⁹ is subject to the same exceptions as apply to commercial broadcasters (see under the heading **Nature of the simulcast requirements for commercial broadcasters**). In addition, however, the ABC and SBS may use their digital transmission capacity to carry:

³³ *Radiocommunications Act 1992* (Cth) s102A

³⁴ BSA sch 2 cl 7(1)(p)

³⁵ BSA sch 4 cl 6(3)(k) and CTC Scheme s46(1)

³⁶ BSA sch 4 cl 60(1)(c)

³⁷ BSA sch 4 cl 19(3)(c) and NTC Scheme s44(2)

³⁸ BSA sch 4 cl 19(3)(h) and NTC Scheme 1999 s53(1)

³⁹ BSA sch 4 cl 35(1)

- multi-channel services complying with the prescribed content requirements in the Act⁴⁰; and
- ABC and SBS radio broadcasting services.⁴¹

In 2000, the 1998 Amendment was amended, to remove the review of the ABC and SBS simulcast requirements from the list of pre-2005 reviews. However, the Department of Communications, Information Technology and the Arts (**DCITA**) has broadened the 2005 review to include the ABC and SBS simulcast obligations on the basis that it is sensible and appropriate to review these obligations at the same time as those applying to commercial broadcasters⁴².

3.2 Duration of simulcast periods for national broadcasters

The start dates for the simulcast periods applying to the ABC and SBS were determined by the Minister on the basis of dates proposed by the ABC and SBS in implementation plans they prepared under the NTC Scheme⁴³. In metropolitan areas the simulcast periods started on 1 January 2001 and in regional coverage areas they started on dates between 1 January 2001 and 1 January 2004.

The simulcast periods for the ABC and SBS services will expire in any given coverage area at the same time as the simulcast period for commercial broadcasters in the corresponding licence area⁴⁴. As a result, the review to be conducted before 1 January 2006 on whether the simulcast periods for commercial broadcasters should be more than 8 years⁴⁵ will also determine the end of the simulcast periods for national broadcasters.

3.3 Transmitter licences supporting ABC and SBS digital transmissions

Under the NTC Scheme national broadcasters were granted radiocommunications licences to use transmitters to support the digital transmissions of their services⁴⁶. Under the same kind of arrangement applying to commercial broadcasters. So far

⁴⁰ BSA sch 4 cl 19(7B)

⁴¹ BSA sch 4 cl 19(3)(k)

⁴² DCITA Issues Paper *Provision of Services other than Simulcasting by Free-to-Air Broadcasters on Digital Spectrum*, dated May 2004

⁴³ BSA sch 4 cl 19(3) and the NTC Scheme 1999 s43

⁴⁴ BSA sch 4 cl 19(c)(iii)

⁴⁵ BSA sch 4 s60B

⁴⁶ BSA sch 4 cl 19(3)(d) and NTC Scheme s35

as possible, the digital and analog transmitters used by each national broadcaster are to be co-located and the digital transmitters must not be used to transmit in digital mode any commercial broadcasting service that provides radio programs, subscription radio or television broadcasting service, subscription radio or television narrowcasting service or open narrowcasting radio or television service⁴⁷. National broadcasters who hold datacasting licences are, however, permitted to use their spare transmission capacity to transmit datacasting services⁴⁸ (see under the heading **Datacasting**) and have limited rights to multi-channel⁴⁹ (see under the heading **Multi-channelling**).

4. Re-transmission of broadcasting service signals

A broadcasting service that does no more than re-transmit programs transmitted by another broadcaster is not prohibited or otherwise subject to regulation under the Act⁵⁰.

This immunity for re-transmission takes priority over any claims the original broadcaster might otherwise have against the re-transmitter under copyright or any other law⁵¹. It does not, however, protect a re-transmitter from actions brought against it by the owners of underlying copyright in the programs that are re-transmitted⁵² unless the re-transmitter complies with the statutory licence regime set out in the *Copyright Act 1968* and pays equitable remuneration for use of the underlying rights⁵³.

5. Multi-channelling

Multi-channelling is the simultaneous broadcast of multiple digital television program streams within one allocation of terrestrial broadcast spectrum⁵⁴. The Act

⁴⁷ BSA sch 4 cl 36(1)

⁴⁸ BSA sch 4 cl 19(3)(k) and NTC Scheme s42(1)

⁴⁹ BSA sch 4 cl 5A and cl 19(7B)

⁵⁰ BSA s212(1)

⁵¹ BSA s212(2)

⁵² BSA s212(2A)

⁵³ *Copyright Act 1968* (Cth) ss135ZZK - 135ZZS

⁵⁴ DCITA issues paper "Provision of Services other than Simulcasting by Free-to-Air Broadcasters on Digital Spectrum" dated May 2004, page 8

prohibits commercial broadcasters from multi-channelling, subject to limited exceptions built into the commercial broadcasters' simulcast obligations (see under the heading **Nature of simulcast requirements for commercial broadcasters**) and the licensing scheme applying to datacasting services (see under the heading **Datacasting**). National broadcasters are permitted to multi-channel some genres of program.

5.1 Prohibition of multi-channelling

The Act prohibits commercial broadcasters from multi-channelling in non-remote areas by requiring SDTV programs be simultaneously broadcast in analog mode (with limited exceptions⁵⁵) and prohibiting the broadcasters' use of their digital transmitters for any purpose other than to satisfy their simulcast requirements or to transmit designated teletext services or datacasting services for which they have licences⁵⁶ (see under the heading **Datacasting**).

Unlike commercial broadcasters, the ABC and SBS are permitted to provide some multi-channel services but only if they comprise television programs falling into specified genres⁵⁷. The genres are primarily documentary, and include educational, science, religious, health, arts and culture-related programs⁵⁸.

In all other respects, national broadcasters are subject to the same prohibitions on multi-channelling in non-remote areas as commercial broadcasters, and the same simulcast requirements⁵⁹.

5.2 Review of multi-channelling provisions

The Minister must conduct a review of the multi-channelling restrictions affecting commercial and national broadcasters by 1 January 2005. The review is to cover the arrangements under which commercial and national broadcasters will be permitted to use their digital transmitters after 1 January 2007 and the fees to be paid to the government for such use⁶⁰.

⁵⁵ BSA sch 4 cl 6(3)(c) and cl 6(8)

⁵⁶ BSA sch 2 cl 7(1)(m) and cl 7(1)(p); *Radiocommunications Act 1992* ss102 and 102A; BSA sch 4 cl 6(3)(k) and the CTC Scheme s46(1)

⁵⁷ BSA sch 4 cl 5A and cl 19(7B)

⁵⁸ BSA sch 4 cl 5A(2)(a)-(v)

⁵⁹ BSA sch 4 cl 19(3)(c), cl 19(8), cl 35 and cl 36

⁶⁰ BSA sch 4 cl 60(1)(h) and cl 60(1)(i)

6. Fourth commercial broadcasting licence

The Act prohibits the ABA from allocating any new commercial television broadcasting licences before 31 December 2006⁶¹ (the **2006 Moratorium**). The only exception to the moratorium involves licences for under-served markets with only one or two commercial broadcasting services⁶².

The reviews to be conducted by 1 January 2005 will cover the conditions that should apply to commercial broadcasting licences after the expiration of the 2006 Moratorium⁶³ and the arrangements under which radiocommunications transmitters may be used to transmit commercial and other broadcasting services under datacasting transmitter licences on expiration of the 2006 Moratorium⁶⁴.

The reviews must be conducted on the basis that any new commercial television licensees after 1 January 2007 are treated in the same way as commercial broadcasters operating before that date⁶⁵.

In his news release of 10 May 2004 relating to the digital television reviews, the Minister announced the Government's intention to introduce amendments to the Act to move the power to allocate new commercial television broadcasting licences from the ABA to the Government⁶⁶.

7. High-definition digital television

7.1 HDTV requirement

In addition to its SDTV simulcast obligations, each commercial and national broadcaster is also required under the legislation⁶⁷ to transmit a version of its service in high-definition digital mode (**HDTV**).

The Act required broadcasters to commence HDTV transmission of their services in any given licence area as soon as practicable after the start of the simulcast

⁶¹ BSA s28

⁶² BSA ss28A, 38A and 38B.

⁶³ BSA sch 4 cl 60(1)(j)

⁶⁴ BSA sch 4 cl 60(1)(h) and cl 60(1)(i)

⁶⁵ BSA sch 4 cl 60(1A)

⁶⁶ DCITA news release "Digital TV Regulatory Reviews to Commence" dated 10 May 2004

⁶⁷ BSA sch 4 cl 37E; Broadcasting Services (Digital Television Standards) Regulations 2000 (**HDTV Regulations**)

periods for that area and, in any event, before the later of 30 June 2003 and 2 years after the beginning of the simulcast period⁶⁸. By that time, each broadcaster must (with limited exceptions) transmit, in the HDTV version of its service, at least 1,040 hours of high-definition programs per calendar year (**HDTV Quota**)⁶⁹. The annual minimum requirement of 1,040 hours replaced an earlier requirement that broadcasters transmit at least 20 hours of HDTV programs per week⁷⁰.

The HDTV version of a program in a broadcaster's service must be the same as the program transmitted simultaneously by the broadcaster as part of its analog version of the service. If the SDTV version of the program is different from the analog version and the difference has been approved by the ABA⁷¹, then the HDTV version may be the same as the SDTV version. An exception is that broadcasters may transmit HDTV demonstration programs on the HDTV versions of their services subject to receiving the ABA's prior approval⁷².

The HDTV version of a broadcaster's signal does not need to include transmissions of programs that are not in HDTV format and may consist of programs transmitted in HDTV digital mode only. In this circumstances, audiences are able to pick up the remaining programs in the broadcaster's service from the SDTV version of that service⁷³.

7.2 High-definition television programs

For the purposes of the HDTV Quota applying to commercial broadcasters, a *high-definition television program* is defined as a program either originally produced in high-definition digital video format or one that has been converted into high definition digital video format from a format of equivalent picture quality (such as 35mm film)⁷⁴. Where only part of a program is broadcast in HDTV format, that part may be counted towards a commercial broadcaster's HDTV Quota obligations. Incidental program material broadcast during a HDTV program will also count

⁶⁸ BSA sch 4 cl 37E(2), cl 37E(2A) cl 37F(2) and cl 37F(2A); the HDTV Regulations

⁶⁹ BSA sch 4 cl 37E(2B) and 37F(2B)

⁷⁰ Which was the original requirement under the HDTV Regulations, sch 1 paragraph 4

⁷¹ Under BSA sch 4 cl 6(9), cl 6(10), cl 19(9) or cl 19(10)

⁷² BSA sch 4 cl 37EA(1) and cl 37FA(1)

⁷³ BSA sch 4 cl 37J

⁷⁴ BSA sch 4 cl 37L(1)

towards a commercial broadcaster's HDTV Quota⁷⁵. Examples are advertising, sponsorships, community service announcements, station promotions, news breaks, weather bulletins and similar material. Archival material used in a HDTV program but otherwise falling outside the applicable definition counts towards the quota, subject to certain conditions⁷⁶.

The ABC and SBS attract less onerous HDTV Quota obligations. The definition of a HDTV program for their purposes includes all of the criteria to be taken into account for commercial broadcasters but it also provides that programs that have been converted into high-definition format from SDTV or analog video format will count towards the national broadcasters' HDTV Quotas⁷⁷. This distinction is intended to take into account the national broadcasters' position that many of their programs are sourced from Europe rather than the United States and, as a result, they are less likely to have been originally produced in HDTV format. The distinction allows the national broadcasters (but not commercial broadcasters) to 'up-convert' programs into HDTV format in order to meet their HDTV Quota obligations.

The Act contemplates the introduction of HDTV regulations to impose quotas for the transmission of HDTV programs in nightly "prime viewing hours" between 6pm and 10.30pm⁷⁸. However, no such regulations have been introduced to date.

If a broadcaster fails to satisfy its HDTV Quota, the ABA may require the broadcaster to surrender the transmitter licences under which it transmits the digital versions of its services. In response to any such requirement, a broadcaster may request a replacement licence to use digital spectrum, but only for less capacity than it was authorised to use under the surrendered licence⁷⁹.

7.3 HDTV standards

The Act also contemplates the enactment of regulations imposing technical standards for HDTV transmission by commercial and national broadcasters⁸⁰. However, following a review of HDTV standards in 1999 and the emergence of

⁷⁵ BSA sch 4 cl 37L(6)

⁷⁶ BSA sch 4 cl 37L(3)

⁷⁷ BSA sch 4 cl 37L(2)

⁷⁸ BSA sch 4 cl 37E(3), cl 37F(3), cl 37G(2) and cl 37H(2)

⁷⁹ BSA sch 4 cl 8(7), cl 8(8), cl 23(7) and cl 23(8)

⁸⁰ BSA sch 4 cl 37A and 37C

industry consensus as to what HDTV standards should apply, no such regulations have been imposed⁸¹.

7.4 HDTV reviews

The original deadline of 1 January 2004 to review HDTV Quotas was postponed for 18 months by amending legislation enacted in 2003. The deadline is now 1 July 2005⁸².

8. Spectrum Allocation

8.1 The spectrum allocation regime

The ABA has responsibility for formulating and maintaining a series of digital channel plans (*DCPs*)⁸³ under which commercial and national broadcasters have been allocated additional spectrum to support their transmission of the digital versions of their services⁸⁴. Under the Act, each broadcaster must be given at least one channel in which to transmit its broadcasting services in digital mode⁸⁵ and each channel must occupy 7MHz of bandwidth⁸⁶. A broadcaster may use any spectrum not used to carry the SDTV and HDTV versions of its service to transmit licensed datacasting and designated teletext services⁸⁷ and national broadcasters have limited rights to use the additional spectrum for multi-channelling purposes.

In formulating and maintaining the DCPs, the ABA is required to take into account the need to plan the most efficient use of the spectrum for broadcasting and other uses⁸⁸.

⁸¹ DCITA "Review Of High Definition Television (HDTV) Targets, Standards and Format", 1999

⁸² BSA sch 4 cl 60A

⁸³ BSA sch 4 cl 7A and cl 22A

⁸⁴ CTC Scheme s8(1), NTC Scheme s8(1).

⁸⁵ BSA sch 4 cl 6(3)(d) and cl 19(3)(d)

⁸⁶ Definition of *channel*, CTC Scheme s3(1), NTC Scheme s3(1).

⁸⁷ BSA sch 4 cl 6(3)(k) and cl 19(3)(k)

⁸⁸ BSA sch 4 cl 6(3)(n) and cl 19(3)(n)

8.2 Reviews of spectrum allocation

The reviews to be conducted before 1 January 2005 will consider whether all parts of the broadcasting services bands available for allocation for broadcasting or datacasting services have been identified⁸⁹ and efficiently structured⁹⁰.

Currently, the only parts of the broadcasting services bands available for allocation for digital broadcasting are VHF Band III, UHF Band IV and UHF Band V⁹¹.

9. Datacasting

The datacasting regime was introduced in 2000 on the rationale that the regime would provide for new and innovative digital services while respecting the restrictions placed on commercial broadcasters during their conversion from analog to digital broadcasting and their investment in the process.

9.1 Definition of datacasting

A datacasting service delivers content in any form or combination of forms using the broadcasting services bands, to people having equipment appropriate to receiving that content. It can be distinguished from a broadcasting service on the basis of the restrictions applying to its content⁹². Under the Act, a datacasting licensee must not transmit programming of certain genres⁹³. However, if a licensed datacaster only provides content of the type permitted under the Act, it will avoid the restrictions on the use of digital spectrum placed on commercial broadcasting service licensees⁹⁴.

9.2 Datacasting genre restrictions

Datacasting services must be licensed by the ABA⁹⁵ and such licences impose the condition that licensees must not transmit content that, if broadcast on a commercial broadcasting service, would constitute a television program (as

⁸⁹ BSA sch 4 cl 60(1)(e)

⁹⁰ BSA sch 4 cl 60(1)(f)

⁹¹ ABA, *Digital Terrestrial Television Broadcasting Planning Handbook – As varied April 20002*

⁹² BSA sch 6 cl 13 to cl 23B

⁹³ BSA sch 6 cl 14 and cl 15

⁹⁴ BSA sch 6 cl 6

⁹⁵ BSA, sch 6, cl 49; using application form ABA 51 and upon payment of a \$350 fee.

defined in the Act) or an extract of such a program exceeding 10 minutes in length⁹⁶.

The prohibited content genres are divided into Category A and Category B programs under the Act. Category A includes drama, sports, music, infotainment, documentary, reality television, children's entertainment, light entertainment and variety, compilations, quiz or games programs and comedy programs⁹⁷. Category B includes news and current affairs, financial, market and business information bulletins and any combination of these programs⁹⁸.

Programs not falling into these categories may be provided without restriction by datacasting licensees. They include information-only and educational programs, interactive computer games, parliamentary broadcasts, foreign-language news bulletins, advertising material and ordinary electronic mail or Internet content.

Similar content-based restrictions are imposed on datacasters in relation to audio programs⁹⁹.

9.3 Datacasting transmitter licences

A datacasting service licensee is not entitled to operate a digital transmitter to deliver its service to audiences without a separate datacasting transmitter licence. However, if a commercial or national broadcaster holds a transmitter licence authorising its broadcast of the digital versions of its service, that transmitter can also be used to transmit the broadcaster's datacasting services provided the broadcaster holds a datacasting licence for each service¹⁰⁰ and pays a fee for the spectrum it uses to carry it¹⁰¹.

A licensed datacaster may transmit its service through the use of a transmitter licensed to another person provided the ABA has made a determination confirming the arrangement¹⁰².

⁹⁶ BSA sch 6 cls 14(1)(a) and (b) and cl 14(2)

⁹⁷ BSA cl 13.

⁹⁸ BSA sch 6 cl 15.

⁹⁹ BSA sch 6 cl 21

¹⁰⁰ *Radiocommunications Act 1992*, ss100A(1B), 102(3) and (5), 102A(3) and (5)

¹⁰¹ *Datacasting Charge (Imposition) Act 1998* cl 6.

¹⁰² BSA sch 6 cl 42 to cl 46

9.4 Review of datacasting arrangements

Before 1 January 2005, the Minister must conduct reviews into:

- the competitive and regulatory arrangements that should apply to the operation of digital transmitters licensed to transmit licensed broadcasting services on or after 1 January 2007¹⁰³;
- fees to be paid to the Government in connection with the operation of a transmitter for datacasting services on or after 1 January 2007¹⁰⁴; and
- whether all parts of the broadcasting services bands available for allocation for broadcasting or datacasting services have been identified and efficiently structured¹⁰⁵.

10. Indigenous broadcasting services

The only provisions in the Act relating to a digital indigenous broadcasting service provide for the holding of a review before 1 January 2005 into the viability of creating an Indigenous TV broadcasting service using digital transmission¹⁰⁶. The review will also canvas the regulatory arrangements that should apply to the transmission of such a service.

The provision requiring this review was passed in 2000 by an amendment to the BSA moved by Democrat Senators¹⁰⁷ in response to recommendations made by the Productivity Commission report into broadcasting¹⁰⁸. In its discussion paper on the review¹⁰⁹, DCITA has highlighted several options for the carriage of an indigenous television broadcasting service, including the creation of a distinct national broadcaster or the possibility of carrying indigenous programming on an ABC or SBS multi-channel.

¹⁰³ BSA sch 4 cl 60(1)(h).

¹⁰⁴ BSA sch 4 cl 60(1)(i).

¹⁰⁵ BSA sch 4 cl 60(1)(e).

¹⁰⁶ BSA sch 4 cl 60(1)(k)

¹⁰⁷ Senate Hansard 28 June 2000 p 15814

¹⁰⁸ Productivity Commission 2000, *Broadcasting*, Report no. 11, AusInfo, Canberra.

¹⁰⁹ DCITA, "A Review of the Viability of Creating an Indigenous Television Broadcasting Service and the Regulatory Arrangements That Should Apply to the Digital Transmission of Such a Service Using Spectrum In the Broadcasting Services Bands" May 2004

11. Future developments

We will continue to monitor the 2004 and 2005 digital television reviews and update the summaries above to reflect changes to the Act arising out of the reviews.

Part C

History of the legislation and other sources



The electronic version of the table that follows includes hyperlinks to publicly available materials

| Reports and legislation | Other sources |
|--|--|
| <p>30 January 1997 Digital Terrestrial Television Broadcasting Specialist Group releases its final report, <i>Digital Terrestrial Television Broadcasting in Australia</i>.</p> | |
| <p>July 1997 Australian Broadcasting Authority (ABA) responds to the specialist group report in its paper, <i>Digital Terrestrial Television Broadcasting</i>.</p> | |
| <p>24 March 1998 The Federal Government announces its intention to adopt the approach recommended in the ABA report.</p> <ul style="list-style-type: none"> Department for Communications, Information Technologies and the Arts (DCITA) Media Release, <i>Digital – A New Era in Television Broadcasting</i>. | <ul style="list-style-type: none"> DCITA, <i>Digital Broadcasting – Questions & Answers</i>, 24 March 1998 J Given, 'Being Digital: Australia's Television Choice' (March 1998) <i>Media and Arts Law Review</i> Vol 3, p38 |
| <p>8 April 1998 Government tables Television Broadcasting Services (Digital Conversion) Bill 1998.</p> <ul style="list-style-type: none"> Explanatory Memoranda Supplementary Explanatory Memoranda Second Reading Speech <p>Act assented to on 27 July 1998.</p> | <ul style="list-style-type: none"> Bills Digest Relevant Hansard debates, 3 June 1998 – 2 July 1998 DCITA, <i>Summary of the main features of the Television Broadcasting Services (Digital Conversion) Act 1998</i>, Fact sheet DCITA, <i>Digital Television and Datacasting – TV's new dawn</i>, speech by the Hon Richard Alston, 19 August 1999 M Duigan, 'The Introduction of Digital Television' (1999) <i>Media and Arts Law Review</i> Vol 4, p26 R Greeney, <i>Choosing a Digital Television Standard – an Australian Perspective</i>, ABA presentation, 12 June 1999 |
| <p>June 1998 Senate Environment, Communications, Information Technology and the Arts Committee Report tabled.</p> | <ul style="list-style-type: none"> Minority Report tabled by the Australian Labor Party Senators Minority Report tabled by the Australian Democrat Senators |

Reports and legislation

December 1998 **DCITA conducts reviews of various digital television issues and calls for submissions.**
 – December 1999

Enhanced Programming

- Options Paper
- Issues Paper
- Report

Datacasting

- Options Paper
- Issues Paper
- Report

Multi-channelling

- Options Paper
- Issues Paper
- Report

Retransmission

- Options Paper
- Issues Paper
- Report

Convergence

- Options Paper
- Issues Paper
- Report

HDTV Standards

- Options Paper
- Issues Paper
- Report

Under-served regional areas

Captioning standards

Other sources

Enhanced programming

- Submissions pre Options Paper (December 1998): News Limited, Telstra, SBS, FACTS

Datacasting

- Submissions pre Options Paper (December 1998): News Limited, ntl, OzEmail, ABC, FACTS, ACA
- Submissions in Response to Options Paper (June 1999): ABC, Australian Caption Centre, AIIA, AOL Bertelsmann, CBAA, Fairfax, Joanna Jacobs (Monash), News Limited, OzEmail, Seven Network, Telstra, SBS, FACTS, ASTRA, Cable & Wireless Optus, AANA, ABA

Multi-channelling

- Submissions pre Options Paper (February/March 1999): Fairfax, National Advisory Council, ABC Digital Broadcasting Content Strategy, ABC, FACTS, News Limited, ASTRA, Cable & Wireless Optus, SBS, Communications Law Centre, ABA, ACA
- Submissions in Response to Options Paper (August 1999): SPAA, ACA, ASTRA, ABC, FACTS, SBS

Retransmission

- Submissions in Response to Options Paper (August 1999): SPAA, Australia Caption Centre, ASTRA, Fairfax, ABC, Screenrights, FACTS

Convergence

- Submissions pre Options Paper (December 1999): ABC, Nortel, Telstra

HDTV Standards

- Submission pre Options Paper (February 1999): News Limited, Panasonic/Matshushita, Fairfax, Sony Australia, Allan J Williams, AANA, ABC, FACTS, EMI Australia, A N Thiele, Harant, Cable & Wireless Optus, ASTRA, SBS, Imparja
- Submissions to response to Options Paper (August 1999): Philips, SPAA, FACTS, News Limited, ACA, SBS, ASTRA, Fairfax, ABC, Frank James

| Reports and legislation | | Other sources |
|-------------------------|---|---|
| March 1999 | The <i>Digital Broadcasting Industry Action Agenda</i> is prepared by DCITA, under the <i>Television Broadcasting Services (Digital Conversion) Act 1998</i> . | <ul style="list-style-type: none"> <i>Digital Broadcasting – Australian Industry Opportunities for the New Millennium</i>, Report to the Digital Broadcasting Industry Action Agenda Working Group, November 1998 Media Release |
| 9 June 1999 | Commencement of the Commercial Television Conversion Scheme 1999, an instrument formulated by the ABA, under s6(1) of Schedule 4 to the <i>Broadcasting Services Act 1992</i> . | <ul style="list-style-type: none"> ABA, <i>Commercial and National Television Conversion Schemes: Part B – Remote Licence Areas</i>, Issues Paper, December 1998 D Varan, D & M Balnaves, 2001 – <i>A Digital Odyssey</i>, paper presented at ABA Planning Seminar, 8 - 9 November 1999 I McGill & R Costelloe, 'Digital Terrestrial Television – adding flesh to regulatory bones' (1999) 2(8) <i>Telemedia</i> 103 |
| 30 June 1999 | Government tables Broadcasting Services Amendment Bill (No. 2) 1999. Act assented to 13 October 1999. | |
| 9 December 1999 | Government tables Broadcasting Services Amendment Bill 2000. Act assented to 21 December 2000. | |
| 21 December 1999 | Government releases policy statement outlining its decisions on key elements of the regulatory regime. | <ul style="list-style-type: none"> DCITA, <i>Digital Broadcasting and Datacasting</i> – Fact sheet, 21 December 1999 R Costelloe, 'Digital Television and datacasting decisions – a clearer picture?' (1999) <i>Internet Law Bulletin</i>, Vol 2 p10 Mitchell, D (ed), <i>Datacasting and Interactive Television: Seminar Proceedings</i>, Network Insight, Sydney, 1999 |
| 16 February 2000 | Commencement of the National Television Conversion Scheme 1999, an instrument formulated by the ABA under s19(1) of Schedule 4 to the <i>Broadcasting Services Act 1992</i> . | |
| 3 March 2000 | Productivity Commission releases <i>Broadcasting Inquiry Report</i> . | <ul style="list-style-type: none"> J Thomas, 'Digital Television and its Discontents: Competition Policy and Broadcasting in Australia' (2000-2001) <i>International Journal of Communications Law and Policy</i>, Vol 6 2000 |

| Reports and legislation | | Other sources |
|---|---|---------------|
| <p>10 May 2000</p> <p>Government tables Broadcasting Services Amendment (Digital Television and Datacasting) Bill 2000.</p> <ul style="list-style-type: none"> • Explanatory Memoranda • Second Reading Speech <p>Act assented to on 3 August 2000.</p> | <ul style="list-style-type: none"> • Bills Digest • Relevant Hansard debates 21 – 29 June 2000 • J Forster & C Lovell, 'Sorting Out the Bits – Digital Television and Datacasting in Australia' (2000/2001) <i>International Journal of Communications Law and Policy</i> Vol 6 2000 • D Mentzines & R Costelloe, 'Digital television and datacasting – a realisation of The Dream or a dog's breakfast?' (September 2000) 4(5) <i>Telemedia</i> | |
| <p>8 June 2000</p> <p>Report of the Senate Environment, Communications, Information Technology and the Arts Committee tabled</p> | <ul style="list-style-type: none"> • Minority Report tabled by the Australian Labor Party Senators • Minority Report tabled by the Australian Democrat Senators | |
| <p>July 2000</p> <p>July 2000 - Report to Parliament on the <i>Review Of Audio and Video Streaming Over The Internet.</i></p> | <ul style="list-style-type: none"> • DCITA Media Release, 'Video and Audio Streaming', 21 July 2000 | |
| <p>17 August 2000</p> <p>Government tables the Copyright Amendment (Digital Agenda) Bill 2000.</p> <ul style="list-style-type: none"> • Explanatory Memoranda • Second Reading Speech <p>Act assented to on 4 September 2000.</p> | <ul style="list-style-type: none"> • Attorney-General's Department, Copyright Reform: <i>Copyright Amendment (Digital Agenda) Act 2000.</i> | |
| <p>12 September 2000</p> <p>Ministerial Determination under section 6(1) of the <i>Broadcasting Services Act 1992</i> on the definition of 'broadcasting service' to exclude Internet streaming.</p> | <ul style="list-style-type: none"> • R Nicholls and C Lidgerwood, 'Ministerial Determination Gives Pause for Thought to High speed Internet service providers' <i>Telemedia</i>, Vol 4, No 7 (2000) p96 • R Costelloe, 'Internet Television and Radio Services – The Streaming Controversy,' <i>Communications Law Bulletin</i> Vol 19 No 3, p9 | |

| Reports and legislation | | Other sources |
|-------------------------|---|---|
| 5 October 2000 | <i>Broadcasting Services (Digital Television Format Standards) Regulations 2000</i> come into operation. | |
| 29 November 2000 | <i>Broadcasting Services (Digital Television Standards) Regulations 2000</i> come into operation. | |
| 6 December 2000 | Government tables Broadcasting Legislation Amendment Bill 2000 [2001]. Act assented to 6 April 2001. | |
| 14 December 2000 | ABA Determination of Remote Licence Areas under Subclause 5(1) of Schedule 4 to the <i>Broadcasting Services Act 1992</i> . | <ul style="list-style-type: none"> ABA, <i>Determination of Remote Licence Areas Issues Paper</i>, October 2000 ABA, <i>Determination of Remote Licence Areas Explanatory Paper</i> |
| 5 April 2001 | Government tables Broadcasting Legislation Amendment Bill (No. 2) 2001. Act assented to 20 July 2001. | |
| 20 September 2001 | <i>Broadcasting Services (Transmitter Access) Regulations 2001</i> come into operation. | |
| 1 January 2002 | <i>Broadcasting Services (Datacasting Charge) Regulations 2001</i> come into operation. | |
| March 2002 | Report to Parliament on the <i>Review Of The Spectrum Allocation Powers Of The Australian Broadcasting Authority</i> . | <ul style="list-style-type: none"> ABA Update, <i>Digital TV – one year on</i>, December 2001, January 2002 ABA, <i>Digital Terrestrial Television Broadcasting – Planning Handbook</i>, April 2002 |
| June 2002 | Report to Parliament on the <i>Review of Digital Transmission of Community Television</i> , released by DCITA. | |

| Reports and legislation | | Other sources |
|-------------------------|---|---|
| 19 September 2002 | ABA releases report on the <i>Determination of Simulcast Start Date for Regional Licence Areas and Application Date for Implementation Plans.</i> | |
| 25 September 2002 | Government tables Broadcasting Legislation Amendment Bill (No.1) 2002. Act assented to 10 December 2002. | |
| 10 December 2002 | Report to Parliament on the <i>Review of the Operation of Schedule 6 of the Broadcasting Services Act 1992.</i> | <ul style="list-style-type: none"> • DCITA Issues Paper • DCITA Media Release, <i>Government Encourages Datacasting Trials</i>, 5 December 2002 • S Barns (ed) <i>Interactive TV and Datacasting: How to Make It Happen?</i>, Network Insight Group, Sydney, 2002 |
| 11 December 2002 | Government tables Broadcasting Legislation Amendment Bill (No.1) 2003. <ul style="list-style-type: none"> • Explanatory Memoranda • Second Reading Speech Act assented to on 26 February 2003. | <ul style="list-style-type: none"> • Hansard debate 13 February 2003 |
| 19 June 2003 | Government tables Communications Legislation Amendment Bill (No. 3) 2003. <ul style="list-style-type: none"> • Explanatory Memoranda • Second Reading Speech Act assented to on 24 October 2003. | <ul style="list-style-type: none"> • Bills Digest • ACCC Report, <i>Emerging Structures in the Communications Sector</i>, 30 June 2003. <ul style="list-style-type: none"> • Submissions in response: Austar, ASTRA, Broadcast Australia, Foxtel, Nine Network and Network Ten (joint submission), Seven Network, Sports Investments Australia • Hodgson, <i>New Media Markets, the UK Experience</i>, ABA Conference, Canberra 2003 • Independent Television Commission (ITC), <i>The UK Television Market: An Overview</i>, 2003 • Telecommunications Journal of Australia, special issue on Digital TV, Summer 2003, Vol 53, No.4 |

| Reports and legislation | | Other sources |
|-------------------------|--|--|
| January 2004 | Attorney-General's Department releases Digital Agenda Review report. | <ul style="list-style-type: none"> I McGill, <i>Retransmission: Broadcasting and Copyright Issues</i>, paper presented at IPRIA conference, 27 April 2004 |
| 10 May 2004 | <p>Government announces the commencement of:</p> <ul style="list-style-type: none"> Four thematic reviews under to Schedule 4 paragraph 60 of the <i>Broadcasting Services Act 1992</i>. A review of the viability of an indigenous television broadcasting service. | <ul style="list-style-type: none"> DCITA, <i>Provision of Services Other Than Simulcasting by Free-to-Air Broadcasters on Digital Spectrum</i>, Issues Paper. DCITA, <i>Review of the viability of an indigenous television broadcasting service and the regulatory arrangements that should apply to the digital transmission of such a service using spectrum in the broadcasting services bands</i>, May 2004 |

Part D

Extracts of legislation under review



Part D – Extracts of legislation under review

1. Introduction

In this Part D we have extracted clauses 60, 60A and 60B of Schedule 4 of the Act (i.e. the provisions requiring the digital reviews be conducted) in their entirety and set out, under each of the paragraphs giving rise to a review, the full text of the clauses of the Act to be taken into account in the context of the review.

A heading preceding each boxed paragraph indicates which of the 7 reviews the paragraph will be considered under (see under heading **Part A – Introduction to the reviews** for a summary of the scope of each of the reviews).

2. Legislation effecting the digital television regime

| Name | Number | Date of Commencement | Relevant Amendments to the Broadcasting Services Act 1992 |
|---|--------------|--|--|
| Television Broadcasting Services (Digital Conversion) Act 1998 (1998 Amendment) | No 99, 1998 | 27 July 1998 | Inserted Schedule 4 ¹ |
| Broadcasting Services Amendment (Digital Television and Datacasting) Act 2000 (2000 Amendment) | No 108, 2000 | The relevant provisions came into effect on 1 January 2001 | Amended 60(1) ² Amended 60(1)(b) ³ Repealed 60(1)(d) ⁴ Inserted 60(1)(g) – (k) ⁵ Inserted 60(1)(1A) ⁶ Inserted 60A ⁷ and 60B ⁸ |

¹ Which introduced the legislative outline and procedures for the conversion

| Name | Number | Date of Commencement | Relevant Amendments to the Broadcasting Services Act 1992 |
|---|--------------|----------------------|---|
| Broadcasting Legislation Amendment Act (No 1) 2003 (Feb 2003 Amendment) | No 4, 2003 | 26 February 2003 | Amended 60A ⁹ |
| Communications Legislation Amendment Bill (No 3) 2003 (Oct 2003 Amendment) | No 108, 2003 | 24 October 2003 | Amended 60(1)(g)(vi) ¹⁰ |

3. Legislation requiring the reviews and the BSA provisions to be considered

3.1 Reviews to be conducted before 1 January 2005¹¹

² To bring the deadline for the reviews set out under clause 60 forward from 31 December 2005 to 1 January 2005

³ To remove from the 1 January 2005 reviews a review of the simulcast obligations of national broadcasters

⁴ To remove from the 1 January 2005 reviews a review of the duration of the simulcast period for commercial television broadcasters

⁵ Providing for the review and regulation of commercial television licence allocation in under-served areas and, generally, HDTV, datacasting and an indigenous service

⁶ To provide that commercial television licensees using datacasting transmitters after 1 January 2007 be treated in the same way as previously licensed commercial television broadcasters

⁷ To require a review of the duration of the simulcast period for commercial television broadcasters by 1 January 2006

⁸ To require reviews of commercial and national broadcaster HDTV obligations by 1 January 2004

⁹ To revise the date for completion of the section 60A reviews from 1 January 2004 to 1 July 2005

¹⁰ To review the regulation of licensees holding more than one commercial television licence issued before 2001 in under-served areas

3.1.2 Review 1 – Multi-channelling (re commercial broadcaster simulcast requirements)

- (1) Before 1 January 2005, the Minister must cause to be conducted a review of the following matters¹²:
- (b)¹³ whether paragraph 7(1)(m) of Schedule 2 (which deals with simulcast requirements for commercial television broadcasting licensees) should be amended or repealed¹⁴;

Legislation to be considered:

Broadcasting Services Act 1992

Sch 2 cl 7 Conditions of commercial television broadcasting licences

- (1) Each commercial television broadcasting licence is subject to the following conditions:
- (m) if there is a simulcast period for the licence area of the licence—the licensee will not broadcast a television program in SDTV digital mode during the simulcast period for the licence area unless the program is broadcast simultaneously

¹¹ Date for review was amended from 31 December 2005 to 1 January 2005 under the 2000 Amendment.

¹² BSA, sch 4 cl 60

¹³ Paragraph (a) was omitted during passage of the 1998 Amendment through Parliament. It originally provided for a review of whether section 28 of the BSA (which originally prohibited the allocation of new commercial television broadcasting licences before a date specified by Proclamation, but not before 31 December 2008) be amended or repealed after 31 December 2008. Section 28 was amended during the passage of the 1998 Amendment to instead prohibit the allocation of new commercial licences until 31 December 2006.

¹³ The 2000 Amendment amended this section. Previously it read "whether paragraph 7(1)(m) of Schedule 2 or clause 35 of this schedule (which deals with simulcast requirements) should be amended or repealed;"

¹⁴ The 2000 Amendment amended this section. Previously it read "whether paragraph 7(1)(m) of Schedule 2 or clause 35 of this schedule (which deals with simulcast requirements) should be amended or repealed;"

by the licensee in analog mode in that area;

3.1.3 Review 1 – Multi-channelling (re use of digital transmitters)

- (c) whether paragraph 7(1)(p) of Schedule 2 or clause 36 of this Schedule (which deal with subscription television broadcasting services and other matters) should be amended or repealed;

Legislation to be Considered:

Broadcasting Services Act 1992

sch 2 cl 7. Conditions of commercial television broadcasting licences

- (1) Each commercial television broadcasting licence is subject to the following conditions:
- (p) if the licensee holds a transmitter licence under section 102 or 102A of the *Radiocommunications Act 1992* that authorises the operation of a transmitter—the licensee will not operate, or permit the operation of, that transmitter to transmit in digital mode:
- (i) a commercial broadcasting service that provides radio programs; or
- (ii) a subscription radio broadcasting service; or
- (iii) a subscription television broadcasting service; or
- (iv) a subscription radio narrowcasting service; or
- (v) a subscription television narrowcasting service; or
- (vi) an open narrowcasting radio service; or
- (vii) an open narrowcasting television service.

Radiocommunications Act 1992

s102. Transmitter licences for certain broadcasting services

- (1) If a broadcasting services bands licence (the "related licence") is allocated to a person under Part 4 or 6 of the *Broadcasting Services*

Act 1992, the ACA must issue to the person a transmitter licence that authorises operation of one or more specified radiocommunications transmitters for transmitting the broadcasting service concerned in accordance with the related licence.

s102A. Transmitter licences required to be issued under digital conversion schemes

- (1) If the ACA is required, under a scheme in force under clause 6 of Schedule 4 to the Broadcasting Services Act 1992, to issue a transmitter licence to a person who holds a commercial television broadcasting licence (the *related licence*), the ACA must issue to the person a transmitter licence that authorises the operation of one or more specified radiocommunications transmitters for transmitting the broadcasting service concerned in digital mode in accordance with the related licence.

Broadcasting Services Act 1992

Sch 4 cl 36. Digital transmitter not to be used to provide a subscription television broadcasting service etc.

- (1) If a national broadcaster holds a transmitter licence that authorises the operation of a transmitter for transmitting the national broadcasting service concerned in digital mode, the national broadcaster must not operate, or permit the operation of, that transmitter to transmit in digital mode:
- (a) a commercial broadcasting service that provides radio programs;
 - (b) a subscription radio broadcasting service;
 - (c) a subscription television broadcasting service;
 - (d) a subscription radio narrowcasting service;
 - (e) a subscription television narrowcasting service;
 - (f) an open narrowcasting radio service; or
 - (g) an open narrowcasting television service.

3.1.4 Review 3 – Spectrum allocation (re identifying parts of the spectrum)

(e)¹⁵ whether all parts of the broadcasting services bands that are available for allocation for broadcasting services or datacasting services have been so identified;

(f) whether the parts of the broadcasting services bands that have been allocated for use for broadcasting services or datacasting services have been efficiently structured;

3.1.5 Review 2 – Fourth commercial licence (re additional commercial licences in under-served areas)

(g) whether the following provisions (which deal with additional commercial television broadcasting licences) should be amended or repealed¹⁶:

(i) section 28A;

Legislation to be considered:

Broadcasting Services Act 1992

s28A. Section 28 does not apply to the allocation of a licence under section 38A or 38B

The rule in section 28 does not apply to the allocation of a licence under section 38A or 38B.

s 28. Limitation on allocation of commercial television broadcasting licences

The ABA must not, after 25 June 1998, allocate any new commercial television broadcasting licences in any licence area before 31 December 2006.

¹⁵ Subparagraph (d) was repealed by the 2000 Amendment. It had originally read "The content of any regulations made for the purposes of paragraph 6(3)(c) of this schedule (which deals with the duration of simulcast period)";

¹⁶ Paragraph (g) and its subparagraphs were inserted under the 2000 Amendment

3.1.6 Review 4 – Under-served areas (re additional commercial licences in single markets)

(ii) section 38A: Additional commercial television licences in single markets

Legislation to be considered:

Broadcasting Services Act 1992

s38A. Additional commercial television licences in single markets

(1) *Circumstances in which existing licensee may apply for additional licence.* If:

- (a) a particular licence area is the licence area of only one commercial television broadcasting licence (the "parent licence") that is in force; and
- (b) additional commercial television broadcasting licences can be allocated for the licence area;

the existing licensee may apply in writing to the ABA for an additional commercial television broadcasting licence for the licence area.

(2) *ABA must grant additional licence.* As soon as practicable, the ABA must allocate an additional commercial television broadcasting licence to the existing licensee for the licence area, so long as:

- (a) all of the following conditions are satisfied:
 - (i) no licence for the licence area previously allocated under this section to the existing licensee has been cancelled because of a breach of the condition set out in paragraph 7(1)(i) of Schedule 2;
 - (ii) no licence for the licence area previously held by the existing licensee has been cancelled because of a breach of the condition set out in subsection (9);
 - (iii) no licence for the licence area previously held by the existing licensee has been surrendered; or
- (b) both:

- (i) paragraph (a) does not apply; and
- (ii) the ABA is satisfied that there are exceptional circumstances.

...

- (7) *Amalgamation of licence areas in some cases.* If:
 - (a) more than 30% of the licence area population of a licence area is attributable to an overlap area; or
 - (b) a licence area is entirely within another licence area;
 this section applies as if the 2 licence areas were one.
- (8) *Fee for additional licence.* On allocation of the additional licence, the applicant must pay to the ABA a fee determined by the ABA. The fee must not be more than the amount that, in the opinion of the ABA, represents the costs (including planning costs) incurred by the ABA in allocating the additional licence.
- (9) *Licence conditions.* On the allocation of the additional licence, it becomes a condition of both the parent licence and the additional licence that the licensee will continue to provide services under those licences for at least 2 years after the date of allocation of the additional licence.
- (10) *Restrictions on transfer of licences.* During the period of 2 years after the date of allocation of the additional licence, any attempt by any person to transfer either the parent licence or the additional licence is of no effect unless both of those licences are transferred at the same time by the same person to the same transferee.
- (11) *Section 37 restrictions apply.* This section has effect subject to section 37.

3.1.7 Review 4 – Under-served areas (re commercial licences in 2-station markets)

(iii) section 38B: Additional commercial television licences in 2-station markets

Legislation to be considered:

Broadcasting Services Act 1992

s38B. Additional commercial television licences in 2 station markets

- (1) If:
- (a) a particular licence area is the licence area of only 2 commercial television broadcasting licences (the *parent licences*) that are in force; and
 - (b) neither of those licences was allocated under section 38A; and
 - (c) an additional commercial television broadcasting licence can be allocated for the licence area; then, within 90 days after the designated time for the licence area:
 - (d) the existing licensees may give the ABA a joint written notice stating that:
 - (i) a company specified in the notice (the *joint-venture company*) will apply for an additional commercial television broadcasting licence for the licence area; and
 - (ii) the joint-venture company is jointly owned by the existing licensees; and
 - (iii) the joint-venture company is formed in Australia or an external Territory and has a share capital; or
 - (e) each existing licensee may give the ABA a written notice stating that the licensee will apply separately for an additional commercial television broadcasting licence for the licence area.
- (2) *Application by joint-venture company.* If a notice is given under paragraph (1)(d), the joint-venture company may, within 12 months after the designated time for the licence area, apply in writing to the ABA for an additional commercial television broadcasting licence for the licence area.
- (3) *Separate applications by existing licensees.* If an existing licensee gives a notice under paragraph (1)(e), the licensee may, within 12 months after the designated time for the licence area, apply in writing to the ABA for an additional commercial television broadcasting licence for the licence area.

- (5) *Allocation of additional licence to joint-venture company.* As soon as practicable after receiving an application under subsection (2), the ABA must allocate an additional commercial television broadcasting licence to the joint-venture company for the licence area, so long as the ABA is satisfied that the joint-venture company is jointly owned by the existing licensees.
- (6) *Allocation of additional licence to existing licensee.* If the ABA has received applications from both of the existing licensees under subsection (3), the ABA must allocate an additional commercial television broadcasting licence to one of those licensees for the licence area in accordance with a price-based system determined under subsection (10).
- (7) If:
- (a) each existing licensee gives a notice under paragraph (1)(e); and
 - (b) by the end of the 12-month period beginning at the designated time for the licence area:
 - (i) the ABA has received an application from only one existing licensee (the *first licensee*) under subsection (3); and
 - (ii) the ABA has not received a notice from the other existing licensee stating that it will not be applying under subsection (3);
- the ABA must, as soon as practicable after the end of that 12-month period, allocate an additional commercial television broadcasting licence to the first licensee for the licence area.
- (8) If:
- (a) each existing licensee gives a notice under paragraph (1)(e); and
 - (b) before the end of the 12-month period beginning at the designated time for the licence area, the ABA receives:
 - (i) an application from one existing licensee (the *first licensee*) under subsection (3); and

- (ii) a notice from the other existing licensee stating that it will not be applying under subsection (3);

the ABA must, as soon as practicable after both have been received, allocate an additional commercial television broadcasting licence to the first licensee for the licence area.

- (9) If only one existing licensee gives a notice under paragraph (1)(e), then, as soon as practicable after receiving an application under subsection (3) from that licensee, the ABA must allocate an additional commercial television broadcasting licence to that licensee for the licence area.
- (10) *Price-based system for allocating licences where separate applications have been received.* The ABA may determine in writing a price-based system for allocating commercial television broadcasting licences under subsection (6).
- (11) The Minister may give specific directions to the ABA for the purpose of a determination.
- (12) Directions may be to include in a determination specified reserve prices for licences, and those reserve prices may be different for licences in different licence areas.
- (13) If a commercial television broadcasting licence is allocated under subsection (6), the ABA must, unless the allocation system adopted was public, publish in the *Gazette*:
- (a) the name of the successful applicant; and
 - (b) the amount that the applicant agreed to pay to the Commonwealth for the allocation of the licence.
- (14) *Amalgamation of licence areas in some cases.* The ABA may, by writing, determine that, if:
- (a) more than 30% of the licence area population of a specified licence area is attributable to a specified overlap area; or
 - (b) a specified licence area is entirely within another specified licence area;
- this section applies as if the 2 licence areas were one.
- (15) A determination under subsection (14) has effect accordingly.

- (16) A determination under subsection (14) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (17) *Fee for additional licence.* On allocation of the additional licence under subsection (5), (7), (8) or (9), the applicant must pay to the ABA a fee determined by the ABA. The fee must not be more than the amount that, in the opinion of the ABA, represents the costs (including planning costs) incurred by the ABA in allocating the additional licence.
- (18) *Licence conditions.* Each additional licence allocated under this section is subject to the following conditions:
- (a) the licensee may only provide the commercial television broadcasting service concerned in digital mode (within the meaning of Schedule 4); and
 - (b) if the licence area for the licence is wholly outside a remote licence area (within the meaning of Schedule 4)—the licensee will commence to provide the commercial television broadcasting service concerned in SDTV digital mode (within the meaning of Schedule 4) by whichever is the earlier of the following times:
 - (i) the time that is notified in writing to the licensee by the ABA;
 - (ii) the start of 1 January 2004; and
 - (c) if the licence area for the licence is not of the kind mentioned in paragraph (b)—the licensee will commence to provide the commercial television broadcasting service concerned in SDTV digital mode (within the meaning of Schedule 4) within 1 year of being allocated the licence or within such longer period as is notified in writing by the ABA.
- (19) Paragraphs 7(1)(i), 7(1)(l) and 7(1)(m) of Schedule 2 do not apply to an additional licence allocated under this section.
- (20) On the allocation of an additional licence under subsection (5), it becomes a condition of:
- (a) the additional licence; and
 - (b) each parent licence;

that the licensee concerned will continue to provide services under the licence concerned for at least 2 years after the commencement of the provision of the commercial television broadcasting service under the additional licence.

- (21) On the allocation of an additional licence under subsection (6), (7), (8) or (9), it becomes a condition of:

- (a) the additional licence; and
- (b) the parent licence concerned;

that the licensee will continue to provide services under those licences for at least 2 years after the commencement of the provision of the commercial television broadcasting service under the additional licence.

- (22) *Restrictions on transfer of licences.* During the period of 2 years after the date of allocation of an additional licence under subsection (5), any attempt by any person to transfer the additional licence is of no effect.

- (23) During the period of 2 years after the date of allocation of an additional licence under subsection (6), (7), (8) or (9), any attempt by any person to transfer either:

- (a) the additional licence; or
- (b) the parent licence concerned;

is of no effect unless both of those licences are transferred at the same time by the same person to the same transferee.

- (24) *Section 37 restrictions apply.* This section has effect subject to section 37.

- (25) *Jointly owned company.* For the purposes of this section, a company (the *first company*) is *jointly owned* by 2 other companies if, and only if, each share in the first company is beneficially owned by either or both of those other companies.

- (26) *Designated time.* In this section:

designated time, in relation to a licence area, means:

- (a) if the licence area is wholly outside a remote licence area (within the meaning of Schedule 4)—the commencement of this section; or

- (b) in any other case—the time determined by the ABA in relation to the licence area under subsection (27).

- (27) The ABA may, by writing, determine a time in relation to a licence area for the purposes of the definition of *designated time* in paragraph (26)(b).

- (28) For a licence area that is not a remote licence area (within the meaning of Schedule 4), the time determined under subsection (27) must be no later than 1 January 2006.

3.1.8 Review 4 – Under-served markets (re suspension of ownership limits)

- (iv) **section 73: Additional licence under section 38A not to result in breach of ownership limits**

Legislation to be considered:

Broadcasting Services Act 1992

s73. Additional licence under section 38A not to result in breach of ownership limits

- (1) If an additional licence has been allocated under section 38A to the holder of an existing licence, the existing licence and additional licence are to be treated, for the purposes of this Part, as being only one licence.
- (2) This section does not apply to the licences at any time after either of the licences is first held by a different person (whether or not it continues to be held by a different person).

3.1.9 Review 4 – Under-served markets (re suspension of rules on control)

- (v) **section 73A: Additional licence allocated under section 38B not to result in breach of control rules**

Legislation to be considered:

Broadcasting Services Act 1992

s73A. Additional licence allocated under section 38B not to result in breach of control rules

- (1) If an additional licence is allocated under section 38B, then for the purposes of Divisions 2 and 3 of this Part:
 - (a) the licence is to be disregarded in relation to a person who is in a position to exercise control of that licence at the time it is allocated; and
 - (b) the licence is to be so disregarded until that person first ceases to be in a position to exercise control of that licence.
- (2) If, during the time a licence is disregarded in relation to a person under subsection (1), that person is in a position to exercise control of another person who is in a position to exercise control of the licence, then, for the purposes of Divisions 2 and 3 of this Part, the licence is also to be disregarded during that time in relation to that other person.

3.1.10 Review 4 – Under-served markets (re exceptions to prohibition against multi-channelling)

(vi) subclauses 6(5A), (5AA)¹⁷, (5B) and (5C) of this Schedule;

Legislation to be considered:

Broadcasting Services Act 1992

Sch 4 cl 6. Commercial television conversion scheme

- (5A) If:
 - (a) the holder of a commercial television broadcasting licence holds another commercial television broadcasting licence; and
 - (b) the other licence was allocated under section 38A or 38B; and

¹⁷ Reference to subparagraph (5AA) was inserted under the Oct 2003 Amendment

- (c) the licences relate to the same licence area (within the meaning of whichever of those sections is applicable); and
 - (d) at or about the time when the other licence was allocated, the holder gave the ABA a written notice electing that this subclause apply to both of the commercial television broadcasting services concerned;
- then:
- (e) paragraphs (3)(d), (e) and (ha) do not apply to either of the commercial television broadcasting services concerned; and
 - (f) Part A of the commercial television conversion scheme must be directed towards ensuring the achievement of the objectives set out in subclause (5B).

(5AA) If:

- (a) the holder of a commercial television broadcasting licence holds another commercial television broadcasting licence; and
 - (b) the other licence was allocated under section 38A before 1 January 2001; and
 - (c) the licences relate to the same licence area (within the meaning of that section); and
 - (d) within 90 days after the commencement of this subclause, the holder gives the ABA a written notice electing that this subclause apply to both of the commercial television broadcasting services concerned;
- then:
- (e) paragraphs (3)(d), (e) and (ha) do not apply to either of the commercial television broadcasting services concerned; and
 - (f) Part A of the commercial television conversion scheme must be directed towards ensuring the achievement of the objectives set out in subclause (5B).

(5B) The objectives mentioned in paragraphs (5A)(f) and (5AA)(f) are as follows:

- (a) the objective that, throughout the simulcast period for the licence area, the holder should be authorised, under one or more transmitter licences, to use one or more particular channels to transmit both of the commercial television broadcasting services concerned in digital mode in that area using multi-channelling transmission capacity on each channel;
- (b) the objective that each channel should occupy 7 MHz of bandwidth;
- (c) the objective that, after the end of the simulcast period for the licence area, the holder is to transmit both of the commercial television broadcasting services concerned in digital mode in that area using multi-channelling transmission capacity of a channel or channels allotted by the ABA under the scheme or a digital channel plan, having regard to:
 - (i) the need to plan the most efficient use of the spectrum; and
 - (ii) the other relevant policy objectives of the scheme.

(5C) Paragraphs (3)(c), (d), (e), (f), (h) and (j) do not apply to a commercial television broadcasting service provided under a licence allocated under section 38B.

Note: Under section 38B, it is a condition of the licence that the service may only be transmitted in digital mode.

- (3) *Policy objectives.* Part A of the commercial television conversion scheme must be directed towards ensuring the achievement of the following policy objectives:
 - (c) the objective that there should be a transitional period for a licence area, that is:

- (i) to be known as the *simulcast period*; and
- (ii) to run for 8 years or for such longer period as is prescribed in relation to that area; and
- (iii) in the case of a metropolitan licence area—to begin on 1 January 2001; and
- (iv) in the case of a regional licence area—to begin on the date determined in relation to that area in accordance with paragraph (b);

throughout which the holder of a commercial television broadcasting licence for that area is required to transmit simultaneously the commercial television broadcasting service concerned in both analog mode and SDTV digital mode in that area;

- (d) the objective that, throughout the simulcast period for a licence area, the holder of a commercial television broadcasting licence for that area should be authorised, under one or more transmitter licences, to use one or more additional channels to transmit the commercial television broadcasting service concerned in digital mode in that area;
- (e) the objective that each additional channel should occupy 7 MHz of bandwidth;
- (f) the objective that, as soon as is practicable after the start of the simulcast period for a licence area, and throughout the remainder of that period, the transmission of a commercial television broadcasting service in SDTV digital mode in that area should achieve the same level of coverage and potential reception quality as is achieved by the transmission of that service in analog mode in that area;
- (h) the objective that, at the end of the simulcast period for a licence area, all transmissions of commercial

television broadcasting services in analog mode in that area are to cease;

- (ha) the objective that, after the end of the simulcast period for a licence area, each holder of a commercial television broadcasting licence for that area is to transmit the commercial television broadcasting service concerned in digital mode in that area using such channel or channels as the ABA allots under the scheme or a digital channel plan, having regard to:
 - (i) the need to plan the most efficient use of the spectrum; and
 - (ii) the other relevant policy objectives of the scheme;
- (j) the objective that, after the end of the simulcast period for a licence area, the transmission of a commercial television broadcasting service in SDTV digital mode in that 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 that area immediately before the end of that period;

3.1.11 Review 4 – Under-served areas (re HDTV quotas)

(vii) paragraph 37E(1)(d) of this Schedule;

Legislation to be considered:

Broadcasting Services Act 1992

Sch 4 cl 37E. Non-remote areas—HDTV quotas for commercial television broadcasting licensees

- (1) The regulations must determine standards that require each commercial television broadcasting licensee:

- (d) if the licence was allocated under section 38B—to ensure that a particular television program transmitted on the HDTV version of that service in that area during the simulcast period for that area is the same as a program (the *SDTV program*) that is transmitted simultaneously by the licensee on that service in SDTV digital mode in that area.

3.1.12 Review 4 – Under-served areas (re HDTV quotas for non-remote areas)

(viii) paragraph 37E(4)(c) of this Schedule;

Legislation to be considered:

Broadcasting Services Act 1992

Sch 4 cl 37E. Non-remote areas—HDTV quotas for commercial television broadcasting licensees

- (4) *Application.* Subclauses (1), (2) and (3) apply in relation to the transmission of a commercial television broadcasting service in a licence area that is not a remote licence area, where:
 - (c) that service is not the subject of an election under subclause 6(5A) or (5AA).

3.1.13 Review 4 – Under-served areas (re HDTV quotas for remote areas)

(ix) paragraph 37G(1)(d) of this Schedule;

Legislation to be considered:

Broadcasting Services Act 1992

Sch 4 cl 37G. Remote areas—HDTV quotas for commercial television broadcasting licensees

- (1) The regulations may determine standards that require each commercial television broadcasting licensee:

- (d) if the licence was allocated under section 38B—to ensure that a particular television program transmitted on the HDTV version of that service in that area during the simulcast period for that area is the same as a program (the *SDTV program*) that is transmitted simultaneously by the licensee on that service in SDTV digital mode in that area.

3.1.14 Review 2 – Fourth commercial licence (re use of transmitters for transmitting broadcasting services after 1 January 2007)

- (h) the competitive and regulatory arrangements that should apply to the operation of a radiocommunications transmitter on or after 1 January 2007 for transmitting a datacasting service under a datacasting transmitter licence, where:
- (i) there is in force a licence (other than a datacasting licence) allocated by the ABA under this Act authorising the provision of that service; or
- (ii) that service is provided in accordance with a class licence;¹⁸

3.1.15 Review 2 – Fourth commercial licence (re revenue arrangements for datacasting services that are other broadcasting services)

- (i) the arrangements that should apply in relation to revenue to be raised by the Commonwealth (whether by way of taxation or otherwise) in connection with the operation of a radiocommunications transmitter on or after 1 January 2007 for transmitting a datacasting service under a datacasting transmitter licence, where:
- (i) there is in force a licence (other than a datacasting licence) allocated by the ABA under this Act authorising the provision of that service; or
- (ii) that service is provided in accordance with a class licence;¹⁹

¹⁸ Paragraph (h) and its subparagraphs were inserted under the 2000 Amendment

¹⁹ Paragraph (i) and its subparagraphs were inserted under the 2000 Amendment

3.1.16 Review 2 – Fourth commercial licence (re commercial television licence conditions after 1 January 2007)

- (j) the conditions that should apply to commercial television broadcasting licences on or after 1 January 2007 for the provision of commercial television broadcasting services;²⁰

3.1.17 Indigenous service review (re viability of an indigenous service)

- (k) the viability of creating an indigenous television broadcasting service and the regulatory arrangements that should apply to the digital transmission of such a service using spectrum in the broadcasting services bands.²¹

3.1.18 Review 2 – Fourth commercial licence (re equal treatment for new commercial television licensees)

- (1A) A review under subclause (1) of a matter referred to in paragraph (1)(h) or (i) is to be conducted on the basis that, if the licence referred to in subparagraph (1)(h)(i) or (i)(i) is a commercial television broadcasting licence, the licensee should, on and after 1 January 2007, be treated in the same way as persons who held commercial television broadcasting licences immediately before that date, in relation to:
- (a) the duration of related transmitter licences; and
- (b) fees under the *Television Licence Fees Act 1964*.²²

3.1.19 Review Process

²⁰ Paragraph (j) was inserted under the 2000 Amendment

²¹ Paragraph (k) was inserted under the 2000 Amendment

²² Section (1A) was inserted under the 2000 Amendment



- (2) The Minister must cause to be prepared a report of a review under subclause (1).
- (3) The Minister must cause copies of a report to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the report.

3.2 Reviews to be conducted before 1 July 2005²³

3.2.1 HDTV review (re HDTV broadcast obligations)

- (1) Before 1 July 2005, the Minister must cause to be conducted a review of the following matters²⁴:
- (a) whether Division 2 of Part 4 of this Schedule (which deals with HDTV quotas) should be amended or repealed;

Legislation to be considered:

Broadcasting Services Act 1992

Sch 4 cl 37E. Non-remote areas—HDTV quotas for commercial television broadcasting licensees

- (1) The regulations must determine standards that require each commercial television broadcasting licensee:
- (a) in addition to transmitting a version of the commercial television broadcasting service concerned in SDTV digital mode in the licence area concerned, to transmit another version (the *HDTV version*) of the service in digital mode in that area; and
- (b) to meet specified quotas in relation to the extent to which high-definition television programs, or specified kinds of high-

²³ BSA Section 60A was inserted under the 2000 Amendment. The date by which the reviews it requires must be conducted was revised from 1 January 2004 to 1 July 2005 under the Feb 2003 Amendment

²⁴ BSA sch 4 cl 60A



- definition television programs, are transmitted in HDTV digital mode on the HDTV version of that service in that area; and
- (c) if the licence was not allocated under section 38B—to ensure that a particular television program transmitted on the HDTV version of that service in that area during the simulcast period for that area is the same as:
- (i) a program (the *analog program*) that is transmitted simultaneously by the licensee on that service in analog mode in that area and that is not covered by a determination under subclause 6(9) or (10); or
- (ii) a program (the *SDTV program*) that is transmitted simultaneously by the licensee on that service in SDTV digital mode in that area and that is covered by a determination under subclause 6(9) or (10); and
- (d) if the licence was allocated under section 38B—to ensure that a particular television program transmitted on the HDTV version of that service in that area during the simulcast period for that area is the same as a program (the *SDTV program*) that is transmitted simultaneously by the licensee on that service in SDTV digital mode in that area.
- (2) Standards made for the purposes of subclause (1) must be directed towards ensuring the achievement of the following policy objectives:
- (a) the objective that the transmission mentioned in paragraph (1)(a) is to commence:
- (i) as soon as practicable after the licensee begins to transmit the commercial television broadcasting service concerned in SDTV digital mode in that area; and
- (ii) in any event, within the phase-in period;
- (b) the objective that, after the end of the phase-in period, each holder of a commercial television broadcasting licence for a licence area is required to transmit at least the HDTV quota of high-definition television programs in HDTV digital mode in

that area on the HDTV version of the commercial television broadcasting service concerned.

- (2A) For the purposes of subclause (2), the *phase-in period* is the period ending at the later of the following times:
- (a) the end of 30 June 2003;
 - (b) the end of the 2-year period beginning when a licensee transmitting a commercial television broadcasting service in an area is required to commence transmitting the service in SDTV digital mode in that area.
- (2B) For the purposes of subclause (2), the HDTV quota is as follows:
- (a) the HDTV quota for each calendar year that starts after the end of a licensee's phase-in period is 1040 hours (unless paragraph (b) or (c) applies to the calendar year or a part of it);
 - (b) if a licensee's phase-in period ends on or after 1 January and before the following 1 October, the HDTV quota for the period (the *first quota period*) starting immediately after the end of the phase-in period and ending on the following 31 December is 1040 hours reduced on a pro-rata basis (because the first quota period is less than a full calendar year);
 - (c) if a licensee's phase-in period ends on or after 1 October and before the following 31 December, the HDTV quota for the period (the *first quota period*) starting immediately after the end of the phase-in period and ending on 31 December in the next calendar year is 1040 hours increased on a pro-rata basis (because the first quota period is more than a full calendar year).
- (3) *Prime viewing hours quotas.* The regulations may determine standards that require commercial television broadcasting licensees to meet specified quotas in relation to the extent to which high-definition television programs, or specified kinds of high-definition television programs, are transmitted in HDTV digital mode in prime viewing hours on the HDTV version of the commercial television broadcasting service concerned.

- (4) *Application.* Subclauses (1), (2) and (3) apply in relation to the transmission of a commercial television broadcasting service in a licence area that is not a remote licence area, where:
- (a) that service is transmitted in digital mode in that area; and
 - (b) that service is not transmitted using a transmitter operated under the authority of a transmitter licence issued as mentioned in subclause 8(8); and
 - (c) that service is not the subject of an election under subclause 6(5A) or (5AA).

Note 1: For *high-definition television program*, see clause 37L.

Note 2: For *prime viewing hours*, see clause 37M.

37EA. Further HDTV transmission rules for commercial television broadcasting licensees in non-remote areas

- (1) In determining, for the purposes of standards made under subclause 37E(1), whether a commercial television broadcasting licensee has ensured that the HDTV simulcast requirement is met:
- (a) if a relevant determination is in force under subclause (2)—ignore HDTV demonstration programs, so long as the licensee complies with such conditions (if any) as are specified in the determination; and
 - (b) if a relevant determination is in force under subclause (4)—ignore any advertising or sponsorship matter covered by the determination.
- (2) *ABA determinations.* The ABA may, by writing, determine that paragraph (1)(a) applies to HDTV demonstration programs transmitted by a specified commercial television broadcasting licensee during a specified period.
- Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.
- (3) The period specified in a determination under subclause (2) must not be more than 12 months from the commencement of the determination.
- (4) The ABA may, by writing, determine that paragraph (1)(b) applies to specified advertising or sponsorship matter transmitted by a specified

commercial television broadcasting licensee during a specified period.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

- (5) The period specified in a determination under subclause (4) must not be more than 2 years from the commencement of the simulcast period for the licence area concerned.
- (7) *HDTV quota*. In determining, after the end of the phase-in period referred to in subclause 37E(2A), whether a commercial television broadcasting licensee has met the HDTV quota (within the meaning of subclause 37E(2B)), ignore any HDTV demonstration programs transmitted by the licensee.
- (8) *Disallowable instrument*. A determination under subclause (2) or (4) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (9) *Interpretation*. A reference in this clause to *advertising or sponsorship matter* is a reference to advertising or sponsorship matter (whether or not of a commercial kind).
- (10) In this clause:

HDTV demonstration program means a television program that is:

- (a) not longer than 60 minutes; and
- (b) transmitted in HDTV digital mode on the HDTV version of a commercial television broadcasting service; and
- (c) produced for the sole purpose of allowing the benefits of transmission in HDTV digital mode to be demonstrated to potential purchasers of equipment capable of receiving television programs in HDTV digital mode.

HDTV simulcast requirement means the requirement referred to in paragraph 37E(1)(c) or (d) of this Schedule.

37 Non-remote areas—HDTV quotas for national broadcasters

- (1) The regulations must determine standards that require each national broadcaster:
 - (a) in addition to transmitting a version of the national television broadcasting service concerned in SDTV digital mode in the

coverage area concerned, to transmit another version (the *HDTV version*) of the service in digital mode in that area; and

- (b) to meet specified quotas in relation to the extent to which high-definition television programs, or specified kinds of high-definition television programs, are transmitted in HDTV digital mode on the HDTV version of that service in that area; and
 - (c) to ensure that a particular television program transmitted on the HDTV version of that service in that area during the simulcast period for that area is the same as:
 - (i) a program (the *analog program*) that is transmitted simultaneously by the broadcaster on that service in analog mode in that area and that is not covered by a determination under subclause 19(9) or (10); or
 - (ii) a program (the *SDTV program*) that is transmitted simultaneously by the broadcaster on that service in SDTV digital mode in that area and that is covered by a determination under subclause 19(9) or (10).
- (2) Standards made for the purposes of subclause (1) must be directed towards ensuring the achievement of the following policy objectives:
- (a) the objective that the transmission mentioned in paragraph (1)(a) is to commence:
 - (i) as soon as practicable after the broadcaster begins to transmit the national television broadcasting service concerned in SDTV digital mode in that area; and
 - (ii) in any event, within the phase-in period;
 - (b) the objective that, after the end of the phase-in period, each national broadcaster is required to transmit at least the HDTV quota of high-definition television programs in HDTV digital mode in a coverage area on the HDTV version of the national television broadcasting service concerned.
- (2A) For the purposes of subclause (2), the *phase-in period* is the period ending at the later of the following times:
- (a) the end of 30 June 2003;
 - (b) the end of the 2-year period beginning when a broadcaster transmitting a national television broadcasting service in an

area is required to commence transmitting the service in SDTV digital mode in that area.

- (2B) For the purposes of subclause (2), the HDTV quota is as follows:
- (a) the HDTV quota for each calendar year that starts after the end of a national broadcaster's phase-in period is 1040 hours (unless paragraph (b) or (c) applies to the calendar year or a part of it);
 - (b) if a national broadcaster's phase-in period ends on or after 1 January and before the following 1 October, the HDTV quota for the period (the *first quota period*) starting immediately after the end of the phase-in period and ending on the following 31 December is 1040 hours reduced on a pro-rata basis (because the first quota period is less than a full calendar year);
 - (c) if a national broadcaster's phase-in period ends on or after 1 October and before the following 31 December, the HDTV quota for the period (the *first quota period*) starting immediately after the end of the phase-in period and ending on 31 December in the next calendar year is 1040 hours increased on a pro-rata basis (because the first quota period is more than a full calendar year).
- (3) *Prime viewing hours quotas.* The regulations may determine standards that require national broadcasters to meet specified quotas in relation to the extent to which high-definition television programs, or specified kinds of high-definition television programs, are transmitted in HDTV digital mode in prime viewing hours on the HDTV version of the national television broadcasting service concerned.
- (4) *Application.* Subclauses (1), (2) and (3) apply in relation to the transmission of a national television broadcasting service in a coverage area that is not a remote coverage area, where:
- (a) that service is transmitted in digital mode in that area; and
 - (b) that service is not transmitted using a transmitter operated under the authority of a transmitter licence issued as mentioned in subclause 23(8); and

- (c) that service is not a multi-channelled national television broadcasting service.

Note 1: For *high-definition television program*, see clause 37L.

Note 2: For *prime viewing hours*, see clause 37M.

37FA. Further HDTV transmission rules for national broadcasters in non-remote areas

- (1) In determining, for the purposes of standards made under subclause 37F(1), whether a national broadcaster has ensured that the HDTV simulcast requirement is met:
 - (a) if a relevant determination is in force under subclause (2)—ignore HDTV demonstration programs, so long as the national broadcaster complies with such conditions (if any) as are specified in the determination; and
 - (b) in the case of the Special Broadcasting Service Corporation where a relevant determination is in force under subclause (4)—ignore any advertising or sponsorship matter covered by the determination.
- (2) *ABA determinations.* The ABA may, by writing, determine that paragraph (1)(a) applies to HDTV demonstration programs transmitted by a specified national broadcaster during a specified period.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

- (3) The period specified in a determination under subclause (2) must not be more than 12 months from the commencement of the determination.
- (4) The ABA may, by writing, determine that paragraph (1)(b) applies to specified advertising or sponsorship matter transmitted by the Special Broadcasting Service Corporation during a specified period.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

- (5) The period specified in a determination under subclause (4) must not be more than 2 years from the commencement of the simulcast period for the coverage area concerned.

- (7) *HDTV quota.* In determining, after the end of the phase-in period referred to in subclause 37F(2A), whether a national broadcaster has met the HDTV quota (within the meaning of subclause 37F(2B)), ignore any HDTV demonstration programs transmitted by the national broadcaster.
- (8) *Disallowable instrument.* A determination under subclause (2) or (4) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (9) *Interpretation.* A reference in this clause to *advertising or sponsorship matter* is a reference to advertising or sponsorship matter (whether or not of a commercial kind).
- (10) In this clause:
HDTV demonstration program means a television program that is:
 - (a) not longer than 60 minutes; and
 - (b) transmitted in HDTV digital mode on the HDTV version of a national television broadcasting service; and
 - (c) produced for the sole purpose of allowing the benefits of transmission in HDTV digital mode to be demonstrated to potential purchasers of equipment capable of receiving television programs in HDTV digital mode.

HDTV simulcast requirement means the requirement referred to in paragraph 37F(1)(c) of this Schedule.

37G. Remote areas—HDTV quotas for commercial television broadcasting licensees

- (1) The regulations may determine standards that require each commercial television broadcasting licensee:
 - (a) in addition to transmitting a version of the commercial television broadcasting service concerned in SDTV digital mode in the licence area concerned, to transmit another version (the *HDTV version*) of the service in digital mode in that area; and
 - (b) to meet specified quotas in relation to the extent to which high-definition television programs, or specified kinds of high-

definition television programs, are transmitted in HDTV digital mode on the HDTV version of that service in that area; and

- (c) if the licence was not allocated under section 38B—to ensure that a particular television program transmitted on the HDTV version of that service in that area during the simulcast period for that area is the same as:
 - (i) a program (the *analog program*) that is transmitted simultaneously by the licensee on that service in analog mode in that area and that is not covered by a determination under subclause 6(9) or (10); or
 - (ii) a program (the *SDTV program*) that is transmitted simultaneously by the licensee on that service in SDTV digital mode in that area and that is covered by a determination under subclause 6(9) or (10); and
 - (d) if the licence was allocated under section 38B—to ensure that a particular television program transmitted on the HDTV version of that service in that area during the simulcast period for that area is the same as a program (the *SDTV program*) that is transmitted simultaneously by the licensee on that service in SDTV digital mode in that area.
- (1A) If the regulations determine standards that require each commercial television broadcasting licensee to ensure the requirement in paragraph (1)(c) or (d) is met, the regulations may also make provision for and in relation to exceptions to that requirement.
- (1B) In making provision for and in relation to exceptions to that requirement, the regulations may empower the ABA to make written determinations and to impose conditions on commercial television broadcasting licensees in those determinations.
- (1C) Subclause (1B) does not limit subclause (1A).
- (2) *Prime viewing hours quotas.* The regulations may determine standards that require commercial television broadcasting licensees

to meet specified quotas in relation to the extent to which high-definition television programs, or specified kinds of high-definition television programs, are transmitted in HDTV digital mode in prime viewing hours on the HDTV version of the commercial television broadcasting service concerned.

- (3) *Application.* Subclauses (1) and (2) apply in relation to the transmission of a commercial television broadcasting service in a remote licence area, where:
- (a) that service is transmitted in digital mode in that area; and
 - (b) that service is not transmitted using a transmitter operated under the authority of a transmitter licence issued as mentioned in subclause 8(10A).

Note 1: For *high-definition television program*, see clause 37L.

Note 2: For *prime viewing hours*, see clause 37M.

37H. Remote areas—HDTV quotas for national broadcasters

- (1) The regulations may determine standards that require each national broadcaster:
- (a) in addition to transmitting a version of the national television broadcasting service concerned in SDTV digital mode in the coverage area concerned, to transmit another version (the *HDTV version*) of the service in digital mode in that area; and
 - (b) to meet specified quotas in relation to the extent to which high-definition television programs, or specified kinds of high-definition television programs, are transmitted in HDTV digital mode on the HDTV version of that service in that area; and
 - (c) to ensure that a particular television program transmitted on the HDTV version of that service in that area during the simulcast period for that area is the same as:
 - (i) a program (the *analog program*) that is transmitted simultaneously by the broadcaster on that service in analog mode in that area and that is not covered by a determination under subclause 19(9) or (10); or
 - (ii) a program (the *SDTV program*) that is transmitted simultaneously by the broadcaster on that service in

SDTV digital mode in that area and that is covered by a determination under subclause 19(9) or (10).

- (1A) If the regulations determine standards that require each national broadcaster to ensure the requirement in paragraph (1)(c) is met, the regulations may also make provision for and in relation to exceptions to that requirement.
- (1B) In making provision for and in relation to exceptions to that requirement, the regulations may empower the ABA to make written determinations and to impose conditions on national broadcasters in those determinations.
- (1C) Subclause (1B) does not limit subclause (1A).
- (2) *Prime viewing hours quotas.* The regulations may determine standards that require national broadcasters to meet specified quotas in relation to the extent to which high-definition television programs, or specified kinds of high-definition television programs, are transmitted in HDTV digital mode in prime viewing hours on the HDTV version of the national television broadcasting service concerned.
- (3) Subclauses (1) and (2) apply in relation to the transmission of a national television broadcasting service in a remote coverage area, where:
 - (a) that service is transmitted in digital mode in that area; and
 - (b) that service is not transmitted using a transmitter operated under the authority of a transmitter licence issued as mentioned in subclause 23(10A); and
 - (c) that service is not a multi-channelled national television broadcasting service.

Note 1: For *high-definition television program*, see clause 37L.

Note 2: For *prime viewing hours*, see clause 37M.

37J. HDTV version

To avoid doubt, a HDTV version of a commercial television broadcasting service or of a national television broadcasting service need not transmit all of the television programs that are broadcast on the version of the service that is transmitted in SDTV digital mode.

Note: For example, a HDTV version of a particular service could consist of programs transmitted in HDTV digital mode. In such a case, receivers would pick up the remaining programs from the version of the service that is transmitted in SDTV digital mode.

37K. Compliance by national broadcasters

A national broadcaster must comply with a standard under this Division that is applicable to the broadcaster.

Note: For compliance by licensees, see clause 7 of Schedule 2.

37L. High-definition television programs

- (1) For the purposes of the application of this Division to a commercial television broadcasting licensee, a *high-definition television program* is:
- (a) a television program, or incidental material, to the extent that it was originally produced in a high-definition digital video format; or
 - (b) a television program, or incidental material, to the extent that:
 - (i) it was originally produced in a non-video format (for example, 16 mm or 35 mm film) that was of equivalent picture quality to a high-definition digital video format; and
 - (ii) it has been converted to a high-definition digital video format;
 - where the conversion has not resulted in a significant reduction in picture quality; or
 - (c) incidental material not covered by paragraph (a) or (b) that is transmitted during breaks in so much of a television program as satisfies the requirements of paragraph (a) or (b).
- (2) For the purposes of the application of this Division to a national broadcaster, a *high-definition television program* is:
- (a) a television program, or incidental material, to the extent that it was originally produced in a high-definition digital video format; or
 - (b) a television program, or incidental material, to the extent that:

- (i) it was originally produced in a non-video format (for example, 16 mm or 35 mm film) that was of equivalent picture quality to a high-definition digital video format; and
- (ii) it has been converted to a high-definition digital video format;

where the conversion has not resulted in a significant reduction in picture quality; or

- (c) a television program, or incidental material, to the extent that:
 - (i) it was originally produced in a standard definition digital video format; and
 - (ii) it has been converted to a high-definition digital video format; or
- (d) a television program, or incidental material, to the extent that:
 - (i) it was originally produced in an analog video format; and
 - (ii) it has been converted to a standard definition digital video format;

where the converted program or material was subsequently converted to a high-definition digital video format; or

- (e) incidental material not covered by paragraph (a), (b), (c) or (d) that is transmitted during breaks in so much of a television program as satisfies the requirements of paragraph (a), (b), (c) or (d).
- (3) If material (the *archival material*) included in a television program or in incidental material satisfies the following criteria:
- (a) the archival material was originally produced:
 - (i) before 1 July 2003; or
 - (ii) if another day is determined in writing by the Minister in relation to a class of television programs or incidental material that includes the television program or incidental material concerned—before that other day;



- (b) the archival material would, apart from this subclause, prevent the part of the television program or incidental material which includes the archival material from satisfying the requirements of paragraph (1)(a) or (b) or (2)(a), (b), (c) or (d) (as the case may be);
- (c) the archival material, taken together with any other material to which paragraphs (a) and (b) apply and that is also included in the same television program or incidental material, amounts to an insubstantial proportion of the television program or incidental material;

that part of the television program or incidental material is taken to satisfy the requirements of paragraph (1)(a) or (b) or (2)(a), (b), (c) or (d) (as the case may be).

- (4) The following provisions apply to determinations of a day under subparagraph (3)(a)(ii):
 - (a) a day so determined may be a specified day, or a day that is identified in some other way (for example, the day occurring a specified period before first transmission);
 - (b) the Minister must not make a determination that would result in a day so determined being earlier than 1 July 2003.
- (5) A determination under subparagraph (3)(a)(ii) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (6) In this clause:

incidental material means:

 - (a) advertising or sponsorship material (whether or not of a commercial kind); or
 - (b) a promotion for a television program or a television broadcasting service; or
 - (c) community information material or community promotional material; or
 - (d) a news break or weather bulletin; or
 - (e) any other similar material.



television program does not include incidental material (whether transmitted during or between television programs).

37M. Prime viewing hours

For the purposes of this Division, *prime viewing hours* are the hours:

- (a) beginning at 6 pm each day or, if another time is prescribed, beginning at that prescribed time each day; and
- (b) ending at 10.30 pm on the same day or, if another time is prescribed, ending at that prescribed time on the same day.

3.2.2 HDTV review – (re remote licence area obligations)

- (b) the regulatory arrangements that should apply to:
 - (i) the transmission of television programs by commercial television broadcasting licensees in HDTV digital mode in remote licence areas; and
 - (ii) the transmission of television programs by national broadcasters in HDTV digital mode in remote coverage areas.
- (2) The Minister must cause to be prepared a report of a review under subclause (1).
- (3) The Minister must cause copies of a report to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the report.

3.3 Review to be conducted before 1 January 2006²⁵

3.3.1 Simulcast period reviews (re the duration of the simulcast period)

- (1) Before 1 January 2006, the Minister must cause to be conducted a review of the content of any regulations made for the purposes of

²⁵ Clause 60B was inserted under the 2000 Amendment

paragraph 6(3)(c) of this Schedule (which deals with the duration of the simulcast period)²⁶.

Legislation to be considered:

Broadcasting Services Act 1992

Sch 4 cl 6 Commercial television conversion scheme

- (1) As soon as practicable after the commencement of this clause, the ABA must, by writing, formulate a scheme (the *commercial television conversion scheme*) for the conversion, over time, of the transmission of commercial television broadcasting services from analog mode to digital mode.
- (2) The commercial television conversion scheme is to be divided into the following Parts:
 - (a) Part A, which is to deal with licence areas that are not remote licence areas;
 - (b) Part B, which is to deal with remote licence areas.
- (3) *Policy objectives.* Part A of the commercial television conversion scheme must be directed towards ensuring the achievement of the following policy objectives:
 - (c) the objective that there should be a transitional period for a licence area, that is:
 - (i) to be known as the *simulcast period*; and
 - (ii) to run for 8 years or for such longer period as is prescribed in relation to that area; and
 - (iii) in the case of a metropolitan licence area—to begin on 1 January 2001; and
 - (iv) in the case of a regional licence area—to begin on the date determined in relation to that area in accordance with paragraph (b);

throughout which the holder of a commercial television broadcasting licence for that area is required to transmit simultaneously the commercial television broadcasting service concerned in both analog mode and SDTV digital mode in that area;

3.3.2 Review Process

- (2) The Minister must cause to be prepared a report of a review under subclause (1).**
- (3) The Minister must cause copies of a report to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the report.**

²⁶ BSA sch 4 cl 60B