



**Australian Government**

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**Digital Switchover Taskforce**

**Legislative framework for implementing a digital television switchover timetable**

**Discussion Paper**

**May 2008**

Digital Switchover Taskforce  
Department of Broadband, Communications and the Digital Economy  
GPO Box 2154  
CANBERRA ACT 2601

# 1. Introduction

## 1.1 Purpose of the discussion paper

This discussion paper outlines proposals for legislative amendments that may be required to provide the flexibility to develop and implement a digital television switchover timetable, including options to enable a staggered, region-by-region switchover.

This paper seeks comment in relation to the most appropriate legislative framework for implementation. The switchover timetable is the subject of ongoing consultation between the Australian Government, industry and the Australian Communications and Media Authority (ACMA), and is due to be provided to the Australian Government for consideration by the end of October 2008.

## 1.2 Submissions

Submissions are invited from interested parties on the matters covered in this paper. Submissions are also invited to address any other relevant issues not specifically addressed in this paper.

Submissions should be provided by close of business on Friday 4 July 2008.

The Department of Broadband, Communications and the Digital Economy (the Department) prefers electronic submissions in Word for Windows or pdf format, which should be emailed to *dst@bcde.gov.au*

Hard copy submissions should be forwarded to:

Manager  
Legislation Section  
Digital Switchover Policy and Regulation Branch  
Department of Broadband, Communications and the Digital Economy  
GPO Box 2154  
CANBERRA ACT 2601

Further information on this discussion paper can be obtained from David Jordan at the above email address or telephone 02 6271 1211, facsimile 02 6271 1717.

Submissions will be made public on the Department's website unless otherwise specified. Persons providing a submission should indicate clearly whether any aspect of the submission should not be made public. Where confidentiality is requested, submitters are encouraged to provide a public version of submissions that can be made available on the Department's website.

## 2. Background

Digital television transmissions began in metropolitan areas in 2001, and in non-remote regional areas by 2004, with the original intention of ending analog-digital simulcasting after eight years. On 18 December 2007, the Australian Government announced that digital television switchover would be completed by the end of December 2013.

A firm digital television switchover timetable will provide certainty to broadcasters to complete digital roll out and for Australian consumers to make the transition to digital-only free-to-air television. A firm timetable will be a key driver of market confidence, act as an incentive to consumer uptake of digital equipment, and provide the focus of any targeted information campaigns.

Simulcasting is expensive for the Australian Government which pays the national broadcasters' analog transmission costs and contributes to regional commercial broadcasters' costs (around \$75 million per year). Simulcasting is also an inefficient use of spectrum that could otherwise be used to provide new services such as broadcasting, telephony or wireless broadband services.

### **Digital Switchover Taskforce**

The Australian Government established the Digital Switchover Taskforce (DST) within the Department of Broadband, Communications and the Digital Economy (the Department) to coordinate and oversee Australia's transition to digital television. This includes developing and implementing a program framework, including a switchover timetable, to complete the switchover from analog to digital television transmission in Australia by the end of 2013. The DST will work closely with industry and report back to the Australian Government with a comprehensive switchover timetable in the third quarter of 2008.

An Industry Advisory Group (IAG) has been established, bringing together broadcasters, retailers, and manufacturers, as well as government departments, to work with the DST to achieve switchover.

### **Strategy to drive the transition to digital television**

On 26 March 2008, the Australian Government announced a \$37.9 million strategy to drive Australia's transition to digital TV, comprising:

- \$8.5 million for the Australian Communications and Media Authority to undertake technical switchover-related projects, including an evaluation of digital TV transmission and reception throughout Australia;
- \$4.8 million for a 'Digital Tracker' to assess issues such as public awareness of digital switchover, intention of households to convert and actual conversion rates;
- \$1 million over two years for research into digital reception problems in multi-unit dwellings with a shared TV antenna system;
- \$6.7 million for a logo and labelling scheme to clearly indicate which products are digitally ready, ensuring Australian consumers can be informed and confident about what products will suit their needs; and
- \$16.9 million for the Digital Switchover Taskforce, which will coordinate the switchover program within the Department.

## **3. Current legislative framework**

### **Simulcast period**

Under the *Broadcasting Services Act 1992*, dates for switchover are derived from the requirement that commercial and national broadcasters must transmit their service simultaneously in both analog and standard definition digital mode in a particular licence area. At the end of the simulcast period, analog transmissions cease and digital-only broadcasting commences.

Paragraph 6(3)(c) of Schedule 4 to the *Broadcasting Services Act* provides that the simulcast period for a particular licence area is to run for eight years after the commencement of digital transmission, or for such longer period as is prescribed in relation to that area. The length of the simulcast period can therefore be extended by

regulation, but not shortened. The *Broadcasting Services (Extension of Simulcast Period) Regulations 2007*, which came into force on 17 December 2007, extend the simulcast period in metropolitan areas to nine years, as a temporary measure to give the Australian Government sufficient time to finalise a staggered, region-by-region switchover timetable.

Digital transmission commenced in metropolitan licence areas (Adelaide, Brisbane, Melbourne, Sydney, and Perth) on 1 January 2001, and in non-remote regional licence areas on 31 March 2003 or 31 December 2003 (depending on the particular licence area). This makes the current legislated switchover date for metropolitan areas 31 December 2009, and 31 March 2011 or 31 December 2011 for non-remote regional areas.

The Broadcasting Services Act provides that ACMA may determine the simulcast period for remote areas. A digital television is yet to commence for remote area broadcasters.

### **Digital television conversion schemes**

The Broadcasting Services Act requires ACMA to formulate and administer the commercial television conversion scheme (CTCS) for the conversion, over time, of commercial television broadcasting services from analog mode to digital mode. Compliance with the CTCS is a condition of commercial television broadcasting licences.

Part A of the CTCS, which deals with metropolitan and non-remote regional commercial television licensees, is required to be directed towards the achievement of a range of legislated policy objectives. This includes the duration of the digital-analog simulcast period, and ensuring that the level of coverage and potential reception quality achieved by the standard definition digital service is equivalent to the existing analog service.

Part B of the CTCS is required to be directed towards the policy objective that standard definition simulcasts in remote areas commence by a date to be determined by ACMA.

The commercial television conversion scheme can be varied by ACMA, after a period of public consultation. In formulating or varying the CTCS, ACMA must comply with any written directions given to it by the Minister. Such a direction from the Minister may be of a general or specific nature.

ACMA is also required to formulate the national television conversion scheme for the conversion of national television broadcasting services. The national television conversion scheme sets the end of the simulcast period in a 'coverage area' to be the same as the end of the simulcast period for commercial television broadcasters in the corresponding licence area.

In 1999, the then Australian Broadcasting Authority made the *Commercial Television Conversion Scheme 1999*, applicable to commercial television broadcasting services throughout Australia. An equivalent Conversion Scheme applying to national television broadcasting services, the *National Television Conversion Scheme 1999*, was also made in the same year.

Over time, both Schedule 4 to the BSA and the schemes have been varied in response to the changing broadcasting environment.

### **High Definition transmission and Multichannelling**

Commercial and national broadcasters are required to transmit at least 1040 hours of high definition programming annually. This requirement ends at digital switchover.

Amendments to the Broadcasting Services Act by the *Broadcasting Legislation Amendment (Digital Television) Act 2006* enabled commercial broadcasters to deliver one high definition multichannel from 1 January 2007, and one standard definition multichannel from 1 January 2009. These multichannels are currently exempt from Australian and children's content requirements, and from captioning requirements.

The restrictions on the numbers of high definition and standard definition multichannels, and the exemption from content and captioning requirements on multichannels, are scheduled to end at the end of the simulcast period.

## **4. Amending the current legislative framework**

The Australian Government has stated that digital switchover will be completed by the end of 2013. The DST is to present a comprehensive switchover timetable to the Australian Government in the third quarter of 2008. The Australian Government's preferred approach is a staggered, region-by-region switchover timetable.

### **4.1 Shortening the duration of the simulcast period**

As the Broadcasting Services Act does not provide for the simulcast period to be shortened, any digital television switchover timetable could not presently include switchover dates for non-remote regional areas before either 31 March 2011 or 31 December 2011 (depending on the particular licence area). It is possible that the most appropriate switchover timetable could include switchover dates for some areas that fall earlier than the currently scheduled switchover dates of 31 March 2011 or 31 December 2011.

Without pre-empting a finalised digital television switchover timetable, and the regions upon which such a timetable may be based, the Australian Government intends to amend the Broadcasting Services Act to enable, if considered necessary or appropriate, the simulcast period for one or more licence areas to be shortened.

### **4.2 Using geographical areas other than licence areas**

The geographical areas for determining switchover are based on licence areas for commercial television broadcasting services. Current provisions would not allow a timetable that may involve a staggered analog switch-off within a single licence area (that is, at present all analog signals within a given licence area would be required to be switched off at the same time).

These provisions include the requirements that:

- as soon as practicable after the start of the simulcast period in a licence area, and throughout the remainder of the simulcast period, the transmission of a television service in SDTV should achieve the same level of coverage and potential reception quality as is achieved by the transmission of that service in analog mode (paragraphs 6(3)(f) & 19(3)(f) of Schedule 4 to the BSA);
- at the end of the simulcast period for a licence area, all transmissions in analog mode in that area must cease (paragraphs 6(3)(h) & 19(3)(h) of Schedule 4 to the BSA); and
- after the end of the simulcast period in that licence area, transmissions in SDTV mode 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 (paragraphs 6(3)(j) & 19(3)(j) of Schedule 4 to the BSA) (emphasis added).

These provisions would prevent a switchover timetable based on regions that are smaller than and within existing television licence areas. The Australian Government intends to amend the Broadcasting Services Act to enable, if considered necessary or appropriate, simulcast periods to be based on areas different to existing television licence areas. The policy of achieving equivalent coverage would remain in place.

### ***4.3 Choice of mechanisms for setting a digital switchover timetable***

There are a number of legislative and administrative mechanisms that could be used to implement a digital switchover timetable, including legislating a detailed switchover timetable, or making provision for a timetable to be set by some form of legislative instrument.

#### **4.3.1 Switchover timetable set in legislation**

A final switchover timetable could be set in the Broadcasting Services Act. A legislated timetable would be the most definitive statement of intent regarding digital switchover, providing certainty to industry and consumers. However, any changes to a legislated timetable would require amendment to the legislation.

#### **4.3.2 Switchover timetable set by legislative instrument**

If a detailed switchover timetable is not to be set in an Act, there are a number of forms of legislative instrument, including regulation and written determination, which could be used:

- A switchover timetable made by regulation—this would be made by the Governor-General on advice from the Minister;
- The Minister could set a switchover timetable by written determination—this power could be delegated to an official of the Department;
- ACMA could set a digital switchover timetable by written determination.

Any of these options would require legislative change to be brought into effect.

#### **Switchover timetable prescribed by regulation**

This option would be a strong statement of intent to implement the preferred switchover timetable. This option reflects current arrangements, as changes to the simulcast period are currently made through regulation.

#### **The Minister to determine a switchover timetable**

The Minister could determine and vary, in writing, a digital switchover timetable. This could be done as one instrument, or by the Minister determining switchover dates for individual regions. This option could also include the requirement that the Minister consult with ACMA before making such a determination, to ensure the Minister must take into account ACMA's technical assessment of digital rollout progress and digital transmission and reception issues. The legislation could define the period within which the switchover timetable must commence and/or be completed.

Such a power of determination could be delegated to one or more identified officials within the Department. This option could, for example, allow the Digital Switchover Taskforce to have responsibility for setting the digital switchover timetable, and would

provide greater flexibility to review and revise the timetable as switchover progresses, if required.

Delegation of powers to officials within the Department can be achieved by a general statement of delegation under the relevant Act. Under section 31 of the *Air Navigation Act 1920*, for example, the Minister may delegate to a person or persons all or any of his or her powers under the Act (except for the power of delegation itself). A delegation under section 31 is revocable at will, and does not prevent the exercise of a power or the performance of a function by the Minister.

In the case of the Broadcasting Services Act, one option could be a similar general provision in the Act regarding delegation of powers. Alternatively, the delegated power could be made specific to Schedule 4 (which deals with digital conversion) so that the delegation of powers to officials in the Department refer only to decision-making powers relating to the conversion from analog to digital television broadcasting.

### **ACMA to determine a switchover timetable**

Another option could be to give ACMA the responsibility to determine a digital switchover timetable. Again, this could be done by one instrument, or by ACMA determining switchover dates for individual regions. This could be achieved through ACMA's existing responsibilities in relation to the commercial and national television conversion schemes, or through another mechanism provided for in new legislation. The legislation could give the Minister the power to direct ACMA in relation to its functions regarding digital switchover and/or could set general parameters for switchover, within which ACMA would develop and implement a detailed timetable.

### **Consultation before making a legislative instrument**

The *Legislative Instruments Act 2003* provides that before a legislative instrument is made, the rule-maker must be satisfied that any consultation that is considered to be appropriate, and that is reasonably practical to undertake, has been undertaken, particularly where the proposed instrument is likely to have a direct or substantially indirect effect on business. Provisions for consultation could be included in the amending legislation to ensure these requirements are satisfied.

### **Disallowance by Parliament**

A regulation or other legislative instrument (such as a determination made by the Minister or delegated official, or a determination by ACMA), once registered on the Federal Register of Legislative Instruments (FRLI), must be tabled in both Houses of the Parliament within six sittings days of registration to remain in effect. Once tabled, a legislative instrument is subject to disallowance in either house, unless that instrument is exempt from disallowance (not applicable in relation to these proposed amendments).

## ***4.4 Other provisions affected by changes to the duration of the simulcast period***

There are a number of events in the Broadcasting Services Act and the Radiocommunications Act that are linked to the 'end of the simulcast period' in a licence area. These include:

- the end of the exemption for high definition and standard definition multichannels from Australian and children's program standards and captioning requirements;

- the return of spectrum used for analog transmission by commercial and national broadcasters; and
- the end of the high definition quota.

See **Attachment A** for a list of all provisions affected or dependent on the date for the ‘end of the simulcast period’.

Provisions for these events may need to be amended if there are changes to how the simulcast period is determined.

## **Content and captioning on commercial television broadcaster multichannels**

Commercial television broadcasters are currently able to provide one high definition multichannel. From 1 January 2009, commercial television broadcasters will be able to provide a standard definition multichannel. These multichannels are currently exempt from Australian and children’s content requirements, and from captioning requirements. These exemptions end at the end of the simulcast period.

If there is a switchover timetable based on areas other than television licence areas, there may be some licence areas where the simulcast period has ended in some parts of the licence area, while it continues in other parts of the licence area.

A review of content and captioning regulation on commercial television broadcaster multichannels is legislated to be conducted a year before the ‘earliest switchover day’.

## **Return of spectrum**

At the end of the simulcast period, commercial television broadcasting services and national broadcasters are to surrender all transmitter licences and be issued with one or more transmitter licences that authorise the transmission of commercial television broadcasting services in digital mode as per ACMA’s digital channel plan for that licence area.

If there is a switchover timetable based on areas other than television licence areas, it would not be possible for all transmitter licences to be returned at the end of the simulcast period for a particular licence area if there are different dates for the end of analog transmission for different areas within the one licence area.

## **End of the high definition quota**

Commercial television broadcasting services and national broadcasters are required to transmit a minimum of 1040 hours of high definition programming each year, until the end of the simulcast period.

A staggered switchover timetable may mean that the high definition quota will apply in some areas of the country but not others during the switchover process.

If there is a switchover timetable based on areas other than television licence areas, this may mean that the high definition quota will apply in some parts of a television licence area and not others during the switchover process. This could cause logistical difficulties for television networks operating within the aggregated regional television licence areas.

One option could be to maintain the high definition quota in all areas until switchover is completed in 2013.

## Attachment A: Legislative provisions dependent on the 'end of the simulcast period'

Issue	Detail	Provisions
<i>Broadcasting Services Act 1992</i>		
<b>Definition of 'earliest digital television switchover day'</b>	Means the earliest day on which a simulcast period (within the meaning of Schedule 4) ends.	s 6.
<b>LAP – commercial and national multichannels</b>	LAP not required to deal with HDTV and SDTV multi-channelled television services during simulcast or simulcast-equivalent period (ceases to have effect at end of the simulcast period).	s 26A, 26B
<b>Reviews on allocation of new commercial television broadcasting licences</b>	Before earliest switchover day, Minister must cause to be conducted a review of whether one or more new BSB commercial television broadcasting licences should be allocated for a particular area or areas. Minister may cause subsequent reviews to be conducted.	s 35A
<b>Program standards on commercial multi-channels</b>	Australian and children's program standards do not apply to HDTV or SDTV multi-channels during the simulcast period.	s 122(7)-(10)
<b>Licence condition – simulcast requirement</b>	Now: Licensee will not broadcast a television program in SDTV during the simulcast period unless the program is broadcast simultaneously in analog From 1 Jan 2009: core service must be digital/analog simulcast during the simulcast period	Sch 2, cl 7(1)(m)
<b>Licence condition – HDTV requirement</b>	Commercial television licensee will provide a HDTV multi-channelled commercial television broadcasting service during the simulcast period	Sch 2, cl 7(1)(ma)-(mc)
<b>Simulcast period length</b>	Simulcast period to run for eight years or 'such longer period as is prescribed by regulation' – from 1 Jan 2001 for metropolitan licence areas, and from 1 April 2003 or 1 January 2004 in regional licence areas. Simulcast period for national broadcasters determined by commercial television simulcast period for a particular licence area.	Sch 4, cll 6(3)(c); 19(3)(c)
<b>Cessation of analog transmission</b>	Transmission by commercial television broadcasting services and national broadcasters in analog mode to cease at the end of the simulcast period.	Sch 4, cll 6(3)(h); 19(3)(h)

<b>Transmission of commercial and national television after simulcast period</b>	Transmission of commercial television broadcasting service and national broadcasting service in SDTV mode in that area after end of simulcast period should achieve same level of coverage and potential reception quality as was achieved by the analog service.	Sch 4, cl 6(3)(j); 19(3)(j)
<b>Remote area simulcast period</b>	Simulcast period for remote areas is to run for such a period as determined by ACMA under Part B of the commercial television conversion scheme. National broadcasters to follow the commercial television conversion scheme.	Sch 4, cl 6(7A); cl 19(7A)
<b>Return of spectrum at the end of the simulcast period</b>	Part A of the CTCS must make provision for a commercial television broadcasting service to surrender all transmitter licences at the end of the simulcast period, and for the issue of one or more transmitter licences that authorise the transmission of commercial television broadcasting services in digital mode as per ACMA's digital channel plan for that licence area.  Part A of the CTCS must also make provision for national broadcaster to surrender transmitter licences, and to issue one or more transmitter licences that authorise the transmission of national television broadcasting services as per ACMA's digital channel plan for that licence area.	Sch 4, cl 8(4)(b); cl 23(4)
<b>Simulcast requirements for national broadcasters</b>	National broadcaster must broadcast in SDTV and analog mode during the simulcast period in a particular area; must provide at least one HDTV multi-channelled national television broadcasting service	Sch 4, cl 35AA
<b>HDTV quota period</b>	HDTV quota period for non-remote areas will end at the end of the simulcast period. Where regulations determine HDTV requirements for commercial and national broadcasters in remote areas, those requirements cease at the end of the simulcast period	Sch 4, cl 37E(2)(b); 37G(5), (6); 37H(4), (5).
<b>Captioning</b>	Commercial and national broadcasters not required to caption a SDTV or HDTV multi-channelled service during the simulcast period unless program has previously been shown on the core commercial television broadcasting service or main national broadcaster service.	Sch 4, cl 38(4), (5).
<b>Anti-siphoning during simulcast period</b>	During simulcast period, anti-siphoning event not to be shown on HDTV or (after 1 Jan 2009) SDTV multichannel service unless it is shown simultaneously or previously on core commercial service. Same for national broadcasters, with the exception that the SDTV restriction already in effect.	Sch 4, cl 41C, 41H, 41J (after 1 Jan 2009); 41D

<b>Anti-siphoning after the end of the simulcast period</b>	After end of simulcast period, anti-siphoning event cannot be shown on secondary (SDTV) multi-channelled commercial service or national service, or HDTV commercial or national multi-channelled service if not previously or simultaneously shown on primary service.	Sch 4, cll 41E, 41F, 41K & 41L (from 1 Jan 2009)
<b>Primary commercial/national television broadcasting service</b>	ACMA may declare by legislative instrument that a specified SDTV multi-channelled commercial or national television broadcasting service provided after the end of the simulcast period is the licensee or broadcaster's primary television broadcasting service.	Sch 4, cll 41G & 41M (from 1 Jan 2009)
<b>Review of content and captioning rules for commercial multichannels</b>	At least one year before the 'earliest television switchover day', Minister must cause to be conducted a review of captioning and content requirements for commercial multichannels.	Sch 4, cl 60C
<b><i>Radiocommunications Act 1992</i></b>		
<b>Transmitter licence – authorisation of multichannel services during simulcast period</b>	Transmitter licence held by licensee of a commercial television licensee is authorised to provide a HDTV multi-channel service (from 1 Jan 2007) and an SD multichannel service (from 1 Jan 2009)	ss 102B; 102AB (from 1 Jan 2009)
<b>Transmitter licence – authorisation of commercial television broadcasting services after end of simulcast period</b>	Where a transmitter licence held by commercial television broadcasting licensee is in force immediately before the end of the simulcast period, the transmitter licence authorises the operation of transmitter(s) of one or more HDTV or SDTV multi-channelled commercial broadcasting services.	s 102AC (from 1 Jan 2009)