National Television Conversion Scheme Variation 2007 (No. 1)

Broadcasting Services Act 1992

The AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY makes this Instrument under subclause 19 (1) of Schedule 4 to the Broadcasting Services Act 1992.

Dated 24 September 2007

LYN MADDOCK
Chairman

MARCUS BEZZI
General Manager

Australian Communications and Media Authority

1 Name of Instrument
This Instrument is the National Television Conversion Scheme Variation 2007 (No. 1).

2 Commencement
This Instrument commences in accordance with clause 32 of Schedule 4 to the Act.

3 Variation of National Television Conversion Scheme 1999
Schedule 1 varies the National Television Conversion Scheme 1999.
Schedule 1 Variations

(section 3)

[1] After section 3
insert

3A Application

This Scheme applies to national television broadcasting services, other than:
(a) SDTV multi-channelled national television broadcasting services; and
(b) HDTV multi-channelled national television broadcasting services.

[2] Subsections 9 (4), (5), (6), (7) and (8)
substitute

(3) ACMA may also have regard to the cost to national broadcasters, tower owners, tower operators and site operators of:
(a) allotting particular channels; and
(b) digital transmission using the channels.

(4) ACMA may also have regard to the likely cost and disruption to consumers caused by having to receive national television broadcasting services in digital mode using allotted channels.

(5) ACMA may also have regard to any interference that digital transmission using a particular channel is likely to cause to analog transmission.

(6) If a regional equalisation plan is in force for a particular area, ACMA may also have regard to the plan.

(7) ACMA may also have regard to other matters it considers relevant.

[3] Subsections 15 (3), (4) and (5), including the notes
substitute

(3) If ACMA varies a technical characteristic (including a technical specification) of a national broadcasting service, ACMA must vary the transmitter licence issued under section 100B of the Radiocommunications Act 1992.

(4) ACMA must issue or vary transmitter licences in a way that makes them consistent with the characteristics.

Note 1 See subsection 111 (5) of the Radiocommunications Act 1992.

Note 2 Schedule 4 to the Act imposes a timetable for conversion of commercial television broadcasting services to digital transmission, with simulcasts starting at different times in different licence areas. The Schedule also makes arrangements for conversion of national television broadcasting services to digital transmission, and sets deadlines by which this should happen. To support these arrangements, ACMA may have to set priorities for carrying out its responsibilities.
[4] **Subsection 25 (1)**

*omit*

service (other than a multi-channelled national television broadcasting service).

*insert*

service.

[5] **Section 26, heading**

*substitute*

26 Minister to tell ACMA when application received

[6] **Section 27, heading**

*substitute*

27 Matters for ACMA to take into account if preparing a report

[7] **Section 30, heading**

*substitute*

30 Further information about application — ACMA report

[8] **Section 33, heading**

*substitute*

33 Minister must tell ACMA about decision

[9] **Subsection 35 (1)**

*omit*

the ABA must make arrangements with the ACA to

*insert*

ACMA must

[10] **Subsection 35 (2)**

*omit*

the ABA may make arrangements with the ACA to

*insert*

ACMA may

*omit*

the ABA must make arrangements with the ACA to

*insert*

ACMA must

[12] **Subsections 35 (4) and (5), including the note**

*substitute*

(4) ACMA must also:

(a) identify conditions to which the licence should be subject, including (if appropriate) the date of effect of the licence; and

(b) issue or vary the licence including the conditions.

*Note* Schedule 4 to the Act imposes a timetable for conversion of commercial television broadcasting services to digital transmission, with simulcasts starting at different times in different licence areas. The Schedule also makes arrangements for conversion of national television broadcasting services to digital transmission, and sets deadlines by which this should happen. To support these arrangements, ACMA may have to set priorities for carrying out its responsibilities.

[13] **Subsections 37B (2) and (3)**

*substitute*

(2) If the national broadcaster gives the Minister a varied implementation plan in accordance with the request, ACMA must:

(a) include the plan, as varied, in the register of approved implementation plans; and

(b) if it is necessary to support the variation of the plan:

(i) vary the transmitter licence issued under section 100B of the *Radiocommunications Act 1992*; and

(ii) identify conditions to which the licence should be subject; and

(iii) issue or vary the licence including the conditions.

[14] **Section 39, heading**

*substitute*

39 **Minister must tell ACMA about decision**
[15] **Section 41**

*substitute*

41 **Transmitter licence**

(1) If the Minister approves the variation of an approved implementation plan, ACMA must also vary the transmitter licence issued under section 100B of the *Radiocommunications Act 1992*, if it is necessary to support the variation of the plan.

(2) ACMA must also:
   (a) identify conditions to which the licence should be subject; and
   (b) vary the licence including the conditions.

[16] **Subsection 42 (1)**

*substitute*

(1) A national broadcaster that holds a datacasting licence issued in accordance with Schedule 6 of the Act is permitted to use any spare transmission capacity that is available on the national broadcaster’s digital transmission channels for the purpose of the transmission of datacasting services.

*Note*  See paragraph 19 (3) (k) of Schedule 4 to the Act.

[17] **Section 47, heading**

*substitute*

47 **Surrender of transmitter licence (SDTV or HDTV requirements contravened)**

[18] **Subsection 47 (1), including the note**

*substitute*

(1) This section applies if a national broadcaster transmitting in a coverage area contravenes:
   (a) subclause 35AA (1) of Schedule 4 to the Act; or
   (b) an SDTV national television format standard; or
   (c) an HDTV national television format standard; or
   (d) subclause 37F (1) of Schedule 4 to the Act; or
   (e) a standard under subclause 37F (3) of Schedule 4 to the Act.

*Note*  See subclause 23 (7) of Schedule 4 to the Act.
[19] **Paragraph 47 (2) (b)**

*omit*
the standard.

*insert*
the provision or standard.

[20] **Section 48, heading**

*substitute*

48 **Replacement transmitter licence after HDTV requirements contravened**

[21] **Subsection 48 (1)**

*omit*
a standard under any of the following provisions of Schedule 4 to the Act:
(a) subclause 37A (1);
(b) subclause 37F (1);
(c) subclause 37F (3).

*insert*
a provision or standard mentioned in paragraph 47 (1) (a), (c), (d) or (e).

[22] **Section 49**

*substitute*

49 **ACMA to issue transmitter licence**

(1) If ACMA approves a request made under section 48, it must issue a transmitter licence to replace the surrendered licence.

(2) However, the amount of transmission capacity covered by the replacement licence must be less than the amount of transmission capacity covered by the surrendered licence.

*Note* See subclause 23 (8) of Schedule 4 to the Act.

(3) ACMA must also:
(a) identify conditions to which the licence should be subject; and
(b) issue the licence including the conditions.

*Note* Schedule 4 to the Act imposes a timetable for conversion of commercial television broadcasting services to digital transmission, with simulcasts starting at different times in different licence areas. The Schedule also makes arrangements for conversion of national television broadcasting services to digital transmission, and sets deadlines by which this should happen. To support these arrangements, ACMA may have to set priorities for carrying out its responsibilities.
[23] **Subsection 54 (1)**

*omit*

The ABA must make arrangements with the ACA to

*insert*

ACMA must

[24] **Subsections 54 (2) and (3)**

*substitute*

(2) ACMA must also:

(a) identify conditions to which a licence issued under this section should be subject; and

(b) issue the licence including the conditions.

[25] **Section 65**

*substitute*

**ACMA to issue transmitter licence**

(1) This section applies if ACMA has made a determination under section 34 of the Act, allocating part of the radiofrequency spectrum to a national broadcaster, for the purpose of transmitting a national television broadcasting service in digital mode on a test basis.

(2) ACMA must issue to the national broadcaster a transmitter licence that authorises the operation of 1 or more specified radiocommunications transmitters for transmitting the national television broadcasting service concerned in digital mode on a test basis.

*Note* See section 100B of the *Radiocommunications Act 1992*.

(3) ACMA must also:

(a) identify conditions to which the licence should be subject, including (if appropriate) the date of effect of the licence; and

(b) issue the licence including the conditions.

*Note* Schedule 4 to the Act imposes a timetable for conversion of commercial television broadcasting services to digital transmission, with simulcasts starting at different times in different licence areas. The Schedule also makes arrangements for conversion of national television broadcasting services to digital transmission, and sets deadlines by which this should happen. To support these arrangements, ACMA may have to set priorities for carrying out its responsibilities.

(4) ACMA does not guarantee or imply that the channel it allots to the national broadcaster for transmission on a test basis will be allotted to the national broadcaster when ACMA makes the digital channel plan.
(5) The period during which the national broadcaster may transmit on a test basis is the period for which ACMA allocates part of the radiofrequency spectrum to the national broadcaster under section 34 of the Act for the purpose of transmitting a national television broadcasting service in digital mode on a test basis.

*Note* See subclause 19 (5) of Schedule 4 to the Act.

**[26] Section 67**

*substitute*

**67 ACMA to issue transmitter licence**

(1) ACMA must issue to the national broadcaster a transmitter licence that authorises the operation of 1 or more specified radiocommunications transmitters for transmitting a national television broadcasting service in digital mode on a test basis.

*Note* See section 100B of the *Radiocommunications Act 1992*.

(2) ACMA must also:

(a) identify conditions to which the licence should be subject, including (if appropriate) conditions about:

(i) the date of effect of the licence; and

(ii) the period during which the national broadcaster may transmit on a test basis; and

(b) issue the licence including the conditions.

*Note* Schedule 4 to the Act imposes a timetable for conversion of commercial television broadcasting services to digital transmission, with simulcasts starting at different times in different licence areas. The Schedule also makes arrangements for conversion of national television broadcasting services to digital transmission, and sets deadlines by which this should happen. To support these arrangements, ACMA may have to set priorities for carrying out its responsibilities.

(3) ACMA does not guarantee or imply that the characteristics, including technical specifications, in the transmitter licence issued under section 100B of the *Radiocommunications Act 1992* for transmission on a test basis will be included in any transmitter licence held by the national broadcaster after the national broadcaster ceases testing.

*Note* A licence for test transmissions may include characteristics that are appropriate for testing, but not for general broadcasting (for example, power restrictions or a requirement to use equipment in a particular way).
[27] Section 70

substitute

70 ACMA to issue transmitter licence

(1) This section applies if ACMA has made a determination under section 34 of the Act, allocating part of the radiofrequency spectrum to a national broadcaster, for the purpose of transmitting a national television broadcasting service in digital mode on a test basis.

(2) ACMA must issue to the national broadcaster a transmitter licence that authorises the operation of 1 or more specified radiocommunications transmitters for transmitting a national television broadcasting service in digital mode on a test basis.


(3) ACMA must also:

(a) identify conditions to which the licence should be subject, including (if appropriate) conditions about:

(i) the date of effect of the licence; and

(ii) the period during which the national broadcaster may transmit on a test basis; and

(b) issue the licence including the conditions.

Note Schedule 4 to the Act imposes a timetable for conversion of commercial television broadcasting services to digital transmission, with simulcasts starting at different times in different licence areas. The Schedule also makes arrangements for conversion of national television broadcasting services to digital transmission, and sets deadlines by which this should happen. To support these arrangements, ACMA may have to set priorities for carrying out its responsibilities.

(4) ACMA does not guarantee or imply that:

(a) the channel used by the national broadcaster for transmission on a test basis will be made available to the national broadcaster for any other purpose; or

(b) the characteristics, including technical specifications, in the transmitter licence issued under section 100B of the Radiocommunications Act 1992 for transmission on a test basis will be included in any transmitter licence held by the national broadcaster after the national broadcaster ceases testing.

Note A licence for test transmissions may include characteristics that are appropriate for testing, but not for general broadcasting (for example, power restrictions or a requirement to use equipment in a particular way).

(5) The period during which the national broadcaster may transmit on a test basis is the period for which ACMA allocates part of the radiofrequency spectrum to the national broadcaster under section 34 of the Act for the purpose of transmitting a national television broadcasting service in digital mode on a test basis.

Note See subclause 19 (5) of Schedule 4 to the Act.
Section 79

Transmitter licence — general

(1) If ACMA approves the application, ACMA must issue to the national broadcaster a transmitter licence that authorises the operation of 1 or more specified radiocommunications transmitters for transmitting the broadcasting service concerned in digital mode.

Note: See section 100B of the Radiocommunications Act 1992.

(2) However, if the national broadcaster already holds a transmitter licence for the coverage area or part of the coverage area concerned, for test transmissions, ACMA must vary the licence, if it is necessary, to give the authorisation mentioned in subsection (1).

Note 1 Division 9 of this Part deals with transmitter licences issued to support test transmissions.

Note 2 Schedule 4 to the Act imposes a timetable for conversion of commercial television broadcasting services to digital transmission, with simulcasts starting at different times in different coverage areas. The Schedule also makes arrangements for conversion of national television broadcasting services to digital transmission, and sets deadlines by which this should happen. To support these arrangements, ACMA may have to set priorities for carrying out its responsibilities.

(3) ACMA must also:

(a) identify conditions to which the licence should be subject, including (if appropriate):

(i) a condition about the date of effect of the licence; and

(ii) a condition that the licence is to be in force until the end of a day determined by ACMA for this section; and

(b) issue or vary the licence including the conditions.

(4) ACMA will ensure, as far as practicable, that the channel used by the national broadcaster for transmission will be made available to the national broadcaster during the simulcast period.

(5) However, ACMA does not guarantee or imply that the channel will be made available.

Examples of problems with making channel available during simulcast period

1 The use of the channel is inconsistent with the digital channel plan for the area.

2 The national broadcaster is required under this Scheme to surrender a transmitter licence relating to the channel.

3 A transmitter licence relating to the channel is cancelled under the Act.

(6) Also, ACMA does not guarantee or imply that the characteristics, including technical specifications, in the transmitter licence will be included in any transmitter licence subsequently issued to the national broadcaster for the area or part of the area.
[29] **Subsection 80 (3)**

*substitute*

(3) ACMA must decide, as soon as practicable:

(a) to vary or renew the transmitter licence so that the transmitter licence is in force for a period agreed to by ACMA; or

(b) if the licence has ceased to be in force — to issue a new transmitter licence that is identical to the previous licence, except that the new transmitter licence will be in force for a period agreed to by ACMA; or

(c) not to vary, renew or issue a transmitter licence.

[30] **Subsections 80 (6), (7) and (8)**

*substitute*

(6) As soon as practicable after making a decision under subsection (3), ACMA must:

(a) vary or renew the transmitter licence; or

(b) issue a new transmitter licence; or

(c) take no action;

and tell the national broadcaster in writing of its decision.

(7) Application may be made to the AAT for review of a decision not to vary, renew or issue a transmitter licence.

[31] **Subsections 81 (2), (3), (4) and (5)**

*substitute*

(2) ACMA must decide, as soon as practicable:

(a) to vary the date of effect of the transmitter licence so that it takes effect from an earlier date nominated by ACMA; or

(b) not to vary the date of effect of the transmitter licence.

(3) As soon as practicable after making a decision, ACMA must:

(a) vary the date of effect of the transmitter licence; or

(b) take no action;

and tell the national broadcaster in writing of its decision.

(4) Application may be made to the AAT for review of a decision not to vary the date of effect of a transmitter licence.
Section 84

Policy objectives for Part B

Part B of this Scheme is directed towards ensuring the achievement of the following policy objectives:

(a) the policy objective mentioned in subclause 19 (6A) of Schedule 4 to the Act;

(b) the policy objective that, where and when practicable, ACMA should establish a transitional period for a remote coverage area, known as a simulcast period, throughout which a national broadcaster would be required to transmit simultaneously the national television broadcasting service concerned in both analog mode and SDTV digital mode;

(c) the policy objective that a national broadcaster should be authorised, under 1 or more transmitter licences, to use 1 or more additional channels to transmit the national television broadcasting service concerned in digital mode in the holder’s remote coverage area;

(d) the policy objective that each additional channel should occupy 7 MHz of bandwidth;

(e) the policy objective that a national broadcaster may be allowed to transmit the national television broadcasting service concerned in digital mode in a remote coverage area during the whole or a part of the period before the start of the simulcast period, so long as that transmission complies with the requirements of Part B of this Scheme;

(f) the policy objective that a national broadcaster may be allowed to transmit, on a test basis, the national television broadcasting service concerned in digital mode in a remote coverage area before the start of the simulcast period for that area, so long as that transmission:
   (i) complies with such requirements as are ascertained in accordance with Part B of this Scheme; and
   (ii) occurs during a period ascertained in accordance with Part B of this Scheme;

(g) the policy objective that, as soon as practicable after the start of the simulcast period for a coverage area, and throughout the remainder of that period, the transmission of a national 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 policy objective that, during the simulcast period for a remote coverage area, there should, as far as practicable, be co-location of:
   (i) transmitters used by a national broadcaster for that area to transmit the television broadcasting service concerned in digital mode in that area; and
   (ii) transmitters used by the national broadcaster to transmit that service in analog mode in that area;
(i) the policy objective that, at the end of the simulcast period for a licence area, all transmissions of national television broadcasting services in analog mode in that area are to cease;

(j) the policy objective that, after the end of the simulcast period for a coverage area, the transmission of a national 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;

(k) the policy objective that national broadcasters should be permitted to use any spare transmission capacity that is available on the digital transmission channels for the purpose of the transmission of:
   (i) datacasting services provided under, and in accordance with the conditions of, datacasting licences; or
   (ii) national radio broadcasting services;

(l) the policy objective that ACMA is to consult national broadcasters about the implementation of Part B of this Scheme;

(m) the policy objective that, if the implementation of Part B of this Scheme affects particular broadcasting transmission towers, ACMA must consult the owners and operators of those towers;

(n) the policy objective that, if the implementation of Part B of this Scheme affects particular satellites, ACMA may consult the owners and operators of those satellites;

(o) the policy objective that, in allotting channels under Part B of this Scheme or a digital channel plan, ACMA must have regard to:
   (i) the need to plan the most efficient use of the spectrum; and
   (ii) the other relevant policy objectives of Part B of this Scheme;

(p) the policy objective that a process for conversion of transmissions of national television broadcasting services from analog mode to digital mode will occur as soon as practicable.

Note 1 The policy objective mentioned in subclause 19 (6A) of Schedule 4 to the Act is that each national broadcaster is required to commence transmitting the national television broadcasting service concerned in SDTV digital mode in a remote coverage area by such date as is ascertained in relation to that area in accordance with an implementation plan that was given by the broadcaster, and is in force, under clause 20 of that Schedule.

Note 2 The implementation of Part A of this Scheme will have priority over the implementation of Part B of this Scheme, but Part B of this Scheme will be implemented as soon as practicable.

[33] Subsections 93 (3), (4) and (5), including the note

substitute

(3) If ACMA varies a technical characteristic (including a technical specification) of a national broadcasting service, ACMA must vary the transmitter licence issued under section 100B of the Radiocommunications Act 1992.
(4) ACMA must issue or vary transmitter licences in a way that makes them consistent with the characteristics.


[34] Division 4

substitute

Division 4 Implementation plans

Note about implementation plans

Under clause 20 of Schedule 4 to the Act, a national broadcaster must prepare, and give to the Minister, 1 or more implementation plans relating to digital transmission.

The implementation plan is a key step in the digital conversion process.

It is a national broadcaster’s binding commitment, approved by the Minister:

(a) to provide transmission of a national television broadcasting service in digital mode from specified sites; and

(b) to cover specified areas by specified dates;

to achieve the same level of coverage and potential reception quality as is achieved by the transmission of that service in analog mode.

Each national broadcaster that broadcasts in a coverage area will be required to submit to the Minister at least 1 implementation plan, dealing with important technical and administrative aspects of conversion to digital transmission in the area.

The national broadcaster may submit a single, comprehensive, plan for the area or a series of plans that develop the national broadcaster’s digital transmission arrangements for the area in stages.

The Minister will assess the draft plan (or a plan that is part of a series), and approve or reject it.

An approved implementation plan becomes the basis on which the national broadcaster will convert to digital transmission. However, as conversion proceeds, the national broadcaster may ask for the approved implementation plan to be varied.

Under subclause 20 (6) of Schedule 4 to the Act, an implementation plan comes into force when it is approved by the Minister.

Clause 21 of Schedule 4 to the Act provides that a national broadcaster must comply with an implementation plan it gave to the Minister, and that is in force.

Subdivision A Approval of documents

95 Form of implementation plan

(1) The Minister must approve, in writing, the form of an implementation plan.
(2) The plan must identify 1 or more sites that a national broadcaster proposes to use for digital transmission.

(3) The plan must identify 1 or more transmitter coverage areas to be served by transmitters that the national broadcaster proposes to use for digital transmission.

(4) For each transmitter, the plan must identify the date on or before which the transmitter will be used for digital transmission.

(5) The form must also require the national broadcaster to identify, in the plan:
   (a) the date on which the national broadcaster proposes to start digital transmission in the coverage area; or
   (b) the dates on which the national broadcaster proposes to start digital transmission in specified parts of the coverage area.

(6) The plan must state whether:
   (a) the plan constitutes the implementation plan for the coverage area; or
   (b) the plan is in a series of implementation plans that the national broadcaster intends to submit for the coverage area.

(7) If the plan is the first in a series of plans, the plan must also state:
   (a) that it is the first plan in a series of sequentially numbered implementation plans that the national broadcaster intends to submit for the coverage area; and
   (b) the total number of plans that the national broadcaster intends to submit for the coverage area; and
   (c) the date by which the national broadcaster expects to submit each implementation plan in the series; and
   (d) the geographic area to which an implementation plan in the series will apply; and
   (e) the reason why it is not practicable to submit a single plan for the coverage area.

(8) A plan that is subsequent to the first in a series of plans must also state:
   (a) the number of the implementation plan in the series of plans for the coverage area; and
   (b) the geographic area to which the implementation plan applies; and
   (c) the date by which the national broadcaster expects to submit each remaining implementation plan (if any) in the series; and
   (d) if any previous implementation plan that is part of the series has been approved by the Minister (an earlier approved plan), the details of the earlier approved plan, including:
      (i) its number in the series; and
      (ii) the date when it was approved; and
(e) if the plan expressly or impliedly varies an earlier approved plan, the change being made and the reason for the change.

*Note* Paragraphs 95 (7) (c) and (8) (c) are not intended to hold the national broadcaster to the dates offered. In both cases, the dates are important indicative information for the Minister’s benefit, but they are not intended to hold the broadcaster to the timetable, or to punish the broadcaster for not meeting the timetable.

(9) The plan may also deal with other matters.

(10) ACMA must publish a notice stating where copies of the form of implementation plan may be obtained.

*Note* ACMA’s options for publishing the notice are in section 4.

**96 Application form for approval of implementation plan**

(1) The Minister must approve, in writing, an application form for approval of an implementation plan.

*Note* See Subdivision B.

(2) ACMA must publish a notice stating where copies of the application form may be obtained.

*Note* ACMA’s options for publishing the notice are in section 4.

**97 Application form — essential content**

The form must require a national broadcaster to prepare the implementation plan using the approved form of the plan, and submit it with the application form.

*Note* See section 96.

**98 Application form — optional content**

(1) The application form may also require a national broadcaster to give information about the site of each transmitter, including:

(a) the name of the site; and

(b) the Australian map grid reference.

(2) The application form may also require a national broadcaster to give information about the proposed emission characteristics of each transmitter, including:

(a) the frequency band; and

(b) the channel; and

(c) the polarisation; and

(d) the effective radiated power.

(3) The application form may also require a national broadcaster to state that the national broadcaster:

(a) has access to each site and broadcasting transmission tower it is proposing to use; and
(b) has used its best endeavours to obtain any approvals required from third parties, and conducted necessary consultations.

Examples
1. Local government approval for use of a site.
2. Consultation with other national broadcasters, and with holders.

(4) The application form may also require a national broadcaster to carry out a test or other analysis described in the form.

(5) The application form may also require a national broadcaster to give other information to the Minister or ACMA.

Subdivision B   Approval of implementation plans

Note: outline of decision-making process

Subclause 20 (1) of Schedule 4 to the Act provides that, as soon as practicable after the formulation of this Scheme, a national broadcaster must give the Minister 1 or more implementation plans relating to the conversion of transmission to digital mode.

Subclause 20 (2) mentions matters to which a national broadcaster must have regard in preparing an implementation plan.

Under subclause 20 (3), the Minister must approve or refuse to approve an implementation plan. Subclause 20 (4) mentions matters to which the Minister must have regard in deciding whether to approve an implementation plan. Paragraph 20 (4) (d) provides that the Minister must have regard to such other matters as the Minister considers relevant.

99 Application for approval of implementation plan

(1) A national broadcaster must apply to the Minister for approval of an implementation plan relating to the conversion of a national television broadcasting service (other than a multi-channelled national television broadcasting service).

(2) The national broadcaster must apply using the approved application form, and prepare the implementation plan in the approved form.

Note See section 96 of this Scheme.

(3) To avoid doubt:
   (a) strict compliance with the approved application form and the approved form of the implementation plan is required; and
   (b) section 25C of the Acts Interpretation Act 1901 does not apply to the approved application form and the approved form of the implementation plan.

Note Section 25C of the Acts Interpretation Act 1901 explains a general presumption that where a person must use a prescribed form it is sufficient to comply substantially with the prescribed form.
100 **Minister to tell ACMA when application received**

As soon as practicable after receiving an application for approval of an implementation plan, the Minister must tell ACMA about it.

101 **Matters for ACMA to take into account if preparing a report**

(1) If the Minister directs ACMA to give a report for subclause 20 (5) of Schedule 4 to the Act, the Minister may specify matters that ACMA must take into account in preparing its report.

(2) The following are examples of matters that ACMA may take into account in preparing the report:

(a) whether the application is in strict compliance with the approved application form;

(b) whether the application deals adequately with the matters that the national broadcaster was required to deal with by the application form;

(c) the technical assumptions in force for subsection 85 (1) of this Scheme;

(d) whether the proposed emission characteristics of the service are consistent with the technical characteristics set out in the digital channel plan for the relevant coverage area or part of the coverage area;

(e) whether the proposed emission characteristics of the service are satisfactory to ensure that the median field strength of transmission beyond the coverage area does not exceed ACMA’s requirements;

(f) whether the service is likely to interfere with other services;

(g) whether the service will start on or before the start of the simulcast period;

(h) whether the policy objectives in section 84 of this Scheme will be met as soon as practicable after the start of the simulcast period;

(i) whether the national broadcaster proposes to transmit national television broadcasting services in analog and SDTV digital modes for the entire simulcast period;

(j) whether the national broadcaster has consulted other broadcasters about the location of the national broadcaster’s transmitters;

(k) whether the national broadcaster proposes to co-locate its own transmitters for transmitting national television broadcasting services in analog and digital modes;

(l) whether the national broadcaster has access to each site and broadcasting transmission tower it is proposing to use;

(m) whether the national television broadcaster’s transmission of services in digital mode will have the same level of coverage and potential reception quality throughout the simulcast period as is achieved by transmission of those services in analog mode.
102 Reduction in coverage and quality of digital transmission

(1) This section applies if:
   (a) a national broadcaster applies for approval of an implementation plan; and
   (b) the level of coverage and potential reception quality achieved by the service in analog mode in the area has reduced after Schedule 4 to the Act commenced; and
   (c) the Minister has directed ACMA to give a report for subclause 20 (5) of Schedule 4 to the Act.

(2) ACMA may ask the national broadcaster, in writing, to explain how the national broadcaster will ensure that digital transmission of the service will achieve the same level of coverage and potential reception quality as was achieved by the transmission of the service in analog mode before the commencement of Schedule 4 to the Act.

(3) If ACMA acts under subsection (2), ACMA must send a copy of the request to the Minister.

(4) If ACMA acts under subsection (2), the national broadcaster’s implementation plan must ensure that digital transmission of the service will achieve the same level of coverage and potential reception quality as was achieved by the transmission of the service in analog mode before the commencement of Schedule 4 to the Act.

(5) If ACMA acts under subsection (2), ACMA is not required to prepare its report while it is waiting for the national broadcaster to respond to the request.

(6) The Minister is not required to consider the application while the Minister is waiting for the report.

103 Location of transmitters

(1) This section applies if:
   (a) a national broadcaster applies for approval of an implementation plan; and
   (b) it is not practicable for the national broadcaster to co-locate, during the simulcast period for the coverage area:
      (i) a transmitter used by the national broadcaster to transmit the national television broadcasting service concerned in digital mode in that area; and
      (ii) transmitters used by the national broadcaster to transmit that service in analog mode in that area; and
   (c) the implementation plan shows an alternative location for the digital transmitter; and
   (d) the Minister has directed ACMA to give a report in relation to the implementation plan for subclause 20 (5) of Schedule 4 to the Act.

Note See paragraph 84 (h) of this Scheme.
(2) ACMA’s report must state ACMA’s view about whether the national broadcaster should be required to co-locate its transmitters as mentioned in paragraph 84 (h) of this Scheme.

(3) For subsection (2), ACMA must form its view by taking into account:
   (a) the policy objectives in section 84 of this Scheme (other than the policy objective in paragraph 84 (h) of this Scheme); and
   (b) the costs that the national broadcaster is likely to incur by choosing particular locations; and
   (c) other matters relevant to the efficient use of transmitters, and the efficient use of spectrum.

104 Further information about application — ACMA report

(1) This section applies if the Minister has directed ACMA to give a report for subclause 20 (5) of Schedule 4 to the Act.

(2) ACMA may, in writing, ask the national broadcaster to do 1 or more of the following things to help ACMA to prepare its report:
   (a) give ACMA the information mentioned in the request;
   (b) carry out a test or other analysis described in the request;
   (c) do something else mentioned in the request.

(3) The request may be to do, or repeat, something that was required in the application form.

(4) If ACMA acts under subsection (2), ACMA must send a copy of the request to the Minister.

(5) ACMA is not required to prepare its report while it is waiting for the national broadcaster to respond to the request.

(6) The Minister is not required to consider the application while the Minister is waiting for the report.

105 Further information about application — Minister’s request

(1) The Minister may, in writing, ask the national broadcaster to do 1 or more of the following things to help the Minister make a decision:
   (a) give the Minister, or ACMA, the information mentioned in the request;
   (b) carry out a test or other analysis described in the request;
   (c) do something else mentioned in the request.

(2) The request may be to do, or repeat, something that was required in the application form.

(3) If the Minister acts under subsection (1), the Minister must send a copy of the request to ACMA.

(4) The Minister is not required to consider the application while the Minister or ACMA is waiting for the national broadcaster to respond to the request.
Variations Schedule 1

National Television Conversion Scheme Variation 2007 (No. 1)

106 New implementation plan

(1) If the Minister refuses to approve a national broadcaster’s implementation plan, the national broadcaster may submit another plan.

Note If the Minister refuses to approve an implementation plan, the Minister may give the national broadcaster a written notice under subclause 20 (7) of Schedule 4 to the Act. A notice under subclause 20 (7) may require the national broadcaster to give a fresh implementation plan. It may also advise that, if specified changes were incorporated in the fresh plan, the Minister would be disposed to approve the fresh plan. The notice must set out the reasons for refusal to approve an implementation plan.

(2) The national broadcaster must give the Minister another application form with the implementation plan if the Minister asks the national broadcaster for it.

(3) The national broadcaster must complete the application form (if required), and prepare the plan, in the way described in section 99 of this Scheme.

(4) The Minister must deal with the application in the way described in sections 101 to 105 of this Scheme.

107 Minister must tell ACMA about decision

If the Minister approves a national broadcaster’s implementation plan, the Minister must tell ACMA about the decision.

108 Register of approved implementation plans

(1) ACMA is to maintain a register of approved implementation plans.

(2) The register is to be open for public inspection, and a person is entitled to be given a copy of, or an extract from, any entry in the register.

(3) ACMA may supply copies of, or extracts from, the register certified by a member, and a copy or extract so certified is admissible in evidence in all courts and proceedings without further proof or production of the original.

Subdivision C Transmitter licences

109 Transmitter licence

(1) If a national broadcaster’s implementation plan is approved, ACMA must issue to the national broadcaster a transmitter licence that authorises the operation of 1 or more specified radiocommunications transmitters for transmitting national broadcasting services in digital mode for the simulcast period.

(2) However, if the national broadcaster already holds a suitable transmitter licence for the remote coverage area concerned ACMA may vary the licence, if it is necessary, to give the authorisation mentioned in subsection (1).

*Note*  In the course of approving a series of implementation plans, transmitter licences may be issued that will support later plans in the series. In those circumstances, it may not be necessary for a new transmitter licence to be issued after the approval of each plan in the series.

(3) Also, if the national broadcaster already holds a suitable transmitter licence for the coverage area concerned, for test transmissions or for transmission in a regional area before the start of the simulcast period, ACMA must vary the licence, if it is necessary, to give the authorisation mentioned in subsection (1).

*Note*  Division 9 of this Part deals with transmitter licences issued to support test transmissions. Division 10 of this Part deals with transmitter licences issued to support transmission in a remote coverage area before the start of the simulcast period.

(4) ACMA must also:

(a) identify conditions to which the licence should be subject, including (if appropriate) the date of effect of the licence; and

(b) issue or vary the licence including the conditions.

*Note*  Schedule 4 to the Act imposes a timetable for conversion of commercial television broadcasting services to digital transmission, with simulcasts starting at different times in different licence areas. The Schedule also makes arrangements for conversion of national television broadcasting services to digital transmission, and sets deadlines by which this should happen. To support these arrangements, ACMA may have to set priorities for carrying out its responsibilities.

Subdivision D  Variation of approved implementation plan

*Note: outline of variation of approved implementation plan*

Under subclause 20 (9) of Schedule 4 to the Act, a national broadcaster may give the Minister a variation of an approved implementation plan that relates to the national broadcaster. Subclauses 20 (2) to (8) apply to the variation of an implementation plan in a corresponding way to the way in which they apply to an implementation plan.

110 Application form for approval of variation

(1) The Minister must approve, in writing, an application form for approval of a variation of an implementation plan.

(2) The form may require a national broadcaster to give information to the Minister.

(3) ACMA must publish a notice stating where copies of the form may be obtained.

*Note*  ACMA’s options for publishing the notice are in section 4.
111 Application for approval of variation

(1) If a national broadcaster gives the Minister a variation of an approved implementation plan for subclause 20 (9) of Schedule 4 to the Act, the national broadcaster must use the approved application form.

(2) To avoid doubt:
   (a) strict compliance with the approved application form is required; and
   (b) section 25C of the Acts Interpretation Act 1901 does not apply to the approved application form.

Note Section 25C of the Acts Interpretation Act 1901 explains a general presumption that where a person must use a prescribed form it is sufficient to comply substantially with the prescribed form.

(3) The national broadcaster’s application must deal with 1 approved implementation plan only.

112 Variation of plan in a series

If:
   (a) a national broadcaster makes an application for approval of an implementation plan in a series; and
   (b) the plan expressly or impliedly varies an earlier approved plan in the series in accordance with paragraph 95 (8) (e) of this Scheme;

the application is taken to include an application for approval of the variation of the earlier approved plan.

113 Varying approved implementation plan — request by Minister

(1) If the Minister believes that an approved implementation plan should be varied as a consequence of a variation under section 92 or 93 of this Scheme, the Minister may request the national broadcaster to vary the implementation plan concerned.

(2) If the national broadcaster gives the Minister a varied implementation plan in accordance with the request, ACMA must:
   (a) include the plan, as varied, in the register of approved implementation plans; and
   (b) if it is necessary to support the variation of the plan ACMA may:
      (i) vary the transmitter licence issued under section 100B of the Radiocommunications Act 1992; and
      (ii) identify conditions to which the licence should be subject; and
      (iii) vary the licence including the conditions.

114 Minister may consult about variation

If the Minister receives an application for a variation of an approved implementation plan, the Minister may do 1 or both of the following:
   (a) invite comments on the proposed variation;
(b) publish a notice:
   (i) stating where copies of the draft plan may be obtained; and
   (ii) inviting comments on the draft plan in the period specified in the
        notice.

  Note  ACMA’s options for publishing the notice are in section 4 of this Scheme.

115  Minister must tell ACMA about decision

If the Minister approves the variation of an approved implementation plan, the Minister must tell ACMA about the variation as soon as practicable.

116  Register of approved implementation plans

If the Minister approves the variation of an approved implementation plan, ACMA must include the plan, as varied, in the register of approved implementation plans.

117  Transmitter licence

(1) ACMA must vary a transmitter licence issued under section 100B of the Radiocommunications Act 1992 if:
   (a) the Minister approves the variation of an approved implementation plan; and
   (b) it is necessary to support the variation of the implementation plan.

(2) ACMA must also:
   (a) identify conditions to which the licence should be subject; and
   (b) vary the licence including the conditions.

Division 5  Datacasting services

118  Use of transmission capacity for datacasting services

(1) A national broadcaster that holds a datacasting licence issued in accordance with Schedule 6 of the Act is permitted to use any spare transmission capacity that is available on the national broadcaster’s digital transmission channels for the purpose of the transmission of datacasting services.

  Note  See paragraph 84 (k) of this Scheme.

(2) However, the national broadcaster must use the capacity in a way that is consistent with the national broadcaster’s transmitter licence issued under section 100B of the Radiocommunications Act 1992.

  Note 1 A charge is imposed for the use of transmission capacity for datacasting: see the Datacasting Charge (Imposition) Act 1998.
  Note 2 Sections 119 to 122 have been reserved for future use.
Subparagraphs 124 (4) (a) (iv), (v) and (vi)

Substitute

(iv) owners and operators of broadcasting transmission towers; and
(v) owners and operators of satellite transmission facilities; and

Subsection 124 (6), note

Omit

After Division 6

Insert

Division 7 Problems with starting or maintaining digital transmission

Surrender of transmitter licence (failure to commence SDTV digital transmission)

(1) This section applies if:
   (a) a national broadcaster does not commence SDTV digital transmission for a coverage area on a date identified under section 123 of this Scheme; and
   (b) ACMA is not satisfied that there were exceptional circumstances relating to the failure to commence SDTV digital transmission.

Note Subclause 19 (6A) of Schedule 4 to the Act sets out the policy objective about when SDTV digital transmission is to start. The policy objective is supported by section 123 of this Scheme.

(2) The national broadcaster must surrender to ACMA each transmitter licence authorising SDTV digital transmission in the area.

(3) The national broadcaster must comply with any requirements of ACMA for surrendering a transmitter licence.

(4) Application may be made to the AAT for review of a decision that there were no exceptional circumstances.

Surrender of transmitter licence (SDTV digital transmission does not continue throughout the simulcast period)

(1) This section applies if a national broadcaster:
   (a) commences SDTV digital transmission on a date identified under section 123 of this Scheme; and
(b) ceases SDTV digital transmission during the simulcast period for the coverage area concerned.

Note Subclause 19 (6A) of Schedule 4 to the Act sets out the policy objective about when SDTV digital transmission is to start. The policy objective is supported by section 123 of this Scheme.

(2) ACMA may give the national broadcaster a written direction to:
(a) resume SDTV digital transmission in the area within the period specified in the direction; and
(b) continue SDTV digital transmission throughout the simulcast period for the area.

(3) The direction must include:
(a) a statement specifying the period (not longer than 1 month) within which the national broadcaster must comply with it; and
(b) a statement that the national broadcaster may give ACMA written reasons identifying exceptional circumstances that prevent the national broadcaster from complying with the direction; and
(c) a statement that the national broadcaster must surrender each transmitter licence authorising transmission of a service in digital mode in the area if:
   (i) the national broadcaster does not comply with the direction within the time mentioned in the direction; and
   (ii) the national broadcaster does not satisfy ACMA that exceptional circumstances exist.

(4) The national broadcaster must surrender to ACMA each transmitter licence authorising digital transmission in the area if:
(a) the national broadcaster did not comply with a direction given under subsection (2); and
(b) ACMA is not satisfied that there were exceptional circumstances relating to the failure to comply.

(5) The national broadcaster must comply with any requirements of ACMA for surrendering a transmitter licence.

(6) Application may be made to the AAT for review of a decision that there were no exceptional circumstances.

127 Surrender of transmitter licence (SDTV or HDTV requirements contravened)
(1) This section applies if a national broadcaster transmitting in a coverage area contravenes:
(a) subclause 35AA (2) of Schedule 4 to the Act; or
(b) an SDTV national television format standard; or
(c) an HDTV national television format standard; or
(d) a standard applicable to the national broadcaster under subclause 37H (1) of Schedule 4 to the Act; or
(e) a standard applicable to the national broadcaster under subclause 37H (2) of Schedule 4 to the Act.

Note See subclause 23 (10) of Schedule 4 to the Act.

(2) ACMA may give the national broadcaster a written direction:
   (a) identifying the contravention; and
   (b) directing the national broadcaster to comply with the provision or standard.

(3) The direction must include:
   (a) a statement specifying the period (not longer than 1 month) within which the national broadcaster must comply with it; and
   (b) a statement that the national broadcaster may give ACMA written reasons identifying exceptional circumstances that prevent the national broadcaster from complying with the direction; and
   (c) a statement that the national broadcaster must surrender each transmitter licence authorising transmission of a service in digital mode in the area if:
      (i) the national broadcaster does not comply with the direction within the time mentioned in the direction; and
      (ii) the national broadcaster does not satisfy ACMA that exceptional circumstances exist; and
   (d) a statement that the national broadcaster may apply for a transmitter licence to replace a transmitter licence surrendered under this section.

Note A transmitter licence issued to replace a surrendered transmitter licence will have less transmission capacity than that which was mentioned in the surrendered licence: see subsection 129 (2) of this Scheme.

(4) The national broadcaster must surrender to ACMA each transmitter licence authorising digital transmission in the area if:
   (a) the national broadcaster did not comply with a direction; and
   (b) ACMA is not satisfied that there were exceptional circumstances relating to the failure to comply.

(5) The national broadcaster must comply with any requirements of ACMA for surrendering a transmitter licence.

(6) Application may be made to the AAT for review of a decision that there were no exceptional circumstances.

128 Replacement transmitter licence after HDTV requirements contravened

(1) This section applies if a holder has surrendered a transmitter licence on the grounds of a contravention of the provision mentioned in paragraph 127 (1) (a) or a standard mentioned in paragraph 127 (1) (c), (d) or (e).

Note See subclause 23 (10A) of Schedule 4 to the Act. The subclauses that are listed deal with HDTV standards.
(2) The national broadcaster may, in writing:
   (a) ask ACMA to arrange for the issue of a transmitter licence to replace the surrendered licence; and
   (b) explain why the replacement licence should be issued.

(3) ACMA:
   (a) may ask the national broadcaster for more information about the request; and
   (b) is not required to consider the request while it is waiting for more information.

(4) ACMA must consider the request and:
   (a) approve it; or
   (b) reject it.

Note 1 If ACMA decides not to arrange for the issue of the replacement licence, it must notify the national broadcaster and give the national broadcaster the statements mentioned in clause 63 of Schedule 4 to the Act.

Note 2 A decision by ACMA to reject a request for a replacement licence is reviewable by the AAT: see clause 62 of Schedule 4 to the Act.

129 ACMA to issue transmitter licence

(1) If ACMA approves a request made under section 128 of this Scheme, it must issue a transmitter licence to replace the surrendered licence.


(2) However, the amount of transmission capacity covered by the replacement licence must be less than the amount of transmission capacity covered by the surrendered licence.

Note See subclause 23 (10A) of Schedule 4 to the Act.

(3) ACMA must also:
   (a) identify conditions to which the licence should be subject; and
   (b) issue the licence including the conditions.

Note 1 Schedule 4 to the Act imposes a timetable for conversion of commercial television broadcasting services to digital transmission, with simulcasts starting at different times in different licence areas. The Schedule also makes arrangements for conversion of national television broadcasting services to digital transmission, and sets deadlines by which this should happen. To support these arrangements, ACMA may have to set priorities for carrying out its responsibilities.

Note 2 Section 130 has been reserved for future use.

Division 8 End of simulcast period

131 Review of allotment

(1) Before the end of a simulcast period, ACMA must consider whether:
   (a) an existing digital channel plan for a simulcast period can be varied; or
(b) a new digital plan must be made;
for the purposes of allotting channels for transmission of the national
broadcasting service in digital mode after the simulcast period.

(2) In considering which option to use, ACMA must have regard to:
(a) whether the channels that would be allotted for digital transmission
after the simulcast period would be essentially the same channels as
those allotted for the simulcast period; and
(b) whether the existing digital channel plan adequately meets the
requirements for the coverage area; and
(c) the need to plan the most efficient use of the spectrum; and
(d) the relevant policy objectives in section 84 of this Scheme and
clause 19 of Schedule 4 to the Act; and
(e) other matters that ACMA considers relevant to the efficient use of the
spectrum for broadcasting, datacasting and other uses.

132 Allotment — variation of digital channel plan
(1) If ACMA decides to vary an existing digital channel plan for a simulcast
period, ACMA must publish a notice:
(a) stating where copies of the proposed variation may be obtained; and
(b) inviting comments on the variation in the period specified in the notice.

(2) In considering the form of the variation, ACMA must have regard to:
(a) any comments it receives; and
(b) the matters mentioned in subsection 88 (2) of this Scheme; and
(c) if the variation is likely to have an effect on an approved
implementation plan, or on an implementation plan that has been
submitted to the Minister, the effect of the variation on the
implementation plan.

(3) ACMA may also have regard to any of the matters mentioned in
paragraphs 88 (3) (a), (b), (c), (d) and (e) of this Scheme.

(4) ACMA must vary the plan before the end of the simulcast period and in
such a manner as to allow the plan, as varied, to commence from the end of
the simulcast period.

(5) ACMA must publish a notice stating where copies of the variation may be
obtained.

Note ACMA’s options for publishing the notice are in section 4 of this Scheme.

133 Allotment — new digital channel plan
(1) Subsections 86 (3) and (4) and sections 87 to 91 of this Scheme apply if
ACMA decides to make a new digital channel plan.
(2) However, ACMA must make the new digital channel plan before the end of the simulcast period and in such a manner as to allow the new plan to commence from the end of the simulcast period.

### 133A End of analog transmission and surrender of licences

(1) At the end of the simulcast period for a coverage area, all transmissions of national television broadcasting services in analog mode in the area are to cease.

*Note* See paragraph 84 (i) of this Scheme.

(2) A national broadcaster must surrender to ACMA all transmitter licences that authorised transmission of that service in the area during the simulcast period.

(3) A national broadcaster that is required to surrender a transmitter licence under this section must comply with any requirements of ACMA for surrendering the licence.

### 133B Transmitter licences

(1) ACMA must issue to a national broadcaster 1 or more transmitter licences that:

(a) have effect from the end of the simulcast period; and

(b) authorise the transmission of national broadcasting services in digital mode using the channel or channels allotted by ACMA under a digital channel plan varied under section 132 of this Scheme or made under section 133 of this Scheme.

*Note* See section 100B of the *Radiocommunications Act 1992*.

(2) ACMA must also:

(a) identify conditions to which a licence issued under this section should be subject; and

(b) issue the licence including the conditions.

### [38] Section 144

*substitute*

### 144 ACMA to issue transmitter licence

(1) This section applies if ACMA has made a determination under section 34 of the Act, allocating part of the radiofrequency spectrum to a national broadcaster, for the purpose of transmitting a national television broadcasting service in digital mode on a test basis.
(2) ACMA must issue to the national broadcaster a transmitter licence that authorises the operation of 1 or more specified radiocommunications transmitters for transmitting the national television broadcasting service concerned in digital mode on a test basis.


(3) ACMA must also:
   (a) identify conditions to which the licence should be subject, including (if appropriate) conditions about:
      (i) the date of effect of the licence; and
      (ii) the period during which the national broadcaster may transmit on a test basis; and
   (b) issue the licence including the conditions.

Note See paragraph 84 (f) of this Scheme.

(4) ACMA does not guarantee or imply that the channel it allots to the national broadcaster for transmission on a test basis will be allotted to the national broadcaster when ACMA makes the digital channel plan.

(5) The period during which the national broadcaster may transmit on a test basis is the period for which ACMA allocates part of the radiofrequency spectrum to the national broadcaster under section 34 of the Act for the purpose of transmitting a national television broadcasting service in digital mode on a test basis.

Note See paragraph 84 (f) of this Scheme.

[39] Section 146

substitute

146 ACMA to issue transmitter licence

(1) ACMA must issue to the national broadcaster a transmitter licence that authorises the operation of 1 or more specified radiocommunications transmitters for transmitting a national television broadcasting service in digital mode on a test basis.


(2) ACMA must also:
   (a) identify conditions to which the licence should be subject, including (if appropriate) conditions about:
      (i) the date of effect of the licence; and
      (ii) the period during which the national broadcaster may transmit on a test basis; and
   (b) issue the licence including the conditions.

Note See paragraph 84 (f) of this Scheme.
(3) ACMA does not guarantee or imply that the characteristics, including technical specifications, in the transmitter licence issued under section 100B of the Radiocommunications Act 1992 for transmission on a test basis will be included in any transmitter licence held by the national broadcaster after the national broadcaster ceases testing.

Note: A licence for test transmissions may include characteristics that are appropriate for testing, but not for general broadcasting (for example, power restrictions or a requirement to use equipment in a particular way).

[40] Section 149

substitute

149 ACMA to issue transmitter licence

(1) This section applies if ACMA has made a determination under section 34 of the Act, allocating part of the radiofrequency spectrum to a national broadcaster, for the purpose of transmitting a national television broadcasting service in digital mode on a test basis.

(2) ACMA must issue to the national broadcaster a transmitter licence that authorises the operation of 1 or more specified radiocommunications transmitters for transmitting a national television broadcasting service in digital mode on a test basis.

Note: See section 100B of the Radiocommunications Act 1992.

(3) ACMA must also:
   (a) identify conditions to which the licence should be subject, including (if appropriate) conditions about:
      (i) the date of effect of the licence; and
      (ii) the period during which the national broadcaster may transmit on a test basis; and
   (b) issue the licence including the conditions.

(4) ACMA does not guarantee or imply that:
   (a) the channel used by the national broadcaster for transmission on a test basis will be made available to the national broadcaster for any other purpose; or
   (b) the characteristics, including technical specifications, in the transmitter licence issued under section 100B of the Radiocommunications Act 1992 for transmission on a test basis will be included in any transmitter licence held by the national broadcaster after the national broadcaster ceases testing.

Note: A licence for test transmissions may include characteristics that are appropriate for testing, but not for general broadcasting (for example, power restrictions or a requirement to use equipment in a particular way).
(5) The period during which the national broadcaster may transmit on a test basis is the period for which ACMA allocates part of the radiofrequency spectrum to the national broadcaster under section 34 of the Act for the purpose of transmitting a national television broadcasting service in digital mode on a test basis.

Note  See paragraph 84 (f) of this Scheme.

[41] **Subsection 155 (4)**

*omit*

paragraph 84 (f)

*insert*

paragraph 84 (h)

[42] **Section 158**

*substitute*

158 **Transmitter licence — general**

(1) If ACMA approves the application, ACMA must issue to the national broadcaster a transmitter licence that authorises the operation of 1 or more specified radiocommunications transmitters for transmitting the broadcasting service concerned in digital mode.

Note  See section 100B of the *Radiocommunications Act 1992*.

(2) However, if the national broadcaster already holds a transmitter licence for the remote coverage area, or part of the remote coverage area, concerned for test transmissions, ACMA must vary the licence, if it is necessary, to give the authorisation mentioned in subsection (1).

Note  Division 9 of Part B of this Scheme deals with transmitter licences issued to support test transmissions.

(3) ACMA must also:

(a) identify conditions to which the licence should be subject, including (if appropriate):

(i) a condition about the date of effect of the licence; and

(ii) a condition that the licence is to be in force on or before the date determined by ACMA under this section; and

(b) issue or vary the licence including the conditions.

(4) ACMA will ensure, as far as practicable, that the channel used by the national broadcaster for transmission will be made available to the national broadcaster during the simulcast period.
(5) However, ACMA does not guarantee or imply that the channel will be made available.

*Examples of problems with making channel available during simulcast period*

1. The use of the channel is inconsistent with the digital channel plan for the area.
2. The national broadcaster is required under this Scheme to surrender a transmitter licence relating to the channel.
3. A transmitter licence relating to the channel is cancelled under the Act.

(6) Also, ACMA does not guarantee or imply that the characteristics, including technical specifications, in the transmitter licence will be included in any transmitter licence subsequently issued to the national broadcaster for the area or part of the area.

158A *Transmitter licence — no application, or unapproved application, for approval of implementation plan by the start of the simulcast period*

(1) This section applies if:

(a) a national broadcaster holds a transmitter licence mentioned in section 158; and

(b) the national broadcaster intends to transmit before the national broadcaster has an approved implementation plan in force for the coverage area, or the relevant part of the coverage area; and

(c) the national broadcaster has not applied for approval of an approved implementation plan for the area, or part of the area, by the date determined by ACMA for subparagraph 158 (3) (a) (ii).

(2) This section also applies if:

(a) a national broadcaster holds a transmitter licence mentioned in section 158; and

(b) the national broadcaster intends to transmit before the national broadcaster has an approved implementation plan in force for the coverage area, or the relevant part of the coverage area; and

(c) the national broadcaster applies for approval of an implementation plan for the area, or part of the area; and

(d) ACMA has not approved the application by the day determined on or before the date determined under subparagraph 158 (3) (a) (ii).

(3) ACMA must decide, as soon as practicable:

(a) to vary or renew a transmitter licence so that it is in force for a period agreed to by ACMA; or

(b) if the licence has ceased to be in force — to issue a new transmitter licence that is identical to the previous licence, except that the new licence will be in force for a period agreed to by ACMA; or

(c) not to vary, renew or issue a transmitter licence.
(4) ACMA must consider whether allowing the transmissions to continue under the varied, renewed or new transmitter licence will:
   (a) assist with developing a digital channel plan, or confirming that an existing digital channel plan is satisfactory; or
   (b) assist with developing an implementation plan, or confirming that an existing approved implementation plan is satisfactory; or
   (c) promote the policy objectives in section 84 of this Scheme.

(5) ACMA may, in writing, ask the national broadcaster to do 1 or more of the following things to help ACMA to consider its decision:
   (a) give ACMA the information mentioned in the request;
   (b) carry out a test or other analysis described in the request;
   (c) do something else mentioned in the request.

(6) As soon as practicable after making a decision under subsection (3), ACMA must:
   (a) vary or renew the transmitter licence; or
   (b) issue a new transmitter licence; or
   (c) take no action;

   and tell the national broadcaster in writing of its decision.

(7) Application may be made to the AAT for review of a decision not to vary, renew or issue a transmitter licence.

158B Transmitter licence — starting before start date

(1) This section applies if:
   (a) a national broadcaster has an approved implementation plan in force for the coverage area, or the relevant part of the coverage area; and
   (b) the national broadcaster holds a transmitter licence relating to the approved implementation plan; and
   (c) the transmitter licence specifies a date of effect; and
   (d) the national broadcaster wishes to start transmission in the area or part of the area before the date of effect.

   Note ACMA recognises the possibility that a national broadcaster with an approved implementation plan, and a specified start date, may subsequently be in a position to start transmission earlier than expected.

(2) ACMA must decide, as soon as practicable:
   (a) to vary the date of effect of the transmitter licence so that it takes effect from an earlier date nominated by ACMA; or
   (b) not to vary the date of effect of the transmitter licence.

(3) As soon as practicable after making a decision under subsection (2), ACMA must:
   (a) vary the date of effect of the transmitter licence; or
   (b) take no action;
and tell the national broadcaster in writing of its decision.

(4) Application may be made to the AAT for review of a decision not to vary the date of effect of a transmitter licence.

[43] Section 159, note
substitute
Note  See paragraph 84 (l).

[44] Section 160, note
substitute
Note  See paragraph 84 (m).

[45] Section 161, note
substitute
Note  See paragraph 84 (n).

[46] Dictionary, definition of * ACA
substitute
* ACMA means Australian Communications and Media Authority

[47] Dictionary, after definition of datacasting service
insert
* designated HDTV multi-channelled national television broadcasting service has the same meaning as in clause 5E of Schedule 4 to the Act.

[48] Dictionary, after definition of * HDTV digital mode
insert
* HDTV multi-channelled national television broadcasting service has the same meaning as in clause 5D of Schedule 4 to the Act.
* HDTV national television format standard has the meaning given by clause 2 of Schedule 4 to the Act.

[49] Dictionary, definition of *multi-channelled national television broadcasting service
omitted
Dictionary, after definition of *SDTV digital mode*

*SDTV multi-channelled national television broadcasting service* has the same meaning as in clause 5C of Schedule 4 to the Act.

*SDTV national television format standard* has the meaning given by clause 2 of Schedule 4 to the Act.

*simulcast-equivalent period* has the same meaning as in clause 2 of Schedule 4 to the Act.

Further variations

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