Explanatory Statement
Issued by the authority of the Australian Communications and Media Authority

NATIONAL TELEVISION CONVERSION SCHEME VARIATION 2007 (No. 1)

Broadcasting Services Act 1992

Background, purpose and legislative basis

This document provides an explanation of the National Television Conversion Scheme Variation 2007 (No. 1), made under subclause 19(1) of Schedule 4 to the Broadcasting Services Act 1992 (the BSA).

In 1998, the Television Broadcasting Services (Digital Conversion) Act 1998 inserted Schedule 4 into the BSA. Schedule 4 provides for the conversion of transmission of broadcasting services from analog mode to digital mode.

Subclause 19(1) of Schedule 4 required the Australian Broadcasting Authority (ABA) to formulate a scheme for the gradual conversion of the transmission of national television broadcasting services from analog mode to digital mode.

Consequently, in 1999 the ABA made the National Television Conversion Scheme 1999 (the Scheme) applicable to national television broadcasting services (as defined in clause 2 of Schedule 4 to the BSA throughout Australia. An equivalent Conversion Scheme applying to commercial television broadcasting services, the Commercial Television Conversion Scheme 1999 (the Commercial Scheme), was also made in the same year.

From 1 July 2005, the ABA merged with the Australian Communications Authority (ACA) to form the Australian Communications and Media Authority (ACMA). ACMA took over the performance of the powers and functions under the BSA previously performed by the ABA, including all powers and functions in relation to the National and Commercial Schemes.

The Scheme is divided into two Parts (Part A and Part B). Part A applies to national television broadcasting services in non-remote (ie regional and metropolitan) coverage areas, and Part B applies to remote coverage areas. Each part contains rules for:

- the creation of digital channel plans by ACMA, which allot digital channels to national broadcasters for the transmission of television services;
- the creation of implementation plans by national broadcasters which outline the roll-out process for digital television services by national broadcasters;
- test transmissions of digital services; and
- other matters necessary for the conversion of the transmission of television broadcasting services from analog to digital mode.
Over time, both Schedule 4 to the BSA and the Scheme have been varied in response to the changing broadcasting environment. The variations to the Scheme are intended to update it to reflect:

- changes required by amendments made to Schedule 4 to the BSA by the Broadcasting Legislation Amendment Act (No. 1) 2006 and the Broadcasting Legislation Amendment (Digital Television) Act 2006; and
- changes to Part B of the Schemes that, from a policy perspective, are consequential to changes resulting from the Schedule 4 amendments; and
- the formation of ACMA from the ABA and the ACA in 1 July 2005.

Amendments to Schedule 4 to the Broadcasting Services Act 1992

In November 2006 Federal Parliament passed the Broadcasting Legislation Amendment Act (No. 1) 2006 (the BLAA) and the Broadcasting Legislation Amendment (Digital Television) Act 2006 (the DTA). Both Acts amended Schedule 4 to the BSA, including provisions relating to the Scheme. As a result ACMA intends to make a series of variations to the Scheme reflecting these amendments.

Policy changes consequential to the Schedule 4 amendments

When developing Part B of the Scheme, the ABA previously took a gradual approach to the conversion of remote area television services from analog to digital mode. Pursuant to clause 28 of Schedule 4 to the BSA, this acknowledges the “special circumstances” that apply in remote areas to the transmission of national television broadcasting services, including the greater costs and difficulties of providing terrestrial television services in remote areas owing to the greater distances and smaller markets involved.

However, in order to maximise consistency between areas of Australia, it was always intended that over time Part B would be brought as closely into line with Part A as possible (notwithstanding clause 28 of Schedule 4 to the BSA).

Variations made to be consistent with variations to Part B of the Commercial Scheme

Certain amendments to Schedule 4 of the BSA made by the BLAA relate to multi-channelling elections for remote area commercial television broadcasting services, dealt with by Part B of the Commercial Scheme. These amendments are designed to make it easier for commercial television broadcasting licence holders delivering services in remote areas to engage in the conversion process. ACMA has therefore varied Part B of the Commercial Scheme to reflect those BLAA amendments.

As a result of these amendments, ACMA has made variations to other provisions in Part B of the Commercial Scheme that tighten the conversion process for commercial television services in remote licence areas. These variations consist of adopting relevant provisions from Part A into Part B of the Scheme. The expectation is that, as a result of the new multi-channelling rules, the conversion process in remote areas will accelerate, and the Commercial Scheme needs to be varied to account for this.

While national television broadcasting services in remote areas are not amended by the BLAA, it is appropriate that such services operate in a consistent regime to commercial services. This is to ensure that the conversion process occurs evenly across broadcasting
categories and viewers are not subject to two different regimes for commercial and national services. Therefore similar variations have been made to Part B of the Scheme.

**The formation of ACMA**

Although ACMA was formed on 1 July 2005, the Scheme was last varied in 2003 and therefore continued to make references to the ABA and the ACA. As part of this variation process these references have been changed to refer to “ACMA”. This often involves a straight substitution of terms, however, in certain provisions (for example those which required the ABA to “make arrangements with the ACA”) such a substitution is inappropriate and other changes have been made.

In these cases the intention is for the Scheme to refer to ACMA instead of ACA or ABA without altering the meaning of the provision. Where a provision previously required the ABA to make arrangements for the ACA to perform a statutory function (for example, to issue, vary or impose conditions upon, transmitter licences) this provision has been modified to require ACMA to perform that function in the same circumstances. Furthermore, where the exercise of those powers by the ACA was subject to conditions, the provision now specifies that the powers now exercised by ACMA are subject to those same conditions.

**Consultation**

Section 17 of the *Legislative Instruments Act 2003* states that where a legislative instrument is likely to have a direct, or substantially indirect, effect on business, or restrict competition, then any person likely to be affected by the instrument must be provided with an adequate opportunity to comment. Additionally, under clause 33 of Schedule 4 to the BSA, ACMA must make provision for public consultation when varying the Scheme.

Consequently, ACMA released the draft amendments to the Scheme for public comment via a news release and information on its web site on 8 June 2007.

Additionally, on this date ACMA wrote to national broadcasters, commercial television broadcasters and the owners and operators of broadcasting transmission towers informing them of the variations as proposed and inviting comment.

The closing date for submissions as part of this process was on 29 June 2007, although ACMA accepted late submissions on a case by case basis.

ACMA received written submissions from the Australian Broadcasting Corporation and Broadcast Australia which have been placed on the ACMA website.

No substantive issues were raised in the submissions received, although some minor changes were made to clarify some questions raised.

**Regulatory Impact**

ACMA has undertaken a regulatory impact analysis process and considers that the variation to the Scheme is likely to have no or low impact on business or the economy and is not anti-competitive. Consequently, neither a Regulation Impact Statement, nor a Business Cost Calculator Report, is necessary in relation to the regulatory proposal.
Commencement

In accordance with clause 32 of Schedule 4 to the Broadcasting Services Act 1992, the National Television Conversion Scheme Variation 2007 (No. 1) will commence when it is approved, in writing, by the Minister.

Notes on the Instrument

Section 1 – Name of Scheme

This section sets out the title of the National Television Conversion Scheme Variation 2007 (No. 1).

Section 2 – Commencement

This section provides the commencement date of the National Television Conversion Scheme Variation 2007 (No. 1), which is on the day that it is approved, in writing, by the Minister, in accordance with clause 32 of Schedule 4 to the BSA.

Section 3 – Variation of the Scheme

This section sets out that Schedule 1 to the National Television Conversion Scheme Variation 2007 (No. 1) varies the Scheme.

Part A of the Scheme

Item [1] – After section 3

Item [1] inserts a new section 3A into the Scheme which provides that the Scheme applies to national television broadcasting services, other than SDTV and HDTV multi-channelled national television broadcasting services, as specified in subclauses 19(7B) and (7C) of Schedule 4 to the Broadcasting Services Act 1992 (BSA). “SDTV multi-channelled national television broadcasting service” and “HDTV multi-channelled national television broadcasting service” are defined, respectively, in clauses 5C and 5D of Schedule 4 to the BSA.

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

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

Items [2] and [3] make amendments consequential to the formation of ACMA, replacing references to the ABA and the ACA with references to ACMA. Other minor amendments in Item [3] replace the previous requirement for the ABA to make arrangements for the ACA to perform a statutory function with a requirement for ACMA to perform that function in the same circumstances.
Item [4] – Subsection 25 (1)

Item [4] amends subsection 25(1) to omit the phrase “(other than a multi-channelled national television broadcasting service.)”. This omission is consequential to the amendment in Item [1] which specifies that the Scheme does not apply to either SDTV or HDTV multi-channelled national television broadcasting services.

Item [5] – Section 26, heading

Item [6] – Section 27, heading

Item [7] – Section 30, heading

Item [8] – Section 33, heading

Item [9] – Subsection 35 (1)

Item [10] – Subsection 35 (2)


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

Item [13] – Subsections 37B (2) and (3)

Item [14] – Section 39, heading

Item [15] – Section 41

Items [5] to [15] make amendments consequential to the formation of ACMA, replacing references to the ABA and the ACA with references to ACMA. Other minor amendments in Items [9] to [13] and Item [15] replace the previous requirement for the ABA to make arrangements for the ACA to perform a statutory function with a requirement for ACMA to perform that function in the same circumstances.

Item [16] – Subsection 42 (1)

Item [16] amends subsection 42(1) replacing the reference to section 34 of the BSA with a reference to Schedule 6 to the BSA.

Item [17] – Section 47, heading

Item [17] amends the heading to section 47, “Surrender of transmitter licence (SDTV or HDTV standards contravened)” replacing “standards” with “requirements”. This reflects the wording in the heading to subclauses 23(7) and (8) of Schedule 4 to the BSA.

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

Item [18] amends subsection 47(1) to list the SDTV and HDTV requirements mentioned in subclause 23(7) of Schedule 4 to the BSA.

Item [19] – Paragraph 47 (2) (b)

Item [19] makes an amendment to paragraph 47(2)(b) of the Scheme to reflect the wording of paragraph 23(7)(b) of Schedule 4 to the BSA.

Item [20] – Section 48, heading
Item [20] amends the heading to section 48, “Replacement transmitter licence after HDTV standards contravened” replacing “standards” with “requirements”. This reflects the wording in the heading to subclauses 23(7) and (8) of Schedule 4 to the BSA.

**Item [21] – Subsection 48 (1)**

Item [21] amends subsection 48(1) to refer to the HDTV requirements (but not the SDTV requirements) mentioned in subsection 47(1) of the Scheme. These are the same requirements specified in subclause 23(8) of Schedule 4 to the BSA.

**Item [22] – Section 49**

**Item [23] – Subsection 54 (1)**

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

**Item [25] – Section 65**

**Item [26] – Section 67**

**Item [27] – Section 70**

**Item [28] – Section 79**

**Item [29] – Subsection 80 (3)**

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

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

Items [22] to [31] make amendments consequential to the formation of ACMA, replacing references to the ABA and the ACA with references to ACMA. Other minor amendments replace the previous requirement for the ABA to make arrangements for the ACA to perform a statutory function with a requirement for ACMA to perform that function in the same circumstances.

**Part B of the Scheme**

**Item [32] – Section 84**

Item [32] inserts new Part B policy objectives into section 84, at paragraphs 84(b), (g) and (j). The paragraphs for the existing policy objectives have also been renumbered as a consequence of the insertion of these new policy objectives.

The new policy objective at paragraph 84(b) is to establish a *simulcast period* in remote coverage areas requiring, as is the case in non-remote coverage areas, a national broadcaster to transmit simultaneously a service in analog mode and SDTV digital mode as it becomes practicable to do so.

The new policy objectives at paragraphs 84(g) and (j) deal with the level of coverage and potential reception quality of national television broadcasting services transmitted in SDTV digital mode, throughout and after the end of, respectively, the simulcast period for a coverage area.

**Item [33] – Subsections 93 (3), (4) and (5) including the note**
Item [33] makes amendments consequential to the formation of ACMA, replacing references to the ABA and the ACA with references to ACMA. Other minor amendments replace the previous requirement for the ABA to make arrangements for the ACA to perform a statutory function with a requirement for ACMA to perform that function in the same circumstances.

**Item [34] – Division 4**

Item [34] inserts new Divisions 4 and 5 into Part B of the Scheme.

*Division 4*

The new Division 4 contains a series of provisions (sections 95 to 117) which set out the rules for the establishment of implementation plans for national broadcasters in remote coverage areas. This Division is similar to Divisions 3 and 4 of Part A of the Scheme which were introduced in 1999 when the Scheme was first made.

Ahead of the provisions in Division 4 of Part B of the Scheme an explanatory note has been inserted which outlines the process for developing and approving implementation plans. It replicates the note before Division 3 of Part A of the Scheme.

*Subdivision A*

Subdivision A contains provisions detailing the form of the implementation plan and the content of the application forms.

Section 95 provides the form and content requirements for an implementation plan. Subsection 95(1) notes that the form of an implementation plan must be approved in writing by the Minister. Subsections 95(6) to (8) provide rules for implementation plans for a coverage area that are provided as part of a series. Subsection 95(10) requires ACMA to publish a notice stating where copies of the form of an implementation plan may be obtained.

The rules for the publication of a notice by ACMA are set out in section 4 of the Scheme. According to section 4, if the Scheme requires ACMA to publish a notice, ACMA must do so in one of the following ways:

- publishing it in a national newspaper;
- publishing it in each State and Territory in a daily newspaper circulating generally in the State or Territory;
- publishing it in the Gazette.

Section 4 also permits ACMA to publish a notice in a daily newspaper circulating generally in each relevant State or Territory if it decides that the notice is of significance only to one or more States or Territories.

Finally in addition to complying with the above requirements, ACMA may publish a notice, statement or document in other ways – for example on the Internet, or in an industry or consumer publication.

Sections 96 to 98 set out the content of the form used to apply for approval for an implementation plan (the application form). Section 96 notes that the application form
must first be approved by the Minister, and that ACMA must publish a notice (as discussed above) stating where copies of the application form may be obtained.

Section 97 specifies that an application form must require a national broadcaster to prepare an implementation plan for the Minister in the form referred to in section 95.

Section 98 lists other types of optional content that the application form may contain. This optional content can include requirements that a national broadcaster:

- gives information as specified in the section (subsections 98(1), (2) and (5));
- makes statements about its access to broadcasting transmission locations (subsection 98(3)); and
- carries out tests or other analysis (subsection 98(4)).

Subdivision B

Subdivision B contains provisions relating to the approval process for an implementation plan submitted by a national broadcaster. The note at the beginning of the Subdivision outlines the provisions in clause 20 of Schedule 4 to the BSA which apply to this process.

Section 99 specifies that a national broadcaster must apply to the Minister for approval of an implementation plan for the conversion of a national television broadcasting service (but not including a multi-channelled digital service, which are excluded from this process under subclauses 20(1A) and (1B) of Schedule 4 to the BSA).

Subsection 99(2) notes that the applicant must use the approved application form (which is referred to in sections 96 to 98 of the Scheme) and that the implementation plan must also be submitted in the approved form (referred to in section 95 of the Scheme). Subsection 99(3) requires strict compliance with the approved application form and approved form of the implementation plan, and notes that section 25C of the Acts Interpretation Act 1901 does not apply to these forms.

Section 100 requires the Minister, as soon as is practicable, to inform ACMA when an application for approval of an implementation plan for the conversion of a national television broadcasting service has been received.

Section 101 relates to a report referred to in subclause 20(5) of Schedule 4 to the BSA, where the Minister may direct ACMA to provide a report on a matter relating to an application for an implementation plan. Section 101 lists examples of matters that the Minister may specify ACMA to take into account when preparing a report.

Section 102 relates to the new Part B policy objectives in paragraphs 84(g) and (j) of the Scheme, which require that the transmission of a national television broadcasting service in SDTV digital mode within a coverage area to 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. The section applies if:

- a national broadcaster applies for the approval of an implementation plan; and
- the level of coverage and potential reception quality achieved by the service in analog mode in the area has reduced since the commencement of Schedule 4 to the BSA; and
the Minister has directed ACMA to give a report for subclause 20(5) of Schedule 4 to the BSA.

In this case ACMA may ask the national broadcaster, in writing, to explain how it will ensure that the transmission of the service in SDTV digital mode will achieve the same level of coverage and potential reception quality as the service in analog mode, prior to the commencement of Schedule 4 to the BSA. Schedule 4 to the BSA commenced on 28 July 1998. A copy of this request must also be sent to the Minister.

If ACMA asks for this explanation, the implementation plan must ensure that the transmission of the service in SDTV digital mode will achieve the same level of coverage and potential reception quality as was achieved by the service in analog mode prior to the commencement of Schedule 4 to the Act.

ACMA is not required to prepare the report while it is waiting for the national broadcaster to respond to the request, and the Minister is not required to consider the application for approval of the implementation plan while the Minister is waiting for the report.

Section 103 relates to the Part B policy objective in paragraph 84(h) in the Scheme which requires that as far as practicable there should be a co-location of analog and digital transmitters used by a national broadcaster to transmit its analog and digital television services. The section applies where a national broadcaster indicates in its application for approval of an implementation plan that it is not practicable to co-locate its analog and digital transmitters, and instead, shows an alternative location for the digital transmitter.

In this situation, if the Minister has directed ACMA to give a report in relation to the implementation plan under subclause 20(5) of Schedule 4 to the BSA, ACMA must state its view about whether the national broadcaster should be required to co-locate its transmitters consistent with the policy objective at paragraph 84(h) of the Scheme. Subsection 103(3) lists the matters which ACMA is to take into account when forming its view. The Minister may have regard to ACMA’s view on this matter when deciding to approve an implementation plan, pursuant to paragraph 20(4)(d) of Schedule 4 to the BSA.

Section 104 provides how a report from ACMA under subclause 20(5) of Schedule 4 to the BSA is to be provided to the Minister. Under this section ACMA may make a request in writing for a national broadcaster to provide information, carry out a test or other analysis, or do something else as requested, to help ACMA prepare its report (a copy of any such request must also be provided to the Minister). The request may require a national broadcaster to do or repeat something already required by the implementation plan application form.

ACMA is not required to prepare the report while it is waiting for the national broadcaster to respond to the request, and the Minister is not required to consider the application for the implementation plan whilst waiting for ACMA to provide the report.

Section 105 permits the Minister to request, in writing, a national broadcaster to do one or more things (listed in subsection 105(1)) in order to help the Minister decide whether to approve an application for an implementation plan. The request may be for the
national broadcaster to do, or repeat, something already required by the implementation plan application form.

A copy of such a request must be forwarded to ACMA, and the Minister is not required to consider the application for an implementation plan whilst either the Minister or ACMA is waiting for the broadcaster to respond to the request.

Section 106 allows a national broadcaster to submit another implementation plan to the Minister if the Minister refuses to approve a plan already submitted. Another application form must be provided with the new implementation plan if the Minister requests it. The section specifies that the national broadcaster must complete the application form and prepare the plan in the way described in section 99 of the Scheme. The Minister must deal with the application in the way described in sections 101 to 105 of the Scheme.

Section 107 requires the Minister to inform ACMA of the approval of a national broadcaster’s implementation plan once the approval is made.

Section 108 requires ACMA to maintain a register of approved implementation plans, to be made available for public inspection. Members of the public are entitled to request a copy of or extract from any entry in the register, and if such a copy or extract is certified by a Member of ACMA it is admissible in all courts and proceedings without further proof or production of the original entry in the register.

The register is available on ACMA’s website at:

Subdivision C

Subdivision C contains one provision, section 109, relating to the issuing of transmitter licences to a national broadcaster authorising digital transmissions following the approval of an implementation plan.

Section 109 requires ACMA to issue to the national broadcaster one or more transmitter licences to authorise the national broadcaster to transmit its television broadcasting service in digital mode in a given coverage area after an implementation scheme has been approved. One licence must be issued for each radio-communications transmitter specified in the implementation plan as being necessary to deliver the national television broadcasting service.

Alternatively, if the national broadcaster already holds a suitable transmitter licence for the remote coverage area for which the implementation plan applies, ACMA may vary that licence so that it authorises the operation of a transmitter pursuant to the approved implementation plan. A similar provision applies for test transmitter licences, except that ACMA is required to vary such a licence if it is necessary to authorise the operation of a transmitter pursuant to the approved implementation plan.

If necessary, ACMA may undertake a combination of issuing new transmitter licences and varying existing transmitter licences.

In issuing or varying transmitter licences ACMA must identify any conditions that apply to the licence, including the date of effect of the licence, and issue or vary the licence accordingly. The date of effect of the licence will usually correspond to the date specified in the implementation plan.
Subdivision D

Subdivision D contains provisions detailing the process for varying implementation plans. This Subdivision has been adopted from Division 4 of Part A of the Scheme. The note at the beginning of the Subdivision sets out the provisions in clause 20 of Schedule 4 to the BSA which apply to the implementation plan variation process.

Section 110 sets out the rules for an application form for the approval of a variation to an implementation plan. The form must be approved in writing by the Minister, and ACMA is required to publish a notice (as discussed above) stating where copies of the form may be obtained.

Section 111 requires that a national broadcaster seeking to apply to the Minister for the approval of a variation to an approved implementation plan must use the approved application form (referred to in section 110 of the Scheme). The section notes that strict compliance with the approved form is required, and that section 25C of the Acts Interpretation Act 1901 does not apply to the approved application form. Subsection 111(3) notes that each application to vary an implementation plan may only deal with one approved implementation plan.

Section 112 specifies that where an application for an implementation plan is submitted for approval as part of a series, and the plan expressly or impliedly varies an earlier approved plan in the series as specified in paragraph 95(8)(e) of the Scheme, then that application will be taken to include an application for approval of the variation of the earlier approved plan. That is, no additional application is required.

Section 113 allows the Minister to request that a national broadcaster submits a variation to an existing approved implementation plan if the Minister believes that the existing implementation plan should be varied as a consequence to the variation of a digital channel plan made under section 92 or 93 of the Scheme.

If a variation is provided by the national broadcaster in response to the Minister’s request, ACMA must update the register of approved implementation plans accordingly, and, if necessary, make any consequential variations to transmitter licences.

Section 114 allows the Minister to invite comments on any application for a variation of an approved implementation plan that is received. If the Minister chooses to seek comments on the proposed variation, the Minister may do so by invitation of specific parties or through the publication of a notice inviting broader consultation.

Section 115 requires the Minister to inform ACMA of any variation made to a national broadcaster’s implementation plan as soon as is practicable after the variation is approved.

Section 116 requires ACMA to update the register of approved implementation plans with the details of a varied implementation plan upon the approval of the variation by the Minister.

Section 117 requires ACMA to vary a transmitter licence issued under section 100B of the Radiocommunications Act 1992 in a coverage area if the Minister approves a variation to the approved implementation plan in that area and the variation requires a consequential variation to the transmitter licence.
Division 5

The New Division 5 contains one provision, section 118, which allows a national television broadcasting licence holder that holds a datacasting licence issued in accordance to Schedule 6 to the BSA to use any spare transmission capacity available on an allotted digital channel to provide a datacasting service (under, and subject to the conditions of, the datacasting licence).

Item [35] – Subparagraphs 124(4)(a)(iv), (v) and (vi)

Item [35] makes amendments consequential to the formation of ACMA, replacing references to the ABA and the ACA with references to ACMA.

Item [36] – Subsection 124 (6), note

Item [36] makes an amendment to the note after subsection 124(6) consequential to Item [37].

Item [37] – After Division 6

Item [37] inserts new Divisions 7 and 8 into Part B of the Scheme.

Division 7

New Division 7 contains a series of provisions (sections 125 to 129) intended to require national broadcasters in remote coverage areas to surrender one or more transmitter licences for a digital service if certain requirements relating to digital transmission are not met. This Division is similar to Division 7 of Part A of the Scheme which was introduced in 1999 when the Scheme was first made.

Section 125 requires a national broadcaster to surrender its transmitter licence if it does not commence SDTV digital transmission for a remote coverage area by the commencement date determined pursuant to section 123 of the Scheme and does not satisfy ACMA that there are exceptional circumstances for the failure to commence transmission. The section permits the national broadcaster to make an application to the Administrative Appeals Tribunal (AAT) for review of a decision that exceptional circumstances do not exist.

Section 126 applies if a national broadcaster commences SDTV digital transmission on a date identified under section 123 of the Scheme but ceases the transmission in the simulcast period for the remote coverage area concerned.

Subsection 126(2) provides that in this situation ACMA may give the national broadcaster a written direction to both resume SDTV digital transmission in the area within a period of time specified in this direction, and to continue the SDTV digital transmission throughout the simulcast period. Subsection 126(3) specifies matters that a direction referred to in subsection 126(2) must include.

Subsection 126(4) requires a national broadcaster to surrender to ACMA each transmitter licence authorising digital transmission in the area if the national broadcaster does not comply with a written direction given under subsection 126(2) and does not satisfy ACMA that there are exceptional circumstances why the national broadcaster did not comply with the direction.
The section permits the national broadcaster to make an application to the AAT for review of a decision that exceptional circumstances do not exist.

Section 127 applies if a national broadcaster transmitting in a remote coverage area contravenes one of the provisions or standards referred to in subsection 127(1) (which reflects the requirements listed in subclause 23(10) of Schedule 4 to the BSA.

Subsection 127(2) provides that in this situation, ACMA may give the national broadcaster a written direction identifying the contravention and directing the national broadcaster to comply with the relevant provision or standard that has been contravened. Subsection 127(3) specifies matters that a direction referred to in subsection 127(2) must include.

Subsection 127(4) requires a national broadcaster to surrender to ACMA each transmitter licence authorising digital transmission in the area if the national broadcaster does not comply with a written direction given under subsection 127(2) and does not satisfy ACMA that there are exceptional circumstances why the national broadcaster did not comply with the direction.

The section permits the national broadcaster to make an application to the AAT for review of a decision that exceptional circumstances do not exist.

Section 128 allows a national broadcaster to ask ACMA, in writing, to issue a transmitter licence to replace a transmitter licence surrendered due to a failure to comply with an HDTV requirement listed in paragraph 127(1)(a), (c), (d) or (e) of the Scheme. In doing so, the national broadcaster must explain to ACMA why the replacement licence should be issued.

The section permits ACMA to ask the national broadcaster for more information about the request before considering the request, and upon consideration requires ACMA to approve or reject the request.

Section 129 requires ACMA to issue a transmitter licence if a request made under section 128 of the Scheme is approved. Reflecting subclause 23(10A) of Schedule 4 to the Broadcasting Services Act 1992, subsection 129(3) specifies that the amount of transmission capacity covered by the replacement licence must be less than the amount of transmission capacity covered by the surrendered licence.

**Division 8**

The new Division 8 contains a series of provisions (sections 131 to 133B) outlining the processes to occur at the end of a simulcast period. This Division is similar to Division 8 of Part A of the Scheme which was last amended by the National Television Conversion Scheme Variation 2000 (No. 1).

Section 131 requires ACMA to consider whether, for the purpose of allotting digital channels at the end of a simulcast period, the existing channel plan should be varied, or a new digital channel plan must be made. In making this decision ACMA must have regard to the matters listed in subsection 131(2).

Section 132 sets out the requirements ACMA must meet if it decides to vary an existing digital channel plan at the end of a simulcast period. If ACMA decides to vary an existing digital channel plan it must publish a notice (as described in relation to Item [34],
above) which states where copies of the proposed variation can be obtained, and which invites comments from the public on the variation.

The section specifies that when considering the form of the variation, ACMA must have regard to any comments it receives and the matters listed in subsection 88(2) of the Scheme which apply when a draft digital channel plan is first prepared. If applicable ACMA must also have regard to the effect of the digital channel plan on an approved implementation plan. ACMA may also have regard to any of the matters listed in subsection 88(3) of the Scheme which apply when a draft digital channel plan is first prepared.

The digital channel plan must be varied before the end of the simulcast period, so as to allow the plan, as varied, to commence from the end of the simulcast period.

Section 133 specifies that if ACMA decides to make a new digital channel plan, it must do so according to the rules set out for the making of digital channel plans in Division 3 of Part B of the Scheme, specifically in subsections 86(3) and (4), and sections 87 to 91. ACMA is required to make the new digital channel plan before the end of the simulcast period so that the plan can commence from the end of the simulcast period.

Section 133A requires all national television broadcasting service transmissions in analog mode in a coverage area to cease at the end of the simulcast period for that coverage area. This section requires all national broadcasters to surrender to ACMA all transmitter licences for analog television broadcasting services in that coverage area. National broadcasters surrendering a transmitter licence under this section must comply with any of ACMA’s requirements for surrendering such a licence.

Section 133B requires ACMA to issue to a national broadcaster one or more transmitter licences for the transmission of services in digital mode for use from the end of the simulcast period. The licences must have effect from the end of the simulcast period and must authorise the national broadcaster to transmit its service in digital mode using the channels allotted to it for that purpose in the digital channel plan referred to in either section 132 or 133 (as appropriate) of this Scheme.

ACMA must also identify the conditions which are to apply to such a licence and issue the licence with those conditions.

**Item [38] – Section 144**
**Item [39] – Section 146**
**Item [40] – Section 149**

Items [38] to [40] make amendments consequential to the formation of ACMA, replacing references to the ABA and the ACA with references to ACMA. Other minor amendments replace the previous requirement for the ABA to make arrangements for the ACA to perform a statutory function with a requirement for ACMA to perform that function in the same circumstances.

**Item [41] – Subsection 155 (4)**

Item [41] makes an amendment to subsection 155(4) consequential to Item [32].

**Item [42] – Section 158**
Item [42] makes amendments to section 158 consequential to the formation of ACMA, replacing references to the ABA and the ACA with references to ACMA. Other minor amendments replace the previous requirement for the ABA to make arrangements for the ACA to perform a statutory function with a requirement for ACMA to perform that function in the same circumstances.

Item [42] also inserts new sections 158A and 158B into the Scheme.

New section 158A makes provision in Part B of the Scheme for ACMA to decide to allow a national broadcaster to transmit a digital service in a remote coverage area before an approved implementation plan is in force for that coverage area.

The section applies in two situations. The first situation is where a national broadcaster holds a transmitter licence mentioned in section 158 of the Scheme and:

- intends to transmit before it has an approved implementation plan for the coverage area or relevant part of the coverage area; and
- has not applied for approval of an approved implementation plan for the area, or part of the area by the date determined by ACMA under subparagraph 158(3)(1)(ii).

The second situation is where a national broadcaster holds a transmitter licence mentioned in section 158 of the Scheme and:

- intends to transmit before it has an approved implementation plan for the coverage area, or relevant part of the coverage area; and
- has applied for the approval of an implementation plan for the area or part of the area; and
- has not had the implementation plan approved on or before the date determined under subparagraph 158(3)(1)(ii).

In either of these situations subsection 158A(3) of the Scheme requires ACMA to decide, as soon as practicable, whether to vary or renew the existing transmitter licence so that it is in force for a period of time agreed to by ACMA and the national broadcaster, or if the licence has ceased to be in force an identical licence to be in force for a period of time agreed to by ACMA and the national broadcaster. Subsection 158A (4) lists the grounds which ACMA must consider when deciding whether to allow the digital transmissions to continue. ACMA may ask the national broadcaster in writing to do one or more of the things mentioned in subsection 158A (5) to help it consider its decision.

If ACMA decides to vary, renew or issue the transmitter licence ACMA must vary, renew or issue the licence, and inform the national broadcaster of its decision, in writing, as soon as practicable after the decision to do so is made. If ACMA decides not to vary, renew or issue the licence it must inform the national broadcaster of its decision, in writing, as soon as practicable after the decision not to do so.

The national broadcaster may apply to the AAT for a review of a decision not to vary, renew, or issue a licence.
New section 158B is similar to section 81 of the Scheme. The section applies where a national broadcaster has an approved implementation plan in force for a coverage area or relevant part of a coverage area, holds a transmitter licence relating to the approved implementation plan, and wishes to start transmission in the area, or part of the area before the date of effect specified by the transmitter licence.

In this situation, ACMA must decide, as soon as practicable, whether or not to vary the date of the transmitter licence so that it takes effect from an earlier date nominated by ACMA.

If ACMA decides to vary the date of effect of the transmitter licence ACMA must vary, the licence, and inform the national broadcaster of its decision, in writing, as soon as practicable after the decision is made. If ACMA decides not to vary the date of effect of the licence it must inform the national broadcaster of its decision, in writing, as soon as practicable after the decision not to do so.

The national broadcaster may apply to the AAT for a review of a decision not to vary, renew, or issue a licence.

**Item [43] – Section 159, note**
Item [43] makes an amendment to the note after section 159 consequential to Item [32].

**Item [44] – Section 160, note**
Item [44] makes an amendment to the note after section 160 consequential to Item [32].

**Item [45] – Section 161, note**
Item [45] makes an amendment to the note after section 161 consequential to Item [32].

**Item [46] – Dictionary, definition of *ACA**

**Item [47] – Dictionary, after definition of *datacasting service**

**Item [48] – Dictionary, after definition of *HDTV digital mode**

**Item [49] – Dictionary, definition of *multi-channelled national television broadcasting service**

**Item [50] – Dictionary, after definition of *SDTV digital mode**

Items [46] – [50] amend the dictionary of the scheme to reflect new terms and changes to definitions of existing terms in the BSA.

**Item [51] – Further variations**
Item [51] makes a series of amendments consequential to the formation of ACMA, replacing references to the ABA and the ACA with references to ACMA.