**Explanatory Statement**

Issued by the authority of the Australian Communications and Media Authority

*NATIONAL TELEVISION CONVERSION SCHEME VARIATION 2011 (No. 2)*

*Broadcasting Services Act 1992*

# Background, purpose and legislative basis

This document provides an explanation of the *National Television Conversion Scheme Variation 2011 (No. 2)* (the Variation), 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 television 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 National 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 Australian Communications and Media Authority (ACMA) was formed, and 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 two schemes.

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

* the creation of digital channel plans (DCPs) by the ACMA, which allot digital channels to national broadcasters for the transmission of television services in digital mode;
* 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 National Scheme have been varied in response to the changing broadcasting environment.

**National Scheme variations – *National Television Conversion Scheme Variation 2011 (No. 2)***

The amendments made by the Variation are intended to update the National Scheme to reflect amendments to the BSA by the *Broadcasting Legislation Amendment (Digital Television) Act 2010* (the Amendment Act) that commenced on 30 June 2010. The Amendment Act made a number of amendments to provisions in the BSA including minor amendments to some provisions that relate to the National Scheme.

In addition, variations have been made that are intended to improve the operation of the National Scheme, to clarify parts of the Scheme, and to correct minor drafting errors.

The ACMA has made an equivalent set of variations to the Commercial Scheme (*Commercial Television Conversion Scheme Variation 2011 (No. 2)*).

**Consultation**

Section 17 of the *Legislative Instruments Act 2003* (the LIA) provides that where a legislative instrument is likely to have a direct, or substantial indirect, effect on business, or to restrict competition, the ACMA must be satisfied that any consultation it considers to be appropriate and that is reasonably practicable to undertake has been undertaken. Additionally, under clause 33 of Schedule 4 to the BSA the ACMA must make provision for consultation with the public, national broadcasters, commercial television broadcasting licensees and owners and operators of broadcasting transmission towers when varying the National Scheme.

On 22 December 2010 the ACMA released a consultation paper on the proposed amendments to the National Scheme for public comment on its web site.

Additionally, on this date the ACMA emailed national broadcasters, commercial television broadcasting licensees, and the owners and operators of broadcasting transmission towers informing them of the variations as proposed in the consultation paper and inviting comment.

The closing date for submissions as part of this process was 4 February 2011.

The ACMA received written submissions from Broadcast Australia and Free TV Australia, which have been placed on the ACMA website. Comments made in those submissions were taken into account in finalising the Variation.

**Regulatory Impact**

The ACMA has considered whether a regulatory impact analysis process is required by undertaking a preliminary assessment for this Variation, and based on this preliminary assessment the Office of Best Practice Regulation (OBPR) has determined that the proposed regulatory change is minor or machinery in nature and has therefore verified that no further regulatory impact analysis is required – OBPR reference number 2011/12493.

**Commencement**

In accordance with section 2 of the Variation, the provisions at sections 1, 2 and 4, and Schedule 2 of the Variation commence on the later of the day after registration or the approval by the Minister in accordance with clause 32 of Schedule 4 to the *Broadcasting Services Act 1992*. Both events need to occur before this Variation commences. Schedule 1 commences immediately after the provisions at Schedule 2 commence.

# Notes on the Instrument

**Section 1 – Name of Instrument**

This section sets out the title of the Variation which is the *National Television Conversion Scheme Variation 2011 (No. 2).*

**Section 2 – Commencement**

This section provides that the provisions at Sections 1, 2 and 4, and Schedule 2 of the Variation commence on the later of the day after registration or the approval by the Minister in accordance with clause 32 of Schedule 4 to the *Broadcasting Services Act 1992*. Both events need to occur before this Variation commences. Schedule 1 commences immediately after the provisions at Schedule 2 commence.

**Section 3 – Variation of the Scheme**

This section sets out that Schedules 1 and 2 to the Variation vary the National Scheme.

**Schedule 1 – General Variations**

**Item [1] – Section 3A**

Item [1] makes a minor clarification to the drafting of section 3A.

**Item [2] – Paragraph 3A(a)**

Item [2] varies paragraph 3A(a) to provide that the existing exclusion of SDTV multi-channelled national television broadcasting services from the operation of the National Scheme does not apply to the primary service of a national broadcaster (as declared by that broadcaster under clause 41M of Schedule 4 to the BSA). Consequently, from the end of the simulcast period, the National Scheme will apply to a national broadcaster’s primary service.

**Item [3] – After paragraph 4(1)(c)**

Item [3] relates to the publication of notices by the ACMA under the National Scheme.

The National Scheme provides that that where the ACMA is required to publish a ‘notice’ under the Scheme, it must do so by publishing it in at least one of a set of ways specified in subsection 4(1).

Item [3] extends the categories of publication under the Scheme to include publication on the ACMA’s internet site.

**Item [4] – Subsection 6(4)**

**Item [5] – Subsection 6(5)**

Items [4] and [5] relate to the application of technical documents made under section 6 of the National Scheme. The items vary subsections 6(4) and (5) of the National Scheme so that the ACMA may publish a notice stating that a document prepared under subsection 6(1) or (2) of the Commercial Scheme is taken to be a document prepared for section 6, irrespective of whether the document was in force at the commencement of the section.

**Item [6] – Subsection 44(3)**

Item [6] amends subsection 44(3) of the National Scheme to clarify that the simulcast period for a regional or metropolitan coverage area begins on the date that the national broadcaster is required to commence transmitting its service in SDTV digital mode that is set out in clause 20 of Schedule 4 to the BSA.

**Item [7] – Subsection 45(1), after note 2**

**Item [8] – Subsection 45(2), note 1 and note 2**

Items [7] and [8] make minor changes to the notes in section 45 of the National Scheme, by removing Note 1 and Note 2 from under subsection 45(2) and inserting Note 1 as Note 3 under subsection 45(1). This notes is relevant to subsection 45(1).

**Item [9] – Paragraph 85(3)(a)**

**Item [10] – Paragraph 85(3)(b)**

Items [9] and [10] relate to the application to DCPs made or prepared under Division 3 of Part B of the National Scheme of technical documents that are made under Part A of the National or Commercial Schemes. The items vary paragraphs 85(3)(a) and (b) of the National Scheme so that the ACMA may publish a notice stating that a document prepared under subsection 6(1) of either the National or Commercial Scheme is taken to be a document prepared for section 85, irrespective of whether the document was in force at the commencement of section 85.

**Item [11] – Subsection 106(4)**

Item [11] amends drafting in subsection 106(4) of the National Scheme to clarify that a reference to ‘sections 101 to 105’ in that provision refers to those sections on an inclusive basis.

**Item [12] – Subsection 124(3) (including the note)**

Item [12] amends subsection 124(3) of the National Scheme to clarify that the simulcast period for a remote coverage area begins on the date that the national broadcaster is required to commence transmitting its service in SDTV digital mode that is set out in the implementation plan for that remote coverage area prepared by the national broadcaster and in force under clause 20 of Schedule 4 to the BSA.

Item [12] also includes two notes. Note 1 references the policy objective in clause 19(6A) of Schedule 4 to the BSA that directs Part B of the National Scheme to achieve the policy objective that each national broadcaster is required to commence transmitting services in SDTV digital mode in a remote coverage area by the date specified in a implementation plan prepared and in force under clause 20 of Schedule 4.

Note 2 explains that the simulcast period for a remote coverage area ends in accordance with paragraph 19(7A)(b) of Schedule 4 to the BSA. Paragraph 19(7A)(b) provides that the end of the simulcast period for a remote coverage area is the end of the simulcast period for the commercial television licence area that corresponds to the coverage area.

**Item [13] – Dictionary, definition of *broadcasting transmission tower***

**Item [14] – Dictionary, definition of *coverage area***

**Item [15] – Dictionary, after definition of *digital-only local market area***

**Item [16] – Dictionary, definition of *licence area***

**Item [17] – Dictionary, definition of *metropolitan coverage area***

**Item [18] – Dictionary, definition of *metropolitan licence area***

**Item [19] – Dictionary, definition of *national broadcasting service***

**Item [20] – Dictionary, definition of *national radio broadcasting service***

**Item [21] – Dictionary, definition of *national television broadcasting service***

**Item [22] – Dictionary, definition of *national television conversion scheme***

**Item [23] – Dictionary, definition of *radiocommunication***

**Item [24] – Dictionary, definition of *regional coverage area***

**Item [25] – Dictionary, definition of *regional licence area***

**Item [26] – Dictionary, definition of *remote coverage area***

**Item [27] – Dictionary, definition of *simulcast period***

Items [13] to [27] make a series of variations to the Dictionary inserted at the end of the National Scheme pursuant to section 3 of the Scheme. These variations standardise a number of definitions for existing terms, aligning them with the definitions in Clause 2 of Schedule 4 to the BSA.

**Schedule 2 –Variations to references**

**Item [1] – Amendment of Scheme – changing references to ACMA into references to the ACMA**

Item [1] makes a global variation throughout the National Scheme. It changes all instances of “ACMA” to “the ACMA”.

**Item [2] – Amendment of Scheme – changes to headings to sections and subsection**

Item [2] makes a global variation to the headings to sections and subsections in the National Scheme. It changes all instances of “ACMA” to “the ACMA”. Item [2] also make a minor alteration to the heading to section 10 of the Scheme.

**Item [3] – Amendment of Scheme – changes to notes**

**Item [4] – Amendment of Scheme – changes to notes**

Item [3] makes a global variation to the notes to the National Scheme changing all instances of “ACMA” to “the ACMA”, subject to the exceptions at item [4].