**Explanatory Statement: *Broadcasting Services (Remote Indigenous Communities) Determination 2011***

**Issued by the Australian Communications and Media Authority**

# Purpose

The purpose of the *Broadcasting Services (Remote Indigenous Communities) Determination 2011* (the Determination) is to determine, under section 8B of the *Broadcasting Services Act 1992* (the Act), remote Indigenous communities for the purposes of the Act.

**Legislative Provision**

Section 8B of the Act provides that the Australian Communications and Media Authority (the ACMA) may determine an Indigenous community to be a remote Indigenous community.

The determination of a remote Indigenous community must be made by legislative instrument.

**Background**

The *Broadcasting Legislation Amendment Act (No. 2) 2002* amended the Act to establish a new community television (CTV) broadcasting framework. The new framework introduced requirements aimed at improving the corporate governance and accountability of CTV licensees. However, provision was made for CTV broadcasting services provided to remote Indigenous communities to be exempt from the definition of a 'CTV licence' and thus exempt from the more stringent regulatory requirements applying to CTV licensees. For the exemption to apply, the ACMA must determine an Indigenous community to be a remote Indigenous community for the purposes of the Act.

In addition, once the Determination is in force, an industry group representing community broadcasting licensees, whose services are targeted to a significant extent to one or more remote Indigenous communities, may develop their own code of practice. Provided that the ACMA is satisfied with relevant statutory matters, such a code of practice could be included in the Register of Codes of Practice under section 123 of the Act.

**Operation**

The Determination provides that the Indigenous communities listed in Schedule 1 to the Determination are remote Indigenous communities for the purposes of the Act.

**Consultation**

Section 17 of the Legislative Instruments Act 2003 (the LIA) requires all consultation that the rule-maker considers to be appropriate and reasonably practicable to undertake to take place before a legislative instrument is made. In determining whether consultation is appropriate and reasonably practicable, the rule-maker may have regard to any matter, including the extent to which the consultation drew on the knowledge of persons having expertise in fields relevant to the legislative instrument and that persons likely to be affected by the legislative instrument have had an adequate opportunity to comment on its content.

The ACMA is satisfied that all consultation that it considers appropriate and reasonably practicable has been undertaken in accordance with the requirements of section 17 of the LIA. A copy of the proposed instrument was provided to the Australian Indigenous Communications Association (AICA) and the Indigenous Remote Communications Association (IRCA) in January 2011 and again in August 2011 for consultation with their members and comment. AICA’s responses were received on 25 July 2011 and 15 September 2011. IRCA’s responses were received on 27 July 2011 and 23 September 2011. Both AICA and IRCA supported the content of the proposed instrument.

This consultation is appropriate and reasonably practicable, as it has drawn on the knowledge of AICA and IRCA, persons having expertise in remote Indigenous communities for the purposes of the Act. In addition, persons likely to be affected by the proposed instrument, that is, remote Indigenous broadcasting services, have had an adequate opportunity to comment through their representation by their respective remote Indigenous media organisations (RIMOs) that are members of AICA and IRCA.

**Regulatory Impact**

The Office of Best Practice Regulation (OBPR) has determined that this Determination gives rise to minor and machinerry regulatory changes with only minor impact on the business of remote Indigenous broadcasting services, and has verified that no further regulatory impact analysis is required – OBPR reference number 2010/12078.

**NOTES ON INSTRUMENT**

**Section 1 – Name of Determination**

Section 1 provides that the name of the Determination is the *Broadcasting Services (Remote Indigenous Communities) Determination 2011.*

**Section 2 – Commencement**

This section provides that the Determination commences the day after it is registered on the Federal Register of Legislative Instruments.

**Section 3 – Definition**

This section sets out the definition of terms used in the Determination.

**Section 4 – Determination of remote Indigenous communities**

Section 4 provides that, for the purposes of the Act, the ACMA determines the Indigenous communities listed in Schedule 1 to be remote Indigenous communities.

**Schedule 1 – Remote Indigenous communities**

Schedule 1 of the Determination sets out the remote Indigenous communities determined by the ACMA.