

Explanatory Statement

Television Licence Area Plan (Mount Gambier/South East) 2011

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Television Licence Area Plans made under subsection 26(1B) of the *Broadcasting Services Act 1992*

In accordance with the *Australian Communications and Media Authority Act 2005*, since 1 July 2005, the Australian Communications and Media Authority (the ACMA) has exercised powers and functions under the *Broadcasting Services Act 1992* (the BSA) previously exercised by the Australian Broadcasting Authority (the ABA).

Amendments to the BSA in 2011 introduced new provisions to make Television Licence Area Plans (TLAPs).

The ACMA prepares TLAPs under subsection 26(1B) of the BSA. TLAPs specify channels that are to be available in specified parts of a particular licence area to provide television broadcasting services, allot channels to particular providers and determine the characteristics, including technical specifications, of the transmission of broadcasting services that are to be available.

The ACMA may, by legislative instrument, vary TLAPs under subsection 26(2) of the BSA.

Intended impact and effect

The instrument makes a TLAP for the Mount Gambier/South East TV1 licence area to define and delineate the restack of digital television channels.

The Mount Gambier/South East TLAP:

- allots channels to commercial and national broadcasters currently operating in particular parts of the licence area;
- allots additional channels for services that are required to change channel to move to the final channel block;
- allots channels to ‘other broadcasting services’ which includes channels that are yet to be allotted for new services;
- specifies the period for which each channel allotment applies;
- determines the characteristics, including technical specifications, of broadcasting services; and
- determines additional specifications and technical limitations related to the use of particular channels.

The allotted channels are consistent with the decisions on planning principles for restacking digital television channels, which are detailed in *Clearing the digital dividend—Decisions on planning principles for restacking digital television channels*. This document is located on the ACMA website at: http://www.acma.gov.au/WEB/STANDARD/pc=PC_312460.

Regulatory impact analysis

The matter has been referred to the Office of Best Practice Regulation (OBPR) for a preliminary assessment of regulatory impact. The OBPR has considered the matter and formed the opinion that the proposed amendment will have minor and machinery impacts and, therefore, no further analysis (in the form of a Business Cost Calculator Report or Regulation Impact Statement) is required. OBPR ID: 2011/12954.

Consultation and submissions

Before making the TLAP, the ACMA undertook the following consultation:

- On 23 September 2011, the ACMA published the following papers on its website:
 - a draft TLAP;
 - an Engineering Report; and
 - a Discussion Paper about the draft TLAP, which invited public comment by 24 October 2011.
- On 23 September 2011, the ACMA wrote to the commercial television broadcasting licensees and national television broadcasting services in the area, alerting them to the proposed TLAPs and inviting comment.
- The ACMA received three submissions on the draft TLAPs on 24 October, 26 October and 2 November respectively.

In finalising the TLAP, the ACMA has considered the submissions it received.

Description of the provisions of the instrument

Section 1

Section 1 names the instrument *Television Licence Area Plan (Mount Gambier/South East) 2011*.

Section 2

Section 2 provides that the instrument commences on 2 April 2012.

Section 3

Section 3 defines the key terms used in the instrument.

Section 4

Subsection 4(1) specifies that each of the channels listed in column 1 of each table in each schedule to the instrument is available in a particular area (the ‘general area served’) in the Mount Gambier/South East TV1 licence area. Column 1 in the relevant tables identifies the channels that are being allotted to different broadcasters. Subsection 4(2) is the means by which the ‘restack window’ will be specified by reference to the date set out in column 3 in a table in a schedule to the instrument. This section effectively permits broadcasters to operate on the pre-restack channel for a period until the end of the restack window which is indicated by the date in column 3 of a table in a schedule. If no date is specified in column 3 in relation to a channel, then the allotment is ongoing.

Section 5

Section 5 contains the operative provisions relating to the allotment of channels to commercial television broadcasting licensees, as set out in Schedule 1 to the instrument. Each broadcaster’s allotment and technical specifications are identified in a separate table in Schedule 1. The operative provisions are a series of options which relate to the level of certainty about which services will be offered in the Mount Gambier/South East TV1 licence area.

If a channel in a table in Schedule 1 has a date in column 2, then subsection 5(1) allots that channel to the relevant commercial television broadcasting licensee for use in the area specified in column 7 (the ‘general area served’) of the relevant table from that date. If there is a date in column 3, the allotment ends at that date.

If a channel in a table in Schedule 1 does not have a date in column 2, then subsection 5(2) allows the ACMA to allot the channel to the broadcaster specified for the table at a date of its

choosing. The channel, if allotted, may only be used in the ‘general area served’ specified in column 7. Beyond this area, the channel must not be used by the licensee unless there is another allotment of the channel to the licensee for another area. For example, if channel 38 is allotted to a particular licensee for use in Keith, then the licensee is not able to use channel 38 in Naracoorte unless it is separately allotted to the licensee for use in Naracoorte.

If there is a table in Schedule 1 that does not have a licensee specified for it, subsection 5(3) permits the ACMA to allot each channel specified in column 1 of the relevant table to a commercial television broadcasting licensee for the Mount Gambier/South East TV1 licence area, for use in the area specified in column 7 (the ‘general area served’).

Subsection 5(4) requires licensees to comply with the technical specifications and other characteristics as set out in the relevant table in Schedule 1. The subsection states that the transmission must not have an effective radiated power (ERP) greater than specified in column 4 of the relevant table, must have the polarisation specified in column 5 of the relevant table, and must comply with any other additional specification as set out in column 6 of the relevant table.

To give practical effect to the technical realities of broadcast engineering, subsection 5(5) provides the ACMA with the ability to permit minor variations in ERP through the transmitter licence conditions which are part of the normal variations in planning broadcasting services¹. In the event that a proposed variation in ERP goes above the variation amount of 5dB, then a TLAP variation would be required. An option has also been included to reflect the potential for a licence condition regime allowing transmissions above the maximum ERP to be inserted into the *Broadcasting Services (Technical Planning) Guidelines 2007* (TPGs).

Subsection 5(6) restricts the use of the channel in accordance with any technical limitations specified in the relevant table in Schedule 1.

In accordance with the BSA, subsection 5(7) provides the ACMA with the power to specify additional technical limitations on the use of the channel. The note to this subsection explains that, even if no technical limitation is specified in the relevant table, the ACMA may still determine technical limitations on the use of a channel by making a decision to do so under this subsection.

Subsection 5(8) prevents the use of the channel specified in the relevant table in Schedule 1 unless the events or circumstances (if any) specified in the table have occurred.

In accordance with the BSA, subsection 5(9) provides the ACMA with the power to determine additional events or circumstances which must occur before the channel may be used. Subsection 5(9) also contains an explanatory note which states that if no event or circumstance is specified for the table, the ACMA may still determine additional events or circumstances that must be met before the channel may be used. The ACMA may do this by making a decision under the subsection.

Section 6

Section 6 is modelled on the provisions set out above relating to commercial television broadcasting licensees, but instead provides for the allotment of channels to national broadcasters, the Australian Broadcasting Corporation (ABC) and the Special Broadcasting Service (SBS), as set out in Schedule 2.

¹ The variation of ERP up to the amount of 5dB through licence conditions is intended to allow the ACMA flexibility in addressing minor adjustments on a case by case basis. The ACMA will assess the impact of interference with other services prior to agreeing to make minor adjustments by up to 5dB in ERP in the conditions on individual licences.

Section 7

Section 7 is modelled on the provisions set out above relating to commercial television broadcasting licensees, but instead provides for the allotment of channels to other providers of television broadcasting services (for example, providers of open narrowcasting television services or community television broadcasting services) as set out in Schedule 3.

Schedule 1

Schedule 1 contains information about the allotment of channels to the commercial television broadcasting licensees in the Mount Gambier/South East TV1 licence area. Each table in the Schedule is arranged on the basis of licensee. Schedule 1 should be read in conjunction with the operative provisions in section 5.

The clause accompanying each table identifies the relevant licensee (subclause (1)) and contains additional technical limitations (if any) (subclause (2)) and circumstances or events (if any) which apply to the allotment of the channels (subclause (3)). The note to clause (1) sets out the relevant licence area and call sign for the licensee specified in the relevant table.

The columns of the tables specify the channels to be allotted (1); the allotment date for each channel (if any) (2); the date on which each allotment ends (if any) (3); the maximum ERP (4); the polarisation (5); additional specifications (if any) (6); the general area served (that is, the area within which a particular channel is being allotted to the particular licensee) (7); and the transmitter specification number (8).

Column 8 is for information only, and is provided for historical and operational reasons. It provides a cross reference to the relevant transmitter specification set out in the Planning Data document that accompanies the TLAP.

Schedule 2

Schedule 2 contains information about the allotment of channels to the national television broadcasting services in the Mount Gambier/South East TV1 licence area. Schedule 2 should be read in conjunction with the operative provisions in section 6.

The tables in Schedule 2 are identical in form to the tables in Schedule 1, except that they apply to the national broadcasters.

Schedule 3

Schedule 3 contains information about the allotment of channels to other providers of television broadcasting services in the Mount Gambier/South East TV1 licence area. Schedule 3 also contains channels that have not yet been allotted but which may be allotted at a later stage. Schedule 3 should be read in conjunction with the operative provisions in section 7.

The tables in Schedule 3 are identical in form to the tables in Schedules 1 and 2, except that they apply to other providers of television broadcasting services.

Attachment 1

Attachment 1 defines the Mount Gambier/South East TV1 licence area in terms of the Australian Standard Geographical Classification areas used by the Australian Bureau of Statistics for the census of 6 August 1991. These geographical classification areas include District Council (DC), Shire (S), City (C), Municipality (M) and collection district (CD).