

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Broadcasting Services (Primary Commercial Television Broadcasting Service) Amendment Declaration 2012 (No.2)

Broadcasting Services Act 1992

Purpose

The purpose of the *Broadcasting Services (Primary Commercial Television Broadcasting Service) Amendment Declaration 2012 (No.2)* (the Amendment Declaration) is to amend the *Broadcasting Services (Primary Commercial Television Broadcasting Service) Declaration 2010* (the Declaration) in order to declare, under clause 41G of Schedule 4 to the *Broadcasting Services Act 1992* (the Act), a particular 'SDTV multi-channelled commercial television broadcasting service' (SDTV multi-channels) to be the 'primary commercial television broadcasting service' (Primary Services) for the commercial television broadcasting licensee in the Griffith and Murrumbidgee Irrigation Area (MIA) TV1 licence area.

Legislative Provisions

Subclause 41G(1) of Schedule 4 to the Act provides that the Australian Communications and Media Authority (the ACMA) may declare one of the SDTV multi-channels provided by certain commercial television broadcasting licensees to be the 'primary commercial television broadcasting service' (Primary Service) during the simulcast period or simulcast-equivalent period for the licence area of the licence.

Subclause 41G(1A) requires that the ACMA must make such a declaration as soon as practicable after the licensee commences to provide a SDTV multi channel service in the relevant licence area, or the commencement of that subclause (30 June 2010), whichever is the latter.

The declaration of a Primary Service must be made by legislative instrument.

Background

Under the Act, commercial television broadcasting licensees are authorised to deliver multiple commercial television broadcasting services in digital mode under a single commercial television broadcasting service licence. This is referred to as 'multi-channelling'.

Multi-channelling creates a two-track regulatory system for commercial television broadcasting services, in which some obligations apply to the analog service and its digital simulcast, but not to other streams of programs transmitted by the same licensee in digital mode.

During the period in which each analog service and its digital equivalent in a licence area must be simulcast, the concept of a 'core commercial television broadcasting service' (core service) is used by the legislation to identify the service to which certain regulatory provisions of the Act apply. Generally, the legislation identifies the core service as the digital simulcast service of the analog service.

The concept of a core service does not apply for licences allocated under section 38B of the Act on or after 1 January 2009. These licences authorise the provision of the following services in digital mode only during the simulcast period:

- two SDTV multi-channels; and
- one high-definition multi-channelled commercial television broadcasting service.

These licences do not authorise an analog service and consequently do not have an SDTV simulcast service or a core service (all services provided under such licences are regarded as multi-channels).

In these instances, the ACMA may declare one of the SDTV multi-channels provided by the commercial television broadcasting licensee to be the licensee's Primary Service for the licence area.

Declaring a Primary Service for a section 38B licensee ensures that the regulation of content is consistent with that of other commercial television broadcasting licences. In particular, a declared Primary Service will be subject to program standards for Australian content and children's programs,¹ as well as captioning requirements, while restrictions on televising an anti-siphoning event apply to the SDTV and HDTV multi-channels (that is, the event must first be shown on the Primary Service).

Operation

The Amendment Declaration amends the Declaration to provide that, during the simulcast period for the Griffith and MIA TV1 licence area, the multi-channel specified in Schedule 1 to the Amendment Declaration is the Primary Service for the section 38B licensee in the licence area.

Consultation

Section 17 of the *Legislative Instruments Act 2003* (the LIA) requires the ACMA to be satisfied that any consultation it considers to be appropriate and that is reasonably practicable to undertake has been undertaken. The ACMA consulted the section 38B licensee in the Griffith and MIA TV1 licence area, being WIN Television Griffith Pty Ltd (WIN Television Griffith).

On 8 February 2012, the ACMA also released a Consultation Paper for public and industry comment on the proposed declaration of Primary Services in the Griffith and MIA TV1 licence area. The closing date for submissions was on 24 February 2012. No submissions were received in response to this consultation paper.

The ACMA is satisfied that consultation has been conducted in accordance with the requirements of section 17 of the LIA.

Statement of Compatibility (SOC) with human rights

As the declaration of Primary Commercial Television Broadcasting Services involves the preparation of a legislative instrument, the following Statement of Compatibility with Human Rights is included:

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

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This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

In the continuing transition to digital television, the government's policy is to ensure all television viewers in Australia are able to receive free-to-air digital television broadcasting services following the switch-off of analog transmission, and to improve choice and quality of television services for people in remote and regional areas.

¹ e.g. *Broadcasting Services (Australian Content) Standard 2005*, *Television Program Standard 23 – Australian Content in Advertising and the Children's Television Standards 2009*.

A key element of this strategy is the requirement for the ACMA to ensure that a primary service is declared for each commercial television broadcasting licence that was allocated under section 38B of the BSA after 1 January 2009, during the simulcast period for the licence's licence area. The declaration must come into force as soon as practicable after the licensee commences providing an SDTV multi-channelled commercial television broadcasting service, and be in force at all times during the simulcast period for the licence area concerned.

Declaring a Primary Service for a section 38B licensee ensures that the declared Primary Service will be subject to program standards for Australian content and children's programs, as well as captioning requirements, while restrictions on televising an anti-siphoning event apply to the SDTV and HDTV multi-channels.

WIN Television Griffith Pty Ltd (WIN Television Griffith) holds a section 38B licence, allocated to it on 9 June 2011, for the Griffith and MIA TV1 licence area, and commenced providing a SDTV multi-channelled commercial television broadcasting service under this licence on 13 January 2012.

The *Broadcasting Services (Primary Commercial Television Broadcasting Service) Amendment Declaration 2012 (No.2)* declares TEN as the Primary Service for WIN Television Griffith in the Griffith and MIA TV1 licence area. This corresponds with the core commercial television broadcasting service provided by commercial television broadcasting licensees associated with Network Ten in metropolitan licence areas.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

The rule-maker of the Legislative Instrument is the Australian Communications and Media Authority.

Regulatory Impact

The ACMA has considered whether a regulatory impact analysis process is required by undertaking a preliminary assessment. Based on this preliminary assessment, the Office of Best Practice Regulation (OBPR) has determined that the proposed regulatory change in this submission is minor or machinery in nature and, therefore, has verified that no further regulatory impact analysis is required for this proposal – OBPR reference number 2010/12069.

Attachment

Further details of the Amendment Declaration are in the Attachment.

NOTES ON SECTIONS

Section 1 – Name of Declaration

This section provides that the name of the Amendment Declaration is the *Broadcasting Services (Primary Commercial Television Broadcasting Service) Amendment Declaration 2012 (No.2)*.

Section 2 – Commencement

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

Section 3 – Amendment of *Broadcasting Services (Primary Commercial Television Broadcasting Service) Declaration 2010*

This section provides that Schedule 1 of the Amendment Declaration amends the Declaration.

Schedule 1 Amendment

[Item 1] Schedule 2, Table 1, after Item 8

Schedule 1 of the Amendment Declaration inserts a new item (Item 9) into Table 1 of Schedule 2 of the Declaration, specifying that the SDTV multi-channel TEN, is the Primary Service for the holder of the section 38B commercial television broadcasting licence (SL 1130146) in the Griffith and MIA TV1 licence area. This is equivalent to the core service that exists for one of the terrestrial commercial television broadcasting licensees in metropolitan areas.