**Explanatory Statement**

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

***Broadcasting Services (Simulcast Period End Date – Remote Licence Areas)* *Determination 2012***

***Commercial Television Conversion Scheme 1999***

# Purpose

The purpose of the *Broadcasting Services (Simulcast Period End Date – Remote Licence Areas) Determination 2012* (the Determination) is to determine, under subsection 139 (3) of the *Commercial Television Conversion Scheme 1999* (the Scheme), the date by which each holder of a commercial television broadcasting licence in a remote licence area is to cease transmitting the commercial television broadcasting service concerned in analog mode.

The Determination will also have the effect of ending the simulcast period for the remote coverage areas for national television broadcasting services that correspond to the remote licence areas (see subclause 19 (7A) of Schedule 4 to the *Broadcasting Services Act 1992* (Act)).

**Legislative Basis**

The Scheme is made under subclause 6(1) of Schedule 4 to Act which requires the Australian Communications and Media Authority (ACMA) to formulate a scheme for the conversion of the transmission of commercial television broadcasting services from analog mode to digital mode.

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

* the creation of digital channel plans by the ACMA, which allot digital channels to holders of existing commercial television broadcasting licences for the transmission of their services in digital mode;
* the preparation of implementation plans by a holder of a commercial television broadcasting licence which outlines the introduction of commercial television broadcasting services in digital mode;
* test transmissions of digital services; and
* other matters necessary for the conversion of the transmission of commercial television broadcasting services from analog to digital mode.

Paragraph 139(3)(b) of the Scheme makes provisions for ending the simulcast period in remote licence areas, including the power for the ACMA to determine an end date that is before 31 December 2013. The end date for the simulcast period in a licence area is the date on which commercial television broadcasting licensees and national television broadcasters must cease broadcasting in analog mode in the relevant licence area.

Subparagraph 139(3)(b)(i) of the Scheme specifies that the date determined by the ACMA must be before 31 December 2013. Subparagraph 139(3)(b)(ii) provides that if the ACMA chooses not to set a date then the end date defaults to 31 December 2013, unless that date has been extended by the Minister and the ACMA under subparagraph 139(3)(ii).

Under subsection 139(4), the ACMA must consult with the public, all holders of a commercial television broadcasting licence in the relevant remote licence area, national broadcasters, owners and operators of broadcasting transmission towers and owners and operators of satellite transmission facilities before determining a date for the area. The ACMA must have regard to any comments it receives during the consultation, and subsection 139(5) specifies that the ACMA must publish the determination as soon as practicable after making it.

The determination of an end date to the simulcast period is made by legislative instrument.

**Background**

Australia is progressively switching over from analog to digital television services. The switchover began with the commencement of digital television simulcasts of analog television services in metropolitan areas in 2001. Digital services have continued to commence across the country on a staggered basis.

In line with the government’s switchover timetable, areas will progressively turn off analog television services to allow the switchover to digital-only television in Australia to be completed by the end of 2013.

The transitional period during which commercial and national television broadcasters are required to transmit simultaneously in analog and digital is known as the simulcast period. Once the simulcast period ends in a licence area, the broadcasters must cease transmitting services in analog mode in that area. Only digital television transmissions are permitted after that time.

For remote licence areas, paragraph 139(3)(b) of the Scheme enables the ACMA to determine an end date for the simulcast period. The power to determine and end date for the simulcast period in metropolitan and regional licence areas, that is, in non-remote licence areas, may only be exercised by the Minister.

Each licence area covered by the determination is a remote licence area in accordance with the Determination of Remote Licence areas made under subclause 5(1) of Schedule 4 to the Act by the Australian Broadcasting Authority on 14 December 2000.

There are three commercial television licence areas in remote central and eastern Australia:

* Remote Central and Eastern Australia TV1 (RCEA TV1);
* Remote Central and Eastern Australia TV2 (RCEA TV2); and
* Mount Isa TV1.

The Determination sets 10 December 2013 as the date by which the holders of the commercial television broadcasting licences for the RCEA TV1, RCEA TV2 and Mount Isa TV1 licence areas are required to cease transmitting the commercial television broadcasting service concerned in analog mode in each area.

There are five commercial television licence areas in remote Western Australia:

* Remote and Regional Western Australia TV1;
* South West and Great Southern TV1;
* Geraldton TV1;
* Kalgoorlie TV1; and
* Western Zone TV1 (collectively ‘remote Western Australian licence areas’**)**.

The Determination sets 25 June 2013 as the date by which the holders of the commercial television broadcasting licences for the remote Western Australian licence areas are required to cease transmitting the commercial television broadcasting service concerned in analog mode in each area.

**Consultation**

Consultation with licensees is required under section 139(9)(4) of the Scheme before an end date for the simulcast period of a remote licence area is determined by the ACMA. 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.

As required by subsection 139(4) of the Scheme, the ACMA consulted with the public, all holders of a commercial television broadcasting licence in the relevant remote licence area, national broadcasters, owners and operators of broadcasting transmission towers and owners and operators of satellite transmission facilities.

The ACMA released a consultation paper for public comment on the proposed end date for the simulcast period in remote licence areas on 9 July 2012. Copies of the consultation paper were sent to the commercial television broadcasting licensees in the remote Western Australian and remote central and eastern Australian licence areas and to the national broadcasters. Copies of the consultation paper were also sent to Broadcast Australia Pty Ltd as an owner and operator of transmission towers in these licence areas and to Singtel Optus Pty Ltd as the owner and operator of satellite transmission facilities.

A period of 2 weeks was provided for public and industry comment (9 July to 23 July 2012).

Five submissions were received from the WIN Network, FreeTV Australia, Broadcast Australia, Imparja Television and the Indigenous Remote Communications Media Association (IRCA). All submissions supported the proposed end date to the simulcast period in the remote central and eastern Australian licence areas. Three submissions supported the proposed date in the Western Australian licence areas. The submission from IRCA was concerned that the proposed date for remote Western Australian licence areas may be premature and sought assurance that the switchoff of analog services will be coordinated with rollout of digital TV services to ensure that communities are not left without TV services.

Comments received during the consultation process have been considered prior to the Determination being made. 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 determination of the end date for a simulcast period for remote television licence areas 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**

Australia is progressively switching over from analog to digital television services. The switchover began with the commencement of digital television simulcasts of analog television services in metropolitan areas in 2001. Digital services have continued to commence across the country on a staggered basis.

In line with the government’s switchover timetable, areas will progressively turn off analog services to allow the switchover to digital-only television in Australia to be completed by the end of 2013.

The legislative framework for the switchover of commercial and national television broadcasting services from analog to digital mode is set out under Schedule 4 to the *Broadcasting Services Act 1992* (BSA), the Commercial Television Conversion Scheme 1999 (the CTCS) and National Television Conversion Scheme 1999 (NTCS).

Schedule 4 to the BSA, the CTCS and NTCS establish a simulcast period for each commercial television licence area (or coverage area as it is described in the NTCS), during which commercial and national television broadcasters must transmit their service in analog and digital mode. Once the simulcast period ends in a licence area, the broadcasters must cease transmitting services in analog mode in that area. Only digital television transmissions are permitted after that time.

For remote licence areas, paragraph 139(3)(b) of the CTCS enables the ACMA to determine an end date for the simulcast period.

The *Broadcasting Services (Simulcast Period End Date – Remote Licence Areas) Determination 2012*determines the end date for the simulcast period in remote Western Australian licence areas and remote licence areas in central and eastern Australia.

**Human rights implications**

This Determination is compatible with the human rights and freedoms noted above because it does not engage any of the applicable rights or freedoms and does not raise any human rights issues.

Australia is a signatory to the International Covenant on Civil and Political Rights (one of the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*) (the ICCPR). Article 19 of the ICCPR deals with freedom of expression and Australia has made a reservation to paragraph 2 of Article 19.

This Determination is consistent with such reservation, which states that the regulation of television broadcasting in the public interest with the object of providing the best possible broadcasting services to the Australian people is compatible with Article 19 of the ICCPR.

**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, and formed the view that the recommendation in this submission would give rise to a regulatory change with only minor or machinery impact on the business or not-for-profit sector. The Office of Best Practice Regulation (OBPR) has verified that no further regulatory impact analysis is required for this proposal – OBPR reference number 13976.

**Commencement**

In accordance with section 2 of the Determination, the Determination will commence the day after it is registered on the Federal Register of Legislative Instruments.

**Notes on the Sections**

**Section 1 – Name of Determination**

This section sets out the title of the Determination.

**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 – Definitions**

This section sets out definitions of terms used in the Determination. Each remote licence area is defined by reference to the relevant licence area plan prepared under section 26 of the Act by the ACMA.

**Section 4 – Determination of simulcast end date for Remote Western Australia television licence areas**

This section determines, under subsection 139(3) of the Scheme, 10 December 2013 as the date by which the holders of the commercial television broadcasting licences for the remote Western Australia licence areas licence areas are required to cease transmitting the commercial television broadcasting service concerned in analog mode in each area.

This also affects national television broadcasting services in the remote coverage areas that correspond to the remote Western Australia licence areas.

**Section 5 – Determination of simulcast end date for Remote Central and Eastern Australia television licence areas**

This section determines, under subsection 139(3) of the Scheme, 25 June 2013 as the date by which the holders of the commercial television broadcasting licences for the RCEA TV1, RCEA TV2 and Mt Isa TV1 licence areas are required to cease transmitting the commercial television broadcasting service concerned in analog mode in each area.

This also affects national television broadcasting services in the remote coverage areas that correspond to the RCEA TV1, RCEA TV2 and Mt Isa TV1 licence areas.