

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Television Licence Area Plan (Sydney) 2012

Broadcasting Services Act 1992

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, and/or empower the ACMA to allot, channels to particular providers and determine the characteristics, including technical specifications, of the transmission of broadcasting services that are to be available. TLAPs may also determine, or empower the ACMA to determine, limitations on the use of particular channels, such as technical limitations or that the use of a particular channel depends on a particular event or circumstance.

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 Sydney TV1 licence area to define and delineate the restack of digital television channels.

The Sydney TLAP:

- allots channels to commercial and national broadcasters currently operating in particular parts of the licence area;
- allots final channels for digital services that have not yet rolled out;
- 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 www.acma.gov.au.

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: 2012/13858.

Consultation and submissions

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

- On 24 September 2012, the ACMA published the following papers on its website:
 - a draft TLAP;
 - an Engineering Report;
 - Planning Data; and
 - a Discussion Paper about the draft metropolitan TLAPs, which invited comment from the persons listed in paragraphs 27(1B)(e) – (h) of the BSA, and invited other persons to make any submissions as to why they should be considered an appropriate person to be consulted under paragraph 27(1B)(h), by 22 October 2012.
- On 24 September 2012, the ACMA wrote to the commercial television broadcasting licensees and national television broadcasting services in the area, and to other persons considered appropriate to be consulted, alerting them to the proposed TLAPs and inviting comment.
- The ACMA received six submissions on the draft TLAPs for Adelaide, Brisbane, Melbourne, Perth and Sydney on 22 October 2012.

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

Statement of Compatibility with Human Rights

In accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*, the ACMA has prepared a Statement of Compatibility with Human Rights to consider the human rights implications of this legislative instrument. The Statement concludes that the content of this legislative instrument does not raise any human rights issues and is therefore regarded as being compatible with human rights.

Television Licence Area Plan (Sydney) 2012

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 July 2010, in the *Australian Communications and Media Authority (Realising the Digital Dividend) Direction 2010*, the Minister for Broadband, Communications and the Digital

Economy directed the ACMA on a range of issues related to the replanning of digital television to yield the 126 MHz of digital dividend.

The *Television Licence Area Plan (Sydney) 2012* plans and allots channels for transmission of television broadcasting services in digital mode and places conditions on the use of some of these channels. This legislative instrument deals only with these matters in the Sydney TV1 licence area, which is defined in the instrument.

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.

Description of the provisions of the instrument

Section 1

Section 1 names the instrument *Television Licence Area Plan (Sydney) 2012*.

Section 2

Section 2 provides that the instrument commences on the day after the end of the simulcast period for the Sydney TV1 licence area.

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 Sydney 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.

If a channel in an item 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 an item in a table in Schedule 1 does not have a date in column 2, then subsection 5(2) provides that the channel is allotted to the broadcaster specified for the table from the day on which the instrument comes into force. 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 41 is allotted to a particular licensee for use in Bouddi, then the licensee is not able to use channel 41 in Gosford unless it is separately allotted to the licensee for use in Gosford.

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 Sydney 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 services.¹ 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 channels specified in column 1 of the tables in Schedule 1 in accordance with any technical limitations specified for that item 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 a channel specified in an item in a 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 this 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

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.

broadcasters, the Australian Broadcasting Corporation (ABC) and the Special Broadcasting Service (SBS), as set out in Schedule 2.

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 providers of other 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 Sydney 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 that accompanies the TLAP.

Schedule 2

Schedule 2 contains information about the allotment of channels to the national television broadcasters in the Sydney 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 providers of other television broadcasting services in the Sydney 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 providers of other television broadcasting services.

Attachment 1

Attachment 1 defines the Sydney TV1 licence area in terms of the Australian Standard Geographical Classification areas used by the Australian Bureau of Statistics for the census of 7 August 2001. These geographical classification areas include NSW local government area (A), city (C) and collection district (CD).