

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Broadcasting Services (Primary Commercial Television Broadcasting Service) Amendment Declaration 2013 (No.1)

Broadcasting Services Act 1992

Purpose

The purpose of the *Broadcasting Services (Primary Commercial Television Broadcasting Service) Amendment Declaration 2013 (No.1)* (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), particular 'SDTV multi-channelled commercial television broadcasting services' (SDTV multi-channels) to be the 'primary commercial television broadcasting services' for commercial television broadcasting licensees in particular licence areas.

Legislative Provisions

Subclause 41G(2) 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 commercial television broadcasting licensees to be the 'primary commercial television broadcasting service' (Primary Service) after the end of the simulcast period or simulcast-equivalent period for the licence area of the licence. Subclause 41G(3) requires that such a declaration is in force at all times after the later of:

- the end of the simulcast period, or simulcast-equivalent period, for the licence area, and
- when a licensee commences to provide a SDTV multi-channel in the licence area.

The declaration of a Primary Service is 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. The legislation identifies the core service as the digital simulcast service of the analog service.¹

¹ Licences allocated under section 38B of the Act before 1 January 2009 authorise the provision of commercial television broadcasting services in digital mode only. In these cases, the core service is the sole SDTV multi-channel that could be provided before 1 January 2009. See sections 41A to 41C of, and paragraph 7(1)(m) of Schedule 2 to, the Act.

Declaring a Primary Service will provide certainty in respect of the regulatory obligations applying to each service provided by a commercial television broadcasting licensee after the simulcast period or simulcast-equivalent period.

A decision by the ACMA to declare a Primary Service will affect the operation of certain content regulations that apply to commercial television broadcasting services in or under the Act. These include, for example, the anti-siphoning scheme, program standards (e.g. *Broadcasting Services (Australian Content) Standard 2005*, *Television Program Standard 23 – Australian Content in Advertising* and the *Children's Television Standards 2009*) and captioning rules.

Operation

The Amendment Declaration amends the Declaration to provide that, after the simulcast period for the Adelaide TV1, Tasmania TV1 and Perth TV1 licence areas, the SDTV multi-channels specified in Schedule 1 to the Declaration (to appear after item 25 in the Declaration), are the Primary Services for the relevant licensees of those services.

The Amendment Declaration also amends the Declaration to reflect that subsequent to the primary services being declared in December 2010, WIN Television SA Pty Ltd:

- provided the WIN service, rather than the WIN SA service under SL 10330 BSL in the Mount Gambier/South East TV1 area, and under SL 10174 BSL in the Riverland TV1 area,
- provided the 7 service, rather than the Nine service under SL 1130144 BSL in the Mount Gambier/South East TV1 area, and under SL 1130145 BSL in the Riverland TV1 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 licensees in each of the Adelaide TV1, Tasmania TV1 and Perth TV1 licence areas, being:

- Network Ten (Adelaide) Pty Ltd, Channel 9 South Australia Pty Ltd and Channel Seven Adelaide Pty Ltd (Adelaide TV1),
- WIN Television TAS Pty Ltd, Southern Cross Television (TNT9) Pty Ltd and Tasmanian Digital Television Pty Ltd (Tasmania TV1), and
- Channel Seven Perth Pty Ltd, Swan Television & Radio Broadcasters Pty Ltd and Network Ten (Perth) Pty Ltd (Perth TV1.)

The ACMA also consulted WIN Television SA Pty Ltd, the licensee subject to the primary services declaration variation in the Mount Gambier/South East TV1 and Riverland TV1 licence areas.

On 20 February 2013 the ACMA released a consultation paper for public and industry comment.

The paper sought comments on the ACMA's proposal to make a declaration specifying Primary Commercial Television Broadcasting Services (Primary Services) for each of the commercial television broadcasting licences in the Adelaide TV1, Tasmania TV1 and Perth TV1 licence areas.

The ACMA also sought comments on its proposal to vary the declaration of primary commercial television broadcasting services for licences in the Mt Gambier/SE TV1 and Riverland TV1 licence areas.

The closing date for submissions was on 11 March 2013. No submissions were received in response to this consultation paper.

Accordingly, 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.

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 after the end of the simulcast period or simulcast-equivalent period for that licence area. The declaration must be in force at all times after the later of the end of the simulcast period or simulcast equivalent period for the licence area, and when a licensee commences to provide a SDTV multi-channel in the licence area.

Declaring a Primary Service 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, 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.)

The *Broadcasting Services (Primary Commercial Television Broadcasting Service) Amendment Declaration 2013 (No.1)* declares services that correspond with the core commercial television broadcasting service currently provided by each of the commercial television broadcasting licensees as the primary service.

The *Broadcasting Services (Primary Commercial Television Broadcasting Service) Amendment Declaration 2013 (No.1)* also amends the primary services declaration for the Mount Gambier/South East TV1 and Riverland TV1 licence areas to reflect current broadcast arrangements.

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, 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 12066.

Attachment

Further details of the Amendment Declaration are in the Attachment.

NOTES ON SECTIONS

Section 1 – Name of Declaration

Section 1 provides that the name of the Amendment Declaration is the *Broadcasting Services (Primary Commercial Television Broadcasting Service) Amendment Declaration 2013 (No.1)*.

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 1, table 1, items 10, 12, 13 and 15

Item 1 amends the primary services declaration to reflect that WIN Television SA Pty Ltd switched the broadcasting service licences (BSLs) in the Mount Gambier/South East TV1 area from WIN SA to WIN (for the SL 10330 BSL), and from Nine to 7 (for the SL 1130144 BSL). Item 1 also amends the primary services declaration to reflect that WIN Television SA Pty Ltd switched the BSLs in the Riverland TV1 area from WIN SA to WIN (for the SL 10174 BSL) and from Nine to 7 (for the SL 1130145 BSL).

[Item 2] Schedule 1, table 1, after item 25

Item 2 inserts new items into the table at Schedule 1 of the Declaration, being a declaration that the SDTV multi-channel in Column 4 is the Primary Service for the holder of commercial television broadcasting service licence in Column 2 for the licence area in Column 1 for each of the Items 26 to 34 (inclusive). The new items deal with the services provided under 6 licences – three in the Adelaide TV1 licence area (new items 26 to 28 inclusive), three in the Tasmania TV1 licence area (new items 29 to 31 inclusive) and three in the Perth TV1 licence area (new items 32 to 34 inclusive).