

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Television Licence Area Plan (Remote Central and Eastern Australia) 2013

Broadcasting Services Act 1992

In accordance with the *Australian Communications and Media Authority Act 2005*, the Australian Communications and Media Authority (the ACMA) exercises powers and functions under the *Broadcasting Services Act 1992* (the BSA).

The ACMA prepares Television Licence Area Plans (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.

Purpose

The *Television Licence Area Plan (Remote Central and Eastern Australia) 2013* contains plans for the Remote Central and Eastern Australia TV1, Remote Central and Eastern Australia TV2 and Mount Isa TV1 licence areas to define and delineate the ‘restack’ of channels for transmission in digital mode in those areas.

Operation

The instrument:

- allots channels to commercial and national broadcasters currently operating in particular parts of the relevant licence areas;
- allots channels for digital services that have not yet rolled out;
- identifies channels that the ACMA may allot 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 ACMA has prepared two TLAPs for remote licence areas in Australia – the *Television Licence Area Plan (Remote and Regional Western Australia) 2013* (RRWA TLAP) (covering Western Australian areas outside of Perth) and the *Television Licence Area Plan (Remote Central and Eastern Australia) 2013* (RCEA TLAP) (covering remote licence areas

in the remaining States and the Northern Territory). The RRWA TLAP and RCEA TLAP (the remote area TLAPs) are the last in a series of TLAPs made by the ACMA to plan television broadcasting services in Australia. The BSA requires that any TLAP prepared by the ACMA must come into force before 31 December 2014.

Completion of all the TLAPs means that each commercial and community television broadcasting licensee, and the national broadcasters, which are providing their services on channels in the digital dividend, must move to a channel (or 'restack') outside the digital dividend by the date worked out in accordance with the TLAP.

The remote area TLAPs differ from other TLAPs. In addition to the restack channel planning for national, commercial and community television broadcasting services, the remote TLAPs make provision for the restack of remote indigenous television broadcasting services (RIBS) provided under community broadcasting licences (CTV RIBS), and the cessation of their transmission in analog mode (analog switch-off).

Note that there is a category of television RIBS provided under open narrowcasting class licences, but these open narrowcasting RIBS are not planned in TLAPs.

The RCEA TLAP provides that CTV RIBS licensees in the licence areas covered by the RCEA TLAP are to cease transmission in analog mode by 31 December 2013. This is consistent with the December 2007 announcement by the Minister for Broadband, Communications and the Digital Economy Senator the Hon Stephen Conroy (the minister) that all free-to-air television broadcasters in Australia will complete the switch from analog to digital-only transmission by 31 December 2013.¹ This cessation date for analog transmission is also consistent with the digital switchover timetable released by the minister in October 2008, which provided for the progressive switch-off of analog transmissions on a regional basis.² The TLAP also provides for RIBS licensees to restack their services to new channels by 31 December 2014. This is consistent with the final restack date used in other TLAPs and with the wider objective of completing restack throughout Australia by the end of 2014.³

As a result, the RCEA TLAP provides that CTV RIBS licensees can either convert to digital on the new restack channel at the same time in 2013, or convert to digital on their existing channel before 31 December 2013, and restack to their new channel before 31 December 2014.

The ACMA restack block planning and digital radio location principles apply to regional and metropolitan licence areas and do not explicitly apply to remote licence areas.⁴ The proposed channel identifications and allotments in remote licence areas avoid unnecessary changes in areas where spectrum demand is low and minimises inconvenience to broadcasters and viewers. A rigorous application of the planning principles of identifying blocks with adjacent channels and allotting all services in the same channel block and frequency band would have led to significant changes and additional costs if rigidly applied in RCEA.

¹ Senator the Hon Stephen Conroy, Minister for Broadband, Communications and the Digital Economy, 'Digital Switchover Date Confirmed', Media release, 18 December 2007.

² Senator the Hon Stephen Conroy, Minister for Broadband, Communications and the Digital Economy, 'Conroy Sets Digital Switchover Timetable', Media release, 19 October 2008.

³ In the May 2012 Budget, the government committed \$143.2 million over five years for the restack and release of the digital dividend with minimal disruption to viewers. In its media release, the government stated its expectation that restack will be completed by 31 December 2014.

⁴ These principles and background information which resulted in the development of these principles can be found at http://www.acma.gov.au/scripts/nc.dll?WEB/STANDARD/1001/pc=PC_312460.

Consultation and submissions

Section 17 of the *Legislative Instruments Act 2003* (the LIA) states that where a legislative instrument is likely to have a direct, or substantially indirect, effect on business, or to restrict competition, ACMA must be satisfied that any consultation it considers to be appropriate and that is reasonably practicable to undertake has been undertaken.

Subsection 27 (1B) of the *BSA* states if before the designated re-stack day for a particular area, the ACMA makes or varies a TLAP for the area the ACMA must, in taking the relevant action, make provision for consultation with:

- commercial television broadcasting licensees who are likely to be affected by the preparation or variation of the TLAP;
- national broadcasters;
- community television broadcasting licensees who are likely to be affected by the preparation or variation of the TLAP; and
- such other persons (if any) as the ACMA considers appropriate.

Before making the TLAP, as a consequence of section 17 of the *LIA* and subsection 27(1B) of the *BSA*, the ACMA undertook the following consultation:

- The ACMA consulted with the commercial television broadcasting licensees and national broadcasters in the planning of the restack of digital channels for remote central and eastern Australia as part of the recent process for making the Digital Channel Plan (DCP) for that area. Consultation included meetings and direct discussion, including phone calls and email exchanges with affected broadcasters. Consultation has also been conducted through the Restack Planning Advisory Group (RPAG) which has meet regularly to discuss restack planning proposals.
- Broadcast Australia (BA) and the Department of Broadband, Communications and the Digital Economy (DBCDE) have consulted commercial television broadcasting licensees and national broadcasters in the development of restack implementation windows.
- The ACMA has consulted with CTV RIBS licensees and the remote indigenous broadcasting sector to explain how their services would be affected by the ACMA's programme for digital switch-over, restack and digital dividend spectrum reallocation. This included consultation on the RCEA TLAP.
- On 31 May 2011, the ACMA wrote to all CTV RIBS licensees informing them of the restack process and inviting comments. The ACMA also wrote to each Remote Indigenous Media Organisation (RIMOs – the regional co-ordinators for CTV RIBS licensees and other RIBS providers) and to the peak body Indigenous Remote Communications Association (IRCA).
- The ACMA met with IRCA on 4 September 2012 and 18 January 2013 to outline the proposed conversion and restack process for RIBS.
- The ACMA met IRCA, the manager of Indigenous Community Television (ICTV), as well as representatives of PAW Media and Communications, the Central Australia Aboriginal Media Association (CAAMA), and the Pilbara and Kimberley Aboriginal Media Association on 11 February 2013. The purpose of this meeting was to discuss in detail the proposed conversion and restack process for RIBS, including the documents provided to these organisations as part of the consultation process.

- On 4 February 2013, the ACMA published the following papers on its website for consultation:
 - draft RCEA TLAP;
 - engineering report;
 - planning data; and
 - discussion paper about the draft RCEA TLAP, which invited comment by 4 March 2013.
- On 6 February 2013, the ACMA wrote to all CTV RIBS licensees informing them of the restack process, including an explanation that the restack process was occurring in the context of the reallocation of the digital dividend spectrum, and invited them to respond with any questions and comments. The ACMA also wrote to each RIMO and to IRCA.
- As a result of receiving responses to the letter dated 6 February 2013, the ACMA had separate discussions with representatives of the East Arnhem Shire Council, the Victoria Daly Shire Council (VDSC), the Kalumburru Shire Council, Queensland Remote Aboriginal Media and other parties representing CTV RIBS licensees.
- The ACMA received eight submissions from six parties on the draft TLAP for remote central Eastern Australia, being from IRCA, the ABC, SBS, VDSC, Mr Alan Hughes and Imparja Television.

Regulatory impact analysis

- The Office of Best Practice Regulation (OBPR) has determined that the proposed regulatory changes resulting from this instrument are machinery in nature and that no further regulatory impact analysis is required. (OBPR IDs: 2012/14284).

Statement of Compatibility with Human Rights

In accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*, the ACMA prepared a Statement of Compatibility with Human Rights to consider the human rights implications of this instrument. The Statement concludes that the content of this legislative instrument is compatible with the human rights and freedoms protected by the international agreements declaring or recognising human rights and freedoms. The Statement is provided at **Attachment A**.

Description of the provisions of the RCEA TLAP

Section 1 *Name of Plan*

Section 1 names the instrument as the *Television Licence Area Plan (Remote Central and Eastern Australia) 2013*.

Section 2 *Commencement*

Section 2 provides that the instrument commences on the day after the simulcast periods for the remote licence areas in central and eastern Australia end.

Section 3 *Definitions*

Section 3 defines the key terms used in the instrument, including the three remote licence areas in remote central and eastern Australia (Mt Isa TV1, Remote Central and Eastern Australia TV1 and Remote Central and Eastern Australia TV2).

Section 4 *Specification of channels to be available in particular areas*

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 relevant licence area(s). Column 1 in each table 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 (and the relevant service does not need to restack).

Section 5 *Allotment of channels to commercial television broadcasting licensees – Schedule 1*

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 licensee’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 specified 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.

Subsection 5(2) provides that where no date is specified in column 2, the channel specified in column 1 is allotted to the commercial television broadcasting licensee of the licence specified for the relevant table, from the day on which the instrument comes into force.

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 relevant 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.⁵ 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).

⁵ 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.

Subsection 5(6) restricts the use of the channels specified in column 1 of the table 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 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 this subsection.

Section 6 *Allotment of channels to national broadcasters – Schedule 2*

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.

Section 7 *Allotment of channels to providers of other television broadcasting services – Schedule 3*

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. No such providers are specified, so the channels are available for allotment by the ACMA if any such providers arise.

Section 8 *Specification of channels to be available in Remote Indigenous Broadcasting Service licence areas*

Section 8 is modelled on the provisions set out above relating to commercial television broadcasting licensees, but instead provides for the specification of channels to be available in RIBS licence areas (which are areas set out in Attachment 6 to the RCEA TLAP).

Section 9 *Allotment of channels to community television broadcasting licensees for Remote Indigenous Broadcasting Service licence areas – Schedule 4*

Section 9 is modelled on the provisions set out above relating to commercial television broadcasting licensees, but instead provides for the allotment of channels to RIBS CTV licensees in the RIBS licence areas and the requirement that transmission services not be provided in analog mode after 31 December 2013.

Schedule 1 *Allotment of channels to commercial television broadcasting licensees*

Schedule 1 contains information about the allotment of channels to the commercial television broadcasting licensees in the relevant licence area(s). 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 accompany the instruments.

Schedule 2 Allotment of channels to national broadcasters

Schedule 2 contains information about the allotment of channels to the national television broadcasters in the relevant licence area(s). 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 Allotment of channels to providers of other television broadcasting services

Schedule 3 contains information about the allotment of channels to providers of other television broadcasting services in the relevant licence area(s). 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.

Schedule 4 Allotment of channels to community television broadcasting licensees for Remote Indigenous Broadcasting Service licence areas

Schedule 4 contains information about the allotment of channels to community television broadcasting licensees for RIBS licence areas. Schedule 4 lists each RIBS licence area with the name described in Attachment 6 to this Plan.

The tables in Schedule 4 are identical in form to the tables in Schedules 1, 2 and 3, except that they apply to CTV RIBS licensees in the RIBS licence areas.

Attachments 1 to 54

The Attachments define the relevant licence area(s) in terms of the Australian Standard Geographical Classification areas used by the Australian Bureau of Statistics for the census of:

- 7 August 2001 (for Mt Isa TV1, Remote Central and Eastern Australia TV1, and Remote Central and Eastern Australia TV2),
- 5 August 2001 (for Amata TV1, Daguragu TV1, St Pauls TV1, and Yorke Islands TV1), and
- 6 August 1991 (for Ali Curung TV1, Aurukun TV1, Badu Island TV1, Barunga TV1, Bathurst Island TV1, Beswick TV1, Boigu Island TV1, Bulman TV1, Coconut Island TV1, Darnley Island TV1, Dauan Island TV1, Ernabella TV1, Finke TV1, Fregon TV1, Galiwinku TV1, Gununa TV1, Hermannsburg TV1, Imanpa TV1, Indulkana TV1, Kintore TV1, Kubin TV1, Lajamanu TV1, Mabuiag Island TV1, Maningrida TV1, Milikapiti TV1, Milingimbi TV1, Minjilang TV1, Murray Island TV1, Ngukurr TV1,

Numbulwar TV1, Oenpelli TV1, Palumpa TV1, Papunya TV1, Peppimenarti TV1, Pmara Jutunta TV1, Pormpuraaw TV1, Pularumpi TV1, Ramingining TV1, Saibai Island TV1, Santa Teresa TV1, Stephens Island TV1, Sue Island TV1, Umbakumba TV1, Wadeye TV1, Warruwi TV1, Woorabinda TV1, Yam Island TV1, Yirrkala TV1, Yuelamu TV1 and Yuendumu TV1).

These geographical classification areas include city (C) and collection district (CD).

ATTACHMENT A

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Television Licence Area Plan (Remote Central and Eastern Australia) 2013

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* (the Act).

Overview of the legislative instrument

In July 2010, in the *Australian Communications and Media Authority (Realising the Digital Dividend) Direction 2010*, the Minister for Communications, Broadband and the Digital Economy directed the Australian Communications and Media Authority 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 (Remote Central and Eastern Australia) 2013* plans and allots channels for transmission of television broadcasting services in digital mode, places conditions on the use of some of these channels, and identifies timeframes for the vacation of the digital dividend spectrum of television broadcasting services. This legislative instrument deals only with these matters in the Mt Isa TV1, Remote Central and Eastern Australia TV1 and Remote Central and Eastern Australia TV2 licence areas, which are defined in the instrument.

Human rights implications

Under subsection 8(3) of the Act a statement of compatibility must include an assessment of whether the Bill is compatible with human rights.

Australia is a signatory to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (the ICCPR). The ICESCR and ICCPR are listed at subsections 3(1)(b) and 3(1)(c), respectively, of the Act as international agreements declaring or recognising human ‘rights and freedoms’.

Article 15(1) of the ICESCR protects the right of everyone to take part in cultural life. Article 19(2) of the ICCPR protects freedom of expression, including the right to seek, receive and impart information and ideas of all kinds, and the means of their dissemination. Article 27 of the ICCPR states that in those countries in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

The effect of this instrument is to plan and allot channels for the transmission of commercial and national television broadcasting services in digital mode. It also allots new restack channels for that remote indigenous television broadcasting services provided under

community broadcasting licences⁶ to take effect by the 31 December 2014, and requires that these services must cease transmitting in analog mode in the remote licence areas by 31 December 2013 and only digital transmissions are permitted after that time.

The cessation of analog mode television is a necessary technological change, which has been occurring around the world. Digital television is more spectrally efficient and delivers television programs using a higher quality of transmission service and thus enhances the viewing experience for Australian audiences.

The change in the transmission mode, from analog to digital and the change of channel allotments at restack does not limit the fundamental rights to freedom of expression and cultural participation, as the viewer continues to have access to broadcasting services, including indigenous broadcasting services.

On this basis, this legislative instrument is compatible with the rights protected by Article 15(1) of the ICESCR and Article 19(2) and 27 of the ICCPR.

Conclusion

This legislative instrument is compatible with the human rights and freedoms protected by the international agreements declaring or recognising human rights and freedoms.

The rule-maker of the legislative instrument is the Australian Communications and Media Authority.

⁶ Community broadcasting licences are broadcasting services bands licences issued in accordance with Part 6 of the *Broadcasting Services Act 1992*.