

Commonwealth of Australia

Australian Communications and Media Authority Act 2005
Broadcasting Services Act 1992

**Australian Communications and Media Authority (Television
Licence Area Planning and Monitoring) Direction 2013**

I, STEPHEN MICHAEL CONROY, Minister for Broadband, Communications and the Digital Economy make the following Directions under section 14 of the *Australian Communications and Media Authority Act 2005* and subsection 26(8) of the *Broadcasting Services Act 1992*.

Dated 19 April 2013

STEPHEN CONROY
Minister for Broadband, Communications and the Digital Economy

1 Name of Direction

This Direction is the *Australian Communications and Media Authority (Television Licence Area Planning and Monitoring) Direction 2013*.

2 Commencement

This Direction commences on the day after it is registered on the Federal Register of Legislative Instruments.

3 Definitions

In this Direction:

ACMA means the Australian Communications and Media Authority.

ACMA Act means the *Australian Communications and Media Authority Act 2005*.

broadcasting services bands has the same meaning as in section 6 of the BSA.

BSA means the *Broadcasting Services Act 1992*.

digital television broadcasting service means a broadcasting service that transmits television programs:

- (a) in digital mode using the broadcasting services bands; and
- (b) that are able to be received by a domestic digital television receiver.

domestic digital television receiver has the same meaning as in section 5 of the *Radiocommunications Act 1992*.

licence area means an area designated by the ACMA under section 29 of the BSA.

restack, in relation to a licence area or part of a licence area means the reorganisation of digital television services for that licence area, so that the services will use spectrum other than the band from 694-820 MHz.

TLAP means a television licence area plan prepared under subsection 26(1B) of the BSA.

transmission service provider means a person who provides transmission services to the provider of a digital television broadcasting service.

4 Direction – The ACMA to consider the achievement of the restack objective

- (1) I direct the ACMA under section 14 of the ACMA Act when performing its broadcasting functions pursuant to paragraphs 10(1)(b) and 10(1)(s) of the ACMA Act to consider, on an area basis:
 - (a) from time to time; and
 - (b) at any other times specified in a notice in writing provided by the Secretary or Deputy Secretary of the Department;until restack has occurred in an area, whether in that area providers of digital television broadcasting services will be able to meet the **restack objective**, being (as applicable):
 - (c) to cease transmitting those services in accordance with the applicable end dates for channel allotments specified in a TLAP; and
 - (d) to provide those services using another channel allotment in accordance with the TLAP for the area.
- (2) When considering whether the restack objective is able to be met in an area, I further direct the ACMA under section 14 of the ACMA Act to take into account any relevant information provided by the Secretary or an SES employee of the Department.

5 Direction – The ACMA to vary TLAPs in specified circumstance

- (1) I direct the ACMA under section 26(8) of the BSA, if the ACMA is satisfied, taking into account any relevant information provided by the Secretary or an SES employee of the Department, that in an area:
- (a) the capacity of a provider of digital television broadcasting services in the area to meet the restack objective has been significantly affected by an event or circumstance outside their control; and
 - (b) the provider of digital television broadcasting services in the area, or a transmission service provider contracted to the provider of digital television broadcasting services, could not reasonably have taken, or could not reasonably take, mitigation action to minimise the impact of the event or circumstance on the capacity of the provider of digital television broadcasting services to meet the restack objective; and
 - (c) as a result of paragraphs 5(1)(a) and 5(1)(b), there is no reasonable prospect that the restack objective can be met in the area;

the ACMA is to exercise its powers under subsection 26(2) of the BSA to vary the TLAP for the area.

- (2) I direct the ACMA that when it exercises its power to vary a TLAP as required by subclause 5(1), the ACMA is to vary the TLAP to the minimum extent necessary to address the adverse impact of the event or circumstance.
- (3) For the avoidance of doubt, this clause 5 does not:
- (a) prevent the ACMA from varying a TLAP at any other time in respect of any matter;
 - (b) require that the ACMA vary a TLAP if it is not satisfied as to the matters described in paragraphs 5(1)(a), (b) and (c).

6 Direction – The ACMA to advise the Minister of its intention to vary a TLAP in specified circumstance

- (1) This clause applies if the ACMA is required to vary a TLAP under clause 5.
- (2) Before exercising its power to vary a TLAP or commencing consultation for such a variation in accordance with section 27 of the BSA, I direct the ACMA under section 14 of the ACMA Act to advise the Minister, with reasonable notice, of its intention to vary a TLAP.
- (3) The advice provided by the ACMA in accordance with this clause 6 must include an initial assessment of:
- (a) the ways in which the TLAP may be varied (the **options**);
 - (b) the likely impact of each of the options on users, including future users, of the radiofrequency spectrum in the frequency range 694 to 820 MHz.