

## EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

### ***Broadcasting Services (Primary Commercial Television Broadcasting Service) Amendment Declaration 2013 (No.2)***

### ***Broadcasting Services Act 1992***

#### **Purpose**

The purpose of the *Broadcasting Services (Primary Commercial Television Broadcasting Service) Amendment Declaration 2013 (No.2)* (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.<sup>1</sup>

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<sup>1</sup> 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, 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 Brisbane TV1, Regional Queensland TV1, Geraldton TV1, Kalgoorlie TV1, South West and Great Southern TV1, Western Zone TV1, Remote and Regional Western Australia TV1 and Darwin TV1 licence areas, the SDTV multi-channels specified in Schedule 1 to the Declaration (to appear after item 34 in the Declaration), are the Primary Services for the relevant licensees of those services.

The Amendment Declaration also amends the Declaration to correct errors that exist in items 3 and 4 of Table 1 of Schedule 2, where incorrect licence numbers have been inserted for the licences held by:

- West Digital Television No.3 Pty Ltd in the Kalgoorlie TV1 licence area (item 3); and
- West Digital Television No.4 Pty Ltd in the Western Zone TV1 licence area (item 4).

### 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 Brisbane TV1, Regional Queensland TV1, Geraldton TV1, Kalgoorlie TV1, South West and Great Southern TV1, Western Zone TV1, Remote and Regional Western Australia TV1 and Darwin TV1 licence areas, being:

- **Brisbane TV1:** Channel Seven Brisbane Pty Ltd, Queensland Television Ltd (part of the Nine Network) and Network TEN (Brisbane) Pty Ltd.
- **Regional Queensland TV1:** Channel Seven Queensland Pty Ltd, Regional Television Pty Ltd and WIN Television Qld Pty Ltd.
- **Geraldton TV1:** Geraldton Telecasters Pty Ltd and West Digital Television No.2 Pty Ltd.
- **Kalgoorlie TV1:** Mid-Western Television Pty Ltd and West Digital Television No.3 Pty Ltd.
- **South West and Great Southern TV1:** Golden West Network Pty Ltd and West Digital Television Pty Ltd.
- **Western Zone TV1:** Golden West Satellite Communications Pty Ltd and West Digital Television No.4 Pty Ltd.
- **Remote and Regional Western Australia TV1:** WIN Television WA Pty Ltd.
- **Darwin TV1:** Territory Television Pty Ltd, Regional Television Pty Ltd and Darwin Digital Television Pty Ltd.

On 12 April 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 Services for each of the commercial television broadcasting licences in the Brisbane TV1, Regional Queensland TV1, Geraldton TV1, Kalgoorlie TV1, South West and Great Southern TV1, Western Zone TV1, Remote and Regional Western Australia TV1 and Darwin TV1 licence areas.

The closing date for submissions was 10 May 2013. One submission was received in response to this consultation paper.

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 Services involves the preparation of a disallowable 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*

#### **Broadcasting Services (Primary Commercial Television Broadcasting Service) Amendment Declaration 2013 (No.2)**

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.2)* 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.2)* also corrects the incorrect licence numbers given for West Digital Television No.3 Pty Ltd and West Digital Television No.4 Pty Ltd in items 3 and 4 of Table 1 of Schedule 2 to the Declaration.

#### **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 for this 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.2)*.

### Section 2 – Commencement

This section provides that the Amendment Declaration commences on 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, after item 34

Item 1 inserts new items into Table 1 of Schedule 1 of the Declaration. For each of the new items 35 to 52, the SDTV multi-channel listed in column 4 of the table is declared to be the Primary Service for the holder of the respective commercial television broadcasting service licence listed in column 2, for the relevant licence area listed in column 1. The new items deal with the services provided under 18 licences:

- three in the Brisbane TV1 licence area (new items 35 to 37 inclusive);
- three in the Regional Queensland TV1 licence area (new items 38 to 40 inclusive);
- two in the Geraldton TV1 licence area (new items 41 and 42);
- two in the Kalgoorlie TV1 licence area (new items 43 and 44);
- two in the South West and Great Southern TV1 licence area (new items 45 and 46);
- two in the Western Zone TV1 licence area (new items 47 and 48);
- one in the Remote and Regional Western Australia TV1 licence area (new item 49); and
- three in the Darwin TV1 licence area (new items 50 to 52 inclusive).

##### [Item 2] Schedule 2, Table 1, items 3 and 4

Item 2 amends the Declaration to correct the licence numbers for West Digital Television No.3 Pty Ltd in the Kalgoorlie TV1 licence area (item 3) and West Digital Television No.4 Pty Ltd in the Western Zone TV1 licence area (item 4).