

Explanatory Statement

Broadcasting Services Act 1992

Broadcasting Services (Exempt Digital Transmission Areas) Determination (No. 3) 2013

Issued by the authority of the Minister for Broadband, Communications and the Digital Economy

Purpose

The Broadcasting Services (Exempt Digital Transmission Areas) Determination (No. 3) 2013 (the Determination) is made by the Minister for Broadband, Communications and the Digital Economy under subclause 21A(2) of Schedule 4 to the *Broadcasting Services Act 1992* (BSA).

The Determination is a legislative instrument for the purposes of section 5 of the *Legislative Instruments Act 2003*.

The purpose of the Determination is to determine that:

- specified areas within the coverage areas corresponding to the Darwin TV1, Northern New South Wales TV1, Remote Central and Eastern Australia TV1, Remote Central and Eastern Australia TV2 and Southern New South Wales TV1 licence areas are exempt digital transmission areas, in relation to the Australian Broadcasting Corporation (ABC); and
- specified areas within the coverage areas corresponding to the Melbourne TV1, Regional Victoria TV1, Western Victoria TV1, Remote Central and Eastern Australia TV1, Remote Central Eastern Australia TV2 and Northern New South Wales TV1 licence areas are exempt digital transmission areas, in relation to the Special Broadcasting Service (SBS).

The detail of each specified area, including indicative maps, is set out in the attachment.

The broad effect of the Determination is to exempt the ABC and the SBS from requirements, imposed by the *National Television Conversion Scheme 1999* (NTCS), or an implementation plan, to transmit services in digital mode in the exempt digital transmission areas. The Determination will also exempt the ABC and SBS from the requirement to submit an implementation plan relating to the exempt digital transmission areas.

Background

Subclause 21A(2) of Schedule 4 to the BSA allows the Minister, upon application from a national broadcaster (the ABC or SBS), to determine that a specified area within a coverage area is an “exempt digital transmission area” in relation to that national broadcaster.

Similarly, subclause 9A(2) of Schedule 4 to the BSA allows the Minister, upon application from a commercial television broadcasting licensee, to determine that a specified area within the licence area is an exempt digital transmission area in relation to that licence.

The effect of a determination under subclause 21A(2) is to exempt the national broadcaster from the obligation to comply with the NTCS (and/or an approved implementation plan), to the extent that the NTCS or plan requires that broadcaster to transmit a national television broadcasting service in digital mode in the exempt digital transmission area. In addition, the national broadcaster is not required to submit an implementation plan that relates to the exempt digital transmission area, in accordance with clause 20 of Schedule 4 to the BSA.

There are a number of transmission sites operated by national and commercial broadcasters which provide analog television services to populations of 500 people or fewer. There are also a number of analog transmission facilities from which not all national and commercial television broadcasting services (generally available in the licence area) are transmitted.

Clauses 9A and 21A of Schedule 4 to the BSA recognise that digital conversion of these more marginal broadcasting transmission sites is not always practical, or necessary, given the introduction of free-to-air satellite national and commercial digital television services (including commercial television broadcasting licences allocated under section 38C of the BSA).

There are certain criteria that must be met before the Minister can determine an area to be an exempt digital transmission area. The applicant must not already provide their television services in digital mode in the proposed exempt digital transmission area and, before making a determination, the Minister must be satisfied that:

- fewer than 500 people reside in the specified area (paragraphs 9A(3)(b)(i) for commercial and 21A(3)(b)(i) for national); or
- the area is an underserviced area (paragraphs 9A(3)(b)(ii) and 21A(3)(b)(ii)) – an underserviced area is defined in subclauses 9A(5)-(9) and 21A(5)-(9), noted below.

In addition, commercial television broadcasting services must be provided in the specified area under a section 38C licence (the Viewer Access Satellite Television service) (paragraph 9A(3)(c)) or, in the case of an exempt digital transmission area for a national broadcaster, national television broadcasting services must be provided in the coverage area with the use of a satellite (paragraph 21A(3)(c)). Alternatively, the Minister may be satisfied that viewers in the proposed exempt digital transmission area have another way through which they can, or will be able to, access digital television (paragraphs 9A(3)(c)(ii) and 21A(3)(c)(ii)).

In considering whether there are fewer than 500 people residing in a specified area, subclauses 9A(4) and 21A(4) require the Minister to have regard to the latest resident population statistics published by the Australian Statistician.

An area is an underserviced area if it does not have coverage of one or more of the commercial television or national television services that are generally provided in the licence area (or corresponding ABC or SBS coverage area) in analog mode or digital mode. For the purposes of this assessment, analog retransmissions are disregarded, but digital retransmission services must be taken into account.

In making the Determination, the Minister has formed the following view with regard to the specified exempt digital transmission areas:

- the SBS is the only broadcaster operated analog television service provided from the Gisborne transmission site, and the area within a 15km radius of the Gisborne transmission site is an underserved area;
- fewer than 500 people reside within a 15km radius of the Adelaide River transmission site;
- fewer than 500 people reside within a 10km radius of the Araluen transmission site;
- fewer than 500 people reside within a 20km radius of the Boulia transmission site;
- fewer than 500 people reside within a 5km radius of the Coen transmission site;
- the ABC is the only broadcaster operated analog television service provided from the Collarenebri transmission site, and the area within a 20km radius of the Collarenebri transmission site is an underserved area;
- fewer than 500 people reside within a 25km radius of the Corfield transmission site;
- fewer than 500 people reside within a 15km radius of the Croydon transmission site;
- the ABC and SBS are the only broadcaster operated analog television services provided from the Emmaville transmission site, and the area within a 10km radius of the Emmaville transmission site is an underserved area;
- fewer than 500 people reside within a 10km radius of the Greenvale transmission site;
- fewer than 500 people reside within a 15km radius of the Isisford transmission site;
- fewer than 500 people reside within a 10km radius of the Lakeland transmission site;
- fewer than 500 people reside within a 10km radius of the Laura transmission site;
- the ABC is the only broadcaster operated analog television service provided from the Marree transmission site, and the area within a 10km radius of the Marree transmission site is an underserved area;
- the ABC is the only broadcaster operated analog television service provided from the Mungindi transmission site, and the area within a 15km radius of the Mungindi transmission site is an underserved area;
- fewer than 500 people reside within a 25km radius of the Newcastle Waters transmission site;
- fewer than 500 people reside within a 10km radius of the Omeo transmission site;
- the ABC is the only broadcaster operated analog television service provided from the Pentland transmission site, and the area within a 25km radius of the Pentland transmission site is an underserved area;
- fewer than 500 people reside within a 10km radius of the Swifts Creek transmission site; and
- commercial and national television broadcasting services are currently provided in each of the specified areas under the Viewer Access Satellite Television (VAST) scheme.

Details of the accompanying determination are set out in Attachment A.

Consultation

The ABC, SBS and ACMA have been consulted in the preparation of the Determination in order to determine whether each specified area meets the statutory criteria.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Broadcasting Services (Exempt Digital Transmission Areas) Determination (No. 3) 2013

This Determination 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 Determination

The effect of the Determination is to exempt the ABC and SBS from requirements imposed by the NTCS (and/or an implementation plan) to transmit television services in digital mode in the specified areas. The Determination also exempts the ABC and SBS from the requirement to submit an implementation plan relating to the exempt digital transmission areas.

Human rights implications

Australia is a signatory to the International Covenant on Civil and Political Rights (the ICCPR), one of the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. 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 15(1) of the International Covenant on Economic, Social and Cultural Rights (the ICESCR) protects the right of everyone to take part in cultural life.

Access to free-to-air television services is relevant to the enjoyment of these rights and freedoms.

While the measures will exempt certain broadcasters from requirements to transmit in digital mode in specified areas, people in those areas have (or will have) alternative access to national and commercial television services delivered by satellite.

Based on this, this Determination is compatible with the rights protected by Article 15(1) of the ICESCR and Article 19(2) of the ICCPR.

Notes on Clauses

Clause 1 provides that the name of the Determination is the *Broadcasting Services (Exempt Digital Transmission Areas) Determination (No. 3) 2013*.

Clause 2 provides that the Determination takes effect on the day after it is registered on the Federal Register of Legislative Instruments.

Clause 3 is a definitions clause.

Clause 4 is the main operative clause.

Subclause 4.1 provides that certain specified areas are exempt digital transmission areas, in relation to the ABC and/or the SBS. The specified areas are outlined in the table following subclause 4.1.

Specifically, the effect of subclause 4.1 is to determine that, for the purposes of clause 21A of Schedule 4 to the BSA:

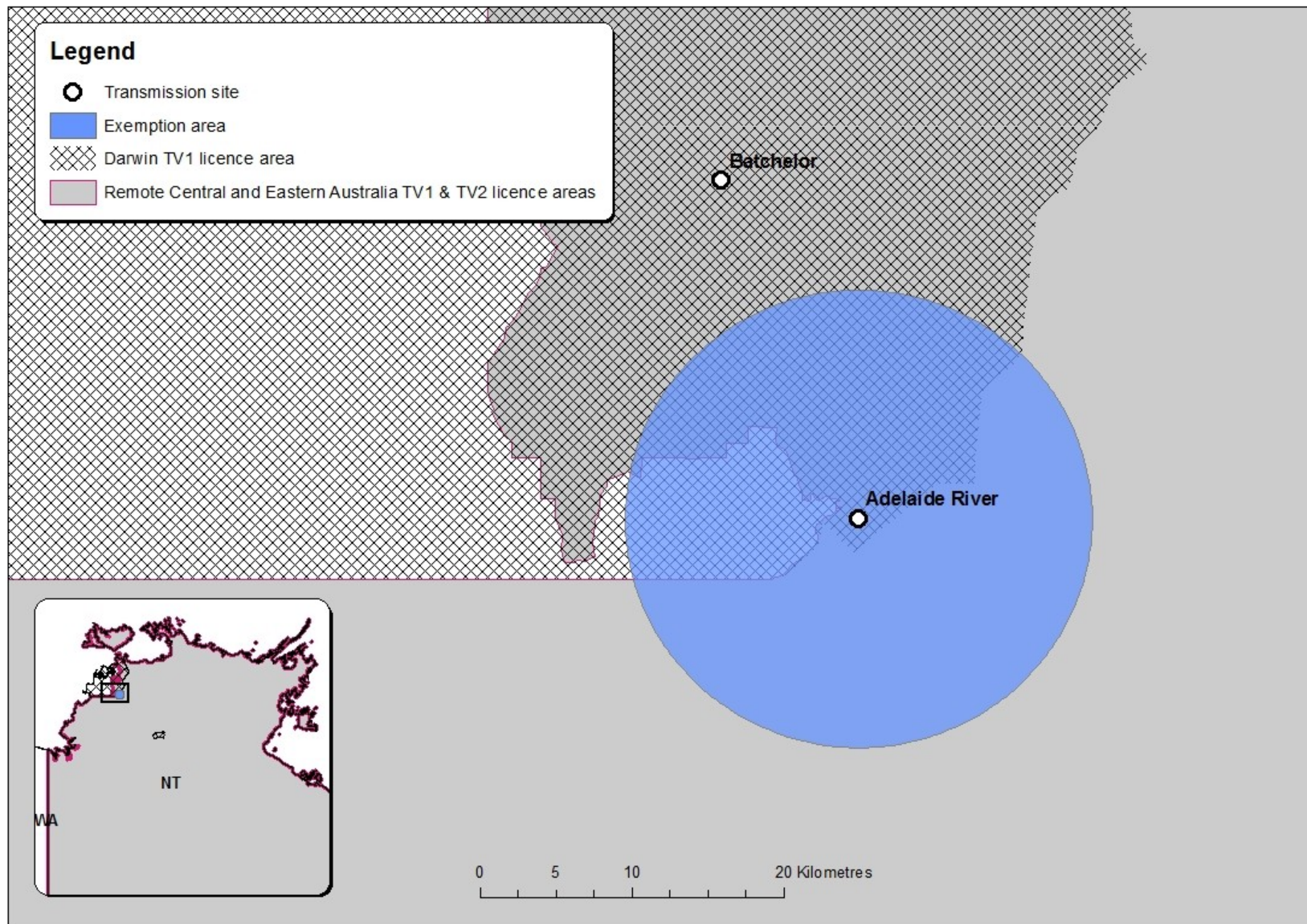
- The area within a 15km radius of the Gisborne Transmission Site (as defined in clause 3) that is within a coverage area corresponding to the Melbourne TV1, Regional Victoria TV1 and/or Western Victoria TV1 licence areas is an exempt digital transmission area in relation to the SBS;
- The area within a 15km radius of the Adelaide River Transmission Site (as defined in clause 3) that is within a coverage area corresponding to the Remote Central and Eastern Australia TV1, Remote Central and Eastern Australia TV2 and/or Southern New South Wales TV1 licence areas is an exempt digital transmission area in relation to the ABC;
- The area within a 10km radius of the Araluen Transmission Site (as defined in clause 3) that is within a coverage area corresponding to the Remote Central and Eastern Australia TV1, Remote Central and Eastern Australia TV2 and/or Southern New South Wales TV1 licence areas is an exempt digital transmission area in relation to the ABC;
- The area within a 20km radius of the Boulia Transmission Site (as defined in clause 3) that is within the coverage areas corresponding to the Remote Central and Eastern Australia TV1 and Remote Central and Eastern Australia TV2 licence areas is an exempt digital transmission area in relation to the ABC;
- The area within a 5km radius of the Coen Transmission Site (as defined in clause 3) that is within the coverage areas corresponding to the Remote Central and Eastern Australia TV1 and Remote Central and Eastern Australia TV2 licence areas is an exempt digital transmission area in relation to the ABC;
- The area within a 20km radius of the Collarenebri Transmission Site (as defined in clause 3) that is within a coverage area corresponding to the Remote Central and Eastern Australia TV1, Remote Central and Eastern Australia TV2 and/or Northern New South Wales TV1 licence areas is an exempt digital transmission area in relation to the ABC;

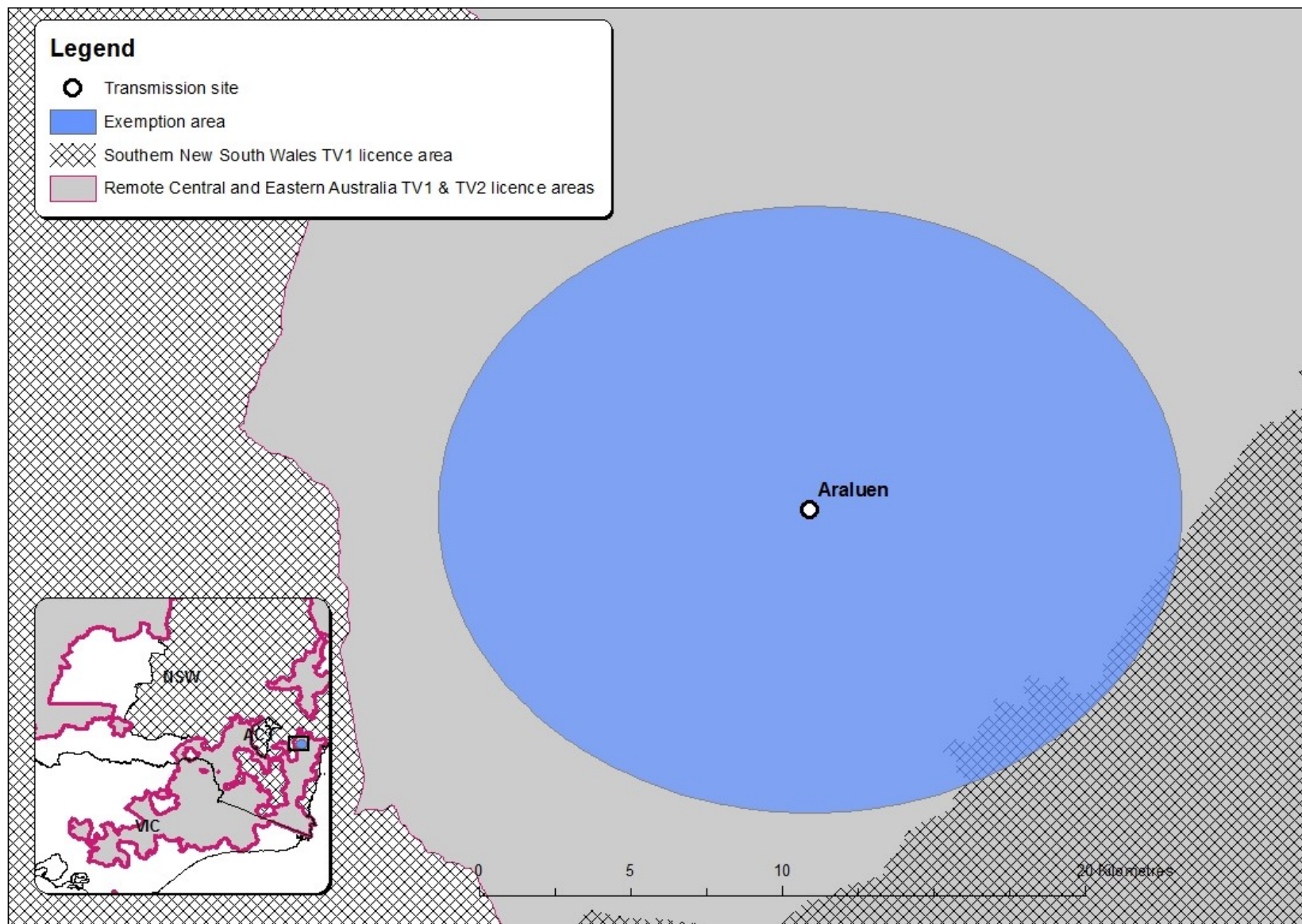
- The area within a 25km radius of the Corfield Transmission Site (as defined in clause 3) that is within the coverage areas corresponding to the Remote Central and Eastern Australia TV1 and Remote Central and Eastern Australia TV2 licence areas is an exempt digital transmission area in relation to the ABC;
- The area within a 15km radius of the Croydon Transmission Site (as defined in clause 3) that is within the coverage areas corresponding to the Remote Central and Eastern Australia TV1 and Remote Central and Eastern Australia TV2 licence areas is an exempt digital transmission area in relation to the ABC;
- The area within a 10km radius of the Emmaville Transmission Site (as defined in clause 3) that is within a coverage area corresponding to the Remote Central and Eastern Australia TV1, Remote Central and Eastern Australia TV2 and/or Northern New South Wales TV1 licence areas is an exempt digital transmission area in relation to the ABC and the SBS;
- The area within a 10km radius of the Greenvale Transmission Site (as defined in clause 3) that is within the coverage areas corresponding to the Remote Central and Eastern Australia TV1 and Remote Central and Eastern Australia TV2 licence areas is an exempt digital transmission area in relation to the ABC;
- The area within a 15km radius of the Isisford Transmission Site (as defined in clause 3) that is within the coverage areas corresponding to the Remote Central and Eastern Australia TV1 and Remote Central and Eastern Australia TV2 licence areas is an exempt digital transmission area in relation to the ABC;
- The area within a 10km radius of the Lakeland Transmission Site (as defined in clause 3) that is within the coverage areas corresponding to the Remote Central and Eastern Australia TV1 and Remote Central and Eastern Australia TV2 licence areas is an exempt digital transmission area in relation to the ABC;
- The area within a 10km radius of the Laura Transmission Site (as defined in clause 3) that is within the coverage areas corresponding to the Remote Central and Eastern Australia TV1 and Remote Central and Eastern Australia TV2 licence areas is an exempt digital transmission area in relation to the ABC;
- The area within a 10km radius of the Marree Transmission Site (as defined in clause 3) that is within the coverage areas corresponding to the Remote Central and Eastern Australia TV1 and Remote Central and Eastern Australia TV2 licence areas is an exempt digital transmission area in relation to the ABC;
- The area within a 15km radius of the Mungindi Transmission Site (as defined in clause 3) that is within a coverage area corresponding to the Remote Central and Eastern Australia TV1, Remote Central and Eastern Australia TV2 and/or Northern New South Wales TV1 licence areas is an exempt digital transmission area in relation to the ABC;
- The area within a 25km radius of the Newcastle Waters Transmission Site (as defined in clause 3) that is within the coverage areas corresponding to the Remote Central and Eastern Australia TV1 and Remote Central and Eastern Australia TV2 licence areas is an exempt digital transmission area in relation to the ABC;
- The area within a 10km radius of the Omeo Transmission Site (as defined in clause 3) that is within the coverage areas corresponding to the Remote Central and Eastern Australia TV1 and Remote Central and Eastern Australia TV2 licence areas is an exempt digital transmission area in relation to the ABC;
- The area within a 25km radius of the Pentland Transmission Site (as defined in clause 3) that is within the coverage areas corresponding to the Remote Central and

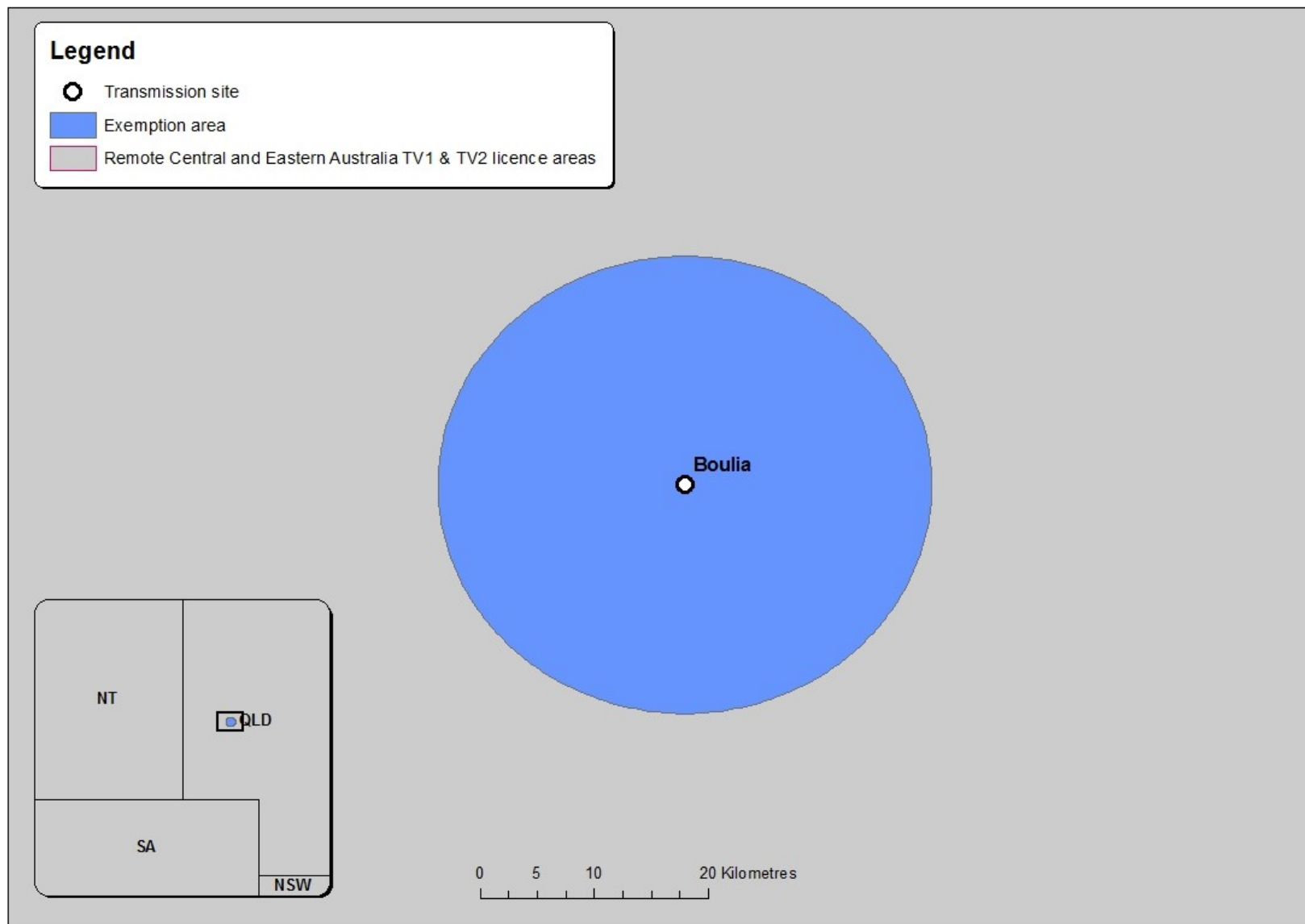
Eastern Australia TV1 and Remote Central and Eastern Australia TV2 licence areas is an exempt digital transmission area in relation to the ABC;

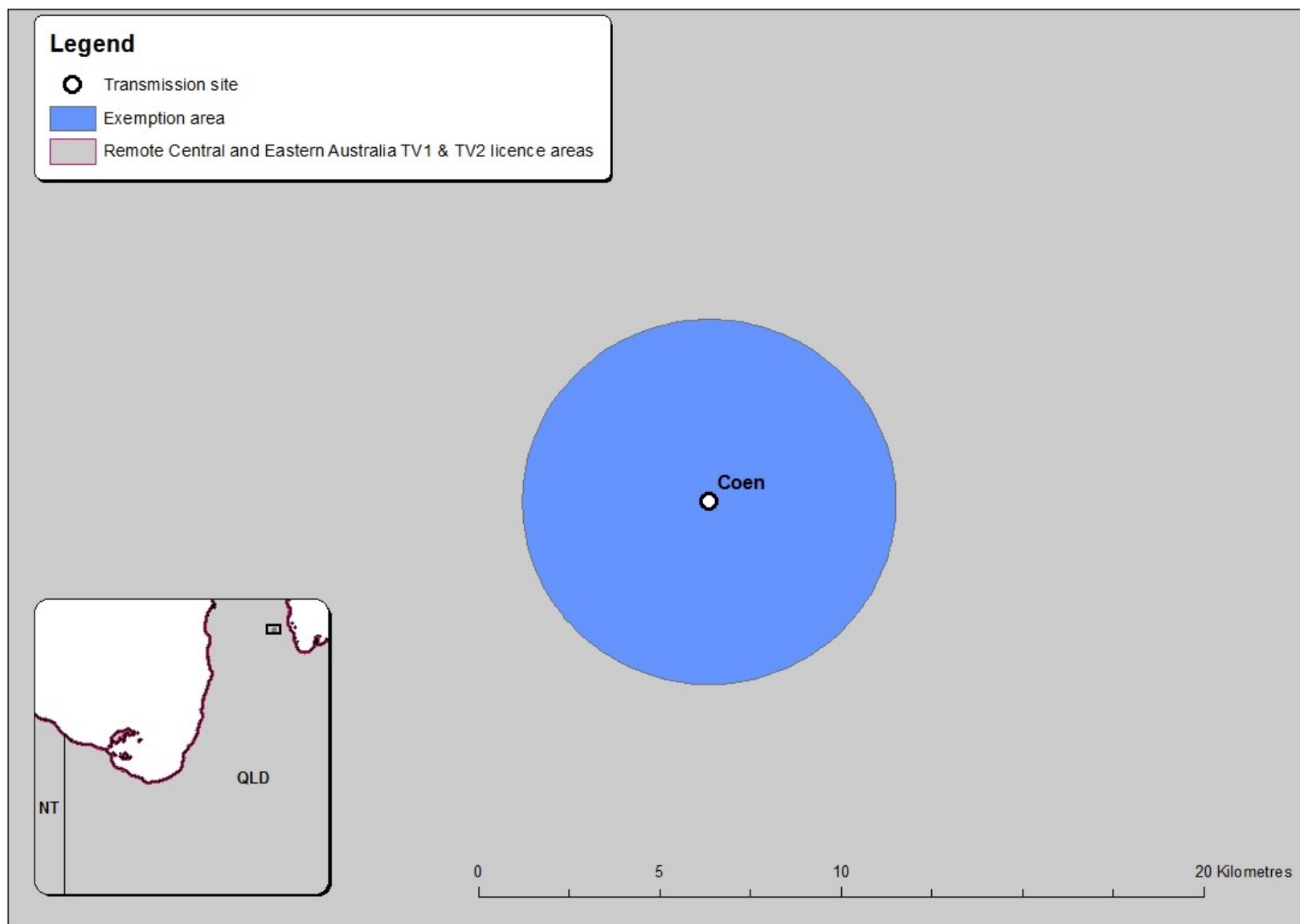
- The area within a 10km radius of the Swifts Creek Transmission Site (as defined in clause 3) that is within the coverage areas corresponding to the Remote Central and Eastern Australia TV1 and Remote Central and Eastern Australia TV2 licence areas is an exempt digital transmission area in relation to the ABC;

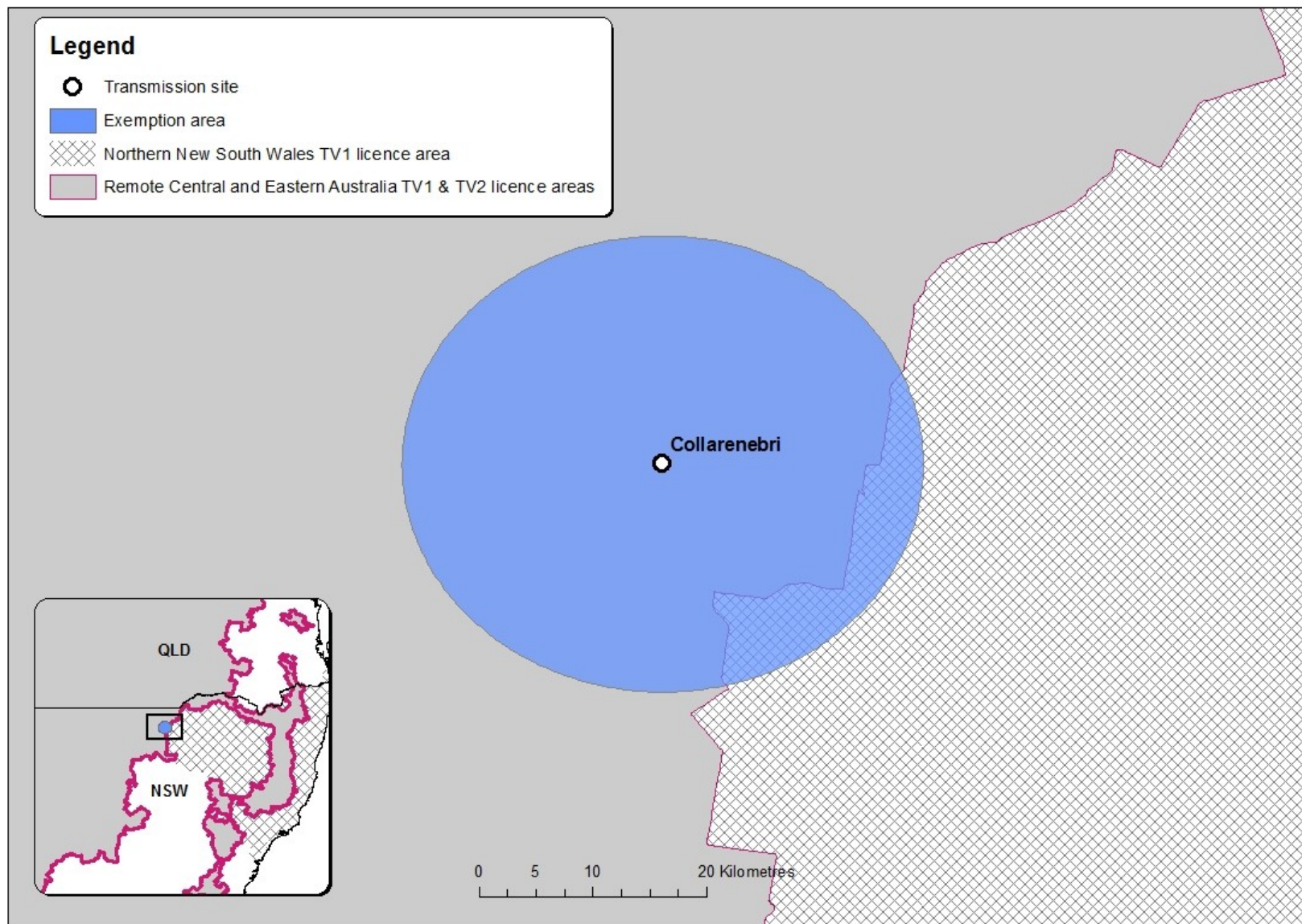
The specified areas are illustrated in the maps at Attachment B. The maps identify the location of each transmission site and the area within the specified distance of that site. The exempt digital transmission areas are illustrated in blue.

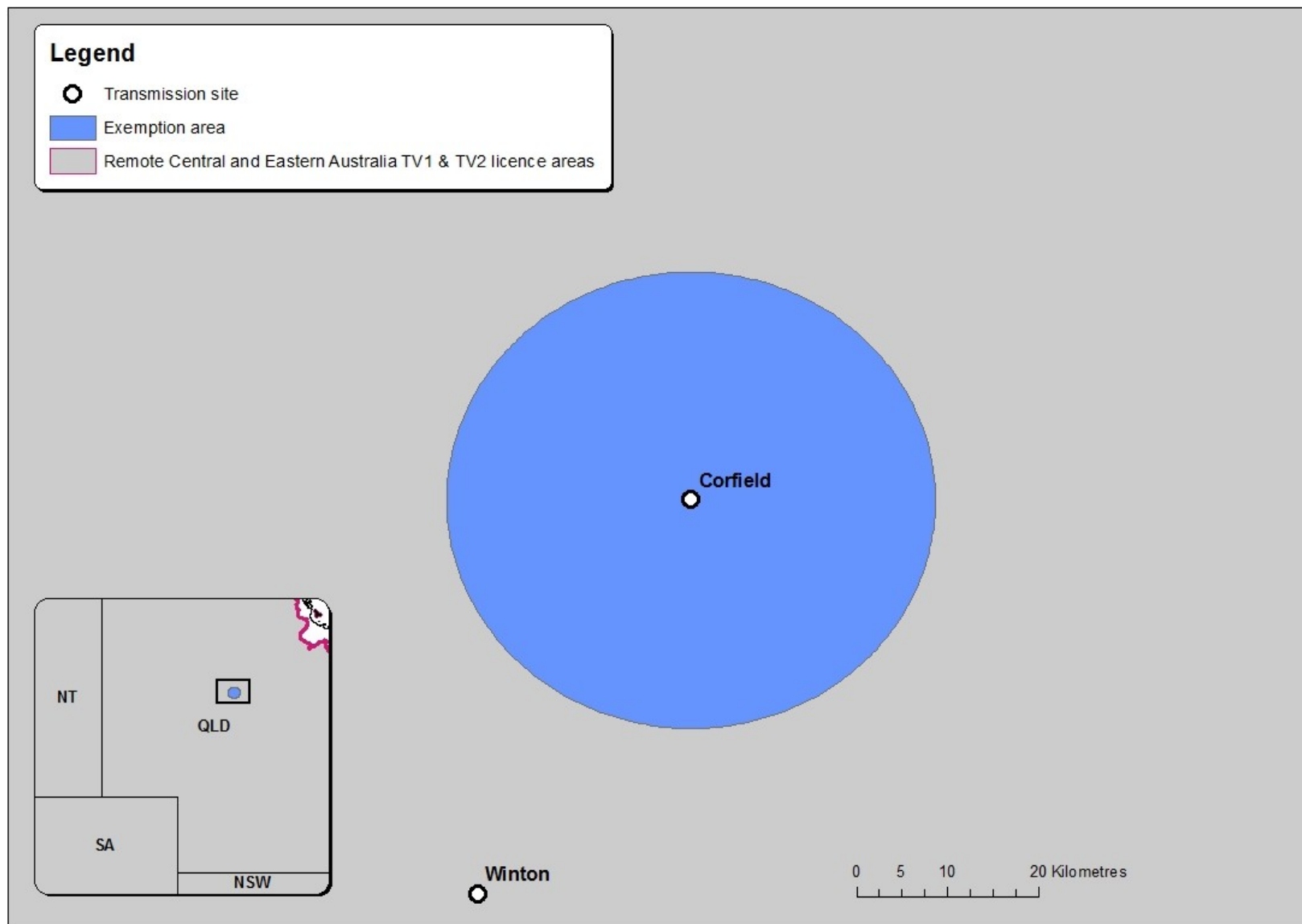


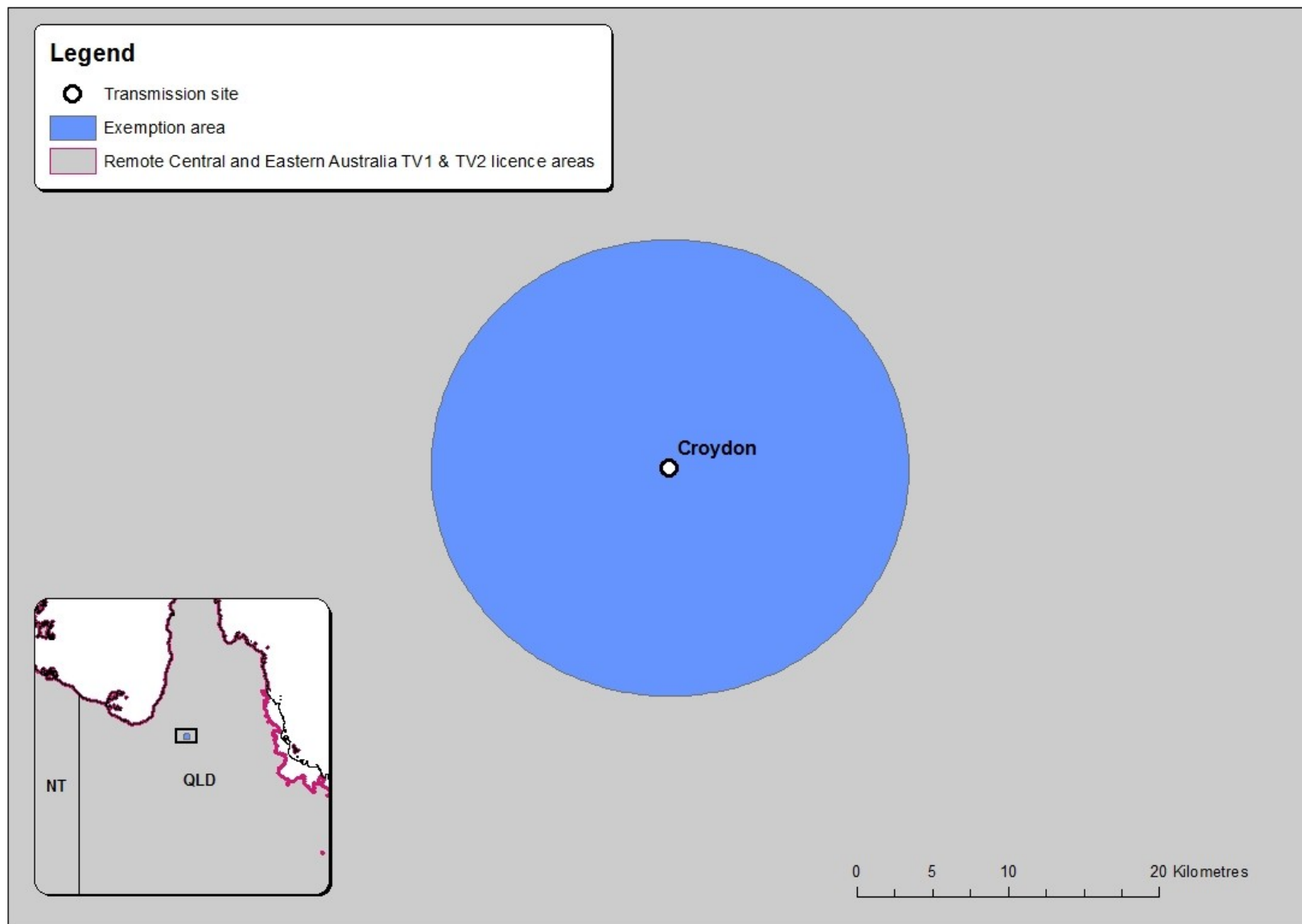


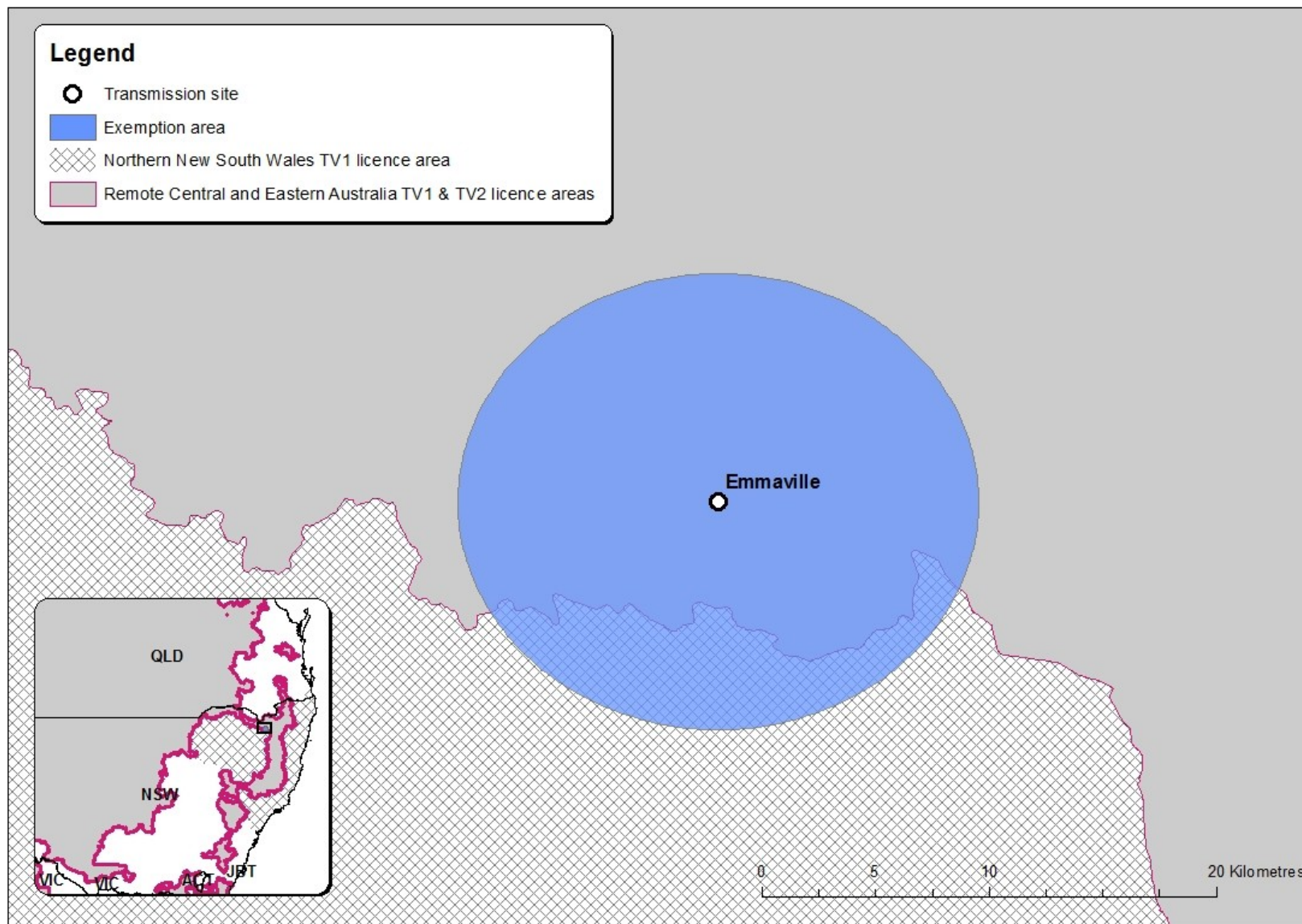


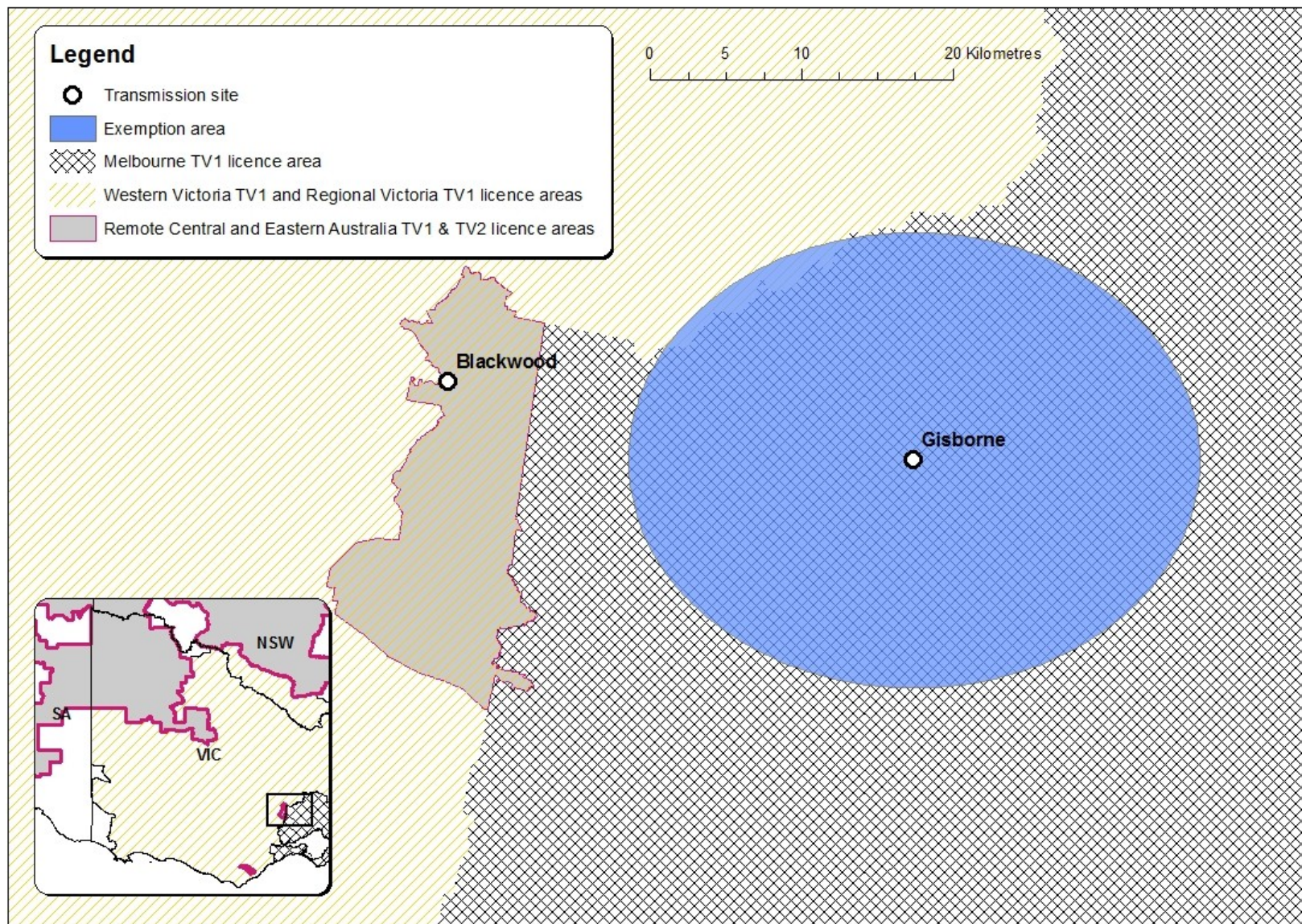


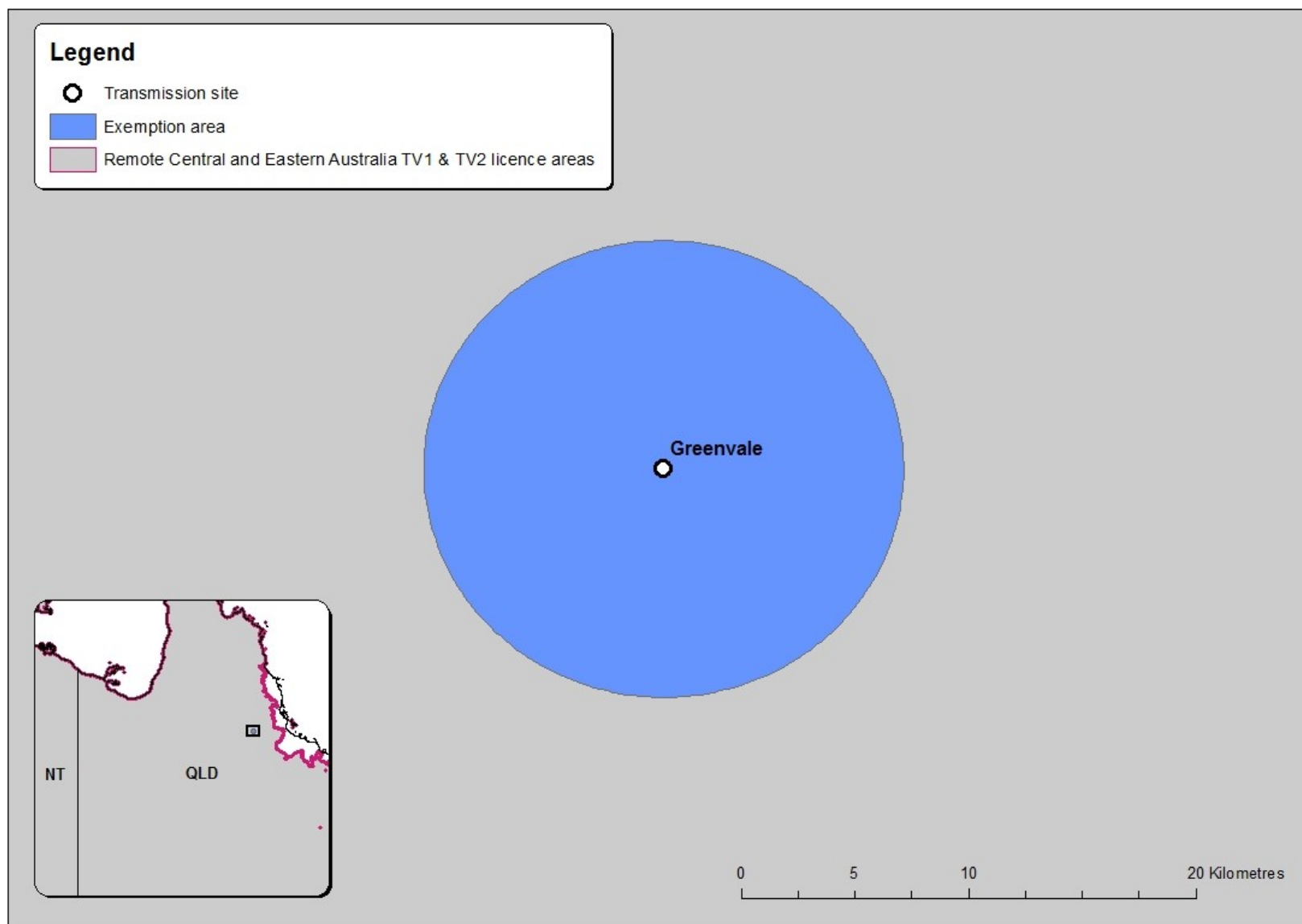


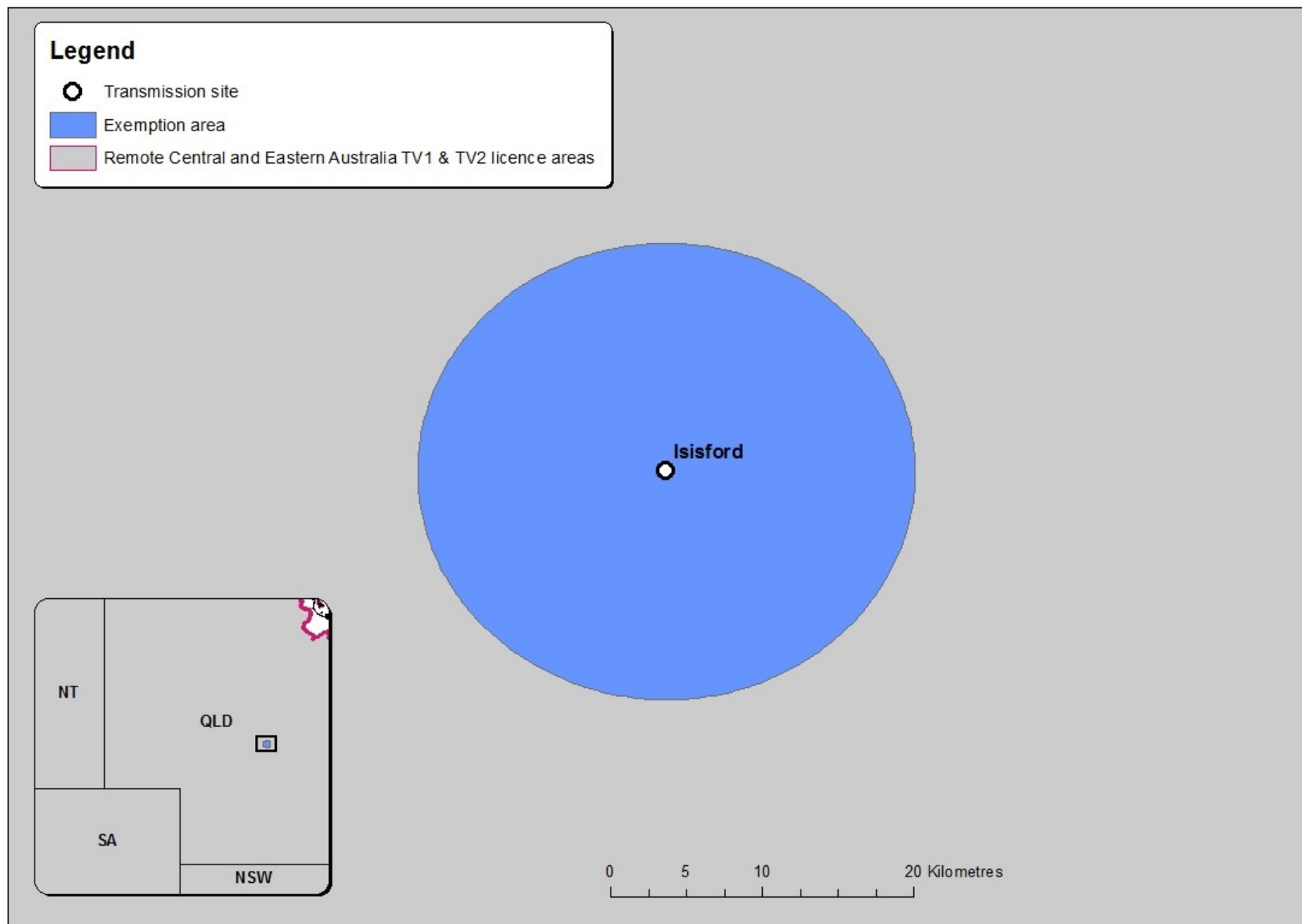






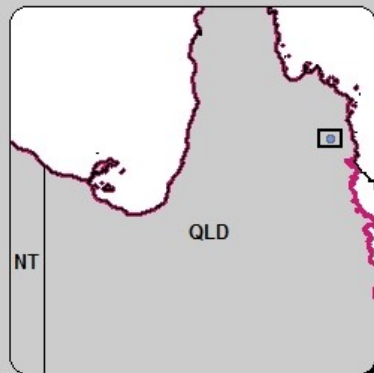
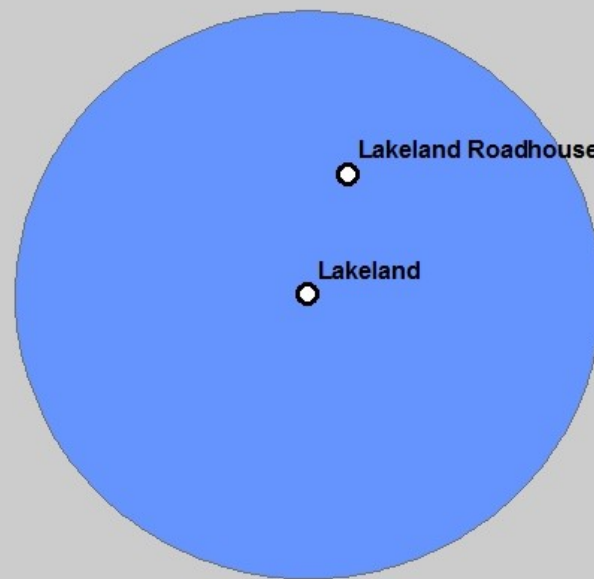






Legend

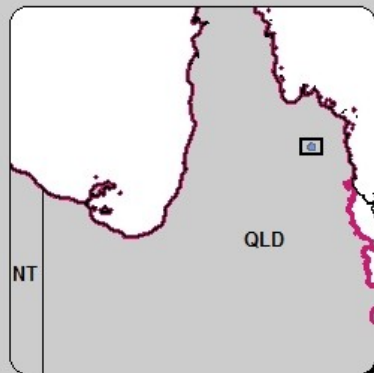
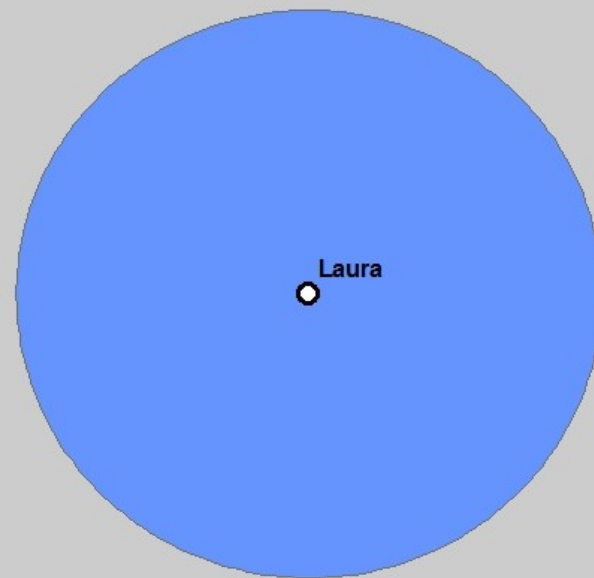
-  Transmission site
-  Exemption area
-  Remote Central and Eastern Australia TV1 & TV2 licence areas

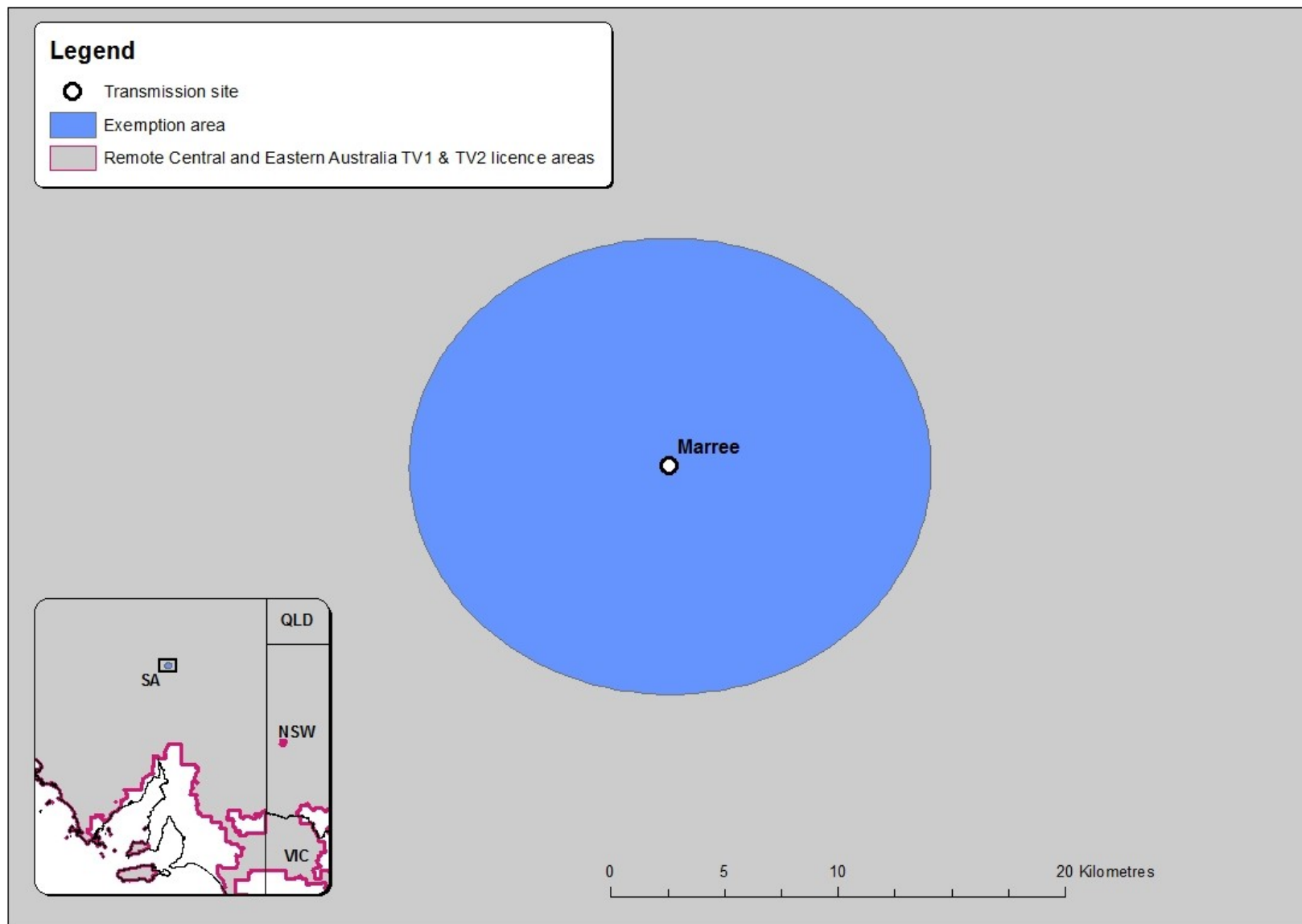


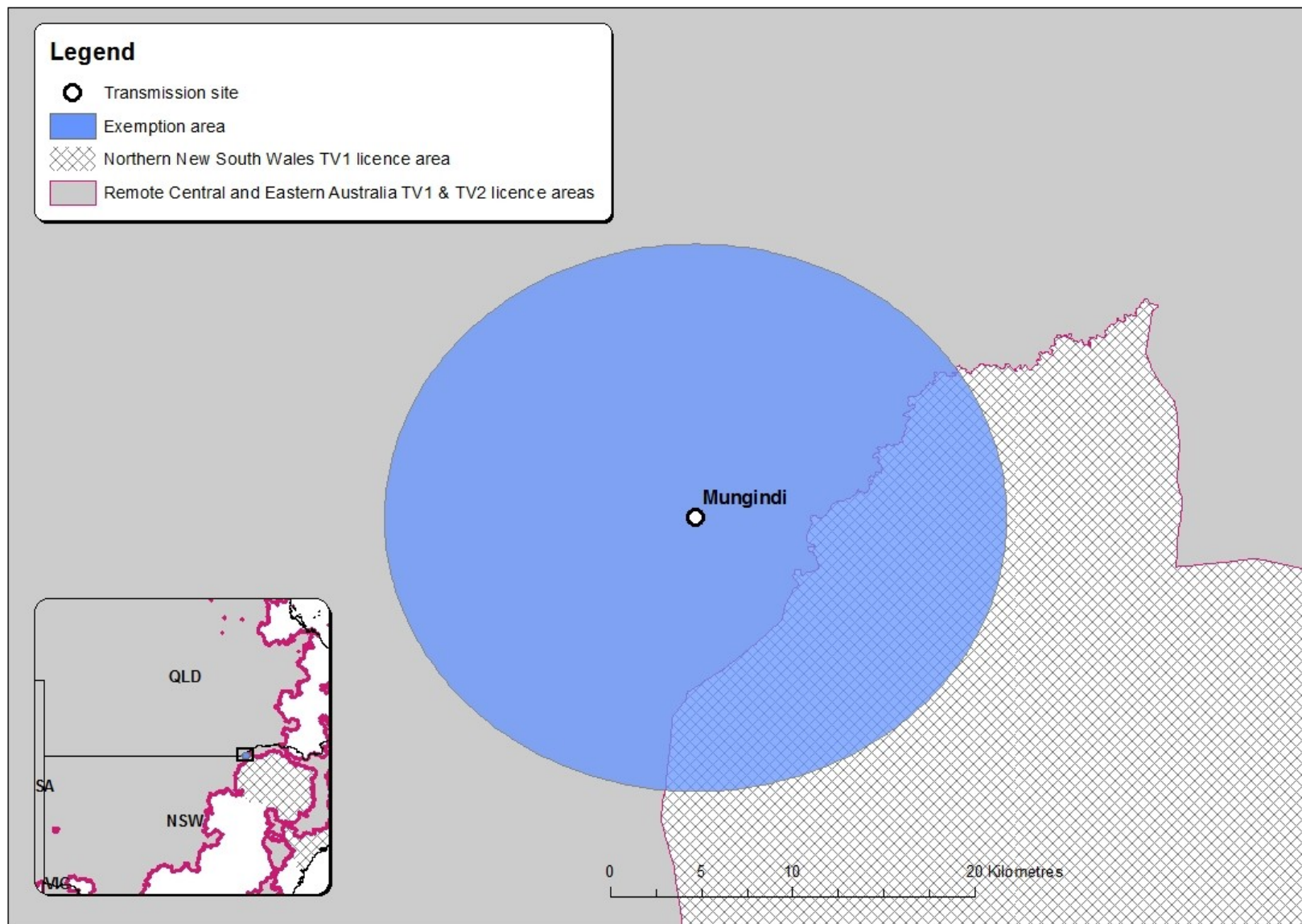
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-  Transmission site
-  Exemption area
-  Remote Central and Eastern Australia TV1 & TV2 licence areas

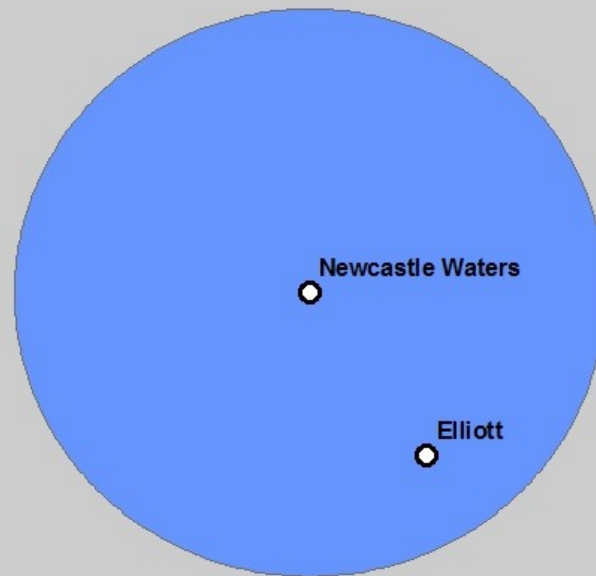
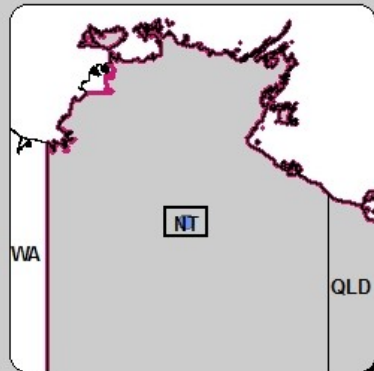






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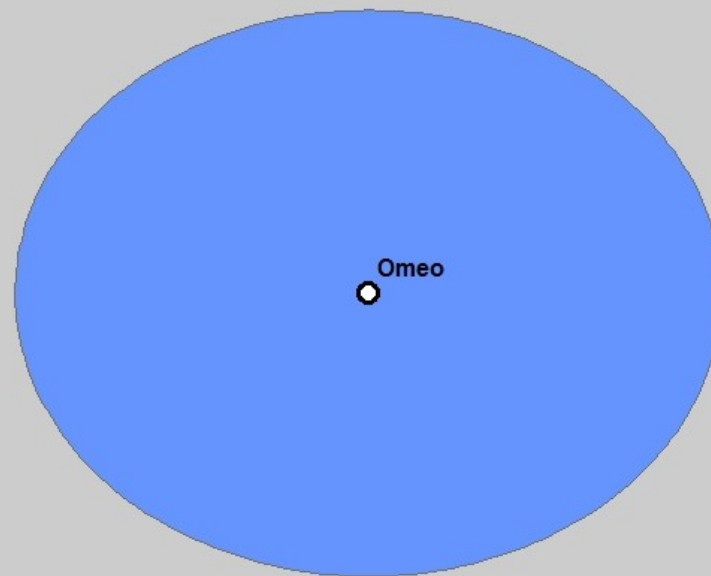
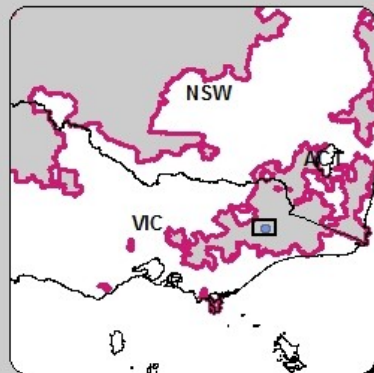


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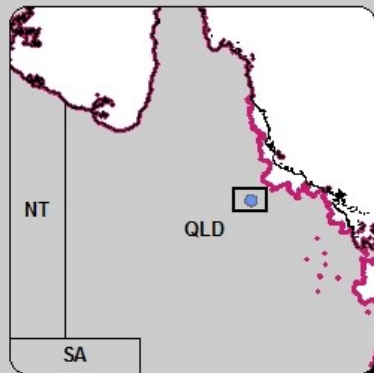
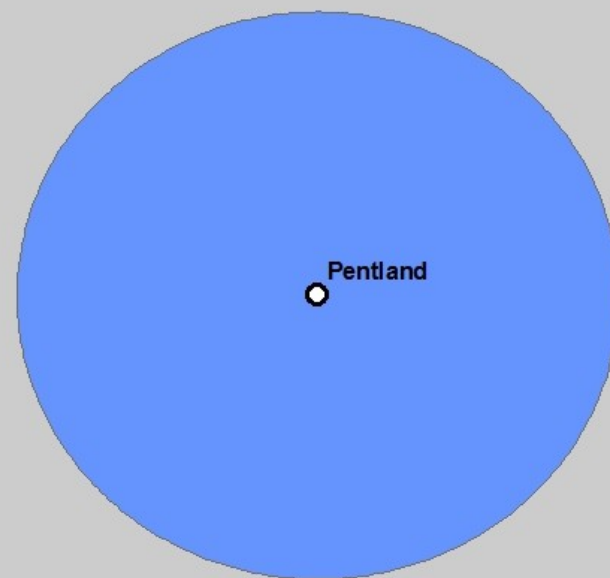
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Legend

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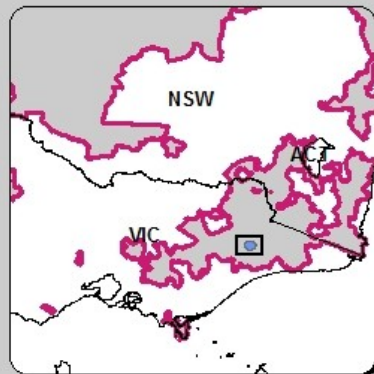
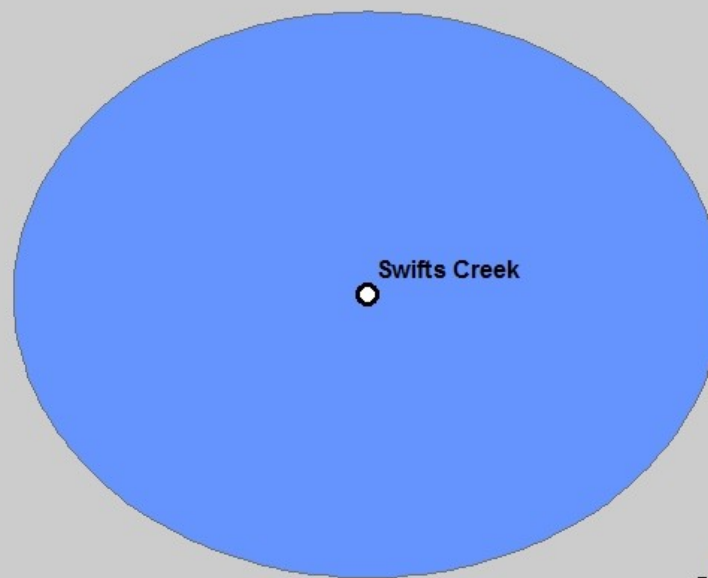


0 5 10 20 Kilometres



Legend

- Transmission site
- Exemption area
- Remote Central and Eastern Australia TV1 & TV2 licence areas



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