

Explanatory Statement

**Issued by the authority of the Minister for Communications, Urban
Infrastructure, Cities and the Arts**

Australian Communications and Media Authority Act 2005
Broadcasting Services Act 1992

Australian Communications and Media Authority (Television Licence Area Planning and Monitoring) Direction 2013 Instrument of Repeal 2021

Authority

Subsection 14(1) of the *Australian Communications and Media Authority Act 2005* enables the Minister for Communications, Urban Infrastructure, Cities and the Arts (the Minister), to direct ACMA in the performance of its functions or the exercise of its powers, including in relation to the conditions of licences issued under the *Radiocommunications Act 1992*.

Subsection 26(8) of the *Broadcasting Services Act 1992* provides that the Minister may direct the ACMA about the exercise of its powers to make or vary a television licence area plan for a particular area.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument.

Purpose

The purpose of the *Australian Communications and Media Authority (Television Licence Area Planning and Monitoring) Direction 2013 Instrument of Repeal 2021* (the Instrument) is to repeal the *Australian Communications and Media Authority (Television Licence Area Planning and Monitoring) Direction 2013* (the Direction).

The Direction formed part of the Australian Government's decision in 2010 to release broadcasting spectrum as a digital dividend by relocating broadcasting services in a 'restack'. The purpose of the Direction was to require the Australian Communications and Media Authority (ACMA) to consider, on an area basis, whether providers of digital television broadcasting services in an area will be able to meet a 'restack objective'.

The Direction is specifically targeted to the details of the 2010 restack decision, the

implementation of which has now completed.

The Direction also uses the term ‘domestic digital television receiver’ which is defined in the *Radiocommunications Act 1992*. This definition will be repealed, along with the provisions relating to datacasting transmitter licences, by schedule 9 of the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020* (the Reform and Modernisation Act) upon its commencement in June 2021. It is therefore appropriate and timely to repeal the Direction, as its primary purpose is complete and it will contain an out of date definition.

Background

Background of the Direction

The Direction was made by the Minister to support the Australian Government’s decision in 2010 to release 126 MHz of broadcasting spectrum in the range 694-820MHz as a digital dividend. In order to release this spectrum, broadcasting services needed to be relocated out of the digital dividend spectrum and reorganised in their remaining spectrum allocation. This process is commonly known as ‘restack’.

The ACMA was responsible for undertaking the channel planning necessary for restack in licence areas throughout Australia. Subsection 26(1B) of the *Broadcasting Services Act 1992* provides that the ACMA may prepare Television Licence Area Plans (TLAPs). TLAPs are being used by the ACMA to facilitate restack by identifying new channels on which broadcasters are to transmit their digital television broadcasting services, and setting associated technical requirements.

Background of the Reform and Modernisation Act

In 2015 the then Department of Communications conducted a review (the Spectrum Review) of the policy and regulatory changes that were needed to cope with the increase in demand for spectrum and changes in technology, markets and consumer preferences since 1992. Following Government consideration of the review, the *Radiocommunications Act 1992* was amended in 2020 by the Reform and Modernisation Act, which implemented recommendations of the Spectrum Review, including by simplifying regulatory structures and streamlining regulatory processes.

Regulation Impact Statement

In 2015, the Spectrum Review was certified by the Department as an independent review for the purposes of assessing regulatory impacts. The Spectrum Review has been certified as an independent review for RIS purposes (OBPR ref:19096). The Reform and Modernisation Act give effect to the recommendations of the Spectrum Review. The instrument repeals the direction, consequential to the

amendments of the Reform and Modernisation Act so no additional RIS is required.

Consultation

The Department of Infrastructure, Transport, Regional Development and Communications (the Department) consulted with ACMA on the repeal of the Direction.

Notes on Sections

Section 1 – Name of instrument

This section provides that the name of the Instrument is the *Australian Communications and Media Authority (Television Licence Area Planning and Monitoring) Direction 2013 Instrument of Repeal 2021*.

Section 2 - Commencement

This section provides that the instrument of repeal commences on the day after it is registered on the Federal Register of Legislation, which may be accessed online at www.legislation.gov.au.

Section 3 – Authority

This section provides that the instrument of repeal is made under subsection 14(1) of the *Australian Communications and Media Authority Act 2005*, subsection 26(8) of the *Broadcasting Services Act 1992* and subsection 33(3) of the *Acts Interpretation Act 1901*.

Section 4 – Schedule

This section provides that each instrument that is specified in Schedule 1 to this instrument is repealed as set out in the Schedule.

Schedule 1 – Repeal

This schedule lists instruments to be repealed.

Item 1 of the schedule provides that the whole of the *Australian Communications and Media Authority (Television Licence Area Planning and Monitoring) Direction 2013* is to be repealed.

Statement of Compatibility with Human Rights

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

Australian Communications and Media Authority (Television Licence Area Planning and Monitoring) Direction 2013 Instrument of Repeal 2021

This Disallowable 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 Bill/Disallowable Legislative Instrument

The *Australian Communications and Media Authority (Television Licence Area Planning and Monitoring) Direction 2013 Instrument of Repeal 2021* (the Instrument) repeals the *Australian Communications and Media Authority (Television Licence Area Planning and Monitoring) Direction 2013* (the Direction).

The Direction formed part of the Australian Government's decision in 2010 to release broadcasting spectrum as a digital dividend by relocating broadcasting services in a 'restack'. The purpose of the Direction is to require the Australian Communications and Media Authority (ACMA) to consider, on an area basis, whether providers of digital television broadcasting services in an area will be able to meet a 'restack objective'.

The Direction is specifically targeted to the details of the 2010 restack decision, the implementation of which has now completed. The Direction also uses the term 'domestic digital television receiver' which is defined in the *Radiocommunications Act 1992*. This definition will be repealed, along with the provisions relating to datacasting transmitter licences, by schedule 9 of the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020* (the Reform and Modernisation Act) upon its commencement in June 2021. It is therefore appropriate and timely to repeal the Direction, as its primary purpose is complete and it will contain an out of date definition.

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

The Hon Paul Fletcher MP

Minister for Communications, Urban Infrastructure, Cities and the Arts