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**Council for Trade-Related Aspects
of Intellectual Property Rights**

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**MAIN DEDICATED INTELLECTUAL PROPERTY LAWS AND
REGULATIONS NOTIFIED UNDER ARTICLE 63.2
OF THE AGREEMENT**

AUSTRALIA

This document reproduces the text¹ of the Broadcasting Legislation Amendment (Digital Dividend and Other Measures) Act 2011, No. 36, 2011 - An Act to amend the *Broadcasting Services Act 1992*, and for other purposes, as notified by Australia on 22 May 2013 under Article 63.2 of the Agreement (see document IP/N/1/AUS/5).

**Conseil des aspects des droits de propriété
intellectuelle qui touchent au commerce**

**PRINCIPALES LOIS ET RÉGLEMENTATIONS CONSACRÉES À
LA PROPRIÉTÉ INTELLECTUELLE NOTIFIÉES AU TITRE
DE L'ARTICLE 63:2 DE L'ACCORD**

AUSTRALIE

Le présent document contient le texte¹ de la Loi n° 36 de 2011 portant modification de la législation relative à la radiodiffusion (dividende numérique et autres mesures) – Modification de la *Loi de 1992 sur les services de radiodiffusion* et autres objectifs, notifiée par l'Australie le 22 mai 2013 au titre de l'article 63:2 de l'Accord (voir le document IP/N/1/AUS/5).

**Consejo de los Aspectos de los Derechos de Propiedad
Intellectual relacionados con el Comercio**

**PRINCIPALES LEYES Y REGLAMENTOS DEDICADOS A LA
PROPIEDAD INTELLECTUAL NOTIFICADOS EN VIRTUD
DEL PÁRRAFO 2 DEL ARTÍCULO 63 DEL ACUERDO**

AUSTRALIA

En el presente documento se reproduce el texto¹ de la Ley de 2011 que modifica la legislación relativa a la radiodifusión (dividendo digital y otras medidas), N° 36, 2011 - Ley para modificar la *Ley de 1992 de Servicios de Radiodifusión* y para otros fines, notificado por Australia el 22 de mayo de 2013 en virtud de lo dispuesto en el párrafo 2 del artículo 63 del Acuerdo (véase el documento IP/N/1/AUS/5).

¹ In English only./En anglais seulement./En inglés solamente.

PP 3-62 - Offset (Pdf file attached)
PP 3 à 62 - Offset (fichier Pdf joint)
PP 3-62 - Offset (fichero Pdf adjunto)



**Broadcasting Legislation Amendment
(Digital Dividend and Other Measures)
Act 2011**

No. 36, 2011

**An Act to amend the *Broadcasting Services Act
1992*, and for other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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Broadcasting Legislation Amendment (Digital Dividend and Other Measures) Act 2011

No. 36, 2011

An Act to amend the *Broadcasting Services Act 1992*, and for other purposes

[Assented to 26 May 2011]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Broadcasting Legislation Amendment (Digital Dividend and Other Measures) Act 2011*.

Broadcasting Legislation Amendment (Digital Dividend and Other Measures) Act 2011 No.
36, 2011 1

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	26 May 2011
2. Schedules 1, 2 and 3	The day after this Act receives the Royal Assent.	27 May 2011

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Digital dividend

Broadcasting Services Act 1992

1 Subsection 6(1) (definition of *broadcasting services bands*)

Repeal the definition, substitute:

broadcasting services bands means:

- (a) that part of the radiofrequency spectrum that is designated under subsection 31(1) of the *Radiocommunications Act 1992* as being primarily for broadcasting purposes; and
- (b) that part of the radiofrequency spectrum that is designated under subsection 31(1A) of the *Radiocommunications Act 1992* as being partly for the purpose of digital radio broadcasting services and restricted datacasting services.

2 Subsection 6(1)

Insert:

designated re-stack day has the meaning given by subsection 26(1K).

3 Subsection 6(1)

Insert:

licence area plan means a licence area plan prepared under subsection 26(1) or (1B).

4 Subsection 6(1)

Insert:

television licence area plan means a licence area plan prepared under subsection 26(1B).

5 Subsection 26(1A)

After “plan” (first occurring), insert “prepared under subsection (1)”.

Schedule 1 Digital dividend

6 After subsection 26(1A)

Insert:

Television licence area plans

(1B) The ACMA may, by legislative instrument, prepare licence area plans that:

- (a) specify the channels that, under the relevant frequency allotment plan, are to be available in particular areas of Australia to provide the following services:
 - (i) commercial television broadcasting services;
 - (ii) national television broadcasting services;
 - (iii) other television broadcasting services;with the use of the broadcasting services bands; and
- (b) allot, or empower the ACMA to allot, those channels to:
 - (i) particular commercial television broadcasting licensees; or
 - (ii) particular national broadcasters; or
 - (iii) particular providers of television broadcasting services (other than commercial television broadcasting licensees or national broadcasters);as the case requires; and
- (c) determine the characteristics, including technical specifications, of the transmission of each of the following services:
 - (i) commercial television broadcasting services;
 - (ii) national television broadcasting services;
 - (iii) other television broadcasting services;using those channels; and
- (d) determine, or empower the ACMA to determine, any technical limitations on the use of a particular channel that the ACMA considers should be applicable; and
- (e) determine, or empower the ACMA to determine, whether the use of a particular channel depends on any event or circumstances that the ACMA considers should be applicable.

(1C) A licence area plan prepared under subsection (1B) is to be known as a *television licence area plan*.

-
- (1D) A television licence area plan may allot, or empower the ACMA to allot, different channels to:
- (a) a particular commercial television broadcasting licensee; or
 - (b) a particular national broadcaster; or
 - (c) a particular provider of a television broadcasting service (other than a commercial television broadcasting licensee or a national broadcaster);
- for different periods.
- (1E) A television licence area plan may allot, or empower the ACMA to allot, 2 or more channels to:
- (a) a particular commercial television broadcasting licensee; or
 - (b) a particular national broadcaster; or
 - (c) a particular provider of a television broadcasting service (other than a commercial television broadcasting licensee or a national broadcaster).
- (1F) A television licence area plan must be consistent with the relevant frequency allotment plan.
- (1G) A television licence area plan does not need to identify a particular television broadcasting service by name.
- (1H) When the television licence area plan for a particular area comes into force:
- (a) subsection (1) ceases to apply to:
 - (i) commercial television broadcasting services; and
 - (ii) national television broadcasting services; and
 - (iii) other television broadcasting services; provided in the area; and
 - (b) if:
 - (i) immediately before the television licence area plan came into force, a licence area plan (the ***existing licence area plan***) prepared under subsection (1) was in force for the area; and
 - (ii) the existing licence area plan relates wholly to television broadcasting services;the existing licence area plan ceases to have effect; and
 - (c) if:
-

Schedule 1 Digital dividend

-
- (i) immediately before the television licence area plan came into force, a licence area plan (the *existing licence area plan*) prepared under subsection (1) was in force for the area; and
 - (ii) the existing licence area plan relates partly to television broadcasting services and partly to other broadcasting services;
- the existing licence area plan ceases to have effect to the extent to which it relates to television broadcasting services.
- (1J) The television licence area plan for an area that is the licence area of a commercial television broadcasting licence must:
- (a) not come into force before the end of the simulcast period, or the simulcast-equivalent period, for the area; and
 - (b) come into force before the designated re-stack day for the area.
- (1K) For the purposes of this Act, the *designated re-stack day* for an area is:
- (a) 31 December 2014; or
 - (b) if the Minister, by writing, specifies a later day for the area—that later day.
- (1L) The Minister must not specify a day under paragraph (1K)(b) unless the Minister is satisfied that a failure to specify the day would be likely to result in significant difficulties of a technical or engineering nature for:
- (a) a commercial television broadcasting licensee; or
 - (b) a national broadcaster; or
 - (c) a provider of a television broadcasting service (other than a commercial television broadcasting licensee or a national broadcaster).
- (1M) Sections 23 and 27 have effect as if a function or power conferred on the ACMA by a television licence area plan were a function conferred on the ACMA by this section.

Note: The following heading to subsection 26(2) is inserted “*Variation*”.

7 At the end of section 26

Add:

Planning criteria—before designated re-stack day

- (7) Paragraphs 23(a) and (b) do not apply in relation to:
- (a) the preparation of a television licence area plan for a particular area; or
 - (b) the variation of a television licence area plan for a particular area; or
 - (c) the performance of a function, or the exercise of a power, by the ACMA under a television licence area plan for a particular area;
- before the designated re-stack day for the area.

Note: For *designated re-stack day*, see subsection 26(1K).

Ministerial direction

- (8) The Minister may, by legislative instrument, direct the ACMA about the exercise of its powers to make or vary a television licence area plan for a particular area.
- (9) The ACMA must comply with a direction under subsection (8).
- (10) Subsections (8) and (9) cease to have effect in relation to a particular area at the start of the designated re-stack day for the area.

Legislative instruments

- (11) If a determination made by the ACMA under a television licence area plan is in writing, the determination is not a legislative instrument.
- (12) An instrument under paragraph (1K)(b) is not a legislative instrument.

Definitions

- (13) In this section:

national television broadcasting service has the same meaning as in Schedule 4.

simulcast-equivalent period has the same meaning as in Schedule 4.

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simulcast period has the same meaning as in Schedule 4.

television broadcasting service means a broadcasting service that provides television programs.

Note: For designation of licence areas, see section 29.

8 Subsection 26A(2)

Repeal the subsection.

9 Subsection 26A(3)

Insert:

relevant licence area plan means the relevant licence area plan prepared under subsection 26(1).

10 After section 26A

Insert:

26AA Compliance with television licence area plan

(1) If:

- (a) a television licence area plan is applicable to the transmission of one or more commercial television broadcasting services in a particular area; and
- (b) those services are provided under a particular commercial television broadcasting licence;

the licensee must not transmit any of those commercial television broadcasting services in that area otherwise than in accordance with the television licence area plan.

(2) If:

- (a) a television licence area plan is applicable to the transmission of one or more national television broadcasting services in a particular area; and
- (b) those services are provided by a particular national broadcaster;

the national broadcaster must not transmit any of those national television broadcasting services in that area otherwise than in accordance with the television licence area plan.

(3) If:

(a) a television licence area plan is applicable to the transmission of one or more television broadcasting services in a particular area; and

(b) those services are not provided:

(i) under a commercial television broadcasting licence; or

(ii) by a national broadcaster;

the provider of those television broadcasting services must not transmit any of those services in that area otherwise than in accordance with the television licence area plan.

(4) In this section:

national television broadcasting service has the same meaning as in Schedule 4.

television broadcasting service means a broadcasting service that provides television programs.

11 Subsection 26B(2)

Repeal the subsection.

12 Subsection 26B(3)

Insert:

licence area plan means a licence area plan prepared under subsection 26(1).

13 After subsection 27(1)

Insert:

Consultation—decisions relating to television licence area plans

(1A) Subsection (1) does not apply to:

(a) the preparation of a television licence area plan for a particular area; or

(b) the variation of a television licence area plan for a particular area; or

(c) the performance of a function, or the exercise of a power, by the ACMA under a television licence area plan for a particular area; or

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(d) the variation of a frequency allotment plan, to the extent that the variation:

- (i) relates to the determination of the number of channels that are to be available in a particular area to provide television broadcasting services; and
- (ii) was made in connection with the preparation or variation of a television licence area plan for the area;

before the designated re-stack day for the area.

Note: For *designated re-stack day*, see subsection 26(1K).

(1B) If, before the designated re-stack day for a particular area, the ACMA takes any of the following actions:

- (a) the ACMA prepares a television licence area plan for the area;
- (b) the ACMA varies a television licence area plan for the area;
- (c) the ACMA performs a function, or exercises a power, under a television licence area plan for the area;
- (d) the ACMA varies a frequency allotment plan, to the extent that the variation:
 - (i) relates to the determination of the number of channels that are to be available in the area to provide television broadcasting services; and
 - (ii) was made in connection with the preparation or variation of a television licence area plan for the area;

the ACMA must, in taking the relevant action, make provision for consultation with:

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

Note: For *designated re-stack day*, see subsection 26(1K).

Note: The following heading to subsection 27(2) is inserted "*Record-keeping requirements*".

14 Subsection 29(1)

Omit "section 26", substitute "whichever of subsection 26(1) or (1B) is applicable".

15 Section 205PA

After:

- The Federal Court may grant injunctions in relation to contraventions of subsection 121FG(3) or section 136A, 136B, 136C, 136D or 136E or subclause 49(3) of Schedule 6 (which deal with the provision of unlicensed services).

insert:

- The Federal Court may also grant injunctions in relation to contraventions of section 26AA (which deals with television licence area plans).

16 Section 205Q

Before “61AH”, insert “26AA,”.

17 At the end of subclause 7(1) of Schedule 2

Add:

- ; (s) if a television licence area plan applies to the licence area—the licensee will comply with subsection 26AA(1).

18 At the end of subclause 9(1) of Schedule 2

Add:

- ; (k) if a television licence area plan applies to the licence area—the licensee will comply with subsection 26AA(3).

19 Paragraph 6(3)(ha) of Schedule 4

Repeal the paragraph, substitute:

- (ha) the objective that, if the television licence area plan for a licence area comes into force immediately after the end of the simulcast period for that area, each holder of a commercial television broadcasting licence for that area is to transmit the commercial television broadcasting service concerned in digital mode in that area after the end of the simulcast period using such channel or channels as are allotted under the television licence area plan for that area;

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- (hb) the objective that, if the television licence area plan for a licence area does not come into force immediately after the end of the simulcast period for that area, each holder of a commercial television broadcasting licence for that area is to transmit the commercial television broadcasting service concerned in digital mode in that area during the period:
- (i) beginning at the end of the simulcast period; and
 - (ii) ending immediately before the television licence area plan comes into force;
- using such channel or channels as the ACMA allots under the scheme or a digital channel plan, having regard to:
- (iii) the need to plan the most efficient use of the spectrum; and
 - (iv) the other relevant policy objectives of the scheme;
- (hc) the objective that, if the television licence area plan for a licence area does not come into force immediately after the end of the simulcast period for that area, each holder of a commercial television broadcasting licence for that area is to transmit the commercial television broadcasting service concerned in digital mode in that area after the television licence area plan comes into force using such channel or channels as are allotted under the television licence area plan for that area;

20 Paragraphs 6(5A)(e) and (5AA)(e) of Schedule 4

Omit “and (ha)”, substitute “, (ha), (hb) and (hc)”.

21 At the end of subclause 6(5B) of Schedule 4

Add:

- ; (c) the objective that, if the television licence area plan for that area comes into force immediately after the end of the simulcast period for the licence area, the holder is to transmit the commercial television broadcasting services provided under the commercial television broadcasting licences referred to in whichever of paragraph (5A)(a) or (5AA)(a) is applicable in digital mode in that area after the end of the simulcast period using multi-channelling transmission capacity of a channel or channels allotted under the television licence area plan for the licence area;

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- (d) the objective that, if the television licence area plan for the licence area does not come into force immediately after the end of the simulcast period for the licence area, the holder is to transmit the commercial television broadcasting services provided under the commercial television broadcasting licences referred to in whichever of paragraph (5A)(a) or (5AA)(a) is applicable in digital mode in that area during the period:
- (i) beginning at the end of the simulcast period; and
 - (ii) ending immediately before the television licence area plan comes into force;
- using multi-channelling transmission capacity of a channel or channels allotted by the ACMA under the scheme or a digital channel plan, having regard to:
- (iii) the need to plan the most efficient use of the spectrum; and
 - (iv) the other relevant policy objectives of the scheme;
- (e) the objective that, if the television licence area plan for the licence area does not come into force immediately after the end of the simulcast period for the licence area, the holder is to transmit the commercial television broadcasting services provided under the commercial television broadcasting licences referred to in whichever of paragraph (5A)(a) or (5AA)(a) is applicable in digital mode in that area after the television licence area plan comes into force using multi-channelling transmission capacity of a channel or channels allotted under the television licence area plan for that area.

22 Subclause 6(5D) of Schedule 4

Omit “(3)(ha) and (n)”, substitute “(3)(hb) and (n) and (5B)(d)”.

23 After clause 7A of Schedule 4

Insert:

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7AA Allotment of channels after the television licence area plan comes into force

- (1) A digital channel plan, to the extent to which it relates to a particular licence area, ceases to have effect when the television licence area plan for that area comes into force.
- (2) The commercial television conversion scheme, to the extent to which it allots channels for a particular licence area, ceases to have effect when the television licence area plan for that area comes into force.

24 Subclause 8(4) of Schedule 4

Repeal the subclause.

25 Paragraph 19(3)(ha) of Schedule 4

Repeal the paragraph, substitute:

- (ha) the objective that, if the television licence area plan for the licence area that corresponds to a coverage area comes into force immediately after the end of the simulcast period for that coverage area, each national broadcaster is to transmit the national television broadcasting service concerned in digital mode in that coverage area after the end of the simulcast period using such channel or channels as are allotted under the television licence area plan for that licence area;
- (hb) the objective that, if the television licence area plan for the licence area that corresponds to a coverage area does not come into force immediately after the end of the simulcast period for that coverage area, each national broadcaster is to transmit the national television broadcasting service concerned in digital mode in that coverage area during the period:
 - (i) beginning at the end of the simulcast period; and
 - (ii) ending immediately before the television licence area plan comes into force;using such channel or channels as the ACMA allots under the scheme or a digital channel plan, having regard to:
 - (iii) the need to plan the most efficient use of the spectrum; and

- (iv) the other relevant policy objectives of the scheme;
- (hc) the objective that, if the television licence area plan for the licence area that corresponds to a coverage area does not come into force immediately after the end of the simulcast period for that coverage area, each national broadcaster is to transmit the national television broadcasting service concerned in digital mode in that coverage area after the television licence area plan comes into force using such channel or channels as are allotted under the television licence area plan for that licence area;

26 Subclause 19(5A) of Schedule 4

Omit “(3)(ha)”, substitute “(3)(hb)”.

27 After clause 22A of Schedule 4

Insert:

22AA Allotment of channels after the television licence area plan comes into force

- (1) A digital channel plan, to the extent to which it relates to a particular coverage area, ceases to have effect when the television licence area plan for the licence area that corresponds to the coverage area comes into force.
- (2) The national television conversion scheme, to the extent to which it allots channels for a particular coverage area, ceases to have effect when the television licence area plan for the licence area that corresponds to the coverage area comes into force.

28 Subclause 23(4) of Schedule 4

Repeal the subclause.

Radiocommunications Act 1992

29 Section 5

Insert:

BSA coverage area means coverage area within the meaning of Schedule 4 to the *Broadcasting Services Act 1992*.

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30 Section 5

Insert:

BSA television licence area plan means a television licence area plan within the meaning of the *Broadcasting Services Act 1992*.

31 After subsection 31(1)

Insert:

(1AA) The Minister may, by written instrument, vary a subsection (1) designation so as to enlarge or reduce the part of the spectrum covered by the designation.

32 After subsection 31(1B)

Insert:

(1BA) The Minister may, by written instrument, vary a subsection (1A) designation so as to enlarge or reduce the part of the spectrum covered by the designation.

33 Subsection 31(7)

After "(1),", insert "(1AA),".

34 Subsection 31(7)

After "(1A),", insert "(1BA),".

35 After subsection 32(2)

Insert:

- (2A) The rule in subsection (2) does not apply if:
- (a) a direction is in force under section 14 of the *Australian Communications and Media Authority Act 2005*; and
 - (b) the direction requires the ACMA, when performing its spectrum management functions, to act in accordance with particular policy objectives that are expressed to be digital dividend policy objectives; and
 - (c) the ACMA is satisfied that the inconsistency would be likely to facilitate any or all of those objectives.

36 After subsection 100(3A)

Insert:

- (3AA) Subsection (2) does not prevent the ACMA from issuing an NBS transmitter licence that authorises the operation of one or more transmitters for transmitting one or more national broadcasting services that are covered by a licence area plan in force under section 26 of the *Broadcasting Services Act 1992*.

37 Subsection 100(5)

After “section”, insert “100B, 102A,”.

38 After section 100

Insert:

100AA NBS transmitter licences—authorised channels

(1) If:

- (a) an NBS transmitter licence was issued under section 100; and
- (b) the licence is in force immediately before the end of the simulcast period, or the simulcast-equivalent period, for a BSA coverage area; and
- (c) the licence authorises the operation of one or more radiocommunications transmitters for transmitting one or more national television broadcasting services in that coverage area;

then, after the end of that period, the licence authorises the operation of the transmitter or transmitters concerned for transmitting those services in digital mode in that BSA coverage area using the channel or channels allotted to the national broadcaster concerned under:

- (d) if a BSA television licence area plan is in force for the BSA television licence area that corresponds to that BSA coverage area—the BSA television licence area plan; or
- (e) otherwise—the national television conversion scheme or a digital channel plan.

(2) If:

- (a) an NBS transmitter licence is issued under section 100 when a BSA television licence area plan for the BSA television licence area that corresponds to a coverage area is in force; and

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- (b) the licence authorises the operation of one or more radiocommunications transmitters for transmitting one or more national television broadcasting services in digital mode in that coverage area;

the licence authorises the operation of the transmitter or transmitters concerned for transmitting those services in digital mode in that area using the channel or channels allotted to the national broadcaster concerned under the BSA television licence area plan for that BSA television licence area.

- (3) If:

- (a) an NBS transmitter licence is issued under section 100 when no BSA television licence area plan for the BSA television licence area that corresponds to a coverage area is in force; and

- (b) subsection (1) does not apply; and

- (c) the licence authorises the operation of one or more radiocommunications transmitters for transmitting one or more national television broadcasting services in digital mode in that coverage area;

the licence authorises the operation of the transmitter or transmitters concerned for transmitting those services in digital mode in that area using the channel or channels allotted to the national broadcaster concerned under the national television conversion scheme or a digital channel plan.

- (4) In this section:

BSA television licence area means a BSA licence area for a commercial television broadcasting licence.

digital channel plan means a digital channel plan covered by clause 22A of Schedule 4 to the *Broadcasting Services Act 1992*.

national television broadcasting service means a national broadcasting service that provides television programs.

national television conversion scheme has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

NBS transmitter licence means a transmitter licence for a transmitter that is for use for transmitting, to the public, a national broadcasting service.

simulcast-equivalent period has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

simulcast period has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

39 After subsection 100B(2B)

Insert:

(2C) If:

- (a) an NBS transmitter licence issued under this section is in force immediately before the end of the simulcast period, or the simulcast-equivalent period, for a BSA coverage area; and
- (b) the licence authorised the operation of one or more radiocommunications transmitters for transmitting one or more national television broadcasting services in digital mode in that area;

the licence is cancelled at the end of that period.

40 Subsection 100B(3)

Insert:

simulcast-equivalent period has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

41 Subsection 100B(3)

Insert:

simulcast period has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

42 At the end of section 102A

Add:

(6) If:

- (a) a transmitter licence issued under this section is in force immediately before the end of the simulcast period, or the simulcast-equivalent period, for a BSA licence area; and
- (b) the licence authorised the operation of one or more radiocommunications transmitters for transmitting one or

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more commercial television broadcasting services in digital mode in that area;
the licence is cancelled at the end of that period.

(7) In this section:

commercial television broadcasting service means a commercial broadcasting service that provides television programs.

simulcast-equivalent period has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

simulcast period has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

43 Subsection 102AC(1)

Repeal the subsection, substitute:

(1) If:

- (a) a transmitter licence issued under section 102 was in force immediately before the end of whichever of the following periods is applicable to the licence area of a commercial television broadcasting licence (the *related licence*):
 - (i) the simulcast period for the licence area;
 - (ii) the simulcast-equivalent period for the licence area; and
- (b) the transmitter licence is held by the licensee of the related licence; and
- (c) immediately before the end of the applicable period, the transmitter licence authorised the operation of one or more radiocommunications transmitters for transmitting one or more commercial television broadcasting services in accordance with the related licence;

then, after the end of the applicable period, the transmitter licence authorises the operation of the transmitter or transmitters concerned for transmitting:

- (d) one or more HDTV multi-channelled commercial television broadcasting services; and
- (e) one or more SDTV multi-channelled commercial television broadcasting services;

in accordance with the related licence, using:

-
- (f) if a BSA television licence area plan is in force for the licence area—the channel or channels allotted to the licensee of the related licence under the BSA television licence area plan; or
 - (g) otherwise—the channel or channels allotted to the licensee of the related licence under the commercial television conversion scheme or a digital channel plan.

Note: The heading to section 102AC is altered by inserting “**issued before the end of the simulcast period etc.**” after “**licences**”.

44 Subsection 102AC(2)

Insert:

commercial television conversion scheme has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

45 Subsection 102AC(2)

Insert:

digital channel plan means a digital channel plan covered by clause 7A of Schedule 4 to the *Broadcasting Services Act 1992*.

46 After section 102AC

Insert:

102AD Transmitter licences issued after the end of the simulcast period etc.—authorised channels

(1) If:

- (a) a transmitter licence is issued under section 102 after the end of whichever of the following periods is applicable to the licence area of a commercial television broadcasting licence (the *related licence*):
 - (i) the simulcast period for the licence area;
 - (ii) the simulcast-equivalent period for the licence area; and
- (b) the transmitter licence is held by the licensee of the related licence; and
- (c) the transmitter licence authorises the operation of one or more radiocommunications transmitters for transmitting one

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or more commercial television broadcasting services in accordance with the related licence;

the transmitter licence authorises the operation of the transmitter or transmitters concerned for transmitting those services in digital mode in accordance with the related licence, using:

- (d) if a BSA television licence area plan is in force for the licence area—the channel or channels allotted to the licensee of the related licence under the BSA television licence area plan; or
- (e) otherwise—the channel or channels allotted to the licensee of the related licence under the commercial television conversion scheme or a digital channel plan.

(2) In this section:

commercial television broadcasting licence has the same meaning as in the *Broadcasting Services Act 1992*.

commercial television broadcasting service means a commercial broadcasting service that provides television programs.

commercial television conversion scheme has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

digital channel plan means a digital channel plan covered by clause 7A of Schedule 4 to the *Broadcasting Services Act 1992*.

47 Paragraph 109(1)(d)

Omit “a condition”, substitute “if subsection 26(1) of the *Broadcasting Services Act 1992* applies—a condition”.

48 Paragraph 109(1)(d)

Omit “by the ACMA under subsection 26(1) of the *Broadcasting Services Act 1992*”, substitute “by the ACMA under that subsection”.

49 After paragraph 109(1)(d)

Insert:

- (da) if a BSA television licence area plan is applicable to the transmission of one or more television broadcasting services under the authority of the licence—a condition that the licensee, and any person so authorised, must not operate, or permit operation of, such a transmitter otherwise than in

accordance with any relevant technical specifications determined under the plan;

50 At the end of section 109

Add:

(3) In this section:

television broadcasting service has the same meaning as in section 26 of the *Broadcasting Services Act 1992*.

51 At the end of subsection 153H(1)

Add:

; and (c) the licence is not:

- (i) an NBS transmitter licence; or
- (ii) a transmitter licence issued under section 101B; or
- (iii) a transmitter licence issued under section 101C; or
- (iv) a transmitter licence issued under section 102.

52 After paragraph 153P(2)(da)

Insert:

(db) both:

- (i) the licence is a transmitter licence that authorises the operation of one or more radiocommunications transmitters for transmitting one or more broadcasting services (within the meaning of the *Broadcasting Services Act 1992*) in digital mode in a BSA licence area; and
- (ii) the transmitter licence is issued during the interim period worked out in relation to the BSA licence area under subsection (4); or

53 At the end of section 153P

Add:

- (4) For the purposes of the application of paragraph (2)(db) to a BSA licence area, the *interim period* is the period:
 - (a) beginning at the commencement of this subsection; and

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- (b) ending at the start of the designated re-stack day (within the meaning of the *Broadcasting Services Act 1992*) for the BSA licence area.

Schedule 2—Other amendments

Australian Communications and Media Authority Act 2005

1 Paragraph 53(2)(k)

After “notice under”, insert “Part 9C of that Act or”.

Broadcasting Services Act 1992

2 Subsection 6(1) (definition of *scheme administrator*)

Repeal the definition, substitute:

scheme administrator:

- (a) in relation to a conditional access scheme for the South Eastern Australia TV3 licence area or the Northern Australia TV3 licence area—has the meaning given by subsection 130ZB(8); or
- (b) in relation to a conditional access scheme for the Western Australia TV3 licence area—has the meaning given by subsection 130ZBB(9).

3 After subsection 41B(1A)

Insert:

(1B) Subsection (1) does not apply to a remote area licence.

4 After subsection 41B(2A)

Insert:

(2AA) Subsection (2) does not apply to a remote area licence.

5 After subsection 41B(2D)

Insert:

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Remote area licences in force immediately before 1 January 2009

- (2DA) If a remote area licence for a licence area was in force immediately before 1 January 2009, the remote area licence is taken to authorise the licensee to provide the following services in the licence area:
- (a) the core commercial television broadcasting service;
 - (b) either:
 - (i) a HDTV multi-channelled commercial television broadcasting service and a SDTV multi-channelled commercial television broadcasting service; or
 - (ii) 2 SDTV multi-channelled commercial television broadcasting services;
- during the simulcast period, or the simulcast-equivalent period, as the case may be, for the licence area.

Remote area licences allocated on or after 1 January 2009

- (2DB) If a remote area licence for a licence area is allocated on or after 1 January 2009 but before the end of whichever of the following periods is applicable:
- (a) the simulcast period for the licence area;
 - (b) the simulcast-equivalent period for the licence area;
- the remote area licence authorises the licensee to provide:
- (c) the following services in the licence area:
 - (i) a HDTV multi-channelled commercial television broadcasting service;
 - (ii) 2 SDTV multi-channelled commercial television broadcasting services; or
 - (d) 3 SDTV multi-channelled commercial television broadcasting services in the licence area;
- during the simulcast period, or the simulcast-equivalent period, as the case may be, for the licence area.

6 Subsection 41B(4)

Insert:

remote area licence means a commercial television broadcasting licence for a remote licence area (within the meaning of Schedule 4).

7 After subsection 43AA(3A)

Insert:

(3AA) Subsection (1) does not require a licensee to provide a program to the licensee of a section 38C licence before the start date for the licence area of the section 38C licence.

8 Subsection 43AA(7)

Insert:

start date, in relation to the licence area of a section 38C licence, has the same meaning as in Division 2 of Part 3 of Schedule 2.

9 After subsection 43AC(3)

Insert:

Start date

(3A) Subsection (2) does not require a licensee to provide a program to the licensee of a section 38C licence before the start date for the licence area of the section 38C licence.

10 Subsection 43AC(5)

Insert:

start date, in relation to the licence area of a section 38C licence, has the same meaning as in Division 2 of Part 3 of Schedule 2.

11 At the end of subsection 130ZB(1)

Add:

for:

- (a) the South Eastern Australia TV3 licence area; or
- (b) the Northern Australia TV3 licence area.

Note: The heading to section 130ZB is altered by adding at the end “—**South Eastern Australia TV3 licence area and Northern Australia TV3 licence area**”.

12 At the end of paragraph 130ZB(5)(b)

Add “or”.

13 After paragraph 130ZB(5)(b)

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Insert:

- (c) a declared service-deficient area;

14 Subsection 130ZB(9)

After “category C reception area”, insert “(but not in a declared service-deficient area)”.

15 After paragraph 130ZB(10)(a)

Insert:

- (aa) is not in a declared service-deficient area; and

16 After subsection 130ZB(13)

Insert:

(13A) For the purposes of subsection (13), if:

- (a) at a particular time, a reception certificate was issued to a person; and
- (b) after that time, the person has not moved to new premises; the person is taken to be eligible for the reception certificate.

17 After subsection 130ZB(15)

Insert:

(15A) The 12th objective is that, if:

- (a) at a particular time, a person was in a category B reception area; and
- (b) at that time, a conditional access system that relates to any of the commercial television broadcasting services provided under the section 38C licence enabled the person to receive those commercial television broadcasting services; and
- (c) after that time:
 - (i) the person ceases to be in the category B reception area; and
 - (ii) the person has not moved to new premises;the conditional access system must enable the person to receive those commercial television broadcasting services.

(15B) The 13th objective is that, if:

- (a) at a particular time, a person was in a declared service-deficient area; and
- (b) at that time, a conditional access system that relates to any of the commercial television broadcasting services provided under the section 38C licence enabled the person to receive those commercial television broadcasting services; and
- (c) after that time:
 - (i) the person ceases to be in the declared service-deficient area; and
 - (ii) the person has not moved to new premises;the conditional access system must enable the person to receive those commercial television broadcasting services.

18 Subsection 130ZB(16) (paragraph (b) of the definition of *related terrestrial licence area*)

Omit “38C(1); or”, substitute “38C(1).”.

19 Subsection 130ZB(16) (paragraph (c) of the definition of *related terrestrial licence area*)

Repeal the paragraph.

20 Subsection 130ZB(16) (notes 1 and 2 after the definition of *simulcast period*)

Repeal the notes.

21 Subsection 130ZB(16) (after the definition of *terrestrial licence area*)

Insert:

Note 1: For *adequate reception*, see section 130ZFA.

Note 2: For *applicable terrestrial digital commercial television broadcasting services*, see section 130ZG.

Note 3: For *declared service-deficient area*, see section 130ZH.

22 After section 130ZB

Insert:

Schedule 2 Other amendments

130ZBB Objectives of conditional access scheme—Western Australia TV3 licence area

Scope

- (1) This section applies to a commercial television broadcasting licence allocated under section 38C for the Western Australia TV3 licence area.

Objectives

- (2) A conditional access scheme for the section 38C licence area complies with this section if the scheme is directed towards the achievement of the objectives set out in this section.
- (3) The first objective is that:
- (a) the scheme should specify the related terrestrial licence areas as areas that are, subject to paragraph (c), taken to be areas (*category A reception areas*) in which people are unable to receive adequate reception of all of the applicable terrestrial digital commercial television broadcasting services; and
 - (b) if a terrestrial licensee for a related terrestrial licence area is authorised, under paragraph 7(2A)(d) of Schedule 2, to provide a commercial television broadcasting service outside the related terrestrial licence area to one or more persons who are in the section 38C licence area—the scheme should provide that those persons are, subject to paragraph (c) of this subsection, taken to be in a category A reception area; and
 - (c) the scheme should provide that a person in a category D reception area is taken not to be in a category A reception area.

Note: For *category D reception area*, see subsection (8).

- (4) The second objective is that the scheme should:
- (a) specify one or more areas included in the Perth TV1 licence area; or
 - (b) specify a method for ascertaining one or more areas included in the Perth TV1 licence area;
- that are taken to be areas (*category B reception areas*) in which people are unable to receive adequate reception of all of the

applicable terrestrial digital commercial television broadcasting services.

- (5) The third objective is that a conditional access system that relates to any of the commercial television broadcasting services provided under the section 38C licence must enable persons in:
- (a) a category A reception area; or
 - (b) a category B reception area; or
 - (c) a declared service-deficient area;
- to receive those commercial television broadcasting services.
- (6) Subsection (5) has effect subject to subsections (18) and (19).
- (7) The fourth objective is that the scheme should provide that so much of the section 38C licence area as is not:
- (a) a category A reception area; or
 - (b) a category B reception area; or
 - (c) a category D reception area;
- is a **category C reception area**.
- Note: For **category D reception area**, see subsection (8).
- (8) The fifth objective is that the scheme should:
- (a) specify one or more related terrestrial sub-areas; or
 - (b) specify a method for ascertaining one or more related terrestrial sub-areas;
- each of which is taken to be an area (a **category D reception area**) in which people will, after the end of the simulcast period, or the simulcast-equivalent period, as the case may be, for the related terrestrial licence area in which the related terrestrial sub-area is included, be able to receive adequate reception of all the applicable terrestrial digital commercial television broadcasting services.
- (9) The sixth objective is that the scheme must:
- (a) if the scheme is developed by a body or association that the ACMA is satisfied represents commercial television broadcasting licensees—identify a company; or
 - (b) if the scheme is formulated by the ACMA—identify the ACMA;
- as the **scheme administrator** for the scheme.

Schedule 2 Other amendments

- (10) The seventh objective is that the scheme must authorise the scheme administrator to issue a certificate (a *reception certificate*) to:
- (a) a person in a category C reception area (but not in a declared service-deficient area); or
 - (b) a person in a category D reception area (but not in a declared service-deficient area);
- stating that the person is unable to receive adequate reception of all of the applicable terrestrial digital commercial television broadcasting services.
- (11) The eighth objective is that a conditional access system that relates to any of the commercial television broadcasting services provided under the section 38C licence must enable a person who:
- (a) is in:
 - (i) a category C reception area; or
 - (ii) a category D reception area; and
 - (b) is not in a declared service-deficient area; and
 - (c) holds a reception certificate;
- to receive those commercial television broadcasting services.
- (12) Subsection (10) has effect subject to subsections (18) and (19).
- (13) The ninth objective is that, if an application for a reception certificate is made in accordance with the scheme, the application must:
- (a) be dealt with by the scheme administrator within 15 business days after receiving the application; and
 - (b) be accepted, and dealt with, without requiring:
 - (i) the payment of a fee by the applicant; or
 - (ii) the applicant to incur any expenses (other than the expense of filling in the application and sending it to the scheme administrator).
- (14) The tenth objective is that, if:
- (a) a person is in a category D reception area; and
 - (b) the category D reception area is included in a related terrestrial licence area;
- the scheme must not allow the person to apply for a reception certificate before the earlier of the following:
-

-
- (c) the start of the designated digital service day for the category D reception area;
 - (d) the end of the simulcast period, or the simulcast-equivalent period, as the case may be, for the related terrestrial licence area.

Note: For *designated digital service day*, see subsection (15).

- (15) The 11th objective is that, if:
 - (a) a category D reception area is included in a related terrestrial licence area; and
 - (b) a particular day (the *relevant day*) occurs during the simulcast period, or the simulcast-equivalent period, as the case may be, for the related terrestrial licence area; and
 - (c) the relevant day is the first day on which all of the core/primary commercial television broadcasting services that are authorised to be provided in the category D reception area are being:
 - (i) provided in the category D reception area; and
 - (ii) transmitted in digital mode;

then:

- (d) the scheme must provide that the relevant day is the *designated digital service day* for the category D reception area; and
- (e) the scheme must require the scheme administrator:
 - (i) to give the ACMA a written notice informing the ACMA that the relevant day is the designated digital service day for the category D reception area; and
 - (ii) to do so as soon as practicable after the relevant day.

Note: The ACMA must maintain a Register in which the ACMA includes any designated digital service days, see section 130ZEA.

- (16) The 12th objective is that the scheme must authorise the scheme administrator to revoke a reception certificate issued to a person if the person is no longer eligible for the reception certificate.
 - (17) For the purposes of subsection (16), if:
 - (a) at a particular time, a reception certificate was issued to a person; and
 - (b) after that time, the person has not moved to new premises; the person is taken to be eligible for the reception certificate.
-

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- (18) The 13th objective is that, if persons are:
- (a) in a local market area; and
 - (b) not in a category A reception area; and
 - (c) not in a category D reception area;
- a conditional access system that relates to any of the commercial television broadcasting services provided under the section 38C licence must not enable those persons to receive those commercial television broadcasting services earlier than 6 months before the time when the local market area becomes a digital-only local market area.
- (19) The 14th objective is that, if persons are:
- (a) in a simulcast area; and
 - (b) not in a local market area; and
 - (c) not in a category A reception area; and
 - (d) not in a category D reception area;
- a conditional access system that relates to any of the commercial television broadcasting services provided under the section 38C licence must not enable those persons to receive those commercial television broadcasting services earlier than 6 months before the end of the simulcast period for the simulcast area.
- (20) The 15th objective is that, if:
- (a) at a particular time, a person was in a category B reception area; and
 - (b) at that time, a conditional access system that relates to any of the commercial television broadcasting services provided under the section 38C licence enabled the person to receive those commercial television broadcasting services; and
 - (c) after that time:
 - (i) the person ceases to be in the category B reception area; and
 - (ii) the person has not moved to new premises;
- the conditional access system must enable the person to receive those commercial television broadcasting services.
- (21) The 16th objective is that, if:
- (a) at a particular time, a person was in a declared service-deficient area; and
-

(b) at that time, a conditional access system that relates to any of the commercial television broadcasting services provided under the section 38C licence enabled the person to receive those commercial television broadcasting services; and

(c) after that time:

(i) the person ceases to be in the declared service-deficient area; and

(ii) the person has not moved to new premises;

the conditional access system must enable the person to receive those commercial television broadcasting services.

(22) In this section:

digital-only local market area has the same meaning as in Schedule 4.

local market area has the same meaning as in Schedule 4.

related terrestrial licence area means a terrestrial licence area mentioned in column 3 of item 3 of the table in subsection 38C(1).

related terrestrial sub-area means an area included in a related terrestrial licence area.

simulcast area means an area covered by paragraph 6(3)(c) of Schedule 4.

simulcast period has the same meaning as in Schedule 4.

terrestrial licence means a commercial television broadcasting licence other than a commercial television broadcasting licence allocated under section 38C or subsection 40(1).

terrestrial licence area means the licence area of a terrestrial licence.

Note 1: For ***adequate reception***, see section 130ZFA.

Note 2: For ***applicable terrestrial digital commercial television broadcasting services***, see section 130ZG.

Note 3: For ***declared service-deficient area***, see section 130ZH.

23 Subparagraph 130ZC(1)(d)(iii)

After “this section”, insert “or section 130ZCA”.

Schedule 2 Other amendments

24 Subsection 130ZC(1) (note)

Repeal the note.

25 Subsection 130ZC(1)(da)

Repeal the paragraph, substitute:

- (da) the ACMA is satisfied that:
- (i) if the scheme is for the South Eastern Australia TV3 licence area or the Northern Australia TV3 licence area—the scheme complies with section 130ZB; or
 - (ii) if the scheme is for the Western Australia TV3 licence area—the scheme complies with section 130ZBB; and

26 Paragraph 130ZCAA(1)(e)

Repeal the paragraph, substitute:

- (e) the ACMA is not satisfied that:
- (i) if the new scheme is for the South Eastern Australia TV3 licence area or the Northern Australia TV3 licence area—the new scheme complies with section 130ZB; or
 - (ii) if the new scheme is for the Western Australia TV3 licence area—the scheme complies with section 130ZBB; and

27 Paragraph 130ZCAB(1)(a)

After “130ZC”, insert “or 130ZCA”.

28 Paragraph 130ZCAB(1)(b)

Repeal the paragraph, substitute:

- (b) if the scheme is registered under section 130ZC—the ACMA is satisfied that:
- (i) if the scheme is for the South Eastern Australia TV3 licence area or the Northern Australia TV3 licence area—the scheme is not achieving one or more of the objectives set out in section 130ZB; or
 - (ii) if the scheme is for the Western Australia TV3 licence area—the scheme is not achieving one or more of the objectives set out in section 130ZBB.

29 Subsection 130ZCAB(2)

Omit “the body or association that developed the scheme”, substitute “the appropriate body or association”.

30 Subparagraph 130ZCAB(2)(a)(i)

After “130ZC”, insert “or 130ZCA”.

31 After subsection 130ZCAB(2)

Insert:

(2A) For the purposes of subsection (2), the *appropriate body or association* is:

- (a) if the scheme is registered under section 130ZC—the body or association that developed the scheme; or
- (b) if the scheme is registered under section 130ZCA—a body or organisation that the ACMA is satisfied represents commercial television broadcasting licensees.

32 Paragraph 130ZCA(3)(a)

Repeal the paragraph, substitute:

- (a) the ACMA is satisfied that:
 - (i) if the scheme is for the South Eastern Australia TV3 licence area or the Northern Australia TV3 licence area—the scheme complies with section 130ZB; or
 - (ii) if the scheme is for the Western Australia TV3 licence area—the scheme complies with section 130ZBB; and

33 Subsection 130ZCA(7)

Repeal the subsection.

34 After section 130ZE

Insert:

130ZEA ACMA to maintain register of designated digital service days

- (1) The ACMA is to maintain a Register in which the ACMA includes any designated digital service days (within the meaning of section 130ZBB) for category D reception areas (within the meaning of that section).

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- (2) The Register is to be maintained by electronic means.
- (3) The Register is to be made available for inspection on the ACMA's website.
- (4) The Register is not a legislative instrument.

35 Paragraph 130ZF(1)(b)

Repeal the paragraph, substitute:

- (b) either:
 - (i) a person is in a category C reception area (within the meaning of the scheme), but is not in a declared service-deficient area; or
 - (ii) if the scheme is for the Western Australia TV3 licence area—a person is in a category D reception area (within the meaning of the scheme), but is not in a declared service-deficient area; and

36 At the end of subsection 130ZF(13)

Add “if the revocation is on the ground that the holder of the reception certificate is no longer eligible for the reception certificate”.

37 At the end of Part 9C

Add:

130ZH Declared service-deficient areas*Declaration*

- (1) If:
 - (a) the ACMA is satisfied that the number of applicable terrestrial digital commercial television broadcasting services provided to persons in a particular area (the *relevant area*) is less than the number of commercial television broadcasting services required by clauses 7B and 7C of Schedule 2 to be provided under a commercial television broadcasting licence allocated under section 38C; and
 - (b) the relevant area is included in a terrestrial licence area; and
 - (c) the terrestrial licence area is wholly or partly included in the licence area of the section 38C licence;

the ACMA must, by legislative instrument, declare that the relevant area is a ***declared service-deficient area*** for the purposes of this Part.

- (2) The ACMA must not make a declaration under subsection (1) in relation to an area if:
- (a) part of the area is included in a local market area; and
 - (b) the remainder of the area is outside the local market area.
- (3) The ACMA must not make a declaration under subsection (1) in relation to an area (the ***relevant area***) before:
- (a) if:
 - (i) the relevant area is included in a local market area; and
 - (ii) the local market area became a digital-only local market area before the commencement of this section;
the end of the 9-month period beginning when the local market area became a digital-only local market area; or
 - (b) if:
 - (i) the relevant area is included in a local market area; and
 - (ii) the local market area becomes a digital-only local market area after the commencement of this section;
the end of the 3-month period beginning when the local market area becomes a digital-only local market area; or
 - (c) if:
 - (i) the relevant area is included in a terrestrial licence area;
and
 - (ii) the relevant area is not included in a local market area;
and
 - (iii) the simulcast period, or the simulcast-equivalent period, as the case may be, for the terrestrial licence area ended before the commencement of this section;
the end of the 9-month period beginning when the simulcast period, or the simulcast-equivalent period, as the case may be, for the terrestrial licence area ended; or
 - (d) if:
 - (i) the relevant area is included in a terrestrial licence area;
and
 - (ii) the relevant area is not included in a local market area;
and

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- (iii) the simulcast period, or the simulcast-equivalent period, as the case may be, for the terrestrial licence area ends after the commencement of this section; and
the end of the 3-month period beginning when the simulcast period, or the simulcast-equivalent period, as the case may be, for the terrestrial licence area ends.

Revocation

- (4) If:
- (a) a declaration is in force under subsection (1) in relation to a particular area (the **relevant area**); and
 - (b) the relevant area is included in a terrestrial licence area; and
 - (c) the terrestrial licence area is wholly or partly included in the licence area of a commercial television broadcasting licence allocated under section 38C; and
 - (d) the ACMA is not satisfied that the number of applicable terrestrial digital commercial television broadcasting services provided to persons in the relevant area is less than the number of commercial television broadcasting services provided under the section 38C licence;
- the ACMA must, by legislative instrument, revoke the declaration.

Certain satellite services to be disregarded

- (5) For the purposes of subsections (1) and (4), disregard a commercial television broadcasting service provided under a section 38C licence if the service is authorised by paragraph 41CA(1)(g).

Definitions

- (6) In this section:

digital-only local market area has the same meaning as in Schedule 4.

local market area has the same meaning as in Schedule 4.

number includes zero.

simulcast-equivalent period has the same meaning as in Schedule 4.

simulcast period has the same meaning as in Schedule 4.

terrestrial licence means a commercial television broadcasting licence other than a commercial television broadcasting licence allocated under section 38C or subsection 40(1).

terrestrial licence area means the licence area of a terrestrial licence.

Note: For *applicable terrestrial digital commercial television broadcasting services*, see section 130ZG.

38 Paragraph 7(1)(ma) of Schedule 2

Omit “(5) and (6)”, substitute “(4C), (5), (6) and (7)”.

39 Paragraphs 7(1)(mb) and (mc) of Schedule 2

After “subject to subclauses”, insert “(4C),”.

40 After subclause 7(4A) of Schedule 2

Insert:

(4B) For the purposes of paragraphs (1)(k) and (m), ignore the broadcast of a commercial television broadcasting service in analog mode in a digital-only local market area if:

- (a) the broadcast of the service in the digital-only local market area occurs accidentally; or
- (b) the broadcast of the service in the digital-only local market area occurs as a necessary result of the provision of commercial television broadcasting services outside the digital-only local market area.

(4C) Paragraphs (1)(ma), (mb) and (mc) do not apply to a commercial television broadcasting service provided by a licensee to the extent to which the service is provided in an area that, under clause 9A of Schedule 4, is an exempt digital transmission area in relation to the licence.

41 Subclause 7(7) of Schedule 2

Omit “(1)(mb)”, substitute “(1)(ma), (mb)”.

42 Paragraph 7(8)(a) of Schedule 2

After “(4A),”, insert “(4B),”.

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43 At the end of clause 7D of Schedule 2

Add:

- (4) Subclause (1) does not require the section 38C licensee to broadcast a program before the start date for the licence area of the section 38C licence.

Note: For *start date*, see clause 7H.

44 Paragraph 6(3)(ga) of Schedule 4

After “to be made”, insert “using a transmitter located”.

45 Subclause 6(7B) of Schedule 4

Omit “at or about the time when the exempt licence was allocated.”, substitute:

within the 12-month period beginning at the later of the following:

- (c) when the exempt licence is allocated;
(d) the commencement of this paragraph.

46 Clause 6C of Schedule 4

Repeal the clause.

47 After clause 9 of Schedule 4

Insert:

**9A Areas exempt from digital transmission requirements—
commercial television broadcasting licensees***Areas exempt from digital transmission requirements*

- (1) If an area is an exempt digital transmission area in relation to a commercial television broadcasting licence, the licensee is not required to comply with:

- (a) the commercial television conversion scheme; or
(b) an implementation plan;

to the extent that the scheme or plan would require the licensee to transmit a commercial television broadcasting service in digital mode in the exempt digital transmission area.

Determination

- (2) On application by the holder of a commercial television broadcasting licence, the Minister may, by legislative instrument, determine that, for the purposes of this clause, a specified area that is within the licence area is an ***exempt digital transmission area*** in relation to the licence.
- (3) The Minister must not make a determination under subclause (2) that specifies an area that is within the licence area of a commercial television broadcasting licence unless, when the determination is made:
- (a) the specified area does not have coverage of any commercial television broadcasting service that is:
 - (i) provided by the commercial television broadcasting licensee in the licence area; and
 - (ii) transmitted in digital mode; and
 - (b) the Minister is satisfied that:
 - (i) fewer than 500 people reside in the specified area; or
 - (ii) the specified area is an underserved area; and
 - (c) either:
 - (i) commercial television broadcasting services are provided in the specified area under a commercial television broadcasting licence allocated under section 38C; or
 - (ii) the Minister is satisfied that there is another way in which people in the specified area can, or will be able to, view an adequate and comprehensive range of commercial television broadcasting services and national television broadcasting services.
- (4) In considering, for the purposes of subparagraph (3)(b)(i), whether fewer than 500 people reside in a specified area, the Minister must have regard to the latest resident population statistics published by the Australian Statistician.

Underserved areas

- (5) For the purposes of subparagraph (3)(b)(ii), a specified area within a licence area is an ***underserved area*** if:

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- (a) the specified area does not have coverage of one or more commercial television broadcasting services that are:
 - (i) provided in the licence area; and
 - (ii) transmitted in analog mode; or
 - (b) the specified area does not have coverage of one or more national television broadcasting services that are:
 - (i) provided in the coverage area that corresponds to the licence area; and
 - (ii) transmitted in analog mode.
- (6) For the purposes of subclause (5), disregard a service that does no more than:
- (a) re-transmit programs that are transmitted by a commercial television broadcasting service; or
 - (b) re-transmit programs that are transmitted by a national television broadcasting service.
- (7) For the purposes of subparagraph (3)(b)(ii), a specified area within a licence area is an ***underserviced area*** if:
- (a) the specified area does not, or will not, have coverage of the commercial television broadcasting services that are:
 - (i) provided in the licence area by a person other than the commercial television broadcasting licensee; and
 - (ii) transmitted in digital mode; or
 - (b) the specified area does not, or will not, have coverage of the national television broadcasting services that are:
 - (i) provided in the coverage area that corresponds to the licence area; and
 - (ii) transmitted in digital mode.
- (8) A reference in subclause (7) to a ***commercial television broadcasting service*** includes a reference to a service that does no more than re-transmit programs that are transmitted by a commercial television broadcasting service.
- (9) A reference in subclause (7) to a ***national television broadcasting service*** includes a reference to a service that does no more than re-transmit programs that are transmitted by a national television broadcasting service.

48 After paragraph 8(10)(a) of Schedule 4

Insert:

(aa) paragraph 7(1)(ma) of Schedule 2; or

49 Paragraph 19(3)(ga) of Schedule 4

After “to be made”, insert “using a transmitter located”.

50 Subclause 19(7CA) of Schedule 4

Repeal the subclause.

51 After paragraph 20(4)(c) of Schedule 4

Insert:

- (ca) whether there are other means by which people in the coverage area to which the implementation plan relates can view an adequate and comprehensive range of:
 - (i) commercial television broadcasting services transmitted in digital mode; and
 - (ii) national television broadcasting services transmitted in digital mode;
- (cb) the extent to which commercial television broadcasting services are being, or will be, transmitted in digital mode in the coverage area to which the implementation plan relates;
- (cc) the extent to which national television broadcasting services are being, or will be, transmitted in digital mode in the coverage area to which the implementation plan relates by a national broadcaster other than the national broadcaster to whom the implementation plan relates;

52 After clause 21 of Schedule 4

Insert:

21A Areas exempt from digital transmission requirements— national broadcasters

Areas exempt from digital transmission requirements

- (1) If an area is an exempt digital transmission area in relation to a national broadcaster, the national broadcaster is not required:
 - (a) to comply with:
 - (i) the national television conversion scheme; or

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- (ii) an implementation plan;
to the extent that the scheme or plan would require the national broadcaster to transmit a national television broadcasting service in digital mode in the exempt digital transmission area; or
- (b) to submit an implementation plan under clause 20 that relates to the exempt digital transmission area.

Determination

- (2) On application by a national broadcaster, the Minister may, by legislative instrument, determine that, for the purposes of this clause, a specified area that is within a coverage area is an ***exempt digital transmission area*** in relation to the national broadcaster.
 - (3) The Minister must not make a determination under subclause (2) that specifies an area that is within a coverage area unless, when the determination is made:
 - (a) the specified area does not have coverage of any national television broadcasting service that is:
 - (i) provided by the national broadcaster in the coverage area; and
 - (ii) transmitted in digital mode; and
 - (b) the Minister is satisfied that:
 - (i) fewer than 500 people reside in the specified area; or
 - (ii) the specified area is an underserviced area; and
 - (c) either:
 - (i) national television broadcasting services are provided in the coverage area with the use of a satellite; or
 - (ii) the Minister is satisfied that there is another way in which people in the specified area can, or will be able to, view an adequate and comprehensive range of commercial television broadcasting services and national television broadcasting services.
 - (4) In considering, for the purposes of subparagraph (3)(b)(i), whether fewer than 500 people reside in a specified area, the Minister must have regard to the latest resident population statistics published by the Australian Statistician.
-

Underserviced areas

- (5) For the purposes of subparagraph (3)(b)(ii), a specified area within a coverage area is an ***underserviced area*** if:
- (a) the specified area does not have coverage of one or more commercial television broadcasting services that are:
 - (i) provided in a licence area that corresponds to the coverage area; and
 - (ii) transmitted in analog mode; or
 - (b) the specified area does not have coverage of one or more national television broadcasting services that are:
 - (i) provided in the coverage area; and
 - (ii) transmitted in analog mode.
- (6) For the purposes of subclause (5), disregard a service that does no more than:
- (a) re-transmit programs that are transmitted by a commercial television broadcasting service; or
 - (b) re-transmit programs that are transmitted by a national television broadcasting service.
- (7) For the purposes of subparagraph (3)(b)(ii), a specified area within a coverage area is an ***underserviced area*** if:
- (a) the specified area does not, or will not, have coverage of the commercial television broadcasting services that are:
 - (i) provided in a licence area that corresponds to the coverage area; and
 - (ii) transmitted in digital mode; or
 - (b) the specified area does not, or will not, have coverage of the national television broadcasting services that are:
 - (i) provided in the coverage area; and
 - (ii) transmitted in digital mode.
- (8) A reference in subclause (7) to a ***commercial television broadcasting service*** includes a reference to a service that does no more than re-transmit programs that are transmitted by a commercial television broadcasting service.
- (9) A reference in subclause (7) to a ***national television broadcasting service*** includes a reference to a service that does no more than

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re-transmit programs that are transmitted by a national television broadcasting service.

53 Clause 35A of Schedule 4

Before “For the purposes”, insert “(1)”.

54 At the end of clause 35A of Schedule 4

Add:

- (2) For the purposes of clauses 34 and 35, ignore the broadcast of a national television broadcasting service in analog mode in a digital-only local market area if:
- (a) the broadcast of the service in the digital-only local market area occurs accidentally; or
 - (b) the broadcast of the service in the digital-only local market area occurs as a necessary result of the provision of national television broadcasting services outside the digital-only local market area.

55 Paragraph 38(4)(c) of Schedule 4

After “provides”, insert “in the licence area another service that is”.

56 Paragraph 38(4)(c) of Schedule 4

Omit “in the licence area;”.

57 Paragraph 38(4)(d) of Schedule 4

After “service”, insert “mentioned in subparagraph (c)(i)”.

58 Paragraph 38(4)(e) of Schedule 4

After “service”, insert “mentioned in subparagraph (c)(ii)”.

59 Subclause 38(4A) of Schedule 4

Repeal the subclause.

60 Subclause 41G(1) of Schedule 4

Omit “or (2CB)” substitute “, (2CB), (2D) or (2DB)”.

Copyright Act 1968

61 Subsection 135ZZJA(2)

Repeal the subsection (including the note), substitute:

- (2) This Part does not apply in relation to a retransmission if:
 - (a) the retransmission is a re-broadcast by a satellite BSA licensee; and
 - (b) subsection 135ZZZI(1) or (2) applies to the re-broadcast.

Radiocommunications Act 1992

62 Subsection 100(5)

Omit “102AF,”.

63 Sections 102AE and 102AF

Repeal the sections.

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36, 2011 49

Schedule 3 Transitional provisions
Part 1 Designation of licence areas

Schedule 3—Transitional provisions

Part 1—Designation of licence areas

1 Designation of licence areas

(1) If:

- (a) the ACMA has, under section 29 of the *Broadcasting Services Act 1992*, designated an area (the **relevant licence area**) as the licence area of a particular commercial television broadcasting licence; and
- (b) the designation of the relevant licence area is by reference to an area described in:
 - (i) a licence area plan prepared under subsection 26(1) of the *Broadcasting Services Act 1992*; or
 - (ii) a variation of such a licence area plan; and
- (c) a television licence area plan comes into force for the relevant licence area;

the designation has effect, after the television licence area plan comes into force, as if the designation were by reference to the corresponding area described in the television licence area plan instead of by reference to an area described in:

- (d) the licence area plan prepared under subsection 26(1) of the *Broadcasting Services Act 1992*; or
- (e) a variation of such a licence area plan.

(2) This item does not prevent the variation of the designation of the relevant licence area in accordance with subsection 29(2) of the *Broadcasting Services Act 1992*.

Part 2—Digital television conversion schemes etc.

2 Commercial television conversion scheme

- (1) This item applies to the commercial television conversion scheme that was in force under Schedule 4 to the *Broadcasting Services Act 1992* immediately before the commencement of this item.
- (2) The amendments of Schedule 4 to the *Broadcasting Services Act 1992* made by this Act do not affect the continuity of the scheme.
- (3) However, the Parliament intends that the ACMA should, within 90 days after the commencement of this item, take action under Schedule 4 to the *Broadcasting Services Act 1992* directed towards ensuring compliance with that Schedule as amended by this Act.
- (4) Subitem (2) does not apply to subclause 7AA(2) of Schedule 4 to the *Broadcasting Services Act 1992* as amended by this Act.

3 National television conversion scheme

- (1) This item applies to the national television conversion scheme that was in force under Schedule 4 to the *Broadcasting Services Act 1992* immediately before the commencement of this item.
- (2) The amendments of Schedule 4 to the *Broadcasting Services Act 1992* made by this Act do not affect the continuity of the scheme.
- (3) However, the Parliament intends that the ACMA should, within 90 days after the commencement of this item, take action under Schedule 4 to the *Broadcasting Services Act 1992* directed towards ensuring compliance with that Schedule as amended by this Act.
- (4) Subitem (2) does not apply to subclause 22AA(2) of Schedule 4 to the *Broadcasting Services Act 1992* as amended by this Act.

4 Digital channel plan made under the commercial television conversion scheme

- (1) This item applies to a digital channel plan that was in force under the commercial television conversion scheme immediately before the commencement of this item.
-

Schedule 3 Transitional provisions**Part 2** Digital television conversion schemes etc.

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- (2) The amendments of Schedule 4 to the *Broadcasting Services Act 1992* made by this Act do not affect the continuity of the plan.
 - (3) Subitem (2) does not apply to subclause 7AA(1) of Schedule 4 to the *Broadcasting Services Act 1992* as amended by this Act.

5 Digital channel plan made under the national television conversion scheme

- (1) This item applies to a digital channel plan that was in force under the national television conversion scheme immediately before the commencement of this item.
- (2) The amendments of Schedule 4 to the *Broadcasting Services Act 1992* made by this Act do not affect the continuity of the plan.
- (3) Subitem (2) does not apply to subclause 22AA(1) of Schedule 4 to the *Broadcasting Services Act 1992* as amended by this Act.

6 Variation of commercial television conversion scheme

- (1) This item applies to a variation by the ACMA of the commercial television conversion scheme if:
 - (a) the variation deals with transitional and/or consequential matters in connection with the amendments made by this Act; and
 - (b) the variation is made within 90 days after the commencement of this item.
- (2) Clause 18 of Schedule 4 to the *Broadcasting Services Act 1992* does not apply to the variation.
- (3) The ACMA must not make the variation unless a copy of the proposed variation was made available on the ACMA's website for a period of at least 10 business days.

7 Variation of national television conversion scheme

- (1) This item applies to a variation by the ACMA of the national television conversion scheme if:
 - (a) the variation deals with transitional and/or consequential matters in connection with the amendments made by this Act; and
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- (b) the variation is made within 90 days after the commencement of this item.
- (2) Clauses 32 and 33 of Schedule 4 to the *Broadcasting Services Act 1992* do not apply to the variation.
- (3) The ACMA must not make the variation unless a copy of the proposed variation was made available on the ACMA's website for a period of at least 10 business days.

Schedule 3 Transitional provisions**Part 3** Other matters

Part 3—Other matters**8 Transitional—pre-commencement contraventions of licence conditions***Scope*

- (1) This item applies to a licence condition set out in:
- (a) section 43AA of the *Broadcasting Services Act 1992*; or
 - (b) section 43AC of the *Broadcasting Services Act 1992*; or
 - (c) clause 7D of Schedule 2 to the *Broadcasting Services Act 1992*.

Contraventions

- (2) If:
- (a) at a time during the period:
 - (i) beginning at the start of 30 June 2010; and
 - (ii) ending immediately before the commencement of this item;a person contravened the licence condition; and
 - (b) if it were assumed that the amendments of:
 - (i) section 43AA of the *Broadcasting Services Act 1992*; and
 - (ii) section 43AC of the *Broadcasting Services Act 1992*; and
 - (iii) clause 7D of Schedule 2 to the *Broadcasting Services Act 1992*;made by this Act had commenced on 30 June 2010, the person would not have contravened the licence condition;
- the person is taken not to have contravened the licence condition.

Note: Schedule 1 to the *Broadcasting Legislation Amendment (Digital Television) Act 2010* commenced on 30 June 2010.

9 Transitional—conditional access schemes

Scope

- (1) This item applies to a conditional access scheme that was registered under section 130ZC or 130ZCA of the *Broadcasting Services Act 1992* before the commencement of this item.

Conditional access schemes

- (2) The amendments made by the following items of Schedule 2:
- (a) item 2;
 - (b) items 11 to 22;
- do not affect the continuity of the scheme.
- (3) Within 30 days after this item commences, the ACMA must, under subsection 130ZCAB(2) of the *Broadcasting Services Act 1992* as amended by this Act, give to a body or association a notice that:
- (a) requests the body or association to develop another scheme that is expressed to replace the scheme; and
 - (b) specifies, under paragraph 130ZCAB(2)(b) of the *Broadcasting Services Act 1992* as amended by this Act, the matter of compliance with:
 - (i) if the scheme is for the South Eastern Australia TV3 licence area or the Northern Australia TV3 licence area—section 130ZB of the *Broadcasting Services Act 1992* as amended by this Act; or
 - (ii) if the scheme is for the Western Australia TV3 licence area—section 130ZBB of the *Broadcasting Services Act 1992* as amended by this Act.
- (4) For the purposes of subsection 130ZCAB(1) of the *Broadcasting Services Act 1992* as amended by this Act, the ACMA is taken, when this item commences, to become satisfied that the scheme is not achieving one or more of the objectives set out in:
- (a) if the scheme is for the South Eastern Australia TV3 licence area or the Northern Australia TV3 licence area—section 130ZB of the *Broadcasting Services Act 1992* as amended by this Act; or
 - (b) if the scheme is for the Western Australia TV3 licence area—section 130ZBB of the *Broadcasting Services Act 1992* as amended by this Act.
-

Schedule 3 Transitional provisions**Part 3** Other matters

10 Transitional—declarations about primary commercial television broadcasting services*Scope*

- (1) This item applies to a declaration:
- (a) that the ACMA is empowered to make under subclause 41G(1) of Schedule 4 to the *Broadcasting Services Act 1992* as amended by this Act; and
 - (b) that relates to a commercial television broadcasting licence to which subsection 41B(2D) or (2DB) of the *Broadcasting Services Act 1992* as amended by this Act applies.

When declaration must come into force

- (2) Subclause 41G(1A) of Schedule 4 to the *Broadcasting Services Act 1992* as amended by this Act has effect, in relation to the declaration, as if the reference in subparagraph (a)(ii) of that subclause to the commencement of that subclause were a reference to the commencement of this item.
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*[Minister's second reading speech made in—
House of Representatives on 24 February 2011
Senate on 25 March 2011]*

(20/11)

56 *Broadcasting Legislation Amendment (Digital Dividend and Other Measures) Act 2011*
No. 36, 2011