

EXPOSURE DRAFT

2010-2011

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Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT (08/12/2010)

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

No. , 2011

(Broadband, Communications and the Digital Economy)

A Bill for an Act to amend the *Broadcasting Services Act 1992*, and for other purposes

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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.	
2. Schedules 1, 2 and 3	The day after this Act receives the Royal Assent.	

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

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

7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.
12

1 **Schedule 1—Digital dividend**
2

3 ***Broadcasting Services Act 1992***

4 **1 Subsection 6(1) (definition of *broadcasting services bands*)**

5 Repeal the definition, substitute:

6 ***broadcasting services bands*** means:

- 7 (a) that part of the radiofrequency spectrum that is designated
8 under subsection 31(1) of the *Radiocommunications Act 1992*
9 as being primarily for broadcasting purposes; and
10 (b) that part of the radiofrequency spectrum that is designated
11 under subsection 31(1A) of the *Radiocommunications Act*
12 *1992* as being partly for the purpose of digital radio
13 broadcasting services and restricted datacasting services.

14 **2 Subsection 6(1)**

15 Insert:

16 ***designated re-stack day*** has the meaning given by subsection
17 26(1K).

18 **3 Subsection 6(1)**

19 Insert:

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

22 **4 Subsection 6(1)**

23 Insert:

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

26 **5 Subsection 26(1A)**

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

28 **6 After subsection 26(1A)**

29 Insert:

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1

Television licence area plans

2

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

3

4

(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:

5

6

7

(i) commercial television broadcasting services;

8

(ii) national television broadcasting services;

9

(iii) other television broadcasting services;

10

with the use of the broadcasting services bands; and

11

(b) allot, or empower the ACMA to allot, those channels to:

12

(i) particular commercial television broadcasting licensees;
or

13

14

(ii) particular national broadcasters; or

15

(iii) particular providers of television broadcasting services

16

(other than commercial television broadcasting licensees

17

or national broadcasters);

18

as the case requires; and

19

(c) determine the characteristics, including technical

20

specifications, of the transmission of each of the following

21

services:

22

(i) commercial television broadcasting services;

23

(ii) national television broadcasting services;

24

(iii) other television broadcasting services;

25

using those channels; and

26

(d) determine, or empower the ACMA to determine, any

27

technical limitations on the use of a particular channel that

28

the ACMA considers should be applicable; and

29

(e) determine, or empower the ACMA to determine, whether the

30

use of a particular channel depends on any event or

31

circumstances that the ACMA considers should be

32

applicable.

33

(1C) A licence area plan prepared under subsection (1B) is to be known

34

as a *television licence area plan*.

35

(1D) A television licence area plan may allot, or empower the ACMA to

36

allot, different channels to:

37

(a) a particular commercial television broadcasting licensee; or

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- 1 (b) a particular national broadcaster; or
2 (c) a particular provider of a television broadcasting service
3 (other than a commercial television broadcasting licensee or
4 a national broadcaster);
5 for different periods.
- 6 (1E) A television licence area plan may allot, or empower the ACMA to
7 allot, 2 or more channels to:
8 (a) a particular commercial television broadcasting licensee; or
9 (b) a particular national broadcaster; or
10 (c) a particular provider of a television broadcasting service
11 (other than a commercial television broadcasting licensee or
12 a national broadcaster).
- 13 (1F) A television licence area plan must be consistent with the relevant
14 frequency allotment plan.
- 15 (1G) A television licence area plan does not need to identify a particular
16 television broadcasting service by name.
- 17 (1H) When the television licence area plan for a particular area comes
18 into force, subsection (1) ceases to apply to:
19 (a) commercial television broadcasting services; and
20 (b) national television broadcasting services; and
21 (c) other television broadcasting services;
22 provided in the area.
- 23 (1J) The television licence area plan for an area that is the licence area
24 of a commercial television broadcasting licence must:
25 (a) not come into force before the end of the simulcast period, or
26 the simulcast-equivalent period, for the area; and
27 (b) come into force before the designated re-stack day for the
28 area.
- 29 (1K) For the purposes of this Act, the *designated re-stack day* for an
30 area is:
31 (a) 31 December 2014; or
32 (b) if the Minister, by writing, specifies a later day for the area—
33 that later day.
-

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1 (1L) The Minister must not specify a day under paragraph (1K)(b)
2 unless the Minister is satisfied that a failure to specify the day
3 would be likely to result in significant difficulties of a technical or
4 engineering nature for:

5 (a) a commercial television broadcasting licensee; or

6 (b) a national broadcaster; or

7 (c) a provider of a television broadcasting service (other than a
8 commercial television broadcasting licensee or a national
9 broadcaster).

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

11 **7 At the end of section 26**

12 Add:

13 *Planning criteria—before designated re-stack day*

14 (7) Paragraphs 23(a) and (b) do not apply in relation to:

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

17 (b) the variation of a television licence area plan for a licence
18 area;

19 before the designated re-stack day for the licence area.

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

21 *Ministerial direction*

22 (8) The Minister may, by legislative instrument, direct the ACMA
23 about the exercise of its powers to make or vary a television
24 licence area plan for a particular licence area.

25 (9) The ACMA must comply with a direction under subsection (8).

26 (10) Subsections (8) and (9) cease to have effect in relation to a licence
27 area at the start of the designated re-stack day for the licence area.

28 *Legislative instruments*

29 (11) If a determination made by the ACMA under a television licence
30 area plan is in writing, the determination is not a legislative
31 instrument.

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1 (12) An instrument under paragraph (1K)(b) is not a legislative
2 instrument.

3 *Definitions*

4 (13) In this section:

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

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

9 *simulcast period* has the same meaning as in Schedule 4.

10 *television broadcasting service* means a broadcasting service that
11 provides television programs.

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

13 **8 Subsection 26A(2)**

14 Repeal the subsection.

15 **9 Subsection 26A(3)**

16 Insert:

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

19 **10 After section 26A**

20 Insert:

21 **26AA Compliance with television licence area plan**

22 (1) If:

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

26 (b) those services are provided under a particular commercial
27 television broadcasting licence;

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

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- 1 (2) If:
2 (a) a television licence area plan is applicable to the transmission
3 of one or more national television broadcasting services in a
4 particular area; and
5 (b) those services are provided by a particular national
6 broadcaster;
7 the national broadcaster must not transmit any of those national
8 television broadcasting services in that area otherwise than in
9 accordance with the television licence area plan.

- 10 (3) If:
11 (a) a television licence area plan is applicable to the transmission
12 of one or more television broadcasting services in a particular
13 area; and
14 (b) those services are not provided:
15 (i) under a commercial television broadcasting licence; or
16 (ii) by a national broadcaster;
17 the provider of those television broadcasting services must not
18 transmit any of those services in that area otherwise than in
19 accordance with the television licence area plan.

- 20 (4) In this section:
21 *national television broadcasting service* has the same meaning as
22 in Schedule 4.
23 *television broadcasting service* means a broadcasting service that
24 provides television programs.

25 **11 Subsection 26B(2)**

26 Repeal the subsection.

27 **12 Subsection 26B(3)**

28 Insert:

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

31 **13 After subsection 27(1)**

32 Insert:

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- 1 (1A) Subsection (1) does not apply to:
2 (a) the preparation of a television licence area plan for a licence
3 area; or
4 (b) the variation of a television licence area plan for a licence
5 area;
6 before the designated re-stack day for the licence area.

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

- 8 (1B) If a television licence area plan for a licence area is:
9 (a) prepared; or
10 (b) varied;
11 before the designated re-stack day for the licence area, the ACMA
12 must, in preparing or varying the plan, as the case may be, make
13 provision for consultation with:
14 (c) commercial television broadcasting licensees who are likely
15 to be affected by the preparation or variation of the plan; and
16 (d) national broadcasters; and
17 (e) community television broadcasting licensees who are likely
18 to be affected by the preparation or variation of the plan; and
19 (f) such other persons (if any) as the ACMA considers
20 appropriate.

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

22 **14 Subsection 29(1)**

23 Omit “section 26”, substitute “whichever of subsection 26(1) or (1B) is
24 applicable”.

25 **15 Section 205PA**

26 After:

- 27

<ul style="list-style-type: none">• The Federal Court may grant injunctions in relation to 28 contraventions of subsection 121FG(3) or section 136A, 29 136B, 136C, 136D or 136E or subclause 49(3) of Schedule 6 30 (which deal with the provision of unlicensed services).
--

31 insert:

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- 1
- 2
- 3
- The Federal Court may also grant injunctions in relation to contraventions of section 26AA (which deals with television licence area plans).

4

16 Section 205Q

5 Before “61AH”, insert “26AA,”.

6

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

7 Add:

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

10

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

11 Add:

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

14

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

15 Repeal the paragraph, substitute:

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

24 (hb) the objective that, if the television licence area plan for a
25 licence area does not come into force immediately after the
26 end of the simulcast period for that area, each holder of a
27 commercial television broadcasting licence for that area is to
28 transmit the commercial television broadcasting service
29 concerned in digital mode in that area during the period:

- 30 (i) beginning at the end of the simulcast period; and
31 (ii) ending immediately before the television licence area
32 plan comes into force;

33 using such channel or channels as the ACMA allots under the
34 scheme or a digital channel plan, having regard to:

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- 1 (iii) the need to plan the most efficient use of the spectrum;
2 and
3 (iv) the other relevant policy objectives of the scheme;
4 (hc) the objective that, if the television licence area plan for a
5 licence area does not come into force immediately after the
6 end of the simulcast period for that area, each holder of a
7 commercial television broadcasting licence for that area is to
8 transmit the commercial television broadcasting service
9 concerned in digital mode in that area after the television
10 licence area plan comes into force using such channel or
11 channels as are allotted under the television licence area plan
12 for that area;

13 **20 Paragraphs 6(5A)(e) and (5AA)(e) of Schedule 4**

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

15 **21 At the end of subclause 6(5B) of Schedule 4**

16 Add:

- 17 ; (c) the objective that, if the television licence area plan for that
18 area comes into force immediately after the end of the
19 simulcast period for the licence area, the holder is to transmit
20 the commercial television broadcasting services provided
21 under the commercial television broadcasting licences
22 referred to in whichever of paragraph (5A)(a) or (5AA)(a) is
23 applicable in digital mode in that area after the end of the
24 simulcast period using multi-channelling transmission
25 capacity of a channel or channels allotted under the television
26 licence area plan for the licence area;
- 27 (d) the objective that, if the television licence area plan for the
28 licence area does not come into force immediately after the
29 end of the simulcast period for the licence area, the holder is
30 to transmit the commercial television broadcasting services
31 provided under the commercial television broadcasting
32 licences referred to in whichever of paragraph (5A)(a) or
33 (5AA)(a) is applicable in digital mode in that area during the
34 period:
- 35 (i) beginning at the end of the simulcast period; and
36 (ii) ending immediately before the television licence area
37 plan comes into force;

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1 using multi-channelling transmission capacity of a channel or
2 channels allotted by the ACMA under the scheme or a digital
3 channel plan, having regard to:
4 (iii) the need to plan the most efficient use of the spectrum;
5 and
6 (iv) the other relevant policy objectives of the scheme;
7 (e) the objective that, if the television licence area plan for the
8 licence area does not come into force immediately after the
9 end of the simulcast period for the licence area, the holder is
10 to transmit the commercial television broadcasting services
11 provided under the commercial television broadcasting
12 licences referred to in whichever of paragraph (5A)(a) or
13 (5AA)(a) is applicable in digital mode in that area after the
14 television licence area plan comes into force using
15 multi-channelling transmission capacity of a channel or
16 channels allotted under the television licence area plan for
17 that area.

22 Subclause 6(5D) of Schedule 4

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

23 After clause 7A of Schedule 4

20 Insert:

22 7AA Allotment of channels after the television licence area plan 23 comes into force

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

31 24 Subclause 8(4) of Schedule 4

32 Repeal the subclause.

33 25 Paragraph 19(3)(ha) of Schedule 4

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1 **22AA Allotment of channels after the television licence area plan**
2 **comes into force**

3 (1) A digital channel plan, to the extent to which it relates to a
4 particular coverage area, ceases to have effect when the television
5 licence area plan for the licence area that corresponds to the
6 coverage area comes into force.

7 (2) The national television conversion scheme, to the extent to which it
8 allots channels for a particular coverage area, ceases to have effect
9 when the television licence area plan for the licence area that
10 corresponds to the coverage area comes into force.

11 **28 Subclause 23(4) of Schedule 4**

12 Repeal the subclause.

13 ***Radiocommunications Act 1992***

14 **29 Section 5**

15 Insert:

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

18 **30 Section 5**

19 Insert:

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

22 **31 After subsection 31(1)**

23 Insert:

24 (1AA) The Minister may, by written instrument, vary a subsection (1)
25 designation so as to enlarge or reduce the part of the spectrum
26 covered by the designation.

27 **32 After subsection 31(1B)**

28 Insert:

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

4 **33 Subsection 31(7)**

5 After “(1),” insert “(1AA),”.

6 **34 Subsection 31(7)**

7 After “(1A),” insert “(1BA),”.

8 **35 After subsection 32(2)**

9 Insert:

- 10 (2A) The rule in subsection (2) does not apply if:
- 11 (a) a direction is in force under section 14 of the *Australian*
 - 12 *Communications and Media Authority Act 2005*; and
 - 13 (b) the direction requires the ACMA, when performing its
 - 14 spectrum management functions, to act in accordance with
 - 15 particular policy objectives that are expressed to be digital
 - 16 dividend policy objectives; and
 - 17 (c) the ACMA is satisfied that the inconsistency would be likely
 - 18 to facilitate any or all of those objectives.

19 **36 After subsection 100(3A)**

20 Insert:

21 (3AA) Subsection (2) does not prevent the ACMA from issuing an NBS
22 transmitter licence that authorises the operation of one or more
23 transmitters for transmitting one or more national broadcasting
24 services that are covered by a licence area plan in force under
25 section 26 of the *Broadcasting Services Act 1992*.

26 **37 Subsection 100(5)**

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

28 **38 After section 100**

29 Insert:

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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
- (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

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1 licence area that corresponds to a coverage area is in force;
2 and

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

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

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

13 (4) In this section:

14 ***BSA television licence area*** means a BSA licence area for a
15 commercial television broadcasting licence.

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

18 ***national television broadcasting service*** means a national
19 broadcasting service that provides television programs.

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

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

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

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

29 **39 After subsection 100B(2B)**

30 Insert:

31 (2C) If:

32 (a) an NBS transmitter licence issued under this section is in
33 force immediately before the end of the simulcast period, or

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- 1 the simulcast-equivalent period, for a BSA coverage area;
2 and
3 (b) the licence authorised the operation of one or more
4 radiocommunications transmitters for transmitting one or
5 more national television broadcasting services in digital
6 mode in that area;
7 the licence is cancelled at the end of that period.

8 **40 Subsection 100B(3)**

9 Insert:

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

12 **41 Subsection 100B(3)**

13 Insert:

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

16 **42 At the end of section 102A**

17 Add:

18 (6) If:

- 19 (a) a transmitter licence issued under this section is in force
20 immediately before the end of the simulcast period, or the
21 simulcast-equivalent period, for a BSA licence area; and
22 (b) the licence authorised the operation of one or more
23 radiocommunications transmitters for transmitting one or
24 more commercial television broadcasting services in digital
25 mode in that area;
26 the licence is cancelled at the end of that period.

27 (7) In this section:

28 *commercial television broadcasting service* means a commercial
29 broadcasting service that provides television programs.

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

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1 Insert:

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

4 **45 Subsection 102AC(2)**

5 Insert:

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

8 **46 After section 102AC**

9 Insert:

10 **102AD Transmitter licences issued after the end of the simulcast** 11 **period etc.—authorised channels**

12 (1) If:

13 (a) a transmitter licence is issued under section 102 after the end
14 of whichever of the following periods is applicable to the
15 licence area of a commercial television broadcasting licence
16 (the *related licence*):

17 (i) the simulcast period for the licence area;
18 (ii) the simulcast-equivalent period for the licence area; and

19 (b) the transmitter licence is held by the licensee of the related
20 licence; and

21 (c) the transmitter licence authorises the operation of one or
22 more radiocommunications transmitters for transmitting one
23 or more commercial television broadcasting services in
24 accordance with the related licence;

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

28 (d) if a BSA television licence area plan is in force for the
29 licence area—the channel or channels allotted to the licensee
30 of the related licence under the BSA television licence area
31 plan; or

32 (e) otherwise—the channel or channels allotted to the licensee of
33 the related licence under the commercial television
34 conversion scheme or a digital channel plan.

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1 (2) In this section:

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

4 *commercial television broadcasting service* means a commercial
5 broadcasting service that provides television programs.

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

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

10 **47 Paragraph 109(1)(d)**

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

13 **48 Paragraph 109(1)(d)**

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

16 **49 After paragraph 109(1)(d)**

17 Insert:

18 (da) if a BSA television licence area plan is applicable to the
19 transmission of one or more television broadcasting services
20 under the authority of the licence—a condition that the
21 licensee, and any person so authorised, must not operate, or
22 permit operation of, such a transmitter otherwise than in
23 accordance with any relevant technical specifications
24 determined under the plan;

25 **50 At the end of section 109**

26 Add:

27 (3) In this section:

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

30 **51 At the end of subsection 153H(1)**

31 Add:

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- 1 ; and (c) the licence is not:
2 (i) an NBS transmitter licence; or
3 (ii) a transmitter licence issued under section 101B; or
4 (iii) a transmitter licence issued under section 101C; or
5 (iv) a transmitter licence issued under section 102.

52 After paragraph 153P(2)(da)

- 6 Insert:
7 (db) both:
8 (i) the licence is a transmitter licence that authorises the
9 operation of one or more radiocommunications
10 transmitters for transmitting one or more broadcasting
11 services (within the meaning of the *Broadcasting*
12 *Services Act 1992*) in digital mode in a BSA licence
13 area; and
14 (ii) the transmitter licence is issued during the interim
15 period worked out in relation to the BSA licence area
16 under subsection (4); or
17

53 At the end of section 153P

- 18 Add:
19 (4) For the purposes of the application of paragraph (2)(db) to a BSA
20 licence area, the *interim period* is the period:
21 (a) beginning at the commencement of this subsection; and
22 (b) ending at the start of the designated re-stack day (within the
23 meaning of the *Broadcasting Services Act 1992*) for the BSA
24 licence area.
25
26

1 **Schedule 2—Other amendments**
2

3 *Australian Communications and Media Authority Act 2005*

4 **1 Paragraph 53(2)(k)**

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

6 *Broadcasting Services Act 1992*

7 **2 Subsection 6(1) (definition of *scheme administrator*)**

8 Repeal the definition, substitute:

9 *scheme administrator:*

- 10 (a) in relation to a conditional access scheme for the South
11 Eastern Australia TV3 licence area or the Northern Australia
12 TV3 licence area—has the meaning given by subsection
13 130ZB(8); or
14 (b) in relation to a conditional access scheme for the Western
15 Australia TV3 licence area—has the meaning given by
16 subsection 130ZBB(9).

17 **3 After subsection 41B(1A)**

18 Insert:

19 (1B) Subsection (1) does not apply to a remote area licence.

20 **4 After subsection 41B(2A)**

21 Insert:

22 (2AA) Subsection (2) does not apply to a remote area licence.

23 **5 After subsection 41B(2D)**

24 Insert:

25 *Remote area licences in force immediately before 1 January 2009*

26 (2DA) If a remote area licence for a licence area was in force immediately
27 before 1 January 2009, the remote area licence is taken to authorise
28 the licensee to provide the following services in the licence area:

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- 1 (a) the core commercial television broadcasting service;
2 (b) either:
3 (i) a HDTV multi-channelled commercial television
4 broadcasting service and a SDTV multi-channelled
5 commercial television broadcasting service; or
6 (ii) 2 SDTV multi-channelled commercial television
7 broadcasting services;
8 during the simulcast period, or the simulcast-equivalent period, as
9 the case may be, for the licence area.

10 *Remote area licences allocated on or after 1 January 2009*

- 11 (2DB) If a remote area licence for a licence area is allocated on or after
12 1 January 2009 but before the end of whichever of the following
13 periods is applicable:
14 (a) the simulcast period for the licence area;
15 (b) the simulcast-equivalent period for the licence area;
16 the remote area licence authorises the licensee to provide:
17 (c) the following services in the licence area:
18 (i) a HDTV multi-channelled commercial television
19 broadcasting service;
20 (ii) 2 SDTV multi-channelled commercial television
21 broadcasting services; or
22 (d) 3 SDTV multi-channelled commercial television
23 broadcasting services in the licence area;
24 during the simulcast period, or the simulcast-equivalent period, as
25 the case may be, for the licence area.

26 **6 Subsection 41B(4)**

27 Insert:

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

31 **7 After subsection 43AA(3A)**

32 Insert:

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

4 **8 Subsection 43AA(7)**

5 Insert:

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

8 **9 After subsection 43AC(3)**

9 Insert:

10 *Start date*

11 (3A) Subsection (2) does not require a licensee to provide a program to
12 the licensee of a section 38C licence before the start date for the
13 licence area of the section 38C licence.

14 **10 Subsection 43AC(5)**

15 Insert:

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

18 **11 At the end of subsection 130ZB(1)**

19 Add:

20 for:

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

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

25 **12 At the end of paragraph 130ZB(5)(b)**

26 Add “or”.

27 **13 After paragraph 130ZB(5)(b)**

28 Insert:

- 29 (c) a declared service-deficient area;
-

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1 **14 Subsection 130ZB(9)**

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

4 **15 After paragraph 130ZB(10)(a)**

5 Insert:

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

7 **16 After subsection 130ZB(13)**

8 Insert:

9 (13A) For the purposes of subsection (13), if:

10 (a) at a particular time, a reception certificate was issued to a
11 person; and

12 (b) after that time, the person has not moved to new premises;
13 the person is taken to be eligible for the reception certificate.

14 **17 After subsection 130ZB(15)**

15 Insert:

16 (15A) The 12th objective is that, if:

17 (a) at a particular time, a person was in a category B reception
18 area; and

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

23 (c) after that time:

24 (i) the person ceases to be in the category B reception area;
25 and

26 (ii) the person has not moved to new premises;
27 the conditional access system must enable the person to receive
28 those commercial television broadcasting services.

29 (15B) The 13th objective is that, if:

30 (a) at a particular time, a person was in a declared
31 service-deficient area; and

32 (b) at that time, a conditional access system that relates to any of
33 the commercial television broadcasting services provided

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1 under the section 38C licence enabled the person to receive
2 those commercial television broadcasting services; and
3 (c) after that time:
4 (i) the person ceases to be in the declared service-deficient
5 area; and
6 (ii) the person has not moved to new premises;
7 the conditional access system must enable the person to receive
8 those commercial television broadcasting services.

9 **18 Subsection 130ZB(16) (paragraph (b) of the definition of**
10 ***related terrestrial licence area*)**

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

12 **19 Subsection 130ZB(16) (paragraph (c) of the definition of**
13 ***related terrestrial licence area*)**

14 Repeal the paragraph.

15 **20 Subsection 130ZB(16) (notes 1 and 2 after the definition of**
16 ***simulcast period*)**

17 Repeal the notes.

18 **21 Subsection 130ZB(16) (after the definition of *terrestrial***
19 ***licence area*)**

20 Insert:

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

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

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

25 **22 After section 130ZB**

26 Insert:

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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

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

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

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- 1 (c) the start of the designated digital service day for the related
2 terrestrial licence area;
3 (d) the end of the simulcast period, or the simulcast-equivalent
4 period, as the case may be, for the related terrestrial licence
5 area.

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

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

19 then:

- 20 (d) the scheme must provide that the relevant day is the
21 *designated digital service day* for the related terrestrial
22 licence area; and
23 (e) the scheme must require the scheme administrator to publish
24 on its website a notice informing the public that the relevant
25 day is the designated digital service day for the related
26 terrestrial licence area.

27 (16) The 12th objective is that the scheme must authorise the scheme
28 administrator to revoke a reception certificate issued to a person if
29 the person is no longer eligible for the reception certificate.

- 30 (17) For the purposes of subsection (16), if:
31 (a) at a particular time, a reception certificate was issued to a
32 person; and
33 (b) after that time, the person has not moved to new premises;
34 the person is taken to be eligible for the reception certificate.

- 35 (18) The 13th objective is that, if persons are:
36 (a) in a local market area; and

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1 (b) not in a category A reception area; and
2 (c) not in a category D reception area;
3 a conditional access system that relates to any of the commercial
4 television broadcasting services provided under the section 38C
5 licence must not enable those persons to receive those commercial
6 television broadcasting services earlier than 6 months before the
7 time when the local market area becomes a digital-only local
8 market area.

9 (19) The 14th objective is that, if persons are:
10 (a) in a simulcast area; and
11 (b) not in a local market area; and
12 (c) not in a category A reception area; and
13 (d) not in a category D reception area;
14 a conditional access system that relates to any of the commercial
15 television broadcasting services provided under the section 38C
16 licence must not enable those persons to receive those commercial
17 television broadcasting services earlier than 6 months before the
18 end of the simulcast period for the simulcast area.

19 (20) The 15th objective is that, if:
20 (a) at a particular time, a person was in a category B reception
21 area; and
22 (b) at that time, a conditional access system that relates to any of
23 the commercial television broadcasting services provided
24 under the section 38C licence enabled the person to receive
25 those commercial television broadcasting services; and
26 (c) after that time:
27 (i) the person ceases to be in the category B reception area;
28 and
29 (ii) the person has not moved to new premises;
30 the conditional access system must enable the person to receive
31 those commercial television broadcasting services.

32 (21) The 16th objective is that, if:
33 (a) at a particular time, a person was in a declared
34 service-deficient area; and
35 (b) at that time, a conditional access system that relates to any of
36 the commercial television broadcasting services provided

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1 under the section 38C licence enabled the person to receive
2 those commercial television broadcasting services; and
3 (c) after that time:
4 (i) the person ceases to be in the declared service-deficient
5 area; and
6 (ii) the person has not moved to new premises;
7 the conditional access system must enable the person to receive
8 those commercial television broadcasting services.

9 (22) In this section:

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

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

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

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

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

19 ***simulcast period*** has the same meaning as in Schedule 4.

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

23 ***terrestrial licence area*** means the licence area of a terrestrial
24 licence.

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

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

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

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

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

24 Subsection 130ZC(1) (note)

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1 Repeal the note.

2 **25 Subsection 130ZC(1)(da)**

3 Repeal the paragraph, substitute:

4 (da) the ACMA is satisfied that:

- 5 (i) if the scheme is for the South Eastern Australia TV3
6 licence area or the Northern Australia TV3 licence
7 area—the scheme complies with section 130ZB; or
8 (ii) if the scheme is for the Western Australia TV3 licence
9 area—the scheme complies with section 130ZBB; and

10 **26 Paragraph 130ZCAA(1)(e)**

11 Repeal the paragraph, substitute:

12 (e) the ACMA is not satisfied that:

- 13 (i) if the new scheme is for the South Eastern Australia
14 TV3 licence area or the Northern Australia TV3 licence
15 area—the new scheme complies with section 130ZB; or
16 (ii) if the new scheme is for the Western Australia TV3
17 licence area—the scheme complies with
18 section 130ZBB; and

19 **27 Paragraph 130ZCAB(1)(a)**

20 After “130ZC”, insert “or 130ZCA”.

21 **28 Paragraph 130ZCAB(1)(b)**

22 Repeal the paragraph, substitute:

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

32 **29 Subsection 130ZCAB(2)**

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

1 **30 Subparagraph 130ZCAB(2)(a)(i)**

2 After “130ZC”, insert “or 130ZCA”.

3 **31 After subsection 130ZCAB(2)**

4 Insert:

5 (2A) For the purposes of subsection (2), the *appropriate body or*
6 *association* is:

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

12 **32 Paragraph 130ZCA(3)(a)**

13 Repeal the paragraph, substitute:

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

20 **33 Subsection 130ZCA(7)**

21 Repeal the subsection.

22 **34 Paragraph 130ZF(1)(b)**

23 Repeal the paragraph, substitute:

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

32 **35 At the end of Part 9C**

33 Add:

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1 **130ZH Declared service-deficient areas**

2 *Declaration*

3 (1) If:

- 4 (a) the ACMA is satisfied that the number of applicable
5 terrestrial digital commercial television broadcasting services
6 provided to persons in a particular area (the *relevant area*) is
7 less than the number of commercial television broadcasting
8 services provided under a commercial television broadcasting
9 licence allocated under section 38C; and
10 (b) the relevant area is included in a terrestrial licence area; and
11 (c) the terrestrial licence area is wholly or partly included in the
12 licence area of the section 38C licence;

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

16 (2) The ACMA must not make a declaration under subsection (1) in
17 relation to an area if:

- 18 (a) part of the area is included in a local market area; and
19 (b) the remainder of the area is outside the local market area.

20 (3) The ACMA must not make a declaration under subsection (1) in
21 relation to an area (the *relevant area*) before:

22 (a) if:

- 23 (i) the relevant area is included in a local market area; and
24 (ii) the local market area became a digital-only local market
25 area before the commencement of this section;
26 the end of the 9-month period beginning when the local
27 market area became a digital-only local market area; or

28 (b) if:

- 29 (i) the relevant area is included in a local market area; and
30 (ii) the local market area becomes a digital-only local
31 market area after the commencement of this section;
32 the end of the 3-month period beginning when the local
33 market area becomes a digital-only local market area; or

34 (c) if:

- 35 (i) the relevant area is included in a terrestrial licence area;
36 and
-

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- 1 (ii) the relevant area is not included in a local market area;
2 and
3 (iii) the simulcast period, or the simulcast-equivalent period,
4 as the case may be, for the terrestrial licence area ended
5 before the commencement of this section;
6 the end of the 9-month period beginning when the simulcast
7 period, or the simulcast-equivalent period, as the case may
8 be, for the terrestrial licence area ended; or
9 (d) if:
10 (i) the relevant area is included in a terrestrial licence area;
11 and
12 (ii) the relevant area is not included in a local market area;
13 and
14 (iii) the simulcast period, or the simulcast-equivalent period,
15 as the case may be, for the terrestrial licence area ends
16 after the commencement of this section; and
17 the end of the 3-month period beginning when the simulcast
18 period, or the simulcast-equivalent period, as the case may
19 be, for the terrestrial licence area ends.

20 *Revocation*

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

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1

Certain satellite services to be disregarded

2

- (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).

3

4

5

Definitions

6

- (6) In this section:

7

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

8

9

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

10

number includes zero.

11

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

12

13

simulcast period has the same meaning as in Schedule 4.

14

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

15

16

17

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

18

19

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

20

21

36 After subclause 7(4A) of Schedule 2

22

Insert:

23

- (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:

24

25

26

- (a) the broadcast of the service in the digital-only local market area occurs accidentally; or

27

28

- (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.

29

30

31

1 **37 Paragraph 7(8)(a) of Schedule 2**

2 After “(4A),”, insert “(4B),”.

3 **38 At the end of clause 7D of Schedule 2**

4 Add:

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

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

9 **39 Paragraph 6(3)(ga) of Schedule 4**

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

11 **40 Subclause 6(7B) of Schedule 4**

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

14 within:

15 (c) 12 months after the exempt licence is allocated; or

16 (d) if, on application by a licensee mentioned in paragraph (a) or
17 (b), the ACMA allows a longer period—that longer period.

18 **41 Clause 6C of Schedule 4**

19 Repeal the clause.

20 **42 After clause 9 of Schedule 4**

21 Insert:

22 **9A Areas exempt from digital transmission requirements—**
23 **commercial television broadcasting licensees**

24 *Areas exempt from digital transmission requirements*

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

28 (a) the commercial television conversion scheme; or

29 (b) an implementation plan;

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

4 *Determination*

5 (2) On application by the holder of a commercial television
6 broadcasting licence, the Minister may, by legislative instrument,
7 determine that, for the purposes of this clause, a specified area that
8 is within the licence area is an *exempt digital transmission area* in
9 relation to the licence.

10 (3) The Minister must not make a determination under subclause (2)
11 that specifies an area that is within the licence area of a commercial
12 television broadcasting licence unless, when the determination is
13 made:

14 (a) the specified area does not have coverage of any commercial
15 television broadcasting service that is:

16 (i) provided by the commercial television broadcasting
17 licensee in the licence area; and

18 (ii) transmitted in digital mode; and

19 (b) the Minister is satisfied that:

20 (i) fewer than 500 people reside in the specified area; or

21 (ii) the specified area is an underserviced area; and

22 (c) either:

23 (i) commercial television broadcasting services are
24 provided in the specified area under a commercial
25 television broadcasting licence allocated under
26 section 38C; or

27 (ii) the Minister is satisfied that there are other means by
28 which people in the specified area can view an adequate
29 and comprehensive range of commercial television
30 broadcasting services and national television
31 broadcasting services.

32 (4) In considering, for the purposes of subparagraph (3)(b)(i), whether
33 fewer than 500 people reside in a specified area, the Minister must
34 have regard to the latest resident population statistics published by
35 the Australian Statistician.

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Schedule 2 Other amendments

- 1 clause, a specified area that is within a coverage area is an *exempt*
2 *digital transmission area* in relation to the national broadcaster.
- 3 (3) The Minister must not make a determination under subclause (2)
4 that specifies an area that is within a coverage area unless, when
5 the determination is made:
- 6 (a) the specified area does not have coverage of any national
7 television broadcasting service that is:
- 8 (i) provided by the national broadcaster in the coverage
9 area; and
- 10 (ii) transmitted in digital mode; and
- 11 (b) the Minister is satisfied that:
- 12 (i) fewer than 500 people reside in the specified area; or
13 (ii) the specified area is an underserviced area; and
- 14 (c) either:
- 15 (i) national television broadcasting services are provided in
16 the coverage area with the use of a satellite; or
- 17 (ii) the Minister is satisfied that there are other means by
18 which people in the specified area can view an adequate
19 and comprehensive range of commercial television
20 broadcasting services and national television
21 broadcasting services.
- 22 (4) In considering, for the purposes of subparagraph (3)(b)(i), whether
23 fewer than 500 people reside in a specified area, the Minister must
24 have regard to the latest resident population statistics published by
25 the Australian Statistician.
- 26 (5) For the purposes of subparagraph (3)(b)(ii), a specified area within
27 a coverage area is an *underserviced area* if:
- 28 (a) the specified area does not have coverage of one or more
29 commercial television broadcasting services that are:
- 30 (i) provided in a licence area that corresponds to the
31 coverage area; and
- 32 (ii) transmitted in analog mode; or
- 33 (b) the specified area does not have coverage of one or more
34 national television broadcasting services that are:
- 35 (i) provided in the coverage area; and
36 (ii) transmitted in analog mode.

1 **45 Clause 35A of Schedule 4**

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

3 **46 At the end of clause 35A of Schedule 4**

4 Add:

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

14 **47 Paragraph 38(4)(c) of Schedule 4**

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

16 **48 Paragraph 38(4)(c) of Schedule 4**

17 Omit “in the licence area;”.

18 **49 Paragraph 38(4)(d) of Schedule 4**

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

20 **50 Paragraph 38(4)(e) of Schedule 4**

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

22 **51 Subclause 38(4A) of Schedule 4**

23 Repeal the subclause.

24 **52 Subclause 41G(1) of Schedule 4**

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

26 ***Copyright Act 1968***

27 **53 Subsection 135ZZJA(2)**

28 Repeal the subsection (including the note), substitute:

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Schedule 2 Other amendments

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

5 *Radiocommunications Act 1992*

6 **54 Subsection 100(5)**

7 Omit “102AF,”.

8 **55 Sections 102AE and 102AF**

9 Repeal the sections.
10

EXPOSURE DRAFT

Transitional provisions **Schedule 3**
Digital television conversion schemes etc. **Part 1**

1 **Schedule 3—Transitional provisions**

2 **Part 1—Digital television conversion schemes etc.**

3 **1 Commercial television conversion scheme**

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

15 **2 National television conversion scheme**

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

27 **3 Digital channel plan made under the commercial television**
28 **conversion scheme**

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Schedule 3 Transitional provisions

Part 1 Digital television conversion schemes etc.

- 1 (1) This item applies to a digital channel plan that was in force under the
2 commercial television conversion scheme immediately before the
3 commencement of this item.
- 4 (2) The amendments of Schedule 4 to the *Broadcasting Services Act 1992*
5 made by this Act do not affect the continuity of the plan.
- 6 (3) Subitem (2) does not apply to subclause 7AA(1) of Schedule 4 to the
7 *Broadcasting Services Act 1992* as amended by this Act.

8 **4 Digital channel plan made under the national television** 9 **conversion scheme**

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

17 **5 Variation of commercial television conversion scheme**

- 18 (1) This item applies to a variation by the ACMA of the commercial
19 television conversion scheme if:
20 (a) the variation deals with transitional and/or consequential
21 matters in connection with the amendments made by this Act;
22 and
23 (b) the variation is made within 90 days after the commencement
24 of this item.
- 25 (2) Clause 18 of Schedule 4 to the *Broadcasting Services Act 1992* does not
26 apply to the variation.
- 27 (3) The ACMA must not make the variation unless a copy of the proposed
28 variation was made available on the ACMA's website for a period of at
29 least 5 business days.

30 **6 Variation of national television conversion scheme**

- 31 (1) This item applies to a variation by the ACMA of the national television
32 conversion scheme if:
-

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Transitional provisions **Schedule 3**
Digital television conversion schemes etc. **Part 1**

- 1 (a) the variation deals with transitional and/or consequential
2 matters in connection with the amendments made by this Act;
3 and
4 (b) the variation is made within 90 days after the commencement
5 of this item.
- 6 (2) Clauses 32 and 33 of Schedule 4 to the *Broadcasting Services Act 1992*
7 do not apply to the variation.
- 8 (3) The ACMA must not make the variation unless a copy of the proposed
9 variation was made available on the ACMA's website for a period of at
10 least 5 business days.
11

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Schedule 3 Transitional provisions

Part 2 Other matters

1 **Part 2—Other matters**

2 **7 Transitional—pre-commencement contraventions of**
3 **licence conditions**

4 *Scope*

- 5 (1) This item applies to a licence condition set out in:
6 (a) section 43AA of the *Broadcasting Services Act 1992*; or
7 (b) section 43AC of the *Broadcasting Services Act 1992*; or
8 (c) clause 7D of Schedule 2 to the *Broadcasting Services Act*
9 *1992*.

10 *Contraventions*

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

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

29 **8 Transitional—conditional access schemes**

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Schedule 3 Transitional provisions

Part 2 Other matters

1 **9 Transitional—declarations about primary commercial**
2 **television broadcasting services**

3 *Scope*

4 (1) This item applies to a declaration:

5 (a) that the ACMA is empowered to make under subclause
6 41G(1) of Schedule 4 to the *Broadcasting Services Act 1992*
7 as amended by this Act; and

8 (b) that relates to a commercial television broadcasting licence to
9 which subsection 41B(2D) or (2DB) of the *Broadcasting*
10 *Services Act 1992* as amended by this Act applies.

11 *When declaration must come into force*

12 (2) Subclause 41G(1A) of Schedule 4 to the *Broadcasting Services Act*
13 *1992* as amended by this Act has effect, in relation to the declaration, as
14 if the reference in subparagraph (a)(ii) of that subclause to the
15 commencement of that subclause were a reference to the
16 commencement of this item.