



Commercial Television Conversion Scheme 1999

as amended

made under subclause 6 (1) of Schedule 4 to the

Broadcasting Services Act 1992

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Scheme Variation 2011 (No. 2)*

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Section 1

Part 1 Introduction**1 Name of scheme** [see Note 1]

This scheme is the *Commercial Television Conversion Scheme 1999*.

2 Commencement [see Note 1]

This scheme commences on gazettal.

3 Definitions — the dictionary etc

- (1) The dictionary at the end of this scheme defines certain words and expressions, and includes references to certain words and expressions that are defined elsewhere in this scheme (*signpost definitions*).

Example

The signpost definition '*remote licence area* see clause 5 of Schedule 4 to the Act.' means that the expression *remote licence area* is defined in clause 5 of Schedule 4 to the Act.

Note The dictionary only includes a signpost definition for a word or expression if the word or expression is used in more than 1 section.

- (2) The dictionary is part of this scheme.
- (3) A definition in this scheme applies to each use of the word or expression in the scheme, unless the contrary intention appears.

3A Application

- (1) This Scheme applies to commercial television broadcasting services, but does not apply:
- (a) to HDTV multi-channelled commercial television broadcasting services; and
 - (aa) to SDTV multi-channelled commercial television broadcasting services, other than a holder's primary commercial television broadcasting service; and
 - (b) in relation to a commercial television broadcasting licence if the licence was allocated under section 36 of the Act on or after 1 January 2007; and
 - (c) in relation to a commercial television broadcasting licence if the licence was allocated under subsection 40 (1) of the Act on or after 1 January 2007; and
 - (d) in relation to a commercial television broadcasting licence if the licence was allocated under section 38C of the Act.
- (2) In this scheme, for the purposes of considering whether the transmission of a service in SDTV digital mode achieved the same level of coverage and potential reception quality as was achieved by the transmission of the service in analog mode at a particular time, disregard:

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- (a) any transmissions in SDTV digital mode made under a licence allocated under section 38C of the Act; and
- (b) any transmissions made by a transmitter used for transmitting one or more commercial television broadcasting services in SDTV digital mode, authorised to operate under a transmitter licence issued under section 100 of the *Radiocommunications Act 1992*.

4 Publication

- (1) If this scheme requires the ACMA to publish a notice, the ACMA must publish it in at least 1 of the following ways:
 - (a) publishing it in a national newspaper;
 - (b) publishing it in each State and Territory in a daily newspaper circulating generally in the State or Territory;
 - (c) publishing it in the *Gazette*;
 - (d) publishing it on the ACMA's Internet site.
- (2) However, if the ACMA decides that the notice is of significance only to 1 or more States or Territories, the ACMA is only required to publish it in each relevant State or Territory in a daily newspaper circulating generally in the State or Territory.
- (3) As well as complying with subsection (1) or (2), the ACMA may publish the notice, statement or document in other ways.

Examples of other publication

Publication on the Internet, or in an industry or consumer publication.

5 Notes

A note in this scheme is an explanatory note, and does not form part of this scheme.

Note: simplified outline of the conversion scheme

Schedule 4 to the *Broadcasting Services Act 1992* sets out arrangements for the conversion, over time, of the transmission of television broadcasting services from analog mode to digital mode.

A program or service is broadcast or transmitted in analog mode if the program or service is broadcast or transmitted using an analog modulation technique.

A program or service is broadcast or transmitted in digital mode if the program or service is broadcast or transmitted using a digital modulation technique.

Under the arrangements:

- the ACMA is to formulate 2 schemes for conversion: a ***commercial television conversion scheme*** and a ***national television conversion scheme***.
- There is to be a ***simulcast period*** throughout which broadcasters are to transmit their television programs in analog and SDTV digital modes.

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- At the end of the simulcast period, analog transmissions are to cease.
- Broadcasters will be allowed to use spare transmission capacity on digital transmission channels to provide datacasting services.
- Owners and operators of broadcasting transmission towers must give digital broadcasters and datacasters access to the towers for the purposes of installing or maintaining digital transmitters.
- There are to be reviews before 1 January 2002, 1 January 2004, 1 January 2005 and 1 January 2006 of certain elements of the digital television regulatory regime.

The commercial television conversion scheme is to be divided into 2 Parts:

- Part A is to deal with licence areas that are not remote licence areas.
- Part B is to deal with remote licence areas.

Part A is itself divided into Divisions:

- Divisions 1 to 9 set out a core implementation process that will be followed by all broadcasters. The core process requires detailed preparatory documents, the approval of plans by the ACMA, the issuing of transmitter licences, the formal start of the simulcast period and the winding-up of existing analog broadcasting arrangements.
- Division 10 sets out special circumstances in which a broadcaster may obtain the ACMA's approval to transmit in digital mode, before the core process is completed, to test the broadcaster's ability to broadcast.
- Division 11 sets out other circumstances in which a broadcaster may obtain the ACMA's approval to transmit in digital mode before the core process is completed.
- Division 12 sets out administrative arrangements related to the conversion process.

Part A Licence areas that are not remote licence areas

Division 1 Technical documents

6 Documents about technical matters

- (1) the ACMA must prepare a document explaining the technical assumptions to which it will have regard when considering whether the transmission of a commercial television broadcasting service in SDTV digital mode will achieve the same level of coverage and potential reception quality as is achieved by the transmission of that service in analog mode.

Note Establishing the same level of coverage and potential reception quality for transmissions is one of the objectives of this scheme: see Act, paragraph 6 (3) (f) of Schedule 4.

- (2) the ACMA may also prepare a document explaining other general technical assumptions to which it will have regard when preparing or making a digital channel plan under Division 2.
- (3) If the ACMA prepares a document, it must publish a notice explaining where copies of the document may be obtained.

Note the ACMA's options for publishing the document are in section 4.

- (4) the ACMA may, at any time, vary a document it has prepared.
- (5) If the ACMA varies the document, it must publish a notice explaining where copies of the variation (or the document as varied) may be obtained.

Note the ACMA's options for publishing the document are in section 4.

Division 2 Digital channel plan

7 Digital channel plan

- (1) The allotment of additional channels to holders, allowing the holders to transmit programs in analog and digital modes during a simulcast period, will be done in a *digital channel plan* made by the ACMA under section 12.
- (1A) Subject to subsection (1B), a digital channel plan may allot channels to holders in a licence area, allowing the holders to transmit in digital mode after a simulcast period for the licence area.
- (1B) A digital channel plan must not allot channels to holders in a licence area if a television licence area plan for the licence area has come into force.

Note Clause 7AA of Schedule 4 to the Act provides that this Scheme, and a digital channel plan, to the extent to which they allot channels for a particular licence area, cease to have effect when the television licence area plan for that licence area comes into force.

Section 8

- (2) A digital channel plan may deal with:
- (a) all licence areas (other than licence areas dealt with in Part B of this scheme); or
 - (b) 1 or more specified licence areas (other than licence areas dealt with in Part B of this scheme); or
 - (c) a specified part of a licence area (other than a specified part of a licence area dealt with in Part B of this Scheme).

Note As a result of subsection (2), there may be more than 1 document available at any time with the title *digital channel plan*.

- (3) A digital channel plan may also deal with the allotment of additional channels to national broadcasters affected by the national television conversion scheme.
- (4) A digital channel plan may also deal with the allotment of channels during a simulcast period to holders of commercial television broadcasting licences allocated under section 38B of the Act.

8 Content of digital channel plan

- (1) A digital channel plan must allot channels to holders.
- (2) A digital channel plan must also explain any technical limitations on the use of a particular channel that the ACMA believes should be shown.
- (3) A digital channel plan must also explain whether the use of a channel depends on any event or circumstances described in the plan.

Example

If a channel is currently being used by another service, the use of the channel for digital transmission may depend on the other service vacating the channel, possibly by a particular date.

- (4) If a holder has made an election under paragraph 6 (5A) (d) or (5AA) (d) of Schedule 4 to the Act and the election remains in force:
- (a) a digital channel plan that relates to the holder may allot one or more channels to the holder for the purposes of transmitting 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; and
 - (b) a digital channel plan that relates to the holder must be directed towards the achievement of the applicable objectives mentioned in subclause 6 (5B) of Schedule 4 to the Act.

Note It is an objective in subclause 6 (5B) of Schedule 4 to the Act that a holder who makes an election under paragraph 6 (5A) (d) or (5AA) (d) of that Schedule is to be authorised, under one or more transmitter licences, to use one or more particular channels to transmit the commercial television broadcasting services to which the election relates in digital mode using multi-channelling transmission capacity on each channel.

- (5) If subsection (4) applies:
- (a) a digital channel plan may reserve channels for when the election is revoked;

- (b) if the election is not revoked before the end of the simulcast period for the relevant licence area — the ACMA may, at any time after the end of the simulcast period, vary the digital channel plan to remove a reservation mentioned in paragraph (a) under section 13 of this Scheme.

- (7) A digital channel plan may include other matters.

Example

Whether there is any channel capacity available for uses other than the conversion of existing broadcasting services.

9 Preparing draft digital channel plan

- (1) If the ACMA wishes to make a digital channel plan, it must prepare a draft version of the plan, having regard to the matters in this section.
- (2) the ACMA must have regard to the need to plan the most efficient use of the spectrum for broadcasting services or other uses, including the need for spectrum to be made available for allocation for the purposes of the transmission of datacasting services under, and in accordance with the conditions of, datacasting licences.
- (3) the ACMA must have regard to the policy objectives of this scheme mentioned in subclause 6 (3) of Schedule 4 to the Act.
- (4) the ACMA must have regard to the objectives set out in subclause 6 (5B) of Schedule 4 to the Act, for the purpose of ensuring that the digital channel plan makes arrangements for a holder that makes an election under paragraph 6 (5A) (d) or (5AA) (d) of that Schedule.
- (5) Subsection (4) applies while the election remains in force.
- (6) the ACMA may also have regard to the cost to holders, national broadcasters, tower owners, tower operators and site operators of:
 - (a) allotting particular channels; and
 - (b) digital transmission using the channels.
- (7) the ACMA may also have regard to the likely cost, and disruption, to consumers caused by having to receive commercial television broadcasting services in digital mode using allotted channels.
- (8) the ACMA may also have regard to any interference that digital transmission using a particular channel is likely to cause to analog transmission.
- (9) If a regional equalisation plan is in force for a particular area, the ACMA may also have regard to the plan.
- (10) the ACMA may also have regard to other matters it considers relevant.

Section 10

10 Notice inviting comments on draft digital channel plan

If the ACMA prepares a draft digital channel plan, it must publish a notice:

- (a) stating where copies of the draft plan may be obtained; and
- (b) inviting comments on the draft plan in the period specified in the notice.

Note the ACMA's options for publishing the notice are in section 4.

11 Revising draft digital channel plan

If the ACMA revises a draft digital channel plan, it must decide whether it is appropriate to invite comments under section 10 on the revised version.

12 Making digital channel plan

- (1) the ACMA may make a digital channel plan at any time after completing its consultation.
- (2) When considering the form of a plan, the ACMA must have regard to any comments it receives.
- (3) If the ACMA makes a digital channel plan, it must publish a notice stating where copies of the plan may be obtained.

Note the ACMA's options for publishing the notice are in section 4.

13 Varying digital channel plan

- (1) This section applies if the ACMA wishes to vary a digital channel plan made, or taken to be made, for this Scheme.
- (2) the ACMA must decide:
 - (a) whether it is appropriate to invite comments on the variation; and
 - (b) if so — whether it is appropriate for it to use the consultation procedure in section 10.

Note In some circumstances, it may be more efficient for the ACMA to use a different form of public consultation.

- (3) If the ACMA invites comments, it must have regard to any comments it receives when considering the form of a variation.
- (4) Also, the ACMA:
 - (a) must have regard to the matters in subsections 9 (2) and (3); and
 - (b) may have regard to the matters in subsections 9 (4) to (7) (inclusive).
- (5) Also, if the variation is likely to have an effect on an approved implementation plan, or on an implementation plan that has been submitted to the ACMA, the ACMA must have regard to the effect of the variation on the approved implementation plan.

- (5A) If the digital channel plan relates to a holder that has made an election under paragraph 6 (5A) (d) or (5AA) (d) of Schedule 4 to the Act and the election remains in force, the ACMA must have regard to the applicable objectives set out in subclause 6 (5B) of Schedule 4 to the Act.
- (6) the ACMA may vary the digital channel plan:
- (a) at any time after completing its consultation; or
 - (b) if there is no consultation — at any time.
- (7) If the ACMA varies the digital channel plan, it must publish a notice stating where copies of the variation may be obtained.

Note the ACMA's options for publishing the notice are in section 4.

14 Varying characteristics and plans

- (1) If there is no licence area plan in force for a licence area, the ACMA may vary the characteristics, including technical specifications, of a broadcasting service available in the licence area.

Note Under subclause 10 (1) of Schedule 4 to the Act, if there is a frequency allotment plan or a licence area plan in force for the area, the ACMA may amend the plan through the commercial television conversion scheme itself.

- (2) If the ACMA wishes to vary a characteristic, it must carry out the same consultations as are required under clause 18 of Schedule 4 to the Act for the variation of this scheme.
- (3) the ACMA must issue or vary transmitter licences in a way that makes them consistent with the characteristics.

Note See subsection 111(5) of the *Radiocommunications Act 1992*.

Division 3 Implementation plans

Subdivision A Purpose of implementation plans

15 Purpose

- (1) Under clause 9 of Schedule 4 to the Act, a holder must prepare, and submit to the ACMA, 1 or more *implementation plans* relating to digital transmission.
- (2) Each holder will be required to prepare an implementation plan, and give the ACMA related information, to advise the ACMA of how the holder proposes to:
- (a) transmit a commercial television broadcasting service in digital mode; and
 - (b) comply with the Act; and
 - (c) meet the objectives in subclause 6 (3) of Schedule 4 to the Act, and, in particular, paragraphs 6 (3) (f), (ga), (j) and (ja).

Section 17

Note about implementation plans

The implementation plan is a key step in the digital conversion process.

It is a holder's binding commitment, approved by the ACMA:

- to provide transmission of a commercial television broadcasting service in digital mode from specified sites; and
- to cover specified areas by specified dates;

to achieve the same level of coverage and potential reception quality as is achieved by the transmission of that service in analog mode.

Each holder for a licence area will be required to submit to the ACMA at least 1 implementation plan, dealing with important technical and administrative aspects of conversion to digital transmission in the area.

The holder may submit a single, comprehensive, plan for the area or the ACMA may allow the holder to submit a series of plans that develop the holder's digital transmission arrangements for the area in stages.

the ACMA will assess the draft plan (or a plan that is part of a series), and approve or reject it.

An approved implementation plan is the basis on which the holder will convert to digital transmission. However, as conversion proceeds, the holder may arrange for an approved implementation plan to be varied to reflect changed circumstances or needs that arise.

Subdivision B Approval of documents

17 Form of implementation plan

- (1) the ACMA must approve, in writing, the form of an implementation plan.
 - (1A) The plan must state:
 - (a) whether the plan constitutes the implementation plan for the licence area; or
 - (b) whether the plan is in a series of implementation plans that the holder intends to submit for the licence area.
 - (2) The plan must identify 1 or more sites that a holder proposes to use for digital transmission.

Note An implementation plan may not cover completely a whole licence area. Under Subdivision D of this Division, the ACMA may approve a proposal for a holder to submit a series of implementation plans that, when read together, will make comprehensive arrangements for the whole licence area.

- (3) The plan must identify 1 or more transmitter coverage areas to be served by transmitters that the holder proposes to use for digital transmission.
 - (4) For each of those transmitters, the plan must identify the date by which the transmitter will be used for digital transmission.

- (5) If the plan is the first in a series of plans, the plan must also state:
- (a) that it is the first plan in a series of sequentially numbered implementation plans that the holder intends to submit for the licence area; and
 - (b) the total number of plans that the holder intends to submit for the licence area; and
 - (c) the dates by which the holder expects to submit each implementation plan in the series; and
 - (d) the geographic area to which an implementation plan in the series will apply; and
 - (e) the reason why it is not practicable to submit a single plan for the licence area.
- (5A) A plan that is subsequent to the first in a series of plans must also state:
- (a) the number of the implementation plan in the series of plans for the licence area; and
 - (b) the geographic area to which the implementation plan applies; and
 - (c) the dates by which the holder expects to submit any remaining implementation plan in the series; and
 - (d) if any previous implementation plan that is part of the series has been approved (an *earlier approved plan*), the details of the earlier approved plan, including:
 - (i) its number in the series; and
 - (ii) the date when it was approved; and
 - (e) if the plan expressly or impliedly varies an earlier approved plan, the change being made and the reason for the change.
- (6) The plan may also deal with other relevant matters.
- (7) the ACMA must publish a notice stating where copies of the form of implementation plan may be obtained.

Note the ACMA's options for publishing the notice are in section 4.

18 Application form for approval of implementation plan

- (1) the ACMA must approve, in writing, an application form for approval of an implementation plan.
- (2) the ACMA must publish a notice stating where copies of the form may be obtained.

Note the ACMA's options for publishing the notice are in section 4.

19 Application form — essential content

- (1) The application form must require a holder to prepare the implementation plan using the approved form of the plan, and to submit the plan with the application form.

Note See section 17.

Section 20

- (2) For a holder for a regional licence area, the form must also require the holder to identify:
 - (a) the date on which the holder proposes to start digital transmission in the area; or
 - (b) the dates on which the holder proposes to start digital transmission in specified parts of the area.

20 Application form — optional content

- (1) The application form may require a holder to give information about the site of each transmitter, including:
 - (a) the name of the site; and
 - (b) the Australian map grid reference.
- (2) The form may require a holder to give information about the proposed emission characteristics of each transmitter, including:
 - (a) the frequency band; and
 - (b) the channel; and
 - (c) the polarisation; and
 - (d) the effective radiated power.
- (3) The form may require a holder to state that the holder has access to each site and broadcasting transmission tower it is proposing to use.
- (4) The form may require a holder to state that the holder has used its best endeavours to obtain any approvals required from third parties, and conducted necessary consultations.

Examples

- 1 Local government approval for use of a site.
 - 2 Consultation with other holders about co-location.
- (5) The form may require a holder to carry out a test or other analysis described in the form.
 - (6) The form may require a holder to give the ACMA other relevant information.

Subdivision D Approval of implementation plans

25 Application for approval of implementation plan

- (1) A holder must apply to the ACMA for approval of an implementation plan.
- (2) The holder must apply using the approved application form, and prepare the plan in the approved form.
- (3) To avoid doubt:
 - (a) strict compliance with the approved application form, and the approved form of the plan, is required; and

- (b) section 25C of the *Acts Interpretation Act 1901* does not apply to the approved application form and the approved form of the plan.

Note Section 25C of the *Acts Interpretation Act 1901* explains a general presumption that it is permissible for a person to use a prescribed form, or to comply substantially with the prescribed form.

27 Application date for implementation plans

- (1) the ACMA must identify a date on or before which a holder must apply for approval of an implementation plan for a licence area (the *application date*).
- (2) The application date for a licence area must be:
- (a) before the start of the simulcast period for the area; and
 - (b) after the ACMA has made a digital channel plan for any part of the area.

Note The simulcast period for each metropolitan licence area starts on 1 January 2001. The simulcast period for a regional licence area is set by the ACMA under section 48 of this Scheme.

- (3) the ACMA must consult with all holders for the licence area about an appropriate application date for the area and may consult with other persons.
- (4) the ACMA must advise each holder for the area of the application date as soon as practicable after it is identified.
- (5) If, after identifying an application date for a licence area, the ACMA approves a proposal for a holder for the area to submit a series of implementation plans for the area:
- (a) the holder is not required to submit a plan in the series on or before the application date; and
 - (b) the ACMA must identify another date which is the day on or before which a holder for the area must apply for approval of the first implementation plan in the series.

Example

A holder might intend to submit a single implementation plan for a whole area on or before the application date but then decide it would be more efficient to submit a series of plans.

- (6) A date identified under paragraph (5) (b) must be before the start of the simulcast period for the area.

Note The simulcast period for each metropolitan licence area starts on 1 January 2001. The simulcast period for a regional licence area is set by the ACMA under section 48 of this Scheme.

- (7) the ACMA must consult with all holders for the licence area about an appropriate date to be identified under paragraph 5 (b) and may consult with other persons.
- (8) the ACMA must advise each holder for the licence area of a date identified under paragraph (5) (b) as soon as practicable after it is identified.

Section 28

28 Considering the implementation plan

- (1) the ACMA must consider whether an implementation plan is suitable for approval, having regard to:
 - (a) the criteria in this section; and
 - (b) other matters that it considers relevant to efficient digital transmission and the efficient use of spectrum.
- (2) The application must be in strict compliance with the approved application form, and must have been made by the date specified under section 27.
- (3) The application must deal adequately with the matters with which the holder was required to deal by the application form.
- (4) Subject to subsection (8), the implementation plan must be consistent with the policy objectives in subclause 6 (3) of Schedule 4 to the Act, and, in particular, the objectives in paragraphs 6 (3) (f), (g), (ga), (j) and (ja).
- (5) the ACMA must have regard to the following matters in considering the policy objective in paragraph 6 (3) (f) of Schedule 4 to the Act, and the proposed commercial television broadcasting service in SDTV digital mode:
 - (a) the technical assumptions published for subsection 6 (1);
 - (b) whether the proposed emission characteristics of the service are consistent with the technical specifications set out in the digital channel plan for the relevant licence area or part of the licence area;
 - (c) whether the proposed emission characteristics of the service are satisfactory to ensure that the median field strength of transmission beyond the licence area does not exceed the ACMA's requirements;
 - (d) whether the service is likely to interfere with other services;
 - (e) whether the service will start on or before the start of the simulcast period;
 - (f) whether the policy objective will be met as soon as practicable after the start of the simulcast period;
 - (g) whether the holder proposes to transmit commercial television broadcasting services in analog and SDTV digital modes for the entire simulcast period;
 - (h) whether the holder has consulted other holders about the co-location of the holders' transmitters;
 - (i) whether the holder proposes to co-locate its own transmitters for transmitting commercial television broadcasting services in analog and SDTV digital modes;
 - (j) whether the holder has access to each site and broadcasting transmission tower it is proposing to use.

Note Section 29 sets out an additional matter that applies in specific circumstances.

- (6) However, if a holder has approval to submit a series of implementation plans for a licence area:
- (a) the ACMA must also be satisfied that, if a plan in the series expressly or impliedly varies an earlier approved plan in the series, the variation is suitable for approval under Division 4; and
 - (b) the ACMA must have regard to the matters in subsection (5) for the whole licence area and for the part of the area to which a plan in the series relates.

Note The arrangements in an implementation plan in a series may provide adequately for a specific part of a licence area, but may be inadequate in the context of the whole licence area. the ACMA will consider both the immediate and future adequacy of the arrangements.

- (7) If the plan is the first in a series of plans, the ACMA must consider, but is not required to agree to, the dates by which the holder expects to submit each implementation plan in the series.
- (8) If a licence has been allocated to a holder under section 38B of the Act, the ACMA:
- (a) must consider the policy objective in paragraph 6 (3) (g) of Schedule 4 to the Act; and
 - (b) must not consider the policy objectives in paragraphs 6 (3) (f), (ga), (j) and (ja) of that Schedule.

Note Licences issued under section 38B are not subject to the requirements of the Act relating to the simulcast period, as the service to which the licence relates must be provided only in digital mode: see subsection 38B (18).

29 Reduction in coverage and quality of analog transmission

- (1) This section applies if:
- (a) a holder for a licence area applies for approval of an implementation plan; and
 - (b) the holder has reduced the level of coverage and potential reception quality achieved by the transmission of the service in analog mode in the area from the level before Schedule 4 to the Act commenced.
- (2) the ACMA may ask the holder, in writing, to explain how the holder will ensure that transmission of the service in SDTV digital mode will achieve the same level of coverage and potential reception quality as was achieved by the transmission of the service in analog mode before the reduction.
- (3) the ACMA is not required to consider the application while it is waiting for the information.
- (4) If the ACMA acts under subsection (2), the holder's implementation plan must ensure that transmission of the service in SDTV digital mode will achieve the same level of coverage and potential reception quality as was achieved by the transmission of the service in analog mode before the reduction.

Section 30

30 Location of transmitters

- (1) This section applies if:
- (a) a holder for a licence area applies for approval of an implementation plan; and
 - (b) it is not practicable for the holder to co-locate, during the simulcast period for the licence area:
 - (i) a transmitter used by the holder to transmit the commercial television broadcasting service concerned in digital mode in that area; and
 - (ii) transmitters used by the holder to transmit that service in analog mode in that area.

Note See Act, Schedule 4, paragraph 6 (3) (g).

- (2) the ACMA must be satisfied that the location of the holder's transmitter in the holder's implementation plan is appropriate, having regard to:
- (a) the policy objectives of this scheme other than the objective in paragraph 6 (3) (g) of Schedule 4 to the Act; and
 - (b) the costs that the holder is likely to incur by choosing particular locations; and
 - (c) other matters relevant to the efficient use of transmitters, and the efficient use of spectrum.

31 Further information about application

- (1) the ACMA may, in writing, ask a holder to do 1 or more of the following things to help the ACMA to consider its decision on an application for approval of an implementation plan:
- (a) give the ACMA the information mentioned in the request;
 - (b) carry out a test or other analysis described in the request;
 - (c) do something else mentioned in the request.
- (2) The request may be to do, or repeat, something that was required in the application form.

Note See subsections 20 (5) and (6).

- (3) the ACMA is not required to consider the application while it is waiting for the holder to respond to the request.

32 Decision on application

- (1) If the ACMA considers that the application is suitable for approval, the ACMA must, in writing:
- (a) approve the application; and
 - (b) tell the holder of the decision as soon as practicable after approving the application.

- (2) If the ACMA considers that the application is not suitable for approval, the ACMA must, in writing:
- (a) refuse to approve the application; and
 - (b) tell the holder of the decision as soon as practicable after refusing to approve the application.
- (3) If the ACMA refuses to approve the application, the ACMA may:
- (a) decide a date on or before which the holder must apply for approval of another implementation plan; and
 - (b) tell the holder the date as soon as practicable.

Note A decision refusing to approve an application is reviewable by the AAT: see clause 62 of Schedule 4 to the Act.

- (4) If the plan is the first in a series of plans, the ACMA must also decide as many of the following dates as the ACMA considers appropriate:
- (a) dates on or before which the holder must apply for approval of implementation plans in the series;
 - (b) a date on or before which the holder must apply for approval of the last plan in the series.

Note Schedule 4 to the Act imposes a timetable for conversion to digital transmission, with simulcasts starting at different times in different licence areas. To support the timetable, the dates decided under subsection (4) may be later than dates set by the ACMA for applications for approval of single plans for whole licence areas.

33 New implementation plan

- (1) If the ACMA refuses to approve a holder's implementation plan, the holder may apply for approval of another plan.
- (2) The holder must apply for approval of the new plan by the date (if any) decided under paragraph 32 (3) (a).
- (3) In preparing a new plan, the holder is not required to deal with the same area, transmitters or other matters dealt with in the plan that was refused.
- (4) If the holder does not have approval to submit a series of plans for the licence area, the holder may apply for that approval after the plan has been refused.

Note After a refusal under section 32, it may be appropriate for the holder to change the holder's plan to a series of plans.

- (5) The holder must give the ACMA another application form with the implementation plan only if the ACMA asks the holder for it.
- (6) The holder must complete the application form (if required), and prepare the plan, in the way described in section 25.
- (7) the ACMA must deal with the application in the way described in sections 28 to 32 (inclusive).

Section 34

34 Date of effect of approved implementation plan

- (1) If the ACMA approves a holder's application for approval of an implementation plan for a licence area, the plan takes effect as the holder's *approved implementation plan* for the area on the day the ACMA approves the application.
- (2) If a holder has approval to submit a series of implementation plans for a licence area, and the ACMA approves an application for approval of a plan in the series, the plan takes effect as the holder's *approved implementation plan* for the appropriate part of the area on the day the ACMA approves the application.

35 Register of approved implementation plans

- (1) the ACMA is to maintain a register of approved implementation plans.
- (2) The register is to be open for public inspection, and a person is entitled to be given a copy of, or an extract from, any entry in the Register.
- (3) the ACMA may supply copies of or extracts from the register certified by a member, and a copy or extract so certified is admissible in evidence in all courts and proceedings without further proof or production of the original.

Subdivision E Transmitter licences

36 Transmitter licence

- (1) Subject to subsections (2), (3) and (4), if a holder's implementation plan is approved, the ACMA must issue to the holder a transmitter licence that authorises the operation of 1 or more specified radiocommunications transmitters for transmitting the broadcasting service concerned in digital mode in accordance with the holder's commercial television broadcasting licence.

Note See section 102A of the *Radiocommunications Act 1992*.

- (2) If the holder already holds a suitable transmitter licence for the licence area concerned, because of the approval of a previous implementation plan in a series, the ACMA may vary the licence, if it is necessary, to give the authorisation mentioned in subsection (1).

Note In the course of approving a series of implementation plans, transmitter licences may be issued that will support later plans in the series. In those circumstances, it may not be necessary for a new transmitter licence to be issued after the approval of each plan in the series.

- (3) If the holder already holds a transmitter licence for the licence area concerned, for test transmissions or for transmission in a regional area before the start of the simulcast period, the ACMA must vary the licence, if it is necessary, to give the authorisation mentioned in subsection (1).

Note Division 10 of this Part deals with transmitter licences issued to support test transmissions. Division 11 of this Part deals with transmitter licences issued to support transmission in a regional area before the start of the simulcast period.

- (4) If a holder has made an election under paragraph 6 (5A) (d) or (5AA) (d) of Schedule 4 to the Act, the ACMA must ensure that the licence as issued or varied will, while the election remains in force, authorise the operation of 1 or more transmitters for transmitting the commercial television broadcasting services that are, in accordance with the election, to be transmitted using multi-channelling transmission capacity.

Note See subclause 6 (5B) of Schedule 4 to the Act.

- (5) the ACMA must also:
- (a) identify conditions to which the licence should be subject, including (if appropriate) the date of effect of the licence; and
 - (b) issue or vary the licence including the conditions.

Note Schedule 4 to the Act imposes a timetable for conversion to digital transmission, with simulcasts starting at different times in different licence areas. To support the timetable, the ACMA may have to set priorities for carrying out its responsibilities.

Division 4 Variation of approved implementation plan

37 Application form for approval of variation

- (1) the ACMA must approve, in writing, an application form for approval of a variation of an approved implementation plan.
- (2) The form may require a holder to give the ACMA information.
- (3) the ACMA must publish a notice stating where copies of the form may be obtained.

Note the ACMA's options for publishing the notice are in section 4.

38 Application for approval of variation

- (1) A holder must apply to the ACMA for approval of a variation of an approved implementation plan.
- (2) However, the holder is not required to apply for approval in the circumstances mentioned in section 40.
- (3) The holder must apply using the approved application form.
- (4) To avoid doubt:
 - (a) strict compliance with the approved application form is required; and
 - (b) section 25C of the *Acts Interpretation Act 1901* does not apply to the approved application form.

Note Section 25C of the *Acts Interpretation Act 1901* explains a general presumption that it is permissible for a person to use a prescribed form, or to comply substantially with the prescribed form.

- (5) The holder's application must deal with 1 approved implementation plan only.

Section 38A

38A Holder must apply for variation in certain circumstances

- (1) A holder must apply to the ACMA for approval of a variation of the holder's approved implementation plan if:
 - (a) the Minister has determined that a specified area within the licence area for the holder is a local market area that will become a digital-only local market area; and
 - (b) the holder:
 - (i) has increased the level of coverage and potential reception quality of the holder's service in analog mode in the specified area since the commencement of Schedule 4 to the Act and before the day the Minister makes the determination; or
 - (ii) increases the level of coverage and potential reception quality of the holder's service in analog mode in the specified area on or after the day the Minister makes the determination.
- (2) A holder must apply to the ACMA for approval of a variation of the holder's approved implementation plan if:
 - (a) the Minister has determined that a specified area within the licence area for the holder is a local market area that will become a digital-only local market area; and
 - (b) the determination results in, or is likely to result in, the holder not being able to comply with the holder's approved implementation plan.

Note Under paragraph 7 (1) (k) of Schedule 2 to the Act, a licensee must comply with the requirements of this scheme.
- (3) However, the holder is not required to apply if the implementation plan relates solely to a commercial television broadcasting licence allocated under section 38B of the Act.
- (4) The holder must apply to A the ACMA:
 - (a) if subparagraph (1) (b) (i) applies — within 30 days of the Minister making the determination or within such longer period as is notified in writing by the ACMA; or
 - (b) if subparagraph (1) (b) (ii) applies — within 30 days of the holder increasing the level of coverage and potential reception quality of the holder's service in analog mode in the specified area or within such longer period as is notified in writing by the ACMA; or
 - (c) if subsection (2) applies — within 30 days of the Minister making the determination or within such longer period as is notified in writing by the ACMA.
- (5) Subsections 38 (3), (4) and (5) apply to an application under this section.
- (6) To avoid doubt, a reference in this section to a holder's approved implementation plan includes a reference to an approved implementation plan that is part of a series of implementation plans.

38B Reduction in coverage and quality of analog transmission

- (1) This section applies if:
 - (a) the Minister determines that a specified area included in a licence area is a local market area that will become a digital-only local market area; and
 - (b) on or after the day the Minister makes the determination:
 - (i) a holder applies for approval of a variation of the holder's approved implementation plan for the licence area; and
 - (ii) the holder reduces, or proposes to reduce, the level of coverage and potential reception quality achieved by the transmission of the commercial television broadcasting service in analog mode in the specified area from the level achieved immediately before the Minister determined that area to be a local market area.
- (2) the ACMA may ask the holder to explain:
 - (a) if the level of coverage and potential reception quality has been reduced — how the holder will ensure that the transmission of the service in SDTV digital mode will achieve the same level of coverage and potential reception quality in the specified area as was achieved by the transmission of the service in analog mode immediately before the reduction; or
 - (b) if the level of coverage and potential reception quality is proposed to be reduced — how the holder will maintain the same level of coverage and potential reception quality that was in effect in the specified area immediately before the Minister determined that area to be a local market area.
- (3) the ACMA is not required to consider the holder's application while it is waiting for the explanation.
- (4) If the ACMA acts under subsection (2), the holder's implementation plan, as varied, must include provisions to ensure that transmission of the commercial television broadcasting service in digital mode in the digital-only local market area will achieve the same level of coverage and potential reception quality as was achieved by the transmission of the analog service:
 - (a) if paragraph (2) (a) applies — immediately before the holder reduced the coverage and potential reception quality; or
 - (b) if paragraph (2) (b) applies — immediately before the Minister determined that area to be a local market area.
- (5) To avoid doubt, a reference in this section to a holder's approved implementation plan includes a reference to an approved implementation plan that is part of a series of implementation plans.

39 Considering application for variation

- (1) the ACMA must consider whether the application is suitable for approval.

Section 40

- (2) the ACMA must decide:
 - (a) whether it is appropriate to invite comments on the application; and
 - (b) if so — whether it is appropriate for it to use the same consultation procedure as is used in section 10 for digital channel plans.

Note The public consultation procedure in section 10 may be an efficient form of consultation for this purpose, but the ACMA does not assume that it will be the most efficient form in every case.

- (3) If the ACMA invites comments, it must have regard to any comments it receives when considering the application.
- (4) the ACMA must deal with the application by considering the plan, as it would be varied, in the way described in sections 28 to 32 (inclusive).

40 Variation of implementation plan in a series

- (1) This section applies if:
 - (a) the ACMA has approved a holder's application to submit a series of implementation plans for a licence area; and
 - (b) the holder applies for approval of an implementation plan in the series; and
 - (c) the plan expressly or impliedly varies an earlier approved implementation plan in the series.

- (2) The application for approval of the implementation plan is taken to include an application for approval of the variation of the earlier approved plan.

- (3) the ACMA must consider whether the application is suitable for approval.

- (4) the ACMA must decide:
 - (a) whether it is appropriate to invite comments on the application; and
 - (b) if so — whether it is appropriate for it to use the same consultation procedure as is used in section 10 for digital channel plans.

Note The public consultation procedure in section 10 may be an efficient form of consultation for this purpose, but the ACMA does not assume that it will be the most efficient form in every case.

- (5) If the ACMA invites comments, it must have regard to any comments it receives when considering the application.

- (6) the ACMA must:
 - (a) consider the earlier approved plan, as it would be varied, in the way described in sections 28 to 32 (inclusive); and
 - (b) have regard to the matters in subsection 28 (5) for the whole licence area and for the part of the area to which the earlier approved plan relates.

Note The arrangements in an implementation plan in a series may provide adequately for a specific part of a licence area, but may be inadequate in the context of the whole licence area. If an approved implementation plan is to be varied by a later plan in the series, the ACMA will consider both the immediate and future adequacy of that plan, as it would be varied.

41 Decision on variation

- (1) If the ACMA considers that the application (including an application for approval of the variation of an approved implementation plan, mentioned in subsection 40 (2)) is suitable for approval, the ACMA must, in writing:
 - (a) approve the application; and
 - (b) tell the holder of the decision as soon as practicable after approving the application.
- (2) If the ACMA considers that the application is not suitable for approval:
 - (a) the ACMA must, in writing:
 - (i) refuse to approve the application; and
 - (ii) tell the holder of the decision as soon as practicable after refusing to approve the application; and
 - (b) if the application was made under subsection 38A (1) or (2) — the holder must make a new application under the relevant subsection within 30 days of being told of the refusal or within such longer period as is notified in writing by the ACMA.

Note A decision refusing to approve the application is reviewable by the AAT: see Act, Schedule 4, clause 62.

42 Date of effect of variation

- (1) If the ACMA approves the variation of an approved implementation plan for a licence area, or a part of an area, the variation takes effect on the day the ACMA approves it.
- (2) The holder's implementation plan, as varied, takes effect as the holder's approved implementation plan for the area, or part of the area, on the day the ACMA approves it.

43 Register of approved implementation plans

If the ACMA approves the variation of an approved implementation plan for a licence area, the ACMA must include the plan, as varied, in the register of approved implementation plans.

44 Transmitter licence

- (1) If ACMA approves the variation of an approved implementation plan, ACMA must vary the transmitter licence issued under section 102A of the *Radiocommunications Act 1992*, if it is necessary as a result of the variation of the plan.
- (2) ACMA must:
 - (a) identify conditions to which the licence should be subject; and
 - (b) vary the licence including the conditions.

Section 45

Division 5 Circumstances where there is no approved implementation plan

45 No implementation plan

- (2) Subject to subsections (2A), (2B) and (2C) the ACMA must issue to the holder a transmitter licence that authorises the operation of 1 or more specified radiocommunications transmitters for transmitting a broadcasting service in digital mode in accordance with the holder's commercial television broadcasting licence.

Note Schedule 4 to the Act imposes a timetable for conversion to digital transmission, with simulcasts starting at different times in different licence areas. To support the timetable, the ACMA may have to set priorities for carrying out its responsibilities.

- (2A) Subsection (2) does not apply if the holder has an approved implementation plan in force at the start of the simulcast period for the licence area to which the plan relates.
- (2B) Subsection (2) does not apply if the holder has a transmitter licence, issued for Division 10 or 11 of Part A of this Scheme, at the start of the simulcast period for the licence area to which the transmitter licence relates.

Note Division 10 of this Part deals with transmitter licences issued to support test transmissions. Division 11 of this Part deals with transmitter licences issued to support transmission in a regional area before the start of the simulcast period.

- (2C) Subsection (2) does not apply if the holder was allocated a commercial television broadcasting licence under section 38A or 38B of the Act.

Note See section 102 of the *Radiocommunications Act 1992*.

- (3) the ACMA must also:
- (a) identify conditions to which the licence should be subject; and
 - (b) issue the licence including the conditions.
- (4) The licence must take effect at the start of the simulcast period.

Division 6 Datacasting services

46 Use of transmission capacity for datacasting services

- (1) A holder that holds a datacasting licence issued in accordance with Schedule 6 to the Act is permitted to use any spare transmission capacity that is available on the holder's digital transmission channels for the purpose of the transmission of either or both of the following:
- (a) datacasting services provided under, and in accordance with the conditions of, datacasting licences;
 - (b) designated teletext services.

Note See Act, Schedule 4, paragraph 6 (3) (k).

- (2) However, the holder must use the capacity in a way that is consistent with:
- (a) the holder's transmitter licence issued under section 102A of the *Radiocommunications Act 1992*; and
 - (b) the holder's datacasting licence issued under the Act.

Note A charge is imposed for the use of transmission capacity for datacasting: see the *Datacasting Charge (Imposition) Act 1998*.

Division 7 Starting SDTV digital transmission

47 Starting SDTV digital transmissions (metropolitan licence area)

Each holder of a commercial television broadcasting licence for a metropolitan licence area must commence transmitting the commercial television broadcasting service concerned in SDTV digital mode in that area on 1 January 2001.

Note See Act, Schedule 4, paragraph 6 (3) (a).

48 Starting SDTV digital transmissions (regional licence area)

- (1) the ACMA must determine a date, for a regional licence area, by which each holder of a commercial television broadcasting licence for the area is required to commence transmitting the commercial television broadcasting service concerned in SDTV digital mode in that area.

Note The date determined by the ACMA must be during the period:

- (a) beginning on 1 January 2001; and
- (b) ending immediately before 1 January 2004.

See Act, Schedule 4, paragraph 6 (3) (b).

- (2) the ACMA must consult with all holders for a regional licence area before determining a date for the area.
- (3) the ACMA must have regard to any comments it receives during consultation.
- (4) The date must be later than the day when the ACMA makes the determination.
- (5) the ACMA must publish the determination as soon as practicable after making it.

Note the ACMA's options for publishing the determination are in section 4.

49 Simulcast period

- (1) There is a transitional period for a licence area, to be known as the *simulcast period*.

Note See Act, Schedule 4, paragraph 6 (3) (c).

Section 50

- (2) A holder for the area must, throughout the simulcast period:
 - (a) transmit simultaneously the commercial television broadcasting service concerned in both analog mode and SDTV digital mode in so much of that area as is not a digital-only local market area; and
 - (b) ensure that no transmissions of the commercial television broadcasting service concerned in analog mode are made in so much of that area as is a digital-only local market area.
- (2A) For the purpose of determining whether a holder has complied, or is complying, with subsection (2), disregard any transmissions made by a transmitter used for transmitting one or more commercial television broadcasting services in SDTV digital mode, authorised to operate under a transmitter licence issued under section 100 of the *Radiocommunications Act 1992*.
- (3) For a metropolitan licence area, the simulcast period begins on 1 January 2001.
- (4) For a regional licence area, the simulcast period begins on the date determined by the ACMA under subsection 48 (1).

Note The Minister may determine simulcast periods for metropolitan and regional licence areas: see Act, Schedule 4, subparagraphs 6 (3) (c) (ii) and (iia) and clause 6A.

Division 8 Problems with starting or maintaining SDTV digital transmission

50 Surrender of transmitter licence (failure to commence SDTV digital transmission)

- (1) This section applies if a holder:
 - (a) does not commence transmission in SDTV digital mode for a licence area as mentioned in paragraph 6 (3) (a) or (b) of Schedule 4 to the Act; and
 - (b) does not satisfy the ACMA that there are exceptional circumstances.

Note 1 See Act, Schedule 4, subclause 8 (2).

Note 2 Paragraphs 6 (3) (a) and (b) of Schedule 4 to the Act set out policy objectives about when digital transmission is to start. The policy objectives are supported by sections 47 and 48.

- (2) The holder must surrender to the ACMA each transmitter licence authorising digital transmission in the area.

Note 1 If the ACMA decides that exceptional circumstances do not exist, it must notify the holder and give the holder the statements mentioned in clause 63 of Schedule 4 to the Act.

Note 2 A decision by the ACMA that exceptional circumstances do not exist is reviewable by the AAT: see Act, Schedule 4, clause 62.

- (3) The holder must comply with any requirements of the ACMA for surrendering a transmitter licence.

51 Surrender of transmitter licence (SDTV digital transmission does not continue throughout the simulcast period)

- (1) This section applies if a holder:
- (a) commences transmission in SDTV digital mode as mentioned in paragraph 6 (3) (a) or (b) of Schedule 4 to the Act; and
 - (b) ceases transmission in SDTV digital mode during the simulcast period for the licence area concerned.

Note 1 See Act, Schedule 4, subclause 8 (3).

Note 2 Paragraphs 6 (3) (a) and (b) of Schedule 4 to the Act are about when digital transmission is to start.

- (1A) This section does not apply to so much of the licence area that is a digital-only local market area.
- (2) the ACMA may give the holder a written direction to:
- (a) resume transmission in SDTV digital mode in the area within the period specified in the direction; and
 - (b) continue transmission in SDTV digital mode throughout the simulcast period for the area.
- (3) The direction must include:
- (a) the period (not longer than 1 month) within which the holder must comply with it; and
 - (b) a statement that the holder may give the ACMA written reasons identifying exceptional circumstances that prevent the holder from complying with the direction; and
 - (c) a statement that the holder must surrender each transmitter licence authorising transmission of a service in digital mode in the area if:
 - (i) the holder does not comply with the direction within the time mentioned in the direction; and
 - (ii) the holder does not satisfy the ACMA that exceptional circumstances exist.
- (4) The holder must surrender to the ACMA each transmitter licence authorising digital transmission in the area if the holder:
- (a) does not comply with a direction; and
 - (b) does not satisfy the ACMA that there are exceptional circumstances.

Note 1 If the ACMA decides that exceptional circumstances do not exist, it must notify the holder and give the holder the statements mentioned in clause 63 of Schedule 4 to the Act.

Note 2 A decision by the ACMA that exceptional circumstances do not exist is reviewable by the AAT: see Act, Schedule 4, clause 62.

- (5) The holder must comply with any requirements of the ACMA for surrendering a transmitter licence.

Section 52

52 Surrender of transmitter licence (SDTV or HDTV requirements contravened)

- (1) This section applies if the holder of a commercial television broadcasting licence for a licence area contravenes any of the following provisions or standards:
- (a) paragraph 7 (1) (ma) of Schedule 2 to the Act;
 - (b) a SDTV commercial television format standard;
 - (c) a HDTV commercial television format standard;
 - (d) subclause 37E (1) of Schedule 4 to the Act;
 - (e) a standard under subclause 37E (3) of Schedule 4 to the Act.

Note See subclause 8 (7) of Schedule 4 to the Act.

- (2) the ACMA may give the holder a written direction:
- (a) identifying the contravention; and
 - (b) directing the holder to comply with the provision or standard.
- (3) The direction must include:
- (a) a statement specifying the period (not longer than 1 month) within which the holder must comply with it; and
 - (b) a statement that the holder may give the ACMA written reasons identifying exceptional circumstances that prevent the holder from complying with the direction; and
 - (c) a statement that the holder must surrender each transmitter licence authorising transmission of a service in digital mode in the area if:
 - (i) the holder does not comply with the direction within the time mentioned in the direction; and
 - (ii) the holder does not satisfy the ACMA that exceptional circumstances exist; and
 - (d) a statement that the holder may apply for a transmitter licence to replace a transmitter licence surrendered under this section.

Note A transmitter licence issued to replace a surrendered transmitter licence will have less transmission capacity than that which was mentioned in the surrendered licence: see subsection 53 (6) of this scheme.

- (4) The holder must surrender to the ACMA each transmitter licence authorising digital transmission in the area if the holder:
- (a) does not comply with a direction; and
 - (b) does not satisfy the ACMA that there are exceptional circumstances.

Note 1 If the ACMA decides that exceptional circumstances do not exist, it must notify the holder and give the holder the statements mentioned in clause 63 of Schedule 4 to the Act.

Note 2 A decision by the ACMA that exceptional circumstances do not exist is reviewable by the AAT: see Act, Schedule 4, clause 62.

- (5) The holder must comply with any requirements of the ACMA for surrendering a transmitter licence.

53 Replacement transmitter licence after HDTV requirements contravened

- (1) This section applies if a holder has surrendered a transmitter licence on the grounds of a contravention of a provision or standard mentioned in paragraph 52 (1) (a), (c), (d) or (e).

Note See subclause 8 (8) of Schedule 4 to the Act. The provisions that are listed deal with HDTV requirements.

- (2) The holder may, in writing:
- (a) ask the ACMA to arrange for the issue of a transmitter licence to replace the surrendered licence; and
 - (b) explain why the replacement licence should be issued.
- (3) the ACMA:
- (a) may ask the holder for more information about the request; and
 - (b) is not required to consider the request while it is waiting for more information.
- (4) the ACMA must consider the request and:
- (a) approve it; or
 - (b) reject it.

Note 1 If the ACMA decides not to arrange for the issue of the replacement licence, it must notify the holder and give the holder the statements mentioned in clause 63 of Schedule 4 to the Act.

Note 2 A decision by the ACMA not to arrange for the issue of a replacement transmitter licence is reviewable by the AAT: see Act, Schedule 4, clause 62.

- (5) If the ACMA approves the request, it must issue a transmitter licence to replace the surrendered licence.

Note See section 102A of the *Radiocommunications Act 1992*.

- (6) However, the amount of transmission capacity covered by the replacement licence must be less than the amount of transmission capacity covered by the surrendered licence.

Note See subclause 8 (8) of Schedule 4 to the Act.

- (7) the ACMA must also:
- (a) identify conditions to which the licence should be subject; and
 - (b) issue the licence including the conditions.

Note Schedule 4 to the Act imposes a timetable for conversion to digital transmission, with simulcasts starting at different times in different licence areas. To support the timetable, the ACMA may have to set priorities for carrying out its responsibilities.

Section 53C

Division 8A Requirements for local market areas and digital-only local market areas

53C End of analog transmission in digital-only local market area and surrender of licences

- (1) At the time when a local market area becomes a digital-only local market area, all transmissions of a commercial television broadcasting service in analog mode made using a transmitter located in the area are to cease.

Note See Act, Schedule 4, paragraph 6 (3) (ga).

Division 9 End of simulcast period

57 End of analog transmission and surrender of licences

- (1) At the end of the simulcast period for a licence area, all transmissions of a commercial television broadcasting service in analog mode in the area are to cease.

Note See Act, Schedule 4, paragraph 6 (3) (h).

Division 10 Test transmissions

Note about testing

An essential part of the conversion to digital transmission is the need for holders to test their digital equipment, and their capacity to provide transmissions of adequate coverage and quality.

Test transmissions are likely to take various forms, from full transmissions of broadcast material to short transmissions of test signals, and may happen at any time before or during a simulcast period. Holders may need to use the channels allotted to them in the digital channel plan, or may want to use 'spare' channels for specific tests.

Although there may appear to be no visual difference between a test transmission and a 'regular' one, the Act treats them differently and allows this scheme to impose different requirements for the kinds of transmission. This is particularly significant for a holder that wishes to transmit before the start of the simulcast period for the holder's licence area — the transmission may be a test or it may be an early start of full digital transmission.

Under this Division, the ACMA will be responsible for approving all test transmissions, either by approving specific tests or by approving a testing plan submitted by a holder.

the ACMA wishes to draw the reader's attention to the provisions in this Division that state that permission to carry out tests in a particular way, or using a particular channel, is not a guarantee that a holder will have a permanent right, or obligation, to transmit in that way, or to use that channel.

Subdivision A Test transmissions

59 Test transmissions

- (1) A holder for a licence area may transmit, on a test basis, the commercial television broadcasting service concerned in digital mode in the area before or after the start of the simulcast period for the area.
- (2) The holder may transmit, on a test basis, material that is part of, or reasonably related to, the transmission of the commercial television broadcasting service concerned in digital mode in the area before or after the start of the simulcast period for the area.
- (3) However, the holder may transmit on a test basis only if:
 - (a) the holder complies with the arrangements in this Division; and
 - (b) the ACMA has given written permission for the transmission.

Subdivision B Approval of application form

60 Application form for approval of testing

- (1) the ACMA must approve, in writing, an application form for approval to transmit on a test basis.
- (2) the ACMA must publish a notice stating where copies of the application form may be obtained.

Note the ACMA's options for publishing the notice are in section 4.

61 Application form — essential content

- (1) The application form must require a holder to tell the ACMA which of the following circumstances applies:
 - (a) no digital channel plan is in force for the licence area in which the holder wishes to transmit on a test basis;
 - (b) a digital channel plan is in force for the licence area, and the holder wishes to transmit on a test basis using a channel allotted to the holder under the digital channel plan for the area;
 - (c) a digital channel plan is in force for the licence area, and the holder wishes to transmit on a test basis using a channel that was not allotted to the holder under the digital channel plan for the area.
- (2) The form must also require the holder:
 - (a) to identify the date on which the holder proposes to start transmission on a test basis; or
 - (b) to explain why it is not practicable for the holder to identify a date.
- (3) The form must also require the holder to tell the ACMA the period during which the holder expects to transmit on a test basis.

Section 62

62 Application form — optional content

- (1) The application form may require a holder to give information about the site of each transmitter to be used for transmission on a test basis, including:
 - (a) the name of the site; and
 - (b) the Australian map grid reference.
- (2) The form may require a holder to give information about the proposed emission characteristics of each transmitter to be used for transmission on a test basis, including:
 - (a) the frequency band; and
 - (b) the channel; and
 - (c) the polarisation; and
 - (d) the effective radiated power.
- (3) The form may require a holder to state that the holder has access to each site and broadcasting transmission tower it is proposing to use for transmission on a test basis.
- (4) The form may require a holder to state that the holder has used its best endeavours to obtain any approvals required from third parties, and conducted necessary consultations.

Examples

- 1 Local government approval for use of a site.
 - 2 Consultation with other holders about co-location.
- (5) The form may require a holder to carry out a test or other analysis described in the form.
 - (6) The form may require a holder to give the ACMA other information.

Subdivision C Approval to transmit on a test basis

63 Application for approval to transmit on test basis

- (1) A holder may apply to the ACMA, at any time, for approval to transmit on a test basis.

Note There is no assumption that test transmissions will only be needed, or approved, before the start of the simulcast period for a licence area. Testing may be needed at any time before or during the period.

- (2) The holder must apply using the approved application form.
- (3) To avoid doubt:
 - (a) strict compliance with the approved application form is required; and
 - (b) section 25C of the *Acts Interpretation Act 1901* does not apply to the approved application form.

Note Section 25C of the *Acts Interpretation Act 1901* explains a general presumption that it is permissible for a person to use a prescribed form, or to comply substantially with the prescribed form.

64 Considering decision

- (1) the ACMA must consider whether the application is suitable for approval, having regard to:
 - (a) the criteria in this section; and
 - (b) other matters that it considers relevant to efficient digital transmission and the efficient use of spectrum.
- (2) The application must be in strict compliance with the approved application form.
- (3) The application must deal adequately with the matters with which the holder was required to deal by the application form.
- (4) the ACMA must be satisfied that approving the transmissions on a test basis will:
 - (a) assist with developing a digital channel plan, or confirming that an existing digital channel plan is satisfactory; or
 - (b) assist with developing an implementation plan, or confirming that an existing approved implementation plan is satisfactory; or
 - (c) promote the policy objectives in subclause 6 (3) of Schedule 4 to the Act.

65 Further information about application

- (1) the ACMA may, in writing, ask a holder to do 1 or more of the following things to help the ACMA to consider its decision on an application:
 - (a) to give the ACMA the information mentioned in the request;
 - (b) to carry out a test or other analysis described in the request;
 - (c) to do something else mentioned in the request.
- (2) The request may be to do, or repeat, something that was required in the application form.

Note See subsections 62 (5) and (6).
- (3) the ACMA is not required to consider the application while it is waiting for the holder to respond to the request.

66 Decision on application

- (1) If the ACMA considers that the application is suitable for approval, the ACMA must, in writing:
 - (a) approve the application; and
 - (b) tell the holder of the decision as soon as practicable after approving the application.
- (2) If section 68 or 73 applies, the ACMA must include in the approval the following statements:
 - (a) the approval does not, of itself, authorise transmission on a test basis; and

Section 67

- (b) the ACMA must be able to allocate part of the radiofrequency spectrum under section 34 of the Act before the holder will be issued with a transmitter licence.
- (3) the ACMA may include any of the following matters in the approval:
 - (a) 1 or more dates on which the holder is permitted to transmit on a test basis;
 - (b) a period in which the holder is permitted to transmit on a test basis;
 - (c) technical requirements with which the holder must comply when transmitting on a test basis;
 - (d) conditions to which the approval is subject, including (if appropriate) a condition that transmissions on a test basis may only be carried out in accordance with a licence mentioned in this Division.
- (4) If the ACMA considers that the application is not suitable for approval, the ACMA must, in writing:
 - (a) refuse to approve the application; and
 - (b) tell the holder of the decision as soon as practicable after refusing to approve the application.
- (5) Application may be made to the AAT for review of a decision refusing to approve the application.

Subdivision D Test transmissions if there is no digital channel plan

67 Application of Subdivision D

This Subdivision applies if:

- (a) the ACMA approves a holder's application for approval to transmit on a test basis; and
- (b) there is no digital channel plan in force for the licence area, or part of a licence area, where the holder wishes to transmit on a test basis.

68 Allocation of spectrum

- (1) the ACMA must consider whether to allocate part of the radiofrequency spectrum to the holder under section 34 of the Act for the purpose of the transmission.
- (2) However, the ACMA does not guarantee that it will be able to allocate a part of the spectrum.
- (3) The holder is not permitted to transmit if the ACMA has not allocated a part of the spectrum.
- (4) If the ACMA makes a determination allocating part of the spectrum, it must publish a notice either:
 - (a) setting out the determination; or

(b) stating where copies of the determination may be obtained.

Note the ACMA's options for publishing the notice are in section 4.

69 the ACMA to issue transmitter licence

(1) This section applies if the ACMA has made a determination under section 34 of the Act, allocating part of the radiofrequency spectrum to the holder, for the purpose of transmitting a commercial television broadcasting service in digital mode on a test basis.

(2) Subject to subsection (2A), the ACMA must issue to the holder a transmitter licence that authorises the operation of 1 or more specified radiocommunications transmitters for transmitting the commercial television broadcasting service concerned in digital mode on a test basis in accordance with the holder's commercial television broadcasting licence.

Note See section 102A of the *Radiocommunications Act 1992*.

(2A) Subsection (2) does not apply if the holder was allocated a commercial television broadcasting licence under section 38A or 38B of the Act and:

(a) if the licence was allocated under section 38A – the holder made an election under paragraph 6 (5A) (d) or (5AA) (d) of Schedule 4 to the Act; or

(b) if the licence was allocated under section 38B – the holder made an election under paragraph 6 (5A) (d) of Schedule 4 to the Act; and

the election is still in force at the time the holder applied for approval to transmit on a test basis.

(3) the ACMA must also:

(a) identify conditions to which the licence should be subject, including (if appropriate) the date of effect of the licence; and

(b) issue the licence including the conditions.

Note Schedule 4 to the Act imposes a timetable for conversion to digital transmission, with simulcasts starting at different times in different licence areas. To support the timetable, the ACMA may have to set priorities for carrying out its responsibilities.

(4) the ACMA does not guarantee or imply that the channel it allots to the holder for transmission on a test basis will be allotted to the holder when the ACMA makes the digital channel plan.

(5) The period during which the holder may transmit on a test basis is the period for which the ACMA allocates part of the radiofrequency spectrum to the holder under section 34 of the Act for the purpose of transmitting a commercial television broadcasting service in digital mode on a test basis.

Note See subclause 6 (5) of Schedule 4 to the Act.

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**Subdivision E Test transmissions if there is a digital channel plan
(tests using allotted channel)**

70 Application of Subdivision E

This Subdivision applies if:

- (a) the ACMA approves a holder's application for approval to transmit on a test basis; and
- (b) there is a digital channel plan in force for the licence area, or part of a licence area, where the holder wishes to transmit on a test basis; and
- (c) the holder wishes to transmit using a channel allotted to the holder by the digital channel plan.

71 the ACMA to issue transmitter licence

- (1) Subject to subsection (1A), the ACMA must issue to the holder a transmitter licence that authorises the operation of 1 or more specified radiocommunications transmitters for transmitting a commercial television broadcasting service on a test basis in digital mode in accordance with the holder's commercial television broadcasting licence.

Note See section 102A of the *Radiocommunications Act 1992*.

- (1A) Subsection (1) does not apply if the holder was allocated a commercial television broadcasting licence under section 38A or 38B of the Act and:
 - (a) if the licence was allocated under section 38A – the holder made an election under paragraph 6 (5A) (d) or (5AA) (d) of Schedule 4 to the Act; or
 - (b) if the licence was allocated under section 38B – the holder made an election under paragraph 6 (5A) (d) of Schedule 4 to the Act; andthe election is still in force at the time the holder applied for approval to transmit on a test basis.
- (2) the ACMA must also:
 - (a) identify conditions to which the licence should be subject, including (if appropriate) conditions about:
 - (i) the date of effect of the licence; and
 - (ii) the period during which the holder may transmit on a test basis; and
 - (b) issue the licence including the conditions.

Note 1 See subclause 6 (5) of Schedule 4 to the Act.

Note 2 Schedule 4 to the Act imposes a timetable for conversion to digital transmission, with simulcasts starting at different times in different licence areas. To support the timetable, the ACMA may have to set priorities for carrying out its responsibilities.

- (3) the ACMA does not guarantee or imply that the characteristics, including technical specifications, in the transmitter licence issued under section 102A of the *Radiocommunications Act 1992* for transmission on a test basis will be included in any transmitter licence held by the holder after the holder ceases testing.

Note A licence for test transmissions may include characteristics that are appropriate for testing, but not for general commercial broadcasting: for example, power restrictions or a requirement to use equipment in a particular way.

Subdivision F Test transmissions if there is a digital channel plan (tests not using allotted channel)

72 Application of Subdivision F

This Subdivision applies if:

- (a) the ACMA approves a holder's application for approval to transmit on a test basis; and
- (b) there is a digital channel plan in force for the licence area, or part of a licence area, where the holder wishes to transmit on a test basis; and
- (c) the holder wishes to transmit using a channel that has not been allotted to the holder by the digital channel plan.

73 Allocation of spectrum

- (1) the ACMA must consider whether to allocate part of the radiofrequency spectrum to the holder under section 34 of the Act for the purpose of the transmission.
- (2) However, the ACMA does not guarantee that it will be able to allocate a part of the spectrum.
- (3) The holder is not permitted to transmit if the ACMA has not allocated a part of the spectrum.
- (4) If the ACMA makes a determination allocating part of the spectrum, it must publish a notice either:
 - (a) setting out the determination; or
 - (b) stating where copies of the determination may be obtained.

Note The ACMA's options for publishing the notice are in section 4.

74 the ACMA to issue transmitter licence

- (1) This section applies if the ACMA has made a determination under section 34 of the Act, allocating part of the radiofrequency spectrum to the holder, for the purpose of transmitting a commercial television broadcasting service in digital mode on a test basis.

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- (2) Subject to subsection (2A), the ACMA must issue to the holder a transmitter licence that authorises the operation of 1 or more specified radiocommunications transmitters for transmitting a commercial television broadcasting service in digital mode on a test basis in accordance with the holder's commercial television broadcasting licence.

Note See section 102A of the *Radiocommunications Act 1992*.

- (2A) Subsection (2) does not apply if the holder was allocated a commercial television broadcasting licence under section 38A or 38B of the Act and:
- (a) if the licence was allocated under section 38A – the holder made an election under paragraph 6 (5A) (d) or 6 (5AA) (d) of Schedule 4 to the Act; or
 - (b) if the licence was allocated under section 38B – the holder made an election under paragraph 6 (5A) (d) of Schedule 4 to the Act; and the election is still in force at the start of the simulcast period.
- (3) the ACMA must also:
- (a) identify conditions to which the licence should be subject, including (if appropriate) conditions about:
 - (i) the date of effect of the licence; and
 - (ii) the period during which the holder may transmit on a test basis; and
 - (b) issue the licence including the conditions.

Note Schedule 4 to the Act imposes a timetable for conversion to digital transmission, with simulcasts starting at different times in different licence areas. To support the timetable, the ACMA may have to set priorities for carrying out its responsibilities.

- (4) the ACMA does not guarantee or imply that:
- (a) the channel used by the holder for transmission on a test basis will be made available to the holder for any other purpose; or
 - (b) the characteristics, including technical specifications, in the transmitter licence issued under section 102A of the *Radiocommunications Act 1992* for transmission on a test basis will be included in any transmitter licence held by the holder after the holder ceases testing.

Note A licence for test transmissions may include characteristics that are appropriate for testing, but not for general commercial broadcasting: for example, power restrictions or a requirement to use equipment in a particular way.

- (5) The period during which the holder may transmit on a test basis is the period for which the ACMA allocates part of the radiofrequency spectrum to the holder under section 34 of the Act for the purpose of transmitting a commercial television broadcasting service in digital mode on a test basis.

Note See subclause 6 (5) of Schedule 4 to the Act.

Subdivision G Test data

75 Test data

- (1) the ACMA may, in writing, ask a holder to give the ACMA information about transmissions on a test basis, including:
 - (a) the holder's test data; and
 - (b) the holder's technical conclusions from the test data.
- (2) the ACMA may also ask the holder, in writing, to give the information in a particular way.
- (3) The holder must comply with a request as soon as practicable.

**Division 11 Transmission in regional licence area
before start of simulcast period**

Note about 'early' transmissions

Schedule 4 to the Act imposes a timetable for conversion to digital transmission, with the conversion process starting at different times in different licence areas.

The timetable, and other arrangements in this scheme, assume that a holder will make arrangements with the intention of broadcasting in digital mode from the start of the simulcast period applicable to the holder. However, the timetable does not prevent a holder for a regional licence area from starting transmissions before the start of the simulcast period.

It is important to note that some holders may be broadcasting before the start of simulcast periods to test their digital equipment, and their capacity to provide transmissions of adequate coverage and quality. Other holders will be broadcasting their regular digital services under an approved implementation plan.

Although there may appear to be no visual difference between a test transmission and 'regular' transmission, the Act treats them differently and allows this scheme to impose different requirements for the kinds of transmission.

Under this Division, the holder will need to apply to the ACMA for approval to transmit a regular digital service before the start of the simulcast period. the ACMA will approve an application if certain requirements are met.

The holder may, or may not, have an approved implementation plan in force at the start of this period of early transmission. If the holder has an approved implementation plan, the holder is likely to be seeking to start transmission earlier than the date of effect stated in the holder's licence.

If the holder does not have an approved implementation plan, the ACMA expects the holder to prepare and submit a plan in accordance with Division 3 of this Part. If the holder does not have an approved plan by the deadline for submitting a plan, or by the start of the simulcast period, the ACMA will decide whether it is appropriate to allow the holder to continue to transmit without an approved plan.

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76 Division 11 does not apply to testing

This Division does not apply to a holder that proposes to transmit, on a test basis, a commercial television broadcasting service in digital mode.

Note See Division 10 of this Part.

77 Application form for approval to transmit before start of simulcast period

- (1) the ACMA must approve, in writing, an application form for approval to transmit before the start of the simulcast period.
- (2) the ACMA must publish a notice stating where copies of the form may be obtained.

Note the ACMA's options for publishing the notice are in section 4.

78 Application form — content

The application form must require a holder to identify the date on which the holder proposes to start digital transmission in the area.

79 Application for approval to transmit before start of simulcast period

A holder for a regional licence area may apply to the ACMA for approval to transmit a commercial television broadcasting service in digital mode in the area, or a part of the area:

- (a) on or after 1 January 2001; and
- (b) before the start of the simulcast period for that area.

Note See Act, Schedule 4, subclause 6 (4).

80 Considering decision on application

- (1) the ACMA must consider whether the application is suitable for approval, having regard to:
 - (a) the criteria in this section; and
 - (b) other matters that it considers relevant to efficient digital transmission and the efficient use of spectrum.
- (2) The application must deal adequately with the matters with which the holder was required to deal by the application form.
- (3) The digital channel plan for the area, or part of the area, must be in force.
- (4) The application must be consistent with the policy objectives in subclause 6 (3) of Schedule 4 to the Act, and, in particular, the objectives in paragraphs 6 (3) (f), (g) and (j).

81 Further information about application

- (1) the ACMA may, in writing, ask a holder to do 1 or more of the following things to help the ACMA to consider its decision on the application:
 - (a) to give the ACMA the information mentioned in the request;
 - (b) to carry out a test or other analysis described in the request;
 - (c) to do something else mentioned in the request.
- (2) the ACMA is not required to consider the application while it is waiting for the holder to respond to the request.

82 Decision on application

- (1) If the ACMA considers that the application is suitable for approval, the ACMA must, in writing:
 - (a) approve the application; and
 - (b) tell the holder of the decision as soon as practicable after approving the application.
- (2) If the ACMA considers that the application is not suitable for approval, the ACMA must, in writing:
 - (a) refuse to approve the application; and
 - (b) tell the holder of the decision as soon as practicable after refusing to approve the application.
- (3) Application may be made to the AAT for review of a decision refusing to approve the application.

83 Transmitter licence — general

- (1) Subject to subsections (1A) and (2), if the ACMA approves the application, the ACMA must issue to the holder a transmitter licence that authorises the operation of 1 or more specified radiocommunications transmitters for transmitting a broadcasting service in digital mode in accordance with the holder's commercial television broadcasting licence.

Note See section 102A of the *Radiocommunications Act 1992*.

- (1A) Subsection (1) does not apply if the holder was allocated a commercial television broadcasting licence under section 38A or 38B of the Act and:
 - (a) if the licence was allocated under section 38A – the holder made an election under paragraph 6 (5A) (d) or (5AA) (d) of Schedule 4 to the Act; or
 - (b) if the licence was allocated under section 38B – the holder made an election under paragraph 6 (5A) (d) of Schedule 4 to the Act; and

the election is still in force at the time the holder applied for approval to transmit before the start of the simulcast period.

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- (2) However, if the holder already holds a transmitter licence for test transmissions in the licence area concerned, the ACMA must vary the licence, if it is necessary, to give the authorisation mentioned in subsection (1).

Note 1 Division 10 of this Part deals with transmitter licences issued to support test transmissions.

Note 2 Schedule 4 to the Act imposes a timetable for conversion to digital transmission, with simulcasts starting at different times in different licence areas. To support the timetable, the ACMA may have to set priorities for carrying out its responsibilities.

- (3) the ACMA must also:
- (a) identify conditions to which the licence should be subject, including (if appropriate):
- (i) a condition about the date of effect of the licence; and
 - (ii) a condition that the licence is to be in force until the date mentioned in section 27; and
- (b) issue or vary the licence including the conditions.

Note The date mentioned in section 27 is the date on or before which a holder is required to apply for approval of an implementation plan.

- (4) the ACMA will ensure, as far as practicable, that the channel used by the holder for transmission will be made available to the holder during the simulcast period.
- (5) However, the ACMA does not guarantee or imply that the channel will be made available.

Examples of problems with making channel available during simulcast period

- 1 The use of the channel is inconsistent with the digital channel plan for the area.
- 2 The holder is required under this Scheme to surrender a transmitter licence relating to the channel.
- 3 A transmitter licence relating to the channel is cancelled under the Act.

- (6) Also, the ACMA does not guarantee or imply that the characteristics, including technical specifications, in the transmitter licence will be included in any transmitter licence subsequently issued to the holder for the area or part of the area.

84 Transmitter licence — no application for approval of implementation plan by application date

- (1) This section applies if:
- (a) a holder holds a transmitter licence mentioned in section 83; and
 - (b) the holder intends to transmit before the holder has an approved implementation plan in force for the licence area, or the relevant part of the licence area; and
 - (c) the holder has not applied for approval of an implementation plan for the area, or part of the area, on or before the date mentioned in section 27.

Note The date mentioned in section 27 is the date on or before which a holder is required to apply for approval of an implementation plan.

- (2) the ACMA must decide, as soon as practicable:
 - (a) to vary or renew the transmitter licence so that the transmitter licence ceases to be in force at the start of the simulcast period; or
 - (b) if the licence has ceased to be in force — to issue a new transmitter licence that is identical to the previous licence, except that the new transmitter licence will cease to be in force at the start of the simulcast period; or
 - (c) not to vary, renew or issue a transmitter licence.
- (3) the ACMA must consider whether allowing the transmissions to continue under the varied, renewed or new transmitter licence will:
 - (a) assist with developing a digital channel plan, or confirming that an existing digital channel plan is satisfactory; or
 - (b) assist with developing an implementation plan, or confirming that an existing approved implementation plan is satisfactory; or
 - (c) promote the policy objectives in subclause 6 (3) of Schedule 4 to the Act.
- (4) the ACMA may, in writing, ask the holder to do 1 or more of the following things to help the ACMA consider its decision:
 - (a) give the ACMA the information mentioned in the request;
 - (b) carry out a test or other analysis described in the request;
 - (c) do something else mentioned in the request.
- (5) As soon as practicable after making a decision under subsection (2), the ACMA must:
 - (a) vary or renew the transmitter licence; or
 - (b) issue a new transmitter licence; or
 - (c) take no action;and tell the holder in writing of its decision.
- (6) Application may be made to the AAT for review of a decision not to vary, renew or issue the licence.

85 Transmitter licence — unapproved application for approval of implementation plan by application date

- (1) This section applies if:
 - (a) a holder holds a transmitter licence mentioned in section 83; and
 - (b) the holder intends to transmit before the holder has an approved implementation plan in force for the licence area, or the relevant part of the licence area; and
 - (c) the holder applies for approval of an implementation plan for the area, or part of the area, by the date mentioned in section 27, and has not withdrawn the application; and

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- (d) the ACMA has not approved the application by the date mentioned in section 27.

Note The date mentioned in section 27 is the date on or before which a holder is required to apply for approval of an implementation plan.

- (2) the ACMA must decide, as soon as practicable:
- (a) to vary or renew the transmitter licence so that the transmitter licence ceases to be in force at the start of the simulcast period; or
 - (b) if the licence has ceased to be in force — to issue a new transmitter licence that is identical to the previous licence, except that the new transmitter licence will cease to be in force at the start of the simulcast period; or
 - (c) not to vary, renew or issue a transmitter licence.
- (3) the ACMA must consider whether allowing the transmissions to continue under the varied, renewed or new transmitter licence will:
- (a) assist with developing a digital channel plan, or confirming that an existing digital channel plan is satisfactory; or
 - (b) assist with developing an implementation plan, or confirming that an existing approved implementation plan is satisfactory; or
 - (c) promote the policy objectives in subclause 6 (3) of Schedule 4 to the Act.
- (4) the ACMA may, in writing, ask the holder to do 1 or more of the following things to help the ACMA to consider its decision:
- (a) give the ACMA the information mentioned in the request;
 - (b) carry out a test or other analysis described in the request;
 - (c) do something else mentioned in the request.
- (5) As soon as practicable after making a decision under subsection (2), the ACMA must:
- (a) vary or renew the transmitter licence; or
 - (b) issue a new transmitter licence; or
 - (c) take no action;
- and tell the holder in writing of its decision.
- (6) Application may be made to the AAT for review of a decision not to vary, renew or issue the licence.

86 Transmitter licence — no application, or unapproved application, for approval of implementation plan by start of simulcast period

- (1) This section applies if:
- (a) a holder holds a transmitter licence:
 - (i) mentioned in section 83; or
 - (ii) varied, renewed or issued as described in subsection 84 (2) or 85 (2); and

- (b) the holder intends to transmit before the holder has an approved implementation plan in force for the licence area, or the relevant part of the licence area; and
 - (c) the holder has not applied for approval of an approved implementation plan for the area, or part of the area, by the start of the simulcast period for the area.
- (2) This section also applies if:
- (a) a holder holds a transmitter licence:
 - (i) mentioned in section 83; or
 - (ii) varied, renewed or issued as described in subsection 84 (2) or 85 (2); and
 - (b) the holder intends to transmit before the holder has an approved implementation plan in force for the licence area, or the relevant part of the licence area; and
 - (c) the holder applies for approval of an implementation plan for the area, or part of the area, by the start of the simulcast period for the area; and
 - (d) the ACMA has not approved the application by the start of the simulcast period.
- (3) the ACMA must decide, as soon as practicable:
- (a) to vary or renew the transmitter licence so that the transmitter licence ceases to be in force for a period specified by the ACMA; or
 - (b) if the licence has ceased to be in force — to issue a new transmitter licence that is identical to the previous licence, except that the new transmitter licence will cease to be in force for a period specified by the ACMA; or
 - (c) not to vary, renew or issue a transmitter licence.
- (4) the ACMA must consider whether allowing the transmissions to continue under the varied, renewed or new transmitter licence will:
- (a) assist with developing a digital channel plan, or confirming that an existing digital channel plan is satisfactory; or
 - (b) assist with developing an implementation plan, or confirming that an existing approved implementation plan is satisfactory; or
 - (c) promote the policy objectives in subclause 6 (3) of Schedule 4 to the Act.
- (5) the ACMA may, in writing, ask the holder to do 1 or more of the following things to help the ACMA to consider its decision:
- (a) give the ACMA the information mentioned in the request;
 - (b) carry out a test or other analysis described in the request;
 - (c) do something else mentioned in the request.
- (6) As soon as practicable after making a decision under subsection (3), the ACMA must:
- (a) vary or renew the transmitter licence; or
 - (b) issue a new transmitter licence; or

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- (c) take no action;
and tell the holder in writing of its decision.
- (7) Application may be made to the AAT for review of a decision not to vary, renew or issue the licence.

87 Transmitter licence — starting before start date

- (1) A holder may apply to the ACMA to vary the date of effect of a transmission licence if:
 - (a) the holder has an approved implementation plan in force for the licence area, or the relevant part of the licence area; and
 - (b) the holder holds a transmitter licence relating to the approved implementation plan; and
 - (c) the transmitter licence specifies a date of effect; and
 - (d) the holder wishes to start transmission in the area or part of the area before the date of effect.

Note the ACMA recognises the possibility that a holder with an approved implementation plan, and a specified start date, may subsequently be in a position to start transmission earlier than expected.

- (2) the ACMA must decide, as soon as practicable:
 - (a) to vary the date of effect of the transmitter licence so that it takes effect from an earlier date nominated by the ACMA; or
 - (b) not to vary the date of effect of the transmitter licence.
- (3) As soon as practicable after making a decision, the ACMA must:
 - (a) vary the date of effect of the transmitter licence; or
 - (b) take no action;
and tell the holder in writing of its decision.
- (4) Application may be made to the AAT for review of a decision not to vary the date of effect of a transmitter licence.

Division 12 Other consultation

88 Consultation with holders of commercial television broadcasting licences

the ACMA must consult holders of commercial television broadcasting licences about the implementation of this scheme.

Note See Act, Schedule 4, paragraph 6 (3) (l).

89 Consultation with tower owners and tower operators

If the implementation of this scheme affects a particular broadcasting transmission tower, the ACMA must consult the tower owner and the tower operator.

Note See Act, Schedule 4, paragraph 6 (3) (m).

Part B Remote licence areas

Division 1 Policy objectives

90 Policy objectives for Part B

Part B of this scheme is directed towards ensuring the achievement of the following policy objectives:

- (a) the policy objective mentioned in subclause 6 (6A) of Schedule 4 to the Act;
- (b) the policy objective that a holder should be authorised, under 1 or more transmitter licences, to use 1 or more additional channels to transmit the commercial television broadcasting service concerned in digital mode in the holder's licence area;
- (c) the policy objective that each additional channel should occupy 7 MHz of bandwidth;
- (d) the policy objective that each exempt remote area service for a remote licence area should be authorised to be transmitted in SDTV digital mode using multi-channelling transmission capacity while an election under subclause 6 (7B) of Schedule 4 to the Act is in force for the service;
- (e) the policy objective that, where and when practicable, there should be a simulcast period during which the holder of a commercial television broadcasting licence for a remote licence area would be required to transmit simultaneously in analog mode and SDTV digital mode in so much of that area as is not a digital-only local market area;
- (f) the policy objective that, before the simulcast period for a licence area has commenced, a holder may be allowed to transmit the commercial television broadcasting service concerned in digital mode in that area, so long as that transmission complies with such requirements as are ascertained in accordance with Part B of this scheme;
- (g) the policy objective that, before the simulcast period for a licence area has commenced, a holder may be allowed to transmit, on a test basis, the commercial television broadcasting service concerned in digital mode in that area, so long as that transmission:
 - (i) complies with the requirements of Part B of this scheme; and
 - (ii) occurs during a period ascertained in accordance with Part B of this scheme;
- (h) the policy objective that, as soon as practicable after the start of the simulcast period for a licence area, and throughout the remainder of that period, the transmission of a commercial television broadcasting service in SDTV digital mode in so much of that area as is not a digital-only local market area should achieve the same level of coverage and potential reception quality as is achieved by the transmission of that service in analog mode in so much of that area as is not a digital-only local market area;

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- (i) the policy objective that, during the simulcast period for a licence or coverage area, there should, as far as practicable, be co-location of:
 - (i) transmitters used by a holder for that area to transmit the television broadcasting service concerned in digital mode in so much of that area as is not a digital-only local market area; and
 - (ii) transmitters used by a holder to transmit that service in analog mode in so much of that area as is not a digital-only local market area;
- (j) the policy objective that, at the end of the simulcast period for a licence area, all transmissions of commercial television broadcasting services in analog mode in that area are to cease;
- (ja) the policy objective that, during the simulcast period for a remote licence area, no transmissions of commercial television broadcasting services in analog mode are to be made using a transmitter located in so much of that area as is a digital-only local market area;
- (jb) the policy 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;
- (jc) the policy 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;
- (jd) the policy 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;
- (k) the policy objective that, as soon as practicable after the end of the simulcast period for a coverage area, the transmission of a commercial television broadcasting service in SDTV digital mode in so much of that area as is not a digital-only local market area should achieve the same level of coverage and potential reception quality as was achieved

by the transmission of that service in analog mode in so much of that area as is not a digital-only local market area immediately before the end of that period;

- (ka) the policy objective that, after a local market area becomes a digital-only local market area, the transmission of a commercial television broadcasting service in SDTV digital mode in the digital-only local market area should achieve the same level of coverage and potential reception quality as was achieved by the transmission of that service in analog mode in the local market area immediately before the local market area became a digital-only local market area;
- (l) the policy objective that a holder should be allowed to use any spare transmission capacity that is available on the digital transmission channels for the transmission of:
 - (i) datacasting services provided under, and in accordance with the conditions of, datacasting licences; or
 - (ii) designated teletext services;
- (m) the policy objective that the ACMA is to consult holders about the implementation of Part B of this scheme;
- (n) the policy objective that, if the implementation of Part B of this scheme affects particular broadcasting transmission towers, the ACMA must consult the owners and operators of those towers;
- (o) the policy objective that, if the implementation of Part B of this scheme affects particular satellites, the ACMA may consult the owners and operators of those satellites;
- (p) the policy objective that, in allotting channels under Part B of this scheme or a digital channel plan, the ACMA must have regard to:
 - (i) the need to plan the most efficient use of the spectrum; and
 - (ii) the other relevant policy objectives of Part B of this scheme;
- (q) the policy objective that processes for conversion of transmissions of television broadcasting services from analog mode to digital mode will occur as soon as practicable.

Note 1 The policy objective mentioned in subclause 6 (6A) of Schedule 4 to the Act is that each holder of a commercial television broadcasting licence for a remote licence area is required to commence transmitting the commercial television broadcasting service concerned in SDTV digital mode in that area by such date as the ACMA determines under the scheme.

Note 2 The implementation of Part A of this scheme will have priority over the implementation of Part B of this scheme, but Part B of this scheme will be implemented as soon as practicable.

Division 2 Technical documents

91 Documents about technical matters

- (1) the ACMA may prepare a document explaining general technical assumptions to which it will have regard when preparing or making a digital channel plan under Division 3.

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- (2) If the ACMA prepares a document, it must publish a notice explaining where copies of the document may be obtained.

Note the ACMA's options for publishing the document are in section 4.

- (3) the ACMA may publish a notice stating that:
- (a) a document prepared by the ACMA under subsection 6 (1) of the *National Television Conversion Scheme 1999* is adopted as, and taken to be, a document prepared for this section; or
 - (b) a document prepared by the ACMA under subsection 6 (1) of this scheme is adopted as, and taken to be, a document prepared for this section.

Note A document prepared under subsection 6 (1) of the *National Television Conversion Scheme 1999* or of subsection 6 (1) of this scheme explains technical assumptions to which the ACMA will have regard when considering whether the transmission of a commercial television broadcasting service in SDTV digital mode will achieve the same level of coverage and potential reception quality as is achieved by the transmission of that service in analog mode.

- (4) the ACMA may publish a notice stating that:
- (a) a document prepared by the ACMA under subsection 6 (2) or 85 (1) of the *National Television Conversion Scheme 1999*, and as in force when this section commences, is adopted as, and taken to be, a document prepared for this section; or
 - (b) a document prepared by the ACMA under subsection 6 (2) of this scheme, as in force when this section commences, is adopted as, and taken to be, a document prepared for this section

Note A document prepared under subsection 6 (2) or 85 (1) of the *National Television Conversion Scheme 1999* or of subsection 6 (2) of this scheme explains general technical assumptions to which the ACMA will have regard when preparing or making a digital channel plan.

- (5) the ACMA may, at any time, vary a document it has prepared.
- (6) If the ACMA varies the document, it must publish a notice explaining where copies of the variation (or the document as varied) may be obtained.

Note the ACMA's options for publishing the document are in section 4.

Division 3 Digital channel plan

92 Digital channel plan

- (1) The allotment of additional channels to holders, allowing the holders to transmit programs in analog and digital modes during a simulcast period, will be done in a *digital channel plan* made by the ACMA under section 97.
- (2) Subject to subsection (2A), a digital channel plan may allot channels to holders in a licence area, allowing the holders to transmit in digital mode after a simulcast period for the licence area.

- (2A) A digital channel plan must not allot channels to holders in a licence area if a television licence area plan for the licence area has come into force.

Note Clause 7AA of Schedule 4 to the Act provides that this Scheme, and a digital channel plan, to the extent to which they allot channels for a particular licence area, cease to have effect when the television licence area plan for that licence area comes into force.

- (3) A digital channel plan may deal with:
- (a) all licence areas (other than licence areas dealt with in Part A of this scheme); or
 - (b) 1 or more specified licence areas (other than licence areas dealt with in Part A of this scheme); or
 - (c) a specified part of a licence area (other than a specified part of a licence area dealt with in Part A of this scheme).

Note As a result of subsection (3), there may be more than 1 document available at any time with the title *digital channel plan*.

- (4) A digital channel plan may also deal with the allotment of channels during a simulcast period to holders of commercial television broadcasting licences allocated under section 38B of the Act.

93 Content of digital channel plan

- (1) Subject to this section, a digital channel plan must allot channels to holders.
- (2) A digital channel plan must also explain any technical limitations on the use of a particular channel that the ACMA believes should be shown.
- (3) A digital channel plan must also explain whether the use of a channel depends on any event or circumstances described in the plan.

Example

If a channel is currently being used by another service, the use of the channel for digital transmission may depend on the other service vacating the channel, possibly by a particular date.

- (4) If:
 - (a) a holder was allocated a licence under subsection 38B of the Act (the *first holder*); and
 - (b) an election was made under subclause 6 (7B) of Schedule 4 to the Act by:
 - (i) if the first holder was allocated a licence under subsection 38B (5) – the holders of the parent licences; or
 - (ii) if the first holder was allocated a licence under subsection 38B (6), (7), (8) or (9) – the first holder; and
 - (c) the election is still in force;then:
 - (d) a digital channel plan that relates to the first holder may allot one or more channels to:
 - (i) if the first holder was allocated a licence under subsection 38B (5) – either or both of the holders of the parent licences; or

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- (ii) if the first holder was allocated a licence under subsection 38B (6), (7), (8) or (9) – the first holder;

for the purposes of transmitting the commercial television broadcasting services provided under:

- (iii) each parent licence; and
- (iv) the first holder's commercial television broadcasting licence; and
- (e) a digital channel plan that relates to the first holder must be directed towards the achievement of the objective mentioned in subclause 6 (7H) of Schedule 4 to the Act.

Note 1 Subclause 6 (7H) of Schedule 4 to the Act provides for the objective that, while an election is in force under subclause 6 (7B), each remote area service for a remote area licence should be authorised to be transmitted in SDTV digital mode using multi-channelling transmission capacity.

Note 2 If a holder was allocated a licence under subsection 38B (6), (7), (8) or (9), the holder will have two commercial television broadcasting licences. If a holder was allocated a licence under subsection 38B (5), the holder will have only one commercial television broadcasting licence and will be jointly owned by two other holders, each of which will hold a commercial television broadcasting licence.

- (5) If subsection (4) applies:
 - (a) a digital channel plan may reserve channels for when the election is revoked;
 - (b) if the election is not revoked before the end of the simulcast period for the relevant licence area – the ACMA may, at any time after the end of the simulcast period, vary the digital channel plan to remove a reservation mentioned in paragraph (a) under section 98 of this Scheme.
- (8) A digital channel plan may include other matters.

Example

Whether there is any channel capacity available for uses other than:

- (a) the conversion of existing broadcasting services; and
- (b) the provision of services mentioned in section 38B of the Act.

94 Preparing draft digital channel plan

- (1) If the ACMA wishes to make a digital channel plan, it must prepare a draft version of the plan, having regard to the matters in this section.
- (2) the ACMA must have regard to:
 - (a) the need to plan the most efficient use of the spectrum for broadcasting services or other uses, including the need for spectrum to be made available for allocation for the purposes of the transmission of datacasting services under, and in accordance with the conditions of, datacasting licences; and
 - (b) the policy objectives mentioned in section 90, in particular the policy objective mentioned in paragraph 90 (d).
- (3) For subsection (2), the objective mentioned in paragraph 90 (d) is more important than the need mentioned in paragraph (2) (a).

- (4) the ACMA may also have regard to:
- (a) the cost, to holders, national broadcasters, tower owners, tower operators and site operators, of:
 - (i) allotting particular channels; and
 - (ii) digital transmission using the channels; and
 - (b) the likely cost, and disruption, to consumers caused by having to receive commercial television broadcasting services in digital mode using allotted channels; and
 - (c) any interference that digital transmission using a particular channel is likely to cause to analog transmission; and
 - (d) if a regional equalisation plan is in force for a particular area — the plan; and
 - (e) other matters it considers relevant.

95 Notice inviting comments on draft digital channel plan

If the ACMA prepares a draft digital channel plan, it must publish a notice:

- (a) stating where copies of the draft plan may be obtained; and
- (b) inviting comments on the draft plan in the period specified in the notice.

Note the ACMA's options for publishing the notice are in section 4.

96 Revising draft digital channel plan

If the ACMA revises a draft digital channel plan, it must decide whether it is appropriate to give notice of and invite comments on the revised draft digital channel plan under section 95.

97 Making digital channel plan

- (1) the ACMA may make a digital channel plan at any time after complying with sections 95 and 96.
- (2) When considering the form of a plan, the ACMA must have regard to any comments it receives.
- (3) If the ACMA makes a digital channel plan, it must publish a notice stating where copies of the plan may be obtained.

Note the ACMA's options for publishing the notice are in section 4.

98 Varying digital channel plan

- (1) This section applies if the ACMA wishes to vary a digital channel plan made for this scheme.
- (2) the ACMA must decide:
 - (a) whether it is appropriate to invite comments on the variation; and

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- (b) if so — whether it is appropriate for it to use the process for inviting comments in section 95.

Note In some circumstances, it may be more efficient for the ACMA to use a different form of public consultation.

- (3) If the ACMA invites comments, it must have regard to any comments it receives when considering the form of a variation.
- (4) Also, the ACMA:
- (a) must have regard to the matters in subsection 94 (2); and
 - (b) may have regard to the matters in subsection 94 (4).
- (5) For subsection (4), the objectives mentioned in paragraph 94 (2) (b) are more important than the need mentioned in paragraph 94 (2) (a).
- (5A) If the digital channel plan relates to a holder in relation to which an election under paragraph 6 (7B) of Schedule 4 to the Act remains in force, the ACMA must have regard to the objectives set out in subclause 6 (7H) of Schedule 4 to the Act.
- (6) the ACMA may vary the digital channel plan:
- (a) at any time after completing its consultation; or
 - (b) if there is no consultation — at any time.
- (7) If the ACMA varies the digital channel plan, it must publish a notice stating where copies of the variation may be obtained.

Note the ACMA's options for publishing the notice are in section 4.

99 First digital channel plan

- (1) This section applies to the preparation and making of, and the consultation process for, the first digital channel plan.
- (2) the ACMA may use material or a document prepared before the commencement of this section.
- (3) The preparation of a draft digital channel plan by the ACMA before the commencement of this section is taken to comply with section 94.
- (4) The publication of a notice about a draft digital channel plan and inviting comments on the draft digital channel plan by the ACMA before the commencement of this section is taken to comply with section 95.
- (5) The revision of the draft digital channel plan by the ACMA before the commencement of this section, and the ACMA's decision, before the commencement of this section, whether to invite comments on the revised draft digital channel plan, are taken to comply with section 96.

Division 4 Implementation plans

Subdivision A Purpose of implementation plans

100 Purpose

- (1) Under clause 9 of Schedule 4 to the Act, a holder must prepare, and submit to the ACMA, 1 or more *implementation plans* relating to digital transmission.
- (2) Each holder will be required to prepare an implementation plan, and give the ACMA related information, to advise the ACMA of how the holder proposes to:
 - (a) transmit a commercial television broadcasting service in digital mode; and
 - (b) comply with the Act; and
 - (c) meet the objectives in section 90.

Note about implementation plans

Implementation plans are only required for the start-up of digital transmission in remote licence areas after the date referred to in subclause 6 (6A) of Schedule 4 to the Act.

The implementation plan is a key step in the digital conversion process.

It is a holder's binding commitment, approved by the ACMA:

- to provide transmission of a commercial television broadcasting service in digital mode from specified sites; and
- to cover specified areas by specified dates;

to achieve the same level of coverage and potential reception quality as is achieved by the transmission of that service in analog mode.

Each holder for a licence area will be required to submit to the ACMA at least 1 implementation plan, dealing with important technical and administrative aspects of conversion to digital transmission in the area.

The holder may submit a single, comprehensive, plan for the area or the ACMA may allow the holder to submit a series of plans that develop the holder's digital transmission arrangements for the area in stages.

the ACMA will assess the draft plan (or a plan that is part of a series), and approve or reject it.

An approved implementation plan is the basis on which the holder will convert to digital transmission. However, as conversion proceeds, the holder may arrange for an approved implementation plan to be varied to reflect changed circumstances or needs that arise.

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Subdivision B Approval of documents

101 Form of implementation plan

- (1) the ACMA must approve, in writing, the form of an implementation plan.
- (2) The plan must state:
 - (a) whether the plan constitutes the implementation plan for the licence area; or
 - (b) whether the plan is in a series of implementation plans that the holder intends to submit for the licence area.
- (3) The plan must identify 1 or more sites that a holder proposes to use for digital transmission.

Note An implementation plan may not completely cover a whole licence area. Under Subdivision C of this Division, the ACMA may approve a proposal for a holder to submit a series of implementation plans that, when read together, will make comprehensive arrangements for the whole licence area.

- (4) The plan must identify 1 or more transmitter coverage areas to be served by transmitters that the holder proposes to use for digital transmission.
- (5) For each of those transmitters, the plan must identify the date on or before which the transmitter will be used for digital transmission.
- (6) If the plan is the first in a series of plans, the plan must also state:
 - (a) that it is the first plan in a series of sequentially numbered implementation plans that the holder intends to submit for the licence area; and
 - (b) the total number of plans that the holder intends to submit for the licence area; and
 - (c) the dates on or before which the holder expects to submit each implementation plan in the series; and
 - (d) the geographic area to which an implementation plan in the series will apply; and
 - (e) the reason why it is not practicable to submit a single plan for the licence area.
- (7) An implementation plan that is subsequent to the first in a series of implementation plans must also state:
 - (a) the number of the implementation plan in the series of plans for the licence area; and
 - (b) the geographic area to which the implementation plan applies; and
 - (c) the dates on or before which the holder expects to submit any remaining implementation plan in the series; and
 - (d) if any previous implementation plan that is part of the series has been approved (an *earlier approved plan*), the details of the earlier approved plan, including:
 - (i) its number in the series; and
 - (ii) the date when it was approved; and

- (e) if the plan expressly or impliedly varies an earlier approved plan, the change being made and the reason for the change.
- (8) The implementation plan may also deal with other relevant matters.
- (9) the ACMA must publish a notice stating where copies of the form of implementation plan may be obtained.

Note the ACMA's options for publishing the notice are in section 4.

102 Application form for approval of implementation plan

- (1) the ACMA must approve, in writing, an application form for approval of an implementation plan.
- (2) the ACMA must publish a notice stating where copies of the form may be obtained.

Note the ACMA's options for publishing the notice are in section 4.

103 Application form — essential content

- (1) The application form must require a holder to prepare the implementation plan using the approved form of the plan, and to submit the plan with the application form.

Note See section 101.

- (2) The application form must also require the holder to identify:
 - (a) the date on which the holder proposes to start digital transmission in the area; or
 - (b) the dates on which the holder proposes to start digital transmission in specified parts of the area.

104 Application form — optional content

- (1) The application form may require a holder to give information about the site of each transmitter, including:
 - (a) the name of the site; and
 - (b) the Australian map grid reference.
- (2) The form may require a holder to give information about the proposed emission characteristics of each transmitter, including:
 - (a) the frequency band; and
 - (b) the channel; and
 - (c) the polarisation; and
 - (d) the effective radiated power.
- (3) The form may require a holder to state that the holder has access to each site and broadcasting transmission tower it is proposing to use.
- (4) The form may require a holder to state that the holder has used its best endeavours to obtain any approvals required from third parties, and conducted necessary consultations.

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Examples

- 1 Local government approval for use of a site.
 - 2 Consultation with other holders about co-location.
- (5) The form may require a holder to carry out a test or other analysis described in the form.
- (6) The form may require a holder to give the ACMA other relevant information.

Subdivision C Approval of implementation plans

105 Application for approval of implementation plan

- (1) A holder must apply to the ACMA for approval of an implementation plan.
- (2) The holder must apply using the approved application form, and prepare the plan in the approved form.
- (3) To avoid doubt:
 - (a) strict compliance with the approved application form, and the approved form of the plan, is required; and
 - (b) section 25C of the *Acts Interpretation Act 1901* does not apply to the approved application form and the approved form of the plan.

Note Section 25C of the *Acts Interpretation Act 1901* explains a general presumption that it is permissible for a person to use a prescribed form, or to comply substantially with the prescribed form.

106 Application dates — implementation plans

- (1) the ACMA must identify a date on or before which a holder must apply for approval of an implementation plan for a licence area (the *application date*).
- (2) The application date for a licence area must be:
 - (a) before the start of the simulcast period for the area; and
 - (b) after has made a digital channel plan for any part of the area.

Note The simulcast period for a remote licence area is set by the ACMA under section 138 of this Scheme.

- (3) the ACMA must consult with all holders for the licence area about an appropriate date for the area and may consult with other persons.
- (4) the ACMA must advise each holder for the area of the application date as soon as practicable after it is identified.
- (5) If, after identifying an application date for a licence area, the ACMA approves a proposal for a holder for the area to submit a series of implementation plans for the area:
 - (a) the holder is not required to submit a plan in the series on or before the application date; and

- (b) the ACMA must identify another date which is the day on or before which a holder for the area must apply for approval of the first implementation plan in the series.

Example

A holder might intend to submit a single implementation plan for a whole area, by the application date, but then decide that it would be more efficient to submit a series of plans.

- (6) A date identified under paragraph 5 (b) must be before the start of the simulcast period for the area.

Note The simulcast period for a remote licence area is set by the ACMA under section 138 of this Scheme.

- (7) the ACMA must consult with all holders for the licence area about an appropriate date to be identified under paragraph 5 (b) and may consult with other persons.
- (8) the ACMA must advise each holder for the licence area of a date identified under paragraph 5 (b) as soon as practicable after it is identified.

107 Considering the implementation plan

- (1) the ACMA must consider whether an implementation plan is suitable for approval, having regard to:
- (a) the criteria in this section; and
 - (b) other matters that it considers relevant to efficient digital transmission and the efficient use of spectrum.
- (2) The application must be in strict compliance with the approved application form and must have been made by the date specified under section 106.
- (3) The application must deal adequately with the matters with which the holder was required to deal by the application form.
- (4) Subject to subsection (8), the implementation plan must be consistent with the policy objectives in section 90 and, in particular, the policy object in paragraph 90 (i).
- (5) the ACMA must have regard to the following matters in considering the policy objectives in section 90, and the proposed commercial television broadcasting service in SDTV digital mode:
- (a) the technical assumptions published for subsection 91 (1);
 - (b) whether the proposed emission characteristics of the service are consistent with the technical specifications set out in the digital channel plan for the relevant licence area or part of the licence area;
 - (c) whether the proposed emission characteristics of the service are satisfactory to ensure that the median field strength of transmission beyond the licence area does not exceed the ACMA's requirements;
 - (d) whether the service is likely to interfere with other services;
 - (e) whether the service will start on or before the start of the simulcast period;

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- (f) whether the policy objective will be met as soon as practicable after the start of the simulcast period;
- (g) whether the holder proposes to transmit commercial television broadcasting services in analog and SDTV digital modes for the entire simulcast period;
- (h) whether the holder has consulted other holders about the co-location of the holders' transmitters;
- (i) whether the holder proposes to co-locate its own transmitters for transmitting commercial television broadcasting services in analog and SDTV digital modes;
- (j) whether the holder has access to each site and broadcasting transmission tower it is proposing to use.

Note Section 108 sets out an additional matter that applies in specific circumstances.

- (6) However, if a holder has approval to submit a series of implementation plans for a licence area:
 - (a) the ACMA must also be satisfied that, if a plan in the series expressly or impliedly varies an earlier approved plan in the series, the variation is suitable for approval under Subdivision E of this Division; and
 - (b) the ACMA must have regard to the matters in subsection (5) for the whole licence area and for the part of the area to which a plan in the series relates.

Note The arrangements in an implementation plan in a series may provide adequately for a specific part of a licence area, but may be inadequate in the context of the whole licence area. the ACMA will consider both the immediate and future adequacy of the arrangements.

- (7) If the plan is the first in a series of plans, the ACMA must consider, but is not required to agree to, the dates on or before which the holder expects to submit each implementation plan in the series.
- (8) If a licence has been allocated to a holder under section 38B of the Act, the ACMA must consider the policy objective in paragraph 90 (i).

Note Licences issued under section 38B are not subject to the requirements of the Act relating to the simulcast period, as the service to which the licence relates must be provided only in digital mode: see subsection 38B (18) of the Act.

108 Reduction in coverage and quality of analog transmission

- (1) This section applies if:
 - (a) a holder for a licence area applies for approval of an implementation plan; and
 - (b) the level of coverage and potential reception quality achieved by the service in analog mode in the area has reduced after Schedule 4 to the Act commenced.
- (2) the ACMA may ask the holder, in writing, to explain how the holder will ensure that transmission of the service in SDTV digital mode will achieve the same level of coverage and potential reception quality as was achieved by the transmission of the service in analog mode before the commencement of Schedule 4 to the Act.

- (3) the ACMA is not required to consider the application while it is waiting for the information.
- (4) If the ACMA acts under subsection (2), the holder's implementation plan must ensure that transmission of the service in SDTV digital mode will achieve the same level of coverage and potential reception quality as was achieved by the transmission of the service in analog mode before the commencement of Schedule 4 to the Act.

109 Location of transmitters

- (1) This section applies if:
 - (a) a holder for a licence area applies for approval of an implementation plan; and
 - (b) it is not practicable for the holder to co-locate, during the simulcast period for the licence area:
 - (i) a transmitter used by the holder to transmit the commercial television broadcasting services in digital mode in that area; and
 - (ii) transmitters used by the holder to transmit that service in analog mode in that area.

Note See paragraph 90 (i).

- (2) the ACMA must be satisfied that the location of the holder's transmitter in the holder's implementation plan is appropriate, having regard to:
 - (a) the policy objectives of this scheme (other than the objective in paragraph 90 (i)); and
 - (b) the costs that the holder is likely to incur by choosing particular locations; and
 - (c) other matters relevant to the efficient use of transmitters, and the efficient use of spectrum.

110 Further information about application

- (1) the ACMA may, in writing, ask a holder to do 1 or more of the following things to help the ACMA to consider its decision on an application for approval of implementation plan:
 - (a) give the ACMA the information mentioned in the request;
 - (b) carry out a test or other analysis described in the request;
 - (c) do something else mentioned in the request.
- (2) The request may be to do, or repeat, something that was required in the application form.

Note See subsections 104 (5) and (6).

- (3) the ACMA is not required to consider the application while it is waiting for the holder to respond to the request.

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111 Decision on application

- (1) If the ACMA considers that the application is suitable for approval, the ACMA must, in writing:
 - (a) approve the application; and
 - (b) tell the holder of the decision as soon as practicable after approving the application.
- (2) If the ACMA considers that the application is not suitable for approval, the ACMA must, in writing:
 - (a) refuse to approve the application; and
 - (b) tell the holder of the decision as soon as practicable after refusing to approve the application.
- (3) If ACMA refuses to approve the application, the ACMA may:
 - (a) specify a date on or before which the holder must apply for approval of another implementation plan; and
 - (b) tell the holder the date as soon as practicable.

Note A decision refusing to approve an application is reviewable by the AAT: see clause 62 of Schedule 4 to the Act.

- (4) If the plan is the first in a series of plans, the ACMA must also specify as many of the following dates as the ACMA considers appropriate:
 - (a) dates on or before which the holder must apply for approval of implementation plans in the series;
 - (b) a date on or before which the holder must apply for approval of the last plan in the series.

Note Schedule 4 to the Act imposes a timetable for conversion to digital transmission, with simulcasts starting at different times in different licence areas. To support the timetable, the dates decided under subsection (4) may be later than dates set by the ACMA for applications for approval of single plans for whole licence areas.

112 New implementation plan

- (1) If the ACMA refuses to approve a holder's implementation plan, the holder may apply for approval of another plan.
- (2) The holder must apply for approval of the new plan by the date (if any) specified under paragraph 111 (3) (a).
- (3) In preparing a new plan, the holder is not required to deal with the same area, transmitters or other matters dealt with in the plan that was refused.
- (4) If the holder does not have approval to submit a series of plans for the licence area, the holder may apply for that approval after the plan has been refused.

Note After a refusal under section 111, it may be appropriate for the holder to change the holder's plan to a series of plans.

- (5) The holder must give the ACMA another application form with the implementation plan only if the ACMA asks the holder for it.
- (6) The holder must complete the application form (if required), and prepare the implementation plan, in the way described in section 105.
- (7) the ACMA must deal with the application in the way described in sections 107 to 111 (inclusive).

113 Date of effect of approved implementation plan

- (1) If the ACMA approves a holder's application for approval of an implementation plan for a licence area, the plan takes effect as the holder's ***approved implementation plan*** for the area on the day the ACMA approves the application.
- (2) If a holder has approval to submit a series of implementation plans for a licence area, and the ACMA approves an application for approval of a plan in the series, the plan takes effect as the holder's ***approved implementation plan*** for the appropriate part of the area on the day the ACMA approves the application.

114 Register of approved implementation plans

- (1) the ACMA is to maintain a register of approved implementation plans.
- (2) The register is to be open for public inspection, and a person is entitled to be given a copy of, or an extract from, any entry in the Register.
- (3) the ACMA may supply copies of or extracts from the register certified by a member, and a copy or extract so certified is admissible in evidence in all courts and proceedings without further proof or production of the original.

Subdivision D Transmitter licences

115 Transmitter licences

- (1) If a holder's implementation plan is approved the ACMA must, subject to subsections (2), (3) and (4), and to the digital channel plan, issue to the holder a transmitter licence that authorises the operation of 1 or more specified radiocommunications transmitters for transmitting the broadcasting services in digital mode, during and after the simulcast period, in accordance with the holder's commercial television broadcasting licence.

Note See section 102A of the *Radiocommunications Act 1992*.

- (2) If the holder already holds a suitable transmitter licence for the licence area concerned, the ACMA may vary the licence, if it is necessary, to give the authorisation mentioned in subsection (1).

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- (3) If the holder already holds a transmitter licence for the licence area concerned, for test transmissions or for transmission in a remote licence area before the start of the simulcast period, the ACMA must vary the licence, if it is necessary, to give the authorisation mentioned in subsection (1).

Note Division 10 of this Part deals with transmitter licences issued to support test transmissions. Division 11 of this Part deals with transmitter licences issued to support transmission in a remote licence area before the start of the simulcast period.

- (4) If a holder has made an election under subclause 6 (7B) of Schedule 4 to the Act, the ACMA must ensure that:
- (a) the transmitter licence, as issued or varied, will authorise the operation of 1 or more transmitters for transmitting the commercial television broadcasting services in digital mode that are, in accordance with the election, to be transmitted using multi-channelling transmission capacity; and
 - (b) the ACMA may alter the issue or variation of the licence and require the surrender of the licence if the election is revoked; and
 - (c) if a subclause 6 (7B) multi-channelling election is in force in relation to a section 38B exempt licence the ACMA must issue the transmitter licence to the holder of that exempt licence; and
 - (d) a transmitter licence is issued only if the holder of a section 38B exempt licence provides evidence that it will transmit in SDTV digital mode the services of the other licensees whilst the licence is in operation.

Note See paragraph 90 (d).

- (5) the ACMA must:
- (a) identify conditions to which the licence should be subject, including (if appropriate) the date of effect of the licence; and
 - (b) issue or vary the licence including the conditions.

Note 1 Schedule 4 to the Act imposes a timetable for conversion to digital transmission, with simulcasts starting at different times in different licence areas. To support the timetable, the ACMA may have to set priorities for carrying out its responsibilities.

Note 2 Sections 116 to 118 have been reserved for future use.

Subdivision E Variation of approved implementation plan

119 Application form for approval of variation

- (1) the ACMA must approve, in writing, an application form for approval of a variation of an approved implementation plan.
- (2) The form may require a holder to give the ACMA information.
- (3) the ACMA must publish a notice stating where copies of the form may be obtained.

Note the ACMA's options for publishing the notice are in section 4.

120 Application for approval of variation

- (1) A holder must apply to the ACMA for approval of a variation of an approved implementation plan.
- (2) However, the holder is not required to apply for approval in the circumstances mentioned in section 122.
- (3) The holder must apply using the approved application form.
- (4) To avoid doubt:
 - (a) strict compliance with the approved application form is required; and
 - (b) section 25C of the *Acts Interpretation Act 1901* does not apply to the approved application form.

Note Section 25C of the *Acts Interpretation Act 1901* explains a general presumption that it is permissible for a person to use a prescribed form, or to comply substantially with the prescribed form.

- (5) The holder's application must deal with 1 approved implementation plan only.

120A Holder must apply for variation in certain circumstances

- (1) A holder must apply to the ACMA for approval of a variation of the holder's approved implementation plan if:
 - (a) the Minister has determined that a specified area within the remote licence area for the holder is a local market area that will become a digital-only local market area; and
 - (b) the holder:
 - (i) has increased the level of coverage and potential reception quality of the holder's service in analog mode in the specified area since the commencement of Schedule 4 to the Act and before the day the Minister makes the determination; or
 - (ii) increases the level of coverage and potential reception quality of the holder's service in analog mode in the specified area on or after the day the Minister makes the determination.
- (2) A holder must apply to the ACMA for approval of a variation of the holder's approved implementation plan if:
 - (a) the Minister has determined that a specified area within the remote licence area for the holder is a local market area that will become a digital-only local market area; and
 - (b) the determination results in, or is likely to result in, the holder not being able to comply with the holder's approved implementation plan.

Note Under paragraph 7 (1) (k) of Schedule 2 to the Act, a licensee must comply with the requirements of this scheme.

- (3) However, the holder is not required to apply if the implementation plan relates solely to a commercial television broadcasting licence allocated under section 38B of the Act.

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- (4) The holder must apply to the ACMA:
 - (a) if subparagraph (1) (b) (i) applies — within 30 days of the Minister making the determination or within such longer period as is notified in writing by the ACMA; or
 - (b) if subparagraph (1) (b) (ii) applies — within 30 days of the holder increasing the level of coverage and potential reception quality of the holder's service in analog mode in the specified area or within such longer period as is notified in writing by the ACMA; or
 - (c) if subsection (2) applies — within 30 days of the Minister making the determination or within such longer period as is notified in writing by the ACMA.
- (5) Subsections 120 (3), (4) and (5) apply to an application under this section.
- (6) To avoid doubt, a reference in this section to a holder's approved implementation plan includes a reference to an approved implementation plan that is part of a series of implementation plans.

120B Reduction in coverage and quality of analog transmission

- (1) This section applies if:
 - (a) the Minister determines that a specified area included in a remote licence area is a local market area that will become a digital-only local market area; and
 - (b) on or after the day the determination commences:
 - (i) a holder applies for approval of a variation of the holder's approved implementation plan for the licence area; and
 - (ii) the holder reduces, or proposes to reduce, the level of coverage and potential reception quality achieved by the transmission of the commercial television broadcasting service in analog mode in the specified area from the level achieved immediately before the Minister determined that area to be a local market area.
- (2) the ACMA may ask the holder to explain:
 - (a) if the level of coverage and potential reception quality has been reduced — how the holder will ensure that the transmission of the service in SDTV digital mode will achieve the same level of coverage and potential reception quality in the specified area as was achieved by the transmission of the service in analog mode immediately before the reduction; or
 - (b) if the level of coverage and potential reception quality is proposed to be reduced — how the holder will maintain the same level of coverage and potential reception quality that was in effect in the specified area immediately before the Minister determined that area to be a local market area.
- (3) the ACMA is not required to consider the holder's application while it is waiting for the explanation.

- (4) If the ACMA acts under subsection (2), the holder's implementation plan, as varied, must include provisions to ensure that transmission of the commercial television broadcasting service in digital mode in the digital-only local market area will achieve the same level of coverage and potential reception quality as was achieved by the transmission of the analog service:
 - (a) if paragraph (2) (a) applies — immediately before the holder reduced the coverage and potential reception quality; or
 - (b) if paragraph (2) (b) applies — immediately before the Minister determined that area to be a local market area.
- (5) To avoid doubt, a reference in this section to a holder's approved implementation plan includes a reference to an approved implementation plan that is part of a series of implementation plans.

121 Considering application for variation

- (1) the ACMA must consider whether the application is suitable for approval.
- (2) the ACMA must decide:
 - (a) whether it is appropriate to invite comments on the application; and
 - (b) if so — whether it is appropriate for it to use the same consultation procedure as is used in section 95 for digital channel plans.

Note The public consultation procedure in section 95 may be an efficient form of consultation for this purpose, but the ACMA does not assume that it will be the most efficient form in every case.

- (3) If the ACMA invites comments, it must have regard to any comments it receives when considering the application.
- (4) the ACMA must deal with the application by considering the implementation plan, as it would be varied, in the way described in sections 107 to 111 (inclusive).

122 Variation of implementation plan in a series

- (1) This section applies if:
 - (a) the ACMA has approved a holder's application to submit a series of implementation plans for a licence area; and
 - (b) the holder applies for approval of an implementation plan in the series; and
 - (c) the plan expressly or impliedly varies an earlier approved implementation plan in the series.
- (2) The application for approval of the implementation plan is taken to include an application for approval of the variation of the earlier approved implementation plan.
- (3) the ACMA must consider whether the application is suitable for approval.
- (4) the ACMA must decide:
 - (a) whether it is appropriate to invite comments on the application; and

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- (b) if so — whether it is appropriate for it to use the same consultation procedure as is used in section 95 for digital channel plans.

Note The public consultation procedure in section 95 may be an efficient form of consultation for this purpose, but the ACMA does not assume that it will be the most efficient form in every case.

- (5) If the ACMA invites comments, it must have regard to any comments it receives when considering the application.
- (6) the ACMA must:
- (a) consider the earlier approved plan, as it would be varied, in the way described in sections 107 to 111 (inclusive); and
 - (b) have regard to the matters in subsection 107 (5) for the whole licence area and for the part of the area to which the earlier approved plan relates.

Note The arrangements in an implementation plan in a series may provide adequately for a specific part of a licence area, but may be inadequate in the context of the whole licence area. If an approved implementation plan is to be varied by a later plan in the series, the ACMA will consider both the immediate and future adequacy of that plan, as it would be varied.

123 Decision on variation

- (1) If the ACMA considers that the application (including an application for approval of the variation of an approved implementation plan, mentioned in subsection 122 (2)) is suitable for approval, the ACMA must, in writing:
- (a) approve the application; and
 - (b) tell the holder of the decision as soon as practicable after approving the application.
- (2) If the ACMA considers that the application is not suitable for approval:
- (a) the ACMA must, in writing:
 - (i) refuse to approve the application; and
 - (ii) tell the holder of the decision as soon as practicable after refusing to approve the application; and
 - (b) if the application was made under subsection 120A (1) or (2) — the holder must make a new application under the relevant subsection within 30 days of being told of the refusal or within such longer period as is notified in writing by the ACMA.

Note A decision refusing to approve the application is reviewable by the AAT: see clause 62 of Schedule 4 to the Act.

124 Date of effect of variation

- (1) If the ACMA approves the variation of an approved implementation plan for a licence area, or a part of an area, the variation takes effect on the day the ACMA approves it.
- (2) The holder's implementation plan, as varied, takes effect as the holder's approved implementation plan for the area, or part of the area, on the day the ACMA approves it.

125 Register of approved implementation plans

If the ACMA approves the variation of an approved implementation plan for a licence area, the ACMA must include the plan, as varied, in the register of approved implementation plans.

126 Transmitter licence

- (1) If the ACMA approves the variation of an approved implementation plan, the ACMA must vary the transmitter licence issued under section 102A of the *Radiocommunications Act 1992*, as part of the plan, if it is necessary to support the variation of the plan.
- (2) the ACMA must:
 - (a) identify conditions to which the licence should be subject; and
 - (b) vary the licence including the conditions.

Subdivision F Circumstances where there is no approved implementation plan

127 No implementation plan

- (2) Subject to subsections (2A), (2B), (2C) and (2D), the ACMA must issue to the holder a transmitter licence that authorises the operation of 1 or more specified radiocommunications transmitters for transmitting a broadcasting service in digital mode in accordance with the holder's commercial television broadcasting licence.

Note Schedule 4 to the Act imposes a timetable for conversion to digital transmission, with simulcasts starting at different times in different licence areas. To support the timetable, the ACMA may have to set priorities for carrying out its responsibilities.

- (2A) Subsection (2) does not apply if the holder has an approved implementation plan in force at the start of the simulcast period for the licence area to which the plan relates.
- (2B) Subsection (2) does not apply if the holder has a transmitter licence, issued for Division 10 or 11 of Part B of this Scheme, at the start of the simulcast period for the licence area to which the transmitter licence relates.

Note Division 10 of this Part deals with transmitter licences issued to support test transmissions. Division 11 of this Part deals with transmitter licences issued to support transmission in a remote area before the start of the simulcast period.

- (2C) Subsection (2) does not apply if the holder was allocated a commercial television broadcasting licence under section 38B of the Act.

Note See section 102 of the *Radiocommunications Act 1992*.

- (2D) Subsection (2) does not apply if the holder has surrendered a transmitter licence in accordance with subsection 102A (2C) of the *Radiocommunications Act 1992* and subsection 102A (2D) of the *Radiocommunications Act 1992* does not apply.

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- (3) the ACMA must also:
 - (a) identify conditions to which the licence should be subject; and
 - (b) issue the licence including the conditions.
- (4) The licence must take effect at the start of the simulcast period.

Division 5 Datacasting services

128 Use of transmission capacity for datacasting services

- (1) A holder that holds a datacasting licence issued in accordance with Schedule 6 to the Act is permitted to use any spare transmission capacity that is available on the holder's digital transmission channels for the purpose of the transmission of either or both of the following:
 - (a) datacasting services provided under, and in accordance with the conditions of, datacasting licences;
 - (b) designated teletext services.

Note See paragraph 90 (l) of this Scheme.

- (2) However, the holder must use the capacity in a way that is consistent with:
 - (a) the holder's transmitter licence issued under section 102A of the *Radiocommunications Act 1992*; and
 - (b) the holder's datacasting licence issued under the Act.

Note 1 A charge is imposed for the use of transmission capacity for datacasting: see the *Datacasting Charge (Imposition) Act 1998*.

Note 2 Sections 129 to 137 have been reserved for future use.

Division 7 Starting SDTV digital transmission

138 Starting SDTV digital transmissions

- (1) the ACMA must determine a date, for a remote licence area, by which each holder for the area is required to commence transmitting the commercial television broadcasting service concerned in SDTV digital mode in that area.
- (2) the ACMA must:
 - (a) consult with all holders for a remote licence area before determining a date for the area; and
 - (b) have regard to any comments it receives during consultation.

- (3) The date must be later than the day when the ACMA makes the determination.

Note the ACMA intends to determine the date in accordance with paragraph 90 (q).

- (4) the ACMA must publish the determination as soon as practicable after making it.

Note the ACMA's options for publishing the determination are in section 4.

139 Simulcast period

- (1) There is a transitional period for a licence area, to be known as the *simulcast period*.

Note See Act, Schedule 4, subclauses 6 (7) and (7A).

- (2) A holder for the area must, throughout the simulcast period:
- (a) transmit simultaneously the commercial broadcasting service concerned in both analog mode and SDTV digital mode in so much of that area as is not a digital-only local market area; and
 - (b) ensure that no transmissions of the commercial broadcasting service concerned in analog mode are made in so much of that area as is a digital-only local market area.
- (2A) For the purpose of determining whether a holder has complied, or is complying, with subsection (2), disregard any transmissions made by a transmitter used for transmitting one or more commercial television broadcasting services in SDTV digital mode, authorised to operate under a transmitter licence issued under section 100 of the *Radiocommunications Act 1992*.

- (3) The simulcast period:
- (a) begins on the date determined by the ACMA under subsection 138 (1); and
 - (b) runs for a period that ends on:
 - (i) if the ACMA determines a date that is before 31 December 2013 — the date determined by the ACMA; or
 - (ii) if:
 - (A) the Minister makes a legislative instrument under subclause 6B (2) of Schedule 4 to the Act; and
 - (B) the ACMA determines a date that is after 31 December 2013;the date determined by the ACMA; or
 - (ii) in any other case — 31 December 2013.

Note See subclause 6 (7A) and clause 6B of Schedule 4 to the Act.

- (4) Before determining the period for paragraph (3) (b), the ACMA must:
- (a) consult with:
 - (i) the public; and
 - (ii) holders; and
 - (iii) national broadcasters; and
 - (iv) owners and operators of broadcasting transmission towers; and
 - (v) owners and operators of satellite transmission facilities; and
 - (b) have regard to any comments it receives during consultation.
- (5) the ACMA must publish the determination as soon as practicable after making it.

Note the ACMA's options for publishing the determination are in section 4.

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Division 8 Problems with starting or maintaining SDTV digital transmission

140 Surrender of transmitter licence (failure to commence SDTV digital transmission)

- (1) This section applies if:
 - (a) the holder of a commercial television broadcasting licence for a licence area does not commence transmission in SDTV digital mode for the licence area on or before the date determined under section 138 of this Scheme; and
 - (b) the ACMA is not satisfied that there were exceptional circumstances relating to the failure to commence transmission.

Note Subclause 6 (6A) of Schedule 4 to the Act sets out the policy objective about the start of SDTV digital transmission. The policy objective is supported by section 138 of this Scheme.

- (2) The holder must surrender to the ACMA each transmitter licence authorising digital transmission in the area.
- (3) The holder must comply with any requirements of the ACMA for surrendering a transmitter licence.
- (4) Application may be made to the AAT for review of a decision that there were no exceptional circumstances.

141 Surrender of transmitter licence (SDTV digital transmission does not continue throughout the simulcast period)

- (1) This section applies if the holder of a commercial television broadcasting licence for a licence area:
 - (a) commences transmission in SDTV digital mode on or before the date determined under section 138 of this Scheme; and
 - (b) ceases transmission in SDTV digital mode during the simulcast period for the area.

Note Subclause 6 (6A) of Schedule 4 to the Act sets out the policy objective about the start of SDTV digital transmission. The policy objective is supported by section 138 of this Scheme.

- (1A) This section does not apply to so much of the remote licence area that is a digital-only local market area.
- (2) the ACMA may give the holder a written direction to:
 - (a) resume transmission in SDTV digital mode in the area within the period specified in the direction; and
 - (b) continue transmission in SDTV digital mode throughout the simulcast period for the area.
- (3) The direction must include:
 - (a) the period (not longer than 1 month) within which the holder must comply with it; and

- (b) a statement that the holder may give the ACMA written reasons identifying exceptional circumstances that prevent the holder from complying with the direction; and
- (c) a statement that the holder must surrender each transmitter licence authorising transmission of a service in digital mode in the area if:
 - (i) the holder does not comply with the direction within the time mentioned in the direction; and
 - (ii) the holder does not satisfy the ACMA that there were exceptional circumstances why the holder did not resume and continue transmission in accordance with the direction given under subsection (2).
- (4) The holder must surrender to the ACMA each transmitter licence authorising digital transmission in the area if:
 - (a) the holder did not comply with the direction given under subsection (2); and
 - (b) the ACMA is not satisfied that there were exceptional circumstances relating to the failure to comply.
- (5) The holder must comply with any requirements of the ACMA for surrendering a transmitter licence.
- (6) Application may be made to the AAT for review of a decision that there were no exceptional circumstances.

142 Surrender of transmitter licence (SDTV or HDTV requirements contravened)

- (1) The holder of a commercial television broadcasting licence is required to surrender 1 or more transmitter licences authorising analog transmission or authorising digital transmission if the holder does not comply with:
 - (a) paragraph 7(1)(ma) of Schedule 2 to the Act; or
 - (aa) paragraph 7(1)(mb) of Schedule 2 to the Act; or
 - (b) a SDTV commercial television format standard; or
 - (c) a HDTV commercial television format standard; or
 - (d) a standard applicable to the holder under subclause 37G (1) of Schedule 4 to the Act; or
 - (e) a standard applicable to the holder under subclause 37G (2) of Schedule 4 to the Act.

Note See subclause 8 (10) of Schedule 4 to the Act.

- (2) the ACMA may give the holder a written direction:
 - (a) identifying the contravention; and
 - (b) directing the holder to comply with the requirement, provision or standard.
- (3) The direction must include:
 - (a) a statement specifying the period (not longer than 1 month) within which the holder must comply with it; and

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- (b) a statement that the holder may give the ACMA written reasons identifying exceptional circumstances that prevent the holder from complying with the direction; and
- (c) a statement that the holder must surrender each transmitter licence authorising transmission of a service in digital mode in the area if:
 - (i) the holder does not comply with the direction within the time mentioned in the direction; and
 - (ii) the holder does not satisfy the ACMA that exceptional circumstances exist; and
- (d) a statement that the holder may apply for a transmitter licence to replace a transmitter licence surrendered under this section.

Note A transmitter licence issued to replace a surrendered transmitter licence will have less transmission capacity than the transmission capacity specified in the surrendered licence: see subsection 143 (6) of this Scheme.

- (4) The holder must surrender to the ACMA each transmitter licence authorising digital transmission in the area if:
 - (a) the holder did not comply with a direction; and
 - (b) the ACMA is not satisfied that there were exceptional circumstances relating to the failure to comply.
- (5) The holder must comply with any requirements of the ACMA for surrendering a transmitter licence.
- (6) Application may be made to the AAT for review of a decision that there were no exceptional circumstances.

143 Replacement transmitter licence after HDTV requirements contravened

- (1) This section applies if a holder of a commercial television broadcasting licence for a licence area has surrendered a transmitter licence on the grounds of a contravention of the provision mentioned in paragraph 142 (1) (a) or a standard mentioned in paragraph 142 (1) (c), (d) or (e).

Note See subclause 8 (10A) of Schedule 4 to the Act. The provisions that are listed deal with HDTV standards.

- (2) The holder may, in writing:
 - (a) ask the ACMA to arrange for the issue of a transmitter licence to replace the surrendered licence; and
 - (b) explain why the replacement licence should be issued.
- (3) the ACMA:
 - (a) may ask the holder for more information about the request; and
 - (b) is not required to consider the request while it is waiting for more information.
- (4) the ACMA must consider the request and:
 - (a) approve it; or

- (b) reject it.

Note 1 If the ACMA decides not to arrange for the issue of a replacement transmitter licence, it must notify the holder and give the holder the statements mentioned in clause 63 of Schedule 4 to the Act.

Note 2 A decision by the ACMA not to arrange for the issue of a replacement transmitter licence is reviewable by the AAT: see clause 62 of Schedule 4 to the Act.

- (5) If the ACMA approves the request, it must issue a transmitter licence to replace the surrendered licence.

Note See section 102A of the *Radiocommunications Act 1992*.

- (6) However, the amount of transmission capacity covered by the replacement licence must be less than the amount of transmission capacity covered by the surrendered licence.

Note See subclause 8 (10A) of Schedule 4 to the Act.

- (7) the ACMA must also:

- (a) identify conditions to which the licence should be subject; and
(b) issue the licence including the conditions.

Note Schedule 4 to the Act imposes a timetable for conversion to digital transmission, with simulcasts starting at different times in different licence areas. To support the timetable, the ACMA may have to set priorities for carrying out its responsibilities.

Division 8A Requirements for local market areas and digital-only local market areas

143C End of analog transmission in digital-only local market area and surrender of licences

- (1) At the time when a local market area becomes a digital-only local market area, all transmissions of a commercial television broadcasting service in analog mode made using a transmitter located in the area are to cease.

Note See paragraph 90 (ja) of this scheme.

Division 9 End of simulcast period

147 End of analog transmission and surrender of licences

- (1) At the end of the simulcast period for a licence area, all transmissions of a commercial television broadcasting service in analog mode in the area are to cease.

Note See paragraph 90 (j) of this Scheme.

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Division 10 Test transmissions

Note about testing

An essential part of the conversion to digital transmission is the need for holders to test their digital equipment, and their capacity to provide transmissions of adequate coverage and quality.

Test transmissions are likely to take various forms, from full transmissions of broadcast material to short transmissions of test signals, and may happen at any time before or during a simulcast period. Holders may need to use the channels allotted to them in the digital channel plan, or may want to use 'spare' channels for specific tests.

Although there may appear to be no visual difference between a test transmission and a 'regular' transmission, the Act treats them differently and allows this scheme to impose different requirements for the kinds of transmission. This is particularly significant for a holder that wishes to transmit before the start of the simulcast period for the holder's licence area — the transmission may be a test or it may be an early start of full digital transmission.

Under this Division, the ACMA will be responsible for approving all test transmissions, either by approving specific tests or by approving a testing plan submitted by a holder.

the ACMA wishes to draw the reader's attention to the provisions in this Division that state that permission to carry out tests in a particular way, or using a particular channel, is not a guarantee that a holder will have a permanent right, or obligation, to transmit in that way, or to use that channel.

Subdivision A Test transmissions

149 Test transmissions

- (1) A holder for a licence area may transmit, on a test basis, the commercial television broadcasting service concerned in digital mode in the area before or after the start of the simulcast period for the area.
- (2) The holder may transmit, on a test basis, material that is part of, or reasonably related to, the transmission of the commercial television broadcasting service concerned in digital mode in the area before or after the start of the simulcast period for the area.
- (3) However, the holder may transmit on a test basis only if:
 - (a) the holder complies with the arrangements in this Division; and
 - (b) the ACMA has given written permission for the transmission.

Subdivision B Approval of application form

150 Application form for approval of testing

- (1) the ACMA must approve, in writing, an application form for approval to transmit on a test basis.
- (2) the ACMA must publish a notice stating where copies of the application form may be obtained.

Note the ACMA's options for publishing the notice are in section 4.

151 Application form — essential content

- (1) The application form must require a holder to tell the ACMA which of the following circumstances applies:
 - (a) no digital channel plan is in force for the licence area in which the holder wishes to transmit on a test basis;
 - (b) a digital channel plan is in force for the licence area, and the holder wishes to transmit on a test basis using a channel allotted to the holder under the digital channel plan for the area;
 - (c) a digital channel plan is in force for the licence area, and the holder wishes to transmit on a test basis using a channel that was not allotted to the holder under the digital channel plan for the area.
- (2) The form must also require the holder:
 - (a) to identify the date on which the holder proposes to start transmission on a test basis; or
 - (b) to explain why it is not practicable for the holder to identify a date.
- (3) The form must also require the holder to tell the ACMA the period during which the holder expects to transmit on a test basis.

152 Application form — optional content

- (1) The application form may require a holder to give information about the site of each transmitter to be used for transmission on a test basis, including:
 - (a) the name of the site; and
 - (b) the Australian map grid reference.
- (2) The form may require a holder to give information about the proposed emission characteristics of each transmitter to be used for transmission on a test basis, including:
 - (a) the frequency band; and
 - (b) the channel; and
 - (c) the polarisation; and
 - (d) the effective radiated power.
- (3) The form may require a holder to state that the holder has access to each site and broadcasting transmission tower it is proposing to use for transmission on a test basis.

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- (4) The form may require a holder to state that the holder has used its best endeavours to obtain any approvals required from third parties, and conducted necessary consultations.

Examples

- 1 Local government approval for use of a site.
- 2 Consultation with other holders about co-location.

- (5) The form may require a holder to carry out a test or other analysis described in the form.
- (6) The form may require a holder to give the ACMA other information.

Subdivision C Approval to transmit on a test basis

153 Application for approval to transmit on test basis

- (1) A holder may apply to the ACMA, at any time, for approval to transmit on a test basis.

Note There is no assumption that test transmissions will only be needed, or approved, before the start of the simulcast period for a licence area. Testing may be needed at any time before or during the period.

- (2) The holder must apply using the approved application form.
- (3) To avoid doubt:
- (a) strict compliance with the approved application form is required; and
 - (b) section 25C of the *Acts Interpretation Act 1901* does not apply to the approved application form.

Note Section 25C of the *Acts Interpretation Act 1901* explains a general presumption that it is permissible for a person to use a prescribed form, or to comply substantially with the prescribed form.

154 Considering decision

- (1) the ACMA must consider whether the application is suitable for approval, having regard to:
- (a) the criteria in this section; and
 - (b) other matters that it considers relevant to efficient digital transmission and the efficient use of spectrum.
- (2) The application must be in strict compliance with the approved application form.
- (3) The application must deal adequately with the matters with which the holder was required to deal by the application form.
- (4) the ACMA must be satisfied that approving the transmissions on a test basis will:
- (a) assist with developing a digital channel plan, or confirming that an existing digital channel plan is satisfactory; or
 - (b) promote the policy objectives mentioned in section 90.

155 Further information about application

- (1) the ACMA may, in writing, ask a holder to do 1 or more of the following things to help the ACMA to consider its decision on an application:
 - (a) to give the ACMA the information mentioned in the request;
 - (b) to carry out a test or other analysis described in the request;
 - (c) to do something else mentioned in the request.

- (2) The request may be to do, or repeat, something that was required in the application form.

Note See subsections 152 (5) and (6).

- (3) the ACMA is not required to consider the application while it is waiting for the holder to respond to the request.

156 Decision on application

- (1) If the ACMA considers that the application is suitable for approval, the ACMA must, in writing:
 - (a) approve the application; and
 - (b) tell the holder of the decision as soon as practicable after approving the application.

- (2) If section 158 or 163 applies, the ACMA must include in the approval the following statements:

- (a) the approval does not, of itself, authorise transmission on a test basis; and
- (b) the ACMA must be able to allocate part of the radiofrequency spectrum under section 34 of the Act before the holder will be issued with a transmitter licence.

- (3) the ACMA may include any of the following matters in the approval:

- (a) 1 or more dates on which the holder is permitted to transmit on a test basis;
- (b) a period in which the holder is permitted to transmit on a test basis;
- (c) technical requirements with which the holder must comply when transmitting on a test basis;
- (d) conditions to which the approval is subject, including (if appropriate) a condition that transmissions on a test basis may only be carried out in accordance with a licence mentioned in this Division.

- (4) If the ACMA considers that the application is not suitable for approval, the ACMA must, in writing:

- (a) refuse to approve the application; and
- (b) tell the holder of the decision as soon as practicable after refusing to approve the application.

- (5) Application may be made to the AAT for review of a decision refusing to approve the application.

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Subdivision D Test transmissions if there is no digital channel plan

157 Application of Subdivision D

This Subdivision applies if:

- (a) the ACMA approves a holder's application for approval to transmit on a test basis; and
- (b) there is no digital channel plan in force for the licence area, or part of a licence area, where the holder wishes to transmit on a test basis.

158 Allocation of spectrum

- (1) the ACMA must consider whether to allocate part of the radiofrequency spectrum to the holder under section 34 of the Act for the purpose of the transmission.
- (2) However, the ACMA does not guarantee that it will be able to allocate a part of the spectrum.
- (3) The holder is not permitted to transmit if the ACMA has not allocated a part of the spectrum.
- (4) If the ACMA makes a determination allocating part of the spectrum, it must publish a notice either:
 - (a) setting out the determination; or
 - (b) stating where copies of the determination may be obtained.

Note the ACMA's options for publishing the notice are in section 4.

159 the ACMA to issue transmitter licence

Application

- (1) This section applies if the ACMA has made a determination under section 34 of the Act allocating part of the radiofrequency spectrum to the holder of a commercial television broadcasting licence for a licence area for the purpose of transmitting a commercial television broadcasting service in digital mode on a test basis.

Election under subclause 6 (7B) of Schedule 4 to the Act

- (2) If an election is in force under subclause 6 (7B) of Schedule 4 to the Act the ACMA must issue a transmitter licence to the holder of the exempt licence.
- (3) A transmitter licence issued under subsection (2) authorises the operation of 1 or more specified radiocommunications transmitters for transmitting the commercial television broadcasting service concerned in digital mode on a test basis in accordance with the holder's commercial television broadcasting licence.
- (4) the ACMA may alter or require surrender of the transmitter licence if the multi-channelling election is revoked.

No election under subclause 6 (7B) of Schedule 4 to the Act

- (5) If no election is in force under subclause 6 (7B) of Schedule 4 to the Act the ACMA must issue a transmitter licence to the holder of the commercial television broadcasting licence.
- (6) A transmitter licence issued under subsection (5) authorises the operation of 1 or more specified radio communications transmitters for transmitting the commercial television broadcasting service concerned in digital mode on a test basis in accordance with the holder's commercial television broadcasting licence.

General

- (7) the ACMA must also:
 - (a) identify conditions to which a transmitter licence issued under subsection (2) or (5) should be subject, including (if appropriate) conditions about:
 - (i) the date of effect of the licence; and
 - (ii) the period during which the holder may transmit on a test basis; and
 - (b) issue the licence including the conditions.

Note Schedule 4 to the Act imposes a timetable for conversion to digital transmission, with simulcasts starting at different times in different licence areas. To support the timetable, the ACMA may have to set priorities for carrying out its responsibilities.

- (8) the ACMA does not guarantee or imply that:
 - (a) the channel used by the holder for transmission on a test basis will be made available to the holder for any other purpose; or
 - (b) the characteristics, including technical specifications, in the transmitter licence issued under the *Radiocommunications Act 1992* for transmission on a test basis will be included in any transmitter licence held by the holder after the holder ceases testing.

Note A licence for test transmissions may include characteristics that are appropriate for testing, but not for general commercial broadcasting: for example, power restrictions or a requirement to use equipment in a particular way.

- (9) The period during which the holder may transmit on a test basis is the period for which the ACMA allocates part of the radiofrequency spectrum to the holder under section 34 of the Act for the purpose of transmitting a commercial television broadcasting service in digital mode on a test basis.

Note See paragraph 90 (g).

Section 160

**Subdivision E Test transmissions if there is a digital channel plan
(tests using allotted channel)**

160 Application of Subdivision E

This Subdivision applies if:

- (a) the ACMA approves a holder's application for approval to transmit on a test basis; and
- (b) there is a digital channel plan in force for the licence area, or part of a licence area, where the holder wishes to transmit on a test basis; and
- (c) the holder wishes to transmit using a channel allotted to the holder by the digital channel plan.

161 the ACMA to issue transmitter licence

Election under subclause 6 (7B) of Schedule 4 to the Act

- (1) If an election is in force under subclause 6 (7B) of Schedule 4 to the Act the ACMA must issue a transmitter licence to the holder of the exempt licence.
- (2) A transmitter licence issued under subsection (1) authorises the operation of 1 or more specified radiocommunications transmitters for transmitting the commercial television broadcasting service concerned in digital mode on a test basis in accordance with the holder's commercial television broadcasting licence.
- (3) the ACMA may alter or require surrender of the transmitter licence if the multi-channelling election is revoked.

No election under subclause 6 (7B) of Schedule 4 to the Act

- (4) If no election is in force under subclause 6 (7B) of Schedule 4 to the Act the ACMA must issue a transmitter licence to the holder of the commercial television broadcasting licence.
- (5) A transmitter licence issued under subsection (4) authorises the operation of 1 or more specified radio communications transmitters for transmitting the commercial television broadcasting service concerned in digital mode on a test basis in accordance with the holder's commercial television broadcasting licence.

General

- (6) the ACMA must:
 - (a) identify conditions to which a transmitter licence issued under subsection (1) or (4) should be subject, including (if appropriate) conditions about:
 - (i) the date of effect of the licence; and
 - (ii) the period during which the holder may transmit on a test basis; and

- (b) issue the licence including the conditions.

Note Schedule 4 to the Act imposes a timetable for conversion to digital transmission, with simulcasts starting at different times in different licence areas. To support the timetable, the ACMA may have to set priorities for carrying out its responsibilities.

- (7) the ACMA does not guarantee or imply that the characteristics, including technical specifications, in the transmitter licence issued under the *Radiocommunications Act 1992* for transmission on a test basis will be included in any transmitter licence held by the holder after the holder ceases testing.

Note A licence for test transmissions may include characteristics that are appropriate for testing, but not for general commercial broadcasting: for example, power restrictions or a requirement to use equipment in a particular way.

Subdivision F Test transmissions if there is a digital channel plan (tests not using allotted channel)

162 Application of Subdivision F

This Subdivision applies if:

- (a) the ACMA approves a holder's application for approval to transmit on a test basis; and
- (b) there is a digital channel plan in force for the licence area, or part of a licence area, where the holder wishes to transmit on a test basis; and
- (c) the holder wishes to transmit using a channel that has not been allotted to the holder by the digital channel plan.

163 Allocation of spectrum

- (1) the ACMA must consider whether to allocate part of the radiofrequency spectrum to the holder under section 34 of the Act for the purpose of the transmission.
- (2) However, the ACMA does not guarantee that it will be able to allocate a part of the spectrum.
- (3) The holder is not permitted to transmit if the ACMA has not allocated a part of the spectrum.
- (4) If the ACMA makes a determination allocating part of the spectrum, it must publish a notice either:
 - (a) setting out the determination; or
 - (b) stating where copies of the determination may be obtained.

Note the ACMA's options for publishing the notice are in section 4.

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164 the ACMA to issue transmitter licence

Application

- (1) This section applies if the ACMA has made a determination under section 34 of the Act allocating part of the radiofrequency spectrum to the holder of a commercial television broadcasting licence for a licence area for the purpose of transmitting a commercial television broadcasting service in digital mode on a test basis.

Election under subclause 6 (7B) of Schedule 4 to the Act

- (2) If an election is in force under subclause 6 (7B) of Schedule 4 to the Act the ACMA must issue a transmitter licence to the holder of the exempt licence.
- (3) A transmitter licence issued under subsection (2) authorises the operation of 1 or more specified radiocommunications transmitters for transmitting the commercial television broadcasting service concerned in digital mode on a test basis in accordance with the holder's commercial television broadcasting licence.
- (4) the ACMA may alter or require surrender of the transmitter licence if the multi-channelling election is revoked.

No election under subclause 6 (7B) of Schedule 4 to the Act

- (5) If no election is in force under subclause 6 (7B) of Schedule 4 to the Act the ACMA must issue a transmitter licence to the holder of the commercial television broadcasting licence.
- (6) A transmitter licence issued under subsection (5) authorises the operation of 1 or more specified radio communications transmitters for transmitting the commercial television broadcasting service concerned in digital mode on a test basis in accordance with the holder's commercial television broadcasting licence.

General

- (7) the ACMA must also:
 - (a) identify conditions to which a transmitter licence issued under subsection (2) or (5) should be subject, including (if appropriate) conditions about:
 - (i) the date of effect of the licence; and
 - (ii) the period during which the holder may transmit on a test basis; and
 - (b) issue the licence including the conditions.

Note Schedule 4 to the Act imposes a timetable for conversion to digital transmission, with simulcasts starting at different times in different licence areas. To support the timetable, the ACMA may have to set priorities for carrying out its responsibilities.

- (8) the ACMA does not guarantee or imply that:
- (a) the channel used by the holder for transmission on a test basis will be made available to the holder for any other purpose; or
 - (b) the characteristics, including technical specifications, in the transmitter licence issued under the *Radiocommunications Act 1992* for transmission on a test basis will be included in any transmitter licence held by the holder after the holder ceases testing.

Note A licence for test transmissions may include characteristics that are appropriate for testing, but not for general commercial broadcasting: for example, power restrictions or a requirement to use equipment in a particular way.

- (9) The period during which the holder may transmit on a test basis is the period for which the ACMA allocates part of the radiofrequency spectrum to the holder under section 34 of the Act for the purpose of transmitting a commercial television broadcasting service in digital mode on a test basis.

Note See paragraph 90 (g).

Subdivision G Test data

165 Test data

- (1) the ACMA may, in writing, ask a holder to give the ACMA information about transmissions on a test basis, including:
- (a) the holder's test data; and
 - (b) the holder's technical conclusions from the test data.
- (2) the ACMA may also ask the holder, in writing, to give the information in a particular way.
- (3) The holder must comply with a request as soon as practicable.

Division 11 Transmission in licence area before start of simulcast period

Note about 'early' transmissions

Schedule 4 to the Act imposes a timetable for conversion to digital transmission, with the conversion process starting at different times in different licence areas.

The timetable, and other arrangements in this scheme, assume that a holder will make arrangements with the intention of broadcasting in digital mode from the start of the simulcast period applicable to the holder. However, the timetable does not prevent a holder for a remote licence area from starting transmissions before the start of the simulcast period.

It is important to note that some holders may be broadcasting before the start of simulcast periods to test their digital equipment, and their capacity to provide transmissions of adequate coverage and quality. Other holders will be broadcasting their regular digital services in accordance with an approval to transmit a regular service before the start of the simulcast period.

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Although there may appear to be no visual difference between a test transmission and a 'regular' transmission, the Act treats them differently and allows this scheme to impose different requirements for the kinds of transmission.

Under this Division, the holder will need to apply to the ACMA for approval to transmit a regular digital service before the start of the simulcast period. the ACMA will approve an application if certain requirements are met.

166 Division 11 does not apply to testing

This Division does not apply to a holder that proposes to transmit, on a test basis, a commercial television broadcasting service in digital mode.

Note See Division 10 of Part B of this scheme.

167 Application form for approval to transmit before start of simulcast period

- (1) the ACMA must approve, in writing, an application form for approval to transmit before the start of the simulcast period.
- (2) the ACMA must publish a notice stating where copies of the form may be obtained.

Note the ACMA's options for publishing the notice are in section 4.

168 Application form — content

The application form must require a holder to identify the date on which the holder proposes to start digital transmission in the area.

169 Application for approval to transmit before start of simulcast period

A holder for a remote licence area may apply to the ACMA for approval to transmit a commercial television broadcasting service in digital mode in the area, or a part of the area before the start of the simulcast period for that area.

Note See Act, Schedule 4, subclauses 6 (7) and (7A) and section 139.

170 Considering decision on application

- (1) the ACMA must consider whether the application is suitable for approval, having regard to:
 - (a) the criteria in this section; and
 - (b) other matters that it considers relevant to efficient digital transmission and the efficient use of spectrum.
- (2) The application must deal adequately with the matters with which the holder was required to deal by the application form.
- (3) The digital channel plan for the area, or part of the area, must be in force.

- (4) The application must be consistent with the policy objectives mentioned in section 90, and, in particular, the policy objectives mentioned in paragraphs 90 (d) and (h).

171 Further information about application

- (1) the ACMA may, in writing, ask a holder to do 1 or more of the following things to help the ACMA to consider its decision on the application:
- (a) to give the ACMA the information mentioned in the request;
 - (b) to carry out a test or other analysis described in the request;
 - (c) to do something else mentioned in the request.
- (2) the ACMA is not required to consider the application while it is waiting for the holder to respond to the request.

172 Decision on application

- (1) If the ACMA considers that the application is suitable for approval, the ACMA must, in writing:
- (a) approve the application; and
 - (b) tell the holder of the decision as soon as practicable after approving the application.
- (2) If the ACMA considers that the application is not suitable for approval, the ACMA must, in writing:
- (a) refuse to approve the application; and
 - (b) tell the holder of the decision as soon as practicable after refusing to approve the application.
- (3) Application may be made to the AAT for review of a decision refusing to approve the application.

173 Transmitter licence — general

Election under subclause 6 (7B) of Schedule 4 to the Act

- (1) If an election is in force under subclause 6 (7B) of Schedule 4 to the Act the ACMA must issue a transmitter licence to the holder of the exempt licence.
- (2) A transmitter licence issued under subsection (1) authorises the operation of 1 or more specified radiocommunications transmitters for transmitting the commercial television broadcasting service concerned in digital mode in accordance with the holder's commercial television broadcasting licence.
- (3) the ACMA may alter or require surrender of the transmitter licence if the multi-channelling election is revoked.

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No election under subclause 6 (7B) of Schedule 4 to the Act

- (4) If no election is in force under subclause 6 (7B) of Schedule 4 to the Act the ACMA must issue a transmitter licence to the holder of the commercial television broadcasting licence.
- (5) A transmitter licence issued under subsection (4) authorises the operation of 1 or more specified radio communications transmitters for transmitting the commercial television broadcasting service concerned in digital mode on a test basis on a test basis in accordance with the holder's commercial television broadcasting licence.

General

- (6) However, if the holder already holds a transmitter licence for the licence area concerned, for test transmissions, the ACMA must vary the licence, if it is necessary, to give the authorisation mentioned in subsection (2) or (5).

Note 1 Division 10 of Part B of this scheme deals with transmitter licences issued to support test transmissions.

Note 2 Schedule 4 to the Act imposes a timetable for conversion to digital transmission, with simulcasts starting at different times in different licence areas. To support the timetable, the ACMA may have to set priorities for carrying out its responsibilities.

- (7) the ACMA must also:
 - (a) identify conditions to which a transmitter licence issued under subsection (1) or (4) should be subject, including (if appropriate):
 - (i) a condition about the date of effect of the licence; and
 - (ii) a condition that the licence is to be in force until the first-occurring of the following events:
 - (A) the day that is 3 months before the start of the simulcast period;
 - (B) 12 months after the date of effect of the licence; and
 - (b) issue or vary the licence including the conditions.
- (8) the ACMA will ensure, as far as practicable, that the channel used by the holder for transmission will be made available to the holder during the simulcast period.
- (9) However, the ACMA does not guarantee or imply that the channel will be made available.

Examples of problems with making channel available during simulcast period

1 The use of the channel is inconsistent with the digital channel plan for the area.

2 The holder is required under this scheme to surrender a transmitter licence relating to the channel.

3 A transmitter licence relating to the channel is cancelled under the *Radiocommunications Act 1992*.

- (10) Also, the ACMA does not guarantee or imply that the characteristics, including technical specifications, in the transmitter licence will be included in any transmitter licence subsequently issued to the holder for the area or part of the area.

Division 12 **Action by the ACMA — holder not complying with Part B of this scheme**

174 Action by the ACMA if holder reduces quality or coverage of analog service — election under Act

- (1) If, before the start of the simulcast period, a holder makes an election under subclause 6 (7B) of Schedule 4 to the Act and then reduces the quality or coverage of transmission in analog mode, the ACMA may ask the holder to make a submission about why the holder's digital transmitter licence should not be surrendered.
- (2) the ACMA must:
 - (a) consider a submission made under subsection (1); and
 - (b) decide whether the holder's digital transmitter licence should be surrendered; and
 - (c) give the holder written notice of the decision; and
 - (d) if the ACMA decides that the holder's digital transmitter licence should be surrendered — give the holder a written notice requiring the holder to surrender the holder's digital transmitter licence.
- (3) If the ACMA gives a holder a notice under paragraph 174 (2) (d), the holder must:
 - (a) surrender to ACMA each transmitter licence authorising digital transmission in the relevant licence area; and
 - (b) comply with any requirements of ACMA for surrendering a digital transmitter licence.

175 Action by the ACMA if holder not broadcasting identical programs in analog and digital modes before simulcast period has commenced

- (1) Subsection (2) applies to a holder for a remote licence area if the holder:
 - (a) holds a commercial television broadcasting licence allocated under a section of the Act other than section 38B of the Act; and
 - (b) transmits the commercial television broadcasting service concerned in SDTV digital mode in the remote licence area (other than on a test basis) before the commencement of the simulcast period.
- (2) The holder must ensure that each program that the holder broadcasts in analog mode before the commencement of the simulcast period is also simultaneously broadcast in SDTV digital mode.
- (3) If the holder does not comply with subsection (2), the ACMA may ask the holder to make a submission about why the holder's digital transmitter licence should not be surrendered.
- (4) the ACMA must:
 - (a) consider a submission made under subsection (3); and

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- (b) decide whether the holder's digital transmitter licence should be surrendered; and
 - (c) give the holder written notice of the decision; and
 - (d) if the ACMA decides that the holder's digital transmitter licence should be surrendered — give the holder a written notice requiring the holder to surrender the holder's digital transmitter licence.
- (5) If the ACMA gives a holder a notice under paragraph 175 (4) (d), the holder must:
- (a) surrender to the ACMA each transmitter licence authorising digital transmission in the relevant licence area; and
 - (b) comply with any requirements of the ACMA for surrendering a digital transmitter licence.

176 Digital Transmitter licences

- (1) This section applies to the holder of a section 38B licence if a digital transmitter licence is issued and a subclause 6 (7B) multi-channelling election is in force.
- (2) If a service provided by the holder of a broadcasting licence, to which the subclause 6 (7B) multi-channelling election referred to in subsection (1) applies, is not being transmitted:
- (a) in digital mode; or
 - (b) in an identical form to the analog form of the service;
- the holder of the digital transmitter licence under which the service is to be transmitted must make a written submission to the ACMA explaining why its digital transmitter licence should not be surrendered.
- (3) On receiving a written submission from the holder of a digital transmitter licence the ACMA must:
- (a) consider the written submission; and
 - (b) decide whether the holder's digital transmitter licence should be surrendered; and
 - (c) give notice of the decision to the holders of all broadcasting licences with services that are broadcast over that transmitter; and
 - (d) if the ACMA decides that the holder's digital transmitter licence should be surrendered — give the holder of the transmitter licence a written notice requiring the holder to surrender the holder's digital transmitter licence.
- (4) the ACMA may also, before making a decision under paragraph 176 (3) (b), request a written submission from other broadcasters to which a multi-channelling election applies.
- (5) If the ACMA requests a submission under subsection (4) it must consider the submission before making a decision under paragraph 176 (3) (b).

Note Section 177 has been reserved for future use.

- (6) If the ACMA gives a holder a notice under paragraph 176 (3) (d), the holder must:
- (a) surrender to the ACMA each transmitter licence authorising digital transmission in the relevant licence area; and
 - (b) comply with any requirements of the ACMA for surrendering a digital transmitter licence.

Division 13 Consultation

178 Consultation with holders

the ACMA must consult holders about the implementation of Part B of this scheme.

Note See paragraph 90 (m).

179 Consultation with tower owners and tower operators

If the implementation of Part B of this scheme affects a particular broadcasting transmission tower, the ACMA must consult the tower owner and the tower operator.

Note See paragraph 90 (n).

180 Consultation with owners and operators of satellite transmission facilities

the ACMA may consult the owners and operators of satellite transmission facilities about the implementation of Part B of this scheme.

Note See paragraph 90 (o).

Dictionary

(section 3)

Note A definition marked with an asterisk appears in Schedule 4 to the Act.

* **AAT** means the Administrative Appeals Tribunal.

* **ACMA** means the Australian Communications and Media Authority.

Act means the *Broadcasting Services Act 1992*.

analog transmission means the broadcasting or transmission of a program or service using an analog modulation technique.

* **broadcasting transmission tower** means:

- (a) a tower; or
- (b) a pole; or
- (c) a mast; or
- (d) a similar structure;

used to supply:

- (e) a broadcasting service by means of radiocommunications using the broadcasting services bands; or
- (f) a datacasting service provided under, and in accordance with the conditions of, a datacasting licence.

channel, in relation to digital transmission, means a channel that occupies 7MHz of bandwidth.

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

* **commercial television conversion scheme** means a scheme under clause 6 of Schedule 4 to the Act.

* **coverage area** means:

- (a) a metropolitan coverage area; or
- (b) a regional coverage area.

* **datacasting service** means a service (other than a broadcasting service) that delivers information (whether in the form of data, text, speech, images or in any other form) to persons having equipment appropriate for receiving that information, where the delivery of the service uses the broadcasting services bands.

datacasting licence see subsection 6 (1) of the Act.

datacasting service see subsection 6 (1) of the Act.

* **digital-only local market area** see clause 5F of Schedule 4 to the Act.

digital transmission means the broadcasting or transmission of a program or service using a digital modulation technique.

digital transmitter licence means a transmitter licence issued under the *Radiocommunications Act 1992* authorising the transmission of commercial television broadcasting services in digital mode.

* **exempt licence** has the meaning given by clause 2 of Schedule 4 to the Act.

exempt remote area licence means a commercial television broadcasting licence used to provide an exempt remote area service.

* **exempt remote area service** has the meaning given by subclause 6(7F) of Schedule 4 to the Act.

* **HDTV commercial television format standard** has the meaning given by clause 2 of Schedule 4 to the Act.

* **HDTV digital mode** see clause 4A of Schedule 4 to the Act.

* **HDTV multi-channelled commercial television broadcasting service** has the same meaning as in clause 5B of Schedule 4 to the Act.

holder means a holder of a commercial television broadcasting licence.

joint-venture company means a company that is capable of being specified as a joint-venture company in a notice under subsection 38B (1) of the Act.

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

licensee means:

- (a) a licensee of a transmitter licence; and
- (b) a former licensee of a transmitter licence which has been compelled to surrender its licence under this scheme.

Note Most holders will also be licensees.

* **local market area** see clause 5F of Schedule 4 to the Act.

* **metropolitan coverage area** means an area that corresponds to a metropolitan licence area.

* **metropolitan licence area** means a licence area in which is situated the General Post Office of the capital city of:

- (a) New South Wales; or
- (b) Victoria; or
- (c) Queensland; or
- (d) Western Australia; or
- (e) South Australia.

* **multi-channelling election** means an election under subclause 6 (7B) of Schedule 4 to the Act.

* **national broadcaster** see subsection 6 (1) of the Act.

* **national broadcasting service** does not include a broadcasting service provided under the *Parliamentary Proceedings Broadcasting Act 1946*.

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

* ***national television conversion scheme*** see clause 19 of Schedule 4 to the Act.

* ***parent licence*** has the meaning given by clause 2 of Schedule 4 to the Act.

* ***radiocommunication*** has the same meaning as in the *Radiocommunications Act 1992*.

* ***regional coverage area*** means an area that corresponds to a regional licence area.

regional equalisation plan means the analog regional equalisation plan:

(a) made under Part IIIC of the *Broadcasting Act 1942*; and

(b) as in force when this scheme commences.

* ***regional licence area*** means a licence area that is not a metropolitan licence area.

* ***remote coverage area*** means an area that corresponds to a remote licence area.

remote licence area see clause 5 of Schedule 4 to the Act.

* ***SDTV commercial television format standard*** has the meaning given by clause 2 of Schedule 4 to the Act.

* ***SDTV digital mode*** see clause 4B of Schedule 4 to the Act.

* ***SDTV multi-channelled commercial television broadcasting service*** has the meaning given by clause 5A of Schedule 4 to the Act.

* ***simulcast-equivalent period*** has the same meaning as in clause 2 of Schedule 4 to the Act.

* ***simulcast period*** has the meaning given by clause 2 of Schedule 4 to the Act.

* ***television broadcasting service*** has the meaning given by clause 2 of Schedule 4 to the Act.

tower operator means the operator of a broadcasting transmission tower.

tower owner means the owner of a broadcasting transmission tower.

* ***transmitter licence*** has the same meaning as in the *Radiocommunications Act 1992*.

Notes to the Commercial Television Conversion Scheme 1999

Note 1

The *Commercial Television Conversion Scheme 1999* (in force under subclause 6 (1) of Schedule 4 to the *Broadcasting Services Act 1992*) as shown in this compilation is amended as indicated in the Tables below.

Table of Instruments

Title	Date of notification in Gazette or FRLI registration	Date of commencement	Application, saving or transitional provisions
<i>Commercial Television Conversion Scheme 1999</i>	9 June 1999 (see <i>Gazette</i> 1999, No. GN23)	9 June 1999	
<i>Commercial Television Conversion Scheme Variation 2000 (No. 1)</i>	22 Dec 2000 (see <i>Gazette</i> 2000, No. S664)	Ss. 1–3 and Schedules 1 and 3: 1 Jan 2001 Remainder: 3 Feb 2001	—
<i>Commercial Television Conversion Scheme Variation 2003 (No. 1)</i>	12 Feb 2003 (see <i>Gazette</i> 2003, No. GN6)	12 Feb 2003	—
<i>Commercial Television Conversion Scheme Variation 2003 (No. 2)</i>	10 Dec 2003 (see <i>Gazette</i> 2003, No. GN49)	12 Dec 2003 (see s. 2)	—
<i>Commercial Television Conversion Scheme Variation 2007 (No. 1)</i>	1 Nov 2007 (see F2007L04259)	2 Nov 2007	—
<i>Commercial Television Conversion Scheme Variation 2009 (No. 1)</i>	16 Mar 2009 (see F2009L01058)	17 Mar 2009	—
<i>Commercial Television Conversion Scheme Variation 2011 (No. 1)</i>	23 Aug 2011 (see F2011L01716)	24 Aug 2011	—
<i>Commercial Television Conversion Scheme Variation 2011 (No. 2)</i>	2 Sept 2011 (see F2011L01801)	Ss. 1, 2, 4 and Schedule 2: 3 Sept 2011 S. 3 and Schedule 1: (a)	—

(a) Section 2 of the *Commercial Television Conversion Scheme Variation 2011 (No. 2)* provides as follows:

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
2. Section 3 and Schedule 1	Immediately after Schedule 2 commences.	

Schedule 2 commenced on 3 September 2011.

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 1	
S. 3A.....	ad. 2007 No. 1 am. 2011 No. 2
S. 4.....	am. 2007 No. 1; 2011 No. 2
Note to s. 5.....	am. 2000 No. 1; 2007 No. 1; 2011 No. 2
Part A	
Division 1	
S. 6.....	am. 2000 No. 1; 2007 No. 1; 2011 No. 2
Note to s. 6 (3).....	am. 2007 No. 1; 2011 No. 2
Note to s. 6 (5).....	am. 2007 No. 1; 2011 No. 2
Division 2	
S. 7.....	am. 2000 No. 1; 2007 No. 1; 2011 Nos. 1 and 2
S. 8.....	am. 2000 No. 1; 2003 No. 2; 2007 No. 1; 2011 No. 2
Note to s. 8 (4).....	am. 2003 No. 2 rs. 2011 No. 2
S. 9.....	am. 2000 No. 1; 2003 No. 2; 2007 No. 1; 2011 No. 2
Heading to s. 10.....	am. 2011 No. 2
S. 10.....	am. 2007 No. 1; 2011 No. 2
Note to s. 10.....	am. 2007 No. 1; 2011 No. 2
S. 11.....	am. 2007 No. 1; 2011 No. 2
S. 12.....	am. 2007 No. 1; 2011 No. 2
Note to s. 12 (3).....	am. 2007 No. 1; 2011 No. 2
S. 13.....	am. 2000 No. 1; 2003 No. 2; 2007 No. 1; 2009 No. 1; 2011 Nos. 1 and 2
Note to s. 13 (2).....	am. 2007 No. 1; 2011 No. 2
Note to s. 13 (7).....	am. 2007 No. 1; 2011 No. 2
S. 14.....	am. 2007 No. 1; 2011 No. 2
Note to s. 14.....	am. 2007 No. 1
Note to s. 14 (3).....	rs. 2011 No. 2
Division 3	
Subdivision A	
S. 15.....	am. 2007 No. 1; 2009 No. 1; 2011 No. 2
Note to s. 15.....	am. 2007 No. 1; 2011 No. 2
S. 16.....	rep. 2000 No. 1
Subdivision B	
S. 17.....	am. 2000 No. 1; 2007 No. 1; 2011 No. 2
Note to s. 17 (2).....	am. 2007 No. 1; 2011 No. 2
Note to s. 17 (7).....	am. 2007 No. 1; 2011 No. 2
S. 18.....	am. 2007 No. 1; 2011 No. 2
Note to s. 18 (2).....	am. 2007 No. 1; 2011 No. 2
S. 20.....	am. 2007 No. 1; 2011 No. 2
Subdiv. C of Div. 3 of Part A.....	rep. 2000 No. 1
Ss. 21–24.....	rep. 2000 No. 1
S. 25.....	am. 2007 No. 1; 2011 No. 2

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 26.....	rep. 2000 No. 1
Subdivision D	
Heading to s. 27.....	rs. 2000 No. 1
S. 27.....	am. 2000 No. 1 rs. 2007 No. 1 am. 2011 No. 2
Note to s. 27 (2).....	am. 2011 No. 2
Heading to s. 28.....	rs. 2007 No. 1
S. 28.....	am. 2000 No. 1; 2007 No. 1; 2009 No. 1; 2011 No. 2
Note to s. 28 (6).....	am. 2007 No. 1; 2011 No. 2
Heading to s. 29.....	am. 2000 No. 1
S. 29.....	am. 2000 No. 1; 2007 No. 1; 2011 No. 2
S. 30.....	am. 2007 No. 1; 2011 No. 2
S. 31.....	am. 2007 No. 1; 2011 No. 2
S. 32.....	am. 2000 No. 1; 2007 No. 1; 2011 No. 2
Note to s. 32 (4).....	am. 2011 No. 2
S. 33.....	am. 2007 No. 1; 2011 No. 2
S. 34.....	am. 2007 No. 1; 2011 No. 2
S. 35.....	am. 2007 No. 1; 2011 No. 2
Subdivision E	
S. 36.....	am. 2000 No. 1; 2003 No. 2 rs. 2007 No. 1 am. 2011 No. 2
Note to s. 36 (5).....	am. 2011 No. 2
Division 4	
S. 37.....	am. 2007 No. 1; 2011 No. 2
Note to s. 37 (3).....	am. 2007 No. 1; 2011 No. 2
S. 38.....	am. 2007 No. 1; 2011 No. 2
S. 38A.....	ad. 2009 No. 1 am. 2011 No. 2
S. 38B.....	ad. 2009 No. 1 am. 2011 No. 2
Heading to s. 39.....	rs. 2007 No. 1
S. 39.....	am. 2007 No. 1; 2011 No. 2
Note to s. 39 (2).....	am. 2007 No. 1; 2011 No. 2
S. 40.....	am. 2007 No. 1; 2011 No. 2
Note to s. 40 (4).....	am. 2007 No. 1; 2011 No. 2
Note to s. 40 (6).....	am. 2007 No. 1; 2011 No. 2
S. 41.....	am. 2007 No. 1; 2009 No. 1; 2011 No. 2
S. 42.....	am. 2007 No. 1; 2011 No. 2
S. 43.....	am. 2007 No. 1; 2011 No. 2
S. 44.....	rs. 2007 No. 1; 2011 No. 2
Division 5	
Div. 5 of Part A.....	rs. 2007 No. 1
S. 45.....	rs. 2007 No. 1 am. 2011 No. 2
Note to 45 (1).....	rep. 2011 No. 2
Note to 45 (2).....	am 2011 No. 2

Table of Amendments

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Provision affected	How affected
Division 6	
S. 46.....	am. 2000 No. 1
Division 7	
Heading to Div. 7..... of Part A	rs. 2000 No. 1
Heading to s. 47.....	rs. 2000 No. 1
S. 47.....	am. 2000 No. 1
Heading to s. 48.....	am. 2000 No. 1
S. 48.....	am. 2000 No. 1; 2007 No. 1; 2011 No. 2
Note to s. 48 (1)	am. 2007 No. 1; 2011 No. 2
Note to s. 48 (5)	am. 2007 No. 1; 2011 No. 2
S. 49.....	am. 2000 No. 1; 2007 No. 1; 2009 No. 1; 2011 No. 2
Note to s. 49 (4)	ad. 2009 No. 1
Division 8	
Heading to Div. 8..... of Part A	rs. 2000 No. 1
Heading to s. 50.....	rs. 2000 No. 1
S. 50.....	am. 2000 No. 1; 2007 No. 1; 2011 No. 2
Note 2 to s. 50 (1)	am 2011 No. 2
Note 1 to s. 50 (2)	am. 2007 No. 1; 2011 No. 2
Note 2 to s. 50 (2)	am. 2007 No. 1; 2011 No. 2
Heading to s. 51.....	rs. 2000 No. 1
S. 51.....	am. 2000 No. 1; 2007 No. 1; 2009 No. 1; 2011 No. 2
Note 1 to s. 51 (4)	am. 2007 No. 1; 2011 No. 2
Note 2 to s. 51 (4)	am. 2007 No. 1; 2011 No. 2
Heading to s. 52.....	rs. 2000 No. 1; 2007 No. 1
S. 52.....	am. 2000 No. 1; 2007 No. 1; 2011 No. 2
Note 1 to s. 52 (4)	am. 2007 No. 1; 2011 No. 2
Note 2 to s. 52 (4)	am. 2007 No. 1; 2011 No. 2
Heading to s. 53.....	rs. 2007 No. 1
S. 53.....	am. 2000 No. 1; 2007 No. 1; 2011 No. 2
Note 1 to s. 53 (4)	am. 2007 No. 1; 2011 No. 2
Note 2 to s. 53 (4)	am. 2007 No. 1; 2011 No. 2
Note to s. 53 (7)	am. 2011 No. 2
Division 8A	
Div. 8A of Part A.....	ad. 2009 No. 1
S. 53A	ad. 2009 No. 1 rep. 2011 No. 1
S. 53B	ad. 2009 No. 1 rep. 2011 No. 1
S. 53C.....	ad. 2009 No. 1 am. 2011 No. 1
S. 53D.....	ad. 2009 No. 1 rep. 2011 No. 1
Division 9	
Div. 9 of Part A.....	rs. 2000 No. 1
S. 54.....	rs. 2000 No. 1 am. 2007 No. 1 rep. 2011 No. 1

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 55.....	rs. 2000 No. 1 am. 2007 No. 1 rep. 2011 No. 1
Note to s. 55 (5)	am. 2007 No. 1 rep. 2011 No. 1
S. 56.....	rs. 2000 No. 1 am. 2007 No. 1 rep. 2011 No. 1
S. 57.....	rs. 2000 No. 1 am. 2007 No. 1; 2011 No. 1
S. 58.....	rs. 2000 No. 1; 2007 No. 1 rep. 2011 No. 1
Note to s. 58 (1)	rs. 2009 No. 1 rep. 2011 No. 1
Division 10	
Note to Div. 10 of Part A	am. 2007 No. 1; 2011 No. 2
Subdivision A	
S. 59.....	am. 2007 No. 1; 2011 No. 2
Subdivision B	
S. 60.....	am. 2007 No. 1; 2011 No. 2
Note to s. 60.....	am. 2007 No. 1; 2011 No. 2
S. 61.....	am. 2007 No. 1; 2011 No. 2
S. 62.....	am. 2007 No. 1; 2011 No. 2
Subdivision C	
S. 63.....	am. 2007 No. 1; 2011 No. 2
S. 64.....	am. 2007 No. 1; 2011 No. 2
S. 65.....	am. 2007 No. 1; 2011 No. 2
S. 66.....	am. 2007 No. 1; 2011 No. 2
Subdivision D	
S. 67.....	am. 2007 No. 1; 2011 No. 2
S. 68.....	am. 2007 No. 1; 2011 No. 2
Note to s. 68 (4)	am. 2007 No. 1; 2011 No. 2
Heading to s. 69.....	am. 2011 No. 2
S. 69.....	rs. 2007 No. 1 am. 2011 No. 2
Note to s. 69 (3)	am. 2011 No. 2
Subdivision E	
S. 70.....	am. 2007 No. 1; 2011 No. 2
Heading to s. 71.....	am. 2011 No. 2
S. 71.....	rs. 2007 No. 1 am. 2011 No. 2
Note 2 to s. 71 (2)	am. 2011 No. 2
Subdivision F	
S. 72.....	am. 2007 No. 1; 2011 No. 2
S. 73.....	am. 2007 No. 1; 2011 No. 2
Note to s. 73 (4)	am. 2007 No. 1; 2011 No. 2
S. 74.....	rs. 2007 No. 1 am. 2011 No. 2
Note to s. 74 (3)	am. 2011 No. 2
Subdivision G	
S. 75.....	am. 2007 No. 1; 2011 No. 2

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ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Division 11	
Note to Div. 11 of Part A	am. 2007 No. 1; 2011 No. 2
S. 77.....	am. 2007 No. 1; 2011 No. 2
Note to s. 77.....	am. 2007 No. 1; 2011 No. 2
S. 79.....	am. 2007 No. 1; 2011 No. 2
S. 80.....	am. 2007 No. 1; 2011 No. 2
S. 81.....	am. 2007 No. 1; 2011 No. 2
S. 82.....	am. 2007 No. 1; 2011 No. 2
S. 83.....	rs. 2007 No. 1 am. 2011 No. 2
Note 2 to s. 83 (2)	am. 2011 No. 2
S. 84.....	rs. 2007 No. 1 am. 2011 No. 2
S. 85.....	rs. 2007 No. 1 am. 2011 No. 2
S. 86.....	rs. 2007 No. 1 am. 2011 No. 2
S. 87.....	rs. 2007 No. 1 am. 2011 No. 2
Note to s. 87 (1)	am. 2011 No. 2
Division 12	
S. 88.....	am. 2007 No. 1; 2011 No. 2
S. 89.....	am. 2007 No. 1; 2011 No. 2
Part B	
Note to Part B	rep. 2003 No. 1
Division 1	
S. 90.....	rs. 2003 No. 1 am. 2007 No. 1; 2009 No. 1; 2011 Nos. 1 and 2
Note 1 to s. 90.....	am. 2007 No. 1; 2011 No. 2
Note 2 to s. 90.....	rep. 2007 No. 1
Note 3 to s. 90 Renumbered Note 2	2007 No. 1
Division 2	
S. 91.....	rs. 2003 No. 1 am. 2007 No. 1; 2011 No. 2
Note to s. 91 (2)	am. 2007 No. 1; 2011 No. 2
Note to s. 91 (3)	am. 2007 No. 1; 2011 No. 2
Note to s. 91 (4)	am. 2007 No. 1; 2011 No. 2
Note to s. 91 (6)	am. 2007 No. 1; 2011 No. 2
Division 3	
S. 92.....	rs. 2003 No. 1 am. 2007 No. 1; 2011 Nos. 1 and 2
S. 93.....	ad. 2003 No. 1 am. 2007 No. 1; 2011 No. 2
S. 94.....	ad. 2003 No. 1 am. 2007 No. 1; 2011 No. 2
S. 95.....	ad. 2003 No. 1 am. 2007 No. 1; 2011 No. 2
Note to s. 95.....	am. 2007 No. 1; 2011 No. 2
S. 96.....	ad. 2003 No. 1 am. 2007 No. 1; 2011 No. 2

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 97.....	ad. 2003 No. 1 am. 2007 No. 1; 2011 No. 2
Note to s. 97 (3)	am. 2007 No. 1; 2011 No. 2
S. 98.....	ad. 2003 No. 1 am. 2007 No. 1; 2009 No. 1; 2011 Nos. 1 and 2
Note to s. 98 (2)	am. 2007 No. 1; 2011 No. 2
Note to s. 98 (7)	am. 2007 No. 1; 2011 No. 2
S. 99.....	ad. 2003 No. 1 am. 2007 No. 1; 2011 No. 2
Division 4	
Div. 4 of Part B.....	ad. 2003 No. 1 rs. 2007 No. 1
Subdivision A	
S. 100.....	ad. 2003 No. 1 rs. 2007 No. 1 am. 2011 No. 2
Note to Div 4 of Part B	am. 2011 No. 2
Subdivision B	
S. 101.....	ad. 2003 No. 1 rs. 2007 No. 1 am. 2011 No. 2
Note to s. 101 (3)	am. 2011 No. 2
Note to s. 101 (9)	am. 2011 No. 2
S. 102.....	ad. 2003 No. 1 rs. 2007 No. 1 am. 2011 No. 2
Note to s. 102 (2)	am. 2011 No. 2
S. 103.....	ad. 2007 No. 1
S. 104.....	ad. 2007 No. 1 am. 2011 No. 2
Subdivision C	
S. 105.....	ad. 2007 No. 1 am. 2011 No. 2
S. 106.....	ad. 2007 No. 1 am. 2011 No. 2
Note to s. 106 (2)	am. 2011 No. 2
Note to s. 106 (6)	am. 2011 No. 2
S. 107.....	ad. 2007 No. 1 am. 2011 No. 2
Note to s. 107 (5)	ad. 2011 No. 2
Note to s. 107 (6)	am. 2011 No. 2
S. 108.....	ad. 2007 No. 1 am. 2011 No. 2
S. 109.....	ad. 2007 No. 1 am. 2011 No. 2
S. 110.....	ad. 2007 No. 1 am. 2011 No. 2
S. 111.....	ad. 2007 No. 1 am. 2011 No. 2
Note to s. 111 (4)	am. 2011 No. 2
S. 112.....	ad. 2007 No. 1 am. 2011 No. 2

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 113.....	ad. 2007 No. 1 am. 2011 No. 2
S. 114.....	ad. 2007 No. 1 am. 2011 No. 2
Subdivision D	
S. 115.....	ad. 2007 No. 1 am. 2011 No. 2
Note 1 to s. 115 (5)	am. 2011 No. 2
Subdivision E	
S. 119.....	ad. 2007 No. 1 am. 2011 No. 2
Note to s. 119 (3)	am. 2011 No. 2
S. 120.....	ad. 2007 No. 1 am. 2011 No. 2
S. 120A	ad. 2009 No. 1 am. 2011 No. 2
S. 120B	ad. 2009 No. 1 am. 2011 No. 2
S. 121.....	ad. 2007 No. 1 am. 2011 No. 2
Note to s. 121 (2)	am. 2011 No. 2
S. 122.....	ad. 2007 No. 1 am. 2011 No. 2
Note to s. 122 (4)	am. 2011 No. 2
Note to s. 122 (6)	am. 2011 No. 2
S. 123.....	ad. 2007 No. 1; am. 2009 No. 1; 2011 No. 2
S. 124.....	ad. 2007 No. 1 am. 2011 No. 2
S. 125.....	ad. 2007 No. 1 am. 2011 No. 2
S. 126.....	ad. 2007 No. 1 am. 2011 No. 2
Subdivision F	
S. 127.....	rs. 2007 No. 1 am. 2011 No. 2
Note to s. 127 (2)	am. 2011 No. 2
Division 5	
Div. 5 of Part B.....	ad. 2003 No. 1 rs. 2007 No. 1
S. 128.....	ad. 2007 No. 1
Division 7	
Div. 7 of Part B.....	ad. 2003 No. 1
S. 138.....	ad. 2003 No. 1 am. 2007 No. 1; 2011 No. 2
Note to s. 138 (3)	am. 2007 No. 1; 2011 No. 2
Note to s. 138 (4)	am. 2007 No. 1; 2011 No. 2
S. 139.....	ad. 2003 No. 1 am. 2007 No. 1; 2009 No. 1; 2011 No. 2
Note to s. 139 (5)	am. 2011 No. 2
Division 8	
Div. 8 of Part B.....	ad. 2007 No. 1

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 140.....	ad. 2007 No. 1 am. 2011 No. 2
S. 141.....	ad. 2007 No. 1; am. 2009 No. 1; 2011 No. 2
S. 142.....	ad. 2007 No. 1 am. 2011 Nos. 1 and 2
S. 143.....	ad. 2007 No. 1 am. 2011 No. 2
Note 1 to s. 143 (4)	am. 2011 No. 2
Note 2 to s. 143 (4)	am. 2011 No. 2
Note to s. 143 (7)	am. 2011 No. 2
Division 8A	
Div. 8A of Part B.....	ad. 2009 No. 1
S. 143A	ad. 2009 No. 1 rep. 2011 No. 1
S. 143B	ad. 2009 No. 1 rep. 2011 No. 1
S. 143C	ad. 2009 No. 1 am. 2011 No. 1
S. 143D.....	ad. 2009 No. 1 rep. 2011 No. 1
Division 9	
Div. 9 of Part B.....	ad. 2007 No. 1
S. 144.....	ad. 2007 No. 1 rep. 2011 No. 1
S. 145.....	ad. 2007 No. 1 rep. 2011 No. 1
S. 146.....	ad. 2007 No. 1 rep. 2011 No. 1
S. 147.....	ad. 2007 No. 1 am. 2011 No. 1
S. 148.....	ad. 2007 No. 1 rep. 2011 No. 1
Note to s. 148 (1)	rs. 2009 No. 1 rep. 2011 No. 1
Division 10	
Div. 10 of Part B.....	ad. 2003 No 1
Note to Div. 10 of Part B	ad. 2003 No. 1 am. 2007 No. 1; 2011 No. 2
Subdivision A	
S. 149.....	ad. 2003 No. 1 am. 2007 No. 1; 2011 No. 2
Subdivision B	
S. 150.....	ad. 2003 No. 1 am. 2007 No. 1; 2011 No. 2
Note to s. 150 (2)	am. 2007 No. 1; 2011 No. 2
S. 151.....	ad. 2003 No. 1 am. 2007 No. 1; 2011 No. 2
S. 152.....	ad. 2003 No. 1 am. 2007 No. 1; 2011 No. 2
Subdivision C	
S. 153.....	ad. 2003 No. 1 am. 2007 No. 1; 2011 No. 2

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 154.....	ad. 2003 No. 1 am. 2007 No. 1; 2011 No. 2
S. 155.....	ad. 2003 No. 1 am. 2007 No. 1; 2011 No. 2
S. 156.....	ad. 2003 No. 1 am. 2007 No. 1; 2011 No. 2
Subdivision D	
S. 157.....	ad. 2003 No. 1 am. 2007 No. 1; 2011 No. 2
S. 158.....	ad. 2003 No. 1 am. 2007 No. 1; 2011 No. 2
Note to s. 158 (4)	am. 2007 No. 1; 2011 No. 2
Heading to s. 159.....	am. 2011 No. 2
S. 159.....	ad. 2003 No. 1 rs. 2007 No. 1 am. 2011 No. 2
Note to s. 159 (7)	am. 2011 No. 2
Subdivision E	
S. 160.....	ad. 2003 No. 1 am. 2007 No. 1; 2011 No. 2
Heading to s. 161	am. 2011 No. 2
S. 161.....	ad. 2003 No. 1 rs. 2007 No. 1 am. 2011 No. 2
Note to s. 161 (6)	am. 2011 No. 2
Subdivision F	
S. 162.....	ad. 2003 No. 1 am. 2007 No. 1; 2011 No. 2
S. 163.....	ad. 2003 No. 1 am. 2007 No. 1; 2011 No. 2
Note to s. 163.....	am. 2007 No. 1
Note to s. 163 (4)	am. 2011 No. 2
Heading to s. 164.....	am. 2011 No. 2
S. 164.....	ad. 2003 No. 1 rs. 2007 No. 1 am. 2011 No. 2
Note to s. 164 (7)	am. 2011 No. 2
Subdivision G	
S. 165.....	ad. 2003 No. 1 am. 2007 No. 1; 2011 No. 2
Division 11	
Div. 11 of Part B.....	ad. 2003 No. 1
Note to Div. 11 of Part B	am. 2007 No. 1; 2011 No. 2
S. 166.....	ad. 2003 No. 1
S. 167.....	ad. 2003 No. 1 am. 2007 No. 1; 2011 No. 2
Note to s. 167.....	am. 2007 No. 1
Note to s. 167 (2)	am. 2011 No. 2
S. 168.....	ad. 2003 No. 1
S. 169.....	ad. 2003 No. 1 am. 2007 No. 1; 2011 No. 2
S. 170.....	ad. 2003 No. 1 am. 2007 No. 1; 2011 No. 2

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 171.....	ad. 2003 No. 1 am. 2007 No. 1; 2011 No. 2
S. 172.....	ad. 2003 No. 1 am. 2007 No. 1; 2011 No. 2
S. 173.....	ad. 2003 No. 1 rs. 2007 No. 1 am. 2011 No. 2
Note 2 to s. 173 (6)	am. 2011 No. 2
Division 12	
Heading to Div. 12..... of Part B	am. 2011 No. 2
Div. 12 of Part B.....	ad. 2003 No. 1 rs. 2007 No. 1
Heading to s. 174.....	am. 2011 No. 2
S. 174.....	ad. 2003 No. 1 rs. 2007 No. 1 am. 2011 No. 2
Heading to s. 175.....	am. 2011 No. 2
S. 175.....	ad. 2003 No. 1 rs. 2007 No. 1 am. 2011 No. 2
S. 176.....	ad. 2003 No. 1 rs. 2007 No. 1 am. 2011 No. 2
S. 177.....	ad. 2003 No. 1 rep. 2007 No. 1
Division 13	
Div. 13 of Part B.....	ad. 2003 No. 1
S. 178.....	ad. 2003 No. 1 am. 2007 No. 1; 2011 No. 2
Note to s. 178.....	rs. 2007 No. 1
S. 179.....	ad. 2003 No. 1 am. 2007 No. 1; 2011 No. 2
Note to s. 179.....	rs. 2007 No. 1
S. 180.....	ad. 2003 No. 1 am. 2007 No. 1; 2011 No. 2
Note to s. 180.....	rs. 2007 No. 1
Dictionary	
Dictionary	am. 2000 No. 1; 2003 No. 1; 2007 No. 1; 2009 No. 1; 2011 No. 2