

Explanatory Statement

Issued by the authority of the Australian Communications and Media Authority

COMMERCIAL TELEVISION CONVERSION SCHEME VARIATION 2009 (No. 1)

Broadcasting Services Act 1992

Background, purpose and legislative basis

This document provides an explanation of the *Commercial Television Conversion Scheme Variation 2009 (No. 1)* (the Variation), made under subclause 6(1) of Schedule 4 to the *Broadcasting Services Act 1992* (the BSA).

In 1998, the *Television Broadcasting Services (Digital Conversion) Act 1998* inserted Schedule 4 into the BSA. Schedule 4 provides for the conversion of transmission of television broadcasting services from analog mode to digital mode.

Subclause 6(1) of Schedule 4 required the Australian Broadcasting Authority (ABA) to formulate a scheme for the gradual conversion of the transmission of commercial television broadcasting services from analog mode to digital mode.

Consequently, in 1999 the ABA made the *Commercial Television Conversion Scheme 1999* (the Scheme), which applied to commercial television broadcasting services (as defined in clause 2 of Schedule 4 to the BSA) throughout Australia. An equivalent conversion scheme applying to national television broadcasting services, the *National Television Conversion Scheme 1999* (the National Scheme), was also made in the same year.

Under Schedule 4 to the BSA, the Scheme must be directed towards various policy objectives of digital transmissions achieving the same level of coverage and potential reception quality as analog transmissions. The ABA prepared a document explaining the technical assumptions to which it will have regard when considering whether digital transmissions achieve these objectives. The document, the *Digital Terrestrial Television Broadcast Planning Handbook*, is available from the Australian Communications and Media Authority (ACMA) website.

From 1 July 2005, ACMA was formed and took over the performance of the powers and functions under the BSA previously performed by the ABA, including all powers and functions in relation to the two Schemes.

The Scheme is divided into two Parts (Part A and Part B). Part A applies to commercial television broadcasting services in non-remote (ie regional and metropolitan) licence areas, and Part B applies to remote licence areas. Each part contains rules for:

- the creation of digital channel plans by ACMA, which allot digital channels to commercial television broadcasters for the transmission of television services in digital mode;
- the creation of implementation plans by commercial broadcasters which outline the roll-out process for digital services by commercial television broadcasters;
- test transmissions of digital services; and
- other matters necessary for the conversion of the transmission of broadcasting services from analog to digital mode.

Over time, both Schedule 4 to the BSA and the Scheme have been varied in response to the changing broadcasting environment. The amendments made by the Variation are intended to update the Scheme to reflect recent amendments to Schedule 4 to the BSA by the *Broadcasting Legislation Amendment (Digital Television Switch-over) Act 2008* (the DTSA).

Amendments to Schedule 4 to the Broadcasting Services Act 1992

The DTSA received Royal Assent on 18 December 2008. The DTSA amended parts of Schedule 4 to the BSA, including provisions relating to Government policies for achieving switch-over to digital television by 31 December 2013.

In particular, the DTSA amendments allow the Minister for Broadband, Communications and the Digital Economy to determine a staggered, region-by-region digital television switch-over timetable.¹ Previously, digital television switch-over could only occur at the end of a simulcast period for an entire licence area, meaning that switch-over could not occur separately in regions within a licence area.

The amendments in the Variation are consequential on the changes made to Schedule 4 to the BSA by Schedule 2 to the DTSA. In summary, the Variation will insert into the Scheme provisions relating to:

- new and amended policy objectives for Part A and Part B of the Scheme to reflect new policy objectives inserted into Schedule 4 to the BSA by the DTSA;
- implementation plans connected with the creation of a ‘digital only local market area’ (DOLMA) and same level of coverage and potential reception quality requirements;
- the cessation of analog transmissions in part of a licence area that is a DOLMA;
- the variation of a digital channel plan (DCP) in a licence area where a ‘local market area’ (LMA) has been determined for the purposes of allotting channels for transmission of television services in digital mode in the DOLMA;

¹ A more detailed explanation of the DTSA amendments may be found in the Explanatory Memorandum to the Broadcasting Legislation Amendment (Digital Television Switch-over) Bill 2008.

- the surrender of transmitter licences as necessary following the cessation of analog transmission or the variation of a DCP; and
- the definition of new terms introduced into Schedule 4 to the BSA by the DTSA.

Consultation

Section 17 of the *Legislative Instruments Act 2003* (the LIA) states that where a legislative instrument is likely to have a direct, or substantially indirect, effect on business, or to restrict competition, ACMA must be satisfied that any consultation it considers to be appropriate and that is reasonably practicable to undertake has been undertaken. Additionally, under clause 18 of Schedule 4 to the BSA, ACMA must make provision for wide public consultation when varying the Scheme.

Normally, clause 18 of Schedule 4 to the BSA would apply to any variation of the Scheme. However, Item 21 of Schedule 2 to the DTSA excludes from the operation of this provision any variations to the Scheme that deal with transitional and/or consequential matters in connection with amendments made by Schedule 2 to the DTSA, provided that they are made within 90 days from the day upon which the DTSA received Royal Assent (ie by 18 March 2009). Instead, the DTSA requires ACMA to make a copy of the proposed variations available on ACMA's website for at least five business days.

Consequently, ACMA released a consultation draft Variation to the Scheme for public comment on its web site on 13 February 2009. The closing date for submissions was at midnight on 20 February 2009. Concurrently with this consultation process, ACMA consulted on an equivalent variation to the National Scheme.

ACMA received written submissions, among others, from Free TV Australia and from Imparja Television, which have been placed on the ACMA web site. Some changes were made to the consultation draft Variation as a result of the comments received in relation to the variation to the National Scheme, but which related to the Commercial Scheme Variation.

In these circumstances ACMA is satisfied that the publication of the Variation in draft form on its website in accordance with Item 21 of Schedule 2 to the DTSA amounts to appropriate consultation for the purposes of section 17 of the LIA.

Regulatory Impact

ACMA has undertaken a regulatory impact analysis process and considers that the proposed variation to the Scheme is likely to have no or low impact on business or the economy and is not anti-competitive. Consequently, neither a Regulation Impact Statement, nor a Business Cost Calculator Report, is necessary in relation to the regulatory proposal. The reference number for the regulatory impact analysis process is ACMA 083.

Commencement

In accordance with section 2 of the Variation, the *Commercial Television Conversion Scheme Variation 2009 (No. 1)* will commence the day after it is registered on the Federal Register of Legislative Instruments.

Notes on the Instrument

Section 1 – Name of Instrument

This section sets out the title of the *Commercial Television Conversion Scheme Variation 2009 (No.1)*.

Section 2 – Commencement

This section provides that the *Commercial Television Conversion Scheme Variation 2009 (No.1)* commences the day after it is registered on the Federal Register of Legislative Instruments.

Section 3 – Variation of the Scheme

This section sets out that the Schedule the *Commercial Television Conversion Scheme Variation 2009 (No.1)* varies the Scheme.

Schedule

Amendments to Part A of the Scheme

Item [1] – Paragraph 13(1)(b)

Item [1] amends paragraph 13(1)(b) so that section 13 only applies where both the new section 53B and the existing section 55 of the Scheme do not apply. This amendment is consequential to the new requirements for LMAs and DOLMAs inserted by Item [11] of the Schedule to the Variation. Section 13 relates to general amendments to DCPs. New section 53B relates to amendments to DCPs specifically where a DOLMA has been determined.

Item [2] – Paragraph 15(2)(c)

Item [2] amends paragraph 15(2)(c) to include references to paragraphs 6(3)(ga) and (ja) of Schedule 4 to the BSA. The Scheme now requires the holder of a commercial television broadcasting licence, when preparing an implementation plan, to advise ACMA of how the holder proposes to meet the objectives in subclause 6(3) of Schedule 4 to the BSA, and in particular, to meet paragraphs 6 (3)(f), (ga), (j) and (ja). This amendment is consequential on the new policy objectives applying to LMAs and DOLMAs inserted at paragraphs 6(3)(ga) and (ja) of Schedule 4 to the BSA by Items 8 and 10 of Schedule 2 to the DTSA.

Item [3] – Subsection 28 (4)

Item [3] amends subsection 28(4) to include references to paragraphs 6(3)(ga) and (ja) of Schedule 4 to the BSA. The Scheme now requires an implementation plan submitted to ACMA by the holder of a commercial television broadcasting licence to be consistent with the policy objectives in subclause 6(3) of Schedule 4 to the BSA, and in particular, the objectives in paragraphs 6(3)(f), (g), (ga), (j) and (ja). This amendment is consequential on the new policy objectives applying to LMAs and DOLMAs inserted at

paragraphs 6(3)(ga) and (ja) of Schedule 4 to the BSA by Items 8 and 10 of Schedule 2 to the DTSA.

Item [4] – Paragraph 28(8)(b)

Item [4] amends paragraph 28(8)(b) to include references to paragraphs 6(3)(ga) and (ja) of Schedule 4 to the BSA. The Scheme now states that if a broadcasting service licence has been allocated to the holder of a commercial television broadcasting licence under section 38B of the BSA², then ACMA must **not** consider the new policy objectives at 6(3)(ga) and (ja) of Schedule 4 to the BSA. This amendment is consequential to the new policy objectives applying to LMAs and DOLMAs inserted at paragraphs 6(3)(ga) and (ja) of Schedule 4 to the BSA by Items 8 and 10 of Schedule 2 to the DTSA.

Item [5] – After section 38

Item [5] inserts two new provisions into the Scheme at section 38A and section 38B. The new provisions relate to the new objective at paragraph 6(3)(ja) of Schedule 4 to the BSA.

Section 38A of the Scheme requires the holder of a commercial television broadcasting licence for a licence area to apply to ACMA for the approval of a variation of the holder's implementation plan for that licence area in certain circumstances, set out in subsections 38A(1) and (2) of the Scheme.

Subsection 38A(1) requires the holder of a commercial television broadcasting licence for a licence area to apply to ACMA for the approval of a variation of the holder's implementation plan for that licence area where:

- the Minister has made a determination under subclause 5F(1) of Schedule 4 to the BSA (inserted by Item 4 of Schedule 2 to the DTSA) that a specified area within that licence area is an LMA that will become a DOLMA; and
- the holder has increased the level of coverage and potential reception quality of the holder's service in analog mode within the specified area that the Minister has determined is an LMA since the commencement of Schedule 4 to the BSA.

That is, if a holder of a commercial television broadcasting licence has improved the transmission of its service in analog mode in a part of a licence area, and that part of the licence area is a specified area that is determined to be an LMA that will become a DOLMA, the holder must vary its implementation plan. This requirement is designed to ensure that the holder of a commercial television broadcasting licence transmits in digital mode in the DOLMA to the standard achieved by the improved transmission in analog mode.

Subsection 38A(2) requires the holder of a commercial television broadcasting licence for a licence area to apply to ACMA for the approval of a variation of the holder's implementation plan for that licence area where:

² A licence allocated under section 38B of the BSA authorises the provision of a unique commercial television broadcasting service in digital mode only. There is no equivalent transmission of the service in analog mode, and the service is therefore irrelevant to the objectives mentioned.

- the Minister has made a determination under subclause 5F(1) of Schedule 4 to the BSA that a specified area within that licence area is an LMA that will become a DOLMA; and
- the impact of the Minister's determination would be to prevent the holder from complying with all or part of the existing implementation plan for that licence area (for example, where the determination would require the holder to cease the transmission of a service in analog mode earlier than is specified in the implementation plan).

Subsection 38A(3) provides that the holder of a commercial television broadcasting licence for a licence area does not have to apply to ACMA for the approval of a variation of the holder's implementation plan, if the implementation plan relates solely to a commercial television broadcasting service delivered under a broadcasting services licence allocated under section 38B of the BSA (i.e. where the plan relates to a digital only service).

Subsection 38A(4) specifies the time in which the holder must apply to ACMA for the variation of an implementation plan under either subsection 38A(1) or (2) of the Scheme. If a holder has to apply because it increases the level of coverage and potential reception quality of its service in analog mode after an LMA and DOLMA has been determined for the licence area, the holder has 30 days from the date of the increase, or a longer period if notified in writing by ACMA, to apply for approval of the variation. In the other two possible cases, the holder has 30 days from the date of the Minister's determination, or a longer period if notified in writing by ACMA, to apply for approval of the variation.

Subsection 38A(5) specifies that subsections 38(3) to (5) apply to applications for the variation of an implementation plan made under subsection 38A(1) or (2). Among other things, these provisions require strict compliance with the approved form.

Subsection 38A(6) provides that a reference in this section to an approved implementation plan includes a reference to an approved implementation plan that is part of a series.

Section 38B requires the holder of a commercial television broadcasting licence for a licence area to ensure that the objective in paragraph 6(3)(ja) of Schedule 4 to the BSA is met where the holder applies for the variation of an implementation plan for that licence area after the Minister has made a determination under subclause 5F (1) of Schedule 4 that a specified area within that licence area is an LMA that will become a DOLMA.

Subsection 38B(1) sets out that the section applies if:

- the Minister has made a determination under subclause 5F(1) of Schedule 4 to the BSA that a specified area within a licence area is an LMA that will become a DOLMA; and
- the holder of a commercial television broadcasting licence for the relevant licence area applies for approval for a variation of the holder's implementation plan for that licence area; and
- the holder has reduced, or proposes to reduce, the level of coverage and potential reception quality achieved by transmission of the commercial

television broadcasting service in analog mode in the specified area for which the Minister made the determination from the level achieved before the determination was made.

That is to say, where there is a degradation of transmission of a service in analog mode in a licence area before an LMA becomes a DOLMA, and a holder has applied for approval of a variation to its implementation plan, then this section will apply.

Subsection 38B(2) allows ACMA to request an explanation from the holder of a commercial television broadcasting licence for a licence area if either the level of coverage and potential reception quality achieved by the transmission of the commercial television broadcasting service in analog mode has been reduced, or is proposed to be reduced. In either case, ACMA may ask the holder to explain how it will ensure that the objective in paragraph 6(3)(ja) of Schedule 4 to the BSA will be met.

Subsection 38B(3) allows ACMA to refrain from having to consider the holder's application for a variation of its implementation plan whilst it is waiting for an explanation requested under subsection 38B(2) of the Scheme.

Subsection 38B(4) specifies that if ACMA requests an explanation from the holder of a commercial television broadcasting licence for a licence area under subsection 38B(2), then the holder's implementation plan for the licence area (as varied) must include provisions to ensure that the objective in paragraph 6(3)(ja) of Schedule 4 to the BSA will be met.

Subsection 38B(5) clarifies that the section applies to series of implementation plans just as it would to a single implementation plan.

Item [6] – Subsection 41(2)

Item [6] amends subsection 41(2) so that where an application for the variation of an implementation plan required under subsection 38A(1) or (2) is refused by ACMA, the holder of a commercial television broadcasting licence for a licence area that made the application must make a new application within 30 days of being told of the refusal, or within a longer period as notified, in writing, by ACMA. This Item is consequential to amendments made by Item [5] of the Schedule to the Variation.

Item [7] – Subsection 49(2)

Item [7] amends subsection 49(2) to require the holder of a commercial television broadcasting licence for a licence area to ensure that no transmissions of its commercial television broadcasting service are made in analog mode during a simulcast period in as much of the licence area as has been determined as being a DOLMA by the Minister under subclause 5F (1) of Schedule 4 to the BSA. This Item is consequential to the new policy objective at paragraph 6(3)(ga) of Schedule 4 to the BSA. The holder must continue to simulcast its service in both digital and analog modes in the remainder of the licence area.

Item [8] – Subsection 49(4)

Item [8] inserts a note indicating that the Minister determines the simulcast periods for metropolitan and regional licence areas under subclause 6(3) of Schedule 4 to the BSA.

Item [9] – Subsection 49(5), including the note

Item [9] omits subsection 49(5), consequential to subparagraphs 6 (3)(c)(ii) and (ia) of Schedule 4 to the BSA, as amended by Item 5 of Schedule 2 to the DTSA.

Item [10] – After subsection 51(1)

Item [10] inserts subsection 51(1A) to limit the application of the ACMA process for the surrender of a transmitter license if an SDTV transmission ceases in the licence area during the simulcast period. Section 51 will not apply for so much of a licence area that is a DOLMA following determination by the Minister under subclause 5F (1) of Schedule 4 to the BSA.

Item [11] – Part A, after Division 8

Item [11] inserts a new Division 8A into Part A of the Scheme. Division 8A is consequential to the new policy objective at paragraph 6(3)(ga) of Schedule 4 to the BSA.

Division 8A

The new Division 8A contains a series of provisions (sections 53A to 53D) that relate to parts of licence areas that the Minister has determined to be LMAs or DOLMAs under subclause 5F(1) of Schedule 4 to the BSA.

Section 53A requires ACMA to consider whether to vary a DCP that allots digital channels in an area that the Minister has determined will be an LMA or a DOLMA, as soon as practicable after the area is determined to be an LMA and before it becomes a DOLMA. Subsection 53A(3) sets out the matters to which ACMA must have regard when considering whether to vary the DCP.

Section 53B applies if, as a result of the review conducted under section 53A, ACMA considers it appropriate or necessary to vary an existing DCP. In this case, ACMA must publish a notice stating where copies of the proposed variation may be obtained and inviting comments on the proposed variation.

The rules for the publication of a notice by ACMA are set out in section 4 of the Scheme. According to section 4, if the Scheme requires ACMA to publish a notice, ACMA must do so in one of the following ways:

- publishing it in a national newspaper;
- publishing it in each State and Territory in a daily newspaper circulating generally in the State or Territory; or
- publishing it in the *Gazette*.

Section 4 also permits ACMA to publish a notice in a daily newspaper circulating generally in each relevant State or Territory if it decides that the notice is of significance only to one or some States or Territories.

In addition to complying with the above requirements, ACMA may publish a notice, statement or document in other ways – for example on the Internet, or in an industry or consumer publication.

When considering the form of the variation ACMA must have regard to the criteria in subsection 53B(3). ACMA may also have regard to any of the matters mentioned in subsections 9(3), (4), (6), (7) and (8) of the Scheme.

Subsection 53B(5) specifies that ACMA must vary the DCP before an LMA becomes a DOLMA and in such a manner as to allow the DCP, as varied, to commence once the LMA becomes a DOLMA. Subsection 53B(6) requires ACMA to publish a notice stating where copies of the variation may be obtained.

Section 53C requires all transmissions of commercial television broadcasting services in analog mode to cease in the part of a licence area that is an LMA when it becomes a DOLMA.

Subsection 53C(2) requires a holder of a commercial television broadcasting licence to surrender all transmitter licences that authorised transmission of the service in the area in analog mode that are licensed to the holder (transmitter licences allocated to third parties for re-transmitting a commercial television broadcasting service are not covered by this provision). Additionally, subsection 53C(3) specifies that, if ACMA has varied a DCP under section 53B, the holder is to surrender to ACMA all transmitter licences that authorised the transmission of the service in the area in digital mode.

Subsection 53C(4) requires a licensee surrendering a licence under subsection 53C(2) or (3) to comply with any requirements of ACMA for surrendering the licence.

Where the holder of a commercial television broadcasting licence has been affected by the variation of a DCP under section 53B, section 53D requires ACMA to issue to that holder one or more transmitter licences which take effect from the time an LMA becomes a DOLMA, and which authorises the transmission of the commercial television broadcasting service concerned in digital mode using the channel or channels allotted by ACMA under a DCP varied under section 53B.

In some circumstances, ACMA may also need to issue transmitter licences which authorise transmission in analog mode in the licence area, but outside the DOLMA. In these circumstances the new transmitter licence for analog transmission issued by ACMA will generally be on the same terms as the previous licence except to the extent necessary to ensure that it does not authorise transmission in analog mode inside the DOLMA.

Subsection 53D(3) requires ACMA to identify the conditions which are to apply to such licences issued under subsection 53D (1) or (2) and to issue the licence with those conditions.

Item [12] – Subsection 58(1), note

Item 12 substitutes to note following subsection 58(1) to indicate that transmitter licences are issued under section 102A of the *Radiocommunications Act 1992* (Radcomms Act).

Amendments to Part B of the Scheme

Item [13] – Paragraph 90(e)

Item [14] – Paragraph 90(h)

Item [15] – Paragraph 90(i)

Items [13] to [15] amend the Part B policy objectives in section 90 of the Scheme as a consequence of subclause 5F of Schedule 4 to the BSA (inserted by Item 4 of Schedule 2 to the DTSA). They recognise that transmissions in analog mode should not be made in a DOLMA.

Item [16] – After paragraph 90(j)

Item [16] inserts a new policy objective for Part B of the Scheme at paragraph 90(ja) that is equivalent and consequential to the policy objective in paragraph 6(3)(ga) of Schedule 4 to the BSA (inserted by Item 8 of Schedule 2 to the DTSA). It recognises that transmissions in analog mode should not be made in a DOLMA.

Item [17] – Paragraph 90(k)

Item [17] amends the Part B policy objective in paragraph 90(k) of the Scheme consequential to subclause 5F of Schedule 4 to the BSA (inserted by Item 4 of Schedule 2 to the DTSA). It recognises that transmissions in analog mode should not be made in a DOLMA.

Item [18] – After paragraph 90(k)

Item [15] inserts a new policy objective for Part B of the Scheme at paragraph 90(ka) that is equivalent and consequential to the policy objective in paragraph 6(3)(ja) of Schedule 4 to the BSA (inserted by Item 10 of Schedule 2 to the DTSA).

Item [19] – Subsection 98(1)

Item [16] amends subsection 98(1) so that section 98 applies only where new section 143B and the existing section 145 of the Scheme do not apply. This amendment is consequential to the new requirements for LMAs and DOLMAs inserted by Item [20] of the Schedule to the Variation. Section 98 relates to general amendments to a digital channel plan (DCP). New section 143B relates to amendments to DCPs specifically made because of the determination of a DOLMA.

Item [20] – After section 120

Item [20] inserts two new provisions into the Scheme at section 120A and section 120B which relate to the new objective at paragraph 90(ka) of the Scheme, inserted by Item [18] of the Schedule to the Variation.

Section 120A requires the holder of a commercial television broadcasting licence for a remote licence area to apply to ACMA for the approval of a variation of the holder's implementation plan for that licence area in certain circumstances set out in subsections 120A(1) and (2).

Subsection 120A(1) requires a the holder of a commercial television broadcasting licence for a remote licence area to apply to ACMA for the approval of a variation of the holder's implementation plan for that licence area where:

- the Minister has made a determination under subclause 5F(1) of Schedule 4 to the BSA (inserted by Item 4 of Schedule 2 to the DTSA) that a specified area within that licence area is an LMA that will become a DOLMA; and
- the holder has increased the level of coverage and potential reception quality of the holder's service in analog mode within the specified area that the Minister has determined is an LMA since the commencement of Schedule 4 to the BSA.

That is, if the holder of a commercial television broadcasting licence has improved the transmission of its service in analog mode in a part of a remote licence area, and that part of the remote licence area is a specified area that is determined to be an LMA that will become a DOLMA, the holder must vary its implementation plan. This requirement is designed to ensure that the holder of a commercial television broadcasting licence transmits in digital mode in the DOLMA to the standard achieved by the improved transmission in analog mode.

Subsection 120A(2) requires the holder of a commercial television broadcasting licence for a remote licence area to apply to ACMA for the approval of a variation of the holder's implementation plan for that licence area where:

- the Minister has made a determination under subclause 5F(1) of Schedule 4 to the BSA (inserted by Item 4 of Schedule 2 to the DTSA) that a specified area within that licence area is an LMA that will become a DOLMA; and
- the impact of the Minister's determination would be to prevent the holder from complying with all or part of the existing implementation plan for that licence area (for example, where the determination would require the holder to cease the transmission of a service in analog mode earlier than is specified in the implementation plan).

Subsection 120A(3) provides that the holder of a commercial television broadcasting licence for a licence area does not have to apply to ACMA for the approval of a variation of the holder's implementation plan, if the implementation plan relates solely to a commercial television broadcasting service delivered under a broadcasting services licence issued under section 38B of the BSA (i.e. where the plan relates to a digital only service).

Subsection 120A(4) specifies the time in which a holder of a commercial television broadcasting licence for a remote licence area must apply to ACMA for the variation of an implementation plan. If a holder of a commercial television broadcasting licence for a remote licence area has to apply because it increases the level of coverage and potential reception quality of its service in analog mode after an LMA and DOLMA has been determined for the remote licence area, the broadcaster has 30 days from the date of the increase, or a longer period if notified in writing by ACMA, to apply for approval of the variation. In the other two possible cases, the holder of a commercial television broadcasting licence for a licence area has 30 days from the date of the Minister's

determination, or a longer period if notified in writing by ACMA, to apply for approval of the variation.

Subsection 120A(5) specifies that subsections 120(3) to (5) apply to applications for the variation of an implementation plan made under subsection 120A(1) or (2). That is, strict compliance with the application form is required, and an application must deal with one implementation plan alone.

Subsection 120A(6) provides that references to an approved implementation plan include references to an approved implementation plan in a series of plans.

Section 120B is intended to ensure that the objective in paragraph 90(ka) of the Scheme (inserted by Item [18] of the Schedule to the Variation) is met, where the holder applies under any section for approval of a variation to an approved implementation plan.

Subsection 120B(1) sets out that the section applies if:

- the Minister has made a determination under subclause 5F (1) of Schedule 4 to the BSA (inserted by Item 4 of Schedule 2 to the DTSA) that a specified area within a remote licence area is an LMA that will become a DOLMA; and
- the holder of a commercial television broadcasting licence for the relevant licence area applies for approval for a variation of the holder's implementation plan for that licence area; and
- the holder has reduced, or proposes to reduce, the level of coverage and potential reception quality achieved by transmission of the commercial television broadcasting service in analog mode in the specified area for which the Minister made the determination from the level achieved before the determination came into effect.

That is to say, where there is a degradation of transmission of a service in analog mode in a remote licence area before an LMA becomes a DOLMA, and a holder of a commercial television broadcasting licence has applied for approval of a variation to its implementation plan, then this section will apply.

Subsection 120B (2) allows ACMA to request an explanation from the holder of a commercial television broadcasting licence for a licence area where either the level of coverage and potential reception quality achieved by the transmission of the commercial television broadcasting service in analog mode has been reduced or where it is proposed to be reduced. In either case, ACMA may ask the holder to explain how it will ensure that the objective in paragraph 90(ka) of the Scheme will be met.

Subsection 120B(3) allows ACMA to refrain from having to consider the holder's application for a variation of its implementation plan whilst it is waiting for an explanation requested under subsection 120B(2).

Subsection 120B (4) specifies that if ACMA requests an explanation from the holder of a commercial television broadcasting licence for a remote licence area under subsection 120B(2), then the holder's implementation plan for the licence area (as varied) must include provisions to ensure that the objective in paragraph 90(ka) of the Scheme will be met.

Subsection 120B(5) clarifies that the section applies to series of implementation plans just as it would to a single implementation plan.

Item [21] – Subsection 123(2), except the note

Item [21] amends subsection 123(2) so that where an application for the variation of an implementation plan required under subsection 120A(1) or (2) is refused by ACMA, the holder of a commercial television broadcasting licence for a remote licence area that made the application must make a new application within 30 days of being told of the refusal, or within a longer period as notified in writing by ACMA. This Item is consequential to amendments made by Item [20] of the Schedule to the Variation.

Item [22] – Subsection 139 (2)

Item [22] amends subsection 139(2) to require the holder of a commercial television broadcasting licence for a remote licence area to ensure that no transmissions of its commercial television broadcasting service are made in analog mode during a simulcast period in as much of the licence area as has been determined as being a DOLMA by the Minister under subclause 5F(1) of Schedule 4 to the BSA. This Item is consequential to the new policy objective at paragraph 90(ja) of Schedule 4 to the BSA (inserted by Item [16] of the Schedule to the Variation). The holder of a commercial television broadcasting licence for a remote licence area must continue to simulcast its service in both digital and analog modes in the remainder of the remote licence area.

Item [23] – After Subsection 141(1)

Item [23] inserts subsection 141(1A) to limit the application of the ACMA process for surrender of a transmitter licence if SDTV digital transmission ceases in the remote licence area during the simulcast period. Section 141 will not apply for so much of a licence area that is a DOLMA determined by the Minister under subclause 5F(1) of Schedule 4 to the BSA.

Item [24] – Part B, after Division 8

Item [24] inserts new Division 8A into Part B of the Scheme, consequential to the new policy objective at paragraph 90(ja) of Schedule 4 to the BSA (inserted by Item [16] of the Schedule to the Variation).

Division 8A

The new Division 8A contains a series of provisions (sections 143A to 143D) that relate to parts of remote licence areas that the Minister has determined to be LMAs or DOLMAs under subclause 5F(1) of Schedule 4 to the BSA (inserted by Item 4 of Schedule 2 to the DTSA).

Section 143A requires ACMA to consider whether to vary a DCP that allots digital channels in an area that the Minister has determined will be an LMA or a DOLMA as soon as practicable after the area is determined to be an LMA and before it becomes a DOLMA. Subsection 143A(3) sets out the matters to which ACMA must have regard when considering whether to vary the DCP.

Section 143B applies if, as a result of the review conducted under section 143A, ACMA considers it appropriate or necessary to vary an existing DCP pertaining to a remote licence area. In this case, ACMA must publish a notice, as described in section 53B in Item [11].

When considering the form of the variation ACMA must have regard to the criteria in subsection 143B(3). ACMA may also have regard to any of the matters mentioned in subsection 94(4) of the Scheme.

Subsection 143B(5) specifies that ACMA must vary the DCP before an LMA becomes a DOLMA and in such a manner as to allow the DCP, as varied, to commence once the LMA becomes a DOLMA. Subsection 143B(6) requires ACMA to publish a notice stating where copies of the variation may be obtained.

Section 143C requires all transmissions of commercial television broadcasting services in analog mode to cease in the part of a remote licence area that is an LMA when it becomes a DOLMA.

Subsection 143C(2) requires a holder of a commercial television broadcasting licence to surrender all transmitter licences that authorised transmission of the service in the area in analog mode that are licensed to the holder (transmitter licences allocated to third parties for re-transmitting a commercial television broadcasting service are not covered by this provision). Additionally, subsection 143C(3) specifies that, if ACMA has varied a DCP under section 143B, the holder is to surrender to ACMA all transmitter licences that authorised the transmission of the service in the area in digital mode.

Subsection 143C(4) requires a licensee surrendering a licence under subsection 143C(2) or (3) to comply with any requirements of ACMA for surrendering the licence.

Where the holder of a commercial television broadcasting licence for a remote licence area has been affected by the variation of a DCP under section 143B, section 143D requires ACMA to issue to that holder one or more transmitter licences which take effect from the time an LMA becomes a DOLMA, and which authorises the transmission of the commercial television broadcasting service concerned in digital mode using the channel or channels allotted by ACMA under a DCP varied under section 143B.

In some circumstances, ACMA may also need to issue transmitter licences which authorise transmission in analog mode in the remote licence area, but outside the DOLMA. In these circumstances the new transmitter licence for analog transmission issued by ACMA will generally be on the same terms as the previous licence except to the extent necessary to ensure that it does not authorise transmission in analog mode inside the DOLMA.

Subsection 143D(3) requires ACMA to identify the conditions which are to apply to such licences issued under subsection 143D (1) and to issue the licence with those conditions.

Item [25] – Subsection 148(1), note

Item [25] substitutes the note following subsection 58(1) to indicate that transmitter licences are issued under section 102A of the Radcomms Act.

Item [26] – Dictionary, after definition of *datacasting service*

Item [27] – Dictionary, after definition of *licence area*

Items [26] and [27] amend the dictionary of the Scheme to include new terms inserted into Schedule 4 to the BSA.