



Commercial Television Conversion Scheme Variation 2009 (No. 1)¹

Broadcasting Services Act 1992

The AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY makes this Instrument under subclause 6 (1) of Schedule 4 to the *Broadcasting Services Act 1992*.

Dated 12th March 2009

CHRIS CHAPMAN
Member

CHRIS CHEAH
Member

Australian Communications and Media Authority

1 Name of Instrument

This Instrument is the *Commercial Television Conversion Scheme Variation 2009 (No. 1)*.

2 Commencement

This Instrument commences on the day after it is registered.

3 Variation of *Commercial Television Conversion Scheme 1999*

Schedule 1 varies the *Commercial Television Conversion Scheme 1999*.

Schedule 1 Variations

(section 3)

[1] Paragraph 13 (1) (b)

omit

section 55 does

insert

sections 53B and 55 do

[2] Paragraph 15 (2) (c)

omit

(f) and (j)

insert

(f), (ga), (j) and (ja)

[3] Subsection 28 (4)

omit

(g) and (j)

insert

(g), (ga), (j) and (ja)

[4] Paragraph 28 (8) (b)

omit

6 (3) (f) and (j)

insert

6 (3) (f), (ga), (j) and (ja)

[5] After section 38

insert

38A Holder must apply for variation in certain circumstances

- (1) A holder must apply to 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

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- (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 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 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 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 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 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) 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) ACMA is not required to consider the holder's application while it is waiting for the explanation.
- (4) If 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.

[6] Subsection 41 (2), except the note

substitute

- (2) If ACMA considers that the application is not suitable for approval:
 - (a) 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

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- (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 ACMA.

[7] Subsection 49 (2)

substitute

- (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.

[8] Subsection 49 (4), at the foot

insert

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.

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

omit

[10] After subsection 51 (1)

insert

- (1A) This section does not apply to so much of the licence area that is a digital-only local market area.

[11] Part A, after Division 8

insert

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

53A Review of allocation of digital channels

- (1) This section applies if the Minister determines that a specified area in a licence area is a local market area that will become a digital-only local market area.

- (2) ACMA must, as soon as practicable and before the area becomes a digital-only local market area, consider whether to vary an existing digital channel plan for the licence area's simulcast period for the purpose of allotting channels for transmission of the commercial television broadcasting service in digital mode in the digital-only local market area.
- (3) In considering whether to vary the plan, ACMA must have regard to the following matters:
 - (a) whether the channels that would be allotted for digital transmission after the simulcast period would be essentially the same channels as those allotted for the simulcast period;
 - (b) whether the channels that would be allotted for digital transmission in the digital-only local market area would be essentially the same channels as those allotted for the simulcast period;
 - (c) whether the existing digital channel plan adequately meets the requirements for the licence area;
 - (d) whether the existing digital channel plan would adequately meet the requirements for the digital-only local market area;
 - (e) whether varying the existing digital channel plan would affect the services provided in those parts of the licence area that are not within the digital-only local market area;
 - (f) the need to plan the most efficient use of the spectrum;
 - (g) the relevant policy objectives in clause 6 of Schedule 4 to the Act;
 - (h) other matters that ACMA considers relevant in relation to the efficient use of the spectrum for broadcasting, datacasting and other uses.

53B Variation of digital channel plan

- (1) If, after considering the matters in subsection 53A (3), ACMA considers it appropriate or necessary to do so, ACMA may decide to vary a digital channel plan for the purpose of allotting channels for transmission of a commercial television broadcasting service in digital mode in the digital-only local market area.
- (2) If ACMA decides to vary an existing digital channel plan, ACMA must publish a notice:
 - (a) stating where copies of the proposed variation may be obtained; and
 - (b) inviting comments on the variation in the period specified in the notice.
- (3) In considering the form of the variation, ACMA must have regard to:
 - (a) any comments it receives in response to the notice under subsection (2); and
 - (b) the matters mentioned in subsection 9 (2); and
 - (c) 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 Minister — the effect of the variation on the approved implementation plan.

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- (4) ACMA may also have regard to any of the matters mentioned in subsections 9 (3), (4), (6), (7) and (8).
 - (5) ACMA must vary the plan before the local market area becomes a digital-only local market area, but the plan, as varied, must not commence before the local market area becomes a digital-only local market area.
 - (6) ACMA must publish a notice stating where copies of the variation may be obtained.

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

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 in the area are to cease.

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

- (2) A licensee must surrender to ACMA all transmitter licences that authorised transmission of that service in the local market area in analog mode.
- (3) If ACMA varies a digital channel plan under section 53B, a licensee affected by the variation must surrender to ACMA all transmitter licences that authorised transmission of the service in the local market area in digital mode.
- (4) A licensee that is required to surrender a transmitter licence under this section must comply with any requirements of ACMA for surrendering the licence.

53D New transmitter licences to be issued

- (1) ACMA must issue to a licensee affected by a variation to a digital channel plan under section 53B one or more transmitter licences, each of which:
 - (a) has effect from the time a local market area becomes a digital-only local market area; and
 - (b) authorises the transmission of the commercial television broadcasting service concerned in digital mode using the channel or channels allotted by ACMA under a digital channel plan varied under section 53B.

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

- (2) If it considers it necessary to do so, ACMA must also issue to the licensee a transmitter licence that authorises the transmission of the commercial television broadcasting service concerned in analog mode in so much of the relevant licence area that is not a digital-only local market area.
- (3) ACMA must also:
 - (a) identify conditions to which the licence should be subject; and

(b) issue the licence, including the conditions.

[12] Subsection 58 (1), note

substitute

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

[13] Paragraph 90 (e)

after

digital mode

insert

in so much of that area as is not a digital-only local market area

[14] Paragraph 90 (h)

omit each mention of

in that area

insert

in so much of that area as is not a digital-only local market area

[15] Paragraph 90 (i)

omit each mention of

in that area

insert

in so much of that area as is not a digital-only local market area

[16] After paragraph 90 (j)

insert

(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 in so much of that area as is a digital-only local market area;

[17] Paragraph 90 (k)

omit each mention of

in that area

insert

in so much of that area as is not a digital-only local market area

[18] After paragraph 90 (k)

insert

- (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;

[19] Subsection 98 (1)

after

scheme

insert

, and sections 143B and 145 do not apply

[20] After section 120

insert

120A Holder must apply for variation in certain circumstances

- (1) A holder must apply to 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 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.
- (4) The holder must apply to 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 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 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 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) 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.

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- (3) ACMA is not required to consider the holder's application while it is waiting for the explanation.
 - (4) If 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.

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

substitute

- (2) If ACMA considers that the application is not suitable for approval:
 - (a) 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 ACMA.

[22] Subsection 139 (2)

substitute

- (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.

[23] After subsection 141 (1)*insert*

- (1A) This section does not apply to so much of the remote licence area that is a digital-only local market area.

[24] Part B, after Division 8*insert***Division 8A Requirements for local market areas and digital-only local market areas****143A Review of allocation of digital channels**

- (1) This section applies if the Minister determines that a specified area in a remote licence area is a local market area that will become a digital-only local market area.
- (2) ACMA must, as soon as practicable and before the area becomes a digital-only local market area, consider whether to vary an existing digital channel plan for the licence area's simulcast period for the purpose of allotting channels for transmission of the commercial television broadcasting service in digital mode in the digital-only local market area.
- (3) In considering whether to vary the plan, ACMA must have regard to the following matters:
 - (a) whether the channels that would be allotted for digital transmission after the simulcast period would be essentially the same channels as those allotted for the simulcast period;
 - (b) whether the channels that would be allotted for digital transmission in the digital-only local market area would be essentially the same channels as those allotted for the simulcast period;
 - (c) whether the existing digital channel plan adequately meets the requirements for the remote licence area;
 - (d) whether the existing digital channel plan would adequately meet the requirements for the digital-only local market area;
 - (e) whether varying the existing digital channel plan would affect the services provided in those parts of the remote licence area that are not within the digital-only local market area;
 - (f) the need to plan the most efficient use of the spectrum;
 - (g) the relevant policy objectives in section 90 of this scheme;
 - (h) other matters that ACMA considers relevant in relation to the efficient use of the spectrum for broadcasting, datacasting and other uses.

143B Variation of digital channel plan

- (1) If, after considering the matters in subsection 143A (3), ACMA considers it appropriate or necessary to do so, ACMA may decide to vary a digital channel plan for the purpose of allotting channels for transmission of a commercial television broadcasting service in digital mode in the digital-only local market area.
- (2) If ACMA decides to vary an existing digital channel plan, ACMA must publish a notice:
 - (a) stating where copies of the proposed variation may be obtained; and
 - (b) inviting comments on the variation in the period specified in the notice.
- (3) In considering the form of the variation, ACMA must have regard to:
 - (a) any comments it receives in response to the notice under subsection (2); and
 - (b) the matters mentioned in subsection 94 (2); and
 - (c) 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 Minister — the effect of the variation on the approved implementation plan.
- (4) ACMA may also have regard to any of the matters mentioned in subsection 94 (4).
- (5) ACMA must vary the plan before the local market area becomes a digital-only local market area, but the plan, as varied, must not commence before the local market area becomes a digital-only local market area.
- (6) ACMA must publish a notice stating where copies of the variation may be obtained.

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

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 in the area are to cease.

Note See paragraph 90 (ja) of this scheme.
- (2) A licensee must surrender to ACMA all transmitter licences that authorised transmission of that service in the local market area in analog mode.
- (3) If ACMA varies a digital channel plan under section 143B, a licensee affected by the variation must surrender to ACMA all transmitter licences that authorised transmission of the service in the local market area in digital mode.

- (4) A licensee that is required to surrender a transmitter licence under this section must comply with any requirements of ACMA for surrendering the licence.

143D New transmitter licences to be issued

- (1) ACMA must issue to a licensee affected by a variation to a digital channel plan under section 143B one or more transmitter licences, each of which:
- (a) has effect from the time a local market area becomes a digital-only local market area; and
 - (b) authorises the transmission of the commercial television broadcasting service concerned in digital mode using the channel or channels allotted by ACMA under a digital channel plan varied under section 143B.

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

- (2) If it considers it necessary to do so, ACMA must also issue to the licensee a transmitter licence that authorises the transmission of the commercial television broadcasting service concerned in analog mode in so much of the relevant remote licence area that is not a digital-only local market area.
- (3) ACMA must also:
- (a) identify conditions to which the licence should be subject; and
 - (b) issue the licence, including the conditions.

[25] Subsection 148 (1), note

substitute

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

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

insert

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

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

insert

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

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.