

Explanatory Statement

AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY (REALISING THE DIGITAL DIVIDEND) DIRECTION 2010

**Issued by the authority of the Minister for Broadband, Communications,
and the Digital Economy**

PURPOSE

This Direction is made under section 14 of the *Australian Communications and Media Authority Act 2005*, subsection 25(3) of the *Broadcasting Services Act 1992* (the BSA), and clauses 15 and 29 of Schedule 4 to the BSA.

The Direction is concerned with the Australian Communications and Media Authority's (the ACMA) exercise of its planning powers and performance of its broadcast planning under the BSA and its spectrum functions under the *Radiocommunications Act 1992* (the Radiocommunications Act), as needed to facilitate the release of broadcasting spectrum as a digital dividend in accordance with the Commonwealth's policy objectives.

The purpose of the Direction is to give effect to the Australian Government's primary policy objective in realising the digital dividend. The dividend will maximise the benefit that use of the spectrum will over time bring to the Australian community and economy, while at the same time ensuring continuation of the current, high quality, free-to-air television services.

To give effect to these objectives, the Direction requires that the ACMA consider exercising its planning powers under the BSA to achieve specified Commonwealth policy objectives and to take account of specified Commonwealth policy objectives when undertaking its spectrum management functions under the Radiocommunications Act and its planning functions under the BSA.

BACKGROUND

On 24 June 2010 the Australian Government announced that it has decided to release broadcasting spectrum as a digital dividend. The decision was made following extensive public consultation through the *Digital Dividend Green Paper*. This spectrum will become available as a result of the switch to digital-only television broadcasting, which will be completed in Australia by 31 December 2013.

The Australian Government's primary policy objective in relation to the digital dividend is to maximise the benefit that use of the spectrum will bring to the Australian community and economy over time. The release of a contiguous block of 126 MHz of spectrum in the upper Ultra High Frequency (UHF) band as a digital

dividend, while at the same time ensuring continuation of the current, high quality, free-to-air television services, will achieve this objective. The purpose of the Direction is to give effect to these objectives.

The Direction requires the ACMA to plan for the release of a contiguous block of 126 MHz of broadcasting spectrum in the upper band as a digital dividend. Accordingly, the Minister for Broadband, Communications and the Digital Economy is directing the ACMA to clear broadcasting services from the frequency range 694 to 820 MHz (that is, channels 52 to 69 inclusive).

The Direction also provides the ACMA with additional guidance in meeting this objective, and with the consequent task of planning broadcasting services in the remaining spectrum.

As noted in the *Digital Dividend Green Paper*, it was anticipated that the release of a contiguous block of 126 MHz of spectrum would require either Channel A or B to be rolled into the digital dividend. Accordingly, the Minister intends for the remaining broadcasting spectrum to support the provision of up to six terrestrial digital television channels nationwide. Each of these 7 MHz channels can support a number of digital television services. This Direction asks the ACMA to consider exercising its power to make available six channels of broadcasting spectrum in each metropolitan licence area for the provision of television broadcasting services.

To ensure the delivery of high quality, free-to-air television services, the Minister has asked the ACMA to consider whether national and commercial television broadcasting services should be located within the same spectrum frequency band in each metropolitan licence area.

The Minister intends that, to facilitate the future roll out of digital radio to rural and regional Australia, two 7 MHz channels are to be made available in each metropolitan licence area for the provision of digital radio broadcasting services. This would allow equivalent spectrum to be used for digital radio in adjacent regional areas without causing interference to television and radio services already operating in metropolitan areas.

With regard to future availability of digital radio in rural and regional Australia, section 215A of the BSA requires a statutory review of the merits of various terrestrial and satellite technologies for transmitting digital radio and restricted datacasting services in regional licence areas to be conducted by 1 January 2011. The review will inform the Government's decisions about the various transmission options for digital radio in regional licence areas.

In order to release the digital dividend spectrum, digital television services in the target frequency range will be relocated and organised more efficiently. This process is known as 'restacking'.

Restacking involves changing the channel on which a digital television service is transmitted to a particular area. For the majority of viewers who have an antenna capable of receiving the restacked services on their new channels, this process is unlikely to involve any costs other than the inconvenience of a re-scan of their digital

receiver (an integrated digital television and set-top box) if it does not do so automatically. Many viewers would have already had to re-scan their digital receivers to pick up changes such as the introduction of new multi-channels by commercial and national broadcasters.

Releasing the digital dividend is an important micro-economic reform and a significant priority for the Australian Government. It presents a historic opportunity to improve communication services available in Australia. The Government aims to auction the digital dividend spectrum in the second half of 2012, allowing successful bidders ample time to plan and deploy the next generation networks that are likely to utilise the spectrum.

It is anticipated that the ACMA will commence its restack planning and engagement with stakeholders as soon as this Direction takes effect. The realisation of the digital dividend will involve not only re-stacking or clearance of the spectrum but also the completion of spectrum re-allocation processes to be undertaken in accordance with Part 3.6 of the Radiocommunications Act. Subject to those spectrum reallocation processes commencing, the Government's aim is for the digital dividend spectrum to be cleared within 12 months of the switch-off of analog television services on 31 December 2013. Subject to any technical constraints, the Government would anticipate that broadcasting spectrum will be restacked at the same time as switchover wherever possible, or shortly thereafter, where not. Necessarily, the digital dividend spectrum will need to be cleared before a new spectrum licensee can be authorised to use that spectrum in accordance with their spectrum licence.

In order to ensure that the Australian Government receives timely advice about the realisation of the digital dividend, including advice about any delay or potential technical issues, the Direction requires the ACMA to report regularly to the Minister on their progress.

NOTES ON CLAUSES

Clause 1 provides for the citation of the Direction.

Clause 2 provides that the Direction will be registered on the Federal Register of Legislative Instruments (FRLI), and will take effect the day after it is registered.

Clause 3 defines the terms used throughout the Direction. The majority of the terms used are self-explanatory, but to the extent that there are terms that are not self-explanatory, these are explained below.

The 'broadcasting services bands' are the designated parts of the radiofrequency spectrum which have been referred to the ACMA for planning under section 31 of the Radiocommunications Act. AM and FM radio services and free-to-air UHF and VHF television services are provided on the broadcasting services bands which are:

- 526.5 to 1606.5 kHz;
- 45 to 52 MHz and 56 to 70 MHz (Band I);
- 85 to 108 MHz (Band II);
- 137 to 144 MHz (channel 5A);

- 174 to 230 MHz (Band III);
- 520 to 820 MHz (Bands IV and V).

A 'regional licence area' is any area that is not a metropolitan licence area. A regional licence area therefore technically includes remote licence areas. However, the ACMA has made a determination under clause 5 of Schedule 4 to the BSA that specified licence areas are to be 'remote licence areas' for the purposes of Schedule 4 to the BSA (*Determination of Remote Licence Areas (22/12/2000)*, published on the FRLI).

Clause 4 requires that in performing its spectrum management functions, the ACMA act in accordance with the following Commonwealth communications policy objectives (the digital dividend policy objectives):

- that the part of the broadcasting services bands comprising the frequencies 694 to 820 megahertz (MHz) inclusive (the digital dividend spectrum) is to be cleared, over time, of broadcasting services and datacasting services;
- that the clearance of the digital dividend spectrum be completed as soon as possible after the final digital television switch-over day.

Clause 5 requires that the ACMA consider, in relation to the digital dividend policy objectives, whether to exercise its powers to vary a frequency allotment plan (FAP) under subsection 25(2) of the BSA, or the commercial television conversion scheme or the national television conversion scheme in a manner that varies a FAP under subclauses 16(1) and 30(1) of Schedule 4 to the BSA, so that, over time:

- in each metropolitan licence area, the number of channels to be made available for the provision of television broadcasting services in digital mode not exceed six at a particular area (located between 174 MHz and 230 MHz inclusive);
- in each metropolitan licence area, 14 MHz (located between 174 MHz and 230 MHz inclusive) should not be made available for television broadcasting services, to allow for the provision of digital radio broadcasting services.

It is important to note here that the FAP concerns the number of channels that are to be available at particular areas of Australia. In practice the particular area refers to a transmission site and the area covered by transmissions from that site; a 'particular area' does not necessarily coincide with a licence area.

Clause 6 requires the ACMA to consider whether to exercise its powers under subsection 26(2) of the BSA to vary each licence area plan (LAP) to the extent that it deals with commercial television broadcasting services, national television broadcasting services, digital radio broadcasting services (as the case requires) and other television broadcasting services (as the case requires). In doing so, the ACMA is to have regard to the digital dividend policy objectives when considering whether (and, if so, how) to vary each LAP.

Furthermore, in deciding whether (and, if so, how) to exercise its power under subsection 26(2) of the BSA in relation to a LAP for a metropolitan licence area, the ACMA is to take into account particular policy objectives. There are different policy objectives for metropolitan licence areas, and regional or remote licence areas.

In relation to metropolitan licence areas, the policy objective is that, where practicable, it is desirable for all television broadcasting services transmitted in digital mode and digital radio broadcasting services to be located in the same frequency band – for example, in VHF Band III.

In relation to regional and remote licence areas, the policy objective is that it is desirable that where LAPs variations are not necessary for, or directly consequential to, clearing the digital dividend spectrum, such planning or allotment is to minimise disruption for the affected television audience, and minimise the financial impact on affected commercial television broadcasting services and national television broadcasting services.

The objective of minimising audience disruption includes, but is not limited to, disruption caused by the need to re-orientate, upgrade or replace antennas. In giving this example, the Direction does not prevent the ACMA from considering the need to minimise other disruptions that may be experienced by the affected television audience, such as the need to re-scan digital televisions and set-top boxes.

The objective of minimising financial impact on broadcasters is intended to require the ACMA to take account of impacts such as the need to purchase new transmission equipment and/or to re-orientate, upgrade or replace existing equipment in order for the broadcasting services to operate at different frequencies.

The Minister is giving the ACMA a direction that is general in nature as it merely requires consideration of certain objectives by the ACMA if the ACMA decides to exercise its powers under subsection 26(2) of the BSA. The direction is not so specific as to actually require the ACMA to exercise its powers under subsection 26(2) of the BSA to vary a relevant LAP.

Clause 7 requires that the ACMA have regard to the digital dividend policy objectives and to consider whether to exercise its powers under clauses 16 or 30 of Schedule 4 to the BSA to vary the commercial television conversion scheme or the national television conversion scheme so as to make or vary, over time, a digital channel plan or to allot channels for transmission in digital mode.

Clause 7 also requires that in deciding whether (and, if so, how) to exercise its power to vary the conversion schemes, the ACMA is to take into account particular policy objectives. There are different policy objectives for metropolitan licence areas, and regional or remote licence areas. These objectives are the same as those noted for clause 6, above.

Clause 8 requires the ACMA to report to and advise the Minister about progress in each licence area towards achieving the policy objectives set out in the Direction, on a quarterly basis. The Direction makes clear that the ACMA is nonetheless able to provide reports or advice to the Minister at any time.

Clause 9 requires the ACMA to periodically monitor and review the feasibility and desirability of using the frequencies 519-526 MHz (also known as UHF Channel 27) for broadcasting purposes. The ACMA is to provide advice, in a written report, to the

Minister if the ACMA forms the opinion that the frequencies 519-526 MHz (inclusive) are desirable for future broadcasting purposes.

CONSULTATION

The ACMA has been consulted about the objectives outlined in this Direction.

Extensive public consultation has also been undertaken through the *Digital Dividend Green Paper* referred to above. A large number of submissions were received from a variety of stakeholders, including the free-to-air commercial and national broadcasters ('the broadcasters') and other current users of the spectrum; the communications industry (carriers, service providers and vendors); subscription television; media organisations; consumer and industry organisations; emergency service, law enforcement and national security organisations; Federal, State and Territory government agencies; and utilities

It is anticipated that the ACMA will consult further with broadcasters about its planning intentions as issues arise.