



# Commercial Television Conversion Scheme Variation 2011 (No. 2)<sup>1</sup>

*Broadcasting Services Act 1992*

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

Dated 16<sup>th</sup> August 2011

*Chris Chapman*

[signed]

Member

*Richard Bean*

[signed]

Member/~~General Manager~~

Australian Communications and Media Authority

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## **1 Name of Instrument**

This Variation is the *Commercial Television Conversion Scheme Variation 2011 (No. 2)*.

## **2 Commencement**

Each provision of this Variation specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table.

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**Commencement information****Column 1****Column 2****Provision(s)****Commencement**

|                                       |   |
|---------------------------------------|---|
| 1. Sections 1, 2 and 4 and Schedule 2 | The day after this Variation is registered. |
| 2. Section 3 and Schedule 1           | Immediately after Schedule 2 commences.     |

- 3**      **Variation of *Commercial Television Conversion Scheme 1999***  
Schedule 1 varies the *Commercial Television Conversion Scheme 1999*.
- 4**      **Variation of *Commercial Television Conversion Scheme 1999***  
Schedule 2 varies the *Commercial Television Conversion Scheme 1999*.

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## Schedule 1 General variations

(section 3)

### Part 1 Multi-channelling amendments

#### [1] After subsection 7(3)

*insert*

- (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.

#### [2] Subsection 8(4)

*substitute*

- (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.

#### [3] Subsection 8(5)

*substitute*

- (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.

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**[4] Subsection 8(6)**

*omit the subsection*

**[5] Paragraph 13(4)(a)**

*omit*

, (3) and (3A)

*insert*

and (3)

**[6] After subsection 13(5)**

*insert*

(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.

**[7] Subsection 14(3), note**

*substitute*

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

**[8] Subsection 45(1) (including the note)**

*omit the subsection*

**[9] Subsection 45(2)**

*omit*

The ACMA must issue

*insert*

Subject to subsections (2A), (2B) and (2C) the ACMA must issue

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**[10] After subsection 45(2) (after the note)**

*insert*

(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*.

**[11] Subsection 69(2)**

*omit*

The ACMA must issue

*insert*

Subject to subsection (2A), the ACMA must issue

**[12] After subsection 69(2) (after the note)**

*insert*

(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.

**[13] Subsection 71(1)**

*omit*

The ACMA must issue

*insert*

Subject to subsection (1A), the ACMA must issue

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**[14] After subsection 71(1) (after the note)**

*insert*

(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 on a test basis.

**[15] Subsection 74(2)**

*omit*

The ACMA must issue

*insert*

Subject to subsection (2A), the ACMA must issue

**[16] After subsection 74(2) (after the note)**

*insert*

(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.

**[17] Subsection 83(1)**

*omit*

If the ACMA approves

*insert*

Subject to subsections (1A) and (2), if the ACMA approves

**[18] After subsection 83(1) (after the note)**

*insert*

(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.

**[19] After subsection 92(3) (after the note)**

*insert*

- (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.

**[20] Subsection 93(4)**

*substitute*

- (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
  - (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.

**[21] Subsection 93(5)**

*substitute*

- (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.

**[22] Subsection 93(6)**

*omit the subsection*

**[23] Subsection 93(7)**

*omit the subsection*



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**[24] After subsection 98(5)**

*insert*

- (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.

**[25] Subsection 127(1) (including the note)**

*omit the subsection*

**[26] Subsection 127(2)**

*omit*

The ACMA must issue

*insert*

Subject to subsections (2A), (2B), (2C) and (2D), the ACMA must issue

**[27] After subsection 127(2) (after the note)**

*insert*

- (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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**Part 2**                      **Miscellaneous amendments****[28]**            **Section 3A***before*

This Scheme

*insert*

(1)

**[29]**            **After paragraph 3A(1)(a)***insert*

- (aa) to SDTV multi-channelled commercial television broadcasting services, other than a holder's primary commercial television broadcasting service; and

**[30]**            **Paragraph 3A(1)(b)***omit*

services

**[31]**            **Paragraph 3A(1)(c)***omit*

services

**[32]**            **Paragraph 3A(1)(c)***omit*

2007.

*insert*

2007; and

- (d) in relation to a commercial television broadcasting licence if the licence was allocated under section 38C of the Act.

**[33]**            **After subsection 3A(1)***insert*

- (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:

- 
- (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*.

**[34] Paragraph 4(1)(c)**

*omit*

*Gazette.*

*insert*

*Gazette;*

- (d) publishing it on the ACMA's Internet site.

**[35] Subsection 17(2), note**

*omit*

Subdivision C

*insert*

Subdivision D

**[36] Subsection 36(1)**

*omit*

(3A)

*insert*

(4)

**[37] Section 44**

*substitute*

- (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.

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**[38] After subsection 49(2)**

*insert*

(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*.

**[39] Subsection 50(1), note 2**

*omit*

sections 64 and 65.

*insert*

sections 47 and 48.

**[40] Paragraph 91(3)(a)**

*after*

the *National Television Conversion Scheme 1999*

*omit*

, as in force when this section commences,

**[41] Paragraph 91(3)(b)**

*after*

subsection 6 (1) of this Scheme

*omit*

, as in force when this section commences,

**[42] Subsection 98(5)**

*omit*

94 (2) (c)

*insert*

94 (2) (b)

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**[43] After subsection 107(5)**

*insert*

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

**[44] Subsection 112(7)**

*after*

sections 107 to 111

*insert*

(inclusive)

**[45] Subsection 121(4)**

*after*

sections 107 to 111

*insert*

(inclusive)

**[46] Paragraph 122(6)(a)**

*after*

sections 107 to 111

*insert*

(inclusive)

**[47] After subsection 139(2)**

*insert*

(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*.

**[48] Paragraph 139(3)(b)**

*substitute*

(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

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(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.

**[49] Subsection 159(3)**

*after*

service concerned in digital mode

*insert*

on a test basis

**[50] Subsection 161(2)**

*after*

service concerned in digital mode

*insert*

on a test basis

**[51] Subsection 164(3)**

*after*

service concerned in digital mode

*insert*

on a test basis

**[52] Subsection 173(5)**

*after*

service concerned in digital mode

*omit*

on a test basis

**[53] After subsection 174(2)**

*insert*

(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.

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**[54] After subsection 175(4)***insert*

- (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.

**[55] After subsection 176(5)***insert*

- (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.

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## Part 3 Dictionary amendments

### [56] Dictionary, definition of *exempt remote area licence*

*substitute*

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

### [57] Dictionary, after definition of *exempt remote area licence*

*insert*

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

### [58] Dictionary, after definition of *licence area*

*insert*

*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.

### [59] Dictionary, definition of *\*multi-channelled national television broadcasting service*

*omit the definition*

### [60] Dictionary, definition of *national television conversion scheme*

*omit*

*national*

*insert*

\* *national*

### [61] Dictionary, after definition of *SDTV digital mode*

*insert*

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

### [62] Dictionary, definition of *simulcast period*

*substitute*

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



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**[63] Dictionary, after definition of *simulcast period***

*insert*

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

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## Schedule 2 Variations to references

(section 4)

### [1] Amendment of Scheme – changing references to ACMA into references to the ACMA

The *Commercial Television Conversion Scheme 1999* is amended as follows:

- (a) by omitting “ACMA” (wherever occurring) and substituting “the ACMA”;
- (b) by omitting “ACMA’s” (wherever occurring) and substituting “the ACMA’s”; and
- (c) by omitting “ACMA” (wherever occurring) and substituting “the ACMA”.

### [2] Amendment of Scheme – changes to headings to sections and subsections

The headings to sections and subsections of the Scheme are altered as follows:

- (a) by omitting “ACMA” (wherever occurring) and substituting “**the ACMA**”;
- (b) by omitting “ACMA” (wherever occurring) and substituting “*the ACMA*”;
- (c) by omitting “ACMA’s”(wherever occurring) and substituting “**the ACMA’s**”;
- (d) by omitting “ACMA’s” (wherever occurring) and substituting “*the ACMA’s*”;
- (e) the heading to section 10 of the Scheme is altered by omitting “Advertising” and substituting “Notice inviting comments on”;
- (f) the heading to section 54 is altered by omitting “allocation” and substituting “allotment”.

### [3] Amendment of Scheme – changes to notes

The notes to the Scheme are altered as follows:

- (a) by omitting “ACMA” (wherever occurring) and substituting “the ACMA”;
- (b) except for the note at subsection 73(2) – by omitting “ACMA’s” (wherever occurring) and substituting “the ACMA’s”;
- (c) by omitting “ACMA” (wherever occurring) and substituting “**the ACMA**”;
- (d) by omitting “ACMA” (wherever occurring) and substituting “*the ACMA*”;
- (e) by omitting “ACMA’s”(wherever occurring) and substituting “**the ACMA’s**”;

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- (f) by omitting “*ACMA’s*” (wherever occurring) and substituting “*the ACMA’s*”.

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**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>.