

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Australian Communications and Media Authority Omnibus Revocation Instrument 2014 (No.2)

Purpose

The purpose of the *Australian Communications and Media Authority Omnibus Revocation Instrument 2014 (No.2)* (**the Revocation Instrument**) is to revoke 56 instruments that have been made under the *Broadcasting Services Act 1992* (**the BSA**), the *Commercial Television Conversion Scheme 1999*, the *Radiocommunications Act 1992*, the *Telecommunications Act 1997*, the *Telecommunications (Carrier Licence Charges) Act 1997* and the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (**the TCPSS Act**) which are spent and redundant and no longer required.

Revocation of the instruments will reduce the possibility for confusion about the status of redundant instruments and make accessing the law simpler for businesses and individuals.

Legislative provisions

BSA

Under subsection 26(1) of the BSA, the ACMA is required, by legislative instrument, to prepare licence area plans that determine the number and characteristics, including technical specifications, of broadcasting services that are to be available in particular areas of Australia with the use of the broadcasting services bands.

Under clause 7H of Schedule 2 to the BSA, the ACMA may, by legislative instrument, declare that for the purposes of Division 2 of Schedule 2, a specified day is the start date for a licence area of a licence allocated under section 38C of the BSA.

Commercial Television Conversion Scheme 1999

The *Commercial Television Conversion Scheme 1999* (**the Scheme**) is made under subclause 6(1) of Schedule 4 to the BSA which requires the ACMA to formulate a scheme for the conversion of the transmission of commercial television broadcasting services from analog mode to digital mode.

Subsection 138(1) of the Scheme requires the ACMA to determine a date for each remote licence area by which each holder of a commercial television broadcasting licence for that area is required to commence transmitting the relevant commercial television broadcasting service in SDTV digital mode.

Paragraph 139(3)(b) of the Scheme makes provisions for ending a simulcast period in remote licence areas, including the power for the ACMA to determine an end date that is before 31 December 2013. The end date for the simulcast period in a licence area is the date on which commercial television broadcasting licensees and national television broadcasters must cease broadcasting in analog mode in the relevant licence area.

Radiocommunications Act 1992

Under the *Radiocommunications Act 1992*, the ACMA is responsible for managing and regulating radiofrequency spectrum. Under 162(1) of the *Radiocommunications Act 1992*, the ACMA may, by written instrument, make standards for the performance of specified devices or for the maximum permitted level of radio emissions from devices within specified parts of the spectrum. Under subsection 294(1) of the *Radiocommunications Act 1992* the ACMA

may, by written instrument, make determinations fixing spectrum access charges payable by licensees for issuing spectrum licences and specifying the times when spectrum access charges are payable.

Telecommunications Act 1997

Under subsection 376(1) of the *Telecommunications Act 1997*, the ACMA may, by written instrument, make a technical standard relating to specified customer equipment or specified customer cabling.

Telecommunications (Carrier Licence Charges) Act 1997

The *Telecommunications (Carrier Licence Charges) Act 1997* makes provision for the imposition of charges in relation to carrier licences issued under the *Telecommunications Act 1997*.

Subsection 14(1) of the *Telecommunications (Carrier Licence Charges) Act 1997* provides that the amount of charge to be imposed on a carrier licence is the amount ascertained in accordance with a written determination made by the ACMA. The *Telecommunications (Carrier Licence Charges) Act 1997* also limits the total of the charges that may be imposed on carrier licences in force at the beginning of a financial year in accordance with subsection 15(1) of that Act.

TCPSS Act

Under section 20F of the TCPSS Act the ACMA had previously been required to make a written assessment of a participating person's eligible revenue for an eligible revenue period.

The written assessment made by the ACMA was then used to calculate how much a participating person must pay to the ACMA in levies. Under section 20 of the TCPSS Act a participating person for an eligible revenue period must give the ACMA a written return of the person's eligible revenue for that period. Paragraph 20(2)(a) provides that the return must be given to the ACMA within the period specified in writing by the ACMA for providing returns.

Section 20D of the TCPSS Act requires the eligible return to be accompanied by a report of an approved auditor. Under section 8F of the TCPSS Act a reference in Part 2 of the TCPSS Act to an "approved auditor" is a reference to a person included in a class of persons specified in a written determination made by the ACMA for the purposes of section 8F.

Under the TCPSS Act, the last eligible revenue period was the 2011-12 financial year. From 1 July 2012, the basis for calculating a participating person's eligible revenue has been governed by the *Telecommunications Universal Service Management Agency Act 2012*.

Acts Interpretation Act 1901

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that the power to make an instrument includes, unless the contrary intention appears, a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Operation

The instruments that are revoked by the Revocation Instrument are either spent, redundant or have no ongoing operation.

Consultation

Section 17 of the *Legislative Instruments Act 2005 (LIA)* requires the ACMA to be satisfied that any consultation it considers to be appropriate and that is reasonably practicable to

undertake in relation to an instrument has been undertaken. However, the LIA also recognises that the nature of an instrument may be such that consultation on its making is unnecessary or inappropriate including in circumstances where the instrument is of a minor or machinery nature and does not substantially alter existing arrangements (section 18).

Under subsection 27(1) of the BSA, the ACMA is required, in performing its functions under sections 24, 25 and 26, to make provision for wide public consultation. On 22 July 2014, the ACMA sought public comment on the proposal to repeal the 9 instruments made under subsection 26(1) of the BSA and listed in section 3 of the Revocation Instrument. Comments were sought from interested parties by 8 August 2014. No comments were received.

Under subsection 138(2) of the Scheme, the ACMA is required to consult with all holders for a remote licence area before determining a date for the area. Subsection 139(4) of the Scheme also requires the ACMA, before determining the end date for a simulcast period, to consult with the public, holders, national broadcasters as well as owners and operators of broadcasting transmission towers and satellite transmission facilities. On 22 July 2014, the ACMA sought public comment on the proposal to repeal the 5 instruments made under subsection 138(1) and paragraph 139(3)(b) of the Scheme and listed in Part 3 of the Revocation Instrument. Comments were sought from interested parties by 8 August 2014. No comments were received.

Under subsection 378(1) of the *Telecommunications Act 1997* the ACMA is required, before making a technical standard under section 376, to try to ensure that interested persons have had an adequate opportunity to make representations about the proposed standard. On 16 July 2014, the ACMA sought public comment on a proposal to remake the *Telecommunications Labelling (Customer Equipment and Customer Cabling) Notice 2001* as well as, relevantly, the proposed revocation of the telecommunications technical standards made under section 376 of the *Telecommunications Act 1997* that are revoked by section 9 of the Revocation Instrument. Comments were sought from interested parties by 19 September 2014. No comments were received about the instruments that are revoked by section 9 of the Revocation Instrument.

No public consultation has been undertaken in relation to the revocation of the instruments effected by sections 4, 7, 8, 10 and 11 of the Revocation Instrument. This is because the ACMA is satisfied that the revocation of the instruments listed in those sections is minor or machinery in nature. The instruments listed in sections 4, 7, 8, 10 and 11 of the Revocation Instrument are spent and redundant and their revocation does not substantially alter existing arrangements.

Regulation impact

The ACMA has undertaken a preliminary assessment of the regulatory impact of the Revocation Instrument in accordance with the requirements of the Office of Best Practice Regulation. It was determined that the ACMA's proposal to revoke the 56 instruments was minor or machinery in nature. For this reason, an exemption from the need to provide a Regulatory Impact Statement (**RIS**) was obtained. The ACMA RIS exemption reference number is ID 17538.

Statement of compatibility with human rights

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires the rule maker in relation to a legislative instrument to which section 42 (disallowance) of the *Legislative Instruments Act 2003* applies to cause a statement of compatibility to be prepared in respect of that legislative instrument.

This statement has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The Revocation Instrument, the effect of which is to revoke 56 instruments, is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The ACMA has considered whether the Revocation Instrument engages any applicable human rights or freedoms and has formed the view that it does not. The Revocation Instrument is compatible with human rights as it does not raise any human rights issues.

Attachment

Further details of the Revocation Instrument are set out in Attachment A.

ATTACHMENT A

NOTES ON INSTRUMENT

Part 1 Preliminary

Section 1 - Name of Instrument

Section 1 provides that the name of the Instrument is the *Australian Communications and Media Authority Omnibus Revocation Instrument 2014 (No.2)*.

Section 2 - Commencement

Section 2 provides that the Instrument commences on the day after it is registered.

Part 2 Revocation of spent and redundant *Broadcasting Services Act 1992* instruments

Section 3 - Revocation of licence area plans made under subsection 26(1) of the *Broadcasting Services Act 1992*

Section 3 revokes 9 licence area plans made under subsection 26(1) of the BSA.

Licence area plans set out how the broadcasting services bands – AM and FM radio, and VHF and UHF television channels – are to be used in different parts of Australia. Each licence area plan determines the number and characteristics, including technical specifications of broadcasting services, that are to be available in particular areas of Australia with the use of the broadcasting services bands. Across Australia, licence area plans were used to plan the transmission of television broadcasting services in analog mode.

As each licence area has switched over to transmission in digital only mode, new “television licence area plans” (TLAPs) have been introduced to plan digital transmission of television broadcasting services in each licence area. TLAPs are now the long term planning instruments for digital television broadcasting services, specifying and allotting channels to particular providers of television services and determining the characteristics, including technical specifications, of the broadcasting services that are to be available in particular parts of Australia with the use of those channels.

The switchover to digital television was completed on 10 December 2013. As a result, while the licence area plans that planned the transmission of television broadcasting services in analog mode are still in force, they have ceased to have effect.

The instruments set out in section 3 are therefore spent and redundant.

Section 4 - Revocation of *Broadcasting Services (Start Dates for Section 38C Licence Areas) Declaration 2010*

Section 4 revokes the *Broadcasting Services (Start Dates for Section 38C Licence Areas) Declaration 2010* made under clause 7H of Schedule 2 to the *Broadcasting Services Act 1992*. The *Broadcasting Services (Start Dates for Section 38C Licence Areas) Declaration 2010* declares the start dates for three licence areas – the Northern Australia TV3 licence area, the South Eastern Australia TV3 licence area and the Western Australia TV3 licence area.

The start dates of 15 December 2010 (for the Northern Australia TV3 and South Eastern Australia TV3 licence areas) and 10 February 2012 (for the Western Australia TV3 licence

area) have now passed and the *Broadcasting Services (Start Dates for Section 38C Licence Areas) Declaration 2010* is therefore spent and redundant.

Part 3 Revocation of spent and redundant *Commercial Television Conversion Scheme 1999* instruments

Section 5 - Revocation of determinations specifying a commencement date under subsection 138(1) of the *Commercial Television Conversion Scheme 1999*

Section 5 revokes four determinations made under subsection 138(1) of the Scheme. The determinations establish the commencement and the end dates for the simulcast period in remote licence areas. The simulcast period was the period when television broadcasting services were to be transmitted in both analog and digital mode immediately prior to the switch-off of analog television.

The four determinations to be revoked set out the date by which each holder of a commercial television broadcasting licence in the remote licence areas was required to commence transmitting the commercial television broadcasting service concerned in digital mode.

The final simulcast period in the remote licence areas ended on 10 December 2013 when the last analog television broadcasting services were switched off. Accordingly, the four determinations are spent and redundant.

Section 6 - Revocation of determination specifying a simulcast period end date under paragraph 139(3)(b) of the *Commercial Television Conversion Scheme 1999*

Section 6 revokes the *Broadcasting Services (Simulcast Period End Date – Remote Licence Areas) Determination 2012* made under paragraph 139(3)(b) of the Scheme. The determination sets out the date by which each holder of a commercial television broadcasting licence in a remote licence area is to cease transmitting the commercial television broadcasting service concerned in analog mode (being 10 December 2013 for holders of commercial television broadcasting licences for the RCEA TV1, RCEA TV2 and Mount Isa TV1 licence areas and 25 June 2013 for holders of the commercial television broadcasting licences for the remote Western Australian licence areas).

The Determination also has the effect of ending the simulcast period for the remote coverage areas for national television broadcasting services that correspond to the remote licence areas.

As the relevant dates set out in the *Broadcasting Services (Simulcast Period End Date – Remote Licence Areas) Determination 2012* have now passed, the instrument is now spent and redundant.

Part 4 Revocation of spent and redundant *Radiocommunications Act 1992* instruments

Section 7 - Revocation of instruments determining spectrum access charges

Section 7 revokes 6 instruments made under subsection 294(1) of the *Radiocommunications Act 1992*. The instruments set out spectrum access charges payable by licensees for issuing spectrum licences in the 800 MHz, 1800 MHz and 2.3 GHz bands. Spectrum licences have been issued to licensees in those bands and the charges have now been paid. The instruments are therefore spent and redundant.

Section 8 – Revocation of *Radiocommunications (Data Transmission Equipment Using Spread Spectrum Modulation Techniques) Standard 2003*

Section 8 revokes the *Radiocommunications (Data Transmission Equipment Using Spread Spectrum Modulation Techniques) Standard 2003* made under subsection 162(1) of the *Radiocommunications Act 1992*. The Standard specifies the technical requirements applying to spread spectrum devices. The applicable requirements in relation to such devices are now dealt with by the *Radiocommunications (Short Range Devices) Standard 2004*. The reference to the Standard was removed from Schedule 3 of the *Radiocommunications Devices (Compliance Labelling) Notice 2003* by the *Radiocommunications Devices (Compliance Labelling) Amendment Notice 2010 (No. 1)*.

As the standard is no longer included in the *Radiocommunications Devices (Compliance Labelling) Notice 2003* and its subject matter is now dealt with by the *Radiocommunications (Short Range Devices) Standard 2004*, it is spent and redundant.

Part 5 Revocation of spent and redundant *Telecommunications Act 1997* instruments

Section 9 - Revocation of technical standards

Section 9 revokes 30 technical standards, made under subsection 376(1) of the *Telecommunications Act 1997*. In all cases, the underlying industry standard to which each standard relates has expired. All of the standards are therefore spent and redundant.

Part 6 Revocation of spent and redundant *Telecommunications (Carrier Licence Charges) Act 1997* instruments

Section 10 - Revocation of instruments made under the *Telecommunications (Carrier Licence Charges) Act 1997*

Section 10 revokes 2 instruments made under the *Telecommunications (Carrier Licence Charges) Act 1997*. The instrument at subsection (1) specifies an annual carrier licence charge applicable to carrier licences that were in force at the beginning of the 2012-2013 financial year. The instrument at subsection (2) specifies the amount of the ACMA's costs attributable to telecommunications powers and functions for the 2011-2012 financial year (for paragraph 15(1)(a)), the amount of ITU contribution paid by the Commonwealth for the 2012 calendar year (for paragraph 15(1)(c)) and the amount paid under section 136C of the *Telecommunications Act 1997* (regarding the reimbursement of costs of developing consumer-related industry codes) for the 2011-2012 financial year (for paragraph 15(1)(ca)). As both instruments relate to financial and calendar years which have now passed, the instruments are spent and redundant.

Part 7 Revocation of spent and redundant *Telecommunications (Consumer Protection and Service Standards) Act 1999* instruments

Section 11 - Revocation of instruments made under the *Telecommunications (Consumer Protection and Service Standards) Act 1999*

Section 11 revokes two instruments made under the TCPSS Act. The instrument at subsection (1) specifies a class of persons who are approved auditors for the purposes of Part 2 of the TCPSS Act. The instrument at subsection (2) specifies the period for providing a return of eligible revenue. Under the TCPSS Act, the last eligible revenue period was the

2011-2012 financial year and that was the last year for which participating persons were required to submit an eligible revenue return, within the period specified by the ACMA (under paragraph 20(2)(a)), and accompanied by a report of an approved auditor (under subsection 20D(1)). As the instruments relate to financial years which have now passed, the instruments are spent and redundant.