

## EXPLANATORY STATEMENT

### *Australian Communications and Media Authority Act 2005*

#### **Australian Communications and Media Authority (Community Television) Direction 2020**

Issued by the Authority of the Minister for Communications, Cyber Safety and the Arts

#### Authority

Section 14 of the *Australian Communications and Media Authority Act 2005* (the ACMA Act) enables the Minister for Communications, Cyber Safety and the Arts (the Minister) to direct the Australian Communications and Media Authority (ACMA), in writing, in relation to the performance of its functions and the exercise of its powers, including functions relating to spectrum and broadcasting.

The ministerial power to give directions to the ACMA under section 14 of the ACMA Act includes a condition that the direction can only be of a general nature if it relates to the ACMA's broadcasting, content and datacasting functions; or the ACMA's powers relating to those functions in subsection 14(2) of the ACMA Act. The Direction is also not subject to any statutory preconditions.

#### Purpose

The purpose of the *Australian Communications and Media Authority (Community Television) Direction* (the Direction) is to instruct the ACMA, in accordance with section 14 of the ACMA Act.

This instruction will give effect to the Australian Government's policy to achieve two listed Government policy objectives that advance the primary Federal Government objective for community-based television broadcasting in metropolitan licence areas (being Adelaide, Brisbane, Hobart, Melbourne, Perth, and Sydney) being delivered using online delivery platforms. This has been the Federal Government's policy since 2014.

#### Background

At the time the Direction was made, there were two community-based television broadcasters. One in Melbourne (providing community television broadcasting services under a licence issued under Part 6 of the *Broadcasting Services Act 1992* (Broadcasting Act) and one in Adelaide (providing CTV Trial Services, being open narrowcasting television services transmitted from one or more stations using an apparatus licence issued under section 100 of the *Radiocommunications Act 1992* (Radcomms Act) for community and educational non-profit purposes).

The Community Television Trial Service in Adelaide is known as 'C44 Adelaide'. The current expiry date for the C44 licencing arrangement is 30 June 2020.

In the lead up to this expiry date, Channel 44 Adelaide Ltd (C44 Adelaide) demonstrated to the Minister that it has a feasible plan to transition from terrestrial broadcasting operations and move to an online delivery platform but that it needs until 30 June 2021 to do so.

C44 Adelaide has committed to complete the transition away from terrestrial broadcasting operations and cease using radiofrequency spectrum by 30 June 2021. It has developed a transition plan which identifies new non-terrestrial revenue sources and has shown how it will fund the costs of divesting itself of existing terrestrial infrastructure costs. The transition plan for part of C44 Adelaide's a detailed plan to reinvent itself as Studio 44 by 1 July 2021.

This Direction specifically requires the ACMA to exercise its relevant powers and perform its relevant functions under the ACMA Act, the Radcomms Act and the Broadcasting Act generally in order to help advance the stated Federal Government's policy that community television broadcasting should be delivered using on-line delivery platforms. The Direction will help ensure that the transmitter licence associated with the CTV Trial Services in Adelaide is able to be renewed, providing a pathway for C44 Adelaide to continue to deliver the CTV Trial Services for a further period of up to 12 months as it implements its transition plan to online delivery.

By operation of the *Radiocommunications (Duration of Community Television Transmitter Licences) Determination 2018 (Amendment No.1 of 2020)*, the apparatus (transmitter) licence issued under subsection 102(1) of the Radcomms Act to Melbourne Community Television Consortium Ltd (MCTC Ltd) as part of its community television broadcasting licence under Part 6 of the Broadcasting Act, will be extended by twelve months, from 30 June 2020 to 30 June 2021. This will allow MCTC Ltd to continue to use spectrum intended for the sixth channel up to and until 30 June 2021 in areas covered by the Melbourne television licence area plan. MCTC Ltd broadcaster is expected to fully complete the transition to exclusive online delivery of its services by 30 June 2021.

The Adelaide arrangement and the Melbourne arrangement will be the last of their types and, on 1 July 2021, the removal of all planned television licences for community broadcasting purposes in metropolitan licence areas in Australia will represent another milestone in the implementation of the Government's policy.

This development means that C44 Adelaide and MCTC Ltd will be the two only remaining community-based television broadcaster using radiofrequency spectrum in prescribed metropolitan areas.

Unlike the Melbourne situation, key decisions in relation to the type of licence Adelaide operates under are ACMA's responsibility. The Minister is therefore looking to provide general direction to ACMA to exercise its relevant powers and perform its relevant functions as conferred by or under the Broadcasting Act, the Radcomms Act and the ACMA Act, to help achieve the policy objectives.

## Consultation

The ACMA was consulted during the Direction's development and the ACMA provided comment on drafts of the Direction. The Direction's final form has incorporated the ACMA's feedback.

## Statement of Compatibility with Human Rights

As section 42 of the *Legislation Act 2003* does not apply to this instrument, being exempted under Part 4 of the *Legislation (Exemption and Other Matters) Regulation 2015*, a Statement of Compatibility with Human Rights is not required under section 9 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

## Further Details

Further details of the Direction are set out at [Attachment A](#).

The Direction is a legislative instrument for the purposes of the *Legislation Act 2003*. However, this instrument is not subject to disallowance, as it is a direction by a Minister to a body (see item 2 of the table in section 9 of the *Legislation (Exemptions and Other Matters) Regulation 2015*).

**Notes on sections to Australian Communications and Media Authority  
(Community Television) Direction 2020**

Section 1

This section provides that the name of the Direction is the *Australian Communications and Media Authority (Community Television) Direction 2020*.

Section 2

Section 2 provides that the Direction will commence on the day it is registered on the Federal Register of Legislation.

Section 3

Section 3 provides that the Direction will be self-repealed on 1 July 2022.

Section 4

Section 4 states the legislative authority for the Direction as being section 14 of the ACMA Act.

Section 5

This section defines the key terms used throughout the Direction.

The term, *ACMA* means the Australian Communications and Media Authority.

*Act* means the ACMA Act.

*Broadcasting Act* means the *Broadcasting Services Act 1992*.

The term, *broadcasting services bands* has the meaning given in section 6 of the Broadcasting Act.

The term, *CTV licence* has the meaning given in section 6 of the Broadcasting Act. CTV licences are community broadcasting licences which provide television programs but are not targeted to a significant extent to remote Indigenous communities.

*CTV Trial Service* is a central term to the Direction. It covers all open narrowcasting television services transmitted from one or more stations using an apparatus licence issued under section 100 of the Radcomms Act for community and educational non-profit purposes in a prescribed metropolitan area.

*community broadcasting service* has the meaning given in section 15 of the Broadcasting Act.

*open narrowcasting television service* means a service under a class licence determined under paragraph 117(e) of the Broadcasting Act.

**Part 6 CTV Service** means a community broadcasting service provided under a CTV licence.

**prescribed metropolitan area** covers the areas in Adelaide, Brisbane, Hobart, Melbourne, Perth, and Sydney and this definition specifically does not include Darwin or Canberra as those capital cities are not metropolitan licence areas.

**Radiocommunications Act** means the *Radiocommunications Act 1992*.

## Section 6

Section 6 directs the ACMA to exercise its relevant powers and perform its relevant functions under the Broadcasting Act, the Radcomms Act and the ACMA Act to help achieve two listed Government policy objectives.

Paragraph 6(a) describes the Government policy objective that, from 1 July 2020, the broadcasting services bands must not be used for CTV Trial Services, with the exception of CTV Trial Services in Adelaide. As noted above, a CTV Trial Service is defined in section 5 of the Direction and covers a specific type of open narrowcasting television service transmitted in the prescribed metropolitan areas (i.e. Adelaide, Brisbane, Hobart, Melbourne, Perth, and Sydney).

Paragraph 6(b) describes the Government policy objective that, from 1 July 2021, the broadcasting services bands must not be used for providing any CTV Trial Services or any Part 6 CTV Services. The term, 'Part 6 CTV Service' is defined in section 5 of the Direction; it essentially is a community broadcasting service that provides television programs (not targeted to a significant extent to Indigenous communities) under a community broadcasting licence issued under Part 6 of the Broadcasting Act.

The Direction would help advance the Federal Government's overarching policy that the following kinds of services:

- CTV Trial Services; and
- Part 6 CTV Services;

in prescribed metropolitan areas, are to be delivered using online delivery platforms.

From 1 July 2021, this overarching policy should be fully realised with CTV Trial Services in Adelaide and the Part 6 CTV Services in Melbourne expected to have fully transitioned to online delivery by that time.

The Direction is intended to be general in nature. It is envisaged that the ACMA would need to consider exercising various functions and powers conferred on it, by or under the specified Acts, such as section 130 of the Radcomms Act (relating to the renewal of apparatus licences), section 34 of the Broadcasting Act (relating to a determination of whether parts of the radiofrequency spectrum are available for allocation for a particular period of time and purpose) and any incidental powers under section 12 of the ACMA Act (a broad power for the ACMA to do all things necessary or convenient in the performance of its functions and powers) to give effect to the Direction.