

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Broadcasting Services Act 1992

Broadcasting Services (Primary Commercial Television Broadcasting Service) Amendment Declaration 2024 (No.1)

Authority

The Australian Communications and Media Authority (the **ACMA**) has made the *Broadcasting Services (Primary Commercial Television Broadcasting Service) Amendment Declaration 2024 (No. 1)* (the **instrument**) under subclause 41G(2) of Schedule 4 to the *Broadcasting Services Act 1992* (the **Act**), and subsection 33(3) of the *Acts Interpretation Act 1901* (the **AIA**).

Subclause 41G(2) of Schedule 4 to the Act provides that the ACMA may declare that a specified multi-channelled commercial television broadcasting service provided by a commercial television broadcasting licensee for the licence area of the licence is the licensee's primary commercial television broadcasting service (**primary service**) in that licence area. Subclause 41G(3) of Schedule 4 to the Act requires that the ACMA must ensure such a declaration is in force at all times after the licensee commences provision of a multi-channelled commercial television broadcasting service.

Subsection 33(3) of the AIA relevantly provides that where an Act confers a power to make a legislative instrument, the power shall be construed as including 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.

Purpose and operation of the instrument

The instrument amends the *Broadcasting Services (Primary Commercial Television Broadcasting Service) Declaration 2020* (the **2020 Declaration**). For each commercial television broadcasting licensee in a licence area, the 2020 Declaration declares a specified multi-channelled commercial television service to be the primary service of the licensee in that licence area.

The declaration of the primary service is important as the concept of primary services underpins various regulatory obligations on commercial television broadcasting licensees. Under the Act, commercial television broadcasting licensees are authorised to deliver multiple commercial television broadcasting services in digital mode under a single commercial television broadcasting service licence. This is referred to as 'multi-channelling'.

Multi-channelling creates a two-track regulatory system for commercial television broadcasting services, in which some obligations apply to the primary service but not to other multi-channelled services transmitted by the same licensee.

The amendments made by the instrument to the 2020 Declaration are necessary to reflect the Mildura Digital Television (**MDT**) service in Mildura, Victoria, ceasing operation on 30 June 2024. MDT was jointly owned by WIN and Seven Network, and was broadcasting the services associated with the Ten Network into the Mildura licence area. MDT surrendering its commercial television broadcasting licence (BSL 1150827) and associated transmitter licence (10104510/1) on 1 July 2024.

Table 1 of Schedule 1 of the instrument requires amending to remove the declaration of a primary service for BSL 1150827.

A provision-by-provision description of the instrument is set out in the notes at **Attachment A**.

The instrument is a legislative instrument for the purposes of the *Legislation Act 2003* (the **LA**), and is disallowable.

The 2020 Declaration is subject to the sunset provisions of the LA.

Documents incorporated by reference

The instrument does not incorporate any documents by reference.

Consultation

Before the instrument was made, the ACMA was satisfied that consultation was undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the LA.

A targeted consultation was carried out by contacting relevant commercial television broadcasting licensees in Mildura, and industry group Free TV, from 26 September 2024 to 10 October 2024 which provided the relevant licensees and Free TV with an opportunity to comment on the proposed changes. The ACMA received 2 submissions in support of the proposal.

No objections were raised with the proposal to amend the 2020 Declaration and the instrument is consistent with the information provided by MDT when requesting the surrender of their broadcast service licence and transmitter licence.

Regulatory impact assessment

A preliminary assessment of the proposal to make the instrument was conducted by the Office of Impact Analysis (**OIA**) based on information provided by the ACMA, for the purposes of determining whether a Regulation Impact Statement (**RIS**) would be required. The OIA has determined that regulatory changes of a minor or machinery nature such as amending the 2020 Declaration do not require a RIS and may be progressed under an OIA reference number OIA24-08340.

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 LA applies to cause a statement of compatibility with human rights to be prepared in respect of that legislative instrument.

The statement of compatibility with human rights set out below has been prepared to meet that requirement.

Overview of the instrument

The instrument amends the 2020 Declaration by removing the MDT Mildura service from Schedule 1. The 2020 Declaration declares specified multi-channelled commercial television broadcasting services to be the primary services of the relevant commercial television broadcasting licensees in particular licence areas. The licensee of the primary service has special obligations in relation to its primary service.

Human rights implications

The ACMA has assessed whether the instrument is compatible with human rights, being the rights and freedoms recognised or declared by the international instruments listed in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* as they apply to Australia.

Having considered the likely impact of the instrument and the nature of the applicable rights and freedoms, the ACMA has formed the view that the instrument does not engage any of those rights or freedoms.

Conclusion

The instrument is compatible with human rights as it does not raise any human rights issues.

Notes to the *Broadcasting Services (Primary Commercial Television Broadcasting Service) Amendment Declaration 2024 (No.1)*

Section 1 Name

This section provides for the instrument to be cited as the *Broadcasting Services (Primary Commercial Television Broadcasting Service) Amendment Declaration 2024 (No.1)*.

Section 2 Commencement

This section provides for the instrument to commence at the start of the day after the day it is registered on the Federal Register of Legislation.

The Federal Register of Legislation may be accessed free of charge at www.legislation.gov.au.

Section 3 Authority

This section identifies the provision of the Act that authorises the making of the instrument, namely subclause 41G(2) of Schedule 4 to the *Broadcasting Services Act 1992*.

Section 4 Amendment

This section provides that the 2020 Declaration is amended in the manner set out in the Schedule to the instrument.

Schedule 1 – Amendment

The Schedule amends the 2020 Declaration to remove the declaration of a primary service for MDT, which is no longer providing commercial television broadcasting services in the Mildura/Sunraysia TV1 licence area, and which has surrendered its commercial television broadcasting licence.