

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Broadcasting Services Act 1992

Broadcasting Services (Service-Deficient Area – Mildura/Sunraysia) Declaration 2025

Authority

The Australian Communications and Media Authority (the **ACMA**) has made the *Broadcasting Services (Service-Deficient Area – Mildura/Sunraysia) Declaration 2025* (the **instrument**) under subsection 130ZH(1) of the *Broadcasting Services Act 1992* (the **Act**).

Subsection 130ZH(1) of the Act provides that the ACMA must, by legislative instrument, declare that an area is a ‘declared service-deficient area’ for the purposes of Part 9C of the Act in certain circumstances. Part 9C of the Act provides for the registration of conditional access schemes, which must be directed towards (among other things) enabling persons in certain areas, including ‘declared service-deficient areas’, to receive commercial television broadcasting services provided with the use of a satellite under a commercial television broadcasting licence allocated under section 38C of the Act.

Purpose and operation of the instrument

Some Australians live in areas where they are unable to receive all the television services provided by national broadcasters and the local commercial television broadcasting licensees through terrestrial transmissions. The Viewer Access Satellite Television (**VAST**) service provides satellite delivery of free-to-air television to those unable to receive reliable local terrestrial transmissions and to travellers with mobile satellite reception equipment.

Viewers in the Mildura/Sunraysia TV1 licence area (the **licence area**) have been unable to access Network Ten commercial television broadcasting services (currently consisting of the multi-channels 10, 10 Bold, and 10 Peach) terrestrially following the closure of Mildura Digital Television Pty Ltd (**MDT**) on 30 June 2024.

The purpose of the instrument is to declare the entirety of the licence area to be a declared service-deficient area. As a result of the instrument, a person in the licence area will be able to receive all commercial television broadcasting services (including the Network Ten services) through VAST, if they have appropriate reception equipment.

Subsection 130ZH(1) of the Act was amended by the *Communications Legislation Amendment (Regional Broadcasting Continuity) Act 2024* (the **RBC Act**) in December 2024. Under section 130ZH of the Act before amendment by the RBC Act, the ACMA could only declare an area to be a declared service-deficient area where it was satisfied that there were fewer terrestrial digital commercial television broadcasting services than the minimum required to be provided on VAST. The cessation of the Network Ten services in the licence area did not reduce the number of ‘applicable terrestrial digital commercial television services’ to a level below that of the minimum number required on VAST. As such, the ACMA could not declare the licence area to be a declared service-deficient area.

Following the RBC Act amendments, subsection 130ZH(1) of the Act now provides that the ACMA must declare an area to be a declared service-deficient area for the purposes of Part 9C of the Act if:

- the ACMA is satisfied that the number of applicable terrestrial digital commercial television broadcasting services provided to persons in a particular area is deficient; and
- the area is within a terrestrial licence area; and

- that terrestrial licence area is wholly or partially included in the licence area of a commercial television broadcasting licence allocated under section 38C of the Act.

For the purposes of determining whether the number of services is deficient in an area, the ACMA may have regard to a range of matters listed in paragraphs 130ZH(2)(a), (b), (c) and (d), being the current provision of terrestrial services in the area and in other licence areas, the historical provision of terrestrial services in the area, the extent of the reduction in terrestrial services, and any other matters the ACMA considers relevant.

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 instrument is subject to the sunset provisions in Part 4 of Chapter 3 of the LA.

Documents incorporated by reference

Section 14 of the LA relevantly provides that legislative instruments may make provision in relation to any matters by incorporating Acts and disallowable legislative instruments, as in force at a particular time, or from time to time.

The instrument incorporates the *Television Licence Area Plan (Mildura/Sunraysia) 2012* (the **Mildura/Sunraysia LAP**) by reference as in force from time to time. The Mildura/Sunraysia LAP is a disallowable legislative instrument made under section 26 of the Act.

The Mildura/Sunraysia LAP is available, free of charge, from the Federal Register of Legislation (www.legislation.gov.au).

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 proposal to make the instrument was released for public consultation on 31 January 2025, together with a draft of the instrument. This provided an opportunity for stakeholders and members of the public to comment on the proposal.

The following stakeholders were notified about the consultation:

- commercial television broadcasting licensees and national broadcasters in the licence area;
- the peak industry bodies, Free TV Australia and the Community Broadcasting Association of Australia;
- Federal members of Parliament whose electorates include the licence area; and
- civic bodies, including local councils and community associations in the licence area.

The consultation closed on 21 February 2025 and the ACMA received 3 submissions in response. The submissions were from Free TV Australia and 2 individuals. Two submissions supported the proposal and the third was not opposed to the proposal. No changes to the draft of the instrument were suggested.

After considering the submissions, the ACMA decided to make the instrument.

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 in **Attachment B** has been prepared to meet that requirement.

Notes to the *Broadcasting Services (Service-Deficient Area – Mildura/Sunraysia) Declaration 2025*

Section 1 Name

This section provides for the instrument to be cited as the *Broadcasting Services (Service-Deficient Area – Mildura/Sunraysia) Declaration 2025*.

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 subsection 130ZH(1) of the Act.

Section 4 Definitions

This section defines the key terms used in the instrument.

Section 5 References to other instruments

This section provides that in the instrument, unless the contrary intention appears:

- a reference to any other legislative instrument is a reference to that legislative instrument as in force from time to time; and
- a reference to another instrument or writing is a reference to that instrument or writing as in force or existing at the commencement of the instrument.

Section 6 Declaration of declared service-deficient area

This section provides that, the ACMA being satisfied of the matters set out in paragraphs 130ZH(1)(a), (b) and (c) of the Act, declares that the licence area is a declared service-deficient area.

Statement of compatibility with human rights

Prepared by the Australian Communications and Media Authority under subsection 9(1) of the
Human Rights (Parliamentary Scrutiny) Act 2011

Broadcasting Services (Service-Deficient Area – Mildura/Sunraysia) Declaration 2025

Overview of the instrument

Some Australians live in areas where they are unable to receive all the television broadcasting services provided by national broadcasters and the local commercial television broadcasting licensees through terrestrial transmissions. The Viewer Access Satellite Television (**VAST**) service provides satellite delivery of free-to-air television to those unable to receive reliable local terrestrial transmissions and to travellers with mobile satellite reception equipment.

Viewers in the Mildura/Sunraysia TV1 licence area (the **licence area**) have been unable to access Network Ten commercial television broadcasting services (currently consisting of the multi-channels 10, 10 Bold, and 10 Peach) terrestrially following the closure of Mildura Digital Television Pty Ltd on 30 June 2024.

The purpose of the *Broadcasting Services (Service-Deficient Area – Mildura/Sunraysia) Declaration 2025* (the **instrument**) is to declare the entirety of the licence area to be a declared service-deficient area for the purposes of Part 9C of the *Broadcasting Services Act 1992*. As a result of the instrument, a person in the licence area will be able to receive all commercial television broadcasting services (including the Network Ten services) through VAST, if they have appropriate reception equipment.

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 engages the right to take part in cultural life in Article 15 of the *International Covenant on Economic, Social and Cultural Rights*.

The instrument promotes the right of people in the licence area to take part in cultural life by providing those people with the opportunity to access television broadcasting services delivered via satellite, and which are not available terrestrially.

Conclusion

The instrument is compatible with human rights as it promotes the right to culture and does not raise any other human rights issues.