Automatic sunsetting of legislative instruments: **Proposal to remake the Broadcasting Services (Remote Indigenous Community) Determination 2011**

Consultation paper

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# Background

## Automatic sunsetting of legislative instruments

Part 4 of Chapter 3 of the *Legislation Act 2003* sets out the provisions for sunsetting of legislative instruments. Generally, legislative instruments sunset (automatically repeal) on 1 April or 1 October on or after the 10th anniversary of their registration.

The [Broadcasting Services (Remote Indigenous Communities) Determination 2011](https://www.legislation.gov.au/Details/F2011L02129) (the Determination), made by the Australian Communications and Media Authority (ACMA), has a sunset date of 1 April 2022. Unless otherwise specified, references to the Determination and its provisions in this paper, refer to the existing Determination.

The ACMA is considering whether the Determination remains necessary, is operating efficiently and effectively and should be remade prior to the sunsetting date.

## This paper and our preliminary view

The ACMA’s preliminary view is that the Determination should be remade with some minor amendments to the list of communities included, and minor and technical changes that include inserting new standard sections dealing with:

the authority to make the instrument

repeal of the existing instrument.

This paper invites comment on the ACMA’s preliminary view, through a number of targeted questions.

# About the Determination

## Application of the Determination

Section 8B of the *Broadcasting Service Act 1992* (the BSA) provides that the ACMA may determine an Indigenous community to be a remote Indigenous community for the purposes of that Act. This determination must be made by legislative instrument.

There are a number of provisions in the BSA that modify the requirements for community broadcasting licensees where their services are targeted to remote Indigenous communities.

For example, community television broadcasting services targeted to remote Indigenous communities are not Community Television (CTV) licences, as defined in subsection 6(1) of the BSA. This is because they do not have the resources to meet the higher governance and accountability requirements placed on CTV licences.[[1]](#footnote-2)

Therefore, they are exempt from regulatory arrangements that apply to CTV licences, including:

the requirement to be a company limited by guarantee within the meaning of the *Corporations Act 2001* (paragraph 80(1)(a) of the BSA)

the requirement to comply with licence conditions that limit the sale of access to airtime (subsections 87A(2) – (6) of the BSA)

being subject to additional licence conditions about community access to airtime, governance, or the provision of annual reports (subsection 87A(7) of the BSA)

restrictions on future licensing of community television services in sections 96A and 96B of the *Radiocommunications Act 1992*.

Licensees for community television and radio services that are targeted to remote Indigenous communities can also broadcast advertisements for which the licensee does not receive consideration in cash or kind.[[2]](#footnote-3) They may be offered streamlined licence renewal and transfer application forms.

Industry groups representing these licensees have the option to develop a code of practice.[[3]](#footnote-4)

**Development of the Determination**

A Determination under section 8B was first made in 2002 by the Australian Broadcasting Authority. In 2002, it determined there were 81 remote Indigenous communities that provided television services funded through the Broadcasting for Remote Aboriginal Community Services Scheme, which had operated since 1987.

On 17 October 2011, the ACMA made the current Determination and determined there were a further 115 remote Indigenous communities that received, or were expected to receive, a service from a community television licence and/or received funding through the [Indigenous Broadcasting Program](https://www.pmc.gov.au/indigenous-affairs/grant/indigenous-broadcasting-programme) from the Australian Government. The ACMA undertook targeted consultation with the relevant peak bodes at the time.

These were the Indigenous Remote Communications Association (IRCA) – representing 8 remote indigenous media organisations (RIMOs) – and the Australian Indigenous Communications Association (AICA), representing all Indigenous radio and television broadcasting services in regional and remote areas.

# Regulatory and communications environment

The power in section 8B to make the Determination was inserted into the BSA by the *Broadcasting Legislation Amendment Act (No 2) 2002*. There have been several changes to the regulatory environment since this provision was added.

**Government support for community television** has changed and it has become policy that – in the prescribed metropolitan areas of Adelaide, Brisbane, Hobart, Melbourne, Perth and Sydney – both community broadcasting services that provide television programs and CTV trial services should be delivered using online delivery platforms. There are now only 2 community television services broadcasting in state capitals, and these services are subject to future licensing restrictions.

The exemption from the requirements under section 87A of the BSA (conditions relating to sale of access to air time, and other conditions, including governance and provision of annual reports to the ACMA) for community television broadcasting licensees that serve remote Indigenous communities, protect these licensees from government restrictions on the future licensing of community television broadcasting services.

**The transition to digital television** in 2013 prioritised satellite delivery of television services in remote locations. This has meant that terrestrial transmission equipment operated by local governments and councils has not been updated and most remote Indigenous community television broadcasting licensees have ceased operations. There are only 4 remote Indigenous community television broadcasting services licenced and it appears to the ACMA that no community television broadcasting services are currently broadcasting in remote Indigenous communities.

**First Nation’s policy.** In 2020, the Government announced the new Closing the Gap agreement which included 4 priority areas, and 17 outcomes and targets.

The Government is developing the Indigenous Digital Inclusion Plan.

# Issues for comment

The ACMA is seeking comment on the continuing need for the Determination, and its effectiveness and efficiency.

**The continuing need for the Determination**

Under the current Determination, 196 remote Indigenous communities are determined. Four communities relate to community television broadcasting licensees located in those communities, and 139 communities are served by currently licensed community radio broadcasting licensees – either long-term or temporary. The list of communities in the current Determination is at [Appendix A](#_Appendix_A:_Communities).

As noted above, the continuation of the Determination means community television broadcasting services targeted to determined remote Indigenous communities are exempt from some of the higher governance and accountability requirements placed on CTV licences. This includes being subject to additional licence conditions about community access to airtime, governance, or the provision of annual reports.

The continuation of the Determination also allows affected community radio and television licensees to carry advertisements, if they do not receive any cash or in-kind consideration. The continuation of the Determination also maintains the ability of relevant community broadcasters to develop a code of practice specific to their industry group if they wish to pursue that option in the future.

There is also a broader operational benefit in having a list of remote Indigenous broadcasting communities as the ACMA uses it to offer streamlined licence renewal and transfers to community radio licensees that serve remote Indigenous communities.

### Question 1

### Is the Determination still needed? If so, why? If not, why not?

**Effectiveness and efficiency of the instrument**

Where an Indigenous community is determined to be a remote Indigenous community for the purposes of the BSA, references in the BSA to ‘remote indigenous community’ will be references to those Indigenous communities. As noted above, community broadcasting licensees providing services for one or more remote Indigenous communities will be exempt from associated regulatory requirements.

The ACMA’s experience is that community broadcasting licensees, whose services target remote Indigenous communities, operate with limited staff and infrastructure and benefit from some regulatory and administrative relief. The BSA operates to shield affected licensees from potential compliance costs and provides the option of a bespoke code of practice should that be considered appropriate.

Without the Determination, there would be no remote Indigenous communities determined for the purpose of the BSA and therefore any assistance that can be provided for these communities under the BSA would not be applicable.

The ACMA has conducted preliminary consultation with representatives of the Department of Infrastructure, Regional Development and Communications, Community Broadcasting Association of Australia (CBAA), First Nations Media Australia (FNMA), National Indigenous Australians Agency (NIAA) and Commercial Radio Australia (CRA).

We are not aware of any concerns about the operation of the Determination.

### Question 2

### Is the Determination effective and efficient? If not, why not?

**Potential enhancements**

The ACMA is seeking stakeholder comments on proposed amendments to the list of communities included in the Determination so that it accurately reflects remote Indigenous communities that receive community broadcasting services and relevant government funding.

These amendments include:

The deletion of some duplicated communities and a community that is no longer populated.

The inclusion of additional communities, which have been proposed via early engagement with NIAA as they are served by Indigenous radio stations and are funded by NIAA.

The addition of communities in which temporary community broadcasting licensees, representing Indigenous community interests have commenced providing a service since the Determination was last made.

The list of communities for potential inclusion and removal from Schedule 1 of the Determination are attached to this paper at [Appendix B](#_Appendix_B:_proposed).

The ACMA understands that there are also several communities on the list that have different names or spellings. The ACMA is keen to use this consultation process to check that the names of the communities are appropriate and accurately captured.

### Question 3

### Are there any new communities that you consider should be added to the list? If so, why should they be added?

### Are there any communities that you think should be taken off the list? If so, why?

### Are there any communities on the list that would be better referred to with a different name or spelling?

# Invitation to comment

## Making a submission

We invite comments on the issues set out in this discussion paper.

[Online submissions](https://www.acma.gov.au/have-your-say) can be made by uploading a document. Submissions in PDF, Microsoft Word or Rich Text Format are preferred.

Submissions by post can be sent to:

The Manager

Community Broadcasting and Safeguards Section

Australian Communications and Media Authority

PO Box Q500 Queen Victoria Building

NSW 1230

The closing date for submissions is **COB,** **22 February 2022**.

Consultation enquiries can be emailed to communitybroadcasting@acma.gov.au.

#### Publication of submissions

We publish submissions on our website, including personal information (such as names and contact details), except for information that you have claimed (and we have accepted) is confidential.

Confidential information will not be published or otherwise released unless required or authorised by law.

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View information about our policy on the [publication of submissions](https://www.acma.gov.au/publication-submissions), including collection of personal information during consultation and how we handle that information.

Information on the *Privacy Act 1988,* how to access or correct personal information, how to make a privacy complaint and how we will deal with any complaints, is available in our [privacy policy](https://www.acma.gov.au/privacy-policy).

# Appendix A: Communities listed in the current Determination

### Queensland

|  |  |
| --- | --- |
| Aurukun | Mer (Murray Island) |
| Badu Island | Mount Isa |
| Bamaga | Napranum  |
| Boigu Island | New Mapoon |
| Dauan Island | Palm Island |
| Doomadgee | Pormpuraaw (Edward River) |
| Erub (Darnley Island) | Poruma Island (Coconut Island) |
| Gununa (Mornington Island) | Saibai Island |
| Hammond Island | Seisia Island |
| Hope Vale | St Pauls Island |
| Iama Island (Yam Island) | Ugar Island (Stephens Island) |
| Injinoo (Cowal Creek) | Umagico |
| Kowanyama | Warraber Island (Sue Island) |
| Kubin | Woorabinda |
| Lockhart River | Wujal Wujal |
| Mabuiag Island | Yorke Island |
| Mapoon |  |

### New South Wales

|  |
| --- |
| Alice Edwards Village |
| Collarenebri Reserve |
| Enngonia |
| Gingie |
| Goodooga Reserve |
| Mallee Mission |
| Namoi Village |
| Warrali Mission |
| Weilmoringle |

### South Australia

|  |  |
| --- | --- |
| Amata | Pukatja (Ernabella) |
| Indulkana | Tjintja (Balfours Well) |
| Kalka | Umuwa |
| Kaltjiti (Fregon) | Walatina |
| Kanypi | Watarru |
| Mimili | Watinuma |
| Nyapari | Yunyarinyi (Kenmore Park) |
| Pipalyatjara | Pukatja (Ernabella) |

### Western Australia

|  |  |
| --- | --- |
| Ardyaloon | Mungullah |
| Balgo | Ngalapita |
| Bardi (One Arm Point) | Nulleywah |
| Beagle Bay | Oombulgurri |
| Bidyadanga (La Grange) | Pandanus Park |
| Billiluna | Papulankutja (Blackstone) |
| Cosmo Newberry | Parnngurr |
| Derby | Patjarr |
| Djarindjin | Punmu |
| Fitzroy Crossing | Tjukurla |
| Halls Creek | Tjuntjuntjara |
| Jarlmadangah | Wakathuni |
| Jigalong | Wangkatjungka |
| Kalumburu | Wannarn |
| Kanpa | Warakurna |
| Katumpul (Nambi Village) | Warburton |
| Kiwirrkurra | Warmun (Turkey Creek) |
| Kundat Djaru (Ringers Soak) | Wingellina |
| Kurrawang | Wongatha Wonganarra |
| Looma | Yakanarra |
| Mantamaru (Jameson) | Yandeearra |
| Menzies | Yiyili |
| Mirima | Youngaleena Bunjima |
| Mount Margaret | Yungngora (Noonkanbah) |
| Mulan |  |

### Northern Territory

|  |
| --- |
| Alangula |
| Ali-Curung |
| Alpurrurulam |
| Ampilatwatja |
| Angurugu |
| Areyonga |
| Arlparra |
| Arnhem Land |
| Balma |
| Baniyala |
| Banthula |
| Barunga |
| Batchelor |
| Beswick |
| Borroloola |
| Bulman |
| Canteen Creek |
| Coonana |
| Daguragu |
| Dhalinybuy |
| Dhurupitjpi |
| Donydji |
| Elliott |
| Engawala |
| Finke |
| Galiwinku |
| Gangan |
| Gapuwiyak |
| Garrthalala |
| Gumatj |
| Gunyangara |
| Gurrumuru |
| Haasts Bluff |
| Harts Range |
| Hermannsburg |
| Imangara |
| Imanpa |
| Intjartnama |
| Jilkminggan |
| Kalkarindji |
| Kaltukatjara (Docker River) |
| Lajamanu (Hooker Creek) |
| Laramba |
| Maningrida |
| Mapuru |
| Mata |
| Milikapiti |
| Milingimbi |
| Minjilang (Croker Island) |
| Minyerri (Hodgson Downs) |
| Mirrngatja |
| Mount Liebig |
| Mutitjulu |
| Nanyingburra |
| Nauiyu (Daly River) |
| Ngadayun |
| Nganmarriyanga (Palumpa) |
| Nguiu (Bathurst Island) |
| Ngukurr (Roper River) |
| Nhulunbuy |
| Nturiya (Ti Tree) |
| Numbulwar |
| Nyirripi |
| Oenpelli (Gunbalanya) |
| Papunya |
| Peppimenarti |
| Pirlangimpi |
| Pmara Jutunta |
| Pularumpi |
| Ramingining |
| Robinson River |
| Santa Teresa |
| Timber Creek |
| Titjikala |
| Tjirrkarli |
| Umbakumba |
| Wadeye |
| Wallace Rock Hole |
| Walungurru (Kintore) |
| Wandawuy |
| Warruwi (Goulburn Island) |
| Wigram Island |
| Willowra |
| Wilora |
| Yarralin |
| Yathalamara |
| Yirrkala |
| Yuelamu (Mt Allan) |
| Yuendumu |

# Appendix B: proposed amendments

**Proposed list of remote Indigenous communities to be added to the Section 8B Determination 2022**

**Queensland**

Charleville

Coen

Cooktown

Normanton

**New South Wales**

Bourke

Wilcannia

**South Australia**

Pukatja (Ernabella)

**Western Australia**

Ardyaloon/Bardi/One Arm Point (listed separately in the current determination)

Broome

Kununurra

Mount Magnet

Mullewa

Roebourne & Karratha

Tjirrkarli (listed under the Northern Territory in the current determination)

**Northern Territory**

Alice Springs

Alyangula (spelling correction, as it is listed as Alangula in the current determination)

Pine Creek

Tennant Creek

Wurrumiyanga (Bathurst Island, Tiwi Islands) – name amended, as it is listed as its previous name, Nguiu, in the current determination

**Proposed list of remote Indigenous communities currently in the 2011 Section 8B Determination and suggested for removal**

Western Australia

Bardi (One Arm Point) (to be amended to Ardyaloon/Bardi/One Arm Point)

Djarindjin

Oombulgurri

Punmu

**Northern Territory**

Tjirrkarli (to be listed under Western Australia)

Nguiu (to be amended to Wurrumiyanga (Bathurst Island, Tiwi Islands)

1. See explanatory memorandum for the Broadcasting Legislation Amendment Bill (No. 2) 2002. [↑](#footnote-ref-2)
2. Subclause 9(6) of Schedule 2 provides for paragraph 9(1)(b) of Schedule 2 to the BSA to be modified, such that the words ‘for which the licensee receives any consideration in cash or in kind’ are inserted after the word ‘advertisements’. Paragraph 9(1)(b) of Schedule 2 provides that community broadcasting licensees are prohibited from broadcasting advertisements unless an exception at subclauses 2(1) and (2) of Schedule 2 to the BSA applies. [↑](#footnote-ref-3)
3. Paragraph 123(1)(ba) of the BSA. [↑](#footnote-ref-4)