LEGISLATIVE INSTRUMENTS ACT 2003

Section 26 - Explanatory Statement

Variation to the licence area plan for Murwillumbah Radio made under the Broadcasting Services Act 1992

On 24 March 2005, the Australian Broadcasting Authority (the ABA) made a variation to the licence area plan for Murwillumbah Radio. The variation was made under section 26(2) of the Broadcasting Services Act 1992 (the BSA) and is referred to in this explanatory paper as “the instrument”.

The licence area plan and variations

The ABA prepares licence area plans under section 26(1) of the BSA. Licence area plans 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.

The ABA may vary licence area plans under section 26(2) of the BSA.

The ABA made the licence area plan for Murwillumbah Radio on 22 December 2000. It is referred to in this explanatory paper as “the licence area plan”.

Intended impact and effect

The instrument varies the characteristics of the technical specification with which services in the Murwillumbah licence area must comply by:

- redefining the licence areas for commercial and community radio services in Murwillumbah; and
- including a technical specification for an additional transmitter for the commercial radio broadcasting service operating as Radio 2MW AM (the service).
In relation to commercial radio services, the ABA intends the effect of the variation to rectify deficiencies in reception of the service in the towns of Burringbar, Ocean Shores, Billinudgel, Mullumbimby, Brunswick Heads and Byron Bay.

In relation to licence areas for community and commercial services, the ABA intends the effect of the variation to redefine the relevant licence areas in the terms used by the Australian Bureau of Statistics in the most recent Census. This variation is of a minor and machinery nature and ensures consistency between the licence area plan and the Census. The ABA does not intend that the licence areas are to be altered in a substantial way.

Consultation

On 1 December 2003, the ABA received an unsolicited request from the licensee of the service for the ABA to vary the licence area plan in the manner set out in the instrument (apart from those provisions referring to the description of the relevant licence areas).

Before making a decision to vary the licence area plan, the ABA undertook the following steps by way of consultation:

- On 16 December 2004 the ABA published the following papers on its website:
  - a draft variation to the licence area plan in accordance with the licensee’s submission; and
  - an explanatory paper about the changes proposed in the draft variation, inviting public comment by 28 January 2005.

- On 4 January 2005, the ABA placed an advertisement in the Byron Shire Echo newspaper outlining the effect of the draft variations to the principal instrument, providing details of how to obtain copies of the draft variation or how to access it on the website and inviting public comment.

- The ABA wrote to licensees of commercial and national broadcasting services within the Murwillumbah licence area and in neighbouring licence areas and to
interested organisations, agencies and industry bodies including the Community Broadcasting Association of Australia, Commercial Radio Australia and the Australian Subscription Television and Radio Association as well as the Australian Competition and Consumer Commission, Airservices Australia and the Australian Communications Authority to advise them of the release of the draft variation and explanatory paper and to invite their comments.

The ABA received one submission on the draft proposal and explanatory paper.

**Description of the provisions of the instrument**

Clause (1)(a) of the instrument varies the text of the determination in the licence area plan to number each of the paragraphs in the determination consecutively as clauses.

Clause (1)(b) of the instrument varies the text of the determination in the licence area plan to include a reference to attachment 1.6 which contains the technical specification for the additional transmitter for the service.

Clause (1)(c) of the instrument varies the text of the determination in the licence area plan to insert a new clause (4). Clause (4) will ensure that references in the determination to schedules and attachments are references to schedules and attachments that have been amended from time to time by the ABA.

Clause (2) of the instrument deletes pages two and three of the licence area plan. Pages two and three of the licence area plan contain information, included for reference, that does not form part of the licence area plan and which may be confusing.

Clause (3) of the instrument varies the schedules to the licence area plan. The schedules set out details of the national, commercial, community and open narrowcasting radio broadcasting services that are to be available on particular frequencies in the Murwillumbah RA1 and RA2 licence areas, provide a transmitter number for each transmitter to be used by each service and specify the various
attachments which contain the technical specifications for the transmitters for each of those services.

Clause 3(a) of the instrument updates Schedule One of the licence area plan by substituting it with an updated schedule in item 2 on page four of the instrument. The updated Schedule includes an additional transmitter number for the service and refers to attachment 1.6 as containing the technical specification for that transmitter.

The schedules in the licence area plan have status columns that contain information, included for reference, that does not form part of the licence area plan and which may be confusing. The updated Schedule One does not contain a status column. Clause (3)(b) of the instrument deletes the status column from Schedule Two to the licence area plan.

Clause (4)(a) of the instrument inserts attachment 1.6 into the licence area plan. This attachment contains the technical specification for an additional transmitter for the service, referred to above.

The technical specification for this service includes the following characteristics:

- the transmitter site;
- the frequency on which the service may be transmitted;
- other emission details; and
- the output radiation pattern (including power limitations).

Clauses 4(b) and (c) of the instrument replace the existing descriptions of the relevant licence areas to define them in terms used by the Australian Bureau of Statistics at the latest Census of 5 August 2001. It is not intended to substantially alter the boundaries of the existing licence areas.

Clause (5) of the instrument notes that the date on which the instrument commences is determined by the ABA.