EXPLANATORY STATEMENT

Section 26 – Legislative Instruments Act 2003

Melbourne Radio - No 1 of 2006
Variation to the Licence Area Plan for Melbourne Radio made under the Broadcasting Services Act 1992

In accordance with the Australian Communications and Media Authority Act 2005, from 1 July 2005 the Australian Communications and Media Authority (ACMA) exercises powers and functions under the Broadcasting Services Act 1992 (BSA) previously exercised by the Australian Broadcasting Authority (ABA).

On 27 April 2006, ACMA made a variation to the Licence Area Plan for Melbourne Radio. The variation was made under section 26(2) of the Broadcasting Services Act 1992 (the BSA) and is referred to in this explanatory statement as “the instrument”.

The licence area plan and variations
ACMA 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.

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

The ABA made the Licence Area Plan for Melbourne Radio on 22 June 2000. It is referred to in this explanatory paper as “the licence area plan”.

Intended impact and effect
The instrument varies the technical specifications with which the commercial AM radio services in the Melbourne radio licence area must comply. The variation swaps the technical specification of the transmitter at Lower Plenty used by the commercial radio service with service licence number SL 4140 (broadcasting as 3AW) with the technical specification of the transmitter at Mt Cottrell used by the commercial radio broadcasting service with SL 4146 (broadcasting as 3EE).

ACMA intends the effect of the variation to be to improve the quality of reception of the 3AW service in inner city Melbourne. ACMA is aware that the variation will have a negative effect on reception of the 3EE service. The same person controls commercial radio broadcasting licences for both services and has asked ACMA to make the change to improve reception of the more commercially successful service.

The instrument also:

- deletes information, included for reference only, that does not form part of the licence area plan and which may be confusing;
- updates the descriptions of the licence areas in the licence area plan; and
- varies the licence area plan to amend previous drafting errors.

ACMA intends the effect of these variations to be to clarify the rights and obligations of radio broadcasting licensees in Melbourne. ACMA does not intend the variations to alter those rights and obligations.
Consultation

On 16 December 2005, the person in control of commercial radio broadcasting licences for the 3AW and 3EE services wrote to ACMA asking it to vary the LAP in the manner set out in the instrument.

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

On 21 March 2006, ACMA published the following papers on its website:

- a proposed variation to the licence area plan in similar form to that of the instrument, and
- an explanatory paper detailing the changes proposed and inviting public comment by 31 March 2006.

On 22 March 2006, ACMA placed an advertisement in The Age newspaper outlining the effect of the proposed variation on the licence area plan, providing details of how to obtain copies of the proposed variation and how to access it on ACMA’s website, and inviting public comment.

ACMA wrote to persons providing broadcasting services available in Melbourne to advise them of the release of the proposed variation and explanatory paper and to invite their comments.

ACMA wrote to industry bodies and other interested agencies and organisations, including the Community Broadcasting Association of Australia, Free TV Australia, the Australian Subscription Television and Radio Association and Commercial Radio Australia, as well as Broadcast Australia, Digital Broadcasting Australia, and Air Services Australia, to advise them of the release of the proposed variation and explanatory paper and to invite their comments.

ACMA received three submissions on the proposed variation 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 insert a new clause that will ensure that references to schedules and attachments includes references to schedules and attachments that have been amended from time to time by ACMA.

Clause (2) of the instrument deletes information under the heading “SCHEDULES” and following the determination in the licence area plan. The paragraphs contained information, included for reference, that does not form part of the licence area plan and which may be confusing.

Clause (3) of the instrument omits Schedule One from the licence area plan and substitutes an updated schedule contained in item 2 of page 4 of the instrument.
The schedule sets out details of the radio broadcasting services that are to be available on particular channels in Melbourne. In particular, the schedule provides the technical specification numbers for the transmitters to be used by the services and specifies the attachments which contain the technical specifications for each of those transmitters.

The updated schedule:

- contains the updated technical specification numbers for the transmitters to be used by the commercial radio broadcasting services referred to above broadcasting as 3AW and 3AA; and

- does not include a status column. The status column contained information, included for reference only, that does not form part of the licence area plan and which may be confusing.

Clause 4(a) of the instrument omits attachments 1.1, 2.1, 3.1, 4.1, 5.1, 6.1, 7.1, 8.1, 9.1, 10.1, 11.1, 12.1, 13.1, 14.1, 15.1, 16.1, 17.1 and 18.1 of the principal instrument and substitutes attachments 1.1, 2.1, 3.1, 4.1, 5.1 6.1, 7.1, 8.1, 9.1, 10.1, 11.1, 12.1, 13.1, 14.1, 15.1, 16.1, 17.1 and 18.1 of this instrument. The attachments to the instrument contain updated licence area descriptions in terms defined by the Australian Bureau of Statistics at the Census of 5 August 2001.

Clause 4(b) of the instrument omits attachments 1.9, 1.11, 1.15, 1.16, 1.24 and 1.25 of the principal instrument and substitute attachments 1.9, 1.11, 1.15, 1.16, 1.24 and 1.25 of this instrument.

Attachments 1.9 and 1.11 of the licence area plan contain technical specification of transmitters for the commercial radio broadcasting services broadcasting as 3AW and 3EE. The attachments in the instrument contain varied technical specifications designed to achieve the intended impact and effect referred to above.

The variation to attachments 1.15, 1.16, 1.24 and 1.25 corrects previous drafting errors.