EXPLANATORY STATEMENT

Section 26 – Legislative Instruments Act 2003

Licence Area Plan Variation
Innisfail Radio
LEGISLATIVE INSTRUMENTS ACT 2003

Section 26 - Explanatory Statement

Variation to the licence area plan for Innisfail Radio – No 1 of 2008 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 (the BSA) previously exercised by the Australian Broadcasting Authority (ABA).

The Innisfail Radio Licence Area Plan (LAP) was determined by the ABA on 12 November 1997 and varied by the ABA on 8 October 1998 and on 31 July 2003 (the principal instrument). However the effect of the ABA’s intended decisions is uncertain due to the lack of clarity within these variation instruments.

On 18 March 2008, ACMA made a further variation to the LAP for Innisfail Radio and that variation is referred to in this Explanatory Statement as “the instrument”. In addition to incorporating further changes, this variation ensured that all previous variations would also take effect.

The LAP and variations

ACMA prepares LAPs under subsection 26(1) of the BSA. LAPs 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, by legislative instrument, vary LAPs under subsection 26(2) of the BSA.

ACMA prepared technical planning guidelines under section 33 of the BSA. All references to ‘Technical Planning Guidelines’ in this variation have been updated to refer to the new Broadcasting Services (Technical Planning) Guidelines 2007, which were made by ACMA on 6 July 2007. However, there is no substantive difference between references in the LAP to ‘Technical Planning Guidelines’ and the Broadcasting Services (Technical Planning) Guidelines 2007.

Intended impact and effect

In relation to broadcasting services, the instrument varies sites and operating conditions for national, commercial and open narrowcasting radio services in Innisfail by:

- make changes to the nominal transmitter site for the open narrowcasting radio service in Tully;
- make changes to the nominal transmitter sites and output radiation patterns for two national radio services in Babinda;
- remove capacity for three transmitters for the 4ZKZ commercial radio service at Bramston Beach, Hinchinbrook and Murray Falls;
• add capacity for a new transmitter for the 4ZKZ commercial radio service in Tully; and
• add capacity for a transmitter for the 4KZ commercial radio service in Babinda, which is currently licensed as a retransmission service.

These changes will increase the efficient use of the radiofrequency spectrum. Some capacity for new and extended services is provided for.

In order to improve readability, the instrument also makes minor and technical variations to the LAP to delete information that was included for reference only, and did not form part of the LAP.

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

**Consultation and Submissions**

Before making a decision to vary the LAP, ACMA undertook the following steps by way of consultation:

On 31 May 2007, ACMA published the following papers on its website:

• a draft variation to the Innisfail LAP;
• a draft variation to the Innisfail FAP;
• an explanatory paper about the changes proposed in the draft variation to the LAP, inviting public comment by 28 June 2007; and
• a media release announcing the proposed draft variation to the Innisfail LAP.

ACMA received one submission on the draft variation to the Innisfail LAP and accompanying explanatory paper.

On 28 September 2007, ACMA published the following papers on its website:

• a revised draft variation to the Innisfail LAP;
• a revised draft variation to the Innisfail FAP;
• an explanatory paper about the changes proposed in the revised draft variation to the LAP, inviting public comment by 31 October 2007; and
• a media release announcing the proposed revised draft variation to the Innisfail LAP.

On 2 October 2007, ACMA placed an advertisement in the “Innisfail Advocate” newspaper outlining the effect of the revised draft variation on the LAP, providing details of how to obtain copies of the revised draft variation, how to access it on ACMA’s website and inviting public comment.
On 2 October 2007, ACMA wrote to the licensees providing radio broadcasting services to the Innisfail region to advise them of the release of the revised draft variation to the Innisfail LAP and to invite their comments.

At this time, ACMA also wrote to industry bodies and other interested agencies or organisations, including the Australian Broadcasting Corporation, Australian Subscription Television and Radio, Commercial Radio Australia Ltd, Community Broadcasting Association of Australia, to advise them of the release of the revised draft variation and explanatory paper and to invite their comments.

ACMA received no submissions on the revised draft variation to the Innisfail LAP and accompanying explanatory paper.

**Description of the provisions of the instrument**

Clause (1)(a) of the instrument numbers each of the paragraphs in the Determination in the principal instrument consecutively as clauses.

Clause (1)(b) of the instrument varies the text of the Determination in the principal instrument by omitting the word “section” and substituting the word “subsection”. This takes into account the correction of a grammatical error in the principal instrument.

Clause (1)(c) of the instrument varies the text in clause (2) of the Determination in the principal instrument by omitting the numbers “1.2 – 1.19” and substituting the numbers “1.2 – 1.23”. This takes into account the addition of attachments 1.20 – 1.23 by the instrument.

Clause 1(d) of the instrument varies the text of the Determination in the principal instrument by inserting a new clause (3) that ensures that references to schedules and attachments include schedules and attachments that have been amended from time to time by ACMA.

Clauses (2)(a), (b) and (c) of the instrument delete all texts on the entire page appearing immediately under the heading “Schedules” (including the heading itself) in the principal instrument. These texts, included for reference only, do not form part of the principal instrument and may be confusing.

Clause (3)(a) of the instrument varies Schedule One of the principal instrument and substitutes a revised Schedule One of this instrument. The schedule sets out up to date details of the national, commercial, community and open narrowcasting radio broadcasting services that are to be available on particular frequencies in the Innisfail RA1 licence area. 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 specification for each of those transmitters.

Clause 4(a) of the instrument omits Attachment 1.1 of the principal instrument and substitutes Attachment 1.1 of this instrument. This takes into account updated information for the licence area of Innisfail RA1, collected in the 2001 Census.

Clause 4(b) of the instrument omits Attachment 1.2 of the principal instrument and substitutes Attachment 1.2 of this instrument. Attachment 1.2 now reflects the former
ABA’s intention in its variation of the licence area plan made on 31 July 2003 and lists details of Cardwell including its technical specifications.

Clause 4(c) of the instrument omits Attachment 1.5 of the principal instrument and substitutes Attachment 1.5 of this instrument. Attachment 1.5 now reflects the former ABA’s intention in its variation of the licence area plan made on 31 July 2003 and lists details of Tully including its technical specifications.

Clause 4(d) of the instrument omits Attachment 1.7 of the principal instrument and substitutes Attachment 1.7 of this instrument. Attachment 1.7 reflects the added capacity for a new transmitter for the 4ZKZ commercial service in Tully. It also removes capacity for a transmitter to the commercial service at Bramston Beach.

Clause 4(e) of the instrument omits Attachment 1.10 of the principal instrument and substitutes Attachment 1.10 of this instrument. Attachment 1.10 changes the nominal location of the transmitter site from Babinda Graham Range to Police Hut Graham Range, as well as the maximum antenna height from 20 to 33 metres.

Clause 4(f) of the instrument omits Attachment 1.11 of the principal instrument and substitutes Attachment 1.11 of this instrument. Attachment 1.11 changes the nominal location of the transmitter site from Babinda Graham Range to Police Hut Graham Range, as well as the maximum antenna height from 20 to 33 metres.

Clause 4(g) of the instrument omits Attachment 1.16 of the principal instrument and substitutes Attachment 1.16 of this instrument. Attachment 1.16 now reflects the former ABA’s intention in its variation of the licence area plan made on 8 October 1998 and lists details of “Innisfail” including its technical specifications.

Clause 4(h) of the instrument omits Attachment 1.18 of the principal instrument and substitutes Attachment 1.18 of this instrument. This takes into account the latest changes to the technical specifications in the general area of Tully such as the changes to the location of the nominal transmitter site.

Clause 4(i) of the instrument varies the principal instrument by adding Attachment 1.20 of this instrument. Attachment 1.20 contains new technical specifications for the commercial radio service 4KZ operating and serving the general area of Hinchinbrook.

Clause 4(j) of the instrument varies the principal instrument by adding Attachment 1.21 of this instrument. Attachment 1.21 reflects the former ABA’s intention in its variation of the licence area plan made on 31 July 2003 and lists the details of Murray Falls including its technical specifications.

Clause 4(k) of the instrument varies the principal instrument by adding Attachment 1.22 of this instrument. Attachment 1.22 reflects the former ABA’s intention in its variation of the licence area plan made on 31 July 2003 and lists the details of East Palmerston including its technical specifications.

Clause 4(l) of the instrument varies the principal instrument by adding Attachment 1.23 of this instrument. Attachment 1.23 adds capacity for a transmitter for the 4KZ retransmission service in Babinda which was not previously included in the radio LAP for Innisfail.