EXPLANATORY STATEMENT

Section 26 – Legislative Instruments Act 2003

Variation to Licence Area Plan – Charters Towers Radio – No.1 of 2008
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LEGISLATIVE INSTRUMENTS ACT 2003

Section 26 – Explanatory Statement

Variation to Licence Area Plan for Charters Towers 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 (BSA) previously exercised by the Australian Broadcasting Authority (ABA).

On 21 November 2008, ACMA varied the Licence Area Plan for Charters Towers (Radio). The variation was made under section 26(2) of the BSA and is referred to in this explanatory paper as “the instrument”.

The licence area plan and variations

ACMA prepares licence area plans (LAPs) under section 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 section 26(2) of the BSA.

The ABA made the LAP for Charters Towers (Radio) on 30 October 1997. The LAP determines the number and characteristics of the broadcasting services to be available within the Charters Towers RA1 licence area. It is referred to in this explanatory statement as “the LAP”.

Intended impact and effect

The instrument varies the operating conditions of an open narrowcasting radio service in the Charters Towers licence area by changing its technical specifications.

The intended impact and effect of the variation is to facilitate provision of the open narrowcasting radio service to the area of Charters Towers on a different frequency without interference from:

- in the short term, engineering tests which are planned to be conducted on the same frequency in Townsville in order to develop technical specifications for an additional national radio broadcasting service for Townsville; and

- in the medium and long term, an additional national radio broadcasting service expected to be available for Townsville on the same frequency.

The instrument also makes variations of a minor and administrative nature to:

- vary the definition of the Charters Towers RA1 licence area so that it is described in terms used by the ABS in the 2001 Census and is consistent with the most recent determination of populations of licence areas made under section 30 of the BSA;

- amend a minor previous drafting error; and
● delete information, included for reference only, that does not form part of the LAP and which may create confusion.

ACMA intends for these variations to clarify the rights and responsibilities of commercial and community radio broadcasting licensees in the Charters Towers area. ACMA does not intend the variation to alter those rights and obligations.

**Regulatory impact statement exemption**

ACMA obtained advice from its SES contact officer for the Government’s regulation impact analysis arrangements that the instrument has no or low regulatory impact. For those reasons under the self-assessment regime administered by the Office of Best Practice Regulation, ACMA has determined that there is no need to produce a Business Cost Calculator report or to prepare a Regulation Impact Statement. The exemption identifier is ACMA 068.

**Consultation and Submissions**

**Public consultation**

Before making the decision to vary the LAP, ACMA undertook the following consultation:

On 18 August, ACMA published the following papers on its website:

- a draft variation to the Charters Towers radio LAP;
- an explanatory paper about the changes proposed in the draft variation to the LAP, inviting public comment by 19 September 2008; and
- a media release announcing the proposed draft variation to the Charters Towers Radio LAP.

On 18 August 2008, ACMA wrote to the licensees providing radio broadcasting services to the Charters Towers region to advise them of the release of the draft variation to the Charters Towers LAP and to invite their comments.

ACMA also made direct contact with the licensee of the open narrowcasting service that will be affected by the variation in Charters Towers.

ACMA received six submissions on the draft variation to the Charters Towers Radio licence area plan and accompanying explanatory paper.

One of the submissions, received from the licensee of the open narrowcasting service in Charters Towers discussed above, stated that changing its frequency to the frequency identified in the draft variation would be costly and take a considerable period of time. Subsequent to this consultation ACMA identified a more suitable frequency in consultation with the licensee who has advised it does not oppose the making of the instrument. The instrument provides for the open narrowcasting service to be transmitted on the newly identified frequency.

**Description of the provisions of the instrument**

Clause (1)(a) of the instrument varies the text of the Determination in the LAP to number each of the paragraphs in the Determination consecutively as clauses.
Clause (1)(b) of the instrument varies the text of the Determination at Clause (2) in the LAP to omit the word “section” and substitute the word “subsection”. This is to amend a previous minor drafting error.

Clause (1)(c) of the instrument varies the text of the Determination in the licence area plan to insert 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) of the instrument deletes all text appearing immediately under the heading “Schedules” in the licence area plan (including the heading itself). The information, included for reference only, does not form part of the licence area plan and may be confusing.

Clause (3) of the instrument varies Schedule One of the licence area plan by omitting the previous Schedule One and inserting a new Schedule One. The schedule sets out details of the national, commercial, community and open narrowcasting radio broadcasting services that are to be available on particular frequencies in the Charters Towers RA1 licence area. In particular, the new schedule inserted by clause 3:

- sets out the frequency to be used for transmission of each particular services, including a different frequency for one of the open narrowcasting service as referred to above;
- provides the transmitter specification numbers for the transmitters to be used by the services, including a different transmitter specification number for one of the open narrowcasting service as referred to above; and
- specifies the attachments which contain the technical specification for each of those transmitters.

Clause (4)(a) of the instrument varies Attachment 1.1 by omitting Attachment 1.1 of the LAP and inserting a new Attachment 1.1. The new Attachment 1.1 describes the Charters Towers RA1 licence area in terms defined by the ABS at the Census of 5 August 2001. The variation does not substantially alter the boundaries of the existing licence area.

Clause (4)(b) of the instrument varies Attachment 1.8 by omitting Attachment 1.8 of the LAP and inserting a new Attachment 1.8. The new Attachment 1.8 contains the technical specifications for the transmitter for the open narrowcasting radio broadcasting service to serve the general licence area of Charters Towers.