EXPLANATORY STATEMENT

Section 26 – *Legislative Instruments Act 2003*

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

Section 26 – Explanatory Statement

Variation to Licence Area Plan for Townsville 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).

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

The licence area plan 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.

The ABA made the LAP for Townsville Radio on 30 October 1997 and varied it on 30 August 2001. The LAP for Townsville Radio, as varied on 30 August 2001, is referred to in this explanatory statement as “the LAP”.

Intended impact and effect

In relation to broadcasting services, the instrument varies the operating conditions of a radio broadcasting service in the Townsville area by:

- making spectrum available and specifying technical specifications for a national radio broadcasting service for the Bowen area within the Townsville RA1 area; and
- changing the technical specifications for the transmitter that is available for the community radio broadcasting service in the Townsville RA2 licence area to provide its service to the Bowen area.

The intended impact and effect of these variations is to:

- facilitate the provision of an additional national radio broadcasting service to the Bowen area; and
- facilitate the provision of community radio broadcasting services to the area of Bowen by providing alternative technical specifications for that service; and
- facilitate testing of radiofrequency spectrum in Townsville and Townsville North to determine their suitability for additional transmitters for the national radio broadcasting service to serve the Townsville area.

The instrument also makes variations of a minor and administrative nature to:
amend minor previous drafting errors;
• vary the definition of the licence areas so that they are described against terms used by the Australia Bureau of Statistics in the 2001 Census and are consistent with the most recent determination of populations of licence areas made under section 30 of the BSA; and
• deletes 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 Townsville and Bowen areas. 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
Before making a 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 Townsville 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 Townsville Radio LAP.

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

On 19 August 2008, ACMA placed an advertisement in the Townsville Herald outlining the effect of the draft variation on the LAP, providing details of how to obtain copies of the draft variation, how to access it on ACMA’s website and inviting public comment.

ACMA received seven submissions on the draft variation to the Townsville Radio LAP and accompanying explanatory paper.

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 correct a minor drafting error.

Clause (1)(c)(i) and (ii) of the instrument varies the text of the Clause (4) of the Determination in the LAP so that it refers to nine national radio broadcasting services. This takes into account the addition of Attachment 3.23 and the new national radio broadcasting service to be available.

Clause (1)(d) of the instrument varies the text of the Determination in the licence area plan to insert a new clause (7) 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 LAP (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, Schedules Three and Four of the LAP by omitting the previous Schedules One, Three and Four and inserting new Schedules One, Three and Four. 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 Bowen RA1, Townsville RA1 and Townsville RA2 licence areas, respectively. In particular, the schedules provide the transmitter specification numbers for the transmitters to be used by the services and specify the attachments which contain the technical specification for each of those transmitters.

Clause (4) amends the attachments to the Townsville LAP which contain definitions of the licence areas in which services will be available and the technical specifications for those services.

Clauses (4)(a), (b), (c), (f) and (h) of the instrument omit Attachments 1.1, 2.1, 3.1, 4.1 and 5.1 and substitutes new Attachments 1.1, 2.1, 3.1, 4.1 and 5.1 to the Townsville LAP.

The new Attachments 1.1, 2.1, 3.1, 4.1 and 5.1 describe the Bowen RA1, Palm Island RA1, Townsville RA2 and Townsville RA3 licence areas in terms of areas defined by the Australian Bureau of Statistics at the Census of 5 August 2001. The variations do not substantially alter the boundaries of these existing licence areas.

Clauses 4(g) and (d) of the instrument omits Attachments 4.2, 3.22 and 3.22.1 of the licence area plan and substitutes new Attachments 4.2 and 3.22.

The new Attachment 4.2 contains the new technical specifications for the transmitter for the community radio broadcasting service for the Townsville RA2 licence area to serve the area of Bowen.

The new Attachment 3.22 contains the technical specifications for the transmitter for the open narrowcasting radio service to serve the general area of Townsville. Its insertion amends previous drafting errors.
Clause 4(e) of the instrument inserts Attachment 3.23 into the LAP. Attachment 3.23 contains the technical specifications for a transmitter for the additional national radio broadcasting service to serve the general area of Bowen.