EXPLANATORY STATEMENT

Section 26 – *Legislative Instruments Act 2003*

Variation to Licence Area Plan – Perth Radio – No.1 of 2009
LEGISLATIVE INSTRUMENTS ACT 2003

Section 26 – Explanatory Statement

Variation to Licence Area Plan for Perth Radio – No. 1 of 2009 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 (the ACMA) exercises powers and functions under the Broadcasting Services Act 1992 (the BSA) previously exercised by the Australian Broadcasting Authority (ABA).

On 23 July 2009, the ACMA varied the Licence Area Plan (LAP) for Perth Radio. The variation was made under subsection 26(2) of the BSA and is referred to in this explanatory statement as “the instrument”.

The licence area plan and variations

The 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.

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

The ABA made the LAP for Perth Radio on 11 October 2001 and varied it on 19 September 2002 and 22 October 2002. The ACMA varied the LAP on 6 November 2006.
The LAP for Perth Radio, as varied, is referred to in this explanatory statement as “the LAP”.

**Intended impact and effect**

In relation to broadcasting services, the instrument varies the technical operating conditions of radio broadcasting services in the Perth area by:

- specifying alternate technical specifications for the commercial radio broadcasting service with the service licence number 1150743 (6PER); and
- specifying alternate technical specifications for the community radio broadcasting services with the service licence numbers SL1150746 (6NME), SL1566 (6SON) and SL3079 (6RTR).

The intended impact and effect of these variations is to:

- facilitate a change of technical conditions for the 6PER and 6NME radio broadcasting services to change the location of their transmitter sites; and
- facilitate a change of technical conditions for the 6SON and 6RTR radio broadcasting services to reflect a change to the height of their transmitting antennae.

The ACMA intends that these variations will clarify the rights and responsibilities of commercial and community radio broadcasting licensees in the Perth area. The ACMA does not intend the variation to alter those rights and obligations in any material way.

The instrument also makes technical amendments to the LAP to correct previous drafting errors.
Regulatory impact statement exemption

The ACMA has considered whether a regulatory assessment process is required and formed the view that the recommendation in this submission would not give rise to a regulatory obligation. Therefore, a regulatory impact analysis process has not been applied.

Consultation and Submissions

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

On 4 March 2009, the ACMA published the following papers on its website:

- a draft variation to the Perth Radio LAP;
- an explanatory paper about the changes proposed in the draft variation to the LAP, inviting public comment by 26 March 2009; and
- a media release announcing the proposed draft variation to the Perth Radio LAP.

On 4 March 2009, the ACMA wrote to the licensees providing commercial and community radio broadcasting services to the Perth region to advise them of the release of the draft variation to the Perth LAP and to invite their comments.

On 4 March 2009, the ACMA placed an advertisement in the “West Australian” newspaper 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 the ACMA’s website and inviting public comment.
The ACMA received 201 submissions on the draft variation to the Perth Radio LAP and accompanying explanatory paper. As a result of this consultation, some of the proposals contained in the draft LAP released for public consultation on 4 March 2009 have not been made at this time.

**Description of the provisions of the instrument**

*Clause 1*

Clause (1) of the instrument varies the text of the Clause (2) of the Determination in the LAP so that it refers to the characteristics, including technical specifications, of the services that are to be available in the area described at Attachment 1.1 of the LAP and that are set out in Schedule One and Attachments 1.1 – 1.34 of the LAP.

This takes into account the addition of Attachments 1.33 and 1.34 to the LAP which enables the improvement of coverage for the community radio broadcasting services with the service licence number SL1150746 (currently operated by 6NME) and SL3079 (currently operated by 6RTR), respectively, to serve the general area of Perth.

*Clause 2*

Clause (2) of the instrument varies Schedule One of the LAP by omitting the previous Schedule One and inserting a new Schedule One. The new Schedule One sets out the details of the national, commercial, community and open narrowcasting radio broadcasting services that are to be available on particular frequencies in the Perth 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 3

Clause (3) (a) of the instrument omits Attachment 1.1 of the principal instrument and substitutes a new Attachment 1.1. The new Attachment 1.1 contains the same information as the previous Attachment 1.1, the information is, however, formatted in a manner that makes it clearer to the reader and which confirms to other descriptions of licences areas in the LAP.

Clause (3) (b) of the instrument omits Attachment 1.8 of the principal instrument. The omission of Attachment 1.8 corrects a technical drafting error that occurred during the variation to the LAP made by the Licence Area Plan – Perth Radio No.1 of 2006.

Clause (3) (c) of the instrument omits Attachment 1.14 of the principal instrument and substitutes the new Attachment 1.14.

The new Attachment 1.14 contains the new technical specifications for the transmitter for the commercial radio broadcasting service with the service licence number SL1150743 (currently operated by 6PER) for the Perth RA1 licence area to serve the general area of Perth.

Clause (3) (d) of the instrument omits Attachment 1.22 of the principal instrument. Attachment 1.22 contained the technical specifications for a transmitter for the community radio broadcasting service with the service licence number SL3079 (currently operated by 6RTR) that serves the general area of Perth within the Perth RA1 licence area. New technical specifications for this service have been determined and can be found at Attachment 1.34.
Clause (3) (e) of the instrument omits Attachment 1.25 of the principal instrument and substitutes the new Attachment 1.25.

The new Attachment 1.25 contains the new technical specifications for the transmitter for the community radio broadcasting service with the licence number SL1566 (currently operated by 6SON) for the Perth RA1 licence area to serve the general area of Perth.

Attachment 1.25 contains an additional special condition that applies to the operation of the transmitter as specified in the technical specification. The special condition ensures that the service cannot commence on the proposed technical specifications unless the ACMA is first satisfied that doing so will not cause undue interference with other services.

Clause (3) (f) inserts Attachments 1.33 and 1.34 into the LAP.

Attachments 1.33 and 1.34 contain the new technical specifications for the transmitters for the community radio broadcasting services with the service licence number SL1150746 (currently operated by 6NME) and SL3079 (currently operated by 6RTR), respectively, to serve the general area of Perth.

The technical specification for the transmitters includes the following characteristics:

- the nominal transmitter site;
- the frequency on which the service may be transmitted;
- other emission details; and
- the output radiation pattern (including power limitations).
Attachments 1.33 and 1.34 each contain an additional special condition that applies to the operation of the transmitter as specified in the technical specification. Each special condition ensures that the service cannot commence on the proposed technical specifications unless the ACMA is first satisfied that doing so will not cause undue interference with other services.