Explanatory Statement

Section 26 Legislative Instruments Act 2003

Variation to Licence Area Plan for Spencer Gulf North Radio – No.1 of 2009

AUGUST 2009
Legislative Instruments Act 2003

Section 26 – Explanatory Statement

Variation to Licence Area Plan for Spencer Gulf North 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 (ACMA) exercises powers and functions under the Broadcasting Services Act 1992 (the BSA) previously exercised by the Australian Broadcasting Authority (ABA).

On 21 August 2009, the ACMA made a variation to the Licence Area Plan for Spencer Gulf North 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 Licence Area Plans (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 Spencer Gulf North Radio on 6 December 2001 and varied it on 3 July 2003. The LAP for Spencer Gulf North Radio, as varied, is referred to in this explanatory statement as “the Spencer Gulf North LAP”.

**INTENDED IMPACT AND EFFECT**

The instrument makes a community radio broadcasting service available in the Port Augusta area by making spectrum available and specifying additional technical specifications for the service.

The intended impact and effect of these variations is to:

- facilitate the provision of a community radio broadcasting service to the Port Augusta area; and
- update the descriptions of the Spencer Gulf North RA1, Port Pirie RA1, Yorke Peninsula RA1 and Whyalla RA1 licence areas using 2001 Census data.

The instrument also deletes information, included for reference only, that does not form part of the Spencer Gulf North LAP and which may create confusion, and makes some minor amendments to correct drafting errors.

The ACMA intends the effect of this variation to be to clarify the rights and obligations of existing radio broadcasting licensees in the Spencer Gulf North area. The ACMA does not intend for the variations to alter those rights and obligations materially.
REGULATORY IMPACT ANALYSIS

The ACMA has considered whether a regulatory impact statement is required and formed the view that the variations to the Spencer Gulf North LAP would not give rise to a regulatory obligation. Therefore, a regulatory impact analysis process has not been applied. The exemption identifier is ACMA 107.

CONSULTATION AND SUBMISSIONS

Before varying the Spencer Gulf North LAP, the ACMA undertook the following consultation:

On 30 June 2009, the ACMA published the following papers on its website:

a. a draft variation to the Spencer Gulf North LAP;
b. an explanatory paper about the changes proposed in the draft variation, inviting public comment by 17 July 2009; and
c. a media release announcing the proposed draft variation.

On 30 June 2009, the ACMA wrote to the licensees providing commercial and community radio broadcasting services to the Spencer Gulf North region to advise them of the release of the draft variation to the Spencer Gulf North LAP and to invite their comments.

On 8 July 2009, the ACMA placed an advertisement in the “Port Augusta Transcontinental” newspaper outlining the effect of the draft variation on the Spencer Gulf North 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 twenty-one submissions on the draft variation.

**DESCRIPTION OF THE PROVISIONS OF THE INSTRUMENT**

**Clause (1)(a)**

Clause (1)(a) of the instrument numbers each of the paragraphs in the Determination in the Spencer Gulf North LAP consecutively as clauses (1), (2), (3), (4) and (5).

**Clause (1)(b)**

Clause (1)(b) of the instrument inserts a new clause (6) into the Determination in the Spencer Gulf North LAP. Clause (6) provides for a new community radio broadcasting service to be available in the new licence area, Port Augusta RA1. The clause makes reference to the schedule and attachments containing the description of the new licence area and the technical specifications for the transmitters for the newly-planned community radio broadcasting service. Relevant schedules and attachments are inserted by later provisions of the instrument.

Clause (1)(b) also inserts a new clause (7) into the Determination that will ensure that it refers to schedules and attachments that have been amended from time to time by the ACMA.

**Clause (2)**

Clause (2) of the instrument deletes all text appearing immediately under the heading “Schedules” in the Spencer Gulf North LAP (including the heading itself). The information was originally included for reference only and may be confusing.
Clause (3)(a)

Clause (3)(a) of the instrument omits Schedules One, Two, Three and Four to the Spencer Gulf North LAP and inserts new Schedules One, Two, Three and Four. These schedules set out the details of the radio broadcasting services that are to be available on particular frequencies in the Spencer Gulf North RA1, Port Pirie RA1, Yorke Peninsula RA1 and Whyalla RA1 licence areas. In particular, each Schedule provides the technical specification numbers for each transmitter to be used by the services in each licence area, and specifies the attachments which contain the technical specifications for each of those transmitters.

Clause (3)(b)

Clause (3)(b) of the instrument inserts Schedule Five to the Spencer Gulf North LAP. The schedule sets out the details of the community radio broadcasting service that is to be available in the Port Augusta RA1 licence area and provides the technical specification number for the transmitter for that service.

Clause (4)(a)

Clause (4)(a) of the instrument varies Attachment 1.1 to the Spencer Gulf North LAP. This attachment contains the definition of the Spencer Gulf North RA1 licence area in terms used by the Australian Bureau of Statistics. Attachment 1.1 now describes the Spencer Gulf North RA1 licence area using 2001 Census data.

Clause (4)(b)

Clause (4)(b) of the instrument omits Attachment 1.11 of the Spencer Gulf North LAP.
Attachment 1.11 describes the commercial radio broadcasting service that was available at Port Pirie under the service licence number 4195.

When the Spencer Gulf North LAP was made, Attachment 1.11 contained a special condition that it was to be replaced by the technical specification of Attachment 1.9 at a date no later that one year after publication of the Gazette notice that the Spencer Gulf North LAP had been determined.

This date has passed and Attachment 1.11 is now redundant.

**Clause (4)(c)**

Clause (4)(c) of the instrument varies Attachments 2.1, 3.1 and 4.1 to the Spencer Gulf North LAP. These attachments contain the definitions of the Port Pirie RA1, Yorke Peninsula RA1 and Whyalla RA1 licence areas in terms used by the Australian Bureau of Statistics. Attachments 2.1, 3.1 and 4.1 now describe the Port Pirie RA1, Yorke Peninsula RA1 and Whyalla RA1 licence areas, respectively, using 2001 Census data.

**Clause (4)(d)**

Clause (4)(d) inserts Attachment 5.1, which describes the Port Augusta RA1 licence area in terms of areas defined by the Australian Bureau of Statistics at the Census of 5 August 2001.

Clause (4)(d) also insert Attachment 5.2 and Attachment 5.3 into the Spencer Gulf North LAP. The new Attachments 5.2 and 5.3 contain the technical specifications for the transmitters for the community radio broadcasting service to serve the Port Augusta RA1 licence area.

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).

Attachment 5.3 also contains a special condition limiting the commencement of that transmitter until the transmitter as specified in Attachment 5.2 ceases operation.