EXPLANATORY STATEMENT

Issued by the Authority of the Australian Communications and Media Authority

Radiocommunications (Issue of Broadcasting (Narrowcasting) Transmitter Licences) Amendment Determination 2010 (No.1)

Radiocommunications Act 1992

Purpose

The purpose of the Radiocommunications (Issue of Broadcasting (Narrowcasting) Transmitter Licences) Amendment Determination 2010 (No.1) (the Amendment Determination) is to amend the Radiocommunications (Issue of Broadcasting (Narrowcasting) Transmitter Licences) Determination No. 1 of 1996 (the Determination). Once amended, the Determination will include additional transmitter licences and those licences will be able to be allocated by the Australian Communications and Media Authority (ACMA).

Legislative Provisions

Section 106 of the Radiocommunications Act 1992 (the Act) provides that the ACMA may determine in writing a price-based allocation system for allocating and/or issuing specified transmitter licences.

A determination made under section 106 of the Act is a legislative instrument for the purposes of the Legislative Instruments Act 2003 (the LIA).

Subsection 33(3) of the Acts Interpretation Act 1901 provides that where an Act confers a power to make an instrument, that power shall, unless the contrary intention appears, be construed as including a power exercisable in a like manner and subject to like conditions, to amend that instrument.

Background

In making or varying Licence Area Plans (LAPs) under section 26 of the Broadcasting Services Act 1992 (the BSA), the ACMA may identify that one or more open narrowcasting services are available for allocation.

Providers of open narrowcasting services do not require a service licence under the BSA, however they need to obtain a transmitter licence issued under the Act with which to transmit the proposed services. There is usually a high level of interest in obtaining licences for open narrowcasting services, particularly high power open narrowcasting (HPON) services. Due to this interest the Spectrum Management Agency (a predecessor organisation to the ACMA) determined that the transmitter licences for these services will be issued using a price-based allocation system, determined under section 106 of the Act.

Accordingly, the Determination was made under section 106 of the Act in 1996. The Determination sets out the price-based allocation system under which transmitter licences for open narrowcasting services are allocated.

The ACMA may only issue a transmitter licence for open narrowcasting services if the spectrum for the licence has been made available by a decision under section 34 of the BSA (the section 34 decision).

Under section 34 of the BSA if broadcasting services bands spectrum is available in a licence area it may be made available to providers of open narrowcasting services. In reaching this decision the ACMA must consider whether the spectrum has been made available for a commercial radio broadcasting licence. If it has not, then the ACMA may, by written instrument, determine it as available for open narrowcasting services.

The ACMA has recently completed variations to the LAPs for the Launceston, Griffith, Perth and Kalgoorlie regions of Australia. These variations have identified new open narrowcasting radio services as being available for allocation in these licence areas. Further, the ACMA made the relevant section 34 decisions prior to making the Amendment Determination.
Operation

The Amendment Determination includes in the Schedule to the Determination a new Part 6. This new part ensures that the range of specified transmitter licences to which the price based allocation set out in the Determination is applicable includes the transmitter licences that will be used to provide those open narrowcasting services as identified in the relevant LAPs for Launceston, Griffith, Perth and Kalgoorlie.

The Amendment Determination also takes the opportunity to update, where relevant, references to the Australian Communications Authority (the ACA) and Australian Broadcasting Authority (the ABA) to the ACMA.

Consultation

Section 17 of the LIA requires the ACMA to be satisfied that any consultation it considers to be appropriate and that is reasonably practicable to undertake has been undertaken before making a legislative instrument.

At the time that the ACMA prepares or varies a LAP, it is required under section 27 of the BSA to consult widely with the public. It does this by way of public notice in relevant newspapers and by inviting written submissions on proposed changes. The consultation papers were also made available on the ACMA’s website for a period of four weeks.

Such consultation includes details of the identified open narrowcasting services and the proposed use of the price based allocation system under the Determination to allocate the related transmitter licences under the Act. Consultation details for each of the relevant areas for which transmitter licences are included in the Determination are provided below.

Launceston

On 27 July 2009, the ACMA released a draft variation to the Launceston radio LAP proposing to make a HPON service available in Launceston, TAS. Submissions on the proposed changes to the Launceston radio LAP closed on 28 August 2009.

The ACMA announced the release of the draft variation to the Launceston radio LAP through the issue of a Media Release on its website on 27 July 2009, the publication of a newspaper advertisement in the Launceston Examiner and a mail out to various industry stakeholders.

In response to the draft variation to the Launceston radio LAP, the ACMA received six submissions.

Griffith

On 7 December 2009, the ACMA released a draft variation to the Griffith radio LAP proposing to make a new HPON service available in Griffith, NSW. Submissions on the proposed changes to the Griffith radio LAP closed on 15 January 2010.

The ACMA announced the release of the draft variation to the Griffith LAP through the issue of a Media Release on its website on 7 December 2009, the publication of a newspaper advertisement in the Griffith Area News on 9 December 2009 and a mail out to various industry stakeholders.

In response to the draft variation to the Griffith radio LAP, the ACMA received one submission.

Perth

On 30 March 2010, the ACMA released a draft variation to the Perth radio LAP proposing to make a new HPON service available in Perth, WA. Submissions on the proposed changes to the Perth radio LAP closed on 30 April 2010.

The ACMA announced the release of the draft variation to the Perth LAP through the issue of a Media Release on its website on 30 March 2010, the publication of a newspaper advertisement in the West Australian on 3 April 2010 and mail out to various industry stakeholders.

In response to the draft variation to the Perth radio LAP, the ACMA received 28 submissions.
On 16 March 2010, the ACMA released a draft variation to the Kalgoorlie radio LAP proposing to make two new HPON service available in Kalgoorlie and Kambalda, WA. Submissions on the proposed changes to the Kalgoorlie radio LAP closed on 16 April 2010.

The ACMA announced the release of the draft variation to the Kalgoorlie LAP through the issue of a Media Release on its website on 16 March 2010, the publication of a newspaper advertisement in the ‘Kalgoorlie Miner’ on 17 April 2010 and mail out to various industry stakeholders.

In response to the draft variation to the Kalgoorlie radio LAP, the ACMA received three submissions.

Overall, only two submissions relevant to the use of the price-based allocation system under the Determination were received (in relation to the proposed variation to the Launceston LAP). These submissions supported the use of the price-based allocation system to allocate the related transmitter licence.

All submissions received were considered by the ACMA before determining the final LAP or LAP variation.

Further consultation on the Amendment Determination is not considered necessary, given that the ACMA will advertise for applications for the available licences in relevant local newspapers. A public auction will then be conducted in instances where more than one application is received. All successful applicants will be noted in a media release and on the ACMA’s website and details published in the Gazette.

Consultation on the updating of references from the ACA and the ABA to the ACMA was not considered necessary as these changes were minor and machinery in nature and do not substantially alter the law.

**Regulation impact**

The ACMA obtained advice from its SES contact officer for the Government’s regulation impact analysis arrangements that the Amendment Determination has no or low impact. For those reasons under the self-assessment regime administered by the Office of Best Practice Regulation, the ACMA has determined that there is no need to produce a Business Cost Calculator Report or to prepare a Regulation Impact Statement. The ACMA RIS exemption number is ACMA 156.

**Other Documents Incorporated in this Instrument by Reference**

The Amendment Determination includes in new Part 6 of the Determination, a reference to a decision made by the ACMA under section 34 of the BSA. The relevant section 34 decisions are notified in the Commonwealth of Australia Government Notices Gazette.

**Attachments**

Further details of the Amendment Determination are in the Attachment.
NOTES ON SECTIONS

Section 1 Name of Amendment Determination

Section 1 provides that the name of the Amendment Determination is the Radiocommunications (Issue of Broadcasting (Narrowcasting) Transmitter Licences) Amendment Determination 2010 (No.1).

Section 2 Commencement

Section 2 provides that the Amendment Determination commences on the day after it is registered on the Federal Register of Legislative Instruments.

Section 3 Amendment of Radiocommunications (Issue of Broadcasting (Narrowcasting) Transmitter Licences) Determination No. 1 of 1996

Section 3 provides that Schedule 1 of the Amendment Determination amends the Radiocommunications (Issue of Broadcasting (Narrowcasting) Transmitter Licences) Determination No. 1 of 1996.

Schedule 1 – Amendments

Item [1] omits the note to clause 2. The ABA was abolished on 30 June 2005. The ACMA is now responsible for issuing transmitter licences under the Act for use for open narrowcasting services.

Item [2] amends the definition section of the Determination to remove the reference to the ACA and includes a new reference for the ACMA. The reference to the ABA is retained in the definitions section in view of the circumstances that earlier section 34 decisions made by the ABA remain referenced in the Schedule to the Determination.

Item [3] substitutes paragraph 5(5)(e) of the Determination in order to properly update the reference in this paragraph to reflect the ACMA instead of its respective predecessor organisations, the ACA and the ABA.


Item [5] includes new Part 6 into the Schedule to the Determination, identifying the date of the section 34 decision made by the ACMA and the affected transmitter licences by reference to the respective areas and ranges of frequencies of those licences.

Item [6] updates outdated references to the ACA and the ABA throughout the Determination.