In accordance with the Australian Communications and Media Authority Act 2005, the Australian Communications and Media Authority (ACMA) exercises powers and functions under the Broadcasting Services Act 1992 (BSA).

The ACMA has made a variation to the licence area plan (LAP) for Nhulunbuy radio. The variation was made under subsection 26(2) of the BSA and is referred to in this explanatory statement as “the instrument”.

The LAP and variations to the LAP

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 original LAP Nhulunbuy Radio (“the Nhulunbuy LAP”) was made on 27 August 1996.

Intended impact and effect

The instrument varies the characteristics, including technical specifications, of radio broadcasting services in the Nhulunbuy area by varying the technical specifications of the existing community broadcasting service 8EAR at Nhulunbuy by increasing the maximum power level to 500 watts (W) and allowing a change of site and polarisation.

The instrument also deletes some material, included for reference only, that does not form part of the LAP and which may create confusion, and makes some minor amendments to revise the drafting of the Nhulunbuy LAP. It also updates each of the licence area definitions so that they are defined in terms of the Australian Bureau of Statistics (ABS) 2006 census data.

The intended impact and effect of this variation is to clarify the characteristics, including technical specifications, of radio broadcasting services in the Nhulunbuy area. The ACMA does not intend the variation to alter any existing rights and obligations, except as set out above.

Regulatory Impact Analysis

The ACMA’s Best Practice Coordinator has considered the matter and referred it to the Office of Best Practice Regulation (OBPR). The OBPR formed the opinion that the proposed regulation is likely to have no or low impact on business or the economy; and neither a regulation impact statement nor a business cost calculator report is necessary in relation to the regulatory proposal.

The OBPR has issued an exemption reference number: 2011/13329.

Consultation

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

1. On 31 October 2012, the ACMA published the following papers on its web site:
   a. a draft instrument;
b. an explanatory paper outlining the changes proposed in the draft instrument and inviting public comment by 30 November 2012; and

c. a media release announcing the draft instrument.

2. On 31 October 2012, the ACMA wrote to the licensees providing radio broadcasting services in the Nhulunbuy RA1 and Yirrkala RA1 and in adjacent radio licence areas to advise them of the release of the draft instrument and to invite their comments by 30 November 2012.

3. On the 7 November 2012 the ACMA placed an advertisement in the “Arafura Times” announcing the draft instrument. The advertisement provided details of how and where to obtain copies of the draft instrument and invited public comment by 30 November 2012.

Submissions
The ACMA received no submissions on the draft instrument.

Description of the provisions of the instrument

Clause 1
Clause 1 identifies the power under which the ACMA makes the instrument, subsection 26(2) of the BSA.

Clause 2
Clause 2 names the instrument the Variation to the Licence Area Plan for Nhulunbuy Radio – No 1 of 2013.

Clause 3
Clause 3 provides the instrument commences the day after it is registered on the Federal Register of Legislative Instruments.

Paragraph 4(a)
Paragraph 4(a) renames the Nhulunbuy LAP as Licence Area Plan – Nhulunbuy Radio.

Paragraph 4(b)
Paragraph 4(b) amends the heading on the title page of the Nhulunbuy LAP so that it reads “Licence Area – Nhulunbuy Radio”.

Sub-paragraph 4(c)(i)
Sub-paragraph 4(c)(i) amends the heading on page two of the Nhulunbuy LAP so that it reads “Licence Area Plan – Nhulunbuy Radio”.

Sub-paragraph 4(c)(ii)
Sub-paragraph 4(c)(ii) removes the heading “Determination” from page two of the Nhulunbuy LAP.

Sub-paragraph 4(c)(iii)
Sub-paragraph 4(c)(iii) omits the two paragraphs of text from page two of the Nhulunbuy LAP and substitutes new clauses (1) and (2) and inserts new clause (3) and (4) into the Nhulunbuy LAP.

New clause (1) states that this plan for radio broadcasting services in the Nhulunbuy area of the Northern Territory is made under subsection 26(1) of the Broadcasting Services Act 1992.
New clause (2) of the instrument details the community and open narrowcasting radio broadcasting services that are to be available on particular frequencies in the Nhulunbuy RA1 licence area.

New clause (3) of the instrument details the community radio broadcasting service that is to be available on a particular frequency in the Yirrkala RA1 licence area.

New clause (4) will ensure that a reference to a schedule or an attachment includes a reference to a schedule or attachment as amended from time to time.

**Sub-paragraph 4(d)(i) and 4(d)(ii)**,

Sub-paragraphs 4(d)(i) and 4(d)(ii) remove from the Nhulunbuy LAP all the text, immediately before Schedule One under the heading “SCHEDULES” (including the heading itself). This material was originally included for reference only and is no longer considered relevant or necessary.

**Paragraph 4(e)**

Paragraph 4(e) replaces Schedules One and Two of the Nhulunbuy LAP. These schedules set out the details of the community and open narrowcasting radio broadcasting services that are to be available on particular frequencies in the Nhulunbuy RA1 and Yirrkala RA1 licence areas.

In particular, the Schedules provide the technical specification numbers for each transmitter to be used by the services in the licence areas, and specify the attachments which contain the technical specification for each of those transmitters and are described in the same manner as previous radio LAP variations.

**Paragraph 4(f)**

Paragraph 4(f) omits Attachments 1.1, 1.2, 1.3, 2.1 and 2.2 from the Nhulunbuy LAP and inserts Attachments 1.1, 1.2, 1.3, 2.1 and 2.2.

The new Attachments 1.1 and 2.1 contains the definitions of the Nhulunbuy RA1 and Yirrkala RA1 licence areas updated to 2006 census data.

The new Attachments 1.2, 1.3 and 2.2 have been varied so that their headings read 'LICENCE AREA PLAN : Nhulunbuy Radio', the site tolerance fields refer to the Broadcasting Services (Technical Planning) Guidelines 2007 in addition the nominal location for transmitters have been changed to better reflect the location of the transmitter (the transmitters have not, however, moved).

The new Attachments 1.2 and 2.2 have been varied so that the polarisation of the services is now mixed, the maximum antenna height reflects actual operating conditions and the Australian map grid reference have been changed to better reflect the actual location of the transmitter.

A special condition has been added to Attachment 1.3 to include a defined coverage radius for the open radio narrowcasting service planned by the attachment.

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**Statement of Compatibility with Human Rights**

Explanatory Statement to F2013L00261
Variation to Licence Area Plan – Nhulunbuy Radio – No.1 of 2013

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Legislative Instrument

The legislative instrument varies the characteristics, including the technical specifications, of the community radio broadcasting service 8EAR at Nhulunbuy to increase the maximum power level to 500 watts and allow a change of site and polarisation.

The legislative instrument also updates the description of the existing commercial and community radio licence areas in the Nhulunbuy LAP so that they are defined in terms used in the 2006 census and are consistent with the ACMA’s most recent determination of population of the licence areas under section 30 of the Broadcasting Services Act 1992.

The legislative instrument also makes minor amendments to delete information included for reference only that does not form part of the Nhulunbuy LAP and which may create confusion.

The intended impact and effect of the legislative instrument is to clarify the characteristics, including technical specifications, of radio broadcasting services in the Nhulunbuy area. The ACMA does not intend the variation to alter any existing rights and obligations, except as set out above.

Human rights implications

The legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

The legislative instrument is compatible with human rights as it does not raise any human rights issues.

Australian Communications and Media Authority