EXPLANATORY STATEMENT
Approved by the Australian Communications and Media Authority

Broadcasting Services Act 1992

Variation to Licence Area Plan – Bendigo (Radio) – 2017 (No.1)

Authority
The Australian Communications and Media Authority (the ACMA) had made the Variation to Licence Area Plan – Bendigo (Radio) – 2017 (No.1) (the instrument) under subsection 26(2) of the Broadcasting Services Act 1992 (the Act).

Subsection 26(2) of the Act provides that the ACMA may, by legislative instrument, vary a licence area plan.

Purpose and operation of the instrument
The ACMA prepares licence area plans (LAPs) under subsection 26(1) of the Act. 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.


It is referred to in this explanatory statement as “the Bendigo LAP”.

The instrument varies the characteristics, including technical specifications, of radio broadcasting services specified in the Bendigo LAP by:

- changing the technical specifications of the existing Maryborough 3EL commercial radio broadcasting service FM in-fill transmitter at Bendigo City to increase its maximum power and antenna height and to allow a change of transmitter site location;
- changing the technical specifications of the existing Maryborough community radio broadcasting service 3GFM to increase its maximum power and allow a change of transmitter site location and expand the Maryborough RA2 licence area; and
- making spectrum available for a long-term community radio broadcasting service and a new licence area at Castlemaine.

The ACMA does not intend the instrument to alter any existing substantive rights and obligations, except as set out above. The instrument also updates some transmitter site nominal locations, Australian Map Grid references for transmitters and advisory notes for commercial and community radio broadcasting services where required, and makes minor changes to the Bendigo LAP for drafting consistency. However, these updates do not reflect changes to the ways in which these services are provided.

Further details regarding the instrument are set out at Attachment A.

Documents incorporated by reference
The instrument incorporates the Broadcasting Services (Technical Planning) Guidelines 2007, which is a disallowable legislative instrument made by the ACMA under section 33 of the Act. As permitted by subparagraph 14(1)(a)(ii) of the Legislation Act 2003 (the LA), that legislative instrument is incorporated as in force from time to time.
This document may be accessed at [www.legislation.gov.au](http://www.legislation.gov.au)

The instrument also incorporates areas defined by the Australian Bureau of Statistics (ABS) in its Census of 5 August 2001 and in its Census of 8 August 2006. As permitted by paragraph 14(1)(b) of the LA, these areas are incorporated as in force at the day the instrument commenced. The areas defined in the Census of 8 August 2006 may be accessed, free of charge, through the Australian Standard Geographical Classification 2006 which is published on the website of the ABS at: www.abs.gov.au. The areas defined in the Census of 5 August 2001 may be accessed, free of charge, in historical Census and data products published on the website of the ABS.

**Consultation**

Before the instrument was made, the ACMA was satisfied that consultation was undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the LA.

On 9 June 2016, the ACMA published a draft variation instrument together with a discussion paper on the ACMA website inviting public comment. The ACMA also wrote to the commercial radio broadcasting licensees and other broadcasting licensees in the Bendigo licence areas and adjacent radio licence areas to advise them of the proposed changes to the Bendigo LAP and to invite comment.

Consultation closed on 8 July 2016 and the ACMA received two submissions.

**Regulatory impact assessment**

The Office of Best Practice Regulation (OBPR), in a guidance note titled “Carve-outs” (available here: https://www.dpmc.gov.au/resource-centre/regulation/carve-outs-guidance-note), has established a “carve-out” for variations to LAPs where those variations are unlikely to have more than a minor regulatory impact (OBPR reference number: 13301). A carve-out is a standing agreement between OBPR and a government agency which sets aside the requirement for a preliminary assessment to be sent to OBPR for certain types of proposed regulatory change. The ACMA has formed the opinion that the instrument falls within the terms of the carve-out with OBPR reference number 13301.

**Statement of compatibility with human rights**

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires the rule-maker in relation to a legislative instrument to which section 42 (disallowance) of the LA applies to cause a statement of compatibility with human rights to be prepared in respect of that legislative instrument.

The statement of compatibility set out below has been prepared to meet that requirement.

**Overview of the instrument**

The instrument varies, under subsection 26(2) of the Act, the Bendigo LAP. The variations add new, or change existing, characteristics, including technical specifications, of certain radio broadcasting services that are specified to be available in the Bendigo RA1, Maryborough (VIC) RA1, Bendigo RA2 and Bendigo RA3 licence areas. These changes are in order to improve the coverage of those services and/or to improve the accuracy of site location. The variation also adds new specifications for a community radio broadcasting service in a new licence area, Castlemaine RA1. Minor changes have also been made to improve drafting consistency.
Human rights implications

The ACMA has assessed whether the instrument is compatible with human rights, being the rights and freedoms recognised or declared by the international instruments listed in subsection 3(1) of the Human Rights (Parliamentary Scrutiny) Act 2011 as they apply to Australia.

Having considered the likely impact of the instrument and the nature of the applicable rights and freedoms, the ACMA has formed the view that the instrument does not engage any of those rights or freedoms.

Conclusion

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

Attachment A

Notes to the Variation to Licence Area Plan – Bendigo (Radio) – 2017 (No.1)

Section 1 Name

This section provides for the instrument to be cited as the Variation to Licence Area Plan – Bendigo (Radio) – 2017 (No.1).

Section 2 Commencement

This section provides for the instrument to commence at the start of the day after it is registered on the Federal Register of Legislation.


Section 3 Authority

This section identifies the provision of the Act that authorises the making of the instrument, namely subsection 26(2) of the Act.

Section 4 Variation

This section varies the Bendigo LAP as set out in paragraphs (a) to (e)

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

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

Paragraph 4(c) omits clauses (1) to (11) and substitutes new clauses (1) to (12).

The new clause (1) explains that the plan is for radio broadcasting services in the Bendigo area of Victoria and is made under subsection 26(1) of the BSA.

The new clauses (2) to (10) reflect the substitution of the word “determination” with the word “plan” in the clauses.

The new clause (11) reflects the addition of a community radio broadcasting service in the Castlemaine area of Victoria and the addition of Schedule 10, Attachments 10.1 and 10.2 to the Bendigo LAP.
The new clause (12) reflects the substitution of the word “determination” with the word “plan” in the clause and clarifies that references to other legislative instruments in the plan are taken to be references to those instruments as in force from time to time. References to other writing in the plan are taken to be references to that writing as in existence at the time the writing was incorporated into the plan.

Paragraph 4(d) replaces Schedules One, Two, Three, Four, Five, Six, Seven, Eight and Nine and inserts new Schedule Ten in the Bendigo LAP. These Schedules set out the details of the national, commercial, community and open narrowcasting radio broadcasting services that are to be available on particular frequencies in the Bendigo RA1, Maryborough (VIC) RA1, Bendigo RA2, Bendigo RA3, Kyneton RA1, Echuca RA1, Maryborough RA2, Bendigo RA4 and Bendigo RA5 licence areas and in the new Castlemaine RA1 licence area.

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.

Paragraph 4(e) omits all attachments and substitutes new Attachments 1.1 to 1.8, 2.1 to 2.3, 3.1, 3.2, 4.1 to 4.3, 5.1, 5.2, 6.1, 6.2, 7.1, 7.2, 8.1, 8.2, 9.1 to 9.3, 10.1 and 10.2.

The new Attachment 1.1 contains the definition of the Bendigo RA1 licence area in terms used by the ABS in the 2001 Census.

The new Attachments 1.2, 1.3, 1.4 and 1.5 contain the technical specifications for the transmitters for the national radio broadcasting services at Bendigo in the Bendigo RA1 licence area.

The new Attachments 1.6 and 1.7 contain the technical specifications for the transmitters for the commercial radio broadcasting services under Service Licence numbers SL 10367 and SL 10258 to be available at Bendigo in the Bendigo RA1 licence area.

The new Attachment 1.8 contains the technical specifications for a transmitter for the open narrowcasting service to be available at Bendigo in the Bendigo RA1 licence area.

The new Attachment 2.1 contains the definition of the Maryborough (VIC) RA1 licence area in terms used by the ABS in the 2001 Census.

The new Attachments 2.2 and 2.3 contain the technical specifications for the transmitters for the commercial radio broadcasting services under Service Licence number SL 10368 to be available in the Maryborough and Bendigo (City) areas, respectively, in the Maryborough (VIC) RA1 licence area.

The new Attachment 3.1 contains the definition of the Bendigo RA2 licence area in terms used by the ABS in the 2001 Census.

The new Attachment 3.2 contains the technical specification for the transmitter for the community radio broadcasting service under Service Licence number SL 10257 to be available in Bendigo in the Bendigo RA2 licence area.

The new Attachment 4.1 contains the definition of the Bendigo RA3 licence area in terms used by the ABS in the 2001 Census.

The new Attachments 4.2 and 4.3 contain the technical specifications for the transmitters for the community radio broadcasting services under Service Licence number SL 1150008 to be available in the Bendigo (City) and Castlemaine areas, respectively, in the Bendigo RA3 licence area.

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The new Attachment 5.1 contains the definition of the Kyneton RA1 licence area in terms used by the ABS in the 2001 Census.

The new Attachment 5.2 contains the technical specifications for the transmitter for the community radio broadcasting service under Service Licence number SL 10405 to be available in Kyneton in the Kyneton RA1 licence area.

The new Attachment 6.1 contains the definition of the Echuca RA1 licence area in terms used by the ABS in the 2001 Census.

The new Attachment 6.2 contains the technical specifications for the transmitter for the community radio broadcasting service under Service Licence number SL 10419 to be available in Echuca in the Echuca RA1 licence area.

The new Attachment 7.1 contains the definition of the Maryborough RA2 licence area in terms used by the ABS in the 2006 Census.

The new Attachment 7.2 contains the technical specifications for the transmitter for the community radio broadcasting service under Service Licence number SL 1130028 to be available in Maryborough in the Maryborough RA2 licence area.

The new Attachment 8.1 contains the definition of the Bendigo RA4 licence area in terms used by the ABS in the 2001 Census.

The new Attachment 8.2 contains the technical specifications for the transmitter for the community radio broadcasting service under Service Licence number SL 1130029 to be available in Bendigo in the Bendigo RA4 licence area.

The new Attachment 9.1 contains the definition of the Bendigo RA5 licence area in terms used by the ABS in the 2001 Census.

The new Attachment 9.2 and 9.3 contains the technical specifications for the transmitters for the community radio broadcasting services under Service Licence numbers SL 1130052 and SL 1130053, respectively, to be available in Bendigo (City) in the Bendigo RA5 licence area.

The new Attachment 10.1 contains the definition of the Castlemaine RA1 licence area in terms used by the ABS in the 2006 Census.

The new Attachment 10.2 contains the technical specifications for the transmitter for the community radio broadcasting service under the Service Licence number SL 1171284 to be available in Castlemaine in the Castlemaine RA1 licence area.

Minor amendments to the descriptions of nominal locations of transmitter sites, to Australian Map Grid references and advisory notes have been made in some of the Attachments. In each case the information has been updated to better reflect current operations or for ease of reference only. These amendments do not signify a change to the planned performance of the relevant transmitter.