

# EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Broadcasting Services Act 1992*

*Variation to Licence Area Plan – Newcastle Radio – 2018 (No.1)*

## Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Variation to Licence Area Plan – Newcastle Radio – 2018 (No.1)* (**the instrument**) under subsection 26(2) of the *Broadcasting Services Act 1992* (**the Act**).

The ACMA may, by legislative instrument, vary licence area plans (**LAPs**) under subsection 26(2) of the Act.

## Purpose and operation of the instrument

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 Australian Broadcasting Authority made the *Licence Area Plan – Newcastle (Radio) – October 1998* on 8 October 1998 (F2005B00625) (**Newcastle LAP**).

The instrument varies the characteristics, including technical specifications, of radio broadcasting services in the Lake Macquarie area in New South Wales by making spectrum available for an FM infill transmitter for the 2HD commercial radio broadcasting service to address coverage deficiencies in that area.

In addition, the instrument does the following: renames the Newcastle LAP; updates some transmitter site nominal locations and Australian Map Grid references; inserts or removes special conditions or replaces special conditions with advisory notes where necessary, and corrects typographical errors.

Further details regarding the instrument are set out in **Attachment A**. The instrument is a disallowable legislative instrument for the purposes of the *Legislation Act 2003* (**the LA**).

## Document incorporated by reference

The instrument incorporates the *Broadcasting Services (Technical Planning) Guidelines 2017*, as in force from time to time.

The *Broadcasting Services (Technical Planning) Guidelines 2017* may be accessed from the Federal Register of Legislation: [www.legislation.gov.au](http://www.legislation.gov.au).

## 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.

Before making the decision to vary the Newcastle LAP, the ACMA invited comment on a consultation paper which provided the background to the proposal by publishing it on the ACMA website on 31 May 2018. The ACMA also announced the release of the consultation paper via social media. In addition, the ACMA specifically wrote to other radio broadcasting licensees in the Newcastle licence area and adjacent radio licence areas, and interested parties including peak industry bodies.

The consultation period ended on 29 June 2018. The ACMA received four submissions from members of the public. Two of those submissions supported the proposal explicitly and the other two made comments of a more general nature. No submission objected to the proposal.

All submissions and comments were taken into account in making the instrument.

### **Regulatory impact assessment**

The Office of Best Practice Regulation (OBPR), in a guidance note entitled “Carve-outs” (available at: <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 the *Licence Area Plan – Newcastle (Radio) – October 1998*. The instrument makes radiofrequency spectrum available for an FM infill transmitter for one commercial radio broadcasting service in the Newcastle RA1 licence area. It also makes minor changes to existing characteristics, including some technical specifications, of other radio broadcasting services in the Newcastle RA1 and other licence areas.

### ***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.

**Notes to the *Variation to Licence Area Plan*  
– *Newcastle Radio – 2018 (No.1)***

**Section 1 Name**

This section provides for the instrument to be cited as the *Variation to Licence Area Plan – Newcastle Radio – 2018 (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.

The Federal Register of Legislation may be accessed at [www.legislation.gov.au](http://www.legislation.gov.au).

**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 Newcastle LAP as set out in paragraphs (a) to (i).

***Paragraph 4(a)***

Paragraph 4(a) renames the Newcastle LAP as the “Licence Area Plan – Newcastle Radio”.

***Paragraph 4(b)***

Paragraph 4(b) amends the heading on the title page of the Newcastle LAP to read “Licence Area Plan – Newcastle Radio”.

***Paragraph 4(c)***

Paragraph 4(c) corrects a typographical error in the Newcastle LAP by replacing the expression “Schedule Four” with the expression “Schedule Five” in paragraph (6) of the Newcastle LAP.

***Paragraph 4(d)***

This paragraph replaces paragraph (7) of the Newcastle LAP with a new paragraph (7). The new paragraph (7) provides that a reference to a schedule or an attachment is a reference to a schedule or an attachment to the Newcastle LAP. The paragraph also provides that a reference to a legislative instrument in the Newcastle LAP is a reference to that instrument as in force from time to time. Further, any other instrument or writing incorporated by reference in the Newcastle LAP is a reference to that instrument or writing as it existed or was in force when it was incorporated.

***Paragraph 4(e) and Schedule 1***

Paragraph 4(e) repeals Schedule One in the Newcastle LAP and replaces it with Schedule 1 to this instrument. The replacement Schedule specifies a number of attachments which contain the technical specifications for transmitters that are used to provide national, commercial and open narrowcasting radio broadcasting services in the Newcastle RA1 licence area.

***Paragraph 4(f)***

Paragraph 4(f) corrects a typographical error in Attachment 1.1 to the Newcastle LAP.

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***Paragraph 4(g)***

Paragraph 4(g) corrects a typographical error in a subheading in Attachment 1.1 to the Newcastle LAP.

***Paragraph 4(h) and Schedule 2***

The paragraph repeals and replaces all the attachments that contain a technical specification in the Newcastle LAP. The majority of nominal site locations are updated to provide greater specificity and corresponding Australian Map Grid references are corrected. Further, all the attachments are updated to include references to the “*Broadcasting Services (Technical Planning) Guidelines 2017*”.

For Attachments 1.2, 1.3, 1.4, 1.5, 1.8 and 1.12 a special condition is included which specifies the maximum cyromotive force permitted for the relevant transmitter.

Attachments 1.12-1.18 include an advisory note in place of a special condition which explains the basis on which each service has been planned so as to limit interference from other broadcasting services. Further, for Attachment 1.12, a special condition is changed to an advisory note, the purpose of which is to explain the ‘coverage area’ of the transmission.

For Attachments 1.13-1.18, redundant references to the former Australian Broadcasting Authority have been removed. Also removed are references to protection strategies for analog television services which are no longer needed.

New Attachment 1.19 has been added which is the technical specification for the FM infill transmitter for the 2HD commercial radio broadcasting service.

Lastly, typographical errors are corrected in the output radiation pattern details in Attachment 1.1 and to the special condition about effective radiated power reduction in Attachment 2.3.

***Paragraph 4(i)***

Paragraph 4(i) corrects a typographical error in Attachment 2.1 to the Newcastle LAP.