

# **EXPLANATORY STATEMENT**

ISSUED BY THE AUSTRALIAN COMMUNICATIONS AND MEDIA  
AUTHORITY

*VARIATION TO LICENCE AREA PLAN – ATHERTON RADIO –  
NO.1 OF 2012*

**BROADCASTING SERVICES ACT 1992**

In accordance with the *Australian Communications and Media Authority Act 2005*, since 1 July 2005, the Australian Communications and Media Authority (ACMA) has exercised powers and functions under the *Broadcasting Services Act 1992* (BSA) previously exercised by the Australian Broadcasting Authority (ABA).

The ACMA has made a variation to the Licence Area Plan for Atherton Radio. The variation was made under subsection 26(2) of the BSA and is referred to in this explanatory statement as “the variation”.

## **The LAP and variations to the LAP**

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 *Licence Area Plan – Atherton Radio – November 1997* on 27 November 1997 and varied it on 19 March 1998 and 3 June 2004.

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

## **Intended impact and effect**

The variation makes available the FM frequency 91.3 MHz, with a maximum effective radiated power (ERP) of 250 watts, for an in-fill transmitter, at Ravenshoe, Queensland for the existing Atherton AM commercial radio broadcasting service 4AM.

The variation also updates the description of the existing commercial and community radio licence areas in the Atherton 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 BSA.

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

The intended impact and effect of this variation is to clarify the characteristics, including technical specifications, of radio broadcasting services in the Atherton 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 variation 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 issued an exemption reference number: 13141.

The Statement of Compatibility with Human Rights has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. This legislative instrument is compatible with human rights as it does not raise any human rights issues.

### **Consultation**

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

On 7 December 2011, the ACMA published the following papers on its web site:

- a Draft Variation to Licence Area Plan – Atherton Radio – No.1 of 2011;
- an explanatory paper and licence area maps outlining the changes proposed in the draft variation and inviting public comment by 20 January 2012; and
- a media release announcing the draft variation.

On 7 December 2011, the ACMA wrote to the licensees providing national, commercial, community radio broadcasting services and open narrowcasting radio services in the Atherton LAP to advise them of the release of the draft variation and to invite their comments by 20 January 2012.

On 20 December 2011, the ACMA placed an advertisement in the 'Atherton Tablelander' newspaper announcing the draft variation. The advertisement provided details of how and where to obtain copies of the draft variation, and invited public comment by 20 January 2012.

### **Submissions**

No submissions were received on the Draft Variation to Licence Area Plan - Atherton Radio – No. 1 of 2011.

### **Description of the provisions of the variation**

#### ***Clause (1)***

Clause (1) identifies that the ACMA makes the variation under subsection 26(2) of the BSA.

### ***Clause (2)***

Clause (2) names the variation the *Variation to Licence Area Plan – Atherton Radio – No. 1 of 2012*.

### ***Clause (3)***

Clause (3) provides that the variation commences the day after it is registered on the Federal Register of Legislative Instruments.

### ***Sub-clause (4)(a)***

Sub-clause (4)(a) of the variation renames the Atherton LAP the “Licence Area Plan – Atherton Radio”.

### ***Sub-clause (4)(b)***

Sub-clause (4)(b) amends the heading on the title page of the Atherton LAP so that it reads “Licence Area Plan – Atherton Radio”.

### ***Paragraphs (4)(c)(i), (ii), and (iii)***

Paragraph (4)(c)(i) amends the heading on page one of the Atherton LAP so that it reads “Licence Area Plan – Atherton Radio”.

Paragraph (4)(c)(ii) removes the heading “Determination” from page one of the Atherton LAP.

Paragraph (4)(c)(iii) omits the three paragraphs of text from the Atherton LAP and substitutes new clauses (1), (2), (3) and (4) of this variation.

The new clause (1) modifies the existing first paragraph to better reflect that the Atherton LAP is for radio broadcasting services in the Atherton area of Queensland, and is made under subsection 26(1) of the BSA.

The new clause (2) modifies the existing second paragraph to substitute the word “Determination” with the word “plan”, and substitute the numbers “1.2 – 1.16” with the numbers “1.2 – 1.17”. The modification also updates the paragraph so that it accurately reflects the number and type of services available in the area, including reflecting the addition of Attachment 1.17, which is described further at sub-clause (4)(f).

The new clause (3) modifies the existing third paragraph to replace the word “Determination” with the word “plan”.

The new clause (4) ensures that the Atherton LAP refers to schedules and attachments that have been amended from time to time by the ACMA.

### ***Sub-clause (4)(d)***

Sub-clause (4)(d) omits all text appearing immediately before Schedule One under the heading “SCHEDULE” in the Atherton LAP (including the heading itself). This material was originally included for reference only and is no longer considered relevant or necessary.

#### ***Sub-clause (4)(e)***

Sub-clause (4)(e) replaces Schedules One and Two of the Atherton LAP with Schedule One and Two of the variation.

Schedule One sets out the details of the national, commercial radio broadcasting and open narrowcasting radio services that are to be available on particular frequencies in the Atherton RA1 licence area.

Schedule Two sets out the details of the community radio service that is to be available with a particular frequency in the Mareeba RA1 licence area.

In particular, the Schedules provide the transmitter specification numbers for each transmitter to be used by the services in the licence areas, and specify the Attachments which contain the technical specifications for each of those transmitters.

Schedule One has been updated to include reference to Attachment 1.17, the in-fill transmitter at Ravenshoe, Queensland for the existing Atherton AM commercial radio broadcasting service 4AM, which is described further at sub-clause (4)(f).

Schedules One and Two have also been updated so that their headings read “Licence Area Plan : Atherton Radio”. This modification will ensure consistency with other recently varied radio LAPs.

#### ***Sub-clause (4)(f)***

Sub-clause (4)(f) removes all Attachments to the Atherton LAP and substitutes Attachments 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 1.8, 1.9, 1.10, 1.11, 1.12, 1.13, 1.14, 1.15, 1.16, 2.1 and 2.2 of this variation.

The new Attachments 1.1 and 2.1 contain the definitions of the Atherton RA1 and Mareeba RA1 licence areas in terms used by the ABS in the 2006 census, but otherwise remain unchanged.

The new Attachments 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 1.8, 1.9, 1.10, 1.11, 1.12, 1.13, 1.14, 1.15, 1.16 and 2.2 provide the technical specifications for each transmitter to be used by each radio service in the Atherton RA1 and Mareeba RA1 licence areas.

The changes made to these technical specifications include:

- updating the nominal locations of the transmitter specified in Attachments 1.3, 1.4, 1.5, 1.6, 1.7, 1.8, 1.9, 1.10, 1.11, 1.12, 1.13, 1.14, 1.15, 1.16 and 2.2 to provide a more accurate description of the transmitter site;

- updating the Australian Map Grid reference specified in Attachments 1.3, 1.5, 1.10, 1.11, 1.12 and 1.13 to reflect the actual locations of the transmitters for these services;
- updating the site tolerance field to refer to the *Broadcasting Services (Technical Planning) Guidelines 2007* in Attachments 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 1.8, 1.9, 1.10, 1.11, 1.12, 1.13, 1.14, 1.15, 1.16 and 2.2;
- updating the maximum antenna height specified in Attachments 1.7, 1.8, 1.9, 1.10 and 1.11 on the advice of the broadcaster; and
- updating the recording method for the output radiation pattern in Attachments 1.14 and 1.15.

This information has been updated for ease of reference only and does not signify a change to the planned performance of the transmitters.

The new Attachment 1.17 makes available the FM frequency 91.3 MHz, with a maximum ERP of 250 watts, for an in-fill transmitter at Ravenshoe, Queensland for the existing Atherton AM commercial radio broadcasting service 4AM.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **Variation to Licence Area Plan – Atherton Radio – No.1 of 2012**

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 makes available the FM frequency 91.3 MHz, with a maximum effective radiated power of 250 watts, for an in-fill transmitter, at Ravenshoe, Qld for the existing Atherton AM commercial radio broadcasting service 4AM.

It also updates the description of the existing commercial and community radio licence areas in the Atherton LAPs so they are defined in terms used in the 2006 census, and are consistent with the ACMA's most recent determination of population of licence areas under section 30 of the BSA. As well as making minor amendments to delete information included for reference only that does not form part of the Atherton Radio LAP and which if left in the Atherton Radio LAP may create confusion.

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

#### **Human rights implications**

This Bill/Legislative Instrument does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This Bill/Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**Australian Communications and Media Authority**