

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Variation to Licence Area Plan – Broken Hill Radio – No.1 of 2013

Broadcasting Services Act 1992

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 Broken Hill radio (the Broken Hill LAP). 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 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 Broken Hill LAP was determined on 23 February 1996 and varied on 14 March 2002 and 15 December 2010.

Intended impact and effect

The variation varies the characteristics, including technical specifications, of radio broadcasting services in the Broken Hill area by:

- formalising permission for the existing 2PNN Broken Hill’s operation;
- removing the existing analog television specifications from the Broken Hill LAP (which are no longer in use by any service) and renaming it *Licence Area Plan – Broken Hill Radio*;
- changing the frequency (106.9 MHz to 96.5 MHz), site and power (200 watts to 4 kilowatts) of the existing commercial radio broadcasting service 2HIL Broken Hill; and
- formalising a change of frequency (105.3 MHz to 94.9 MHz) for one of the existing Broken Hill open narrowcasting radio services.

The variation also deletes some material, included for reference only, that does not form part of the LAP and which may create confusion. The variation also makes some minor amendments to revise the drafting of the Broken Hill LAP and 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 Broken Hill area. The *Television Licence Area Plan (Broken Hill) 2011* came into force on 2 April 2012 and, therefore, on that date the provisions planning analog television broadcasting services in the Broken Hill LAP (Clause 2, Schedule One and Attachment 1.1 – 1.7) ceased to have effect

(see subsection 26(1H) of the BSA). Removing those analog specifications from the Broken Hill LAP and renaming the LAP as *Licence Area Plan – Broken Hill Radio* will avoid any confusion as to the purpose of the instrument. 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: ID 14190.

Consultation

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

- On 17 November 2012, the ACMA published the following papers on its web site:
 - variation;
 - an explanatory paper outlining the changes proposed in the draft variation and inviting public comment by 14 December 2012;
 - draft licence area maps; and
 - a media release announcing the draft variation.
- On 15 November 2012, the ACMA wrote to the licensees providing radio broadcasting services in the Broken Hill area to advise them of the release of the draft variation and to invite their comments by 14 December 2012.
- On 17 November 2012, the ACMA placed an advertisement in the "Barrier Daily Truth" 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 14 December 2012.

Submissions

No submissions were received on the proposed draft variation.

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 – Broken Hill Radio – No. 1 of 2013*.

Clause 3

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

Paragraph 4(a)

Paragraph 4(a) renames the Broken Hill LAP as *Licence Area Plan – Broken Hill Radio*.

Paragraph 4(b)

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

Sub-paragraph 4(c)(i)

Sub-paragraph 4(c)(i) amends the heading on page one of the Broken Hill LAP so that the heading now reads “Licence Area Plan – Broken Hill Radio”.

Sub-paragraph 4(c)(ii)

Sub-paragraph 4(c)(ii) omits clause (1) and substitutes a new clause (1) into the Broken Hill LAP. The new clause (1) modifies the existing first paragraph of the LAP to better reflect that the Broken Hill LAP is for radio broadcasting services in the Broken Hill area of New South Wales, and is made under subsection 26(1) of the BSA.

Sub-paragraph 4(c)(iii)

Sub-paragraph 4(c)(iii) omits clause (2) of the Broken Hill LAP. Clause (2) described the analog television broadcasting services that were available in the Broken Hill area. The *Television Licence Area Plan (Broken Hill) 2012* came into force on 2 April 2012 and, therefore, on that date the provisions planning television broadcasting services in the Broken Hill LAP ceased to have effect.

Sub-paragraph 4(c)(iv)

Sub-paragraph 4(c)(iv) omits clause (3) and substitutes a new clause (3) into the Broken Hill LAP. The new clause (3) determines that five national radio broadcasting services, two commercial radio broadcasting services and two open narrowcasting radio services are to be available in the Broken Hill RA1 licence area.

This is related to the introduction of planning for a transmitter for the national radio broadcasting service 2PNN Broken Hill (at Attachment 2.10), for the change to the frequency and site and increase in power of the commercial radio broadcasting service 2HIL Broken Hill (at Attachment 2.7), and for a change of frequency for one of the existing open narrowcasting radio services at Broken Hill (at Attachment 2.9).

Sub-paragraph 4(c)(v)

Sub-paragraph 4(c)(v) amends clause (4) of the Broken Hill LAP to substitute the word ‘determination’ with the word ‘plan’.

Sub-paragraph 4(c)(vi)

Sub-paragraph 4(c)(vi) inserts a new clause into the Broken Hill LAP. This new clause (clause (5)) ensures that a reference in the plan to a schedule or an attachment includes a reference to a schedule or attachment as amended from time to time.

Paragraph 4(d)

Paragraph 4(d) omits Schedule One of the Broken Hill LAP. Schedule One described the analog television broadcasting services that were available in the Broken Hill area. The *Television Licence Area Plan (Broken Hill) 2012* came into force on 2 April 2012 and therefore on that date the provisions planning television broadcasting services in the Broken Hill LAP ceased to have effect.

Paragraph 4(e)

Paragraph 4(e) omits Schedule Two and substitutes a new Schedule Two into the Broken Hill LAP.

Schedule Two sets out the radio services that are to be available in the Broken Hill RA1 licence area. In particular, it identifies the frequency each service is authorised to use, the transmitter specification number for each transmitter to be used in the licence area, the relevant Attachment for each transmitter, and the “general area” served by those transmitters.

This is related to the introduction of planning for a transmitter for the national radio broadcasting service 2PNN Broken Hill (at Attachment 2.10), for the change to the frequency and site and increase in power of the commercial radio broadcasting service 2HIL Broken Hill (at Attachment 2.7), and for a change of frequency for one of the existing open narrowcasting radio services at Broken Hill (at Attachment 2.9).

Paragraph 4(f)

Paragraph 4(f) omits the heading “Licence Area Plan – Broken Hill – (Radio) – February 1996” from Schedule Three and substitutes the heading “Licence Area Plan : Broken Hill Radio”.

Sub-paragraphs 4(g)(i) and 4(g)(ii)

Sub-paragraph 4(g)(i) amends Attachments 2.2, 2.3, 2.4, 2.5, 2.6, 2.8, and 3.2 to omit the heading “Licence Area Plan – Broken Hill” and substitute the heading “Licence Area Plan : Broken Hill Radio”.

Sub-paragraph 4(g)(ii) amends Attachments 2.2, 2.3, 2.4, 2.5, 2.6, 2.8, and 3.2 to omit the reference “Refer to Technical Planning Guidelines” and substitute “Refer to *Broadcasting Services (Technical Planning) Guidelines 2007*”.

Paragraph 4(h)

Paragraph 4(h) omits Attachment 1.1, 1.3, 1.4, 1.5, 1.6 and 1.7 from the Broken Hill LAP.

Attachment 1.1 described the Broken Hill TV1 licence area and Attachments 1.2 – 1.7 described the analog television broadcasting services that were available in the Broken Hill area. The *Television Licence Area Plan (Broken Hill) 2012* came into force on 2 April 2012 and therefore on that date the provisions planning television broadcasting services in the Broken Hill LAP ceased to have effect.

Paragraph 4(i)

Paragraph 4(i) omits Attachments 2.1, 2.7, 2.9 and 3.1 and substitutes new Attachments 2.1, 2.7, 2.9 and 3.1 into the Broken Hill LAP.

The new Attachments 2.1 and 3.1 contain the definitions of the Broken RA1 and Broken Hill RA2 licence areas updated to 2006 census data.

Attachment 2.7 contains the updated technical specifications of the existing commercial radio broadcasting service 2HIL at Broken Hill. This service is now planned to operate on FM frequency 96.5 MHz from Broadcast Site 3 km NW of Broken Hill with a effective radiated power of 4 kW with an omni-directional radiation pattern and mixed polarisation.

Attachment 2.9 contains the updated technical specifications of an existing open narrowcasting radio service. This service is now planned to operate on FM frequency 94.9 MHz from Rocky Hill with an effective radiated power of 4 kW with an omni-directional radiation pattern and mixed polarisation.

Paragraph 4(j)

Paragraph 4(j) inserts new Attachment 2.10 into the Broken Hill LAP.

Attachment 2.10 makes available, for national radio broadcasting services, the FM frequency 104.5 MHz from Rocky Hill with a maximum effective radiated power of 4 kilowatt with an omni-directional radiation pattern and mixed polarisation. This frequency is currently occupied by the Australian Broadcasting Corporation radio service 'NewsRadio'.

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 – Broken Hill 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

This legislative instrument varies the characteristics, including technical specifications, of radio broadcasting services in the Broken Hill area by:

- formalising permission for the existing 2PNN Broken Hill's operation;
- removing the existing analog television specifications from the Broken Hill LAP and renaming it Licence Area Plan – Broken Hill Radio;
- changing the frequency (106.9 MHz to 96.5 MHz), site and power (200 watts to 4 kilowatts) of the existing commercial radio service 2HIL Broken Hill; and
- formalising a change of frequency (105.3 MHz to 94.9 MHz) for one of the existing Broken Hill open narrowcasting services.

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

Human rights implications

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

Conclusion

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

Australian Communications and Media Authority