**EXPLANATORY STATEMENT**ISSUED BY THE AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY

**VARIATION TO LICENCE AREA PLAN – DARWIN RADIO – NO.1 OF 2014***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).

The ACMA has made a variation to the *Licence Area Plan – Darwin Radio* (Darwin LAP). 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**

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 Australian Broadcasting Authority made the *Licence Area Plan – Darwin Radio* on 17 October 1995 and the ACMA varied it on 21 June 2012.

**Intended impact and effect**

The instrument varies the characteristics, including technical specifications, of radio broadcasting services in the Darwin area to:

* improve the operation of the commercial radio broadcasting services operated on the callsigns 8HOT in Darwin and 8KTR in Katherine;
* make provision for a new community radio broadcasting service to be made available at Darwin;
* update the descriptions of the technical specifications for other radio services (where appropriate) to reflect their current operation and ensure that they are described in the same manner as other recently varied radio LAPs, as well as redefine existing licence areas in the LAP using 2006 census data; and
* delete some material, included for reference only, that does not form part of the 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 Darwin area. The ACMA does not intend the variation to alter any existing rights and obligations, except as set out above.

**Regulatory Impact Analysis**

The Office of Best Practice Regulation (OBPR) has considered the instrument and formed the opinion that the instrument 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 ID: 2012/14043.

**Consultation**

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

1. On 5 December 2012, the ACMA published on its website an explanatory paper outlining the proposed changes and inviting public comment by 11 January 2013, along with a Draft Variation to the Licence Area Plan – Darwin Radio. A media release was also published on the ACMA’s website, announcing the proposed variation and consultation process.
2. On 5 December 2012, the ACMA also wrote to the licensees providing broadcasting services in the Darwin area and areas adjacent to Darwin to advise of the release of the proposed variation and to invite their comments by 11 January 2013.

The draft variation instrument that was published on 5 December 2012 was drafted in a different form to the final *Variation to the Licence Area Plan – Darwin Radio – No. 1 of 2014*, but the changes made by the final instrument are the same as those in the draft variation instrument.

A draft variation to the Frequency Allotment Plan (FAP) for Darwin, prepared under section 25 of the BSA, was published on 5 December 2012 for consultation. The draft LAP instrument consulted on 36 available channels; however, the draft variation to the FAP for Darwin consulted on 33 channels. A revised draft variation to the FAP was placed on the ACMA website from 9 to 16 November 2013 and comments invited.

**Submissions**

One submission was received on the draft instrument and has been taken into account in the preparation of the variation.

No comments were received regarding the draft variation to the FAP.

**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 Licence Area Plan – Darwin Radio – No.1 of 2014*.

***Clause 3***

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

***Clause 4***

Clause 4 sets out the variations to be made to the Darwin LAP.

***Paragraph 4(a)***

Paragraph 4(a) omits the five paragraphs of text on page one of the Darwin LAP and substitutes the five new clauses, and inserts Clause (6) following Clause (5).

The new Clause (1) highlights that this plan is radio broadcasting services in the Darwin area of the Northern Territory and is made under subsection 26(1) of the *Broadcasting Services Act 1992*.

New Clauses (2), (3), (4) and (5) modify the previous paragraphs of text to accurately describe the number and type of radio services available in each of the licences areas of the Darwin LAP. The previous paragraphs are also updated to replace the word “Determination” with the word “plan”.

The new clause (6) will ensure that a reference to a schedule or an attachment in the Darwin LAP includes a reference to a schedule or attachment that has been amended from time to time.

***Paragraph 4(b)***

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

***Paragraph 4(c)***

Paragraph 4(c) updates the existing Schedules Two, Three, Four and Five of the Darwin LAP with new Schedules Two, Three, Four and Five of the instrument, respectively.

These new Schedules describe the details of the of the national, commercial, community and open narrowcasting radio services that are to be available on particular frequencies in the Darwin RA1, Darwin RA2, Darwin RA3 and Katherine RA1 licence areas, respectively.

In particular, these Schedules provide the transmitter specification number 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.

***Paragraph 4(d)***

Paragraph 4(d) of the instrument substitutes Attachments 2.1, 3.1, 4.1 and 5.1 of the Darwin LAP. The new attachments contain new descriptions of the Darwin RA1, Darwin RA2, Darwin RA3 and Katherine RA1 licence areas. The changes to licence areas include updating the descriptions of each of the licence areas at Attachments 2.1, 3.1, 4.1 and 5.1 to be described in terms used by the Australian Bureau of Statistics in the 2006 census, but otherwise remaining unchanged.

***Paragraph 4(e)***

Paragraph 4(e) inserts four new attachments into the Darwin LAP: Attachments 2.24 – 2.27. These attachments contain the technical specifications for the new community radio broadcasting service to be available in the Darwin RA1 licence area, and for new transmitters for existing national and commercial radio broadcasting services in the Darwin RA1 licence. The national broadcasting service is the Australian Broadcasting Corporation’s Parliamentary News Network/NewsRadio service and has been operating in the Darwin area since 2008. Its inclusion in this variation is to formalise its approval.

***Paragraphs 4(f) to (t)***

These paragraphs make a range of changes to the technical specifications included in the existing attachments to the Darwin LAP. The changes made to these technical specifications include:

* updating the Specification Number at Attachments 2.2 to 2.23, 3.2, 3.3, 4.2 to 4.6, and 5.2 to 5.4, to correctly identify the relevant transmitter;
* updating the nominal locations of the transmitter sites specified at Attachments 2.2 to 2.23, 3.2, 3.3, 4.2 to 4.6, and 5.2 to 5.4to provide a more accurate description of the transmitter site;
* updating the Australian Map Grid Reference of the transmitter sites specified at Attachments 2.2 to 2.19, 2.22, 2.23, 3.2, 3.3, 4.2 to 4.6, and 5.2 to 5.4 to provide a more accurate description of the transmitter site;
* updating the site tolerance of the transmitters sites specified in all the existing attachments to refer to the *Broadcasting Services (Technical Planning) Guidelines 2007*;
* updating the maximum antenna height of the emission specified in Attachments 2.2, 2.4, 2.6, 2.7, 2.11 to 2.14, 2.16, 2.17, 3.2, 3.3, and 4.2 on the advice of the relevant licensee or national broadcaster; and
* updating the recording method for the output radiation pattern in Attachments 2.2, 2.4, 2.11, 2.12 to 2.14, 2.17, 3.2, 3.3 and 4.2 to reflect the actual operating pattern on the advice of the relevant licensee or national broadcaster.

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

The technical specification numbers in attachments 2.25, 3.2 and 4.2 were incorrect and have been corrected in the final Darwin LAP. These were minor typographical errors only and did not prevent cross referencing of technical details and services.

Special conditions have been added to Attachments 2.2, 2.4, 2.11, 2.12, 2.13, 2.14, 2.17 and 3.3. These special conditions stipulate that:

1. If the transmitter is sited at a location other than the nominal location, the licensee must ensure that the median field strength of the transmission at the Department of Defence Shoal Bay Receiving Station does not exceed the greater of: (a) the level that would be received if the transmitter was operating from the nominal location; or (b) a level which has been agreed in writing with the Department of Defence;
2. If a transmitter is sited at a location other than the nominal location, for the purposes of application of Guideline 36 of the *Broadcasting Services (Technical Planning) Guidelines 2007*, the maximum ERP specified is deemed to be 30 kW and omnidirectional.
3. If a transmitter is sited at the nominal location, the minimum level of service requirements detailed in Guideline 38 of the *Broadcasting Services (Technical Planning) Guidelines 2007* are waived in the sector 5 degrees True to 15 degrees True.

Similar special conditions have been added to Attachments 3.2 and 4.2, with the exception that the licensee may be able to have a greater level of median field strength of transmission at the Department of Defence Shoal Bay Receiving Station, if the transmitter is located at a location other than the nominal location, where that level has been proven by established operation not to result in interference.

The inclusion of these special conditions ensures the services can avail themselves of the change of site provision of the *Broadcasting Services (Technical Planning) Guidelines 2007* and do not cause any interference to the Department of Defence installation at Shoal Bay.

A special condition has been added to Attachments 2.18, to 2.23. The special condition describes the coverage radius of the transmission in kilometres from a point with AMG co-ordinates. This point is the same as the nominal location. The coverage area for open narrowcasting services is necessary for the operation of some parts of the *Radiocommunications Licence Conditions (Broadcasting Licence) Determination No. 1 of 1998*.

Notes that are no longer considered necessary to Attachments 2.3, 2.10 and 2.15 have been omitted.

**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 – Darwin Radio – No.1 of 2014***

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 instrument varies the characteristics, including technical specifications, of radio broadcasting services in the Darwin area to:

* allow improved delivery of the 8HOT Darwin and 8KTR Katherine commercial radio broadcasting services;
* make provision for a new community radio broadcasting service at Darwin;
* update the descriptions of other radio services (where appropriate) to reflect their current operation and ensure that they are described in the same manner as other recently varied radio LAPs, as well as redefine existing licence areas in the LAP to 2006 census data;
* amend the technical descriptions of most radio services in the Darwin area to update the Darwin LAP to reflect their current authorisation and operation;
* update each of the licence area definitions in the Darwin LAP so that they are defined in terms of the Australian Bureau of Statistics (ABS) 2006 census data; and
* delete some material, included for reference only, that does not form part of the 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 Darwin area. The ACMA does not intend the variation 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**