

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Broadcasting Services Act 1992

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

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Variation to Licence Area Plan – Port Hedland (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.

The Australian Broadcasting Authority made the *Licence Area Plan –Port Hedland (Radio) – June 1996* (F2005B01115) on 21 June 1996 and varied it on 22 May 2003.

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

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

- making spectrum available to facilitate a conversion of the 6NW AM commercial radio broadcasting service at Port Hedland to an FM transmission;
- changing the technical specifications of the transmitter for the 6HED commercial radio broadcasting service at Port Hedland to improve service; and
- making spectrum available in the Port Hedland LAP for the operating national ABC Parliamentary News Network services at Port Hedland and Broome.

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.

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**), the *Broadcasting Services (Technical Planning) Guidelines 2007* are incorporated as in force from time to time. The *Broadcasting Services (Technical Planning) Guidelines 2007* can be accessed, free of charge, at: www.legislation.gov.au.

The instrument also incorporates areas defined by the Australian Bureau of Statistics (**ABS**) in its 6 August 1991 and 5 August 2001 Censuses. 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 Censuses

referred to above are available, free of charge, from the ABS website at:
<http://www.abs.gov.au/websitedbs/censushome.nsf/home/historicaldata?opendocument&navpos=281>.

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 4 November 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 Port Hedland licence areas and adjacent radio licence areas to advise them of the proposed changes to the Port Hedland LAP and to invite comment.

Consultation closed on 2 December 2016 and the ACMA received eight submissions which were taken into account before a decision was made to make the instrument.

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 Port Hedland LAP. The variations add new, or change existing characteristics, including technical specifications, of certain radio broadcasting services in the Port Hedland RA1 and Port Hedland RA2 licence areas. These changes are in order to improve the coverage of those services and/or to clarify transmitter site locations.

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 – Port Hedland (Radio) – 2017 (No.1)*

Section 1 Name

This section provides for the instrument to be cited as the *Variation to Licence Area Plan – Port Hedland (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 provides that the making of the instrument is authorised under subsection 26(2) of the Act.

Section 4 Variation

This section varies the Port Hedland LAP as set out in paragraphs (a) to (g).

Paragraph 4(a) renames the instrument as the “Licence Area Plan – Port Hedland Radio”.

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

Subparagraph 4(c)(i) amends the heading on the first page of the Port Hedland LAP so that it reads “Licence Area Plan – Port Hedland Radio”.

Subparagraph 4(c)(ii) numbers each of the paragraphs on the first page of the instrument under the heading “Licence Area Plan – Port Hedland Radio” as clauses (1) to (3).

Paragraph 4(d) omits clauses (1) to (3) and substitutes new clauses (1) to (4).

The new clause (1) provides that the plan is for radio broadcasting services in the Port Hedland area of Western Australia and is made under subsection 26(1) of the BSA.

The new clause (2) reflects the number of national, commercial and open narrowcasting radio broadcasting services in the Port Hedland LAP. It reflects the addition of the technical specifications for the national service at Port Hedland at Attachment 1.4 and at Broome at Attachment 1.7 and the technical specifications to facilitate the conversion of the AM service at Port Hedland to FM at Attachment 1.9.

The new clause (3) reflects planning for a community radio broadcasting service in the Port Hedland LAP.

The new clause (4) ensures that a reference to a schedule or an attachment includes a reference to a schedule or attachment as amended from time to time 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 are taken to be references to that writing as in existence at the time the writing was included in the plan.

Subparagraph 4(e)(i) removes from the Port Hedland LAP the heading “SCHEDULE” immediately after clauses (1) to (4).

Subparagraph 4(e)(ii) removes from the Port Hedland LAP all the text occurring after the heading “SCHEDULE” and before Schedule One.

Paragraph 4(f) replaces Schedules One and Two of the Port Hedland 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 Port Hedland RA1 and Port Hedland RA2 licence areas.

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(g) omits all attachments and substitutes new Attachments 1.1 to 1.14, 2.1 and 2.2.

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

The new Attachments 1.2, 1.3, 1.4, 1.5, 1.6 and 1.7 contain the technical specifications for transmitters for the national radio broadcasting services at Port Hedland and Broome

The new Attachments 1.8, 1.9 and 1.10 contain the technical specifications for the transmitters for the commercial radio broadcasting service under Service Licence number SL 010342 to be available at Port Hedland and Broome in the Port Hedland RA1 licence area.

The new Attachments 1.11 and 1.12 contains the technical specifications for the transmitters for the commercial radio broadcasting service under Service Licence number SL 010014 to be available at Port Hedland and Broome in the Port Hedland RA1 licence area.

The new Attachment 1.13 contains the technical specifications for the transmitter for the open narrowcasting radio broadcasting service to be available at Port Hedland in the Port Hedland RA1 licence area.

The new Attachment 1.14 contains the technical specifications for the transmitter for the open narrowcasting radio broadcasting service to be available at Broome in the Port Hedland RA1 licence area.

The new Attachment 2.1 contains the definition of the Port Hedland RA2 licence area in terms used by the ABS in the 1991 Census.

The new Attachment 2.2 contains the technical specifications for the transmitter for the community radio broadcasting service under Service Licence number SL 100000783 to be available in Port Hedland in the Port Hedland RA2 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.