

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications (Digital Radio Channels – NSW/ACT) Plan Variation 2017 (No. 1)

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Digital Radio Channels – NSW/ACT) Plan Variation 2017 (No. 1)* (**the instrument**) under subsection 44A(6) of the *Radiocommunications Act 1992* (**the Act**).

Subsection 44A(1) of the Act provides that, before issuing the first digital radio multiplex transmitter (**DRMT**) licence for a designated BSA radio area, the ACMA must prepare a digital radio channel plan. Subsection 44A(6) of the Act provides that the ACMA may, by legislative instrument, vary a digital radio channel plan.

Purpose and operation of the instrument

In July 2015, the Department of Communications released the [Digital Radio Report](#). Arising from the recommendations of the report, the Government requested that the ACMA establish a joint government-industry committee chaired by the ACMA, to progress the rollout of digital radio in regional Australia. The Digital Radio Planning Committee for Regional Australia formed in September 2015, and is tasked with planning the rollout of digital radio in regional areas where industry considers that it is economically feasible to do so. A technical sub-committee was also formed (chaired by Commercial Radio Australia) to develop high level planning principles as part of the rollout process.

The instrument varies an existing legislative instrument — the *Radiocommunications (Digital Radio Channels — NSW/ACT) Plan 2007 (the Plan)* — which is made under subsection 44A(1) of the Act. The Plan allots the frequency channels and determines the technical specifications for each DRMT licence in a designated BSA radio area known as ‘Sydney RA1’. The Sydney RA1 licence area is the area defined by Attachment 1.1 to the [Licence Area Plan — Sydney Radio](#), a legislative instrument made under subsection 26(1) of the *Broadcasting Services Act 1992*.

The instrument repeals and substitutes Schedule 1 to the Plan, thereby making minor amendments to the technical specifications for the main Sydney DRMTs and co-channel transmitters serving Penrith.

In addition, the instrument changes the way in which technical specifications that apply to the operation of a co-channel transmitter are determined. Instead of determining the technical specifications for co-channel DRMTs by reference to the ‘technical planning guidelines’ made under section 33 of the *Broadcasting Services Act 1992*, the instrument amends the Plan to determine that the technical specifications for co-channel DRMTs are those specified in the relevant DRMT licence.

The instrument also inserts a second schedule into the Plan for a new digital radio channel plan for the designated BSA radio area known as ‘Canberra RA1’. The Canberra RA1 licence area is the area defined by Attachment 1.1 to the [Licence Area Plan — Canberra \(Radio\) — June 1999](#), a legislative instrument made under subsection 26(1) of the *Broadcasting Services Act 1992*.

The new schedule allots frequency channels and specifies the technical specifications for the DRMT licences in Canberra RA1.

In the instrument, a frequency channel is referred to as a ‘frequency block’. One frequency channel is reserved for a category 3 DRMT licence as required by the Act (paragraph 44A(1)(b) of the Act). A

category 3 DRMT licence may be issued to a company beneficially owned by the national broadcasters, and is to be used only for the transmission of digital national radio broadcasting services (paragraph 109B(1)(h) of the Act).

Another frequency channel is allotted for use by the licensee of a category 1 DRMT licence. A category 1 DRMT licence is to be used only for the transmission of digital commercial radio broadcasting services and digital community radio broadcasting services (paragraph 109B(1)(f) of the Act).

A provision-by-provision description of the instrument is set out in the notes at **Attachment A**.

The instrument is a legislative instrument for the purposes of the *Legislation Act 2003 (the LA)*.

Documents incorporated by reference

The Plan, as amended by the instrument, refers to legislative instruments and other writing, as in force from time to time, in accordance with section 314A of the Act.

Section 6 of the Plan, as substituted by item 2 of Schedule 1 to the instrument, provides that the technical specifications for co-channel transmitters licensed under a relevant DRMT licence are those specified in that licence. The details of DRMT licences issued by the ACMA, including the technical specifications of transmitters authorised to operate under those licences, are publicly available, free of charge, on the Register of Radiocommunications Licences, published on the ACMA's website:

www.acma.gov.au.

Schedule 1 to the instrument makes amendments that refer to the relevant designated BSA radio areas as being the Sydney RA1 and Canberra RA1 licence areas. The Sydney RA1 licence area is defined in the [Licence Area Plan — Sydney Radio](#) and the Canberra RA1 licence area is defined in the [Licence Area Plan — Canberra \(Radio\) — June 1999](#), both of which are publicly available, free of charge, at: www.legislation.gov.au.

Consultation

Subsection 44A(7) of the Act requires that, before varying the Plan, the ACMA must:

- publish a draft of the variation on the ACMA's website; and
- invite members of the public to make submissions to the ACMA about the variation within a specified period of at least 30 days; and
- consider any submissions the ACMA receives from members of the public within that period.

On 21 December 2016, a draft version of the instrument and an accompanying discussion paper, and a media release were issued announcing the release of the draft instrument for comment. The release of the draft instrument was part of a wider consultation package about facilitating the expansion of digital radio across Australia. The invitation to comment closed on 13 February 2017.

The ACMA received a total of 12 submissions in response to the consultation package. The submissions were from a range of stakeholders in the radio broadcasting sector, and one was from a member of the public. Taken together, the submissions reflect the differing interests of stakeholders, which the ACMA must balance in the planning process for the expansion of digital radio into regional Australia. Overall, the submissions were supportive of the variations proposed. The ACMA considered all relevant submissions received before deciding not to make any changes to the draft instrument released for consultation.

Before making the instrument, the ACMA was satisfied that it had undertaken consultation that was appropriate within the terms of subsection 17(1) of the LA.

Regulatory impact assessment

The Office of Best Practice Regulation has determined that any regulatory change effected by the instrument is minor and machinery in nature and that no further regulatory impact analysis is required (OBPR reference number: 2138).

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 to be prepared in respect of that legislative instrument.

The statement of compatibility set out in Attachment B has been prepared to meet that requirement.

Notes to the *Radiocommunications (Digital Radio Channels – NSW/ACT) Plan Variation 2017 (No. 1)*

Section 1 Name

This section provides for the instrument to be cited as the *Radiocommunications (Digital Radio Channels – NSW/ACT) Plan Variation 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.

The Federal Register of Legislation may be accessed at www.legislation.gov.au.

Section 3 Authority

This section identifies the provision of the Act that authorises the making of the instrument, namely subsection 44A(6) of the Act.

Section 4 Amendments

This section provides that the Plan is amended by the applicable items in Schedule 1.

Schedule 1 — Amendments

Item 1 Section 3

This item inserts a “(1)” before the first words of section 3 in order to divide the section into subsections.

Item 2 Section 3, definition of *technical planning guidelines*

This item removes the definition of ‘technical planning guidelines’ from the definitions section of the Plan. The removal of the definition is related to item 4.

Item 3 At the end of section 3

This item adds a new subsection (2) to section 3. New subsection 3(2) provides that a reference in the Plan to a legislative instrument or other instrument or writing is taken to be a reference to that other legislative instrument, instrument or writing as in force or as in existence from time to time.

Item 4 Section 6

This item repeals and substitutes section 6 of the Plan. It provides that the technical specifications for a co-channel transmitter are those specified in the relevant DRMT licence.

Item 5 Schedule 1

This item repeals and substitutes Schedule 1 to the Plan, including the six attachments to Schedule 1.

Item 6 After Schedule 1

This item adds a new digital radio channel plan to allot and reserve frequency channels and specify technical specifications for two DRMT licences for the designated BSA radio area known as ‘Canberra RA1’.

Designated BSA radio area

This item specifies that Schedule 2 is the digital radio channel plan for the designated BSA radio area that corresponds with the Canberra RA1 licence area.

Table 1 Frequency channels

Table 1 lists the frequency blocks that are allotted for use in Canberra RA1 and specifies the relevant licence category and the technical specification number. Consistently with other metropolitan markets (Adelaide, Brisbane, Hobart, Melbourne, Perth and Sydney), the frequency block for the category 3 DRMT licence for Canberra RA1 is 9C. The table provides that frequency block 9C is reserved for a category 3 DRMT licence. Unlike other markets, however, the frequency block for the category 1 DRMT licence for Canberra RA1 is 8D.

Possible future variations to the Plan may provide additional frequency blocks for use by the same DRMT licensee. A ‘multiplex transmitter licence’ name is therefore specified in column 1 of Table 1 to provide a means of relating different frequency blocks to the one licence.

Table 2 Type and number of licences to be issued

This table specifies the categories of DRMT licence that are to be issued in Canberra RA1. It also specifies how many licences in each category are to be issued.

Attachments to Schedule 2

Attachments 2.1 and 2.2 determine the technical specifications in relation to frequency blocks 8D and 9C respectively. The frequency blocks are listed in Table 1 of Schedule 2.

Statement of compatibility with human rights

Prepared by the Australian Communications and Media Authority under subsection 9(1) of the
Human Rights (Parliamentary Scrutiny) Act 2011

Radiocommunications (Digital Radio Channels – NSW/ACT) Plan Variation 2017 (No. 1)

Overview of the instrument

The instrument is part of a package of subordinate legislation, the purpose of which is to facilitate the rollout of digital radio in regional areas of Australia. The implementation of the rollout follows on from the Government's acceptance of recommendations in the Department of Communications' [Digital Radio Report](#) published in July 2015. This led to the establishment of the Digital Radio Planning Committee for Regional Australia which was tasked with planning the rollout of digital radio in regional areas where industry considers it economically feasible to do so.

The instrument varies an existing legislative instrument — the *Radiocommunications (Digital Radio Channels — NSW/ACT) Plan 2007 (the Plan)* by amending the technical specifications for digital radio multiplex transmitters authorised to operate in the Sydney RA1 licence area.

The instrument also inserts a new digital radio channel plan for the designated BSA radio area that corresponds with the Canberra RA1 licence area. The ACMA has authorised trials of digital radio broadcasting services in Canberra since July 2010. The insertion of the new digital radio channel plan is for the purpose of facilitating the rollout of digital radio in the Canberra RA1 licence area on a permanent basis.

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 the applicable rights and freedoms.

Conclusion

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