

# EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Broadcasting Services Act 1992*

***Variation to Licence Area Plan – Sale Radio – 2017 (No.1)***

## Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Variation to Licence Area Plan – Sale Radio – 2017 (No.1)* (**the instrument**) under subsection 26(2) of the *Broadcasting Services Act 1992* (**the Act**).

The ACMA may, by legislative instrument, vary licence area plans (**LAPs**) under subsection 26(2) of the Act.

## Purpose and operation of the instrument

The ACMA prepares 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 – Sale Radio – December 2001* (F2005B00823) on 6 December 2001 (**Sale LAP**). The instrument varies the characteristics, including technical specifications, of radio broadcasting services in the Sale area of Victoria by making spectrum available for an FM transmitter for the 3GV commercial radio broadcasting service at Bairnsdale.

The ACMA does not intend the variations to alter any existing rights and obligations, except as set out above. 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. However, these updates do not reflect changes to the ways in which these services are to be provided.

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

## Document incorporated by reference

The instrument varies the Sale LAP to incorporate the *Broadcasting Services (Technical Planning) Guidelines 2017*, as in force from time to time.

This legislative instrument may be accessed from the Federal Register of Legislation:

[www.legislation.gov.au](http://www.legislation.gov.au).

## Consultation

Subsection 17(1) of the *Legislation Act 2003* requires that, before the ACMA makes a legislative instrument, it must be satisfied that any consultation that the ACMA considers is appropriate and reasonably practicable to undertake, has been undertaken.

On 1 August 2017, the ACMA published a draft instrument and a consultation paper inviting public comment on the ACMA website. The ACMA also wrote to the commercial radio broadcasting licensees and other broadcasting licensees in the licence areas planned in the Sale LAP and adjacent radio licence areas to advise them of the proposed changes to the Sale LAP and to invite comment.

Consultation closed on 1 September 2017 and the ACMA received no submissions.

## **Regulatory impact assessment**

The Office of Best Practice Regulation (**OBPR**) has determined that the regulatory changes effected by this variation are minor or machinery in nature and has advised that no regulatory impact statement is required. The OBPR has issued an exemption reference number: ID 13301.

## **Statement of compatibility with human rights**

As required by subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* a Statement of Compatibility with Human Rights has been prepared and is set out below.

### ***Overview of the instrument***

The instrument varies the Sale LAP. The variations contained in the instrument add new, or change existing, characteristics including technical specifications, of certain radio broadcasting services in the Sale RA1 licence area. These changes improve the coverage of those services and the accuracy of prescribed 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 – Sale Radio – 2017 (No.1)***

**Section 1      Name**

This section provides for the instrument to be cited as the *Variation to Licence Area Plan – Sale 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 identifies the provision of the Act that authorises the making of the instrument, namely subsection 26(2) of the Act.

**Section 4      Variation**

This section varies the Sale LAP as set out in paragraphs (a) to (q).

***Paragraph 4(a)***

Paragraph 4(a) renames the Sale LAP as “Licence Area Plan – Sale Radio”.

***Paragraph 4(b)***

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

***Paragraph 4(c)***

Paragraph 4(c) numbers each of the clauses under the heading ‘DETERMINATION’ as clauses (1) to (3).

***Paragraph 4(d)***

Paragraph 4(d) omits clause (1) and substitutes a new clause.

The new clause (1) provides that the Sale LAP is a plan for radio broadcasting services in the Sale area of Victoria and it is made under subsection 26(1) of the Act.

***Paragraph 4(e)***

Paragraph 4(e) omits the word ‘Determination’ in clauses (2) and (3) and substitutes the word ‘plan’.

***Paragraph 4 (f)***

Paragraph 4(f) inserts a clause (4) following clause (3).

The new clause (4) ensures that a reference to a schedule or an attachment is a reference to a schedule or an attachment to the Sale LAP, and that a reference to the *Broadcasting Services (Technical Planning) Guidelines 2017* or another legislative instrument includes a reference to that legislative instrument as in force from time to time. Clause (4) also provides that a reference to any other kind of

instrument or writing is a reference to that other kind of instrument or writing as in force or existence at that time the reference was included.

***Paragraph 4(g)***

Paragraph 4(g) removes from the Sale LAP the heading “SCHEDULES” immediately after clauses (1) to (3) and the text occurring after the heading “SCHEDULES” before Schedule One. This material was originally included for reference only and is no longer considered relevant or necessary.

***Paragraph 4(h)***

Paragraph 4(h) removes the words “Licence Area Plan : Sale Radio – December 2001” from the Schedules and Attachments in the Sale LAP and substitutes the words “LICENCE AREA PLAN : Sale Radio” in each of the Schedules and the Attachments.

***Subparagraph 4(i)(i)***

Subparagraph 4(i)(i) removes the wording “Frequency Band & Modes” from the Attachments in the Sale LAP (other than Attachments 1.1 and 2.1) and substitutes “Frequency Band Modes :”.

***Subparagraph 4(i)(ii)***

Subparagraph 4(i)(ii) removes the wording “Maximum antenna height” from the Attachments in the Sale LAP (other than Attachments 1.1 and 2.1) and substitutes “Maximum Antenna Height :”.

***Subparagraph 4(i)(iii)***

Subparagraph 4(i)(iii) removes the wording “Polarisation” from the Attachments in the Sale LAP (other than Attachments 1.1 and 2.1) and substitutes “Polarisation :”.

***Subparagraph 4(j)(i)***

Subparagraph 4(j)(i) removes the column headed “Status” from the tables in Schedules One and Two of the Sale LAP.

***Subparagraph 4(j)(ii)***

Subparagraph 4(j)(ii) removes from Schedule One in the Sale LAP the row detailing the specifications of the transmitter for Service Licence No. SL4157 at Sale and substitutes details that include the specifications for the transmitter at Sale and a new in-fill transmitter at Bairnsdale. The licensee of the commercial radio broadcasting licence No. SL4157 will be able to provide its service using this new infill transmitter in accordance with the specifications in new Attachment 1.10A.

***Paragraph 4(k) and Schedule 1***

Paragraph 4(k) and Schedule 1 omit the Nominal Location text in Attachments 1.2 to 1.17, 2.2 and 2.3 and substitute new Nominal Location text, to identify the location with greater precision.

***Paragraph 4(l) and Schedule 2***

Paragraph 4(l) and Schedule 2 omit the Australian Map Grid Reference in Attachments 1.2, 1.3, 1.4, 1.5, 1.10, 1.11 and 2.2 and substitute new Australian Map Grid References.

***Paragraph 4(m)***

Paragraph 4(m) removes the headings ‘LICENCE AREA FOR SERVICE LICENCE NUMBERS: SL4157, SL1150756’ and ‘SALE COMMERCIAL RADIO’ from Attachment 1.1.

The heading text for Attachment 1.1 does not provide a sufficient description of the content and function of the Attachment, and paragraph 4(m) replaces it with new heading text.

***Paragraph 4(n) and Schedule 3***

Paragraph 4(n) and Schedule 3 insert a new attachment into the Sale LAP immediately following Attachment 1.10. New Attachment 1.10A contains the technical specifications of a new transmitter for the commercial radio broadcasting service under Service Licence No. SL4157 to be available in the Sale RA1 licence area at Bairnsdale.

***Paragraph 4(o)***

Paragraph 4(o) omits the text “Special Condition” from each of the Attachments 1.13-1.17 and substitutes the text “Advisory Note”.

***Paragraph 4(p)***

Paragraph 4(p) omits and substitutes the text immediately following “Advisory Note” in Attachment 1.16. The former text did not adequately describe the technical limitations to the specifications of the transmitter to be available in the Sale RA1 licence area at Myrtlebank. The new text provides an enhanced description of those technical limitations.

***Paragraph 4(q)***

Paragraph 4(q) omits from Attachment 2.1 the heading ‘LICENCE AREA FOR SERVICE LICENCE NUMBER: SL5266’ and ‘EAST GIPPSLAND COMMUNITY RADIO’. That heading did not provide a sufficient description of the content and function of the Attachment, and paragraph 4(q) replaces it with a new heading.