

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Broadcasting Services Act 1992

Variation to Licence Area Plan – Riverland Radio – 2019 (No.1)

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Variation to Licence Area Plan – Riverland Radio – 2019 (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

LAPs determine the number and characteristics, including technical specifications, of broadcasting services that are to be made available in particular areas of Australia with the use of the broadcasting services bands.

The Australian Broadcasting Authority determined the *Licence Area Plan – Riverland Radio* (F2005B01104) (**Riverland LAP**) on 22 August 1996.

The instrument varies the characteristics, including technical specifications, of radio broadcasting services in the Riverland area of South Australia. In relation to the 5RM commercial radio broadcasting service (**5RM**), the instrument makes spectrum available for a main FM transmitter to enable 5RM to convert from AM to FM transmission, and makes spectrum available for an FM infill transmitter as part of that conversion process.

The instrument also makes changes in relation to the 5RIV commercial radio broadcasting service (**5RIV**) and the 5LFM community radio broadcasting service (**5LFM**). In each case, the substantive change is to the general area served by the relevant transmitter from Morgan to Waikerie.

Further details regarding the instrument are set out in **Attachment A**.

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

Document incorporated by reference

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

The *Broadcasting Services (Technical Planning) Guidelines 2017* may be accessed free of charge from the Federal Register of Legislation: www.legislation.gov.au.

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.

Before making the decision to vary the Riverland LAP, on 17 May 2019, the ACMA published a consultation paper on its website which provided the background to the proposal. The ACMA also announced the release of the paper via social media and used social media platforms to engage with residents in the relevant radio licence areas in relation to the proposed variation. The following stakeholders were separately notified about the release of the consultation paper: radio broadcasting

licensees and national broadcasters in the Riverland RA1 licence area and in adjacent radio licence areas; the peak bodies Commercial Radio Australia, Community Broadcasting Association of Australia and the Australian Narrowcast Radio Association; Airservices Australia; and state and federal politicians. Civic bodies including local councils and libraries were also contacted.

The consultation period ended on 14 June 2019. The ACMA received 19 submissions, the majority of which related to a proposal about another licence area plan that was also discussed in the consultation paper. Only one submission, which was from a commercial radio broadcasting licensee, referred specifically to the proposal to vary the Riverland LAP. The submission did not object to the proposal. The ACMA received four online comments, only one of which referred to radio services in the Riverland LAP.

A second consultation paper was published on the ACMA website on 3 July 2019. This consultation referred specifically to making spectrum available for 5RM to convert from AM to FM transmission. The ACMA also announced the release of this second paper via social media and used social media platforms to engage with residents in the relevant radio licence area in relation to the proposed variation. The same stakeholders notified about the release of the first consultation paper were also notified about the release of the second paper.

The second consultation period ended on 2 August 2019. The ACMA received one submission about varying the Riverland LAP. The submission opposed the proposed extended AM and FM simulcast of 5RM, and also raised overspill concerns. These matters were considered, but the ACMA considered that the benefits of the simulcast outweighed any disadvantages, and that the overspill was not significant.

The ACMA took all comments and submissions into account in making the instrument.

Regulatory impact assessment

The Office of Best Practice Regulation (OBPR), in a guidance note entitled “Carve-outs” (available at: <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.

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 the *Licence Area Plan – Riverland Radio*. The instrument makes radiofrequency spectrum available for, and changes existing characteristics including technical specifications of, certain radio broadcasting services in the Riverland area of South Australia.

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 – Riverland Radio – 2019 (No.1)*

Section 1 Name

This section provides for the instrument to be cited as the *Variation to Licence Area Plan – Riverland Radio – 2019 (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 Riverland LAP as set out in paragraphs 4(a) to 4(g).

Paragraph 4(a) omits clause (3) and substitutes a new clause (3) in the Riverland LAP. The new clause (3) ensures that a reference to a schedule or an attachment is a reference to a schedule or an attachment to the Riverland 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. New clause (3) 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(b) removes the text “(Determined by the Australian Broadcasting Authority on 22 August 1996)” from the Riverland LAP.

Paragraph 4(c) makes changes to Schedule Two of the Riverland LAP by:

- changing the name of an area served by transmitters operated in accordance with the technical specifications set out in two attachments;
- changing the frequency to be used by one transmitter for 5LFM; and
- making consequential changes to include references to two new attachments, for the AM-FM conversion of 5RM.

Paragraph 4(d) makes a number of minor changes to Attachment 2.1 to the Riverland LAP to make the text consistent with other licence area plans.

Paragraphs 4(e) and (g), and Schedules 1 and 3, replace Attachments 2.2 to 2.13 of the Riverland LAP. The replacement attachments include a number of changes including:

- changes to the nominal locations of the transmitters to provide a better description;
- changes of Australian Map Grid references to Geocentric Datum of Australia 1994 coordinates for those nominal locations;
- to update the name of the *Broadcasting Services Technical Planning) Guidelines 2017*.

New Attachments 2.8 and 2.13 also include changes to the area served, from Morgan to Waikerie, for 5RIV and 5LFM, and new Attachment 2.13 includes the change of frequency in Waikerie for 5LFM.

Paragraph 4(f) and Schedule 2 insert new Attachments 2.6A and 2.6B into the Riverland LAP. These new attachments provide for the technical specifications for FM transmission of 5RM, in addition to the technical specification for AM transmission in Attachment 2.6.