**EXPLANATORY STATEMENT**

Approved by the Australian Communications and Media Authority

*Broadcasting Services Act 1992*

***Variation to Licence Area Plan – Brisbane Radio – 2021 (No.1)***

**Authority**

The Australian Communications and Media Authority (**the ACMA**) has made the *Variation to Licence Area Plan – Brisbane Radio – 2021 (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 – Brisbane Radio – December 2000* (**the Brisbane LAP**) in December 2000. The Brisbane LAP was subsequently varied in 2001, 2004, 2012 and 2017 and the name of the instrument was varied to *Licence Area Plan -Brisbane Radio.*

The instrument primarily varies the characteristics, including technical specifications, of radio broadcasting services in the Brisbane, Wynnum and Caboolture areas in Queensland. The main variations are:

* Variation of technical specifications for several commercial and community FM broadcasting services in the Brisbane area to increase maximum antenna heights.
* Variation of technical specifications for two community broadcasting services in the Wynnum and Caboolture areas to increase transmission power and maximum antenna heights.
* Expansion of the Caboolture RA1 licence area.

The instrument also makes other more minor variations including updates to some transmitter site nominal locations and replacing Australian Map Grid References for these transmitters with coordinates using the Geocentric Datum of Australia 1994 (GDA94).

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**).

**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 Brisbane LAP, the ACMA published a consultation paper on its website on 11 November 2020 which provided the background to the proposal. The following stakeholders were notified by email about the release of the consultation paper: radio broadcasting licensees and national broadcasters in the Brisbane RA1 licence area and in adjacent radio licence areas, the peak bodies Commercial Radio Australia and the Community Broadcasting Association of Australia, Air Services Australia, and state and federal members of Parliament whose electorates include the Brisbane area. Civic bodies including local councils and libraries were also contacted.

The ACMA received one submission. The submission raised concerns regarding signal overspill outside the Brisbane RA1 licence area and referred to the party’s submission to the ACMA’s earlier consultation on the variation to the *Radiocommunications (Digital Radio Channels — Queensland) Plan 2007* (Queensland DRCP). The submission was supportive of measures to limit the risk of interference from a community broadcaster in the Wynnum RA1 licence area.

The ACMA has taken the submission into account in making the instrument. The ACMA considers that the new technical specifications in the Brisbane LAP will not provide any greater level of signal overspill to populations outside of the Brisbane RA1 licence area than is already transmitted by an existing commercial radio broadcasting service.

**Incorporation by reference**

The instrument does not incorporate any documents by reference. However, the Brisbane LAP does incorporate a legislative instrument, the *Broadcasting Services (Technical Planning) Guidelines 2017*  by reference.

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

**Regulatory impact statement**

## The Office of Best Practice Regulation (OBPR), in a guidance note entitled “Carve-outs” (available free of charge at: <https://www.pmc.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 with human rights set out below has been prepared to meet that requirement.

***Overview of the instrument***

The instrument varies the *Licence Area Plan – Brisbane Radio.* The instrument makes changes to existing characteristics including technical specifications of certain radio broadcasting services in the Brisbane, Wynnum and Caboolture areas of Queensland.

***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.

**Attachment A**

**Notes to the *Variation to Licence Area Plan – Brisbane Radio – 2021 (No.1)***

**Section 1 Name**

This section provides for the instrument to be cited as the *Variation to Licence Area Plan – Brisbane Radio – 2021 (No.1)*.

**Section 2 Commencement**

This section provides for the instrument to commence at the start of the day after the day 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 Brisbane LAP as set out in paragraphs 4(a) to 4(dd). In addition to the changes discussed below, there are a number of typographical changes that have been made to some of the Attachments to the Brisbane LAP referred to below.

Paragraph 4(a) omits clause (8) and substitutes a new clause (8). This new clause (8) provides that a reference to a schedule or an attachment is a reference to a schedule or an attachment to the Brisbane LAP, and that a reference to the *Broadcasting Services (Technical Planning) Guidelines 2017* or any other legislative instrument includes a reference to that legislative instrument as in force from time to time. The clause 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 the time the reference was included in the LAP.

Paragraph 4(b) amends Attachment 1.1 to make minor amendments to update some of the information in the Attachment, including:

* omitting the words “Licence Area ID – 504”;
* substituting the note which lists the abbreviations used in the Attachment.

Paragraph 4(c) amends attachments 1.2, 1.3 and 1.4 to update certain technical specifications and make other minor amendments, including:

* omitting the nominal location “4QR Site BALD HILLS” and substituting “Broadcast Australia site Kluver St BALD HILLS”;
* omitting the Australian Map Grid reference and substituting GDA94 nominal coordinates; and
* inserting a new special condition concerning cymomotive force requirements.

Paragraph 4(d) amends Attachments 1.5, 1.6 and 1.7 to:

* omit the nominal location “Channel 2 Site MOUNT COOT-THA” and substitute “Broadcast Australia site Sir Samuel Griffith Drive MOUNT COOT-THA”; and

omit the Australian Map Grid reference and substitute GDA94 nominal coordinates.

Paragraph 4(e) amends Attachment 1.8 to:

* omit the nominal location “Broadcast Planning Site Wynnum Rd Near Van Park WYNNUM WEST” and substitute “Broadcast Site 1871 Wynnum Rd WYNNUM WEST”;
* omit the Australian Map Grid reference and substitute GDA94 nominal coordinates;
* omit the Night-time and Daytime Output Radiation Pattern tables and substitute the tables at Parts 1 and 2 (respectively) of Schedule 1 to the instrument, and ;
* omit the Special Conditions and substitute a new special condition concerning cymomotive force requirements.

Paragraph 4(f) amends Attachment 1.9 to:

* omit the nominal location “Broadcast Planning Site Wynnum Rd Near Van Park WYNNUM WEST” and substitute “Broadcast Site 1871 Wynnum Rd WYNNUM WEST”;
* omit the Australian Map Grid reference and substitute GDA94 nominal coordinates;
* omit the Output Radiation Pattern table and substitute the new table at Part 3 of Schedule 1 to the instrument; and
* insert a new special condition concerning cymomotive force requirements.

Paragraph 4(g) amends Attachment 1.10 to:

* omit the nominal location “4BC South East Transmission Mast 273 Queens Rd NUDGEE” and substitute “Broadcast site 273 Queens Rd NUDGEE”;
* omit the Australian Map Grid reference and substitute GDA94 nominal coordinates;
* omit the Night-time and Daytime Output Radiation Pattern tables and substitute the tables at Parts 4 and 5 (respectively) of Schedule 1 to the instrument; and
* omit the Special Conditions and substitute new Special Conditions about the time of day operation requirements and cymomotive force requirements.

Paragraph 4(h) amends Attachment 1.11 to:

* omit the Australian Map Grid reference and substitute GDA94 nominal coordinates;
* omit the “Output Radiation Pattern” table and substitute the new output radiation pattern table at Part 6 of Schedule 1 to the instrument; and
* insert a Special Condition about cymomotive force requirements.

Paragraph 4(i) amends Attachment 1.12 to:

* omit the nominal location “4TAB/SUN FM Site MT DUNSINANE” and substitute “Broadcast/Comms Site off Veresdale Scrub School Rd MT DUNSINANE”; and

omit the Australian Map Grid reference and substitute GDA94 nominal coordinates. .

Paragraph 4(j) amends Attachment 1.13 to:

* omit the nominal location “Community Broadcast Park site The Summit MOUNT COOT-THA” and substitute “TXA T-Site Tower 445 Sir Samuel Griffith Drive MOUNT COOT-THA”;
* omit the Australian Map Grid reference and substitute GDA94 nominal coordinates; and
* omit the “Maximum antenna height 60 m” and substitute with “Maximum antenna height: 172 m”.

Paragraph 4(k) amends Attachment 1.14 to:

* omit the nominal location “Channel 7 Site MOUNT COOT-THA” and substitute “TXA T-Site Tower 445 Sir Samuel Griffith Drive MOUNT COOT-THA”;
* omit the Australian Map Grid reference and substitute GDA94 nominal coordinates; and
* omit the “Maximum antenna height 95 m” and substitute with “Maximum antenna height: 172 m”.

Paragraph 4(l) amends Attachment 1.15 to:

* omit the nominal location “Channel 10 Site MOUNT COOT-THA” and substitute “TXA T-Site Tower 445 Sir Samuel Griffith Drive MOUNT COOT-THA”;

omit the Australian Map Grid reference and substitute GDA94 nominal coordinates.

Paragraph 4(m) amends Attachment 1.16 to:

* omit the nominal location “Channel 7 Site MOUNT COOT-THA” and substitute “TXA T-Site Tower 445 Sir Samuel Griffith Drive MOUNT COOT-THA”;
* omit the Australian Map Grid references and substitute GDA94 nominal coordinates; and
* omit “Maximum antenna height 95 m” and substitute “Maximum antenna height: 172 m”.

Paragraph 4(n) amends Attachment 1.18 to:

* omit the nominal location “Community Broadcast Park site The Summit MOUNT COOT-THA” and substitute “Community Radio site The Summit Sir Samuel Griffith Drive MOUNT COOT-THA”;
* omit the Australian Map Grid reference and substitute GDA94 nominal coordinates; and
* omit “Maximum antenna height 30 m” and substitute with “Maximum antenna height: 80 m”.

Paragraph 4(o) amends Attachment 1.19 to:

* omit the nominal location “4RPH Site Fleming Rd TINGALPA” and substitute “Broadcast Australia Site off Fleming Rd TINGALPA”;
* omit the Australian Map Grid reference and substitute GDA94 nominal coordinates;
* omit the “Output Radiation Pattern” table and substitute the new table at Part 7 of Schedule 1 to the instrument; and
* insert a Special Condition about cymomotive force requirements.

Paragraph 4(p) amends Attachment 1.20 to:

* omit the nominal location “4RPH Site Fleming Rd TINGALPA” and substitute “Broadcast Australia Site off Fleming Rd TINGALPA”;
* omit the Australian Map Grid reference and substitute GDA94 nominal coordinates;
* omit the “Output Radiation Pattern” table and substitute the new table at Part 8 of Schedule 1 to the instrument; and
* insert a new Special Condition relating to cymomotive force requirements.

Paragraph 4(q) amends Attachment 1.21 to:

* omit the nominal location “Channel 7 Site MOUNT COOT-THA” and substitute “Community Radio site The Summit Sir Samuel Griffith Drive MOUNT COOT-THA”; and

omit the Australian Map Grid reference and substitute GDA94 nominal coordinates.; Paragraph 4(r) amends Attachments 1.23, 1.24 and 1.25 to:

- omit the nominal location “Community Broadcast Park site The Summit MOUNT COOT-THA” and substitute “Community Radio site The Summit Sir Samuel Griffith Drive MOUNT COOT-THA”;

- omit the Australian Map Grid reference and substitute GDA94 nominal coordinates; and

* omit “Maximum antenna height 30 m” and substitute “Maximum antenna height 80 m”.

Paragraph 4(s) further amends Attachment 1.23 to omit the subheading ‘Special Condition’ and the paragraph that follows and substitute a new Advisory Note which states: “Any transmission with this specification has the potential to cause interference to reception of the Toowoomba open narrowcasting service on 99.1 MHz and therefore may need to operate with a reduced ERP toward Toowoomba.”.

Paragraph 4(t) amends Attachment 1.26 to:

* omit the nominal location “4BI Site Meiers Rd LONG POCKET” and substitute “Nominal Planning site Meiers Rd LONG POCKET”;
* omit the Australian Map Grid reference and substitute GDA94 nominal coordinates; and
* omit the heading Special Conditions and the numbered paragraphs that follow and substitute a new Special Condition about cymomotive force requirements and a new Advisory Note which states: “The coverage area of this transmission is a circle of radius 30 km measured from a point with the following GDA94 co-ordinates:   
  -27.515051 152.997619. This point is the same as the nominal transmitter site. ”.

Paragraph 4(u) amends Attachment 2.1 to make minor changes to the information in the Attachment as follows:

- the words “Licence Area ID – 353” are omitted;

- the word “numbers” is substituted with the word “number”; and

- the note is replaced with a new note which lists the abbreviations used in alphabetical order.

Paragraph 4(v) amends Attachment 2.2 to:

* omit the Australian Map Grid reference and substitute GDA94 nominal coordinates; and
* omit “Polarisation Vertical” and substitute “Polarisation: Mixed”.

Paragraph 4(w) amends Attachment 3.1 to make minor changes to the information in the Attachment as follows:

* the words “Licence Area ID – 868” are omitted;
* the word “numbers” is substituted with the word “number”; and
* the note is replaced with a new note which lists the abbreviations used in alphabetical order.

Paragraph 4(x) amends Attachment 3.2 to omit the Australian Map Grid reference and substitute GDA94 nominal coordinates.

Paragraph 4(y) amends Attachment 4.1 to make minor changes to the information in the Attachment as follows:

* the words “Licence Area ID – 867” are omitted;
* the word “numbers” is substituted with the word “number”; and
* the note is replaced with a new note which lists the abbreviations used in alphabetical order.

Paragraph 4(z) amends Attachment 4.2 to:

* omit the nominal location “Broadcast Site Off 196 Mount View Road MOUNT COTTON” and substitute “Broadcast site Off Mount View Road MOUNT COTTON”;
* omit the Australian Map Grid reference and substitute GDA94 nominal coordinates;
* omit “Maximum antenna height 10 m” and substitute “Maximum antenna height: 22 m”; and
* omit the “Output Radiation Pattern” table and substitute the new table at Part 9 of Schedule 1 to the instrument.

Paragraph 4(aa) repeals Attachment 5.1 and substitutes a new Attachment 5.1 at Schedule 2 to the instrument. This amendment expands the Caboolture RA1 licence area.

Paragraph 4(bb) amends Attachment 5.2 to:

- omit the Australian Map Grid reference and substitute GDA94 nominal coordinates; and

- omit the “Output Radiation Pattern” table and substitute the new table at Part 10 of Schedule 1 to the instrument.

Paragraph 4(cc) amends Attachment 6.1 to make minor changes to the information in the Attachment as follows:

- the words “Licence Area ID – 737” are omitted; and

- the word “numbers” is substituted with the word “number”.

Paragraph 4(dd) amends Attachment 6.2 to omit the Australian Map Grid reference and substitute GDA94 nominal coordinates.

Schedule 1 to the instrument contains substitute Output Radiation Pattern tables as referred to in paragraphs 4(e)(iii), 4(e)(v), 4(f)(iv), 4(g)(iv), 4(g)(vi), 4(h)(iii), 4(o)(iv), 4(p)(iv), 4(z)(vi) and 4(bb)(v).

Schedule 2 to the instrument contains new Attachment 5.1 as referred to in paragraph 4(aa). The new Attachment 5.1 contains the definition of the expanded Caboolture RA1 licence area in terms used by the Australian Bureau of Statistics.