

SUPPLEMENTARY EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Broadcasting Services Act 1992

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

Authority

The Australian Communications and Media Authority (ACMA) has made the *Variation to Licence Area Plan – Albury Radio – 2021 (No. 1)* (**instrument**) under subsection 26(2) of the *Broadcasting Services Act 1992* (**Act**)

This supplementary explanatory statement amends the explanatory statement to the instrument as set out below.

Purpose and operation of the instrument

After the sixth paragraph, insert:

Sunsetting provisions do not apply

Item 13 of the table at regulation 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* provides that licence area plans are not subject to the sunseting provisions in Part 4 of Chapter 3 of the LA. According to the explanatory statement to that regulation:

Instruments made under section 26 of the Broadcasting Services Act include licence area plans ... These instruments provide for the planning of broadcasting services. They are intended to be enduring to provide certainty for industry in making significant investment decisions concerning the provision of broadcasting services in the relevant licence areas.

The Explanatory Memorandum for the Legislative Instruments Bill 2003 stated that some of the rationales for exemption from sunseting included:

- *where the instrument is clearly designed to be enduring and not subject to regular review...*
- *where commercial certainty would be undermined by sunseting. For example, the table includes plans of management made under the Fisheries Management Act 1991 – substantial investments are made in reliance on plans that are intended to be in force for substantially longer periods than 10 years.*

There are a number of factors that point to the benefit of commercial certainty being undermined if licence area plans were to sunset every 10 years, and which suggest that licence area plans are intended to be enduring:

- Broadcasting services have been provided in Australia since the first half of the twentieth century, and continue to be a significant part of daily life in Australia.
- There is no express power to revoke a licence area plan. The bulk of the services provided are intended to be for long duration. Commercial and community broadcasting licences are allocated for five years, and are subject to regular renewal after that time. Under section 47 of the Act, the ACMA must renew commercial broadcasting licences unless it is satisfied that allowing the licensee to continue to provide commercial broadcasting services would lead to a significant risk of an offence or a breach of a civil penalty provision under the Act occurring, or a breach of the licence conditions occurring. The regulatory regime clearly intends that generally, once commenced, these services continue uninterrupted, where possible.

- A person must not be in a position to exercise control of more than two commercial radio broadcasting licences, or one commercial television broadcasting licence, in the same licence area (sections 53 and 54 of the Act). Particular considerations apply to overlapping licence areas (section 51 of the Act). A change to a licence area may cause section 51 of the Act to operate in circumstances where it did not previously operate, and place a person in breach of section 53 or section 54 of the Act.
- The provision of broadcasting services involves the deployment of significant infrastructure, especially the radiocommunications transmitters used to provide the service that are planned in licence area plans. As at 30 June 2021, there were 276 commercial radio broadcasting licences, 69 commercial television broadcasting licences and 360 community radio broadcasting licences in force. Combined with the national broadcasters and open radio narrowcasting services, this is a substantial group of stakeholders who would be compelled to make submissions to advance their interests and protect their significant investments if licence area plans were to sunset and be remade every 10 years.

Parliament continues to have oversight of variations to licence area plans, as these instruments are subject to disallowance under the LA. It also has oversight through other mechanisms (e.g., the relevant Senate Estimates Committee). The Minister also has the power to give the ACMA a direction about the exercise of the ACMA's powers to make or vary a licence area plan for a particular area (see subsection 26(8) of the Act).