

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Broadcasting Services Act 1992

Variation to Licence Area Plan – Deniliquin Radio – 2025 (No. 1)

Authority

The Australian Communications and Media Authority (the **ACMA**) has made the *Variation to Licence Area Plan – Deniliquin Radio – 2025 (No. 1)* (the **instrument**) under subsection 26(2) of the *Broadcasting Services Act 1992* (the **Act**).

The ACMA may, by legislative instrument, vary a licence area plan (**LAP**) 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 – Deniliquin Radio* (F2005B00594) (**Deniliquin LAP**) on 15 September 1997.

The instrument amends the Deniliquin LAP to make spectrum available for a new FM transmitter in Deniliquin for a commercial radio broadcasting service (**2QN**). The instrument also makes changes to the technical specifications to the transmitters for 2QN and the other commercial radio broadcasting service in the Deniliquin RA1 licence area (**2MOR**) at Cobram, and removes the technical specifications for a planned high power open narrowcasting (**HPON**) service at Deniliquin from the Deniliquin LAP. No HPON service is being provided using the technical specifications.

The instrument also makes minor variations, including updates to some transmitter site nominal locations and replacing Australian Map Grid References for transmitters with co-ordinates using the Geocentric Datum of Australia 1994 (**GDA94**).

The instrument also removes specific references to the *Broadcasting Services (Technical Planning) Guidelines 2017* (the **2017 Guidelines**), and replaces them with provisions that:

- refer to any guidelines made under section 33 of the Act; and
- are intended to clarify the relationship between the technical specifications determined in the Deniliquin LAP and any guidelines made under section 33 of the Act.

These changes, in relation to guidelines under section 33 of the Act, do not affect the operation of radiocommunications transmitters under a licence issued under section 102 of the *Radiocommunications Act 1992* (**Radiocommunications Act**).

It is a condition of each transmitter licence issued under section 102 of the Radiocommunications Act that the licensee:

- must not operate a radiocommunications transmitter otherwise than in accordance with any relevant technical specifications determined under subsection 26(1) of the Act (paragraph 109(1)(d) of the Radiocommunications Act); and
- must comply with guidelines developed by the ACMA under section 33 of the Act (paragraph 109(1)(e) of the Radiocommunications Act).

Operation of a radiocommunications device is not authorised by an apparatus licence (including a transmitter licence issued under section 102 of the Radiocommunications Act) if it is not in accordance with the conditions of the licence (subsection 97(4) of the Radiocommunications Act). Under section 46 of the Radiocommunications Act, it is an offence, and subject to a civil penalty, to operate a radiocommunications device otherwise than as authorised by a spectrum licence, apparatus licence or a class licence. The Radiocommunications Act prescribes the following maximum penalties for the offence:

- if the radiocommunications device is a radiocommunications transmitter, and the offender is an individual – imprisonment for 2 years;
- if the radiocommunications device is a radiocommunications transmitter, and the offender is not an individual – 1,500 penalty units (which is \$495,000 based on the current penalty unit amount of \$330);
- if the radiocommunications device is not a radiocommunications transmitter – 20 penalty units (\$6,600).

The Radiocommunications Act, in subsection 46(3), prescribes the following maximum civil penalties:

- if the radiocommunications device is a radiocommunications transmitter – 300 penalty units (\$99,000);
- if the radiocommunications device is not a radiocommunications transmitter – 20 penalty units (\$6,600).

It is an offence, and subject to a civil penalty, to possess a radiocommunications device for the purpose of operating the device otherwise than as authorised by a spectrum licence, apparatus licence or class licence (section 47 of the Radiocommunications Act). The Radiocommunications Act prescribes the same penalties for this offence and civil penalty contravention as for the offence and civil penalty contravention in section 46 of the Radiocommunications Act.

In addition, an apparatus licensee must not contravene a condition of the licence. Contravention is subject to a civil penalty (section 113 of the Radiocommunications Act). The Radiocommunications Act prescribes a maximum civil penalty of 100 penalty units (\$33,000).

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)*, and is disallowable.

Item 13 of the table at regulation 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* provides that LAPs are not subject to the sunset 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 sunset included:

- *where the instrument is clearly designed to be enduring and not subject to regular review...*
- *where commercial certainty would be undermined by sunset. 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 LAPs were to sunset every 10 years, and which suggest that LAPs 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 LAP. 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 19 November 2024, there were 261 commercial radio broadcasting licences, 68 commercial television broadcasting licences and 361 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 LAPs were to sunset and be remade every 10 years.

Parliament continues to have oversight of variations to LAPs, 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 has the power to give the ACMA a direction about the exercise of the ACMA's powers to make or vary a LAP for a particular area (see subsection 26(8) of the Act).

Documents incorporated by reference

In accordance with section 14 of the LA, the instrument amends the Deniliquin LAP to incorporate the Radiocommunications Act, and guidelines made under section 33 of the Act, as in force from time to time. The Act and the current such guidelines, the 2017 Guidelines, may be accessed from the Federal Register of Legislation, free of charge, at www.legislation.gov.au.

The instrument also incorporates the Geodetic Datum of Australia known as GDA94, gazetted in the Commonwealth of Australia *Gazette* No. GN 35 on 6 September 1995, as existing at the time the instrument commenced (see paragraph (6)(c) of the Deniliquin LAP). *Gazette* No. GN 35 can be accessed, free of charge, at 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 Deniliquin LAP, the ACMA published a consultation paper on its website on 16 December 2024, which provided the background to the proposal. The following stakeholders were notified by email about the release of the consultation paper:

- radio broadcasting licensees in the Deniliquin RA1, Bendigo RA1, Griffith RA1, Remote Commercial Radio Service Central Zone RA1, Shepparton RA1 and Swan Hill RA1 licence areas;
- national broadcasters in Deniliquin and surrounding areas;
- the peak industry bodies Commercial Radio & Audio, Community Broadcasting Association of Australia, and Australian Narrowcast Radio Association;
- State and Federal members of Parliament whose electorates include the Deniliquin area, and civic bodies including local councils, shire libraries and community associations.

The consultation period ended on 24 January 2025 and 2 submissions were received. One submission raised no concerns or objections to the proposal. The second submission raised concerns about the use of the frequency previously used by an HPON transmitter to transmit a commercial radio broadcasting service and the decision to remove the HPON service from the Deniliquin LAP, the simulcasting of AM and FM transmissions in Deniliquin and the change of location of the 106.1 MHz transmitter, and submitted that the more densely populous areas of Deniliquin will receive the FM transmission while the smaller, more dispersed townships will continue to only receive AM transmission. The ACMA has considered these concerns and decided not to make any changes to the instrument as:

- the removal of the HPON transmitter does not significantly decrease the diversity of services planned in the Deniliquin LAP; and
- the simulcasting of AM and FM transmissions is aligned with the ACMA's approach to planning, considering the specific circumstances of Deniliquin and that the proposed FM transmitter will improve sound quality in the town of Deniliquin while maintaining AM coverage in the wider licence area; and
- the change of the 106.1 MHz transmitter location in the Deniliquin LAP will not change actual coverage, as this change reflects the location from which the transmitter has been operating.

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 amends the Deniliquin LAP to make spectrum available for a new FM transmitter for a commercial radio broadcasting service, 2QN, in Deniliquin. The AM transmission of 2QN will not be switched off in the Deniliquin RA1 licence area. The FM transmission will not seek to replicate the AM transmission's coverage and will mainly serve the more densely populated town area. The instrument also makes changes to technical specifications for transmitters for 2QN and the 2MOR commercial radio broadcasting service at Cobram and removes the technical specifications for the planned HPON transmitter at Deniliquin from the Deniliquin LAP.

The instrument also makes minor variations, including updates to some transmitter site nominal locations and replacing Australian Map Grid References for transmitters with co-ordinates using GDA94.

The instrument also removes specific references to the 2017 Guidelines, and replaces them with provisions that:

- refer to any guidelines made under section 33 of the Act; and
- are intended to clarify the relationship between the technical specifications determined in the Deniliquin LAP and any guidelines made under section 33 of the Act.

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.

This instrument allows the more densely populated town area of Deniliquin to access an FM service. This changes the broadcast technology and improves the quality of the sound but does not alter the content or the availability of the programs to the listeners. The ACMA considers that the impact of the instrument will be of a technical nature and will not impact the ability of broadcasters to reach listeners, nor the nature or type of content that is available to them. In these circumstances, and having considered 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 – Deniliquin Radio – 2025 (No. 1)*

Section 1 Name

This section provides for the instrument to be cited as the *Variation to Licence Area Plan – Deniliquin Radio – 2025 (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, free of charge, 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 26(2) of the Act.

Section 4 Amendments

This section provides for the Deniliquin LAP (F2005B00594) to be varied as set out in Schedule 1 to the instrument.

Schedule 1 – Amendments

Item 1

Item 1 omits the words ‘Six open narrowcasting radio services’ and replaces them with ‘Five open narrowcasting radio services’ in clause (4) of the Deniliquin LAP; it also omits the words ‘Attachments 1.7 to 1.13’ and replaces them with ‘Attachments 1.7, 1.9, 1.10, 1.12 and 1.13’ in clause (4).

Item 2

Item 2 inserts four new clauses after clause (5):

- Clause (5A) makes it clear that radiocommunications transmitters planned in the Deniliquin LAP are identified in their relevant Schedule by their corresponding Attachment, frequency, approximate geographic area they are planned to serve, technical specification number, and for a transmitter planned for provision of a service under a broadcasting services bands licence, the licence number.
- Clause (5B) makes it clear that each Attachment, except for an attachment describing an area where broadcasting services are to be available, determines the technical specification of a radiocommunications transmitter, which are:
 - a description, and the geographic coordinates of, the nominal location from which the transmitter must be operated;
 - the frequency on which the transmitter must be operated, and the frequency band containing that frequency, and the mode of transmission the transmitter must use;
 - the required polarisation, maximum antenna height, and maximum effective radiated power or electromotive force for the transmitter, in each specified direction, of transmissions;
 - any special conditions that apply to the operation of the transmitter, and any circumstances that must exist for a transmitter to be able to be operated or that prohibit the transmitter from being operated.

- Clause (5C) makes it clear that a radiocommunications transmitter may be operated from an alternative site to the nominal location, if such operation complies with any requirements set out for the transmitter and for the operation of the transmitter in guidelines made under section 33 of the Act in relation to operation from an alternative site.
- Clause (5D) provides that in the Deniliquin LAP, ‘radiocommunications transmitter’ has the meaning given by the Radiocommunications Act.

Item 3

Item 3 repeals two rows of the table in Schedule One to the Deniliquin LAP, which refer to Attachments 1.4B and 1.4C, and replaces them with new rows. The new rows have changed specifications for the channel or frequency being planned, the service licence number of the broadcasting licence to which the channel or frequency relates, the transmitter specification number and the ‘area served’ for the channel or frequency, in one or both of these rows.

Item 4

Item 4 omits the row that refers to Attachment 1.8 from the table in Schedule One.

Item 5

Item 5 repeals a reference to the 2017 Guidelines in each of Attachments 1.2 to 1.4.

Item 6

Item 6 amends Attachment 1.4A of the Deniliquin LAP, to vary the description of the nominal location of the radiocommunications transmitter planned by the Attachment. The amendment does not represent a change in the nominal location, but updates the description of the location and changes the coordinates from the Australian Map Grid to GDA94. Item 6 also repeals a reference to the 2017 Guidelines and increases the maximum antenna height of the transmitter.

Item 7

Item 7 amends Attachment 1.4B of the Deniliquin LAP, to vary the service licence number, the transmitter specification number of the radiocommunications transmitter planned by the Attachment, and the frequency on which the transmitter may operate. Item 7 also repeals a reference to the 2017 Guidelines. Item 7 also removes the note headed ‘*Availability of TS12000971*’ in Attachment 1.4B.

Item 8

Item 8 amends Attachment 1.4C of the Deniliquin LAP, to vary the area served by the radiocommunication transmitter planned by the Attachment, its transmitter specification number, and the frequency and the nominal location of the transmitter. The amendment to the nominal location does not represent a change in the actual operating location of the transmitter, but regularises the location that is currently being used for its operation. Item 8 also repeals a reference to the 2017 Guidelines, increases the maximum antenna height of the transmitter, and increases the maximum effective radiated power that the transmitter may operate on. Item 8 also removes the first paragraph from the advisory note which had stated that the service is planned on an interference limited basis and that field strengths below the planned minimum median field strength level are likely to suffer interference from other broadcasting services.

Item 9

Item 9 repeals a reference to the 2017 Guidelines in Attachment 1.5.

Item 10

Item 10 amends Attachment 1.6 of the Deniliquin LAP, to vary the nominal location of the radiocommunications transmitter planned by the Attachment. The amendment to the nominal location does not represent a change in the actual operating location of the service but regularises the location that is currently being used for its operation. Item 10 also repeals a reference to the 2017 Guidelines, and increases the maximum antenna height of the transmitter. Item 10 also inserts an advisory note stating that the transmission of the broadcasting service has been planned on an interference limited basis and field strengths below this level are likely to suffer interference from other broadcasting services; and any transmission in accordance with the specification is planned on the basis that it will be protected to a minimum median field strength level of 66 dB μ V/m against interference from other broadcasting services.

Item 11

Item 11 repeals a reference to the 2017 Guidelines in Attachment 1.6A. Item 11 also removes the note headed '*Availability of TS12000441*' in Attachment 1.6A.

Item 12

Item 12 repeals a reference to the 2017 Guidelines in Attachment 1.7.

Item 13

Item 13 repeals Attachment 1.8.

Item 14

Item 14 repeals a reference to the 2017 Guidelines in each of Attachments 1.9, 1.10, 1.12, 1.13, 1.14 and 2.2.