

# EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Broadcasting Services Act 1992*

***Variation to Licence Area Plan – Wangaratta Radio – 2025 (No. 2)***

## Authority

The Australian Communications and Media Authority (the **ACMA**) has made the *Variation to Licence Area Plan – Wangaratta Radio – 2025 (No. 2)* (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 – Wangaratta Radio – September 1997* (F2005B00805) (**Wangaratta LAP**) on 15 September 1997.

The instrument amends the Wangaratta LAP to correct minor errors made when the Wangaratta LAP was varied by the *Variation to Licence Area Plan – Wangaratta Radio – 2025 (No. 1)* in May 2025 (the **May variation**). The May variation enabled a commercial radio broadcasting service (**3NE**) in Wangaratta to convert from operating on the AM frequency band to the FM frequency band. This involved adding four additional FM infill transmitters for 3NE, and changing the technical specifications of a transmitter for another commercial radio broadcasting service (**3NNN**) in Bright.

Minor errors were made in the technical specifications of the May variation including to the transmitter numbers of the Bright and Wodonga infill transmitters, and the output variation pattern of the Wodonga infill transmitter.

The instrument also corrects two other minor typographical errors.

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).

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 Wangaratta LAP to incorporate 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 (11)(c) of the Wangaratta LAP). *Gazette* No. GN 35 can be accessed, free of charge, at [www.legislation.gov.au](http://www.legislation.gov.au).

### **Consultation**

The instrument corrects minor errors that were made by making the May variation to the Wangaratta LAP. The May variation was consulted on from December 2024 to January 2025, and when released for public consultation, the correct details were available to the public. The ACMA therefore considers that consultation has been undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the LA.

### **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 Wangaratta LAP to correct minor errors to the Wangaratta LAP that arose when the May variation was made. These include correcting transmitter numbers for infill transmitters in Bright and Wodonga for the commercial radio broadcasting service 3NE, and correcting the output radiation pattern for the infill transmitter in Wodonga for the commercial radio broadcasting service 3NE.

### ***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 corrects minor technical and typographical errors. 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.

## Attachment A

### Notes to the *Variation to Licence Area Plan – Wangaratta Radio – 2025 (No. 2)*

#### **Section 1      Name**

This section provides for the instrument to be cited as the *Variation to Licence Area Plan – Wangaratta Radio – 2025 (No. 2)*.

#### **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](http://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 Wangaratta LAP (F2005B00805) to be varied as set out in Schedule 1 to the instrument.

#### **Schedule 1 – Amendments**

##### **Item 1**

Item 1 omits ‘Taminick Gap’ in Attachment 1.9A and substitutes it with ‘TAMINICK GAP’.

##### **Item 2**

Item 2 omits ‘(GDA93)’ in Attachment 1.15A and substitutes it with ‘(GDA94)’.

##### **Item 3**

This item corrects the transmitter specification number for the transmitter planned by Attachment 1.18. It also corrects the output radiation pattern, by ensuring that the final entry in the table covers all directions around the transmitter.

##### **Item 4**

Item 4 corrects the transmitter specification number for the transmitter planned by Attachment 1.19.