



Australian Government
**Australian Communications
and Media Authority**

Australia's regulator for broadcasting, the internet, radiocommunications and telecommunications

www.acma.gov.au

EXPLANATORY STATEMENT

Section 26 – *Legislative Instruments Act 2003*

Licence Area Plan Variation
Mudgee Radio

August 2008

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Published by the Australian Communications and Media Authority

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LEGISLATIVE INSTRUMENTS ACT 2003

Section 26 - Explanatory Statement

Variation to the licence area plan for Mudgee Radio made under the *Broadcasting Services Act 1992*

In accordance with the *Australian Communications and Media Authority Act 2005*, from 1 July 2005 the Australian Communications and Media Authority (ACMA) exercises powers and functions under the *Broadcasting Services Act 1992* (BSA) previously exercised by the Australian Broadcasting Authority (ABA).

On 21 August 2008, ACMA made a variation to the Licence Area Plan for Mudgee Radio. The variation was made under section 26(2) of the *Broadcasting Services Act 1992* (the BSA) and is referred to in this explanatory paper as “the instrument”.

The licence area plan and variations

ACMA prepares licence area plans (LAPs) under section 26(1) of the BSA. LAPs determine the number and characteristics, including technical specifications, of broadcasting services that are to be available in particular areas of Australia which use the broadcasting services bands.

ACMA may, by legislative instrument, vary LAPs under section 26(2) of the BSA.

The ABA made the LAP for Mudgee Radio (the Mudgee LAP) on 26 June 1997.

ACMA obtained advice from its contact officer for the Government’s regulation impact analysis arrangements that the instrument has no or low impact. For those reasons under the self-assessment regime administered by the Office of Best Practice Regulation, ACMA has determined that there is no need to produce a Business Cost Calculator report or to prepare a Regulation Impact Statement. The ACMA RIS reference number is ACMA 026.

Intended impact and effect

The instrument:

- defines a new licence area, incorporating the areas of Mudgee, Kandos/Rylstone, Pyramul and Illford, in which the commercial radio broadcasting service with the service licence (SL) Number 10101, operating as 2GEE Mudgee (the commercial radio broadcasting service), will be available;
- provides technical specifications for the commercial radio broadcasting service to serve the area of Kandos;
- makes minor and technical variations to the Mudgee LAP to delete information that was included for reference only, and did not form part of the Mudgee LAP, in order to improve the Mudgee LAP's readability.

In relation to the commercial radio broadcasting service, ACMA intends the effect of the variation to:

- make the commercial radio broadcasting service available to a new and larger licence area that includes the towns of Pyramul and Illford; and
- authorise transmission of the commercial radio service to the area of Kandos from a different location than the transmitter site specified in the Mudgee LAP.

In relation to the licence areas in the Mudgee LAP, ACMA intends the effect of the variation to authorise the broadcast of the commercial broadcasting service to a new licence area, called the Mudgee RA3 licence area, which includes the areas in the Mudgee RA1 licence area and the areas of Pyramul and Illford. The commercial radio broadcasting service was previously available in the Mudgee RA1 licence area and will now be available in the larger Mudgee RA3 licence area.

Consultation

Following wide public consultation, on 26 June 1997, the then ABA determined the Mudgee LAP. The licence area plan provided a technical specification with a nominal location for the transmitter for the commercial radio broadcasting service to serve the area of Kandos/Rylstone.

On 16 May 2005 the licensee of the commercial radio broadcasting service advised ACMA that:

- the specified location for the transmitter used to serve the general area of Kandos/Rylstone was not appropriate; and
- it wished to move the site of the translator in the Mudgee LAP and to serve the area of Pyramul and Illford to the immediate south of the existing licence area.

Before making a decision to vary the Mudgee LAP, ACMA undertook the following steps by way of consultation:

On 22 December 2005 ACMA published the following papers on its website:

- a draft variation to the Mudgee LAP in accordance with the licensee's submission; and
- an explanatory paper about the changes proposed in the draft variation, inviting public comment by 10 February 2006 and 30 May 2008, respectively.

On 7 January 2006, ACMA placed an advertisement in the Mudgee Guardian and Gulgong Advertiser outlining the effect of the draft variations to the Mudgee LAP, providing details of how to obtain copies of the draft variation or how to access it on the website and inviting public comment. ACMA received one submission, in February 2006, in relation to the proposal.

On 22 December 2005 and in May 2008 ACMA wrote to the following interested persons and organisations to advise them of the draft variation and to invite their comments:

- operators of radio broadcasting services within the Mudgee licence areas and in neighbouring licence areas;
- industry bodies including the Community Broadcasting Association of Australia, Commercial Radio Australia and the Australian Subscription Television and Radio Association; and
- interested agencies including the Australian Competition and Consumer Commission and Air Services Australia.

On 6 May 2008 ACMA wrote to the previous submitter and commercial broadcasting services within the Mudgee licence areas and in neighbouring licence areas, asking for further comment due to the time lapsed between the previous consultation and presentation of the matter to the Authority.

ACMA received two submissions on the further request for comment in May 2008.

Description of the provisions of the instrument

Clause (1)(a) of the instrument numbers each of the paragraphs in the Determination in the Mudgee LAP consecutively as clauses (1), (2), (3) and (4).

Clause (1)(b)(i) of the instrument varies the text of clause (2) of the Determination in the Mudgee LAP to change the number of commercial radio broadcasting services to be available in the Mudgee RA1 licence area from two to one.

Clause (1)(b)(ii) of the instrument varies the text of clause (2) of the Determination in the Mudgee LAP to remove reference to Attachments 1.3 and 1.4 containing the previous technical specifications for the transmitters for the commercial radio broadcasting service SL10101.

Clause 1(c) of the instrument varies the text of clause (3) of the Determination in the Mudgee LAP to remove reference to service licence number SL10102 referred in Schedule 2 being made available two years after publication in the Commonwealth of Australia Gazette. This date has now passed.

Clause 1(d) of the instrument inserts a new clause (5) into the Determination in the Mudgee LAP. The new clause provides for the commercial radio broadcasting service to be available in the new licence area, Mudgee RA3. The clause makes reference to the schedules and attachments containing the description of the new licence area and the technical specifications for the transmitters for the commercial radio broadcasting service. Relevant schedules and attachments are inserted by later provisions of the instrument.

Clause (1)(e) of the instrument varies the text of the Determination in the Mudgee LAP to insert a new clause (6) that will ensure that it refers to schedules and attachments that have been amended from time to time by ACMA.

Clause (2) of the instrument deletes all text appearing immediately under the heading “Schedules” in the Mudgee LAP (including the heading itself). The information was included for reference only, but may be confusing.

Clause (3) of the instrument varies the schedules to the Mudgee LAP. The schedules set out details of the radio broadcasting services that are to be available on particular frequencies in the various licence areas in Mudgee and surrounding areas. In particular, the schedules provide for technical specification numbers for each transmitter to be used by the services and specify the attachments which contain the technical specification for each of those transmitters.

Clause (3)(a) of the instrument omits Schedule One and substitutes a new Schedule One to the Mudgee LAP. The previous schedule set out the relevant details of two broadcasting services made available in the licence area plan in the Mudgee RA1 area. The updated schedule does not refer to the commercial radio broadcasting service that is to be provided to the Mudgee RA3 licence area (see clauses 3(b) and 4(d) below).

Clause (3)(b) of the instrument inserts Schedule Four to the Mudgee LAP. The schedule refers to the commercial radio broadcasting service as being available in the Mudgee RA3 licence area and provides two technical specification numbers for transmitters for that service, including

- the technical specification number of the transmitter currently used by the commercial radio broadcasting service to serve the Mudgee area; and
- the technical specification numbers for the transmitter to be used by the commercial radio broadcasting service to serve the area of Kandos (including Rylstone, Pyramul and Illford).

Clause (4) amends the attachments to the Mudgee LAP which contain definitions of the licence areas in which services will be available and the technical specifications for those services.

Clauses 4(a),(c) and (d) of the instrument omit Attachments 1.1, 2.1 and 3.1 and substitutes Attachments 1.1, 2.1 and 3.1 to the Mudgee LAP.

The new Attachments 1.1, 2.1 and 3.1 describe the Mudgee RA1, Mudgee RA3 and Kandos RA1 licence areas in terms of areas defined by the Australian Bureau of Statistics at the Census of 5 August 2001. The variations do not substantially alter the boundaries of these existing licence areas. Clause 4(e) also inserts Attachment 4.1, which describes the Mudgee

RA3 licence area in terms of areas defined by the Australian Bureau of Statistics at the Census of 5 August 2001.

Clauses (4) (b) and (e) of the instrument omit Attachments 1.3 and 1.4 and insert Attachments 4.1, 4.2 and 4.3 to the Mudgee LAP. The omitted attachments contain the technical specifications for the commercial radio broadcasting service that used to serve the Mudgee RA1 licence area. The new Attachments 4.2 and 4.3 contain the technical specifications for the transmitters for the commercial radio broadcasting service to serve the Mudgee RA3 licence area. The new Attachment 4.1 contains a description of that licence area which includes the areas of Kandos/Rylstone, Pyramul and Illford.

The technical specifications for those transmitters include the following characteristics:

- the nominal transmitter site;
- the frequency on which the service may be transmitted;
- other emission details; and
- the output radiation pattern (including power limitations).