**EXPLANATORY STATEMENT**

Approved by the Australian Communications and Media Authority

*Radiocommunications Act 1992*

***Radiocommunications (Digital Radio Channels – Northern Territory) Plan 2017***

**Authority**

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Digital Radio Channels – Northern Territory) Plan 2017* (**the instrument**) under subsection 44A(1) of the *Radiocommunications Act 1992* (**the Act**).

Subsection 44A(1) of the Act provides that, before issuing the first digital radio multiplex transmitter (**DRMT**) licence for a designated BSA radio area, the ACMA must prepare a digital radio channel plan that:

* allots a frequency channel or channels for use by DRMT licensees where each allotted frequency channel has a bandwidth of at least 1.536 MHz; and
* reserves a frequency channel of at least 1.536 MHz bandwidth for a category 3 DRMT licence for the BSA designated radio area; and
* determines which of the following types of licences, or which combination of those types, are to be issued for the designated BSA radio area:
  + category 1 DRMT licence;
  + category 2 DRMT licence; and
* if a particular type of category 1 or category 2 DRMT licence is to be issued in the BSA designated radio area, determines whether a single licence is to be issued, or 2 or more licences are to be issued; and
* determines the technical specifications of multiplex transmitters operated under DRMT licences for the designated BSA radio area.

**Purpose and operation of the instrument**

In July 2015, the Department of Communications released the [*Digital Radio Report*](https://www.communications.gov.au/publications/digital-radio-report). Arising from the recommendations of the report, the Government requested that the ACMA establish a joint government-industry committee chaired by the ACMA, to progress the rollout of digital radio in regional Australia. The Digital Radio Planning Committee for Regional Australia formed in September 2015, and is tasked with planning the rollout of digital radio in regional areas where industry considers that it is economically feasible to do so, starting with the permanent licensing of the Canberra and Darwin trial services. A technical sub-committee was also formed (chaired by Commercial Radio Australia) to develop high level planning principles as part of the rollout process.

The instrument makes a digital radio channel plan for Darwin. It allots frequency channels and determines the technical specifications for two DRMT licences for the designated BSA radio area known as ‘Darwin RA1’. The Darwin RA1 licence area is that area defined by Attachment 2.1 to the [*Licence Area Plan – Darwin Radio*](https://www.legislation.gov.au/Details/F2014C00082), a legislative instrument made under subsection 26(1) of the *Broadcasting Services Act 1992*.

In the instrument a frequency channel is referred to as a ‘frequency block’. One frequency channel is reserved for a category 3 DRMT licence as required by the Act. A category 3 DRMT licence may be issued to a company beneficially owned by the national broadcasters, and is to be used only for the transmission of digital national radio broadcasting services (paragraph 109B(1)(h) of the Act).

Another frequency channel is to be allotted for use by the licensee of a category 1 DRMT licence. A category DRMT 1 licence is to be used only for the transmission of digital commercial radio broadcasting services and digital community radio broadcasting services (paragraph 109B(1)(f) of the Act).

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**).

**Documents incorporated by reference**

The instrument refers to legislative instruments and other writing, as in force from time to time, in accordance with section 314A of the Act.

Section 7 of the instrument provides that the technical specifications for co-channel transmitters licensed under a relevant DRMT licence are those specified in that licence. The details of DRMT licences issued by the ACMA, including the technical specifications of transmitters authorised to operate under those licences, are publicly available, free of charge, on the Register of Radiocommunications Licences, published on the ACMA’s website: [www.acma.gov.au](http://www.acma.gov.au).

Schedule 1 to the instrument refers to the relevant designated BSA radio area as being the Darwin RA1 licence area. The Darwin RA1 licence area is defined in the [*Licence Area Plan – Darwin Radio*](https://www.legislation.gov.au/Details/F2014C00082) which is publicly available, free of charge, at: [www.legislation.gov.au](http://www.legislation.gov.au).

**Consultation**

Subsection 44A(5) of the Act provides that, before preparing a digital radio channel plan, the ACMA must:

* publish a draft of the plan on its website; and
* invite members of the public to make submissions about the draft plan within a specified period of at least 30 days; and
* consider any submissions it receives from members of the public within that period.

On 21 December 2016, a draft version of the instrument and an accompanying discussion paper were published on the ACMA website, inviting members of the public to make submissions, and a media release was issued announcing the release of the draft instrument for comment. The invitation to comment closed on 13 February 2017.

The ACMA received a total of 12 submissions in response to the consultation package. The submissions were from a range of stakeholders in the radio broadcasting sector, and one was from a member of the public. Taken together, the submissions reflect the differing interests of stakeholders, which the ACMA must balance in the planning process for the expansion of digital radio into regional Australia. Overall, the submissions were supportive of the ACMA’s proposal to make the instrument, which all submitters agreed would facilitate the rollout of digital radio in the specified areas. Before making the instrument, the ACMA considered all relevant submissions received before deciding not to make any changes to the draft instrument released for consultation.

Before making the instrument, the ACMA was satisfied that it had undertaken consultation that was appropriate within the terms of subsection 17(1) of the LA,

**Regulatory impact assessment**

The Office of Best Practice Regulation has determined that any regulatory change effected by the instrument is minor and machinery in nature and that no further regulatory impact analysis is required (OBPR reference number: 2138).

**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 to be prepared in respect of that legislative instrument.

The statement of compatibility set out in Attachment B has been prepared to meet that requirement.

**Attachment A**

**Notes to the *Radiocommunications (Digital Radio Channels – Northern Territory) Plan 2017***

**Section 1 Name**

This section provides for the instrument to be cited as the *Radiocommunications (Digital Radio Channels – Northern Territory) Plan 2017*.

**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 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 44A(1) of the Act.

**Section 4 Definitions**

Subsection 4(1) defines a number of key terms used throughout the instrument. A number of other expressions used in the instrument are defined in the Act.

Subsection 4(2) provides that a reference in the instrument to a legislative instrument or other instrument or writing is taken to be a reference to that other legislative instrument, instrument or writing as in force or as in existence from time to time.

**Section 5 Digital radio channel plans**

Subsection 5(1) provides that the schedule to the instrument is a digital radio channel plan for the designated BSA radio area specified in that schedule. The designated BSA radio area is ‘Darwin RA1’. The instrument may be later varied to add further schedules relating to additional designated BSA radio areas.

Subsection 5(2) sets out the matters that the digital radio channel plan specified in Schedule 1 deals with, in accordance with subsection 44A(1) of the Act.

**Section 6 Maximum ERP limits**

Subsection 6(1) provides that the effective radiated power of each digital radio multiplex transmitter in any part of a sector or bearing is that specified in the Attachment to Schedule 1 for that transmitter.

Subsection 6(2) provides that a licensee of a DRMT licence must demonstrate compliance with the requirement in subsection (1) if called upon to do so.

**Section 7 Co-channel transmitters**

This section provides that the technical specifications for a co-channel transmitter are those specified in the DRMT licence for that transmitter.

**Schedule 1 Darwin RA1**

**Designated BSA radio area**

This item specifies that Schedule 1 is the digital radio channel plan for the designated BSA radio area that corresponds with the Darwin RA1 licence area.

**Table 1 Frequency channels**

Table 1 lists the frequency blocks that are allotted for use in Darwin RA1 and specifies the relevant licence category and the technical specification number. For consistency with other metropolitan markets (Adelaide, Brisbane, Melbourne, Perth and Sydney), as well as Hobart, the frequency blocks for Darwin RA1 are 9A for the category 1 DRMT licence and 9C for the category 3 DRMT licence. The table provides that frequency block 9C is reserved for a category 3 DRMT licence.

Possible future variations to the instrument may provide additional frequency blocks for use by the same DRMT licensee. A ‘multiplex transmitter licence’ name is therefore specified in column 1 of Table 1 to provide a means of relating different frequency blocks to the one licence.

**Table 2 Type and number of licences to be issued**

This table specifies the categories of DRMT licence that are to be issued in Darwin RA1. It also specifies how many licences in each category are to be issued.

**Attachments to Schedule 1**

Attachments 1.1 and 1.2 determine the technical specifications in relation to frequency blocks 9A and 9C respectively. The frequency blocks are listed in Table 1 of Schedule 1.

**Attachment B**

**Statement of compatibility with human rights**

Prepared by the Australian Communications and Media Authority under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*

***Radiocommunications (Digital Radio Channels – Northern Territory) Plan 2017***

***Overview of the instrument***

The instrument is part of a package of subordinate legislation, the purpose of which is to facilitate the rollout of digital radio in regional areas of Australia. The implementation of the rollout follows on from the Government’s acceptance of recommendations in the Department of Communications’ [*Digital Radio Report*](https://www.communications.gov.au/publications/digital-radio-report) published in July 2015. This led to the establishment of the Digital Radio Planning Committee for Regional Australia which was tasked with planning the rollout of digital radio in regional areas where industry considers it economically feasible to do so.

The ACMA has authorised trials of digital radio broadcasting services in Darwin since August 2010. The instrument makes a digital radio channel plan for the Northern Territory in order to facilitate the permanent rollout of digital radio in the designated BSA radio area known as ‘Darwin RA1’.

***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 the applicable rights and freedoms.

***Conclusion***

The instrument is compatible with human rights as it does not raise any human rights issues.