

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Broadcasting Services Act 1992

Broadcasting Services (Technical Planning) Guidelines (Consequential Amendments) Instrument 2017 (No. 1)

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Broadcasting Services (Technical Planning) Guidelines (Consequential Amendments) Instrument 2017 (No. 1)* (**the instrument**) under paragraph 19(1)(b) and subsection 26(2) of the *Broadcasting Services Act 1992* (**the Act**).

Paragraph 19(1)(b) of the Act provides that the ACMA may, by legislative instrument, clarify the criteria used to define the following categories of broadcasting services:

- commercial broadcasting services;
- community broadcasting services;
- subscription broadcasting services;
- subscription narrowcasting services;
- open narrowcasting services; and
- international broadcasting services;

for the purpose of distinguishing between categories of broadcasting services.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make a legislative instrument, the power shall be construed to include a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument.

Subsection 26(1) of the Act states that the ACMA must, by legislative instrument, prepare licence area plans that determine the number and characteristics, including technical specifications, of broadcasting services that are to be available in particular areas of Australia with the use of the broadcasting services bands. Subsection 26(1B) of the Act provides that the ACMA may, by legislative instrument, prepare licence area plans that, among other things, specify and allot the channels available in particular areas of Australia for the provision of commercial, national and other television broadcasting services and determine the technical specifications of such services. A licence area plan prepared pursuant to subsection 26(1B) of the Act is known as a television licence area plan (see subsection 26(1C)). Subsection 26(2) of the Act states that the ACMA may, by legislative instrument, vary a licence area plan.

Purpose and operation of the instrument

The purpose of the instrument is to amend:

- (a) certain licence area plans made under subsection 26(1) of the Act;
- (b) certain television licence area plans made under subsection 26(1B) of the Act; and
- (c) the *Broadcasting Services Clarification Notice 2016* (**the Clarification Notice**) made under paragraph 19(1)(b) of the Act.

The amendments are a consequence of the making of the *Broadcasting Services (Technical Planning) Guidelines 2017* (**the 2017 TPGs**). The 2017 TPGs impose technical requirements on broadcasting

licensees, datacasting licensees and authorised persons in respect of the planning and operating of transmission facilities. The 2017 TPGs revoke and replace the *Broadcasting Services (Technical Planning) Guidelines 2007 (the 2007 TPGs)*.

The 2017 TPGs form part of a wider group of legislative instruments that deal with the planning and operating of services using the broadcasting services bands. These legislative instruments include licence area plans and television licence area plans. Certain licence area plans and television licence area plans contain cross-references to the 2007 TPGs and provisions therein. The making of the 2017 TPGs meant that amendments of affected licence area plans were necessary in order to update the cross-references to the 2017 TPGs.

The Clarification Notice also contains references to the 2007 TPGs. As is the case with certain licence area plans and television licence area plans, the Clarification Notice has been amended as a consequence of the making of the 2017 TPGs.

The amendments that the instrument makes to licence area plans, television licence area plans and the Clarification Notice are intended to maintain the regulatory arrangements established by those instruments.

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 amends other legislative instruments that incorporate by reference the 2007 TPGs, replacing those references with references to the 2017 TPGs. Each of the legislative instruments mentioned in the instrument is publicly available, free of charge, from the Federal Register of Legislation (which may be accessed 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.

The ACMA released a draft of the 2017 TPGs together with an accompanying consultation paper on the ACMA website on 27 July 2017, inviting public comment. As well as discussing the proposal to make the 2017 TPGs, the consultation paper explained that as a consequence of the proposal, some 76 other listed legislative instruments made under either the Act or the *Radiocommunications Act 1992* would also need amending.

Comments on the proposal to make both the 2017 TPGs and the consequential amendments closed on 14 August 2017. The ACMA received three submissions in response to the consultation process.

Only one submission addressed the proposal to make consequential amendments to the 76 legislative instruments. That submission, which did not object to the proposal, but rather sought clarification on the operation of the instrument, was taken into account by the ACMA before it made the instrument.

Regulatory impact assessment

A preliminary assessment of the proposal to make the 2017 TPGs was conducted by the Office of Best Practice Regulation (**OBPR**), based on information provided by the ACMA, for the purposes of determining whether a Regulation Impact Statement (**RIS**) would be required. OBPR determined that

the remaking of the 2007 TPGs would have more than a minor regulatory impact. However, OBPR also determined that if the 2007 TPGs were assessed as operating effectively and efficiently as informed by a public consultation process, the ACMA may, in lieu of a RIS, self-certify that the remaking of the 2007 TPGs as the 2017 TPGs would have no more than a minor regulatory impact (OBPR reference ID 22477). Informed by the public consultation process, the ACMA assessed the 2007 TPGs as operating effectively and efficiently. As the instrument does no more than update cross-references from the 2007 TPGs to the 2017 TPGs so as to maintain pre-existing regulatory arrangements, the instrument is also considered to have no more than a minor regulatory impact.

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 below has been prepared to meet that requirement.

Overview of the instrument

The purpose of the instrument is to amend:

- (a) certain licence area plans made under subsection 26(1) of the Act;
- (b) certain television licence area plans made under subsection 26(1B) of the Act; and
- (c) the *Broadcasting Services Clarification Notice 2016* made under paragraph 19(1)(b) of the Act.

The amendments to the abovementioned legislative instruments are a consequence of the making of the 2017 TPGs. The 2017 TPGs impose technical requirements on broadcasting and datacasting licensees for planning and operating new or existing transmission facilities. They revoke and replace the 2007 TPGs.

The licence area plans, television licence area plans, and the Clarification Notice contain cross-references to the 2007 TPGs. As a result of the making of the 2017 TPGs, consequential amendments were made to the abovementioned instruments in order to maintain the regulatory arrangements established by those instruments.

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 those rights or freedoms.

Conclusion

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

Notes to the *Broadcasting Services (Technical Planning) Guidelines (Consequential Amendments) Instrument 2017 (No. 1)*

Section 1 Name

This section provides for the instrument to be cited as the *Broadcasting Services (Technical Planning) Guidelines (Consequential Amendments) Instrument 2017 (No. 1)*.

Section 2 Commencement

This section provides for the instrument to commence on the later of: (a) the commencement of the *Broadcasting Services (Technical Planning) Guidelines 2017*; or (b) 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.

Section 3 Authority

This section identifies the provisions of the Act that authorises the making of the instrument, namely paragraph 19(1)(b) and subsection 26(2) of the Act.

Section 4 Amendments to licence area plans made under subsection 26(1) of the *Broadcasting Services Act*

This section provides that each licence area plan specified in Schedule 1 to the instrument is amended by omitting the words “*Broadcasting Services (Technical Planning) Guidelines 2007*” and replacing them with “*Broadcasting Services (Technical Planning) Guidelines 2017*” wherever the former words appear.

Section 5 Amendments to television licence area plans made under subsection 26(1B) of the *Broadcasting Services Act*

This section provides that each television licence area plan specified in Schedule 2 to the instrument is amended by omitting the words “*Broadcasting Services (Technical Planning) Guidelines 2007*” and replacing them with “*Broadcasting Services (Technical Planning) Guidelines 2017*” wherever the former words appear.

Section 6 Amendments to the *Broadcasting Services Clarification Notice 2016*

This section provides that the Clarification Notice is amended as set out in the applicable items in Schedule 3 to the instrument.

Schedule 1—Table of licence area plans amended

This Schedule lists the licence area plans that are amended by the instrument.

Schedule 2—Table of television licence area plans amended

This Schedule lists the television licence area plans that are amended by the instrument.

Schedule 3—Amendments to the *Broadcasting Services Clarification Notice 2016* (F2016L00366)

The Schedule sets out three items that specify how the *Broadcasting Services Clarification Notice 2016* is amended.

Item 1

This item omits and replaces the definition of “ancillary communication service” in section 4 of the Clarification Notice. This is because the definition in section 4 of the Clarification Notice referred to the 2007 TPGs. As the 2017 TPGs do not include a definition of the term, this item inserts a definition for “ancillary communication service”, taken from the 2007 TPGs, into the Clarification Notice.

Item 2

This item inserts a definition of “FM radio band” into section 4 of the Clarification Notice by cross-referencing the definition given to that term by the 2017 TPGs.

Item 3

This item omits “FM radio broadcasting band” in paragraph 6(1)(b) of the Clarification Notice and replaces it with the words “FM radio band”. This is to ensure consistency with the terminology used in the 2017 TPGs.