

# REPLACEMENT EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Radiocommunications Act 1992*

## ***Radiocommunications (Digital Radio Channels – Western Australia) Plan Variation 2019 (No.1)***

### **Authority**

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Digital Radio Channels – Western Australia) Plan Variation 2019 (No. 1)* (**the instrument**) under subsection 44A(6) 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 radio area designated under the *Broadcasting Services Act 1992* (**BSA**), 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;
- reserves a frequency channel of at least 1.536 MHz bandwidth for a category 3 DRMT licence for the designated BSA radio area;
- 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;
- if a particular type of category 1 or category 2 DRMT licence is to be issued in the designated BSA 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**

The instrument varies an existing legislative instrument — the *Radiocommunications (Digital Radio Channels – Western Australia) Plan 2007* (**the Plan**) — which is made under subsection 44A(1) of the Act. The Plan allots the frequency channels and determines the technical specifications for each digital radio multiplex transmitter licence in the designated BSA radio area known as ‘Perth RA1’ (see Schedule 1 to the Plan).

The instrument makes a digital radio channel plan for the Mandurah RA1 licence area. It allots frequency channels and determines the technical specifications for two DRMT licences for the designated BSA radio area known as ‘Mandurah RA1’. The Mandurah RA1 licence area is that area defined by Attachment 1.1 to the [Licence Area Plan – Mandurah Radio](#), a legislative instrument made under subsection 26(1) of the BSA.

In the instrument a frequency channel is referred to as a ‘frequency block’.

One 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).

Another 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 (i.e. ABC and SBS) and is to be used only for the transmission of digital national radio broadcasting services (paragraph 109B(1)(h) 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.

Schedule One to the instrument makes the relevant designated BSA radio area the Mandurah RA1 licence area. The Mandurah RA1 licence area is defined in the [Licence Area Plan – Mandurah Radio](#) which is publicly available, free of charge, at: [www.legislation.gov.au](http://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.

When preparing a digital radio channel plan the ACMA must have regard to the digital commercial, community and national radio broadcasting services, that are, or will be, authorised by radio broadcasting licences for the designated BSA radio area (subsection 44A(8) of the Act).

On 19 February 2019, a consultation paper was published on the ACMA website. Radio broadcasters in the Mandurah RA1 licence area, relevant industry associations and licensees in surrounding licence areas were consulted. The invitation to comment closed on 20 March 2019. Four submissions were received, representing the interests of commercial, community and national licensees within and neighbouring the Mandurah RA1 licence area. Commercial Radio Australia supported the proposed digital radio channel plan for Mandurah RA1. The Community Broadcasting Association of Australia raised matters that turn on the legislation and planning principles that have been discussed by the Digital Radio Planning Committee for Regional Australia and its technical subcommittee. All submitters, along with the ACMA, are members of the Committee. In their submissions, the ABC and SBS requested not to be restricted to the same coverage as the commercial services. However, subsection 44A(11) of the Act requires the ACMA, as far as practicable, to ensure that a digital radio channel plan for a particular designated BSA radio area does not discriminate between digital radio multiplex transmitter licensees in relation to the technical specifications of multiplex transmitters.

### **Regulatory impact assessment**

The Office of Best Practice Regulation (OBPR) 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 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 varies an existing legislative instrument — the *Radiocommunications (Digital Radio Channels — Western Australia) Plan 2007* so as to allow for digital radio in the Mandurah RA1 licence area. The anticipated outcome is the establishment of digital radio services in that licence area.

### ***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 *Radiocommunications (Digital Radio Channels – Western Australia) Plan Variation 2019 (No. 1)***

**Section 1 Name**

This section provides for the instrument to be cited as the *Radiocommunications (Digital Radio Channel – Western Australia) Plan Variation 2019 (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 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(6) of the *Radiocommunications Act 1992 (the Act)*.

**Section 4 Variation**

This section provides that the Plan is amended as set out in Schedule 1

**Schedule One Variation**

Schedule One updates a reference in the note to section 6 of the Plan to the *Broadcasting Services (Technical Planning) Guidelines 2017*. Those Guidelines are a legislative instrument and may be accessed, free of charge, on the Federal Register of Legislation at [www.legislation.gov.au](http://www.legislation.gov.au).

Schedule One also inserts a new Schedule 2 into *Radiocommunications (Digital Radio Channels – Western Australia) Plan 2007*. The new Schedule 2 contains the digital radio channel plan for Mandurah RA1, detailed below.

**Schedule 2 Mandurah RA1**

**Designated BSA radio area**

The designated BSA radio area is the Mandurah RA1 licence area.

**Table 1 Frequency channels**

Table 1 lists the frequency blocks that are allotted for use in Mandurah RA1 and specifies the relevant licence category and the technical specification number. The table provides that frequency block 8C is reserved for a category 1 DRMT licence. For consistency with the neighbouring Perth market, the frequency block for Mandurah RA1 is 9C for the category 3 DRMT licence.

Possible future variations to the instrument may provide additional frequency blocks for use by the same DRMT licensee. A ‘multiplex 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 Mandurah RA1. It also specifies how many licences in each category are to be issued.

**Attachments to Schedule 1**

Attachments 2.1 and 2.2 determine the technical specifications in relation to frequency blocks 8C and 9C respectively. The frequency blocks are listed in Table 1 of Schedule 2.