

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications (Digital Radio Channels – Queensland) Plan Variation 2020 (No.1)

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Digital Radio Channels – Queensland) Plan Variation 2020 (No. 1)* (**the instrument**) under section 44A 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 of that type is to be issued, or 2 or more licences of that type are to be issued; and
- determines the technical specifications of multiplex transmitters operated under DRMT licences for the designated BSA radio area.

Subsection 44A(6) of the Act provides that the ACMA may, by legislative instrument, vary a digital radio channel plan.

When preparing or varying 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).

Purpose and operation of the instrument

The instrument varies an existing legislative instrument — the *Radiocommunications (Digital Radio Channels — Queensland) Plan 2007* (**the Plan**) — which is made under subsection 44A(1) of the Act.

The instrument makes a digital radio channel plan for the Gold Coast RA1 licence area, and includes it in the Plan. It allots frequency channels and determines the technical specifications for two DRMT licences for the designated BSA radio area known as ‘the Gold Coast RA1 licence area’. The Gold Coast RA1 licence area is the area defined by Attachment 1.1 to the Licence Area Plan — Gold Coast Radio — December 2000 (**Gold Coast LAP**), a legislative instrument made under subsection 26(1) of the BSA.

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

Under the changes made by the instrument, one frequency channel is to be allotted for use by the licensee of a category 1 DRMT licence. A category 1 DRMT 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 (under section 102E of the Act) to a company beneficially owned by either or both of 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 disallowable legislative instrument for the purposes of the *Legislation Act 2003* (the LA).

Documents incorporated by reference

The instrument refers to the following legislative instruments, and other instruments or writing, in accordance with section 314A of the Act, section 10 of the *Acts Interpretation Act 1901* and section 14 of the LA:

- the Geocentric Datum of Australia, gazetted in the Commonwealth of Australia *Gazette* No. GN 35 on 6 September 1995 (**GDA94**), as existing on that date. *Gazette* No. GN 35 can be accessed, free of charge, at www.legislation.gov.au;
- the *Broadcasting Services (Technical Planning) Guidelines 2017* (**Guidelines**), as in force from time to time. The Guidelines are a legislative instrument and are publicly available, free of charge, at www.legislation.gov.au;
- the Gold Coast LAP, as in force from time to time. The Gold Coast LAP is a legislative instrument and is publicly available, free of charge, 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.

On 22 September 2020, the ACMA published a consultation paper on its website about a proposal to amend the Plan to include a digital radio channel plan for the Gold Coast RA1 licence area, and to amend the existing digital radio channel plan for the Brisbane RA1 licence area. Radio broadcasting licensees and the national broadcasters in the Gold Coast RA1 licence area and in surrounding licence areas, as well as peak bodies representing industry stakeholders and civic bodies, were notified of the consultation and invited to make submissions. State and federal members of parliament were notified about the release of the consultation paper. The public consultation period closed on 23 October 2020.

The ACMA received 13 submissions in response to its consultation process, and a number of comments on social media. The submissions were from two members of the public, seven commercial radio broadcasting licensees, both national broadcasters, the community radio industry peak body and a communications service provider. While most submitters supported the proposal to include a digital radio channel plan for the Gold Coast RA1 licence area, some raised concerns about the effect of the proposal on the radio broadcasting services in neighbouring licence areas. The ACMA had regard to these submissions, but considered that any overspill of digital radio transmissions into neighbouring licence areas was a necessary result of ensuring adequate reception within the Gold Coast RA1 licence area. Several submitters proposed that additional transmitters be planned for digital radio

in the Gold Coast RA1 licence area. The ACMA had regard to these submissions, but decided to undertake further examination and consultation on any additional transmitters that may be planned for digital radio in the Gold Coast RA1 licence area.

Several submitters objected to the proposal to amend the existing digital radio channel plan for the Brisbane RA1 licence area, on the basis of the effect of the proposal on the radio broadcasting services in neighbouring licence areas. In this case, the ACMA has decided not to amend the digital radio channel plan for the Brisbane RA1 licence area, and will undertake further examination of options to improve digital radio transmission in that licence area.

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 the *Radiocommunications (Digital Radio Channels — Queensland) Plan 2007* to insert a digital radio channel plan for the Gold Coast RA1 licence area to enable the rollout of digital radio services in the Gold Coast 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 – Queensland) Plan Variation 2020 (No. 1)*

Section 1 Name

This section provides for the instrument to be cited as the *Radiocommunications (Digital Radio Channel – Queensland) Plan Variation 2020 (No. 1)*.

Section 2 Commencement

This section provides for the instrument to commence at the start of the day after the day 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 provision of the Act that authorises the making of the instrument, namely section 44A of the Act.

Section 4 Amendments

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

Schedule 1 Amendments

Item 1 inserts a definition of GDA 94 (the Geocentric Datum of Australia) into section 3 of the Plan.

Item 2 removes an expression from a definition in section 3 of the Plan, which is a consequence of the insertion of a new section 3B in the Plan (see below).

Item 3 inserts section 3B in the Plan. The new section explains how references in the Plan to other legislative instruments, non-legislative instruments, and other writing are incorporated.

Items 4 and 5 amend section 6 (and the note to that section) in the Plan to provide that the technical specifications for a co-channel transmitter licensed under a relevant DRMT licence are those determined by the licence (previously, they were determined in accordance with the *Broadcasting Services (Technical Planning) Guidelines 2017*). The note to the section has been repealed as a consequence of the amendment to the section.

Item 6 adds a new Schedule 2 to the Plan after Attachment 1.3 of Schedule 1. The new Schedule 2 contains the digital radio channel plan for the Gold Coast RA1 licence area, detailed below.

Schedule 2 Gold Coast RA1

Designated BSA radio area

The designated BSA radio area is the Gold Coast RA1 licence area.

Table 1 Frequency channels

Table 1 lists the frequency blocks that are allotted for use in the Gold Coast RA1 licence area, and specifies the relevant licence category and the technical specification number. The table provides that

frequency block 9D is for a category 1 DRMT licence. Frequency block 8B 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 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 Number of licences to be issued

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

Attachments 2.1 to 2.4

Attachments 2.1 and 2.2 to Schedule 2 determine the technical specifications for the category 1 DMRT licences in the Gold Coast RA 1 licence area, and Attachments 2.3 and 2.4 to Schedule 2 determine the technical specifications for category 3 DMRT licences in the Gold Coast RA 1 licence area. The technical specifications include nominal locations of transmitters, site tolerance, the centre frequency for transmissions, and maximum antenna height.