

# EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Broadcasting Services Act 1992*

*Variation to Licence Area Plan – Deniliquin Radio – 2022 (No. 1)*

## Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Variation to Licence Area Plan – Deniliquin Radio – 2022 (No. 1)* (**the instrument**) under subsection 26(2) of the *Broadcasting Services Act 1992* (**the Act**).

The ACMA may, by legislative instrument, vary a licence area plan (**LAP**) under subsection 26(2) of the Act.

## Purpose and operation of the instrument

LAPs 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.

The Australian Broadcasting Authority determined the *Licence Area Plan – Deniliquin Radio* (**the Deniliquin LAP**) on 15 September 1997.

The instrument varies the characteristics, including technical specifications, of Deniliquin’s commercial and open narrowcasting radio broadcasting services in the Deniliquin RA1 licence area. The main variations are:

- making radiofrequency spectrum available for two new transmitters for the commercial radio broadcasting service with the callsign 2MOR to serve the Echuca and Moama areas in Victoria and New South Wales;
- making radiofrequency spectrum available for a new transmitter for the commercial radio broadcasting service with the callsign 2QN to serve the Echuca and Moama areas in Victoria and New South Wales;
- making radiofrequency spectrum available for a new transmitter for the commercial radio broadcasting service with the callsign 2QN to serve Cobram in Victoria; and
- removing a technical specification for a high-powered open narrowcasting (**HPO**N) service planned for Moama in New South Wales.

The instrument also makes minor variations including updates to some transmitter site nominal locations and replacing Australian Map Grid References for transmitters with co-ordinates using the Geocentric Datum of Australia 1994 (**GDA94**).

Item 13 of the table at regulation 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* provides that licence area plans are not subject to the sunset provisions in Part 4 of Chapter 3 of the *Legislation Act 2003* (**the LA**). According to the explanatory statement to that regulation:

*Instruments made under section 26 of the Broadcasting Services Act include licence area plans ... These instruments provide for the planning of broadcasting services. They are intended to be enduring to provide certainty for industry in making significant investment decisions concerning the provision of broadcasting services in the relevant licence areas.*

The Explanatory Memorandum for the Legislative Instruments Bill 2003 stated that some of the rationales for exemption from sunset included:

- *where the instrument is clearly designed to be enduring and not subject to regular review...*
- *where commercial certainty would be undermined by sunseting. For example, the table includes plans of management made under the Fisheries Management Act 1991 – substantial investments are made in reliance on plans that are intended to be in force for substantially longer periods than 10 years.*

There are a number of factors that point to the benefit of commercial certainty being undermined if licence area plans were to sunset every 10 years, and which suggest that licence area plans are intended to be enduring:

- Broadcasting services have been provided in Australia since the first half of the twentieth century, and continue to be a significant part of daily life in Australia.
- There is no express power to revoke a licence area plan. The bulk of the services provided are intended to be for long duration. Commercial and community broadcasting licences are allocated for five years, and are subject to regular renewal after that time. Under section 47 of the Act, the ACMA must renew commercial broadcasting licences unless it is satisfied that allowing the licensee to continue to provide commercial broadcasting services would lead to a significant risk of an offence or a breach of a civil penalty provision under the Act occurring, or a breach of the licence conditions occurring. The regulatory regime clearly intends that generally, once commenced, these services continue uninterrupted, where possible.
- A person must not be in a position to exercise control of more than two commercial radio broadcasting licences, or one commercial television broadcasting licence, in the same licence area (sections 53 and 54 of the Act). Particular considerations apply to overlapping licence areas (section 51 of the Act). A change to a licence area may cause section 51 of the Act to operate in circumstances where it did not previously operate, and place a person in breach of section 53 or section 54 of the Act.
- The provision of broadcasting services involves the deployment of significant infrastructure, especially the radiocommunications transmitters used to provide the service that are planned in licence area plans. As at 30 June 2021, there were 276 commercial radio broadcasting licences, 69 commercial television broadcasting licences and 360 community radio broadcasting licences in force. Combined with the national broadcasters and open radio narrowcasting services, this is a substantial group of stakeholders who would be compelled to make submissions to advance their interests and protect their significant investments if licence area plans were to sunset and be remade every 10 years.

Parliament continues to have oversight of variations to licence area plans, as these instruments are subject to disallowance under the LA. It also has oversight through other mechanisms (e.g., the relevant Senate Estimates Committee). The Minister has the power to give the ACMA a direction about the exercise of the ACMA's powers to make or vary a licence area plan for a particular area (see subsection 26(8) 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 LA.

### **Documents incorporated by reference**

In accordance with section 14 of the LA, the instrument incorporates the *Broadcasting Services (Technical Planning) Guidelines 2017*, as in force from time to time. The *Broadcasting Services (Technical Planning) Guidelines 2017* may be accessed from the Federal Register of Legislation at: [www.legislation.gov.au](http://www.legislation.gov.au).

The instrument also incorporates the Geodetic Datum of Australia known as GDA94, gazetted in the Commonwealth of Australia *Gazette* No. GN 35 on 6 September 1995, as in existence at the time the instrument commences. *Gazette* No. GN 35 can be accessed, free of charge, at: [www.legislation.gov.au](http://www.legislation.gov.au).

The instrument also incorporates areas defined by the Australian Bureau of Statistics (ABS) in its 8 August 2006 Census. As permitted by paragraph 14(1)(b) of the LA, these areas are incorporated as in existence at the time the instrument commences. The areas defined in the 2006 Census are available, free of charge, from the ABS website at: <http://www.abs.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.

Before making the decision to vary the Deniliquin LAP, the ACMA published a consultation paper on the ACMA website on 18 March 2022 and invited comments on proposals to vary the Deniliquin LAP, which included background to each individual proposal, proposed technical specifications for relevant attachments and a map of the Deniliquin RA1 licence area.

The ACMA wrote to relevant stakeholders, notifying them that the consultation paper had been published, including peak bodies, the commercial radio broadcasting licensees, State and Federal members of Parliament, local councils, community associations, other broadcasting licensees and national broadcasters in the Deniliquin licence areas and adjacent radio licence areas.

The consultation period ended on 22 April 2022. The ACMA received one submission regarding the proposal for the technical specification of the 2QN service at Cobram. The submission raised concerns regarding the use of specific frequency for Cobram as the submitter previously requested the same frequency to be used for another service planned in the *Licence Area Plan - Remote Central and Eastern Australia Radio*. After consideration of the submission, the ACMA decided to proceed with the proposals.

### **Regulatory impact assessment**

The Office of Best Practice Regulation (OBPR), in a guidance note entitled “Carve-outs” (available free of charge at: <https://www.pmc.gov.au/resource-centre/regulation/carve-outs-guidance-note>), has established a carve-out for variations to LAPs where those variations are unlikely to have more than a minor regulatory impact (OBPR reference number: 13301). A carve-out is a standing agreement between OBPR and a government agency which sets aside the requirement for a preliminary assessment to be sent to OBPR for certain types of proposed regulatory change. The ACMA has formed the opinion that the instrument falls within the terms of the carve-out.

### **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 *Licence Area Plan – Deniliquin Radio*. The instrument makes radiofrequency spectrum available and amends transmitter specifications for commercial, community and national radio broadcasting services, and open narrowcasting radio services, in the Deniliquin

radio licence areas covering the Echuca, Moama, Cobram and Deniliquin areas in Victoria and New South Wales.

***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 *Variation to Licence Area Plan – Deniliquin Radio – 2022 (No. 1)***

**Section 1 Name**

This section provides for the instrument to be cited as the *Variation to Licence Area Plan – Deniliquin Radio – 2022 (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, free of charge, 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 26(2) of the Act.

**Section 4 Amendments**

This section provides for the Deniliquin LAP (F2005B00594) to be varied as set out in Schedule 1 to the instrument.

**Schedule 1 - Amendments**

Item 1 renames the Deniliquin LAP as the ‘Licence Area Plan – Deniliquin Radio’.

Item 2 repeals clauses (1) to (6) of the Deniliquin LAP and substitutes them with new clauses. These clauses describe the number of national, commercial, open narrowcasting and community radio broadcasting services available in the area described at Attachment 1.1, as well as detailing their corresponding Attachments in the plan. Other than the reduction of the number of open narrowcasting radio services planned, from seven to six, there are no substantive changes to the clauses.

Item 3 omits “(Determined by the Australian Broadcasting Authority on 15 September 1997)” after clause (6) in the Deniliquin LAP.

Item 4 repeals Schedule One and Schedule Two and substitutes new Schedules One and Two. The new Schedules plan the details of all the radio broadcasting services, their corresponding channels, service licence numbers, transmitter specification numbers and area(s) served in the Deniliquin RA1 and RA2 licence areas. Other than the reduction of the number of open narrowcasting radio services planned, from seven to six, and the increase in transmitters planned for the existing commercial radio broadcasting services, there are no substantive changes to the Schedules.

Item 5 repeals all the existing Attachments to the Deniliquin LAP and substitutes the new Attachments set out in the item.

Specifically, the substantive changes to Attachments to the Deniliquin LAP include:

- inserting new Attachments 1.4A, 1.4B, 1.4C and 1.6A, which set out the technical specifications for new infill transmitters for the 2QN and 2MOR commercial broadcasting radio services;

- making the technical specifications set out in Attachments 1.4B and 1.6A available only for a certain time. Attachment 1.4B provides that the technical specification in it will be available only until the commercial radio broadcasting licensee commences using the technical specification set out in Attachment 1.6A. Conversely, the technical specification in Attachment 1.6A is not available until the commercial radio broadcasting licensee ceases using the technical specification set out in Attachment 1.4B;
- omitting Attachment 1.11, to remove the technical specification for the planned but not licensed 92.5 MHz HPON service;
- changing the special conditions in Attachments 1.7, 1.8, 1.9, 1.10, 1.12, 1.13, 1.14 and 2.2 to advisory notes;
- adding a second advisory note to Attachments 1.14 and 2.2 about minimum field strength.

Other amendments include updating nominal site locations, replacing Australian Grid Map references with a latitude and longitude format using GDA94, including references to the *Broadcasting Services (Technical Planning) Guidelines 2017*, and general formatting changes.