

# EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Broadcasting Services Act 1992*

## ***Variation to Licence Area Plan – Murrayville Community Radio – 2022 (No. 1)***

### **Authority**

The Australian Communications and Media Authority (**the ACMA**) has made the *Variation to Licence Area Plan – Murrayville Community 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 *Community Radio Licence Area Plan – Murrayville (Radio) – August 1996* (**the Murrayville LAP**) on 27 August 1996.

The instrument varies the characteristics, including technical specifications, of Murrayville community radio broadcasting services in the Murrayville RA1 licence area. The main variation is to add a technical specification to the Murrayville LAP for an existing community radio broadcasting retransmission with the call sign 3MBR serving Lameroo.

There is currently one community radio broadcasting service planned in the Murrayville RA1 licence area, serving the general area of Murrayville. In 2000, the licensee was issued with a retransmission licence to transmit the service in Lameroo however this transmission was not planned in the Murrayville LAP. It was assessed at the time to be an appropriate technical specification and the ACMA has not received any objections or complaints about the service. The ACMA therefore believes it is appropriate to regularise the service by planning it officially in the Murrayville LAP.

The instrument is a disallowable legislative instrument for the purposes of the *Legislation Act 2003* (**the LA**).

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 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 sunset. 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 services that are planned in licence area plans. As at 30 June 2022, there were 276 commercial radio broadcasting licences, 69 commercial television broadcasting licences and 366 community 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**.

### **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 refers to the Geodetic Datum of Australia known as GDA94, gazetted in the Commonwealth of Australia *Gazette* No. GN 35 on 6 September 1995, as existing 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).

---

*Explanatory Statement to the Variation to Licence Area Plan – Murrayville Community Radio – 2022  
(No. 1)*

The instrument also refers to areas defined by the Australian Bureau of Statistics (**ABS**) in its 6 August 1991 Census. The Census is 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 Murrayville LAP, the ACMA published a consultation paper on the ACMA website on 26 August 2022 which included background to the proposal, details of the proposed changes, the proposed additional technical specification and a map of the affected licence area, and invited comment on the proposal to vary the Murrayville LAP.

The following stakeholders were notified by email about the release of the consultation paper and invited to comment:

- radio broadcasting licensees and national broadcasters in the Murrayville RA1 licence area and in adjacent radio licence areas;
- the peak industry bodies Commercial Radio Australia and Community Broadcasting Association of Australia;
- government bodies including local councils in the affected area.

The consultation period ended on 23 September 2022. The ACMA received one submission which did not oppose the extension of the Murrayville service to Lameroo and the ACMA has therefore decided to proceed with the proposal.

### **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 *Community Radio Licence Area Plan – Murrayville (Radio) – August 1996*. The instrument adds a technical specification for an existing community radio broadcasting transmission in the Murrayville RA1 licence area, serving the Lameroo area. The instrument also makes some other minor amendments.

### ***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 – Murrayville Community Radio – 2022 (No. 1)***

**Section 1 Name**

This section provides for the instrument to be cited as the *Variation to Licence Area Plan – Murrayville Community 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 Murrayville LAP (F2005B00831) to be amended as set out in Schedule 1 to the instrument.

**Schedule 1–Amendments**

Item 1 renames the Murrayville LAP as “Licence Area Plan – Murrayville Community Radio”.

Item 2 omits the title page and substitutes it with the new name of the instrument, “Licence Area Plan – Murrayville Community Radio”.

Item 3 repeals the two paragraphs after the heading “DETERMINATION” and substitutes them with three numbered paragraphs:

- Paragraphs 1 and 2 modernise the repealed two paragraphs and make them consistent with other LAPs.
- Paragraph 3 provides for the interpretation of terms that appear in the Murrayville LAP. Paragraph 3(a) specifies that a reference to a schedule or attachment is a reference to a schedule or attachment to the plan. Paragraph 3(b) specifies that a reference to a legislative instrument in the plan is a reference to that instrument as in force from time to time. Paragraph 3(c) specifies that a reference to any other kind of instrument or writing in the plan is a reference to that instrument or writing as in force or in existence at the time the reference was included in the plan.

Item 4 amends the Murrayville LAP to omit the date it was first determined.

Item 5 repeals the Schedule to omit some notes.

Item 6 repeals Schedule One and replaces it with the Schedule One set out in the instrument.

Item 7 repeals all the attachments in the Murrayville LAP and replaces them with the attachments included in the instrument. These are Attachments 1.1, 1.2 and 1.3. The only substantive changes to the attachments are:

---

*Explanatory Statement to the Variation to Licence Area Plan – Murrayville Community Radio – 2022 (No. 1)*

- In Attachment 1.1, re-ordering the Area Descriptions into numerical order.
- In Attachment 1.2, updating the nominal location and converting the location from Australian Grid Map references to a latitude and longitude format using GDA94.
- Inserting new Attachment 1.3, that plans technical specifications for transmission of the community radio broadcasting service provided under licence SL10374.