

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications (Digital Radio Channels – Tasmania) Plan Variation 2023 (No.1)

Authority

The Australian Communications and Media Authority (the **ACMA**) has made the *Radiocommunications (Digital Radio Channels – Tasmania) Plan Variation 2023 (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 designated BSA radio area (a licence area planned for commercial radio broadcasting services under the *Broadcasting Services Act 1992* (the **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 for the designated BSA radio area, determines whether a single licence of that type is to be issued, or two 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). The ACMA must, as far as practicable, ensure that a digital radio channel plan for a designated BSA radio area does not discriminate between DRMT licensees in relation to the technical specifications of multiplex transmitters (subsection 44A(11) of the Act).

Purpose and operation of the instrument

The instrument varies the *Radiocommunications (Digital Radio Channels — Tasmania) Plan 2007* (the **Plan**).

The Plan includes a digital radio channel plan for the Hobart RA1 licence area. The instrument varies the Plan to make a digital radio channel plan for the Launceston RA1 licence area, which is a designated BSA radio area. The digital radio channel plan for the Launceston RA1 licence area allots frequency channels and determines the technical specifications for two DRMT licences. The Launceston RA1 licence area is the area defined by Attachment 1.1 to the *Licence Area Plan — Launceston Radio* (the **Launceston LAP**), a legislative instrument made under subsection 26(1) of

the BSA. The instrument allows the ACMA to issue DRMT licences, to enable the provision of digital radio broadcasting services.

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 for the Launceston RA1 licence area. 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 only be issued to a company that is formed in Australia, has a share capital, and is beneficially owned by either or both of the national broadcasters (i.e. the Australian Broadcasting Corporation (the **ABC**) and the Special Broadcasting Service (**SBS**)) (section 102E of the Act); and
- is to be used only for the transmission of digital national radio broadcasting services (paragraph 109B(1)(h) of the Act).

It is a condition of each DRMT licence that the licensee:

- must not operate a multiplex transmitter under the licence except on a frequency channel and at a constancy specified in the licence in accordance with the relevant digital radio channel plan (paragraph 109B(1)(m) of the Act); and
- must comply with guidelines developed by the ACMA under section 33 of the BSA (paragraph 109B(1)(n) of the Act).

Operation of a radiocommunications device is not authorised by an apparatus licence if it is not in accordance with the conditions of the licence (subsection 97(4) of the Act). Under section 46 of the Act, it is an offence, and subject to a civil penalty, to operate a radiocommunications device otherwise than as authorised by a spectrum licence, apparatus licence or a class licence. The Act prescribes the following maximum penalties for the offence:

- if the radiocommunications device is a radiocommunications transmitter, and the offender is an individual – imprisonment for 2 years;
- if the radiocommunications device is a radiocommunications transmitter, and the offender is not an individual – 1,500 penalty units (which is \$469,500 based on the current penalty unit amount of \$313);
- if the radiocommunications device is not a radiocommunications transmitter – 20 penalty units (\$6,260).

The Act prescribes the following maximum civil penalties:

- if the radiocommunications device is a radiocommunications transmitter – 300 penalty units (\$93,900);
- if the radiocommunications device is not a radiocommunications transmitter – 20 penalty units (\$6,260).

It is an offence, and subject to a civil penalty, to possess a radiocommunications device for the purpose of operating the device otherwise than as authorised by a spectrum licence, apparatus licence

or class licence (section 47 of the Act). The Act prescribes the same penalties for this offence and civil penalty contravention as for the offence and civil penalty contravention in section 46.

In addition, an apparatus licensee must not contravene a condition of the licence. Contravention is subject to a civil penalty (section 113 of the Act). The Act prescribes a maximum civil penalty of 100 penalty units (\$31,300).

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**) and is disallowable.

Paragraph (aa) of item 55 of the table at regulation 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* provides that digital radio channel plans are not subject to the sunseting provisions in Part 4 of Chapter 3 of the LA. According to the explanatory statement for the *Legislation (Exemptions and Other Matters) Amendment (Sunsetting Exemptions) Regulations 2017*, digital radio channel plans and their variations:

form an integral part of the regulatory framework that allows for the issuing of [DRMT] licences. [DRMT] licences remain in force for 15 years, and therefore it is appropriate for [digital radio channel plans] to endure. [Digital radio channel plans] are designed to have long term application and are intended to be conducive to stability and predictability for the digital radio broadcasting industry. There are minor adjustments made to the [digital radio channel plans] from time to time, usually in response to requests from [DRMT] licensees seeking amendments of the technical specifications of related transmitters. For example, this may include seeking the insertion of technical specifications for co-channel transmitters or by varying the output radiation patterns of licensed transmitters. Such amendments to technical specifications do not affect the broader operation or enduring nature of the [digital radio channel plans]. These minor amendments are also designed to endure, well beyond the sunseting period of ten years.

Subjecting [digital radio channel plans or variations] to the sunseting regime would reduce the stability and predictability of the regulatory framework underlying the long term investments and other long term planning undertaken by participants in the digital radio broadcasting sector. This undermines commercial certainty for the digital radio broadcasting sector and its customers.

Parliament continues to have oversight of digital radio channel plans, and variations to digital radio channel 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 in relation to the performance of its functions and the exercise of its powers (section 14 of the *Australian Communications and Media Authority Act 2005*).

Documents incorporated by reference

Section 314A of the Act provides that an instrument under the Act may make provision in relation to a matter by applying, adopting or incorporating (with or without modifications) matter contained in any Act or any other instrument or writing as in force or existing at a particular time or as in force or existing from time to time.

The instrument amends the Plan to incorporate by reference 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.

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 1 September 2023, 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 Launceston RA1 licence area. Radio broadcasting licensees and the national broadcasters in the Launceston 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 29 September 2023.

The ACMA received 5 submissions in response to its consultation process. The submitters included a commercial radio broadcasting licensee and its network owner, a national broadcaster, the community radio industry peak body and a communications service provider. While the submitters supported the proposal to include a digital radio channel plan for the Launceston RA1 licence area in the Plan, some suggested changes to the proposed technical specifications. The ACMA had regard to these submissions, but considered that changes to the technical specifications required further consideration and, if appropriate, could be made through a variation to the Plan at a future date.

Regulatory impact assessment

In 2016, the Office of Best Practice Regulation (**OBPR**) (now the Office of Impact Assessment) conducted a preliminary assessment of a proposal to make legislative instruments for the purpose of expanding digital radio into regional Australia, which included making digital radio channel plans for regional designated BSA radio areas. OBPR advised that a regulation impact statement would not be required, because the anticipated legislative instruments were considered to be minor and machinery in nature, and were not expected to have a regulatory impact on business, community organisations or individuals (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 with human rights set out below has been prepared to meet that requirement.

Overview of the instrument

The instrument varies the Plan to make a digital radio channel plan for the Launceston RA1 licence area. The digital radio channel plan for the Launceston RA1 licence area allots frequency channels and determines the technical specifications for two DRMT licences. The instrument allows the ACMA to issue DRMT licences, to enable the provision of digital radio broadcasting services in the Launceston RA1 licence area.

Human rights implications

Explanatory Statement to the Radiocommunications (Digital Radio Channels – Tasmania) Plan Variation 2023 (No.1)

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 – Tasmania)
Plan Variation 2023 (No. 1)**

Section 1 Name

This section provides for the instrument to be cited as the *Radiocommunications (Digital Radio Channel – Tasmania) Plan Variation 2023 (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 adds a new Schedule 2 to the Plan after Schedule 1 to the Plan (Schedule 1 to the Plan is the digital radio channel plan for the Hobart RA1 licence area). The new Schedule 2 contains the digital radio channel plan for the Launceston RA1 licence area, the details of which are set out below.

Digital radio channel plan for the Launceston RA1 licence area designated BSA radio area

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

Table 1 Frequency channels

Table 1 lists the frequency blocks that are allotted for use in the Launceston RA1 licence area, and specifies the relevant DRMT licence category and the technical specification number for each such block. 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 Type and number of licences to be issued

This table specifies the categories of DRMT licence that are to be issued in Launceston 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 the digital radio channel plan for the Launceston RA1 licence area determine the technical specifications for the category 1 DMRT licences in that licence area, and Attachments 2.3 and 2.4 determine the technical specifications for category 3 DMRT licences in that licence area. The technical specifications include nominal locations of transmitters, nominal coordinates for those locations, the frequency blocks for transmissions, the required polarisation of transmissions, the maximum antenna height and the maximum permitted output radiation pattern.