

# EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Broadcasting Services Act 1992*

*Variation to Licence Area Plan – Longreach Radio – 2024 (No. 1)*

## Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Variation to Licence Area Plan – Longreach Radio – 2024 (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 – Longreach Radio* (**the Longreach LAP**) on 27 August 1996.

The instrument makes spectrum available for commercial radio services at Aramac and Muttaburra and updates technical specifications for services at Winton. The main variations are to:

- make spectrum available for FM transmitters for 4LRE commercial radio broadcasting service at Aramac and Muttaburra;
- update the technical specifications for the 4LG and 4LRE commercial radio broadcasting services and high powered open narrowcasting service at Winton;
- make various minor technical amendments to the Longreach LAP including updates to the transmitter location information, substitutions of Australian Map Grid References by Geocentric Datum of Australia 1994 (**GDA94**) coordinates, minor antenna height updates and minor formatting and grammatical changes;
- incorporate the *Broadcasting Services (Technical Planning) Guidelines 2017* (**2017 Guidelines**) (discussed below).

The instrument removes specific references to the 2017 Guidelines, and replaces them with provisions that:

- refer to any guidelines made under section 33 of the Act; and
- are intended to make express the relationship between the technical specifications determined in the Longreach LAP and any guidelines made under section 33 of the Act.

These changes, in relation to the guidelines under section 33 of the Act, do not affect the operation of radiocommunications transmitters under a licence issued under section 102 of the *Radiocommunications Act 1992* (**Radiocommunications Act**).

It is a condition of each transmitter licence issued under section 102 of the Radiocommunications Act that the licensee:

- must not operate a radiocommunications transmitter otherwise than in accordance with any relevant technical specifications determined under subsection 26(1) of the Act (paragraph 109(1)(d) of the Radiocommunications Act); and

- must comply with guidelines developed by the ACMA under section 33 of the Act (paragraph 109(1)(e) of the Radiocommunications Act).

Operation of a radiocommunications device is not authorised by an apparatus licence (including a transmitter licence issued under section 102 of the Radiocommunications Act) if it is not in accordance with the conditions of the licence (subsection 97(4) of the Radiocommunications Act). Under section 46 of the Radiocommunications 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 Radiocommunications 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 \$495,000 based on the current penalty unit amount of \$330);
- if the radiocommunications device is not a radiocommunications transmitter – 20 penalty units (\$6,600).

The Radiocommunications Act, in subsection 46(3), prescribes the following maximum civil penalties:

- if the radiocommunications device is a radiocommunications transmitter – 300 penalty units (\$99,000);
- if the radiocommunications device is not a radiocommunications transmitter – 20 penalty units (\$6,600).

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 Radiocommunications Act). The Radiocommunications Act prescribes the same penalties for this offence and civil penalty contravention as for the offence and civil penalty contravention in section 46 of the Radiocommunications Act.

In addition, an apparatus licensee must not contravene a condition of the licence. Contravention is subject to a civil penalty (section 113 of the Radiocommunications Act). The Radiocommunications Act prescribes a maximum civil penalty of 100 penalty units (\$33,000).

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**).

Item 13 of the table at regulation 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* provides that LAPs 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 sunseting 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 LAPs were to sunset every 10 years, and which suggest that LAPs 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 a commercial broadcasting licence 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 of 19 November 2024, there were 261 commercial radio broadcasting licences, 68 commercial television broadcasting licences and 361 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).

### **Documents incorporated by reference**

In accordance with section 14 of the LA, the instrument incorporates the Radiocommunications Act, and guidelines made under section 33 of the Act, as in force from time to time. The Radiocommunications Act, and the current guidelines, the 2017 Guidelines, may be accessed from the Federal Register of Legislation at: [www.legislation.gov.au](http://www.legislation.gov.au).

The instrument also incorporates GDA94, gazetted in the Commonwealth of Australia *Gazette* No. GN 35 on 6 September 1995, as existing at the time the instrument commenced (see paragraph 7(c) of

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the Longreach LAP, as inserted by the instrument). *Gazette* No. GN 35 can be accessed, 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.

Before making the decision to vary the Longreach LAP, the ACMA published a consultation paper on the ACMA website on 9 September 2024, which included background to each individual proposal, proposed technical specifications for the relevant attachments and a map of the affected licence area, and invited comment on the proposals to vary the Longreach LAP.

The ACMA sent an e-bulletin to relevant stakeholders, including peak bodies, the licensees in the Longreach RA1 licence area, commercial and community broadcasting licensees and national broadcasters in overlapping and adjacent radio licence areas, and politicians and local government representatives for the relevant areas, notifying them that the consultation paper had been published and invited comments.

The consultation period ended on 8 October 2024. The ACMA received no submissions and decided to proceed with the proposals.

### **Regulatory impact assessment**

The Office of Impact Analysis (OIA), in a guidance note entitled ‘Carve-outs’ (available free of charge at: <https://oia.pmc.gov.au/resources/guidance-oia-procedures/carve-outs>), has established a ‘carve-out’ for variations to LAPs where those variations are unlikely to have more than a minor regulatory impact (reference number: OIA23-06155). A carve-out is a standing agreement between OIA and a government agency, which sets aside the requirement for a preliminary assessment to be sent to OIA 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 – Longreach (Radio) – August 1996*. The instrument adds FM transmitters for commercial radio service 4LRE at Aramac and Muttaborra and updates technical specifications for commercial radio services 4LG and 4LRE and HPON service at Winton. In addition, the instrument makes minor amendments to the Longreach LAP.

### **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 – Longreach Radio – 2024*  
(No. 1)**

**Section 1      Name**

This section provides for the instrument to be cited as the *Variation to Licence Area Plan – Longreach Radio – 2024 (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 Longreach LAP (F2005B01110) to be varied as set out in this section.

Paragraph 4(a) removes the title page.

Paragraph 4(b) renames the Longreach LAP as the “Licence Area Plan – Longreach Radio”

Paragraph 4(c) numbers each clause consecutively as they appear under the heading “DETERMINATION”.

Paragraph 4(d) modernises clause (1) of the Longreach LAP to make it consistent with other LAPs.

Paragraph 4(e) omits, in clause 2 of the LAP, each occurrence of “Determination” and substitutes “plan” to make it consistent with other LAPs.

Paragraph 4(f) inserts 5 additional clauses into the LAP after clause (2):

- Clause (3) makes it clear that radiocommunications transmitters planned for the Longreach RA1 licence area are identified in Schedule One by their corresponding Attachment, frequency, approximate geographic area they are planned to serve, technical specification number, and for a transmitter planned for provision of a service under a broadcasting services bands licence, the licence number.
- Clause (4) makes it clear that each Attachment, except for an attachment describing an area where broadcasting services are to be available, determines the technical specification of a radiocommunications transmitter, which are:
  - a description, and the GDA94 coordinates of, the nominal location from which the transmitter is to be operated;
  - the frequency on which the transmitter to be operated, and the frequency band containing that frequency, and the mode of transmission the transmitter must use;
  - the required polarisation, maximum antenna height, and maximum effective radiated power or cymomotive force for the transmitter;

- any special conditions that apply to the operation of the transmitter, and any circumstances in which a transmitter must not operate, or in which a transmitter may operate.
- Clause (5) makes it clear that a radiocommunications transmitter may be operated from an alternative site to the nominal location, if such operation complies with guidelines for the transmitter and operation of the transmitter made under section 33 of the Act in relation to operation from an alternative site.
- Clause (6) provides that ‘radiocommunications transmitter’ has the meaning given by the Radiocommunications Act.
- Clause (7) provides for the interpretation of terms that appear in the licence area plan. Paragraph 7(a) specifies that a reference to a schedule or attachment is a reference to a schedule or attachment to the plan. Paragraph 7(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 7(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.

Paragraph 4(g) amends the Longreach LAP to omit the date it was determined.

Paragraph 4(h) removes the text and page with the heading “SCHEDULE” to make it consistent with other LAPs.

Paragraph 4(i) repeals and replaces Schedule One to the LAP. Other than modernisation of the Longreach LAP, the new Schedule One plans for additional transmitters at Aramac and Muttaborra for commercial radio broadcasting service provided under licence SL10223.

Paragraph 4(j) repeals and replaces Attachment 1.1 to the LAP to modernise the licence area description including removing population figures.

Paragraphs 4(k) to 4(ee), Paragraphs 4(gg), 4(hh), and Paragraph 4(jj) to 4(pp) include changes to Attachments 1.2 to 1.22, Attachments 1.23, 1.24, and Attachments 1.25 to 1.31 for all radio services by:

- updating the technical specification numbers to make them consistent with other LAPs;
- making minor amendments to nominal location to reflect current operational conditions;
- updating the nominal co-ordinates in relation to the location of transmitters and converting from Australian Grid Map references to a latitude and longitude format using GDA94;
- removing the Site Tolerance reference to the Technical Planning Guidelines which is now covered by the addition of clause (5); and
- insert a colon (“:”) after each of “Frequency Band & Mode”, “Polarisation” and “Maximum antenna height” to correct the formatting on all attachments.

Paragraphs 4(k), 4(m) to 4(r), 4(t), 4(w), 4(x), and 4(z) include changes to Attachments 1.2, 1.4 to 1.9, 1.11, 1.14, 1.15 and 1.17 for national radio services by:

- making minor amendments to antenna heights to reflect current operating conditions.

Paragraphs 4(bb) to 4(kk) also include changes to Attachments 1.19 to 1.26 for commercial radio services by:

- updating the antenna polarisation from “Vertical” to “Mixed” to make them consistent with other LAPs.

- inserting new Attachments 1.22A and 1.24A, after Attachments 1.22 and 1.24, respectively. These attachments contain technical specifications for transmissions at Aramac and Muttaborra for the commercial radio broadcasting service provided under licence SL10223.
- updating Attachments 1.21 and 1.26 relating to the technical specifications for transmissions at Winton for the commercial radio broadcasting services provided under licences SL10221 and SL10223, respectively. The change increases the maximum antenna height to 30 m.

Paragraph 4(pp) also include changes to Attachment 1.31 by:

- updating Attachment 1.31 relating to the technical specifications for transmission at Winton of the open narrowcasting service. The updates include changing the antenna polarisation from vertical to mixed and increasing the maximum antenna height to 30 m.

### **Schedule 1 – Schedule One**

This Schedule contains the Schedule inserted into the Longreach LAP by paragraph 4(i). Other than modernisation of the Longreach LAP, the new Schedule One plans for the additional commercial radio broadcasting services at Aramac and Muttaborra provided under licence SL10223.

### **Schedule 2 - Attachment 1.1**

This Schedule contains the Attachment inserted into the Longreach LAP by paragraph 4(j) to modernise the licence area description including removing population figures.

### **Schedule 3–Attachment 1.22A**

This Schedule contains the Attachment inserted into the Longreach LAP by paragraph 4(ff) and details the technical specifications for commercial radio broadcasting service at Aramac provided under licence SL10223.

### **Schedule 4–Attachment 1.24A**

This Schedule contains the Attachment inserted into the Longreach LAP by paragraph 4(ii) and details the technical specifications for commercial radio broadcasting service at Muttaborra provided under licence SL10223.