

# Assessing and prioritising requests to vary radio licence area plans (LAPs) Policy guidelines

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# About this policy

This policy sets out the general approach of the Australian Communications and Media Authority (the ACMA) to varying analog radio licence area plans (LAPs). It is intended to assist parties requesting that the ACMA vary radio LAPs. The ACMA will consider the merits of a request to vary a LAP before deciding whether to **propose** such a variation and consult on it widely.

The approach in this policy reflects the ACMA's expectation that a LAP will remain in place for some time, and that the public (including relevant licence-holders) should not be unduly burdened by unnecessary proposed or actual changes to it.

The first part of this policy sets out what elements the ACMA considers when assessing if it will propose a radio LAP variation in response to a request. The second part outlines matters that are likely to influence the priority that the ACMA attaches to variations that it intends to propose.

## Contact information

Questions about this policy should be directed to:

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# Overview

## Licence area plans

The planning functions of the ACMA are set out in Part 3 of the *Broadcasting Services Act 1992* (the BSA). Under this Part, the ACMA prepares legislative instruments called licence area plans (LAPs) for analog radio that determine the number, category and characteristics of broadcasting services to be available in particular areas of Australia that use the broadcasting services bands.<sup>1,2</sup> The schedules to an analog radio LAP include:

- > the categories of service included in each LAP (that is, national, community, commercial or open narrowcasting radio)
- > the service licence number, which uniquely identifies each commercial and community service
- > the transmitter specification number, which uniquely identifies each transmitter required for the services
- > an attachment with the technical specifications for each transmitter
- > the general area served by each transmitter
- > the frequency for each service.

Initial preparation of radio licence area plans in Australia was completed in 2003.<sup>3</sup>

When considering whether to propose a draft variation to a LAP, the ACMA is not performing a function or exercising a power expressly provided for under the BSA, but is performing a function that is incidental or conducive to the performance of its functions under the BSA. Accordingly, the ACMA is acting under paragraph 10(1)(s) of the *Australian Communications and Media Authority Act 2005* (the ACMA Act). Section 12 of the ACMA Act makes it clear that the ACMA has the power to do all things necessary or convenient to be done in connection with this function (subject to certain limitations not relevant to requests to vary LAPs).

All LAPs can be found on the Federal Register of Legislative Instruments at [www.comlaw.gov.au](http://www.comlaw.gov.au) by searching for the relevant [licence area name](#) (for example, 'Licence Area Plan – Bendigo').

## The ACMA's discretionary power to vary LAPs

Subsection 26(2) of the BSA gives the ACMA a discretionary power to vary LAPs. There is no right to apply for a variation to a LAP; however, it is the ACMA's practice to consider certain requests that LAPs be varied. This policy sets out the framework for the ACMA's consideration of requests for variation to radio LAPs received from licensees or third parties. Initial consideration of requests to vary LAPs is conducted as part of the ACMA's incidental powers and functions under the ACMA Act (see above). The ACMA's planning functions in Part 3 of the BSA are not engaged unless or until it decides to propose a variation be made to the LAP, at which time the ACMA is obliged to engage in wide public consultation about the proposed variation.

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<sup>1</sup> The broadcasting services bands (BSBs) are designated by the minister and referred to the ACMA for planning. The BSB include the spectrum used for AM and FM radio, and VHF and UHF television).

<sup>2</sup> The ACMA also prepares digital radio channel plans (DRCPs) and television licence area plans (TLAPs). TLAPs are prepared under Part 3 of the BSA, and DRCPs under the *Radiocommunications Act 1992*. DRCPs must be consistent with relevant radio LAPs made under Part 3 of the BSA.

<sup>3</sup> Preparation of these LAPs involved wide public consultation, with draft LAPs released for comment and stakeholder submissions received and considered on each of them.

If the ACMA decides to propose a radio LAP variation, it usually prepares a draft LAP showing the proposed variation, and releases the draft for wide public consultation. The draft LAP is generally accompanied by a draft explanatory paper. The ACMA considers submissions received from stakeholders before making a final decision on whether it will vary the LAP.<sup>4</sup>

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<sup>4</sup> Subsection 27(1) of the BSA requires the ACMA to consult widely before varying a LAP. This obligation is consistent with the legislative character of the variation decision.

# Framework for assessing requested radio LAP variations

Generally speaking, the ACMA has a wide discretion in deciding whether there is a sufficient reason to propose a requested LAP variation. The objects of the BSA and the planning criteria relating to the ACMA's planning of the broadcasting services bands in Part 3 of the BSA guide its consideration of these matters.

The ACMA's framework for assessing whether it will propose a LAP variation in response to a request encompasses a number of elements. These include assessing the potential outcome of a requested variation in relation to:

- > legal and technical requirements
- > the objects in the BSA within the context of a number of demographic, economic, social and technical criteria
- > policy and/or technical issues as they relate to the legislative objectives.

Following is an outline of key elements of the ACMA's framework for assessing requested variations. Requests for variation that address these elements and make a convincing case for change are more likely to result in the ACMA deciding to propose a LAP variation.<sup>5</sup>

## Legal and technical requirements

Compliance with the technical specifications determined under a relevant LAP is required as a condition of a broadcaster's transmitter licences under paragraph 109(1)(d) of the *Radiocommunications Act 1992* (the RA). A requested variation to a LAP that would result in a service specified in a LAP not being able to comply with other relevant legal requirements will not be considered. Examples of legislative requirements that radio broadcasting services must comply with include:

- > Schedule 2 to the BSA, which sets out standard conditions with which licensees must comply. Part 4 of this Schedule relates to commercial radio broadcasting licences, Part 5 to community broadcasting licences and Part 7 to services provided under class licences.
- > *Broadcast Services (Technical Planning) Guidelines 2007*. The technical planning guidelines set out the technical conditions with which service providers must comply when planning their facilities.
- > The Radiocommunications Licence Conditions (Broadcasting Licence) Determination No. 1 of 1998, made under paragraph 107(1)(f) of the RA, which imposes additional licence conditions on broadcasting transmitter licences issued under section 100 of the RA including high-power open narrowcasting radio services (HPONs).

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<sup>5</sup> The ACMA acknowledges that the community broadcasting sector may be more limited in the information that it is able to provide. It will take this into account when requests are received from that sector.

Radio LAP variations also need to be consistent with necessary technical requirements for radio broadcasting services. Examples of variations that might be inconsistent with existing technical requirements include proposals to use:

- > A frequency outside the part of the broadcasting services bands that is specified for use for the type of service desired (AM radio 526.5–1606.5 kHz; FM radio 87.50–108.0 MHz).<sup>6</sup>
- > A frequency that is not consistent with the channelling arrangement for the band in question (AM radio—9 kHz multiples; FM radio—multiples of 200 kHz, which include 100 kHz offset to avoid interference).<sup>7</sup>
- > A set of technical specifications that would, or would be likely to, cause interference to other broadcasting or radiocommunication services.
- > A set of technical specifications that would result in an unacceptable level of exposure to electromagnetic energy (EME) to members of the public.

## Promoting relevant objects in the BSA

When making planning decisions under the BSA, the ACMA is to promote the objects as set out in section 3, including the economic and efficient use of the radiofrequency spectrum. In promoting these public interest objectives, the ACMA is to consider a number of planning criteria set out in section 23 of the BSA. Although initial consideration of requests to vary LAPs is not conducted under any express power in the BSA, the ACMA will first consider whether requested changes are likely to promote the objects of the BSA, and how such proposals might be assessed against the planning criteria in section 23 of the BSA.

Using the radiofrequency spectrum economically and efficiently means that it should not be planned in a wasteful way and that it should, as far as possible, be put to productive use. Examples of how the ACMA might promote this objective include planning measures that maximise spectrum productivity, and planning the correct number of broadcasting services—not more than are required. These types of factors will be taken into account when assessing the desirability of radio LAP variation requests.

The ACMA may be required to balance competing objects listed in section 3 of the BSA when making planning decisions. Examples of objects that are relevant to the ACMA's planning decisions, including those to vary radio LAPs, include:

- > promoting the availability to Australian audiences of a diverse range of radio and television services offering entertainment, education and information
- > providing a regulatory environment that will facilitate the development of a broadcasting industry in Australia that is efficient, competitive and responsive to audience needs
- > encouraging diversity in control of the more influential broadcasting services
- > promoting the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity
- > promoting the availability to Australian audiences of television and radio programs about matters of local significance
- > ensuring the maintenance and, where possible, the development of diversity, including public, community and Indigenous broadcasting as the Australian broadcasting system moves to digital broadcasting.

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<sup>6</sup> Specified in Part 3 (AM radio 526.5 – 1606.5 kHz) or Part 4 (FM radio 87.5 – 108 MHz) of the *Broadcast Services (Technical Planning) Guidelines 2007*.

<sup>7</sup> As described in Appendix 1 and 2 of the *Broadcast Services (Technical Planning) Guidelines 2007*.

The ACMA assesses how well a requested variation promotes the objects in section 3 of the BSA, while having regard to a range of planning criteria listed under section 23 of the BSA, including:

- > demographics
- > social and economic characteristics within the licence area, neighbouring licence areas and Australia generally
- > the number of existing broadcasting services and the demand for new broadcasting services within the licence area, neighbouring licence areas and Australia generally
- > developments in technology
- > technical restraints to the delivery or reception of broadcasting services
- > the demand for radiofrequency spectrum for services other than broadcasting services
- > such other matters as the ACMA considers relevant.

The objects and criteria are discussed in the ACMA's [Broadcasting Planning Manual](#).

## Policy and technical issues taken into account

The likelihood that a given variation would promote the objects of the BSA will depend on the details of the requested variation. Certain variations may generate tensions between the objects, and the ACMA will consider the competing objects when assessing these variation requests. Whether the ACMA is likely to consider proposing a radio LAP variation in these situations will depend on the relative importance of each object. General guidelines and policies that apply to radio LAPs can be found in the ACMA's [Broadcasting Planning Manual](#).

The ACMA has a number of policies for particular requests. Following are examples of requests that raise policy and/or technical issues when assessed against the objects of the BSA.

### 1. Requests to add new commercial or community radio services

The initial planning of radio licence areas across Australia was completed in 2003, leaving analog radio spectrum heavily congested, particularly in metropolitan and densely populated regional areas. Spectrum scarcity in these areas limits the ACMA's ability to plan new radio services.

The [Australian Communications and Media Authority \(Commercial Radio Broadcasting Services\) Direction \(No.1\) 2007](#) requires the ACMA to consider whether to vary a LAP in order to add one or more additional commercial radio services in circumstances where:

- > *either* a regional commercial radio licensee has not complied with certain local content obligations *or* there has been a change in control of a commercial radio licence
- > the format of the service has changed from one of broad general appeal to one of more limited appeal.

LAP variations are not required for new services licensed under section 40 of the BSA, as these services do not use the broadcasting services bands.

### 2. Requests to convert commercial AM services to FM services

The ACMA occasionally receives requests from AM commercial radio broadcasting licensees either to convert their services to FM or to use FM in-fill translators to improve the coverage of their AM services.

Converting AM radio services to FM services may confer a substantial benefit on the licensee and raise fairness issues for competing services. This is because FM radio

services are generally considered more profitable than AM services, since they provide much better sound quality and may be cheaper to install and operate. Competing FM commercial radio services are likely to have paid a premium in order to obtain the benefits of FM coverage.

There may also be circumstances where converting an AM service to FM disadvantages some listeners, because of the superior coverage area of the AM signal.

The ACMA will consider the merit of requests for AM to FM conversion or FM in-fill translators to improve the coverage of AM services on a case-by-case-basis. The ACMA has a preference for in-fill solutions that are tailored to addressing areas of poor or no AM reception, rather than substantially duplicating AM coverage. The ACMA may consider whether improved coverage could feasibly be achieved by modifying the AM transmission facility.

For more information about the ACMA's approach to AM to FM conversion, see [AM/FM conversion in LAP variations and the ACMA's approach to planning in-fill services](#).

### **3. Requests to vary the location or increase the power of high-power open narrowcasting (HPON) radio services, resulting in a larger coverage area**

The ACMA will generally not extend the defined coverage area of an HPON broadcasting licence because these are allocated on a competitive price basis at auction, with bids based on the defined coverage for the licence at the time. Extending the defined coverage of an HPON licence after its allocation at auction would not generally be appropriate as it may increase the perceived value of the licence. Other potential purchasers at the auction would not have been made aware of the potentially improved technical operating conditions.

For more information about the ACMA's approach to the coverage areas of open narrowcasting services, refer to [Broadcasting Planning Manual, Broadcast Planning Instruction No. 3: Planning of Open Narrowcasting Services](#).

### **4. Requests to vary licence areas for commercial radio broadcasting services**

The ACMA assumes that the licence areas of existing commercial broadcasting services using the broadcasting services bands represent accepted media markets. The ACMA will not vary them without good reason. One such good reason may exist where it is necessary to update them because boundaries are based on outdated census descriptions (see the [Record of advice and assumptions](#)).

### **5. Requests to vary licence areas for community radio broadcasting services**

There may be circumstances in which the ACMA would consider varying licence area boundaries of existing community broadcasting services. For such requests, the ACMA will as a general rule consider the following issues:

- > The relevance of the service to the community in the area proposed to be served. The ACMA would generally look for indications of local relevance to listeners in the area proposed to be served. On occasion, the ACMA has accepted that 'community interests' are not so narrowly geographically confined—for example, a radio service for the print handicapped that is targeted to an entire state.
- > Whether it is practical for community members in the area proposed to be served to participate in the provision of the service. The ACMA might consider the distance people in this area would need to travel in order to visit the station's studio, along with any other issue relevant to participation in the service.
- > Whether there are better options to improve the availability of community broadcasting services in the area. The size of the community and the feasibility of

establishing a more local service to serve the particular community of interest will be of particular relevance.

The relevance of these issues will depend on the local circumstances of a request. As a generalisation, however, the ACMA is likely to be well-disposed to a request to extend a community service into a neighbouring area where the small size of the population makes it unlikely that a more local community service would ever be viable. Conversely, it may refuse to consider a request to extend a community service into a large town or city that is a substantial distance from the station.

There may also be issues that the ACMA will need to consider in balancing the impact of such decisions. LAP variation requests that would significantly extend the licence area of a community service to include additional areas have the potential to bypass the licence allocation process. This may occur if—to improve the coverage and/or extend the licence area of an existing service—a planned but unallocated service is removed from an adjoining licence area or part of a wide coverage unallocated frequency for the same licence area is used, leaving a more limited frequency available for any future service.

Such outcomes favour the incumbent licensee requesting the variation, and may deny aspirant licensees the opportunity to apply for the licence of the removed service through a competitive allocation process, or to broadcast using the wide coverage frequency.

On a related issue, the ACMA expects that new community broadcasting services should have the same licence area as existing services in that licence area, unless there are good reasons to the contrary.

In determining a new licence area for a new community radio broadcasting service, or granting an extension to the licence area specified for an existing community radio broadcasting service, the ACMA will consider the criteria set out in Chapter 4(2) of its [General Approach to Analog Planning](#).

## **6. Requests to vary an unallocated community radio broadcasting service planned in a LAP**

The ACMA occasionally receives requests from temporary community broadcasting licensees to vary the technical specifications of a planned but unallocated long-term community radio service determined to be available in a licence area in a LAP. Examples include where the temporary licensee would prefer to serve a different coverage area or to use different technical characteristics than those shown in the LAP.

The ACMA's general policy is to not propose changes to the technical specifications of a broadcasting service planned in a LAP until the long-term broadcasting licence has been allocated. The LAP variation process is often costly and time-consuming, and, as long-term community broadcasting licences are advertised widely and allocated on a merits basis, the temporary community broadcasting licensee requesting the change may not end up being the successful applicant for the long-term broadcasting service. The ACMA will consider exceptional circumstances; for example, where the specifications in the LAP would disadvantage the temporary broadcaster in applying for the long-term licence and there is little likelihood another group might emerge to apply for it.

## **7. Requests to vary a LAP to eliminate interference to fortuitous reception of a service (reception of distant signals of a radio service outside its licence area)**

Given the potential impact on spectrum availability and the need to ensure efficient use of the radiofrequency spectrum, the ACMA does not afford services with fortuitous reception the right of protection from interference. For more information, see [Broadcasting Planning Manual, Broadcast Planning Instruction No. 11: Fortuitous reception of radio and TV broadcasting services](#).

## **8. Requests to vary the characteristics of an existing radio service that would result in excessive signal overspill or the location of a transmitter site outside the licence area**

Commercial and community broadcasting services are licensed to serve specific geographic areas, referred to as 'licence areas'.

Transmissions outside a licensee's licence area must only be incidental to what is technically necessary to provide an adequate signal to that licence area, unless another exception applies (for example, see clause 8(3) of Schedule 2 to the BSA). The [Broadcasting Services \(Technical Planning\) Guidelines 2007](#) set out the maximum median field strength that a licensee must not exceed for transmissions in any urban centre beyond the licence area boundary (paragraphs 25, 26, 46, 47) for a transmitter sited at a location other than the nominal location. They also require the transmitter site to be located within the licence area of the related licence, unless otherwise stated in the technical specifications of the LAP (paragraph 33).

In considering requests that would result in significant overspill, the ACMA takes account of whether the population that would be covered fortuitously with a usable radio signal is wholly disproportionate to the population that is ostensibly being served within the licence area. In this situation, there is likely to be a commercial incentive created to serve the interests and needs of the fortuitous audience in preference to the audience in the 'planned' licence area.

## **9. Requests to vary specifications for existing radio services from parties other than the licensees of those radio services**

The ACMA sometimes receives requests from parties other than the relevant licensee to extend the coverage or licence area of a service, or to add new services to a licence area. Although it would be possible for the ACMA to vary a radio LAP to extend the coverage or licence area of a service, including planning a translator, the licensee is not compelled to provide the extended service. The ACMA is more likely to consider requests to vary the technical specifications of an existing broadcasting service when they come from or are fully supported by the licensee of that broadcasting service and likely to be utilised by the existing licensee.

Similarly, requests to make additional broadcasting licences available for allocation in an area will be more likely to be progressed if they are made by groups or individuals with an interest in being allocated the licence to operate the service, and who are likely to be in a position to provide such a service.

On a related issue, the ACMA will not generally propose third-party requests for LAP variations that would reduce the licence area or coverage area of an existing service. Nor would it generally do so at the request of the licensee itself, as the broadcasting licence conditions provide some latitude to licensees to switch off unwanted infill translators or reduce the power of main transmitters at their own discretion, without variation of the relevant LAP.

## Providing sufficient information

Before the ACMA can properly assess a request to vary a radio LAP, a requester must provide sufficient detail of their proposal. Importantly, the ACMA expects that this request will be evidence-based and include relevant supporting information about the requested variation. [ACMA Form B92](#)—Request to vary a licence area plan—radio (with guidance notes) helps requesters to provide such information.<sup>8</sup>

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<sup>8</sup> This form applies to requests received after the commencement of this policy statement.

# Framework for prioritising requested radio LAP variations

If the ACMA intends to propose that a requested variation to a LAP be made, it will be prioritised to ensure it is dealt with in an appropriately timely manner, taking into account the matters listed below.

The ACMA will assess the priority of each proposed variation on a case-by-case basis according to the prioritising issues most relevant to it (see below). For example, it is usually more administratively and technically efficient to include all proposed variations to a particular LAP in a single process. The order of priority attached to variations will be reviewed regularly to ensure that it remains relevant.

Individual requesters may also wish to comment on the priority that they consider is appropriate for the variation that they have requested; for example, by submitting evidence about the urgency of the proposed variation.

Requesters should note that the process for proposing a radio LAP variation involves extensive public consultation and takes account of stakeholder submissions.

The following list is of matters that the ACMA may consider when prioritising requests to vary radio LAPs. The list is not exhaustive and the ACMA may consider other issues when attaching a priority to a particular variation.

## **1. The extent to which the objects of the BSA are likely to be promoted by the variation**

As discussed in the framework for assessing requests, the ACMA will consider undertaking radio LAP variations that, on balance, promote the objects of the BSA. The priority given to a particular variation, however, will be influenced by the *extent* to which it promotes these objects. Generally speaking, the greater the benefits generated by a proposed variation for the public within the licence area served by a licensee (or, in the case of an open narrowcasting service, within the specified coverage area of the service), the more likely the ACMA is to give the request a higher priority.

## **2. Circumstances influencing the urgency of variations**

Examples of the types of variations that have particular urgency include those necessary to ensure the continued availability of a service or for the extension of a national, commercial or community broadcasting service to an audience relying on it for community information, especially emergency alert announcements. Examples of events causing the need for these types of variations include:

- > broadcasters being forced to move from a transmitter site
- > changed council boundaries requiring the coverage area of a community broadcasting service to be extended to ensure community service announcements reach the population of the area.

## **3. The date of receipt of the variation request**

The ACMA will consider the date it received the variation request when considering the priority of a proposed variation.

## **4. The date of the event said to require the variation**

If the requested variation is made well after the date of the event that is said to have necessitated the request, it is likely that this request will be given a lower priority (unless the requester submits evidence to the contrary). This is because a lengthy

period of time between the request and the event in question suggests that the variation is not urgent.

**5. Variations that relate to a LAP that the ACMA is in the process of varying**

It is often more administratively and technically efficient to consider all variations associated with a particular LAP at the same time. This allows for technical outcomes to be developed that will accommodate a number of different variations that may have been requested, maximising efficiency. On the other hand, if the ACMA has recently varied a particular LAP, it is less likely to consider varying that LAP again in the near term.

**6. Extent of information provided in support of the request**

As discussed in the framework for assessing requests, the ACMA requires sufficient information to assess a request. The priority of a request may also be influenced by the extent of information provided, including technical details that would help the ACMA to undertake the proposed variation.