



COMMUNITY
BROADCASTING
ASSOCIATION OF
AUSTRALIA

Broadcasting Services Determination Deemed Digital Radio Licence Areas

Community Broadcasting Association of Australia
Comments in relation to the ACMA consultation paper
Remake of the Broadcasting Services (Deemed Digital Radio Areas)
Determination 2007 and deeming additional licence areas
in Canberra and Darwin

NOVEMBER 2017

1. Introduction

- 1.1 On 1 November 2017, the Community Broadcasting Association of Australia (CBAA) received a letter and copy of a draft Determination proposed to be made under subsection 8AD(3) of the *Broadcasting Services Act 1992*, entitled *Broadcasting Services (Deemed Digital Radio Licence Areas) Determination 2017*.
- 1.2 The letter and draft Determination were accompanied by a Consultation Paper entitled *Automatic sunseting of legislative instruments Proposal to remake the Broadcasting Services (Deemed Digital Radio Licence Areas) Determination 2007 and deeming additional licence areas for community digital radio broadcasting services for Canberra and Darwin, October 2017*.
- 1.3 The consultation paper provides background to the deeming process, the situation of previous and existing deemed areas, and consideration of the community broadcasting licence areas proposed to be deemed in Canberra and Darwin.
- 1.4 The consultation paper and the draft Determination were circulated by the ACMA to all licensees operating services within or overlapping the Canberra RA1 and Darwin RA1 Licence Areas, as well as to the licensees of print handicapped stations 2RPH and 3RPH, as the licensees of existing services that have been previously deemed by way of the ACMA Determination made in 2007: NSW Community RA1 to be same as Sydney RA1, and Victorian Community RA1 to be the same as Melbourne RA1.¹
- 1.5 The CBAA has itself also circulated and brought the draft Determination and consultation paper to the attention of the community radio broadcasting licensees operating services within or overlapping the Canberra RA1 and Darwin RA1 Licence Areas, as well as to the licensees of 2RPH and 3RPH.
- 1.6 The consultation paper invited comments on the proposed 2017 Determination by COB 9 November 2017, noting that the timeframe requires a very fast turnaround.
- 1.7 The ACMA has advised that the short timeframe for consultation is related to ACMA plans to invite applications for the Foundation category 1 digital radio multiplex transmitter (DRMT) licences in Canberra and Darwin on 20 November 2017.
- 1.8 The category 1 DRMT licence is for transmitting commercial and community radio services. The ACMA is moving forward to extend permanent licensing of digital radio in Canberra and Darwin.
- 1.9 A category 3 DRMT licence has already been issued to enable permanent broadcasts by the ABC and SBS in these areas.
- 1.10 In order for incumbent community radio broadcasting licensees to sign a joint written notice and to be eligible to subscribe for shares in a digital community radio representative company each licensee's Licence Area must be the same as the relevant commercial licence area, or be deemed to be the same.
- 1.11 The CBAA notes and agrees that settling the deeming of community licences as soon as possible will provide certainty for community broadcasting licensees in relation to participation in the formation of the digital community radio broadcasting representative companies.
- 1.12 While the turnaround time for comments on the consultation paper is very fast, the CBAA nevertheless appreciates the opportunity to make comment.
- 1.13 Given the short timeframe for consultation, the ACMA may wish to have regard to comments made by community radio licensees that are directly affected by the Determination, even if those comments were to arrive subsequent to 9 November 2017.
- 1.14 It should be noted that, as a general principle in seeking comments, not-for-profit community licensees require a longer timeframe for Board consultation and consideration.

¹ Note that by way of subsection 8AD(2) of the *Broadcasting Services Act 1992* the licence areas Hobart RA2 and Hobart RA4 are taken to be the same as the commercial radio broadcasting licence area in which is situated the General Post Office of Hobart

2. Background to Planning Digital Radio

- 2.1 The consultation paper provides an overview of the legislative framework and planning regime for digital radio and how it differs from analogue radio.
- 2.2 Analogue radio requires an individual transmitter for each service whereas DAB+ digital radio combines services from a number of broadcasting licensees into a multiplex, which is transmitted over a Digital Radio Multiplex Transmitter (DRMT), licensed separately.
- 2.3 The Radiocommunications Act 1992 provides that a certain amount of gross multiplex capacity be reserved for designated community radio broadcasting licensees.
- 2.4 A designated community radio broadcasting licensee has the same licence area as the relevant commercial broadcasting licence area in which digital radio is to commence.
- 2.5 Under section 8AD of the Broadcasting Services Act 1992 (BSA) a broadcasting licence area is able to be deemed as being the same as the relevant commercial broadcasting licence area for the purposes of digital radio.
- 2.6 Under subsection 8AD(3) of the BSA the ACMA may, by legislative instrument, determine that a community radio broadcasting licence is deemed as being the same as the relevant commercial broadcasting licence area for the purposes of digital radio.
- 2.7 The current legislative and planning framework contemplates only the initial phase of digital radio, where licensing and planning is based on commercial radio broadcasting Licence Areas.
- 2.8 The ACMA consultation paper has noted that in the initial phase of digital radio introduction only 'wide-area' community licensees were able to participate in digital radio. In part, this reflected the fact that in the major cities even with two DRMT licenses, the total capacity reserved for community broadcasters was insufficient to accommodate all community broadcasting licensees.
- 2.9 The consultation paper notes that, while the situation of sub-metropolitan services in the major cities sits outside of the initial legislative and planning framework, the situation in regional areas is a more complex setting.
- 2.10 The consultation paper also notes that in many regional areas there will be community radio services whose relationship to the commercial radio Licence Area does not clearly fit into either 'metro' or 'sub-metro' models found in the major cities and that this will require judgement calls to be made at the appropriate time.
- 2.11 The CBAA agrees with this summary analysis and also agrees with the ACMA proposal to consider deeming in regional areas on a case-by-case basis.
- 2.12 While the ACMA consultation paper and the current comments by the CBAA deal specifically with Canberra and Darwin, there are some general points to be made and there will be further issues to consider in regional planning for community digital services.
- 2.13 Unlike allocation such as Canberra, where there will be 5 designated community radio broadcasting services many regional locations will have a number of key community radio services that function as subsets of the commercial radio licence area, or may sit outside of and/or overlap with one or more commercial licence areas.
- 2.14 These services, which are likely to be the only community radio services in the area, will require different considerations in terms of digital radio planning and may result in a different set of comments by the CBAA to those related to Canberra and Darwin.

3. Future pathways beyond the initial phase

- 3.1 The ACMA consultation paper notes that the concept of 'wide-coverage' stations as being the only stations able to participate in digital radio has been a feature of the initial phase of digital radio introduction.
- 3.2 As noted, the current legislative and planning framework contemplates only the initial phase of digital radio, where licensing and planning is based on commercial radio broadcasting Licence Areas.
- 3.3 While the concept may have merit in terms of the initial phase, it is now timely for this to be re-visited.
- 3.4 Planning for digital radio is now well advanced and, in due course, there will be a full national frequency allocation and allotment plan agreed by industry and the ACMA.
- 3.5 There is now scope for the ACMA to timetable the exploration of further services within the same overall frequency allocation. This will lead to an increase in services and further efficient use of spectrum.
- 3.6 The ACMA is currently in the late stages of finalising a national allotment plan. This substantial amount of work will enable further allocations and digital radio channel plans to be published as and when digital radio services are rolled out to further regional areas across Australia. This region-by-region approach to planning across the nation was undertaken in order to give greater certainty to allocations.
- 3.7 Armed with this forward planning data, it is possible for allocations to be made in further areas of Australia with greater certainty and in doing so, there will be little chance of subverting the future implementation of further services in other adjacent licence areas. The CBAA has supported this approach as being fair and equitable insofar as it ensures a pathway for services that are able to take up digital radio.
- 3.8 Now that this work is near to mature, the CBAA believes there is scope for the ACMA to consider, on a case-by-case basis, the provision of spectrum for the trial of low(er) power limited coverage digital radio services.
- 3.9 It seems reasonable to expect there will be cases where spectrum allocated (or notionally allocated) in respect of a commercial Licence Area may be efficiently and judiciously re-used in an area outside of that intended Licence Area, so long as it is used on a low power and limited coverage basis.
- 3.10 There would seem to be little cause for concern at such frequency re-use. In fact, if there were fortuitous reception of out-of-area signals from an adjacent or second adjacent Licence Area due to overspill, the introduction of low power limited coverage services would act to prevent such reception: an outcome that may well be favoured by commercial licensees in the overspill area.
- 3.11 The introduction of this new layer of small-scale services sits outside of the current legislative framework that is in place for the initial phase of digital radio. The CBAA is not suggesting replacing that framework, but is suggesting that there be an additional scope added to the legislative framework to at least enable services to be implemented, on a case-by-case basis, in sub-set areas of commercial Licence Areas and also in areas of (regional) Australia where there is, in fact, no commercial radio Licence Area and so a logical gap in the current legislative framework.
- 3.12 Ahead of this legislative and policy development work, it seems reasonable that the ACMA consider authorising trial licensing of small-scale digital radio licences where there is demonstrated interest and wherewithal. The CBAA can envisage potential interest in remote, sub-metropolitan and some otherwise under-served regional and rural areas.
- 3.13 It is also true that not all areas may fit well with a digital radio (DAB+) solution. The CBAA supports DAB+ as the mainstay radio digitisation solution for delivery of live radio services. A key feature is that the resulting radio service is freely available.
- 3.14 The CBAA also supports the complementary use of online/mobile delivery as a potential solution for radio digitisation in areas that have low population densities, are hyper-local or for service with highly targeted objectives, provided this is paired with legislation ensuring licensed radio services are zero-rated, and so akin to being freely available.

4. Existing deemed licence areas unchanged

- 4.1 The CBAA endorses the retention of deeming of Licence Areas in the 2017 Determination that were previously deemed in the 2007 Determination.
- 4.2 It is understood that the need to remake the 2007 Determination is due to over-arching provision of the Legislation Act 2003 that requires that most legislative instruments are repealed on the tenth anniversary of those registration, in this case the 2007 Determination is due to sunset on 1 April 2018.
- 4.3 The intent of the deeming decisions that led to the 2007 Determination was surely that the affected Licence Areas would be deemed in perpetuity. There is no sense of time limitation stated or implied by section 8AD of the Broadcasting Services Act 1992.
- 4.4 This is especially relevant, given the implications of deeming include enabling eligibility for shareholding and commitment to the Digital Representative Company, and a commitment to participate and invest in use of digital radio multiplex capacity.
- 4.5 It is appreciated that the ACMA may well have attempted to have the Determination to be considered evergreen and that, as a general statement irrespective of broadcasting issues, obtaining that status for legislative instruments may be a challenge akin to the metaphorical camel passing through the eye of a needle.
- 4.6 So, the CBAA considers the remake of the 2007 Determination a procedural matter necessary to preserve the long-term intention of the 2007 Determination and fully supports the on-going Determination that:
- o NSW Community RA1 be deemed to be the same as Sydney RA1; and
 - o Victorian Community RA1 be deemed to be the same as Melbourne RA1
- for the purposes of digital radio.
- 4.7 In effect this affects the licensees of services of print handicapped radio reading services 2RPH and 3RPH and ensures their continued equivalent status as designated licensees in respect of the DRMT licences in Sydney and Melbourne respectively.

5. Deeming of services in Darwin

Darwin RA2

- 5.1 The consultation paper outlines the history of the Darwin RA1 Licence Area as reflecting the service area of the former 8DN AM commercial Service, surrendered in 1992.
- 5.2 The current two commercial licensees, 8HOT and 8MIX, are planned in FM and planned to cover an area coextensive with Darwin RA2.
- 5.3 The consultation paper notes that the Darwin RA2 lies within Darwin RA1 and covers the Darwin municipality and Palmerston municipality. It covers 4% of the Darwin RA1 geographical area and 60% of its population.
- 5.4 Given that the existing commercial licensees are in fact not planned in a way that achieves coverage of the Darwin RA1 but are instead planned to cover the area coextensive with Darwin RA2, it follows that the two community licensees with the Darwin RA2 Licence Area match the commercial services in terms of coverage.
- 5.5 The CBAA therefore fully supports the ACMA proposal that the 2017 Determination include an additional Determination that:
- o Darwin RA2 be deemed to be the same as Darwin RA1
- for the purposes of digital radio.
- 5.6 In effect this affects the services of the Religious-Christian community licensee, 8GGG, and of the Indigenous community licensee, 8KNB and ensures their equivalent status as designated licensees in respect of the DRMT licences in Darwin.

Darwin RA3

- 5.7 The consultation paper notes that the Darwin RA3 Licence Area covers the same area as Darwin RA2 with the addition of the regional areas of Adelaide River, Batchelor, Jabiru and Lake Bennett.
- 5.8 The regional areas of Adelaide River, Batchelor and Lake Bennett fall with the Darwin RA1 Licence Area, Jabiru sits outside.
- 5.9 It follows that the one community licensee with the Darwin RA3 Licence Area has coverage that matches or improves upon the commercial services in terms of coverage.
- 5.10 The CBAA therefore fully supports the ACMA proposal that the 2017 Determination include an additional Determination that:
- o Darwin RA3 be deemed to be the same as Darwin RA1
- for the purposes of digital radio.
- 5.11 In effect this affects the services of the General community licensee, 8TFM and ensures their equivalent status as a designated licensee in respect of the DRMT licences in Darwin.
- 5.12 The CBAA would add that, given there is existing coverage that sits outside of the Darwin RA1 that future consideration might be given to varying the Darwin RA1 Licence Area to include those areas.
- 5.13 The CBAA also notes that the Darwin RA3 licensee currently operates multiple FM transmitters across Darwin RA3.
- 5.14 While it is not currently contemplated, it may be that there is a future case for in-fill transmitters to support improved coverage for the Darwin digital service.
- 5.15 The CBAA again makes the case that it ought be open for (third) parties apart from the DRMT licensee, but, of course, under agreement and co-ordination with the DRMT licensee, to be able initiate the implementation and operation of transmitter for in-fill or extension or re-transmission coverage, especially in cases where the coverage is not coincident with the main site coverage.

Katherine RA3

- 5.16 The Darwin RA1 Licence Area includes a discrete area that covers the Katherine community.
- 5.17 While Katherine sits within the Darwin RA1 there is no current imperative from the Darwin commercial licensees to extend digital radio transmissions to the Katherine area.
- 5.18 There is also a distinct Katherine RA1 Licence Area separate to the commercial Darwin RA1 Katherine area. The Katherine RA1 has two planned community licenses, 8KTR which is in operation on FM, and a second that has not been allocated.
- 5.19 The ACMA proposal is not to deem Katherine RA1 to be the same as Darwin RA1 for the purposes of digital radio.
- 5.20 While the CBAA can understand the reasons for the ACMA proposal, this does leave the question as to what will be the future pathway for radio digitisation for Katherine community radio.
- 5.21 If at a future time there is a commercial decision is to extend the Darwin RA1 services to Katherine, then the CBAA would expect the ACMA to consider the situation of the Katherine RA1 community licensee/s.
- 5.22 Future options might include offering a new digital only licence within Darwin RA1 for the Katherine area. This may be awkward.
- 5.23 Another option may be that a stand-alone small-scale limited coverage digital service be implemented in Katherine. This would require either trial licensing or legislative change and is discussed elsewhere.
- 5.24 The further option for a small population area may be an alternate technology and legislative solution for digitisation of licensed radio services, such as online/mobile delivery paired with legislated zero-rating, also discussed elsewhere.

Arnhem Land RA1

- 5.25 The ACMA planned an Arnhem Land RA1 Licence in response to interest by Aboriginal Resource and Development Services Inc (ARDS) in providing a community broadcasting service in the Yolngu Matha language.
- 5.26 The service was planned in AM. However, ARDS has been operating since 2013 under a temporary community broadcasting licence using VHF FM spectrum.
- 5.27 Arnhem Land RA1 Licence Area is a non-contiguous Licence Area. It overlaps with the Darwin RA1 by 15% if measured by geography, including the Darwin metropolitan area.
- 5.28 If measured by population the Arnhem Land RA1 overlaps the Darwin RA1 by 83%.
- 5.29 As the issue of long term licence it is likely to be well after the Darwin RA1 digital start up day, it is not open to the ACMA to consider this matter in the context of a deeming determination.
- 5.30 However, the CBAA notes that, under subsection 84A(3) of the Broadcasting Services Act 1992, if after digital radio start up day the ACMA allocates a community broadcasting licence, the licence must be allocated as:
- o a licence to provide an analogue community radio broadcasting service; or
 - o a licence to provide a digital community radio broadcasting service,
- with nothing to prevent both analogue and digital licences being provided concurrently should that be appropriate.
- 5.31 Therefore, it is open to the ACMA to subsequently consider the options as part of future planning.
- 5.32 Taking into account the 83% population, the case for a digital licence will be compelling, even if it sits alongside or is augmented by analogue licences that enable analogue transmission in the same or other geographic areas.
- 5.33 Those areas in the Arnhem RA1 Licence area but outside of the Darwin RA1 may be candidates for a stand-alone digital services and/or online mobile paired with zero-rating, as discussed elsewhere.
- 5.34 The CBAA considers, in the interim period, ahead of the allocation of a community broadcasting licence across the Arnhem Land RA1 licence area, that the ACMA might view the Yolngu Matha language service as entirely appropriate as a content service provider, should one of the existing Darwin community broadcasting licensees (then) operating on digital radio agree and/or wish to embrace them as part of its suite of services and within the available multiplex capacity reserved for community broadcasting.

Darwin RA1 - planned but not yet allocated

- 5.35 The consultation paper references the planned but as yet not allocated community radio broadcasting licence for Darwin, and that it will be for the Darwin RA1 Licence Area.
- 5.36 As the licence is to have a Darwin RA1 Licence Area, there is no need for any deeming determination to be considered.
- 5.37 The consultation paper states that the licence is intended to come into force before the Darwin RA1 digital radio start up day and that the ACMA will authorise the licensee to provide both an analogue and – from digital radio start up day – one or more community digital radio broadcasting services. It would also be open to the ACMA to licence with the above outcomes after the digital radio start up day.
- 5.38 The CBAA therefore supports the proposals and outcomes outlined in the consultation paper in relation to the planned Darwin RA1 licence, notes there is no need for deeming, and that the result will be further community radio services to be carried within the available multiplex capacity reserved for community broadcasting.

6. Deeming of services in Canberra

Canberra RA1

- 6.1 The consultation paper outlines licence planning for Canberra, noting that there 4 commercial radio broadcasting licences planned for the Canberra RA1 Licence Area, with callsigns 2CA, 2CC, 2ROC and 1CBR.
- 6.2 There are also 4 community radio broadcasting licences planned in Canberra RA1, with callsigns 1XXR, 1ART, 1CMS and 1WAY.
- 6.3 As these 4 community licences have a Canberra RA1 Licence Area these licensees are designated community radio broadcasting licensees as defined in the Radiocommunications Act 1992 and there is no need for any deeming determination to be considered.
- 6.4 In effect their existing licenced status results in eligibility of the General community licensee (2XX) 1XXR, the Arts and Music community licensee (Artsound) 1ART, the Ethnic community licensee (Ethnic Broadcasters Council) 1CMS, and the Religious-Christian community licensee (Canberra Christian Radio) 1WAY to participate in digital radio in Canberra.

Canberra RA2

- 6.5 The consultation paper notes that the Canberra RA2 Licence area is coextensive with the Canberra RA1 Licence Area with the addition of the town of Wagga Wagga.
- 6.6 The one community licensee with the Canberra RA2 Licence Area has coverage which matches or exceeds the commercial radio services in the Canberra RA1 Licence Area.
- 6.7 The CBAA therefore fully supports the ACMA proposal that the 2017 Determination include an additional Determination that:
 - o Canberra RA2 be deemed to be the same as Canberra RA1 for the purposes of digital radio.
- 6.8 In effect this affects the service of the Print Handicapped community licensee, 1RPH and ensures their equivalent status as a designated licensee in respect of the DRMT licences in Canberra.
- 6.9 The CBAA notes that the IRA2 Licence Area for 1RPH adds coverage the town of Wagga Wagga to the coverage of Canberra.
- 6.10 Therefore, as and when digital radio services are contemplated for Wagga Wagga, the ACMA will need to ensure there is positive consideration given to deeming 1RPH a second time, to ensure inclusion in Wagga Wagga digital radio.
- 6.11 This highlights another aspect of where the current adherence to digital radio planning and licensing based solely on historic commercial licence areas can result in outcomes at odds with best efficiency and appropriate service outcomes.

Queanbeyan RA1, Yass RA1 and Tuggeranong RA1

- 6.12 The consultation paper notes that the licences areas Queanbeyan RA1, Yass RA1 and Tuggeranong RA1 overlap with Canberra RA1 or, in the case of Tuggeranong, are a subset.
- 6.13 The ACMA considers these three services as local coverage services, planned for a specific geographic area. The community of interest is described as general to each geographic area, with no over-arching other community of interest.
- 6.14 The ACMA does not propose to deem these licence areas to be the same as Canberra RA1 for the purposes of digital radio.
- 6.15 While the CBAA can understand the reasons for the ACMA proposal, this does leave the question as to what will be the future pathway for radio digitisation for these localised community services.
- 6.16 Stand-alone small-scale limited coverage digital services are an option to consider. This would require either trial licensing or legislative change and is discussed elsewhere.
- 6.17 Another option at some future stage, may be for the ACMA to consider licensing further community digital radio only services in the Canberra RA1.

A further option for small population and/or target areas may be an alternate technology and legislative solution for digitisation of licensed radio services, such as online/mobile delivery paired with legislated zero-rating, also discussed elsewhere.