

EXPLANATORY STATEMENT

Radiocommunications Act 1992

Acts Interpretation Act 1901

Radiocommunications (Spectrum Designation) Notice No. 1 of 1996* *Instrument of Revocation No. 1 of 2010

Issued by the authority of the Minister for Broadband, Communications
and the Digital Economy

OVERVIEW

Background

The *Radiocommunications (Spectrum Designation) Notice No. 1 of 1996* (the Designation Notice), made on 16 May 1996 by the then Minister for Communications and the Arts under subsection 36(1) of the *Radiocommunications Act 1992* (the Act), designated the following parts of the spectrum to be allocated by issuing spectrum licences:

- (a) 0.40000 MHz in the frequency band between 500.99375 MHz and 501.39375 MHz throughout Australia;
- (b) 3.60000 MHz in the frequency band between 501.39375 MHz and 504.99375 MHz in specified parts of Australia;
- (c) 0.40000 MHz in the frequency band between 510.99375 MHz and 511.39375 MHz throughout Australia; and
- (d) 3.60000 MHz in the frequency band between 511.39375 MHz and 514.99375 MHz in specified parts of Australia.

On 22 June 1999, the then Minister gave notice to the Australian Communications Authority (the predecessor of the Australian Communications and Media Authority) of a modification to some of the coordinates given under the Designation notice, under the *Radiocommunications (Spectrum Designation) Notice No.1 of 1996 (Amendment No.1 of 1999)* of minor variations to coordinates.

The spectrum licences issued in the designated segments in the frequency ranges 500.99375 - 504.99375 MHz and 510.99375 - 514.99375 MHz (the 500 MHz band) expire on 31 May 2012.

Review of the 403 -520 MHz bands

The Australian Communications and Media Authority (ACMA) has undertaken a review of the 403-520 MHz band (the 400 MHz band).

On 18 April 2008 the ACMA released the discussion paper, *Spectrum Options: 403-520 MHz- Initial consultation on future arrangements for the 400 MHz band*

(The Options Paper). This was the first formal step in a review of spectrum management arrangements in the 400 MHz band. The purpose of the discussion paper was to stimulate discussion and gather information from stakeholders to assist the ACMA to develop future arrangements. The 400 MHz band is predominantly used by the land mobile service, but also accommodates other services, including the fixed (point-to-point and point-to-multipoint), radiolocation and amateur services. Seventy five responses were received to the Options Paper—all but one confidential submission are available on the ACMA's website.

On 2 April 2009, the ACMA released the discussion paper, *Spectrum Options 403–520 MHz – Proposals for future arrangements in the 400 MHz band* (The Proposals Paper). This paper, inter alia, discussed the impending expiry of the 500 MHz spectrum licences and sought comment on proposals for the future of these licences. This consultation satisfied the requirements of subsections 36(3) and (4) of the Act; that is, the ACMA may make recommendations to the Minister for Broadband, Communications and the Digital Economy (the Minister) proposing such a revocation, but only after giving members of the public reasonable opportunity to make representations to the ACMA about such a recommendation.

In addition to that consultation, the ACMA approached all 500 MHz band spectrum licence holders, seeking their views on the future of the spectrum licences.

In summary, of those affected licensees that chose to speak with the ACMA, few sought continuation of spectrum licensing in the 500 MHz band. Many of the spectrum licences allotted in the 500 MHz band do not appear to be as heavily used as adjacent spectrum and all licensees that do have significant numbers of registered devices expressed a preference to move to an apparatus licensing arrangements.

Based on the series of public consultations undertaken, the ACMA formed the view that the existing spectrum licences in force in the 500 MHz band should be allowed to expire and upon expiration of such licences, the 500 MHz band should no longer be designated for the issuing of spectrum licences, but should revert to allocation via the issue of apparatus licences.

On 30 April 2010, the ACMA made public its recommendation regarding the reversion of the 500 MHz band to allocation via the issue of apparatus licences in *The Way Ahead- Decisions and Implementation Options for the 400 MHz Band*. The spectrum licences in the 500 MHz band were the first to be allocated and are due to expire on 31 May 2012. After public consultation, the ACMA has determined that neither the design of the spectrum licences, nor the associated technical frameworks, favour the types of services which are most likely to use this frequency band.

As a result, the 500 MHz band has been used sparsely and has not been as successful as spectrum licensing in other bands. Both the ACMA and stakeholders

agree that reverting to apparatus licences would likely increase interest in the 500 MHz band.

In accordance with section 36(3) of the Act, on 29 April 2010, the ACMA recommended to the Minister that the Designation Notice be revoked.

Access to the 500 MHz band is also essential to the successful transition of other services in the implementation of the other outcomes of the 400 MHz band review. Without access to spare frequency in the 500 MHz band initiatives such as the harmonisation of the government band will be delayed. This is because sparse use of the 500 MHz band to date has resulted in vacant spectrum which the ACMA now requires, in order to relocate some services being moved out of other parts of the 400 MHz band.

The new arrangements proposed by the ACMA for the 500 MHz band would not require any incumbents to leave the 500 MHz band prior the expiry of the current Designation Notice in May 2012. Rather, the ACMA will develop a process to give existing spectrum licensees priority in the allocation of new apparatus licences.

Existing spectrum licensees will be offered the opportunity to take out a 12.5 kHz bandwidth apparatus licence to replace each of their existing spectrum licence device registrations. The ACMA is proposing licence fees which would be consistent with the rest of the 400 MHz band.

The ACMA further proposes that remaining spectrum should next be made available to users transitioning due to other changes in the 400 MHz band.

NOTES ON CLAUSES

Clause 1 – Name of instrument

Clause 1 provides that the name of the Instrument is the *Radiocommunications (Spectrum Designation) Notice No. 1 of 1996 Instrument of Revocation No. 1 of 2010*.

Clause 2 - Commencement

Clause 2 provides that the revocation instrument commences on 1 June 2012, being the day after all spectrum licences issued in the 500 MHz band expire.

Clause 3 – Revocation

Clause 3 provides for the revocation of the *Radiocommunications (Spectrum Designation) Notice No. 1 of 1996*.

Clause 4 - Expiry

Clause 4 provides that the revocation instrument expires on the day after it commences. By operation of sections 8B of the *Acts Interpretation Act 1901* and section 13 of the *Legislative Instruments Act 2003*, an expired instrument is taken to be repealed.

The revocation may not operate to reduce the spectrum currently being used under existing spectrum licences in the bandwidth which was designated under the original notice. Accordingly, the instrument commences on 1 June 2012 as the current spectrum licences in the 500 MHz band are valid until 31 May 2012.