

EXPLANATORY STATEMENT

Radiocommunications (Class of Services) Determination 2012

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

Purpose

The Radiocommunications (Class of Services) Determination 2012 (the **Determination**) is made under subsection 82(3) of the *Radiocommunications Act 1992* (the **Act**).

Subsection 82(3) of the Act permits the Minister to determine, by written instrument, a specified class of services for which re-issuing spectrum licences to the same licensees would be in the public interest.

Subsection 82(4) provides that a determination made under subsection 82(3) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the determination.

The Determination enables the Australian Communications and Media Authority (the **ACMA**) to re-issue a spectrum licence to the person to whom it was previously issued, without following the procedures determined under section 60 of the Act (as they apply because of section 80 of the Act), if the licence was used in the provision of a service included in a class of services specified in the Determination (subsection 82(1) refers).

Background

In 2009, the Department of Broadband, Communications and the Digital Economy (the **Department**) released a public discussion paper proposing a set of public interest criteria relevant to spectrum licence renewal and the exercise of the Minister's powers. These public interest criteria were:

- promoting the highest value use for spectrum;
- investment and innovation;
- competition;
- consumer convenience; and
- determining an appropriate rate of return to the community.

Submissions to the discussion paper strongly supported these five public interest criteria.

On 4 March 2010, the Minister for Broadband, Communications and the Digital Economy, Senator the Hon Stephen Conroy (the **Minister**), announced the Australian Government's approach to the re-issue of certain 15-year radio frequency spectrum licences (**Spectrum Licences**).

These are the spectrum licences primarily used by telecommunications carriers to provide 2G and 3G mobile phone and wireless services to millions of Australian consumers.

The Spectrum Licences are due to expire in the period between 2013 and 2017.

The Minister requested that the Department conduct an information gathering process in relation to the possible re-issue of Spectrum Licences held by Telstra Corporation, SingTel Optus,

Vodafone Hutchison Australia, and vividwireless (**Renewal Process**). The process commenced in May 2010. As part of this Renewal Process, all participants were requested to specify how they had satisfied, and continued to meet, the public interest (by reference to the five criteria set out above and the public interest generally) and detail the use (or proposed use) of the licences for which they sought renewal. Participants were also requested to state the amounts that they would be willing to pay, as spectrum access charges, for the re-issue of the Spectrum Licences.

An inter-Departmental committee (**Evaluation Committee**) was established by the Minister on 23 December 2010 to evaluate the detailed materials provided by the Renewal Process participants in relation to the public interest criteria, the spectrum access charges each had proposed, and all other matters raised by the Renewal Process participants in their submissions. The Committee was provided with evaluation guidelines to assist in the Committee's assessment of the public interest considerations. A copy of these guidelines was also provided to each Renewal Process participant. The final report of the Evaluation Committee with its recommendations was submitted to the Minister in December 2011.

Having regard to all relevant matters including the advice received from the Department and the Evaluation Committee and submissions received from the Renewal Process participants, the Minister has made the Determination. The Minister was also guided by the object of the Act.

Consultation

The ACMA has been consulted in relation to the making of this Determination. A draft of this Determination was made available to the Renewal Process participants in October 2011 prior to releasing the Determination to the public for consultation on 23 December 2011. No issues were raised regarding the description of the classes of services during the course of the consultation.

Statement of compatibility with human rights

A statement of compatibility with human rights in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is not required for the Determination since it is not a disallowable instrument (subsection 82(4) of the Act refers).

Notes on clauses

Clause 1 provides the citation of the Determination.

Clause 2 provides that the Determination will be registered on the Federal Register of Legislative Instruments and will take effect on the day after its registration.

Clause 3 provides that the Determination ceases at the end of 31 December 2017.

Clause 4 defines the terms used in the Determination.

Clause 5 specifies that the Minister has determined each of the classes of services described in clause 6 as being a class of services for which re-issuing spectrum licences to the same licensees would be in the public interest.

Clause 5 describes the classes of services as follows:

- Mobile voice and data communications services provided in the 800 MHz, 1800 MHz or 2 GHz spectrum bands.
- Wireless broadband services provided in the 2.3 GHz or 3.4 GHz spectrum bands.
- Satellite services provided in the 27 GHz spectrum band.