

## EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

*Radiocommunications (Trading Rules for Spectrum Licences) Determination 2012*

*Radiocommunications Act 1992*

### Purpose

The purpose of the *Radiocommunications (Trading Rules for Spectrum Licences) Determination 2012* (the **Determination**) is to set out the rules for the trading of spectrum licences. The Determination revokes the *Radiocommunications (Trading Rules for Spectrum Licences) Determination 1998* (the **1998 Determination**) and provides updated rules for the trading of spectrum licences which are aimed at providing greater flexibility for spectrum licensees.

### Legislative Provisions

The Determination is made under section 88 of *the Radiocommunications Act 1992* (the **Act**) which provides that the Australian Communications and Media Authority (the **ACMA**) may determine rules for the assignment of spectrum licences and the circumstances in which licences can be varied, issued or cancelled as the result of an assignment.

The Determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

### Background

The Determination is part of a set of legal instruments being made by the ACMA to give effect to the recommendations of the review of the spectrum licence framework detailed in the *Proposed updates to the spectrum licence framework – Consultation paper*. The consultation paper is available on the ACMA website.

The Determination revokes the *Radiocommunications (Trading Rules for Spectrum Licences) Determination 1998* and replaces it with a new set of spectrum trading rules,

which are designed to provide increased flexibility for spectrum licensees in trading of spectrum. The main differences between the Determination and the 1998 Determination are:

- the standard trading unit (STU) has been redefined with a frequency component of 1Hz and a geographic component defined as a single cell of the *Australian Spectrum Map Grid 2012 (ASMG)*. The ASMG is spectrum map grid published by the ACMA and can be accessed on the ACMA website. The new STU is the smallest spectrum space that could be traded.
- the minimum contiguous bandwidth (MCB) for each frequency band will continue to apply to the licensing of spectrum space. If the trade of a part of a licence will result in a spectrum licence with a bandwidth less than the MCB for the frequency band of the licence, prior approval from the ACMA must be obtained before the trade can be conducted.
- the MCB for the 700 MHz, 800 MHz, 1800 MHz and 2.5 GHz bands will be set to a value of 5 GHz.
- the MCB for the 27 GHz, 28 GHz and 31 GHz band will be set to a value of 50 MHz.
- The Hierarchical cell identification scheme (HCIS) in the ASMG will be used to describe the geographical area of a licence.

## **Operation**

The Determination sets out the new rules for the trading of spectrum licences. The Determination also revokes the 1998 Determination.

## **Consultation**

The ACMA has undertaken substantial consultation with stakeholders about its plans to update the spectrum licence framework.

In March 2012, the ACMA released a consultation paper, *Proposed updates to the spectrum licence framework*. This paper was the culmination of a comprehensive series of reviews of elements of the spectrum licensing technical and regulatory frameworks. The reviews were conducted in anticipation of forthcoming major spectrum allocations and processes to re-allocate or re-issue expiring spectrum licences. The paper discussed the proposed changes to the spectrum licence trading rules and a draft Determination was attached for public comment.

Stakeholders were generally in favour of the changes to the spectrum trading rules to allow greater flexibility in the trading of spectrum. There was concern raised that the changes to the minimum amount of bandwidth (MCB) that can be traded may result in band fragmentation. There was also a request for further information about the process for administrative review by the Administrative Appeals Tribunal where applications for prior approval to trade parts of licences which result in licences with bandwidths less than the MCB for the band were refused by the ACMA. Stakeholders also requested that the ACMA provide a range of formats for reading maps by various Geographic Information Systems (such as Mapinfo, Google Earth, Arc GIS, etc), a consistent naming convention for spectrum licence areas and the grouping of HCIS identifiers in a table.

All written submissions from this consultation process are available on the ACMA's website at [www.acma.gov.au](http://www.acma.gov.au).

The ACMA had regard to the comments made in these submissions when preparing the final Determination. There were no changes required to the Determination as a result of comments received. However, the ACMA has provided further explanation of the new trading rules and administrative review process in the response paper to the consultation paper. The response paper is available on the ACMA website. The ACMA also anticipates that this explanatory statement will provide further guidance to licensees about the purpose of the new trading rules.

### **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 *Legislative Instruments Act 2003* applies to cause a statement of compatibility to be prepared in respect of that legislative instrument. This statement is in **Attachment B**.

### **Regulatory Impact**

The ACMA consulted with the Office of Best Practice Regulation (the **OBPR**) on the requirement for a Regulation Impact Statement (**RIS**) for this legislative instrument. The OBPR advised that this Determination does not warrant the preparation of a RIS as it will only have minor impacts – OBPR reference [ID13484].

## Documents incorporated by reference

The Determination incorporates the following documents by reference:

- the *Australian Spectrum Map Grid 2012* published by the ACMA as in force from time to time.

## Detailed Description of the Determination

Details of the Determination are set out in **Attachment A**.

## ATTACHMENT A

### DETAILS OF THE RADIOCOMMUNICATIONS (TRADING RULES FOR SPECTRUM LICENCES) DETERMINATION 2012

#### Section 1 – Title

This section provides that the name of the Determination is the *Radiocommunications (Trading Rules for Spectrum Licences) Determination 2012*.

#### Section 2 - Commencement

This section states that the Determination will commence on the day after it is registered on the Federal Register of Legislative Instruments.

#### Section 3 – Revocation

This section revokes the *Radiocommunications (Trading Rules for Spectrum Licences) Determination 1998*.

#### Section 4 – Purpose

This section states that the purpose of the Determination is to set out the rules for the trading of spectrum licences.

**Section 5 – Interpretation**

This section provides definitions for the terms used in the Determination. The note to the section provides that certain terms have the same meaning as in the Act.

**Section 6 – Approval of form**

This section requires the ACMA to approve a form (Trading Form) for trading licences in accordance with the Determination. The information that licensees have to provide to the ACMA when trading licences (prescribed in section 9 of the Determination) must be provided using a Trading Form. Once approved, the Trading Form will be accessible on the ACMA website.

**Section 7 – What may be traded**

The section sets out the rights of licensees to trade all or part of their licence. Subject to the restrictions in section 8, this section provides that a licensee may trade all or part of their licence to an existing licensee or to another person and may trade parts of this licence to different persons.

**Section 8 – Restrictions on trading**

This section sets out the restrictions imposed on licensees in trading licences. The restrictions have been imposed to prevent fragmentation of spectrum holdings and decrease inefficient spectrum use.

The section sets out three restrictions on the trading of spectrum licences. Firstly, a licensee must only trade all or part of their licence as a single whole STU or a multiple of whole STUs. This restriction prevents licensees from trading parts of an STU or a multiple of part STUs. Secondly, a licensee must not trade a part of their licence if the trade results in a licence with a bandwidth less than the MCB for the frequency band for which the licence operates, without the ACMA's prior written permission. The purpose of restricting trade in this manner without the ACMA's permission is that the MCB is the minimum spectrum required to deploy a commercial service using the technology likely to be used in the relevant frequency band. Thirdly, a licensee must not transfer their licence for the purpose of providing security for a loan.

## **Section 9 – Information to be given to the ACMA**

Subsection 86 (1) of the Act provides as follows:

*(1) The parties to an assignment under section 85 of the whole, or any part of, a licence that involves:*

- (a) a change in the licensee; or*
- (b) the issue of a spectrum licence; or*
- (c) the variation of the conditions of a spectrum licence; or*
- (d) the cancellation of one or more existing spectrum licences;*

*must give to the ACMA such information about the assignment as the ACMA requires (if any) for the purpose of amending the Register to take account of the assignment.*

Section 9 of the Determination details the information which must be provided to the ACMA as part of the trading process. Subsection 9 (2) requires that the information be provided in the Trading Form. The information will be used by the ACMA to update the Register of Radiocommunications Licences (which is established under section 143 of the Act) to reflect the changes that have occurred as a result of the trade. Subsection 86 (2) of the Act provides that an assignment covered by subsection 86 (1) cannot take effect before the Register is amended under Part 3.5 of the Act to take into account the assignment.

## **Section 10 – Review of decision**

The section sets out the process for seeking review of a decision made by the ACMA under the Determination to refuse written permission under subsection 8 (2) of the Determination to trade a part of a licence in the circumstances set out in subsection 8 (2). A licensee whose interests are affected by a refusal by the ACMA to give written permission for the trade under subsection 8 (2), may apply to the Administrative Appeals Tribunal (the **AAT**) for a review of the decision.

The section also sets out that the ACMA must give notice of their decision to a licensee whose interests are affected by the decision, and that the notice must include a statement which informs the licensee of their right to seek review of the decision at the AAT and that the licensee may request a statement of reasons from the ACMA under section 28 of the *Administrative Appeals Tribunal Act 1975* in relation to the ACMA's decision. The purpose of this provision is to give licensees whose interests may be affected by the ACMA's decision to refuse permission for a trade an avenue to seek administrative review of their decision if they are dissatisfied with the decision.

**Schedule 1 – Minimum contiguous bandwidths**

This Schedule sets out a table which contains the minimum contiguous bandwidths (MCB) for each frequency band listed in column 2 of the table. The MCB is the minimum bandwidth required for the provision of services in the relevant frequency band. Subsection 8 (2) of the Determination imposes a restriction on the trade of licences where the resulting licence has a frequency bandwidth that is less than the MCB for the frequency band of the licence as set out in Schedule 1.

**ATTACHMENT B****Statement of Compatibility with Human Rights**

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

*Radiocommunications (Trading Rules for Spectrum Licences) Determination 2012*

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Legislative Instrument**

Section 88 of the *Radiocommunications Act 1992* (the Act) provides that the ACMA may determine rules for the assignment of spectrum licences and the circumstances in which licences can be varied, issued or cancelled as the result of an assignment.

The purpose of the *Radiocommunications (Trading Rules for Spectrum Licences) Determination 2012* (the Determination) is to set out the rules for the trading of spectrum licences. The Determination revokes the *Radiocommunications (Trading Rules for Spectrum Licences) Determination 1998* and provides updated rules for the trading of spectrum licences which are aimed at providing greater flexibility for spectrum licensees in trading spectrum licences.

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 *Legislative Instruments Act 2003* applies, to cause a statement of compatibility to be prepared in respect of that legislative instrument.

The Determination is a legislative instrument that is subject to disallowance under section 42 of the *Legislative Instruments Act 2003*.



**Human Rights Implications**

The Determination does not engage any of the applicable rights or freedoms.

**Conclusion**

The Determination is compatible with human rights as it does not raise any human rights issues.