EXPLANATORY STATEMENT

**Issued by the Australian Communications and Media Authority**

***Radiocommunications Spectrum Marketing Plan (700 MHz Band) 2012***

*Radiocommunications Act 1992*

Purpose

The *Radiocommunications Spectrum Marketing Plan (700 MHz Band) 2012* (the **Marketing Plan**) specifies the spectrum lots available in the 700 MHz (digital dividend) band allocation, the method by which the lots will be allocated, and conditions that will apply to the spectrum licences issued after that allocation process.

Legislative Provisions

The Marketing Plan is made by the Australian Communications and Media Authority (the **ACMA**) under section 39A of the *Radiocommunications Act 1992* (the **Act**). Under this provision, the ACMA must prepare a marketing plan before issuing spectrum licences in parts of the radiocommunications spectrum that is the subject of a spectrum re-allocation declaration made by the Minister for Broadband, Communications and the Digital Economy, Senator Stephen Conroy (the **Minister**) under section 153B of the Act.

Background

The television broadcasting environment in Australia is undergoing a conversion from analog to digital-only services, a move that is part of a global technology trend in broadcasting. Together with improvements in picture and sound quality, this change will enable a significant amount of radiofrequency spectrum to be freed up for other uses. The spectrum made available through this process is referred to as the ‘digital dividend’.

In June 2010, the Minister publicly announced that the digital dividend would consist of a single spectrum block of 126 MHz between 694 MHz and 820 MHz. On 9 July 2010, the Minister directed the ACMA to clear those frequencies of broadcasting services.

The re-allocation of the 700 MHz spectrum is an integral step in the Australian Government’s plans to realise the full benefits of the digital dividend. It will result in new licensees gaining access to the spectrum released by the digital dividend to provide additional or improved services for the public.

On 1 November 2011, following a written recommendation from the ACMA, the Minister made a declaration under section 153B of the Act, the *Radiocommunications (Spectrum Re-allocation) Declaration No. 1 of 2011* (the **Minister’s Declaration**),declaring that specific parts of the above frequency band would be subject to re-allocation by spectrum licensing. The Minister’s Declaration identified two separate blocks of 45 MHz for re-allocation that lie in the frequency bands between 703–748 MHz and 758–803 MHz (**the 700 MHz band**). These frequencies will be reallocated across Australia with the exception of a region known as the Mid West Radio Quiet Zone (the **RQZ**)in Western Australia. The RQZ has been excised from this re-allocation process to avoid radiofrequency interference at scientific radio-astronomy observatories on this site. The specific frequency and geographic boundaries for the 700 MHz re-allocation are set out in the Minister’s Declaration.

The Minister’s Declaration also includes a re-allocation deadline of 31 December 2013. This sets the date by which the ACMA must have allocated at least one spectrum licence for the parts of the spectrum affected by the declaration. If this does not occur, the Minister’s Declaration will automatically be considered to have been revoked and will cease to apply immediately after the re-allocation deadline. However, this date does not preclude the allocation process from occurring earlier.

Under subsection 39A(2) of the Act, the ACMA must prepare a marketing plan for issuing spectrum licenses that authorise the use of radiocommunications devices in parts of the spectrum described by the Minister’s Declaration. The Marketing Plan is the document required under this provision. The ACMA must also determine the procedures for allocating spectrum licences under section 60 of the Act. These are set out in the *Radiocommunications (Spectrum Licence Allocation – Combinatorial Clock Auction) Determination 2012* (the **Allocation Determination**).

Although the ACMA does not intend to designate the 700 MHz band for a specific category of use, this spectrum is most likely to be used to deploy or extend mobile telecommunications and broadband using advanced wireless services. The recent rapid take-up of mobile devices such as smart phones and tablet computers has led to an exponential growth in wireless data traffic. This in turn has led to a substantial demand for suitable spectrum to support and improve the quality of these services. The 700 MHz band is particularly well suited to fixed and mobile communications technologies, as it has the ability to carry signals over long distances and penetrate buildings, thus reducing the cost of rolling out wide coverage wireless networks.

As a result of the high demand expected from industry to acquire the 700 MHz band spectrum, the ACMA is reallocating this spectrum through an auction process.

The re-allocation process is being planned in parallel with the necessary step of clearing this band of incumbent users. These users include apparatus licensees who provide a range of television broadcasting services, including national and commercial broadcasters, television re-transmission services and other localised services. Users of low interference potential devices, such as wireless microphones, also operate in the 700 MHz band under a class licence.

The process of clearing parts of the radiofrequency spectrum normally occurs through the issue of a re-allocation declaration from the Minister made under section 153B of the Act. The Minister’s Declaration, made on 1 November 2011, identifies spectrum for re-allocation and specifies a period ending on 31 December 2014 after which all current apparatus licences in that spectrum will be cancelled (the **re-allocation period**). Although the declaration process will have the effect of removing some incumbent apparatus licensees in the 700 MHz band, many incumbent users will not be affected. These are broadcasters who operate under apparatus licences that are ‘protected’ by section 153H from the effect of a section 153B declaration. The band will be cleared of these protected licensees instead by a process referred to as ‘Restack’.

Apparatus licences issued under section 100 of the Act for the retransmission of television broadcasting services, however, will be cancelled at the end of the re-allocation period. In many cases, the ACMA is engaging with section 100 apparatus licensees to ensure that, where appropriate, retransmission services can be provided in broadcasting services bands spectrum below the spectrum being re-allocated.

If the timetable for implementing the restack process is delayed, the ACMA may, in accordance with section 153P of the Act, authorise the continued operation of retransmission services in an area beyond 31 December 2014. Section 153P does not apply to those frequencies in the range 694 MHz to 820 MHz that do not fall within the definition of “700 MHz Band” in the Marketing Plan.

The restack process, combined with the re-allocation period and the measures referred to above for television broadcasting retransmission services, will see all broadcasting services being moved to channels below the digital dividend band. This will leave a single contiguous block of spectrum for re-allocation.

The ACMA will be allocating 700 MHz band spectrum together with spectrum from the 2.5 GHz band in a single auction process. Information about the 2.5 GHz band spectrum to be allocated in the combined auction is described in the *Radiocommunications Spectrum Marketing Plan (2.5 GHz Band) 2012*.

Marketing Plan Operation

The Marketing Plan is one of a set of legislative instruments that gives effect to the Minister’s Declaration to reallocate the specified range of frequencies in the 700 MHz band (a complete list of the relevant instruments is provided at the end of this section).

The purpose of the Marketing Plan is to describe the spectrum ‘product’ that will be offered at auction. In doing so, it identifies the spectrum that will be allocated and defines how this spectrum will be divided into lots for applicants (bidders) to acquire in the auction process. In addition, it sets out some of the technical and non-technical conditions that may apply to spectrum licences, and other matters that licensees should take into account when operating devices under a spectrum licence.

The Marketing Plan also notes the method by which the ACMA will conduct the allocation, although limited details of the allocation procedure and related administrative arrangements are included in this document. Full details of the allocation procedure are set out in the Allocation Determination. With the expected high demand for spectrum in the 700 MHz band, the ACMA considers that a price-based method of allocation, namely an auction, to be the most efficient means of allocating this spectrum. The ACMA has chosen the Combinatorial Clock Auction (**CCA**) methodology, delivered through a secure online system, as the auction method to be used to conduct the auction.

The 700 MHz spectrum to be reallocated will be divided into auction lots that are defined by their geographic area and bandwidth range. Nine lots will be available, with each lot covering the whole of Australia (except for the excised RQZ). Lots will also have a bandwidth of 10 MHz in paired configuration (2x5 MHz), with a block of 5 MHz in the lower (703-748 MHz) and upper (758-803 MHz) parts of the band, on either side of the mid-band gap. The paired configuration enables the use of next generation advanced wireless communication technology, such as 4G Long Term Evolution (**LTE**).

The technical conditions applied to spectrum licences are drawn from the ACMA’s technical framework developed for the 700 MHz band in consultation with industry stakeholders. The technical framework is partly set out in the Marketing Plan sections on licence conditions and the sample spectrum licence. They are also set out in the *Radiocommunications (Unacceptable Levels of Interference – 700 MHz Band) Determination 2012* (the **Unacceptable Interference Determination**)) and the radiocommunications advisory guidelines documents listed at the end of this section. These conditions place constraints and regulations on the use of spectrum licences to allow all licensees to operate services without causing undue interference to other services operating in other parts of the radiofrequency spectrum. Core conditions (in accordance with section 66 of the Act) will apply to spectrum licences in terms of:

* defining their geographic boundaries
* defining their range of frequencies
* setting out-of-area radio emission limits
* setting out-of-band radio emission limits.

In addition, the Marketing Plan discusses other relevant obligations, including spectrum trading rules and use by third parties and registration of transmitters with the ACMA. Licence commencement and licence duration are also described.

A sample spectrum licence provided in the Schedules to the Marketing Plan also contains information relating to core and other conditions that may apply to the operation of a service under the spectrum licence. The spectrum licences issued by the ACMA may contain additional or varied conditions.

The set of legislative instruments, including the Marketing Plan, that are relevant to the re-allocation of the 700 MHz band are listed below.

* *Radiocommunications (Spectrum Re-allocation) Declaration No. 1 of 2011 (1/11/2011)*
* *Radiocommunications Spectrum Marketing Plan (700 MHz Band) 2012*
* *Radiocommunications (Spectrum Licence Allocation – Combinatorial Clock Auction) Determination 2012*
* *Radiocommunications (Unacceptable Levels of Interference – 700 MHz Band) Determination 2012*
* *Radiocommunications Advisory Guidelines (Managing Interference from Transmitters – 700 MHz Band) 2012*
* *Radiocommunications Advisory Guidelines (Managing Interference to Receivers – 700 MHz Band) 2012*

A description of each section in the Marketing Plan is provided in Attachment A.

Consultation

The ACMA has consulted extensively with stakeholders about its plans for the re-allocation of the 700 MHz band generally, and on the Marketing Plan in particular. A variety of communication methods have been used to reach as many stakeholders as possible at each stage of the re-allocation planning process.

The ACMA began its public consultation in October 2010, with the publication of the discussion paper, ‘*Reallocation in the 700 MHz ‘Digital Dividend’ Band’*. This paper sought stakeholder views on key issues that would influence the ACMA’s early considerations of band configuration, licence design and the method of allocating the 700 MHz band. As part of this consultation, the ACMA held an industry forum (‘*Spectrum Tune-up 2010: Digital Dividend’*). The Tune-up covered issues raised in the discussion paper and provided an opportunity for stakeholders to give direct feedback to the ACMA.

In response to the discussion paper, the ACMA received a total of 45 written submissions. Stakeholder views expressed in these submissions have been taken into consideration by the ACMA in planning the re-allocation of 700 MHz spectrum.

Consultation was also conducted during the first key legislative step of the re-allocation process. This step required the ACMA to provide a recommendation to the Minister under section 153F of the Act specifying parts of the 700 MHz band to be reallocated, as well as a timeframe for conducting the process. In June 2011, the ACMA prepared a draft recommendation and, in accordance with section 153G of the Act, sought comment from potentially affected apparatus licensees on the terms of the proposed recommendation. Nine written submissions were received, and the ACMA had regard to the views expressed in these submissions when preparing its final recommendation to the Minister.

The ACMA has also engaged with incumbent licensees, prospective new licensees and other public stakeholders during the development of the Marketing Plan and associated legislative instruments. In addition to this, spectrum licensees and industry representatives have provided input into the preparation of the technical framework that forms part of the 700 MHz band Marketing Plan through extensive involvement in a technical working panel (the **Technical Liaison Group**) organised and chaired by the ACMA.

Stakeholder views were also taken into account in the development of the Marketing Plan. During the preparation of a draft version of the Marketing Plan, the ACMA held the *Digital Dividend Auction Tune-Up 2011*, an industry forum which presented stakeholders with details on preliminary approaches being considered on several key parts of the spectrum auction planning process. Presentations and details of this event are available on the ACMA’s e*ngage* website (www.engage.acma.gov.au). The ACMA also undertook preliminary consultation (through the ACMA’s *engage* website) on its proposed approaches to key auction planning issues, such as lot configuration and licence commencement.

A draft version of the Marketing Plan was subsequently released for detailed public consultation on 11 April 2012. The Marketing Plan was released as part of a package of draft allocation instruments, together with the explanatory information paper, *Draft allocation instruments for the allocation of spectrum in the 700 MHz and 2.5 GHz bands (the digital dividend auction)*. A revised draft of the Marketing Plan, prepared following comments on the initial draft, was released for a second round of consultation on 6 July 2012. A third revised draft of the Marketing Plan was released in a third round of detailed public consultation on 31 August 2012.

The ACMA took the views of stakeholders into consideration during the re-drafting of the Marketing Plan, including the final version of this instrument.

Documents Incorporated into the Marketing Plan by Reference or Otherwise Referred to

The Marketing Plan incorporates the following documents by reference, or otherwise refers to them:

* A series of maps to be published by the ACMA, showing the exclusion zones required to implement the separation distances set out in Part 4 of the *Radiocommunications Advisory Guidelines (Managing Interference from Transmitters – 700 MHz Band) 2012*. These maps, which will be updated as the restack of digital television services progresses, will be available on the ACMA’s website.
* RALI MS-32 Coordination of Apparatus Licensed Services Within the Mid West Radio Quiet Zone, which are Radiocommunications Assignment and Licensing Instructions that provide processes for co-ordination with the RQZ. These instructions are available from the ACMA’s website.
* The Australian Spectrum Map Grid 2012 – The Australian Spectrum Map Grid (**ASMG**) is used to identify geographic areas of spectrum licences. This document describes ASMG and the Hierarchical Cell Identifier Scheme (**HCIS**) that the Marketing Plan uses to define licence areas. This document is on the ACMA’s website.

The Marketing Plan also incorporates or refers to the following instruments and Acts:

* *Radiocommunications (Spectrum Licence Allocation – Combinatorial Clock Auction) Determination 2012*
* *Radiocommunications Act 1992*
* *Radiocommunications Advisory Guidelines (Managing Interference to Receivers - 700 MHz Band) 2012*
* *Radiocommunications Advisory Guidelines (Managing Interference from Transmitters - 700 MHz Band) 2012.*
* *Broadcasting Services Act 1992*
* *Radiocommunications (Spectrum Re-allocation) Declaration No. 1 of 2011*
* *Radiocommunications (Register of Radiocommunications Licences) Determination 1997*
* *Radiocommunications (Trading Rules for Spectrum Licences) Determination 2012*
* *Australian Communications and Media Authority Act 2005*
* *International Tax Agreements Act 1953*
* *Income Tax Assessment Act 1997*
* *Radiocommunications Licence Conditions (Apparatus Licence) Determination 2003*
* *Radiocommunications (Mid-West Radio Quiet Zone) Frequency Band Plan 2011*
* *Radiocommunications (Labelling) Determination 1997*

These instruments and Acts can be found on the Australian Government’s ComLaw website (www.comlaw.gov.au/).

In accordance with subsection 314A(2) of the Act, a legislative instrument made under the Act may incorporate a matter contained in any other instrument or writing as in force from time to time, even if the other instrument or writing does not exist at the time the first instrument is made.

Detailed Description of the Instrument

Details of the instrument are in Attachment A.

Regulation Impact Statement

A regulation impact statement (**RIS**), entitled *Lot configuration for the digital dividend* *auction*, was prepared by the ACMA to inform decision-making by the Authority on how to divide the 700 MHz spectrum for re-allocation into lots for auction. The definition of lots available in the 700 MHz spectrum auction is included in the Marketing Plan. This RIS has been approved by the Office of Best Practice Regulation (the **OBPR**) and will be posted on the OBPR website (http://www.finance.gov.au/obpr/about/). Based on advice from the OBPR, no further aspect of the Marketing Plan warranted the preparation of a RIS (OBPR issue reference ID13105).

Statement of Compatibility with Human Rights

In accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*,the ACMA has prepared a Statement of Compatibility with Human Rights (the **Statement of Compatibility**) to consider the human rights implications of the Marketing Plan. The Statement of Compatibility concludes that the content of this legislative instrument does not raise any human rights issues and is therefore regarded as being compatible with human rights. The Statement of Compatibility prepared for this instrument is provided in Attachment B.

ATTACHMENT A

detailed description of the instrument

Part 1 Introduction

Section 1.1 – Name of Plan

This section gives the name of the Marketing Plan as the *Radiocommunications Spectrum Marketing Plan (700 MHz Band) 2012*.

Section 1.2 – Commencement

This section specifies when the Marketing Plan will come into effect. The Marketing Plan commences the day after it is registered on the Federal Register of Legislative Instruments.

Section 1.3 – Purpose of this Plan

This section lists the matters contained in the Marketing Plan, which should be taken into account by prospective auction applicants. The Marketing Plan should be read in conjunction with the Allocation Determination for a more complete understanding of all allocation procedures.

Section 1.4 – Definitions

This section provides definitions of terms used in the Marketing Plan. These are designed to assist the reader in interpreting the Marketing Plan. Where a defined term is explained in more detail in this explanatory statement, a cross reference to the relevant section is given below.

*exclusion zone:* See section 3.7

*Australian spectrum map grid (ASMG)*: See section 3.6.

*HCIS identifier*: See section 2.4.

*Hierarchical Cell Identifier Scheme (HCIS)*: See section3.6.

*lot:* See section 2.4.

*lot rating:* See section 2.4.

*product:* See section 2.4.

*region:* See section 2.4.

*spurious emission*: See Schedule 5.

Part 2 Allocation of spectrum licences

Section 2.1 – Purpose of this Part

This section provides a brief description of topics that are covered by Part 2. These include the procedures and timetable for allocating spectrum under the Marketing Plan. This section is intended to aid readers to navigate through the document and quickly find sections of interest.

Section 2.2 – Parts of the spectrum

This section explains that 700 MHz band spectrum defined in the Minister’s Declaration will be allocated under the conditions and procedures described in the Marketing Plan and accompanying Allocation Determination. No part of the spectrum identified in the Marketing Plan has been set aside for public or community services.

If the Minister’s Declaration is revoked under the Act, the Marketing Plan will have no effect. The declaration will be taken to have been revoked if no spectrum licence is allocated by the re-allocation deadline of 31 December 2013.

Section 2.3 – How licences will be allocated

This section states that the primary means of allocating spectrum licences in the 700 MHz band will be by auction using the CCA methodology. The rules and procedures that apply to the auction are set out in the Allocation Determination for this re-allocation process.

The ACMA has chosen the CCA as the auction methodology that is most likely to deliver an efficient outcome and enable spectrum to be allocated persons who value it the highest. This decision took into account the fact that 2.5 GHz band spectrum will be allocated in the same auction process as the 700 MHz band spectrum. These bands can offer complementary signal propagation characteristics when used to deliver mobile communications service over a wide-scale network.

The major attributes that make the CCA methodology suited to maximising the efficient allocation of 700 MHz and 2.5 GHz band spectrum in the combined band auction are described below.

* It allows package bidding – this will give bidders a high level of flexibility to bid on packages of lots within a single band or across bands. Bidders have certainty that if they win lots, they will win all lots in a package, rather than risk exposing themselves to winning only part of a package that may be insufficient for their business needs.
* The CCA enables bidders to easily change their bidding strategy to switch to different packages that may become more “profitable” to them as the auction progresses. That is, bidders may wish to bid on an alternative package when the difference between the bidder’s valuation of the package currently being bid on and the current auction price becomes less than the equivalent difference for an alternative package. This situation may occur as the price rises higher than anticipated for a particular product or when the ratio of prices between different products changes significantly over the course of the auction.
* The package bidding nature of the CCA methodology also makes it well adapted to auctions where complementary products are on offer. Products are complementary where the bidders place a higher value on acquiring a set of items than the sum of the individual value of each item in the set. With bidders having certainty that they can only win whole packages of lots, they are able to express their true value for complementary products in the auction. As spectrum in complementary bands being offered, this attribute is especially relevant.

In the circumstances that not all 700 MHz (or 2.5 GHz) band spectrum on offer is allocated in the auction, the ACMA may choose to hold a further allocation procedure or procedures. The method used and the configuration of the spectrum offered in any subsequent allocation process will be determined by the ACMA at a later date.

Section 2.4 – The auction

This section sets out how the allocation will take place, partly by reference to the procedures set out in the Allocation Determination. It also provides a detailed summary of the allocation process.

It explains that the spectrum being reallocated in the 700 MHz band has been divided by the ACMA into smaller blocks (referred to as *lots*) for auction. Each lot is defined by a specific geographic area and a frequency bandwidth. In the 700 MHz band, all lots will be uniform. Each lot will cover the whole of Australia (except for the excised Radio Quiet Zone in Western Australia, or RQZ) and will consist of 5 MHz in the 700 MHz lower band paired with 5 MHz in the 700 MHz upper band. Schedule 3 of the Marketing Plan defines the region covered by lots in this allocation.

Lots have also been given a category for the purposes of the auction. Categories have been created to divide the 700 MHz (and 2.5 GHz) spectrum being reallocated under the Allocation Determination into separate bands. For the auction, all 700 MHz lots have been assigned to a single category referred to as the ‘700 MHz band’. This category is defined by the frequency ranges set out in Schedule 1 and the bandwidth of spectrum lots in the 700 MHz band. The name and number used to describe the category are set out in Schedule 1.

Lots that are identical, that is, they belong to the same category and share a common geographic coverage and bandwidth, collectively comprise units of a *product*. All spectrum earmarked for re-allocation in the Minister’s Declaration will be assigned to a specific product type. The product available in the 700 MHz band is defined in Schedule 2 of the Marketing Plan. The bandwidth of units (lots) are specified in column 5 (‘Bandwidth’) of Schedule 1.

The lots specified in this Marketing Plan will be auctioned in accordance with the allocation procedures set out in the Allocation Determination*.* Lots in the 700 MHz spectrum band will be auctioned simultaneously with lots in the 2.5 GHz band, using the CCA methodology. This auction will allow bidders to place bids on lots within either the 700 MHz band, or the 2.5 GHz band, or on packages of lots in both bands.

This section states that the ACMA will notify auction applicants of the lot rating for each lot under section 4.6 of the Allocation Determination. The ACMA will publish these ratings on its website within 70 days of a notice about the auction being published under subsection 4.4(1) of the Allocation Determination. Lot ratings determine the relative value of a spectrum lot for the purpose of the auction. Each lot is ascribed a lot rating, with lots regarded as being of higher value given a higher lot rating. All lots in a product will have the same lot rating.

Lot ratings play an important role in the auction. As part of the registration process, each auction applicant is required to nominate a total (or aggregate) amount of lot ratings for the lots that they want to obtain. This will set their initial eligibility, which is a numerical quantity that limits the size of packages (in terms of their combined lot ratings) that an applicant can bid for during the clock round phase of the auction. The initial eligibility, in combination with the dollar value of initial eligibility points set by the ACMA under paragraph 4.6(1)(b) of the Allocation Determination, will be used to calculate an applicant’s initial eligibility payment. The eligibility payment must be made to the ACMA prior to the auction, as a participation amount, a deed of financial security, or a combination of these two payment methods.

In accordance with the Allocation Determination, the auction will be held in two stages, an allocation stage and an assignment stage. The allocation stage determines the number and type of products that will be allocated, along with the allocation price to be paid for these products by each winning bidder. The assignment stage determines the exact frequency boundaries of each allocated lot and the final price to be paid by successful bidders.

At the end of the auction, providing that specific post-auction conditions set out in the Allocation Determination, the Act and other laws are met, the ACMA will issue spectrum licences to the winning bidders. Spectrum licences issued under the Marketing Plan will go to each person allocated a product in the auction. Subject to the requirements of the Act, other laws and the Allocation Determination, a spectrum licence will be for the number and type of lots won and at the frequencies assigned during the assignment stage of the auction.

Section 2.5 – Advertising the auction

This section refers to the requirement that the ACMA advertise the details of the spectrum auction in accordance with the Allocation Determination, in which this process is described in more detail. The notice published will invite persons to apply to participate in the auction.

Section 2.6 – Taking part in the auction

This section specifies that detailed information about the auction and the application process will be made available by the ACMA in the Applicant Information Package (the **AIP**), in accordance with the Allocation Determination. The AIP will be made available prior to the application process. The contents of the AIP are set out in section 4.5 in the Allocation Determination.

The AIP will contain important information about the auction for potential participants. It will describe how to apply to participate in the auction, and will include copies of all necessary forms and documents to participate in the auction. Section 4.5 of the Allocation Determination contains a complete list of the documents and forms that will be included in the AIP. The AIP will also include copies of the legislative instruments that are relevant to the re-allocation spectrum in the 700 MHz band.

This section also explains that information about how to apply to participate in the auction is included in Part 4 of the Allocation Determination.

Part 3 Spectrum licences to be issued

Section 3.1 – Purpose of this Part

This section provides an overview of the subjects covered by this Part and is intended to aid readers to navigate through the document quickly to find sections of interest.

Part 3 describes the spectrum licences that will be issued in accordance with the Marketing Plan, as well as some of the matters that prospective applicants should consider when deciding whether to apply for a spectrum licence under this Marketing Plan (prospective applicants should in all cases, seek their own legal, technical and financial advice before applying). It also covers some of the matters that a licensee must take into account when operating a radiocommunications device under a licence obtained under this Marketing Plan.

Section 3.2 – Issue of licences

This section describes when the ACMA will issue spectrum licences in the 700 MHz band. The licence will be issued to a successful applicant as soon as practicable after that applicant has paid the balance of the winning bid price in accordance with the Allocation Determination.

Section 3.3 – Duration of licences

This section explains that spectrum licences issued in the 700 MHz band allocation will last for a period of 15 years from the date the licence commences.

The 15-year licence duration is the maximum term permitted under section 65 of the Act. The ACMA has set the licence duration for the maximum period to provide long-term certainty to licence holders. This has the aim of encouraging licensees to invest in new networks or services, thereby enabling spectrum to move to its highest value use.

If any lots in the 700 MHz band remain unallocated after the auction, the ACMA may choose to allocate some or all of those lots at a later date. This section states that licences for lots allocated after the auction will start on a date to be determined by the ACMA and have less than 15 years duration. The shorter licence duration will be used to align the expiry date of all licences in the 700 MHz band. This will maximise the flexibility available to licensees for spectrum trading. It will also reduce the chance of band fragmentation and provide the government with more flexibility in planning the allocation of this spectrum after new licences expire.

Section 3.4 – Commencement of licences

This section specifies when a spectrum licence issued as a result of the auction will commence. Upon commencement, a licence holder is entitled to use the spectrum in accordance with the conditions of that licence.

Spectrum licences in the 700 MHz band issued as a result of the auction will commence on 1 January 2015.

Spectrum licensees should be aware that a licence condition in all 700 MHz band spectrum licences will prevent the operation of radiocommunications devices in areas where television broadcasting services are being provided on a channel between 694 MHz and 820 MHz after the licence commencement date. The condition provides protection for commercial, national and community television broadcasting services, as well as retransmission services.

Section 3.7 refers to this condition (see explanatory notes below). The sample licence attached at Schedule 6 to the Marketing Plan includes a version of this condition at Licence Schedule 4.

Section 3.5 – Core licence conditions

Under section 66 of the Act there are a number of core conditions which a spectrum licence must include. This section sets out these core conditions, including the geographic area and frequency bandwidth in which a radiocommunications device can be operated under a spectrum licence.

Section 3.6 – Determining core licence conditions

This section explains how the core conditions for spectrum licences issued in the 700 MHz band as a result of the auction are determined. Where 700MHz band spectrum is left unallocated after this auction, the ACMA may choose to allocate this spectrum in a second auction. For spectrum licences allocated in a second auction in accordance with the Allocation Determination, this section also explains how the frequency band and geographic area core conditions of spectrum licences are determined.

Each licence will specify the range of frequencies that the new licensee has been allocated in accordance with the Allocation Determination. These will be the frequencies assigned to the spectrum lots won at the end of the assignment stage of the auction, providing that the successful applicant has satisfied all post-auction obligations under the Allocation Determination and the Act. If a licensee has been allocated more than one spectrum lot, the licence issued may specify the aggregate frequency range for the spectrum lots won.

Spectrum licences in the 700 MHz band will each consist of a minimum of 10 MHz of spectrum in a paired configuration (2 x 5 MHz). Smaller spectrum blocks are inappropriate for either 3G or 4G mobile telecommunications technologies (the most likely uses of the 700 MHz band). However, bidders who wish to acquire larger blocks of spectrum are still able to bid on multiple blocks of 2x5 MHz spectrum to build up larger amounts of spectrum (e.g. 2x10, 2x15 or 2x20 MHz), subject to the constraints set out in the Minister’s direction, *Radiocommunications (Spectrum Licence Limits) Direction No.1 of 2012* (the **Minister’s Direction**), as amended. The Minister’s Direction caps the amount of spectrum that any person or related group of persons can use after the auction. The flexibility to bid on multiple blocks of spectrum will allow auction participants to bid on the packages which best suit their business needs and to take advantage of the greater technical efficiency that wider bandwidths offer to technologies such as LTE.

In determining the bandwidth of each lot, the ACMA has also taken into account the total amount spectrum available in the 700 MHz band (2x45 MHz). A uniform bandwidth size of 2x10 MHz would not fit equally into the overall spectrum available, while bandwidth sizes of 2x15 MHz or larger are likely to dictate market outcomes in the auction unnecessarily. Larger bandwidth sizes would also limit the flexibility for auction participants to bid on the amount of spectrum preferred.

Taking into account these market and technical considerations, the 2x5 MHz is considered to be the optimum frequency bandwidth and configuration for 700 MHz band lots in this allocation.

Each licence will also specify the geographic area over which the licence will apply. The geographic area will correspond to the area described in Schedule 3 of the Marketing Plan for the products won. Spectrum licences in the 700 MHz band will cover the whole of Australia (‘National’), except the RQZ.

A ‘National’ geographic area for 700 MHz band licences has also been selected in consideration of technical and market factors, as well as stakeholder feedback on this issue. The propagation characteristics of the 700 MHz band allow this spectrum to be used to transmit signals over wide areas without unacceptable attenuation of that signal. This significantly reduces the cost of building and maintaining mobile networks over large areas (for example, by reducing the number of base stations required to service a large area compared to providing a similar service using higher frequency bands). The National area is intended to allow future users of this spectrum to make best technical and economic use of the propagation qualities of the 700 MHz band. If the geographic area of the 700 MHz band allocation were fragmented into smaller areas, the economic value of this band may not be realised.

A National licence area will also enable a service provider to operate national networks under a single licence, rather than needing to obtain multiple lots that cover smaller areas to create the national coverage sought.

The choice of the National area for the 700 MHz band was also supported by stakeholders throughout several rounds of consultation addressing aspects of the allocation of this band.

Previous marketing plans have provided a set of geographic co-ordinates to define the outer boundary of each spectrum lot available for allocation. However, this Marketing Plan incorporates a new identifier scheme adopted by the ACMA in 2012 (the Hierarchical Cell Identifier Scheme, or the **HCIS**) to define the National area.

Under this system, the National area is defined, not by co-ordinates, but by referring to a set of identifiers which collectively correspond to a single area on the Australian Spectrum Map Grid (the **ASMG**). The ASMG is described in more detail, including with the use of geographic co-ordinates to define the ASMG outer boundary, in the ACMA information paper, *The Australian spectrum map grid 2012*, available from the ACMA’s website at www.acma.gov.au.

The ASMG divides the Australian land mass into a grid of squares (termed cells) of four sizes, corresponding to sides of length 3 degrees, 1 degree, 15 minutes and 5 minutes of arc. The new identifier scheme is aligned to this tiered structure, with cells at each size given a unique identifier name. Under this system, the National area is comprised of a collection of unique identifiers that cover the same area on the ASMG. Spatial data files (in Shapefile format), which are available from the ACMA’s website, may be used to generate a map of an area defined by a set of HCIS identifiers with geographic information software.

The HCIS provides for a more detailed description of geographic areas through aggregation of smaller cells into complete larger blocks of cells, and is likely to provide greater flexibility to licensees for future spectrum trading.

An indicative representation (map) to illustrate the National area is shown in Schedule 3.

Subsections 3.6(3) and 3.6(4) of the Marketing Plan explain that the emission limits that will apply as a licence condition upon the licences issued in accordance with this Marketing Plan will be calculated in accordance with Schedules 4 and 5 of the Marketing Plan. These Schedules, respectively, are used to calculate the maximum emission limits allowable outside the geographic area, and outside the frequency band, of the spectrum licences as part of the core conditions of each licence.

Section 3.7 – Other licence conditions

This section identifies other kinds of statutory licence conditions and other licence conditions that will also apply to each spectrum licence issued under this allocation process, but which are not included in the core conditions of a licence. These include residency requirements of the licensee and the obligations for payment to the ACMA of applicable charges before a spectrum licence can be issued. The ACMA may also include conditions about other matters, including conditions relating to interference management. Some of these conditions are included in the sample licence at Schedule 6.

One licence condition that will be included in each spectrum licence issued in the 700 MHz band as a result of the auction is a condition to protect the reception of broadcasting services and retransmission services provided on a channel between 694 MHz to 820 MHz) after the licence commencement date (the **interference management condition**).

The interference management condition will provide that where:

* a transmitter is used to provide a broadcasting or a retransmission service; and
* the broadcasting or retransmission service is provided on a channel between 694 MHz and 820 MHz; and
* the transmitter is operated under an apparatus licence,

the licensee must comply with Part 4 of the *Radiocommunications Advisory Guidelines (Managing Interference from Transmitters – 700 MHz Band) 2012* (the **700 MHz Transmitter Interference Guidelines**). Part 4 prevents the operation of a radiocommunications device in an exclusion zone that includes the transmitter site.

In accordance with section 4.2 of the 700 MHz Transmitter Interference Guidelines, the ACMA will periodically publish maps on its website showing exclusion zones around broadcasting services and retransmission services that are in use in the 700 MHz band. Subsection 4.2(2) of the 700 MHz Transmitter Interference Guidelines provides that for areas designated by these published maps, a spectrum licensee must not deploy a service in any part of the 700 MHz band.

Subsection 3.7(3) explains that the date upon which a broadcasting service is no longer authorised to provide a broadcasting service on a channel between 694 MHz and 820 MHz must be determined in accordance with the relevant television licence area plan (**TLAP**), but that a broadcasting service may cease to be provided before the date upon which that broadcasting service is no longer authorised in accordance with the relevant TLAP.

TLAPs are made by the ACMA under subsection 26(1B) of the *Broadcasting Services Act 1992.* TLAPs specify and allot the channels that are to be available in a particular licence area for broadcasting services. The ACMA is using TLAPS to set the dates by which television broadcasting services must vacate the channels between 694 MHz and 820 MHz. These ‘vacation dates’ are subject to change and the ACMA may vary the TLAPs to give effect to these changes, from time to time. A broadcasting service may, however, vacate a channel between 694 MHz and 820 MHz in a licence area, or part of a licence area, before the date in which that broadcasting service is no longer authorised to provide provided on that channel in accordance with the relevant TLAP.

TLAPs are publicly accessible on the Federal Register of Legislative Instruments (www.comlaw.gov.au). Proposed TLAPs and proposed variations to existing TLAPs will also be publicly available on the ACMA’s website.

Section 3.7(3) also explains that the date upon which a retransmission service is no longer authorised to be provided will depend on the apparatus licence used to provide the service, but that a retransmission service may cease to be provided before the date upon which that retransmission service is no longer so authorised. The ACMA authorises the provision of retransmission services in the channels between 694 MHz and 820 MHz by making a determination under subsection 34(1) of the *Broadcasting Services Act 1992* providing that a channel is available for the temporary re-transmission of programs and by issuing a transmitter licence to the provider under subsection 100(1) of the Act.

In accordance with section 153P of the Act, and the Minister’s Declaration, the ACMA must not issue an apparatus licence (including a transmitter licence) that authorises the operation of radiocommunications devices in the 700 MHz band except in certain circumstances. The ACMA may only issue a transmitter licence to the provider of a retransmission service for use of a channel in the 700 MHz band in accordance with section 153P of the Act. Section 153P does not apply to those frequencies in the range 694 MHz to 820 MHz that do not fall within the definition of “700 MHz Band”.

The sample spectrum licence includes a version of the interference management condition.

An interference management-related licence condition will also provide protection to the RQZ. The RQZ is an area where emissions from radiocommunications devices are restricted to assist with the development and use of new radio astronomy technologies. It is the site of the CSIRO Murchison Radio-Observatory and the potential site of the Square Kilometre Array telescope, a major international scientific project supported by the Commonwealth and Western Australian governments.

In July 2011, following public consultation, the ACMA implemented enhanced protection measures for the RQZ by making a new frequency band plan and other legislative instruments (and amendments). The 700 MHz band spectrum licences will include a condition that must be observed where a licence surrounds or is adjacent to the RQZ. These conditions are consistent with the enhanced protection measures, and are designed to prevent harmful interference to radio astronomy services at the site. An example of the licence condition is included in Licence Schedule 4 in the sample spectrum licence at Schedule 6 of the Marketing Plan.

Pursuant to section 71 of the Act, the ACMA may include conditions about such other matters as it thinks fit. The ACMA may also include conditions in a spectrum licence that are not included in the sample spectrum licence.

The Marketing Plan does not deal with all the requirements a licensee may need to meet when using a radiocommunications device, only the requirements imposed by, or under, the Act.

Section 3.8 – Registration of transmitters

Under Part 3.5 of the Act, the ACMA is required to register all spectrum licences, and certain details of radiocommunications devices (except in particular cases) that are operated under each spectrum licence. This section of the Marketing Plan states that all spectrum licences issued under this allocation will include a condition that prevents the operation of a radiocommunications transmitter unless all requirements for registering the transmitter under Part 3.5 have been met to the satisfaction of the ACMA. This is a mandatory licence condition for inclusion in all spectrum licences under subsection 69(1) of the Act. This section of the Marketing Plan also makes provision for allowing transmitters that are part of a group of transmitters to be registered separately or as a group.

The ACMA has the discretion to refuse to register a transmitter under subsection 145(1) of the Act if it forms the view that operating the device in question will cause unacceptable levels of interference to the operation of another transmitter, either under the same or another licence. Unacceptable levels of interference are specified in the Unacceptable Interference Determination made under section 145 of the Act.

However, under subsection 69(2) of the Act, the ACMA may include an exemption from the registration requirements within the mandatory spectrum licence condition, as set out in section 69(1) of the Act.

Transmitters operated with a maximum radiated true mean power of 23 dBm or less per occupied bandwidth in the lower band (703–748 MHz) or 30 dBm or less per occupied bandwidth in the upper band (758–803 MHz) will be exempt from the requirement to be registered. Provided that these low power transmitters meet the emission mask requirements of the spectrum licence, the ACMA considers that they will not cause unacceptable interference. This exemption is included in Licence Schedule 3 of the sample spectrum licence at Schedule 6 of the Marketing Plan.

Section 3.9 – Draft sample licence

This section states that a sample spectrum licence is available at Schedule 6 of the Marketing Plan. The sample spectrum licence sets out the technical and other conditions that may apply to spectrum licences issued in a part of the spectrum referred to in the Minister’s Declaration. However, the conditions in the sample spectrum licence may not reflect the actual conditions included in a spectrum licence issued to a winning bidder.

Section 3.10 – Compatibility requirements

This section explains the purpose of the ACMA’s Radiocommunications Advisory Guidelines (made under section 262 of the Act) that relate to the re-allocation of the 700 MHz band.

Part 4 After allocation

Section 4.1 – Purpose of this Part

This section sets out the purpose of this Part, which is to explain matters that apply after the spectrum licences are issued under the Marketing Plan.

Section 4.2 – Registration of licences

This section specifies that, in accordance with Part 3.5 of the Act and the *Radiocommunications (Register of Radiocommunications Licences) Determination 1997* (the **Register Determination**), the ACMA must register the details of licences on the Register of Radiocommunications Licences (the **Register**). The Register is a publicly available database, and is available on the ACMA’s website.

Part 3.5 of the Act and the Register Determination set out the information that the Register is required to contain, including the name and postal address of the licensee, the licence date of issue and expiry date. The Register may also include details of third party authorisation to use a licence and details of radiocommunications devices to be used under a licence.

Section 4.3 – Third party use

This section highlights that a licensee may permit third parties to operate radiocommunications devices under any licences it holds. Any such arrangement must comply with Division 1 of Part 3.2 of the Act, which includes provisions governing third party use.

Section 4.4 – Trading in licences

This section provides that a licensee may assign, or otherwise deal with, the whole or any part of a licence in accordance with Division 5 of Part 3.2 of the Act. Section 4.5 of the Marketing Plan provides further details about the rules for trading in spectrum licences issued under this Plan.

Section 4.5 – Trading rules

This section ensures that licensees who wish to trade part or all of a spectrum licence in a secondary market are made aware that they must comply with the trading rules made by the ACMA under section 88 of the Act.

In part, the trading rules define the minimum block of spectrum and geographic area that (a) may be traded to a third party, and (b) must be retained by the licensee. The full trading rules are set out in *Radiocommunications (Trading Rules for Spectrum Licences) Determination 2012*.

Section 4.6 – Agreements about emission limits

This section explains the purpose for which an agreement about emission limits can be made. Licensees who are issued 700 MHz band spectrum licences that are adjacent to one another may wish to establish agreements that allow a licensee to exceed their out-of-band or out-of-area core licence conditions. The word ‘adjacent’ can refer to spectrum licences that share a geographic boundary, a boundary between frequency bands, or both. (In the case of the 700 MHz band, the only geographic boundary is between the National area and the RQZ.) This section explains the conditions under which these agreements can be made by reference to Schedules 4 and 5 in the Marketing Plan.

When such an agreement is in place, that agreement effectively sets the emission limits that apply to that licence under section 3.6 of the Marketing Plan and in accordance with Schedules 4 and 5. Schedules 4 and 5 provide that such an agreement must be in writing.

Section 4.7 – Spectrum licences that are about to expire

This section explains the actions that the ACMA will take to determine market interest in spectrum licences which are about to expire. In accordance with section 78 of the Act, the ACMA will publish a notice about spectrum licences that are due to expire within the period set out in the notice. The notice will invite expressions of interest from people wishing to obtain those expiring spectrum licences. This information will be published in the *Gazette* and will also be published on the ACMA’s website.

Section 4.8 – Re-issue of licences

This section explains what the ACMA will do when spectrum licences expire. Under Division 4 of Part 3.2 of the Act, the ACMA may decide to re-issue a spectrum licence to the existing licence holder when it expires if it is in the public interest to do so. Alternatively, the ACMA may offer the spectrum licence for re-allocation by auction, tender, or pre-determined or negotiated price. A re-issued licence may be different to the original licence, including by having different conditions placed on the licensee.

Schedule 1 Category

This Scheduledefines the category referred to in subsection 2.4(1) of the Marketing Plan. In the 700 MHz band, the ACMA has created a single category for the purposes of the auction.

Schedule 1 provides details of the 700 MHz band category by name, number, and lower and upper paired frequency ranges. It also provides the bandwidth of all spectrum lots in the category.

Spectrum within a category is considered to have similar spectrum qualities and be subject to the same or very similar non-core licence conditions. Spectrum in the 700 MHz band has distinctly different properties from the 2.5 GHz band, which is being auctioned simultaneously. All spectrum being reallocated in the 700 MHz band will belong to the same category (the ‘700 MHz band’) because of the similar properties of the spectrum across the band, and the consistent licence conditions that will apply to its use.

The category to which a lot has been assigned is one of several characteristics used to define groups of lots, referred to as products.

Schedule 2 Products

This Schedule defines the 700 MHz band spectrum product that will be offered during the auction.

A product for the purposes of this Marketing Plan is the set of spectrum lots that have the same geographic area (region) and bandwidth, and belong to the same category.

For each product in the 700 MHz band, Schedule 2 lists the product name, its category number, its region, and the number of lots that are available. The bandwidth of lots in the product is also shown in column 5 (‘Bandwidth’) of Schedule 1.

Schedule 3 Regions

This Schedule specifies the geographic area of spectrum lots on offer. It names the area and provides a precise geographic definition of the area. The area is, broadly speaking, Australia except for the RQZ.

To precisely describe the geographic area for each spectrum lot on offer, this Schedule lists a set of HCIS references that correspond to the same area on the ASMG.

A map of the area is also provided (for illustrative purposes only).

Schedule 4 Emission limits outside the area

This Schedule describes the limits placed on the radiofrequency emissions outside the licence area by transmitters operating under the spectrum licence. The limit is expressed as a horizontally radiated power limit that applies to all transmitters within the licence area.  In determining the level of emissions from a transmitter, this Schedule requires the licensee to take into account the kind of antenna and associated equipment used.

Schedule 4 provides base emission limits that apply to parts of the spectrum that are not covered by an agreement made between the relevant licensees to exceed out-of-area core licence conditions. A written agreement between the licensee and all affected licensees of frequency-adjacent and area-adjacent spectrum licences can permit the out-of-area core condition to be exceeded up to a specified maximum level of radio emissions. Part 2 of Schedule 4 states the specified maximum that must not be exceeded.

Schedule 5 Emission limits outside the band

This Schedule describes the limits placed on the radiofrequency emissions outside the licence band that are produced by transmitters and receivers under the spectrum licence.

Schedule 5 provides base emission limits for spurious and non-spurious emissions from transmitters operating in the lower and upper parts of the 700 MHz band under the spectrum licence. These limits apply to parts of the spectrum that are not covered by an agreement to exceed out-of-band core licence conditions between licensees.

Spurious emissions are emissions that are outside the licence bandwidth that are not deliberately generated or transmitted. They include emissions that are not modulation products, wide band noise or emissions caused by switching transients.

Non-spurious emissions are emissions that are outside the licence bandwidth that are generated in the process of generating the emission within the licence bandwidth. They include modulation products, wideband noise and switching transients produced as the transmitter is turned on and off.

Base emission limits for spurious emissions from receiver devices operating under this licence are also specified in this Schedule. These also apply to parts of the spectrum that are not covered by an agreement to exceed out-of-band core licence conditions between licensees.

This Schedule also states that a written agreement between the licensee and all affected licensees of frequency-adjacent and area-adjacent spectrum licences can permit the out-of-band core condition to be exceeded up to a specified maximum level of radio emissions. Part 2 of Schedule 5 provides that the specified maximum that must not be exceeded.

Schedule 6 Sample licence

This Schedule sets out a sample spectrum licence for the 700 MHz band declared for re-allocation. It is an example, constructed for the purposes of illustration only, and is not an actual licence. It includes five licence schedules, which are explained below.

Licence Schedule 1 – Licence details, bands and areas

This Schedule to the licence identifies the licensee, the licence issue and expiry dates and other technical details of the licence. The technical details include the frequency bands of the licence and the geographic area over which it applies.

Licence Schedule 2 – Core conditions

This Schedule sets out the core conditions of the licence. Licence Schedule 2 authorises the operation of radiocommunications devices in accordance with these licence core conditions.

Licence Schedule 2 defines and applies the core conditions, including out of band and out of area base emission limits that must be observed by the licensee when operating radiocommunications devices under the spectrum licence.

This Schedule also makes provision for the licensee to exceed the emission limit core conditions in circumstances where there is a written agreement between the licensee and all affected licensees of frequency-adjacent and area-adjacent spectrum licences. Where such a written agreement exists, the licensee must comply with the maximum permitted level of radio emission specified in the agreement.

Licence Schedule 3 – Statutory Conditions

This Schedule contains other statutory conditions that apply to the licence relating to liability for charges, third party operation of transmitters and transmitter registration requirements. It also includes conditions under which the ACMA may refuse to register a transmitter, conditions where a transmitter will be exempt from the requirement to be registered, and residency requirements for licensees.

Licence Schedule 4 – Other Conditions

This Schedule contains other licence conditions included by the ACMA relating to interference management. It places the responsibility to manage interference on licensees. It also explains the term, ‘manage interference’, which describes the responsibilities of licensees to ensure that the causes of interference are investigated and that steps are taken to reduce the interference to acceptable levels.

Under this Schedule, interference management responsibilities cover:

* the need to manage interference between radiocommunications devices operated under the licence, and between devices operated under this licence and other spectrum licences held by the licensee;
* interference management of radiocommunications devices that are co-sited (located within 200 metres of each other);
* interference management in relation to protection of the RQZ;
* the obligation to prevent harmful interference to a receiver operating in another country and in accordance with the International Telecommunications Union Radio Regulations;
* information to be included on the Register of Radiocommunications Licences;
* Electromagnetic Energy Requirements (EME);
* protection of reception of broadcasting services.

Licence Schedule 4 includes a licence condition in clause 8 (‘Management of potential interference to the reception of broadcasting services’) that protects the reception of any broadcasting service, or retransmission service provided by a transmitter operated under an apparatus licence on a channel between 694 MHz and 820 MHz after the licence commencement date.

The interference management condition provides that where:

* a transmitter is used to provide a broadcasting or a retransmission service; and
* the broadcasting or retransmission service is provided on a channel between 694 MHz and 820 MHz; and
* the transmitter is operated under an apparatus licence,

the licensee must comply with Part 4 of the 700 MHz Transmitter Interference Guidelines. Part 4 prevents the operation of a radiocommunications device in an exclusion zone that includes the transmitter site.

In accordance with section 4.2 of the 700 MHz Transmitter Interference Guidelines, the ACMA will periodically publish maps on its website showing exclusion zones around broadcasting services and retransmission services that are in use in the 700 MHz band. Subsection 4.2(2) of the 700 MHz Transmitter Interference Guidelines provides that for areas designated by these published maps, a spectrum licensee must not deploy a service in any part of the 700 MHz band.

Clause 9 of Licence Schedule 4 explains that the date upon which a broadcasting service is no longer authorised to provide a broadcasting service on a channel between 694 MHz and 820 MHz must be determined in accordance with the relevant TLAP, but that a broadcasting service may cease to be provided before the date upon which that broadcasting service is no longer so authorised.

TLAPs are made by the ACMA under subsection 26(1B) of the *Broadcasting Services Act 1992.* TLAPs specify and allot the channels that are to be available in a particular licence area for broadcasting services. The ACMA is using TLAPS to set the dates by which television broadcasting services must vacate the channels between 694 MHz and 820 MHz. A broadcasting service may, however, vacate a channel between 694 MHz and 820 MHz in a licence area, or part of a licence area, before the date in which that broadcasting service is no longer authorised to be provided on that channel in accordance with the relevant TLAP.

TLAPs are publicly accessible on the Federal Register of Legislative Instruments (www.comlaw.gov.au). Proposed TLAPs and proposed variations to existing TLAPs will also be publicly available on the ACMA’s website.

Clause 9 of Licence Schedule 4 also explains that the date upon which a retransmission service is no longer authorised to be provided will depend on the apparatus licence used to provide the service, but that a retransmission service may cease to be provided before the date upon which that retransmission service is no longer so authorised. The ACMA authorises the provision of retransmission services in the channels between 694 MHz and 820 MHz by making a determination under subsection 34(1) of the *Broadcasting Services Act 1992* providing that a channel is available for the temporary re-transmission of programs and by issuing a transmitter licence to the provider under subsection 100(1) of the Act.

The ACMA may, acting in accordance with the special circumstances licensing provisions in section 153P of the Act, authorise the continued operation of television broadcasting retransmission services in the relevant area beyond 1 January 2015 – with any such authorisation ending concurrently with the broadcasting services vacation date set in the TLAP.

In accordance with section 153P of the Act, and the *Radiocommunications (Spectrum Re-allocation) Declaration No. 1 of 2011*, the ACMA must not issue an apparatus licence (including a transmitter licence) that authorises the operation of radiocommunications devices in the 700 MHz band except in certain circumstances. The ACMA may only issue a transmitter licence to the provider of a retransmission service for use of a channel in the 700 MHz band in accordance with section 153P of the Act. Section 153P does not apply to those frequencies in the range 694 MHz to 820 MHz that do not fall within the definition of “700 MHz Band” in the Marketing Plan.

Licence Schedule 5 – Licence Notes

The licence notes are provided in the sample licence document for the purposes of clarification and guidance on the use of the licence.

ATTACHMENT B

Statement of Compatibility with Human Rights

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

**Radiocommunications Spectrum Marketing Plan (700 MHz Band) 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

On 1 November 2011, the Minister for Broadband, Communications and the Digital Economy made the *Radiocommunications (Spectrum Re-allocation) Declaration No. 1 of 2011* (the **Minister’s Declaration**) under section 153B of Part 3.6 of the *Radiocommunications Act 1992* (the **Act**).

The Minister’s Declaration makes the part of the spectrum from:

(a) 703 MHz to 748 MHz; and

(b) 758 MHz to 803 MHz,

in the areas set out in the re-allocation declaration, subject to re-allocation by issuing spectrum licences.

Under section 60 of the Act, the Australian Communications and Media Authority (the **ACMA**) must determine the procedures for allocating spectrum licences. These procedures are set out in the *Radiocommunications (Spectrum Licence Allocation — Combinatorial Clock Auction) Determination 2012* (the **Allocation Determination**).

Under subsection 39A(2) of the Act, the ACMA must also prepare a marketing plan for issuing spectrum licences that authorise the operation of radiocommunications devices at frequencies within the spectrum and within areas specified in the Minister’s Declaration. This legislative instrument is the marketing plan required by that section.

The marketing plan that constitutes this legislative instrument sets out:

(a) the procedures for issuing spectrum licences for the spectrum set out in the Minister’s Declaration;

(b) the timetable for issuing spectrum licences;

(c) how the spectrum licences are to be allocated and issued;

(d) how much of the spectrum is to be reserved for public or community services; and

(e) the types of conditions that may be included in the spectrum licences to be issued.

Other than making reference to the procedures, this legislative instrument does not set out the procedures for allocating spectrum licences relating to spectrum set out in the Minister's Declaration; these are set out in the Allocation Determination.

Human Rights Implications

The marketing plan that constitutes this legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

The marketing plan that constitutes this legislative instrument is compatible with human rights as it does not raise any human rights issues.

**The Australian Communications and Media Authority**