

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Radiocommunications (26.5-31.3 GHz Band) Reform Instrument 2013

Radiocommunications Act 1992

Purpose

The *Radiocommunications (26.5-31.3 GHz Band) Reform Instrument 2013* (the **Reform Instrument**) has three purposes.

The first purpose is to repeal the legislative instruments that underpinned the spectrum licensing framework for licences in the frequency range 27.5-28.35 GHz (the **28 GHz band**) and the frequency range 31-31.3 GHz (the **31 GHz band**). These bands will cease to be subject to spectrum licensing on 1 February 2014 and the instruments will no longer be relevant from that date.

The Reform Instrument also amends the *Radiocommunications Licence Conditions (Fixed Licence) Determination 1997* (the **Fixed LCD**) to insert specific conditions that will apply to fixed apparatus licensees, operating point-to-multipoint stations in the 28 GHz band, and exempts such licences from unnecessary conditions which would restrict deployment of point-to-multipoint services in the 28 GHz band. In order to avoid limiting possible future deployments in nearby bands, the Reform Instrument applies those conditions to apparatus licensed services in the frequency range 26.5-31.3 GHz. This includes the frequency range 26.5-27.5 GHz (the **27 GHz band**), which is currently subject to spectrum licensing. Those spectrum licences expire on 18 January 2016. Including this frequency range in the Fixed LCD does not in any way change the existing restrictions that apply to the issue of apparatus licences in the spectrum-licensed 27 GHz band. If the 27 GHz band ceases to be subject to spectrum licensing in the future, these amendments would mean that apparatus-licensed services could be introduced in the band without the need for further amendments.

Finally, the Reform Instrument removes rollout goals for point-to-multipoint services deployed in the 1900-1920 MHz and 2010-2025 MHz frequency ranges. Those goals only applied to licences issued or renewed after 27 April 2005 and before 15 February 2008. They are therefore now redundant.

Legislative Provisions

The Reform Instrument is made under sections 39, 39A, 145 and 262 and paragraph 107(1)(f) of the *Radiocommunications Act 1992* (the **Act**) and under subsection 33(3) of the *Acts Interpretation Act 1901* (the **AIA**).

The redundant legislative instruments that are repealed by the Reform Instrument were each made under one or more of sections 39, 39A, 145 and 262 of the Act. The power to make those instruments under those sections is taken to include the power to repeal, rescind, revoke, amend or vary these instruments by virtue of subsection 33(3) of the AIA.

The Fixed LCD is made under paragraph 107(1)(f) of the Act, which permits the ACMA to determine, by legislative instrument, licence conditions applicable to a particular type of apparatus licence. The power to make such an instrument is taken to include the power to vary or amend this instrument by virtue of subsection 33(3) of the AIA.

The Reform Instrument is a legislative instrument for the purposes of the *Legislative Instruments Act 2003 (LIA)*.

Background

The 28 and 31 GHz bands are currently spectrum licensed, with licences expiring on 31 January 2014. The approaching expiry of those licences provided the Australian Communications and Media Authority (the **ACMA**) with an opportunity to undertake a review to identify future arrangements to enable the bands to meet their highest value use in order to derive the greatest overall public benefit.

In January 2013 the ACMA released a discussion paper, *Review of licensing arrangements in the 28/31 GHz bands*, (the **January 2013 discussion paper**).¹ The January 2013 discussion paper outlined two broad options for future arrangements in the bands when current spectrum licences expire:

- > retention of spectrum licensing; or
- > introduction of apparatus licensing.

The January 2013 discussion paper explained that the ACMA's preliminary preferred position was the introduction of apparatus licensing. The ACMA formed this view because it considered apparatus licensing to be the most efficient way to accommodate the range of services emerging as high-value uses of the 28 GHz band. The ACMA considered there was little information on likely future uses of the 31 GHz band. Apparatus licensing would allow the ACMA to implement appropriate arrangements in the 31 GHz band as and when demand for services emerge in that band. Apparatus licensing would also allow the development of arrangements to provide continuity of service for incumbent spectrum licensees, which would give them both certainty and flexibility.

Following consideration of responses to the January 2013 discussion paper, in April 2013 the ACMA remained of the view that the 28 and 31 GHz bands should cease to be available for spectrum licensing from 1 February 2014. Accordingly in May 2013 the ACMA recommended

¹ Full discussion paper can be accessed at www.acma.gov.au.

to the then Minister for Broadband, Communications and the Digital Economy that he revoke the *Radiocommunications (Spectrum Designation) Notice No. 1 of 1998*. The Minister accepted the recommendation and made the *Radiocommunications (Spectrum Designation) Notice No. 1 of 1998 Instrument of Revocation No. 1 of 2013* (the **Revocation Instrument**) on 16 June 2013.² The effect of the Revocation Instrument is that the 28 GHz band will cease to be available for spectrum licensing when current spectrum licences expire on 31 January 2014.

The 31 GHz band was reallocated for spectrum licensing in the Spectrum Re-allocation Declaration No. 1 of 1998 (the **Re-allocation Declaration**). This Re-allocation Declaration ceased to have effect on 1 January 2008 due to the operation of subsection 32(2) of the LIA. The effect of the Re-allocation Declaration having lapsed is that the 31 GHz band will cease to be subject to spectrum licensing if no existing spectrum licences in the band are re-issued prior to licence expiry on 31 January 2014.

The ACMA commenced processes to authorise apparatus licensing in the 28 GHz band when current spectrum licences expire. The ACMA has no evidence that there is demand for access to the 31 GHz band at this time.

Operation

The amendments made by the Reform Instrument insert a new Part 3F in the Fixed LCD, which applies to impose specific licence conditions on any fixed apparatus licences issued in the 26.5 to 31.3 GHz band for the operation of a point to multi-point station. Other amendments have been made to exclude fixed licences operating in the 26.5-31.3 GHz band from the general conditions applying to fixed licences under Part 3 of the Fixed LCD.

This avoids unnecessarily restricting the deployment of point-to-multipoint systems in the 26.5-31.3 GHz band, while ensuring that appropriate licence conditions are placed on the operation of point-to-multipoint systems in the 26.5-31.3 GHz band, such that:

- > a remote station must not be operated if its operation would cause harmful interference to a service provided by another station;
- > the remote station must transmit to a base station using only the receive or transmit frequencies specified on the licence for that base station; and
- > adaptive transmit power control must be used on each station authorised to operate under the licence.

These amendments facilitate the issue of apparatus licences in the 28 GHz band and also any apparatus licences that may be made available for point to multipoint services in the

² The Revocation Instrument is available at <http://www.comlaw.gov.au/Details/F2013L01283>.

future in the 31 GHz and other nearby bands. This is because the amendments apply to the frequency range 26.5-31.3 GHz.

The Reform Instrument also removes the redundant roll out obligations that applied to apparatus licences in the 1900 – 1920 MHz band from the Fixed LCD and repeals the legislative instruments that underpin the spectrum licences in the 28 GHz band (and the 31 GHz band). These instruments will no longer be required once the spectrum licences expire on 31 January 2014. These instruments are:

- a. *Radiocommunications Advisory Guidelines (Managing Interference between 27 GHz and 28 GHz Spectrum-Licensed Services) 2000*;
- b. *Radiocommunications Advisory Guidelines (Managing Interference from Non-spectrum-licensed Transmitters – 28 GHz and 31 GHz Bands) 1998*;
- c. *Radiocommunications Advisory Guidelines (Protection of Non-spectrum-licensed Receivers – 28 GHz and 31 GHz Bands 1998)*;
- d. *Radiocommunications Spectrum Marketing Plan (28 GHz and 31 GHz Bands) 1998*;
- e. *Radiocommunications (Unacceptable Levels of Interference – 28 GHz and 31 GHz Bands) Determination 1998*.

The amendments to the Fixed LCD and the revocation of the legislative instruments listed above do not take effect until 1 February 2014.

Consultation

The ACMA has consulted extensively with stakeholders about its plans to develop apparatus licensing arrangements in the 28 GHz band.

The ACMA established a Technical Liaison Group (the **TLG**) to work with interested industry participants on the establishment of new arrangements in the 28 GHz band, including provision of continuity of service arrangements for holders of expiring spectrum licences. As well as the TLG work, the ACMA also considered submissions in response to the January 2013 discussion paper, existing service allocations and internationally defined access arrangements relating to the 28 GHz band.

Following that consideration, in October 2013 the ACMA released a consultation paper, *Amending the Fixed LCD to support access to the 28 GHz band by apparatus licensed services* (the **October 2013 consultation paper**).³

The October 2013 consultation paper explained that the amendments the ACMA proposed to make to the Fixed LCD were to:

³ Full consultation paper can be accessed at www.acma.gov.au

- Exclude application of the general fixed licence conditions for point to multipoint systems operating under a fixed licence in the 26.5-31.3 GHz band;
- Impose specific conditions on the operation of point-to-multipoint systems in the 26.5–31.3 GHz band;
- Remove redundant rollout goals for point-to-multipoint services deployed in the 1900-1920 MHz and 2010-2025 MHz frequency ranges. Those goals only applied to licences issued or renewed after 27 April 2005 and before 15 February 2008 and therefore are now redundant.

Finally, the October 2013 consultation paper noted that the framework underpinning spectrum licences in the 28 GHz band (and the 31 GHz band) is made up of a number of instruments which, when licences expire on 31 January 2014, will no longer be relevant. The ACMA therefore proposed to repeal those instruments.

Submissions in response to the October 2013 consultation paper were due by 19 November 2013. A total of five responses were received. The responses did not raise any significant concerns in relation to either the revocation of the legislative instruments that underpinned the spectrum licensing framework for licences in the 28 and 31 GHz bands; or in relation to the amendments to the Fixed LCD.

Regulatory Impact Analysis

The Office of Best Practice Regulation (the **OBPR**) determined that the regulatory change effected by the Reform Instrument is minor or machinery in nature and has therefore verified that no further regulatory impact analysis is required (OBPR 2013/13843).

Detailed Description of the instrument

Further details of the Reform Instrument are provided in **Attachment A**.

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 LIA applies to cause a statement of compatibility to be prepared in respect of that legislative instrument. This statement is **Attachment B**.

NOTES ON SECTIONS

Section 1 - Name of Instrument

Section 1 provides that the Reform Instrument is to be cited as the *Radiocommunications (26.5–31.3 GHz Band) Reform Instrument 2013*.

Section 2 - Commencement

This section provides that the Reform Instrument commences on 1 February 2014. This provision ensures commencement of the Reform Instrument coincides with the ceasing of spectrum licences in the 28 and 31 GHz bands on 31 January 2014.

Section 3 – Repeal

This section lists the five legislative instruments which are repealed by the Reform Instrument.

Section 4 - Amendment of the *Radiocommunications Licence Conditions (Fixed Licence) Determination 1997*

This section provides that Schedule 1 of the Reform Instrument amends the *Radiocommunications Licence Conditions (Fixed Licence) Determination 1997*.

Schedule 1 – Amendments

Item [1]

This item omits references to paragraph 2(1)(bb) from paragraph 2(1)(b) of the Fixed LCD and inserts a reference to new paragraph 2(1)(bd). Paragraph 2(1)(b) sets out the scope of the Fixed LCD and this amendment ensures that the paragraph correctly states that the Fixed LCD sets out the conditions applicable to every fixed licence (point to multipoint station), other than those referred to in paragraphs 2(1)(bc) and 2(1)(bd).

Item [2]

This item omits paragraph 2(1)(bb), which provided that certain fixed licences (point to multipoint station that operated in the 1900 – 1920 MHz or 2010-2025 MHz frequency band) were subject to conditions set out in Part 3D. Part 3D is omitted by item [7] as described below.

Item [3]

This item inserts a new paragraph 2(1)(bd), which provides that certain fixed licences (point to multipoint station) for a station that operates in the 26.5–31.3 GHz band are subject to the conditions in Part 3F.

Item [4]

This item inserts a new definition of “26.5-31.3 GHz band” to ensure it is clear throughout the instrument that this term refers to the frequency band 26.500-31.300 GHz.

Item [5]

This item updates the heading to Part 3 to reflect that the conditions set out in Part 3 for fixed licences (point to multipoint station) do not apply to licences for stations that operate in the 26.5-31.3 GHz band.

Item [6]

This item adds a reference to stations that operate in the 26.5-31.3 GHz band. This addition has the effect of ensuring that the conditions in Part 3 do not apply to a fixed licence (point to multipoint station) that operates in the 26.5-31.3 GHz band.

Item [7]

This item omits Part 3D. Part 3D imposed roll-out goal conditions on fixed licences (point to multipoint) for stations that operate in the 1900-1920 MHz or 2010-2025 MHz frequency band. The conditions set out in Part 3D only applied to such licences that were issued or renewed before 15 February 2008, and are therefore now redundant.

Item [8]

This item inserts new Part 3F which applies specific conditions for fixed licences (point-to-multipoint stations) for stations that operate in the 26.5-31.3 GHz band. These conditions are that the licensee must:

- not operate the station if its operation causes harmful interference to a service provided by another station;
- operate the station to transmit to the base station using the receive or transmit frequencies specified on the licence for the base station; and
- use adaptive transmit power control on each station that is authorised to be operated under the licence.

Item [9]

This item omits Schedule 3, which related to evidence for meeting the rollout goals in Part 3D of the Fixed LCD. As Part 3D is repealed, Schedule 3 is no longer relevant.

Statement of Compatibility with Human Rights

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

Radiocommunications (26.5-31.3 GHz Band) Reform Instrument 2013

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

The legislative instrument is made under sections 39, 39A, 145 and 262 and paragraph 107(1)(f) of the *Radiocommunications Act 1992* (the **Act**) and under subsection 33(3) of the *Acts Interpretation Act 1901* (the **AIA**). Paragraph 107(1)(f) of the Act permits the ACMA to determine, by legislative instrument, licence conditions applicable to a particular type of apparatus licence. Sections 39, 39A, 145 and 262 of the Act empower the ACMA to make marketing plans governing the allocation or re-allocation of spectrum for spectrum licensing, to determine what an unacceptable level of interference is for the purpose of registration of radiocommunications transmitters and to make advisory guidelines regarding any aspect of radiocommunications or radio emissions, respectively. The power to make those instruments under those sections is taken to include the power to repeal, rescind, revoke, amend or vary these instruments by virtue of subsection 33(3) of the AIA.

The purpose of the *Radiocommunications (26.5-31.3 GHz Band) Reform Instrument 2013* (the **Reform Instrument**) is to

- > repeal legislative instruments that underpinned the spectrum licensing framework for licences in the frequency range 27.5-28.35 GHz (the **28 GHz band**) and the frequency range 31-31.3 GHz (the **31 GHz band**);
- > amend the *Radiocommunications Licence Conditions (Fixed Licence) Determination 1997* (the **Fixed LCD**) to avoid applying conditions which would unnecessarily restrict deployment of point-to-multipoint services in the frequency range 26.5-31.3 GHz band; and
- > amend the Fixed LCD to remove redundant rollout goals for point-to-multipoint services deployed in the 1900-1920 MHz and 2010-2025 MHz frequency ranges.

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 (the **LIA**) applies to cause a statement of compatibility to be prepared in respect of that legislative instrument.

The Reform Instrument is a legislative instrument that is subject to disallowance under section 42 of the LIA.

Human Rights Implications

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

Conclusion

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