

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Radiocommunications (Trading Rules for Spectrum Licences) Amendment Determination 2013

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 *Radiocommunications (Trading Rules for Spectrum Licences) Amendment Determination 2013* (the **Amendment Determination**) provides updated rules for the trading of spectrum licences which are aimed at providing greater flexibility for spectrum licensees in the 2.3 GHz band in particular.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that when an Act confers a power to make an instrument, that power shall, unless the contrary intention appears, be construed as including a power exercisable in a like manner and subject to like conditions, to amend that instrument.

Legislative Provisions

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

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that when an Act confers a power to make an instrument, that power shall, unless the contrary intention appears, be construed as including a power exercisable in a like manner and subject to like conditions, to amend that instrument.

Background

The frequency range 2302-2400 MHz ('the **2.3 GHz band**') is currently allocated Australia-wide via the issue of spectrum licences. Existing spectrum licences in the band are due to expire on 24 July 2015. The ACMA reviews the technical frameworks for a spectrum-licensed band as licences approach expiry. This helps to ensure the framework remains current and can manage interference across the tenure period of a spectrum licences in a particular band, which may be up to 15 years.

The ACMA established a Technical Liaison Group (**TLG**) to assist in the review of the technical framework for the 2.3 GHz band in August 2012. The TLG process involved consideration by the TLG of several iterations of proposed changes to the technical conditions that spectrum licensed devices would operate under in accordance with the Act.

One of the regulatory issues considered by the TLG was the technical parameters of technologies and the need for updated trading rules to reflect the newer technologies capable of operating in the 2.3 GHz band. As a result, the TLG recommended that the minimum contiguous bandwidth (**MCB**) be increased from 3.5 MHz to 5 MHz to better align with the bandwidth of both existing and expected technologies.

Operation

The Amendment Determination sets out the rules for the trading of spectrum licences. The ACMA specifies the MCB in the Determination as it is the smallest contiguous bandwidth

that can generally be licensed, and ensures that the potential for fragmentation in the band is reduced.

When spectrum licences were first issued in July 2000, the MCB defined for the 2.3 GHz band was set at 7 MHz. This aligned with the main technology used in the band at the time – Multipoint Distribution Systems (MDS) for the delivery of television services.

The ACMA amended the MCB to 3.5 MHz in 2009. This change was made to create a finer resolution in the MCB so it would be more representative of bandwidths used by fixed wireless access services technologies (broadband) while still supporting legacy MDS services.

MDS services are no longer operational in the 2.3 GHz band. Consequently, one of the outcomes of the ACMA's review of the technical framework for the 2.3 GHz band is to optimise the MCB for fixed wireless access services and fixed point-to-point services, which use technologies that operate in bandwidths using multiples of 5 MHz.

The Amendment Determination changes the MCB for the 2.3 GHz band from 3.5 MHz to 5 MHz.

Consultation

The ACMA has consulted extensively with stakeholders about its plans to update the spectrum licensed technical framework for the 2.3 GHz band. The ACMA received two submissions in response to its consultation process. Neither respondent commented on the proposed amendment to the MCB specified in the Determination.

All written submissions from this consultation process are available on the ACMA's website at www.acma.gov.au.

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 ID16044.

Detailed Description of the Amendment Determination

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

ATTACHMENT A

DETAILS OF THE RADIOCOMMUNICATIONS (TRADING RULES FOR SPECTRUM LICENCES) AMENDMENT DETERMINATION 2013

Section 1 – Title

This section provides that the name of the **Amendment** Determination is the *Radiocommunications (Trading Rules for Spectrum Licences) Amendment Determination 2013*.

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 – Amendment of *Radiocommunications (Trading Rules for Spectrum Licences) Determination 2012*

This section specifies that Schedule 1 amends the *Radiocommunications (Trading Rules for Spectrum Licences) Determination 2012*.

Schedule 1 – Amendments

This Schedule sets out two amendments to the *Radiocommunications (Trading Rules for Spectrum Licences) Determination 2012*. The first of these changes is to remove the table of contents from the instrument, which is unnecessary for a short instrument of this kind. The second change is to the number specified under the column “Minimum contiguous bandwidth (MHz)” for Item 9 in Schedule 1.

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 trading of spectrum 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 the Schedule. The minimum contiguous bandwidth for Item 9 is changed from 3.5 to 5 MHz.

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) Amendment Determination 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

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) Amendment Determination 2013* (the **Amendment Determination**) is to update the rules for the trading of spectrum licences for the 2.3 GHz band. 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 Amendment Determination is a legislative instrument that is subject to disallowance under section 42 of the *Legislative Instruments Act 2003*.

Human Rights Implications

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

Conclusion

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