

EXPLANATORY STATEMENT

Radiocommunications Act 1992

Radiocommunications (Spectrum Designation) Notice No. 1 of 2014

Issued by the authority of the Minister for Communications

Authority

Subsection 36(1) of the *Radiocommunications Act 1992* (the **Act**) enables the Minister for Communications (the **Minister**), after consultation with the Australian Communications and Media Authority (the **ACMA**), to give to the ACMA a written notice designating a specified part of the spectrum to be allocated by issuing spectrum licences.

Subsection 36(2) of the Act provides that the notice may be expressed to apply generally or with respect to one or more specified areas.

Subsection 36(3) of the Act enables the ACMA to make recommendations to the Minister about spectrum designation notices that should be given. Subsection 36(4) of the Act requires the ACMA to consult publicly before making a recommendation to the Minister to issue a notice.

Purpose

The purpose of the Notice is to designate the frequency ranges between 1770-1775 MHz and 1865-1870 MHz in Adelaide, 1710-1712.5 MHz and 1805-1807.5 MHz in regional South Australia, and 1710-1712.5 MHz and 1805-1807.5 MHz in Cairns/Townsville (**Relevant Spectrum**) as part of the spectrum to be allocated by issuing spectrum licences.

Background

The *Spectrum Re-allocation Declaration No. 4 of 1997* (the **1997 Declaration**) and the *Spectrum Re-allocation Declaration 1999 (No. 2)* (the **1999 Declaration**) enabled the introduction of spectrum licensing in the 1710-1755 MHz and 1805-1850 MHz ranges, and in the 1755-1785 MHz and 1850-1880 MHz ranges respectively, within the specified geographic areas in Australia. The Relevant Spectrum was part of the spectrum designated for spectrum licensing under the 1997 Declaration and the 1999 Declaration.

Spectrum licences were issued in relation to the Relevant Spectrum but these licences have subsequently been either surrendered to the ACMA or have expired with the incumbent licensee not seeking reissue of the licences. Accordingly,

since there are no incumbent licensees in the Relevant Spectrum, the Notice does not adversely affect any licensees.

The 1997 Declaration and the 1999 Declaration are no longer in force, as they lapsed following the introduction of the *Legislative Instruments Act 2003*. Consequently, the ACMA is unable to allocate the Relevant Spectrum as spectrum licences under the Act without the Minister designating, by written notice to the ACMA, the Relevant Spectrum be allocated by issuing spectrum licences.

In accordance with subsection 36(3) of the Act, the ACMA has made a recommendation to the Minister to issue the Notice. The Minister has accepted the ACMA's recommendation and issues the accompanying Notice under subsection 36(1) of the Act.

The Office of Best Practice Regulation (**OBPR**) was consulted about the making of the Notice. The OBPR considered the changes arising from the Notice were machinery in nature and that no further regulatory impact statement was required. The OBPR exemption number for the Notice is 16300.

Consultation

The ACMA conducted a public consultation (in accordance with subsection 36(4) of the Act) between 30 January 2013 and 15 March 2013. The ACMA received three submissions, all of which supported the ACMA's proposal to make a recommendation for the Relevant Spectrum to be designated for spectrum licensing.

On 17 October 2013, the ACMA wrote to the Minister recommending, under subsection 36(3) of the Act, that the Minister provide the ACMA with a written notice under subsection 36(1) of the Act, designating the Relevant Spectrum for allocation as spectrum licences.

Statement of compatibility with human rights

This statement of compatibility is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The Notice is made under subsection 36(1) of the Act and designates the Relevant Spectrum as spectrum to be allocated by issuing spectrum licences. The Notice has been issued after consultation with the ACMA and the public. The Notice provides for the continuation of current licensing arrangements and does not represent a significant change in policy.

The Notice 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*. It does not engage any of the applicable rights or freedoms and does not raise any human rights issues.

NOTES ON SECTIONS

Section 1 – Name of instrument

Section 1 provides that the name of the Notice is the *Radiocommunications (Spectrum Designation) Notice No. 1 of 2014*.

Section 2 - Commencement

Section 2 provides that the Notice commences on the day after it is registered on the Federal Register of Legislative Instruments.

Section 3 – Definitions

Section 3 defines the term ‘Australian Spectrum Map Grid’ or ‘ASMG’ as the *Australian Spectrum Map Grid 2012* published by the ACMA, as existing from time to time. The ASMG uses the hierarchical cell identifier scheme (HCIS) to identify geographic areas.

Section 3 provides a definition for ‘identified geographic areas of Australia’ to mean the relevant locations specified in the Schedule. Subsection 36(2) of the Act requires the Notice to be expressed to apply with respect to one or more specified areas. In this case, the Notice is expressed to apply to three separate geographic areas (Adelaide, regional South Australia and Cairns/Townsville), described by the HCIS identifiers listed in the Schedule.

Section 3 also defines ‘relevant frequency ranges’ to mean the following ranges within the identified geographic areas of Australia:

- 1770 – 1775 MHz and 1865 – 1870 MHz within the geographical area of Adelaide;
- 1710 – 1712.5 MHz and 1805 – 1807.5 MHz within the geographical area of regional South Australia; and
- 1710 – 1712.5 MHz and 1805 – 1807.5 MHz within the geographical area of Cairns/Townsville.

Section 3 makes clear that the range of numbers identified includes the higher, but not the lower number so to avoid any frequency band overlap.

Section 4 – Designation

In accordance with subsection 36(1) of the Act, section 4 of the Notice provides that the relevant frequency ranges are designated as part of the spectrum to be allocated by issuing spectrum licences.

Schedule

The geographical areas of Adelaide, regional South Australia and Cairns/Townsville have been described in the Schedule by reference to HCIS identifiers.