

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Australian Communications and Media Authority Omnibus Revocation Instrument 2014

Purpose

The purpose of the *Australian Communications and Media Authority Omnibus Revocation Instrument 2014 (Revocation Instrument)* is to revoke 24 instruments that have been made under the *Radiocommunications Act 1992*, the *Telecommunications Act 1997*, the *Telecommunications (Consumer Protection and Service Standards) Act 1999 (TCPSS Act)*, and the *Telecommunications (Numbering Charges) Act 1997* which are now spent and redundant.

Revocation of the instruments will reduce the possibility for confusion about the status of redundant instruments and make accessing the law simpler for businesses and individuals.

Legislative provisions

Radiocommunications Act 1997

Under the *Radiocommunications Act 1997*, the ACMA is responsible for managing and regulating radiofrequency spectrum. Chapter 2 of the *Radiocommunications Act 1997* provides for the preparation of plans and procedures to govern the allocation of spectrum under the licensing systems provided for in Chapter 3.

Section 38 of the *Radiocommunications Act 1997* requires the ACMA (on receiving a notice designating a specified part of the spectrum to be allocated by issuing spectrum licences) to prepare a conversion plan which sets out the procedures and timetables for issuing spectrum licences to replace existing apparatus licences that authorise operation of radiocommunications devices. Sections 39 and 39A of the *Radiocommunications Act 1997*, require the ACMA to prepare marketing plans for issuing spectrum licences that authorise the operation of radiocommunications devices where it receives a notice designating a part of the spectrum to be allocated by issuing spectrum licences or where a spectrum re-allocation declaration states that part or parts of spectrum should be re-allocated by spectrum licences.

Section 60 of the *Radiocommunications Act 1997* requires the ACMA to determine procedures to be applied in allocating spectrum licences under Subdivision B, Division 1 of Part 3.2. Section 106 provides that the ACMA may determine a price-based allocation system for allocating and/or issuing specified transmitter licences.

Subsection 145(4) provides that the ACMA may determine what are unacceptable levels of interference that could be caused by a transmitter to the operation of other radiocommunications devices under a spectrum or any other licence.

Chapter 5 of the *Radiocommunications Act 1997* provides for various matters dealing with administration and enforcement, including allowing the ACMA to make advisory guidelines about any aspect of radiocommunication or radio emission (section 262) and providing for the ACMA to determine charges for things done by the ACMA, including spectrum access charges for spectrum licences (section 294).

Telecommunications Act 1992

Under subparagraph 460(3)(a)(ii) of the *Telecommunications Act 1992*, if the ACMA is of the opinion that a variation to the *Telecommunications Numbering Plan 1997* is a minor variation, the ACMA may make a written declaration to that effect.

TCPSS Act

Under section 20F of the TCPSS Act the ACMA has previously been required to make a written assessment of a participating person's eligible revenue for an eligible revenue period. A person's eligible revenue for an eligible revenue period was the amount taken to be the person's eligible revenue for that period in accordance with a determination in writing made by the ACMA for the purposes of subsection 20B(1) of the TCPSS Act.

The written assessment made by the ACMA was then used to calculate how much a participating person must pay to the ACMA in levies. Subsection 23D(2) and subsection 101A(2) allowed the ACMA to set interest rates on outstanding levy amounts owing under the TCPSS Act.

Under the TCPSS Act, the last eligible revenue period was the 2011-12 financial year. From 1 July 2012, the basis for calculating a participating person's eligible revenue was transferred to the *Telecommunications Universal Service Management Agency Act 2012*.

Telecommunications (Numbering Charges) Act 1997

Under section 18 of the *Telecommunications (Numbering Charges) Act 1997*, if a carriage service provider holds an allocated number at the beginning of a day determined under subsection 18(2) of that Act, a charge is imposed on that number. Subsection 18(2) provides that before 16 February in each year, the ACMA must determine in writing a day in April in that year.

Acts Interpretation Act 1901

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that the power to make an instrument includes, unless the contrary intention appears, a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Operation

The instruments that are being revoked under the Revocation Instrument relate to instruments which are spent or redundant and have no ongoing operation.

Consultation

Section 17 of the *Legislative Instruments Act 2005 (LIA)* requires the ACMA to be satisfied that any consultation it considers to be appropriate and that is reasonably practicable to undertake in relation to an instrument has been undertaken. Paragraph 18(2)(a) of the LIA provides that a rule-maker may be satisfied that consultation is unnecessary or inappropriate for an instrument if the instrument is of a minor or machinery nature and does not substantially alter existing arrangements.

No public consultation has been undertaken because the ACMA is satisfied that the Revocation Instrument is minor and machinery in nature. The Revocation Instrument revokes instruments which are spent and redundant and the revocation of those instruments will not substantially alter existing arrangements.

Regulation impact

The ACMA has undertaken a preliminary assessment of the regulatory impact in accordance with the requirements of the Office of Best Practice Regulation. It has been determined that revoking the 24 instruments will have no direct or significant indirect impact on business or

the economy. For those reasons, an exemption from the need to provide a Regulatory Impact Statement (RIS) has been obtained. The ACMA RIS exemption reference number is ID 16628.

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 has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The Revocation Instrument, the purpose of which is to revoke 24 instruments, 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*.

The ACMA has considered whether the Revocation Instrument engages any applicable human rights or freedoms and has formed the view that it does not. The Revocation Instrument is compatible with human rights as it does not raise any human rights issues.

Attachment

Further details of the Revocation Instrument are set out in Attachment A.

NOTES ON INSTRUMENT

Part 1 Preliminary

Section 1 - Name of Instrument

Section 1 provides that the name of the Instrument is the *Australian Communications and Media Authority Omnibus Revocation Instrument 2014*.

Section 2 - Commencement

Section 2 provides that the Instrument commences on the day after it is registered.

Part 2 Revocation of spent and redundant *Radiocommunications Act 1992* instruments

Section 3 - Revocation of 500 MHz conversion plan

Section 3 revokes the *Radiocommunications Spectrum Conversion Plan (500 MHz Band) 1996 (conversion plan)* made under subsection 38(1) of the *Radiocommunications Act 1997*. The conversion plan sets out the procedures and timetable for issuing spectrum licences to replace existing apparatus licences that authorised the operation of radiocommunications devices in the 500 MHz frequency band. Licences issued in the 500 MHz spectrum band in accordance with the conversion plan expired on 31 May 2012.

On 20 December 2010, the then Minister for Broadband, Communications and the Digital Economy made the *Radiocommunications (Spectrum Designation) Notice No. 1 of 1996 Instrument of Revocation No. 1 of 2010* which revoked the *Radiocommunications (Spectrum Designation) Notice No. 1 of 1996 (1996 Designation Notice)*. As a consequence of the revocation of the 1996 Designation Notice, and the expiry of the 500 MHz band instruments, the 500 MHz band is no longer subject to spectrum licensing.

The conversion plan is therefore spent and redundant.

Section 4 - Revocation of 500 MHz marketing plans

Section 4 revokes 2 spectrum marketing plans made under subsection 39(1) of the *Radiocommunications Act 1992*. These plans dealt with the issue of spectrum licences that authorised the operation of radiocommunications devices in the 500 MHz band at frequencies not used under spectrum licences issued in accordance with the conversion plan.

As set out above, licences issued in the 500 MHz spectrum band expired on 31 May 2012 and the 500 MHz band is no longer subject to spectrum licensing.

The 500 MHz spectrum marketing plans are therefore spent and redundant.

Section 5 - Revocation of certain marketing plans the subject of a spectrum re-allocation declaration

Section 5 revokes four spectrum marketing plans made under subsection 39A(2) of the *Radiocommunications Act 1992*. The marketing plans made under subsection 39A(2) relate to spectrum in the 800 MHz, 1.8 GHz and 2010-2025 MHz spectrum bands, all of which had been the subject of a spectrum re-allocation declaration.

The spectrum marketing plans for the 800 MHz and 1.8 GHz bands described the relevant geographic areas and frequency ranges that were to make up "lots" that would be subject to a

price-based allocation. The plans also included an example of a spectrum licence that would be issued to successful bidders in the auction. Spectrum licences were issued in the 800 MHz and 1800 MHz bands by the ACMA in accordance with the plans described at paragraphs 5(a), (b) and (c). Because these plans relate to the particular auction products and lots in the 800 MHz and 1800 MHz bands which have now been issued, the instruments are wholly spent and no longer required.

The spectrum marketing plan for the 2010-2025 MHz band sets out the plan for issuing spectrum licences in the 2010-2025 MHz band. Spectrum licences were never issued in this frequency range and the band is not subject to spectrum licensing. The plan described at paragraph 5(d) is therefore redundant and not required.

Section 6 - Revocation of instruments which determine the procedures to be applied in allocating certain spectrum licences

Subsection 6(1) revokes 3 instruments made under subsection 60(1) of the *Radiocommunications Act 1992*. The instruments set out the procedures to be applied in allocating spectrum licences in the 500 MHz band (in the case of the instrument at paragraph (1)(a)), the 1.8 GHz band (in the case of the instrument at paragraph (1)(b)) and the 27 GHz band (in the case of the instrument at paragraph (1)(c)). Spectrum licences in each of those bands have been issued and allocated in accordance with the relevant determinations. The instruments are therefore spent and no longer required.

Subsection 6(2) revokes 2 instruments made under subsections 60(1) and 294(1) of the *Radiocommunications Act 1992*. The instruments set out the procedures to be applied and the spectrum access charges payable by licensees for issuing spectrum licences in the 800 MHz band (in the case of the instrument at paragraph (2)(a)) and the 2010-2025 MHz band (in the case of the instrument at paragraph (2)(b)). Spectrum licences in the 800 MHz band were issued in accordance with the determination at paragraph (2)(a) and licences were never issued in the 2010-2025 MHz band. Both instruments are therefore no longer required.

Section 7 - Revocation of instrument which determines a price-based allocation system for allocating and issuing specified transmitter licences

Section 7 revokes the *Radiocommunications (Space Licence Allocation) Determination 2001* which sets out a price-based allocation system for the allocation and issue of space transmitter licences. The instrument related to an auction conducted on 30 October 2001 following which one transmitter licence was issued. That transmitter licence ended on 23 May 2007. The *Radiocommunications (Space Licence Allocation) Determination 2001* is therefore spent and no longer required.

Section 8 - Revocation of instruments specifying unacceptable levels of interference

Section 8 revokes two instruments which specify what are unacceptable levels of interference to the operation of other radiocommunications devices under spectrum licences in the 500 MHz band (in the case of the instrument listed at paragraph (a)) and the 2010-2025 MHz band (in the case of the instrument listed at paragraph (b)).

As set out above, licences issued in the 500 MHz spectrum band expired on 31 May 2012 and the 500 MHz band is no longer subject to spectrum licensing. In addition, no spectrum licences were ever issued in the 2010-2025 MHz band. Both instruments are therefore no longer required.

Section 9 - Revocation of 500 MHz advisory guidelines

Section 9 revokes advisory guidelines for transmitters in the 500 MHz band and was made under subsection 262(1) of the *Radiocommunications Act 1992*. As the instrument relates to licences which are now expired and a spectrum frequency which is no longer subject to spectrum licensing, the advisory guidelines are spent and no longer required.

Part 3 Revocation of spent and redundant *Telecommunications Act 1997* instruments

Section 10 - Revocation of minor variation to numbering plan declarations

Section 10 revokes 2 instruments made under paragraph 460(3)(a) of the *Telecommunications Act 1997*. The instruments declared that particular variations made in past years to the *Telecommunications Numbering Plan 1997* were minor variations which did not require public consultation. As those minor variations to the Numbering Plan were fully effected, the instruments are spent and no longer required.

Part 4 Revocation of spent and redundant *Telecommunications (Consumer Protection and Service Standards) Act 1999* instruments

Section 11 - Revocation of spent and redundant *Telecommunications (Consumer Protection and Service Standards) Act 1999* instruments

Section 11 revokes 3 instruments made under subsections 20B(1), 23D(2) and 101A(2) of the TCPSS Act. The instrument at paragraph (a) sets out the requirements for calculating a person's eligible revenue for financial years ending on 30 June 2012 or earlier. The instruments at paragraphs (b) and (c) set interest rates on outstanding levy amounts owing under the TCPSS Act for financial years ending 30 June 2012 or earlier.

As all instruments relate to financial years which have now passed, the instruments are spent and no longer required.

Part 5 Revocation of spent and redundant *Telecommunications (Numbering Charges) Act 1997* instruments

Section 12 - Revocation of determinations specifying a date under section 18 of the *Telecommunications (Numbering Charges) Act 1997*

Section 12 revokes 3 instruments which set out a day in April for calendar years that have now passed. Carriage service providers required to pay a charge under the *Telecommunications (Numbering Charges) Act 1997* by reference to the date set out in the instruments listed in section 12 would, by now, have paid the charge for numbers allocated and held on the day determined by the ACMA. The instruments are therefore spent and no longer required.