

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Radiocommunications (Trading Rules for Spectrum Licences) Amendment Determination 2015 (No. 1)

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 2015 (No. 1)* (the **Amendment Determination**) provides updated rules for the trading of spectrum licences which are aimed at providing greater flexibility for spectrum licensees in the 3.4 GHz band in particular.

Legislative Provisions

The Amendment Determination has been made by the Australian Communications and Media Authority in accordance with section 88 of the *Radiocommunications Act 1992* (the **Act**) and in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the **AI Act**).

Section 88 of the Act 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.

Subsection 33(3) of the AI Act relevantly provides that where an Act confers a power to make a legislative instrument, the power shall be construed as including 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.

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

Background

The frequency range 3425-3492.5 MHz and 3542.5-3575 MHz (the **3.4 GHz band**) is currently allocated via the issue of spectrum licences in various metropolitan, highly populated regional centres and regional areas. Existing spectrum licences in the band are due to expire on 13 December 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 suitable for the management of 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 3.4 GHz band in July 2014. 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 band. As a result, the TLG recommended that the minimum contiguous bandwidth (**MCB**) be increased from 2.5 MHz to 10 MHz to better align with the bandwidth of both existing and expected technologies.

The 27500–28350 MHz (28 GHz) and 31000–31300 MHz (31 GHz) bands were, until February 2014, subject to spectrum licensing. The bands are now subject to apparatus licensing. The Determination also includes definitions for minimum contiguous bandwidths for these bands, which are no longer required and need to be removed.

Operation

The Determination sets out the rules for the trading of spectrum licences. The ACMA specifies the MCB in the Determination as the smallest contiguous bandwidth that can generally be traded, and so ensures that the potential for fragmentation in the various spectrum bands is reduced.

When spectrum licences were first issued in the 3.4 GHz band in December 2000, the MCB defined for the band was set at 2.5 MHz. This was suitable for the main technology used in the band at that time.

However, over time there has been a change in the most likely technology to be deployed in the band. Consequently, one of the outcomes of the ACMA's review of the technical framework for the 3.4 GHz band was to optimise the MCB for time division duplex fixed and mobile broadband services. The outcome of the review was that a 10 MHz MCB should be adopted for the 3.4 GHz band.

Also, since the 28 GHz and 31 GHz bands are no longer subject to spectrum licensing, the Determination no longer needs to define a MCB for them.

The Amendment Determination changes the MCB for the 3.4 GHz band from 2.5 MHz to 10 MHz. It also removes the MCBs for, and references to, the 28 GHz and 31 GHz bands.

Consultation

The ACMA has consulted extensively with stakeholders about its plans to update the spectrum licensed technical framework for the 3.4 GHz band.

The ACMA established a TLG to support the review of the technical framework in the 3.4 GHz band. Incumbent and prospective licensees for the 3.4 GHz band were invited to participate in the TLG process. The TLG's role was to consider and provide advice to the ACMA on technical aspects required for the development or review of the technical framework.

The ACMA developed a discussion paper which outlined the proposed approach to the spectrum licensing framework for the 3.4 GHz band. This paper was provided by the ACMA for comment to TLG members and is available on the ACMA website at www.acma.gov.au.

The ACMA took into account the views expressed by TLG members when preparing the Amendment Determination. The draft Amendment Determination, along with other proposed changes to the 3.4 GHz band technical framework, were also available for public comment from 18 December 2014 to 6 February 2015 in order to give all interested parties a further opportunity to comment on the draft instruments.

The ACMA received five submissions in response to its consultation process. The submissions commented on various aspects of the proposed changes to the 3.4 GHz band technical framework. However, no submissions commented on the proposed changes to the Amendment 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 LI Act applies to cause a statement of compatibility with human rights to be prepared in respect of that legislative instrument. This statement is in Attachment A.

Regulatory Impact

Prior to releasing the draft Amendment Determination for comment, 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 the Amendment Determination did not warrant the preparation of a RIS because the instrument is likely to have only minor and machinery impacts. The reference for the OBPR's assessment is ID 18035.

Detailed Description of the Amendment Determination

Section 1 – Title

This section provides that the name of the Amendment Determination is the *Radiocommunications (Trading Rules for Spectrum Licences) Amendment Determination 2015 (No. 1)*.

Section 2 – Commencement

This section states that the Amendment 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 three amendments to the *Radiocommunications (Trading Rules for Spectrum Licences) Determination 2012*. The first two changes are to the numbers specified under the column “Minimum contiguous bandwidth (MHz)” for Item 12 and Item 13 in Schedule 1 of that Determination. The third change is to remove Item 15 and Item 16.

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 12 and Item 13 is changed from 2.5 to 10 MHz.

Also, since the 28 GHz and 31 GHz bands are no longer subject to spectrum licensing, the Determination no longer needs to define the MCB for them.

ATTACHMENT A**Statement of Compatibility with Human Rights**

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

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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* 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 2015 (No. 1)* (the Amendment Determination) is to update the rules for the trading of spectrum licences for the 3.4 GHz band and remove the MCB for the 28 GHz and 31 GHz bands. 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 with human rights 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.