

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Radiocommunications 1.5 GHz Frequency Band Plan 2015

Radiocommunications Act 1992

Purpose

The Australian Communications and Media Authority (the **ACMA**) has made the *Radiocommunications 1.5 GHz Frequency Band Plan 2015* (the **Plan**).

The Plan revokes and replaces the *1.5 GHz Band Plan* (the **1996 Instrument**) without making any significant changes to the regulatory arrangements created by the 1996 Instrument.

The ACMA has made the Plan because the 1996 Instrument was due to “sunset” (i.e. be automatically repealed) on 1 October 2015, in accordance with Part 6 of the *Legislative Instruments Act 2003* (the **LIA**). Following review, and consultation as described below, the ACMA formed the view that the 1996 Instrument was operating effectively and efficiently, and continued to form a necessary and useful part of the legislative framework. Accordingly, the ACMA has remade the 1996 Instrument by making the Plan, without any significant changes, so that its on-going effect is preserved.

Legislative Provisions

The Plan has been made by the ACMA in accordance with subsection 32(1) of the *Radiocommunications Act 1992* (the **Act**) and in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the **AIA**).

Subsection 32(1) of the Act allows the ACMA to prepare frequency band plans, each relating to one or more frequency bands. A frequency band plan is a legislative instrument (section 35 of the Act).

Under subsection 33(3) of the AIA, where an Act confers a power to make, grant or issue any instrument of a legislative character, 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 Plan revokes the 1996 Instrument.

Background

On 2 December 1996, the then Spectrum Manager, acting for the Spectrum Management Agency, made the 1996 Instrument under subsection 32(1) of the Act. The 1996 Instrument provided that a frequency band that is part of the 1.5 GHz band, stated on page 2, may be used for the operation of authorised services, subject to some limitations. Authorised services included those that were listed in *Australian Radiofrequency Spectrum Plan* for the relevant part of the 1.5 GHz band. The limitations included, for example, not operating a fixed service in certain parts of the band. However, that limitation itself was subject to some exceptions:

- the person had a licence in force when the 1996 Instrument commenced; or
- the person was operating a point to multipoint service, on specified frequencies, used to supply a public telecommunications service in rural and remote areas (that is areas that are outside of significant population centres).

The limitations effectively restricted access to some parts of the 1.5 GHz band, for the purpose of preserving future planning options in that band.

Operation

The Plan relates to the 1.5 GHz band, which is the frequency band greater than 1427 MHz and not exceeding 1535 MHz. It specifies the purpose for which the 1.5 GHz band may be used, namely, the operation of services specified for the band in the spectrum plan made under section 30 of the Act, subject to some additional limitations. The effect of the Plan is that the ACMA is generally not permitted to issue any licences in relation to that frequency band that would be inconsistent with the Plan (see paragraphs 39(6)(b) and 39A(8)(b), subsection 104(1) and section 137 of the Act). Transmitter licences issued to authorise the use of transmitters in these frequencies are also subject to the condition that the transmitter must not be operated for a purpose that is inconsistent with the relevant band plan (see paragraph 108(2)(a) of the Act).

Consultation

Subsection 17(1) of the LIA requires that, before the ACMA makes a legislative instrument, the ACMA must be satisfied that any consultation that it considers is appropriate and reasonably practicable to undertake has been undertaken.

Section 33 of the Act provides that, before preparing a band plan, the ACMA must, by notice published on its website, state that a draft of the plan is available, set out the draft plan, and invite interested parties to make representations about the draft plan. Interested parties must have at least one month to make representations, and the ACMA must give due consideration to any representations made.

In this case, the ACMA consulted publicly from 28 May 2015 to 3 July 2015 by means of a notice, consultation paper and draft version of the proposed instrument published on its website. That paper explained the sunseting process and the ACMA's preliminary view that the existing arrangements should be saved from automatic repeal and remade without any significant changes. Interested parties were invited to comment. The ACMA received one submission in response to the consultation paper which supported the ACMA's proposal to remake the 1996 Instrument in its current form.

Detailed Description of the Plan

Details of the Plan are set out in **Attachment A**.

Documents incorporated in the Plan by Reference

The Plan incorporates by reference the following Act and legislative instruments as in force from time to time (as permitted by section 13 of the LIA and section 314A of the Act) or otherwise refers to them:

- the Act;
- *Australian Radiofrequency Spectrum Plan 2013*;
- *Radiocommunications (Interpretation) Determination 2015*.

The Act and legislative instruments referenced in the Plan can be found on the ComLaw website (<http://www.comlaw.gov.au>).

Statement of Compatibility with Human Rights

As required under the *Human Rights (Parliamentary Scrutiny) Act 2011*, a Statement of Compatibility with Human Rights has been prepared by the ACMA and is at **Attachment B**.

Regulation Impact Statement

Under the Guidance Note *Sunsetting Legislation* published by the Office of Best Practice Regulation (OBPR) in March 2013, streamlined administrative processes apply to sunseting legislative instruments. As the ACMA has determined that the 1996 Instrument was fit for purpose, and should be remade without any significant changes, and has certified those matters to OBPR, no Regulation

Impact Statement is required in relation to the making of the Plan, (OBPR reference number ID 18666).

Attachment A

Details of the *Radiocommunications 1.5 GHz Frequency Band Plan 2015*

Section 1 — Name of frequency band plan

Section 1 provides that the Plan is called the *Radiocommunications 1.5 GHz Frequency Band Plan 2015*.

Section 2 — Commencement

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

Section 3 — Revocation

Section 3 provides that the 1996 Instrument is revoked.

Section 4 — Interpretation

Section 4 defines various terms which are used in the Plan.

The *1.5 GHz band* means the range of frequencies greater than 1427 MHz and not exceeding 1535 MHz.

An *authorised service* is a service specified in the *Australian Radiofrequency Spectrum Plan 2013* as a primary or secondary service for the 1.5 GHz band, or a part of that band.

Section 5 — Purpose of the 1.5 GHz band

Section 5 provides that, subject to section 6, a frequency band that is part of the 1.5 GHz band may be used for the operation of each authorised service that relates to the frequency band.

Section 6 — Limitations on the use of the 1.5 GHz band

Section 6 limits the use of frequency bands that are part of the 1.5 GHz band in the manner set out in Schedule 1, subject to subsections 10(4) to 10(8) inclusive of the *Australian Radiofrequency Spectrum Plan 2013* which allow use of the band in certain instances.

Schedule 1 — Limitations on the use of the 1.5 GHz band

Schedule 1 places limits on the types of services that can operate in the bands 1452–1492 MHz and 1525–1530 MHz, which are both a part of the 1.5 GHz band.

The limitations are on the operation of fixed services in the bands (subject to some exceptions), the operation of mobile services in the bands (again, subject to an exception), and the operation of broadcasting services or broadcasting-satellite services in the bands.

One of the exceptions to the prohibition on the operation of fixed services in the band is where the service is a point to multipoint service operated for the delivery of public telecommunications services in a rural or remote area (that is, an area outside a significant population centre), on particular frequencies listed in the Schedule.

Attachment B

Statement of Compatibility with Human Rights

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

Radiocommunications 1.5 GHz Frequency Band Plan 2015

The 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 *Radiocommunications 1.5 GHz Frequency Band Plan 2015* revokes and replaces the *1.5 GHz Band Plan* without making any significant changes to the regulatory arrangements created by that instrument.

The *Radiocommunications 1.5 GHz Frequency Band Plan 2015* places restrictions on the use of parts of the 1.5 GHz band to preserve future planning options.

Human Rights Implications

The *Radiocommunications 1.5 GHz Frequency Band Plan 2015* does not engage any of the applicable rights or freedoms.

Conclusion

The legislative instrument is compatible with human rights as it does not raise any human rights issues.