

# EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Radiocommunications Act 1992*

## ***Radiocommunications Spectrum Marketing Plan (700 MHz Band) Variation 2016 (No. 1)***

### **Authority**

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications Spectrum Marketing Plan (700 MHz Band) Variation 2016 (No. 1)* (**the Marketing Plan Variation**) under subsection 42(1) of the *Radiocommunications Act 1992* (**the Act**).

Section 42 of the Act provides that the ACMA may, at any time, by legislative instrument, vary a marketing plan. Part 2.2 of the Act applies in relation to a variation of a marketing plan in the same way that it applies in relation to the preparation of the marketing plan.

### **Purpose and operation of the Marketing Plan Variation**

The Marketing Plan Variation varies the *Radiocommunications Spectrum Marketing Plan (700 MHz Band) 2012* (**the 2012 Plan**). The changes made by the Marketing Plan Variation to the 2012 Plan are primarily to remove the frequency ranges 733 MHz to 748 MHz and 788 MHz to 803 MHz (**the 700 MHz (unallocated lots) band**) from the operation of the 2012 Plan, from the date of commencement of the Marketing Plan Variation. A new marketing plan, the *Radiocommunications Spectrum Marketing Plan (700 MHz unallocated lots band) 2016* (**the 2016 Marketing Plan**) will apply to the 700 MHz (unallocated lots) band from that date.

### *Background*

On 1 November 2011, following recommendations from the ACMA, the Minister for Broadband, Communications and the Digital Economy made declarations that specific parts of the spectrum in both the 700 MHz and 2.5 GHz bands would be subject to re-allocation by spectrum licensing under section 153B of the Act. Two blocks of spectrum in each band were to be re-allocated. In the **700 MHz band**, this corresponded to the frequency ranges 703 MHz to 748 MHz and 758 MHz to 803 MHz (see the *Radiocommunications (Spectrum Re-allocation) Declaration No. 1 of 2011* (**the Re-allocation Declaration**)). The 700 MHz (unallocated lots) band is a subset of the 700 MHz band.

### *700 MHz band allocation in 2013*

The ACMA undertook a ‘Combinatorial Clock Auction’ in 2013 for the 700 MHz band and the 2.5 GHz band, in accordance with the *Radiocommunications (Spectrum Licence Allocation—Combinatorial Clock Auction) Determination 2012*. In the 700 MHz band, there were nine 2 x 5 MHz national lots on offer (totalling 2 x 45 MHz). Optus Mobile Pty Ltd won two lots (totalling 2 x 10 MHz, for the frequency ranges 703 MHz to 713 MHz and 758 MHz to 768 MHz) and Telstra Corporation Ltd won four lots (totalling 2 x 20 MHz, for the frequency ranges 713 MHz to 733 MHz and 768 MHz to 788 MHz). This meant that there were three 2 x 5 MHz lots (totalling 2 x 15 MHz, for the frequency ranges 733 MHz to 738 MHz and 788 MHz to 793 MHz) which were left unsold.

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*Explanatory Statement to the Radiocommunications Spectrum Marketing Plan (700 MHz Band) Variation 2016 (No. 1)*

### *Residual 700 MHz band for allocation in 2017*

The Minister for Communications and the Arts, Senator Mitch Fifield, (**the Minister**) has directed the ACMA under section 14 of the *Australian Communications and Media Authority Act 2005* to take such action as the ACMA considers necessary or convenient to allocate and issue spectrum licences, authorising the operation of radiocommunications devices in the residual 700 MHz band in the designated area (see section 8 of the *Radiocommunications (Spectrum Licence Allocation—Residual 700 MHz Spectrum) Direction 2016 (the Residual 700 MHz Spectrum Direction)*). In the Residual 700 MHz Spectrum Direction, the residual 700 MHz band corresponds to the 700 MHz (unallocated lots) band.

The Minister has also directed the ACMA to allocate the spectrum licences by way of auction.

Under subsection 39A(2) of the Act, the ACMA must prepare a marketing plan for issuing spectrum licences that authorise the use of radiocommunications devices at frequencies within the parts of the spectrum, and within the areas, specified in the Re-allocation Declaration. The 700 MHz (unallocated lots) band was covered by the 2012 Marketing Plan, as part of the allocation of the 700 MHz band that occurred in 2012. However, in order to conduct a new allocation process for the 700 MHz (unallocated lots) band, the ACMA has made the 2016 Marketing Plan. The ACMA has therefore made consequential amendments to the 2012 Marketing Plan, to remove the 700 MHz (unallocated lots) band from the operation of the 2012 Marketing Plan.

### *Marketing Plan Variation operation*

The Marketing Plan Variation removes the residual 700 MHz band from the operation of the 2012 Marketing Plan. It is one of a set of legislative instruments that enables the allocation of the 700 MHz (unallocated lots) band, including:

- > the 2016 Marketing Plan;
- > the Re-allocation Declaration;
- > the *Radiocommunications (Spectrum Licence Allocation – 700 MHz Band) Determination 2016*;
- > the *Radiocommunications (Unacceptable Levels of Interference – 700 MHz Band) Determination 2012*;
- > the *Radiocommunications Advisory Guidelines (Managing Interference from Transmitters – 700 MHz Band) 2012*;
- > the *Radiocommunications Advisory Guidelines (Managing Interference to Receivers – 700 MHz Band) 2012*; and
- > the Residual 700 MHz Spectrum Direction.

A provision-by-provision description of the Marketing Plan Variation is set out in the notes at **Attachment A**.

The Marketing Plan Variation is a legislative instrument for the purposes of the *Legislation Act 2003* (the LA).

## **Documents incorporated by reference**

The Marketing Plan Variation inserts a provision into the 2012 Marketing Plan that incorporates a reference to the Marketing Plan Variation, and inserts notes that incorporate references to the Marketing Plan Variation and the 2016 Marketing Plan.

These legislative instruments may be obtained from the Federal Register of Legislation (<http://www.legislation.gov.au>). These legislative instruments are incorporated as in force, from time to time, in accordance with subsection 14(1) of the LA.

## **Consultation**

Before the Marketing Plan Variation was made, the ACMA was satisfied that consultation was undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the LA.

A draft version of the Marketing Plan Variation was released for public consultation on 21 October 2016, together with the explanatory information paper [Draft allocation instruments for 700 MHz spectrum - unsold lots auction](#). Consultation closed on 17 November 2016.

The ACMA received a total of 9 written submissions to this information paper. The ACMA took the views of stakeholders into consideration during the revision of the Marketing Plan Variation.

## **Regulatory impact assessment**

Prior to making the Marketing Plan Variation, the ACMA was informed that the Office of Best Practice Regulation (**the OBPR**) considered that the proposal to allocate licences for the 700 MHz (unallocated lots) band was sufficiently related to previous processes considered by the OBPR, including the allocation that occurred in 2013, such that it was exempt from the requirement for a Regulation Impact Statement for this legislative instrument (OBPR reference 20916).

## **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 LA applies to cause a statement of compatibility to be prepared in respect of that legislative instrument.

The statement of compatibility set out below has been prepared to meet that requirement.

## **Overview of the instrument**

On 1 November 2011, following recommendations from the ACMA, the Minister for Broadband, Communications and the Digital Economy made a declaration that specific parts of the spectrum in the 700 MHz band would be subject to re-allocation by spectrum licensing under section 153B of the Act. The specific parts of the spectrum declared for re-allocation are set out in the Re-allocation Declaration, and consist of the frequency ranges 703 MHz to 748 MHz and 758 MHz to 803 MHz (namely, the 700 MHz band). This spectrum was offered as part of the digital dividend auction for the 700 MHz and 2.5 GHz bands that was held in 2013. At that auction, 2 x 15 MHz of the 700 MHz band was not allocated (namely, the 700 MHz (unallocated lots) band).

The Minister has given the ACMA the Residual 700 MHz Spectrum Direction. In complying with that direction, the ACMA has made the 2016 Marketing Plan, and has made the Marketing Plan Variation in order to make consequential changes to the 2012 Marketing Plan. Broadly speaking, the

Residual 700 MHz Spectrum Direction requires the ACMA to allocate spectrum licences for the 700 MHz (unallocated lots) band by auction.

Under subsection 39A(2) of the Act, the ACMA must prepare a marketing plan for issuing spectrum licences that authorise the use of radiocommunications devices at frequencies within the parts of the spectrum, and within the areas, specified in the Re-allocation Declaration. The Marketing Plan Variation removes the 700 MHz (unallocated lots) band from the operation of the 2012 Marketing Plan, to ensure that the 2016 Marketing Plan is the marketing plan that applies to the issue of spectrum licences in the 700 MHz (unallocated lots) band.

### ***Human rights implications***

The ACMA has assessed whether the Marketing Plan Variation is compatible with human rights, being the rights and freedoms recognised or declared by the international instruments listed in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* as they apply to Australia.

Having considered the likely impact of the instrument and the nature of the applicable rights and freedoms, the ACMA has formed the view that the Marketing Plan Variation does not engage any of those rights or freedoms.

### ***Conclusion***

The Marketing Plan Variation is compatible with human rights as it does not raise any human rights issues.

**Notes to the *Radiocommunications Spectrum Marketing Plan (700 MHz Band) Variation 2016 (No. 1)***

**Section 1 Name**

This section provides for the Marketing Plan Variation to be cited as the *Radiocommunications Spectrum Marketing Plan (700 MHz Band) Variation 2016 (No. 1)*.

**Section 2 Commencement**

This section provides for the Marketing Plan Variation to commence at the start of the day after it is registered on the Federal Register of Legislation.

The Federal Register of Legislation may be accessed at [www.legislation.gov.au](http://www.legislation.gov.au).

**Section 3 Authority**

This section identifies the provision that authorises the making of the Marketing Plan Variation, namely subsection 42(1) of the *Radiocommunications Act 1992*.

**Section 4 Amendments**

This section provides that the *Radiocommunications Spectrum Marketing Plan (700 MHz Band) 2012* is amended as set out in Schedule 1.

**SCHEDULE 1 AMENDMENTS**

**Items 1, 2 and 3**

These three items collectively repeal the definition of the **700 MHz band** from the 2012 Marketing Plan and substitute new definitions for the **700 MHz band**, the **700 MHz lower band**, and the **700 MHz upper band**. The effect of these new definitions is that, after the commencement of the Marketing Plan Variation, the 700 MHz band for the purpose of the 2012 Marketing Plan no longer includes the 700 MHz (unallocated lots) band (the frequency ranges 733 MHz to 748 MHz and 788 MHz to 803 MHz). Instead, the 700 MHz (unallocated lots) band will be dealt with by the 2016 Marketing Plan.

These items do not affect anything done in relation to the 700 MHz (unallocated lots) band in accordance with the 2012 Marketing Plan before the commencement of the Marketing Plan Variation.

**Item 4**

This item inserts a section in the 2012 Marketing Plan that provides that, in that Plan, unless the contrary intention appears, a reference to another legislative instrument is a reference to that other legislative instrument as in force from time to time, and a reference to another instrument or writing is a reference to that instrument or writing as existing from time to time.

**Item 5, 6 and 7**

These items repeal, respectively, subsections 2.3(2), 3.3(2) and 3.6(2) of the 2012 Marketing Plan, each of which related to spectrum that was unallocated after the allocation process in 2013, or the

licences to be issued in that spectrum. The ACMA intends to make such further allocation of the 700 MHz (unallocated lots) band, in accordance with the 2016 Marketing Plan, therefore it is no longer necessary for the 2012 Marketing Plan to include details about such further allocations or licences.

**Item 8**

This item adds a note to the table at Schedule 1 to the 2012 Marketing Plan. The note explains that after the commencement of the Marketing Plan Variation, the 2012 Marketing Plan ceases to deal with the 700 MHz (unallocated lots) band; the 2016 Marketing Plan deals with the 700 MHz (unallocated lots) band from that time.

**Item 9**

This item adds a note to the table at Schedule 2. The note explains that after the commencement of the Marketing Plan Variation, the 2012 Marketing Plan ceases to deal with the 700 MHz (unallocated lots) band; the 2016 Marketing Plan deals with the 700 MHz (unallocated lots) band from that time.