

# EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Radiocommunications Act 1992*

## ***Radiocommunications Spectrum Marketing Plan (700 MHz unallocated lots band) 2016***

### **Authority**

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications Spectrum Marketing Plan (700 MHz unallocated lots band) 2016* (**Marketing Plan**) under section 39A of the *Radiocommunications Act 1992* (**the Act**).

Subsection 39A(2) of the Act provides that the ACMA must, by legislative instrument, prepare a marketing plan for issuing spectrum licences that authorise the operation of radiocommunications devices at frequencies with a part or parts of the spectrum included in a declaration made under section 153B of the Act, and within areas specified in that declaration. Subsection 39A(5) provides that a marketing plan may indicate:

- (a) the procedures to be followed for issuing spectrum licences in accordance with the plan;
- (b) the timetable for issuing spectrum licences in accordance with the plan;
- (c) how the spectrum dealt with under the plan is to be apportioned among spectrum licences to be issued;
- (d) how much of the spectrum dealt with under the plan is to be reserved for public or community services;
- (e) the conditions, or types of conditions, that may be included in spectrum licences to be issued.

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

The Marketing Plan specifies the spectrum lots available in the allocation of the frequency ranges 733 MHz to 748 MHz and 788 MHz to 803 MHz (**the 700 MHz (unallocated lots) band**), the method by which the lots will be allocated, and the conditions that are likely to apply to spectrum licences issued after the conclusion of the allocation process. The 700 MHz (unallocated lots) band is the same as the ‘residual 700 MHz band’ in the ‘designated area’, as defined in the *Radiocommunications (Spectrum Licence Allocation—Residual 700 MHz Spectrum) Direction 2016* (**the Residual 700 MHz Spectrum Direction**).

### *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.

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### *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.

### *700 MHz (unallocated lots) 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 700 MHz (unallocated lots) band (see section 8 of the Residual 700 MHz Spectrum Direction). The Minister has directed the ACMA, in allocating these spectrum licences, to offer the following two products sequentially:

- > a 2 x 10 MHz lot, representing the frequency ranges 738 MHz to 748 MHz and 793 MHz to 803 MHz (**10 MHz lot**); and
- > a 2 x 5 MHz lot, representing the frequency ranges 733 MHz to 738 MHz and 788 MHz to 793 MHz (**5 MHz lot**).

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

The Residual 700 MHz Spectrum Direction specifies that spectrum licences must be allocated authorising the use of radiocommunications devices in the geographic area set out in the Re-allocation Declaration. This area is effectively the Australian mainland and Tasmania, excluding the Mid-West Radio Quiet Zone (**RQZ**). The specific geographic boundaries for the lots are set out in the Re-allocation Declaration.

The Residual 700 MHz Spectrum Direction also requires the ACMA to have any spectrum licences issued come into force on 1 April 2018, and expire on 31 December 2029.

### *Operation of the Marketing Plan*

Under subsection 39A(2) of the Act, the ACMA must prepare a marketing plan for issuing spectrum licenses that authorise the use of radiocommunications devices in parts of the spectrum described by the Re-allocation Declaration. The *Radiocommunications Spectrum Marketing Plan (700 MHz) 2012 (the 2012 Marketing Plan)* dealt with the allocation of spectrum licences for the 700 MHz band in 2013, including the 700 MHz (unallocated lots) band that was unallocated after the 2013 process concluded. The ACMA has made the Marketing Plan in relation to the upcoming allocation of spectrum licences in the 700 MHz (unallocated lots) band under the *Radiocommunications (Spectrum Licence Allocation – 700 MHz Band) Determination 2016 (Allocation Determination)*. The ACMA has made the *Radiocommunications Spectrum Marketing Plan (700 MHz Band) Variation 2016 (No. 1)* to remove the 700 MHz (unallocated lots) band from the operation of the 2012 Marketing Plan.

The Marketing Plan is one of a set of legislative instruments that enables the allocation of the 700 MHz (unallocated lots) band, including:

- > the Allocation Determination;
- > 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*;
- > the Re-allocation Declaration;
- > the Residual 700 MHz Spectrum Direction.

The purpose of the Marketing Plan is to describe the spectrum ‘products’ that will be offered at auction. In doing so, it identifies the spectrum that will be allocated and defines how this spectrum will be divided into lots for applicants to acquire in the auction process, or possibly for a pre-determined price, under the Allocation Determination. In addition, it sets out some of the technical and non-technical conditions that may apply to spectrum licences, and other matters that licensees should take into account when deciding whether to participate in the allocation process and when operating radiocommunications devices under a spectrum licence.

The Marketing Plan also briefly describes the procedures by which the ACMA will conduct the allocation. Full details of the allocation procedures are set out in the Allocation Determination. Consistent with the Residual 700 MHz Band Direction, the ACMA will employ a price-based method of allocation, namely an auction, to allocate this spectrum. The ACMA has chosen the Simple Clock Auction (SCA) methodology, delivered through a secure online system, as the auction method to be used to conduct the auction. If, in particular circumstances, the ACMA considers there is no need for an auction, the Allocation Determination allows the ACMA to allocate a licence to an applicant without conducting an auction.

The 700 MHz (unallocated lots) band is divided into two lots that are defined by geographic area and frequency range. The lots will be available in a paired configuration (the 10 MHz lot is a pair of 10 MHz frequency ranges, and the 5 MHz lot is a pair of 5 MHz frequency ranges). The paired configuration enables the use of technologies such as 4G Long Term Evolution (LTE), used to deliver mobile broadband services. The 10 MHz lot will consist of a block of 10 MHz in each of the lower and upper parts of the 700 MHz band, namely, 738 MHz to 748 MHz and 793 MHz to 803 MHz. The 5 MHz lot will consist of a block of 5 MHz in each of the lower and upper parts of the 700 MHz band, namely, 733 MHz to 738 MHz and 788 MHz to 793 MHz.

The technical conditions to be included in spectrum licences allocated in accordance with the Marketing Plan and the Allocation Determination are drawn from the ACMA’s existing technical framework for the 700 MHz band, developed in 2012 in consultation with industry stakeholders. These technical conditions are set out in the Marketing Plan, in the parts that deal with licence conditions and the sample spectrum licence. The broader technical framework is set out in the following legislative instruments:

- > *Radiocommunications (Unacceptable Levels of Interference – 700 MHz Band) Determination 2012*;

- > *Radiocommunications Advisory Guidelines (Managing Interference from Transmitters – 700 MHz Band) 2012;*
- > *Radiocommunications Advisory Guidelines (Managing Interference to Receivers – 700 MHz Band) 2012.*

The technical framework places constraints on, and regulates the use of, spectrum licences to allow licensees to operate services without causing undue interference to other services operating in other parts of the radiofrequency spectrum. Core conditions (in accordance with section 66 of the Act) will be included in spectrum licences to:

- > define their geographic boundaries;
- > define their range of frequencies;
- > set out-of-area radio emission limits;
- > set spurious and non-spurious radio emission limits.

In addition, the Marketing Plan discusses other relevant obligations, including spectrum trading rules, use by third parties and registration of transmitters with the ACMA, and payment obligations imposed by the Allocation Determination.

Licence commencement and licence duration are also described in the Marketing Plan. In accordance with the Residual 700 MHz Band Direction, spectrum licences will come into force on 1 April 2018 and expire on 31 December 2029.

A sample spectrum licence set out in Schedule 5 to the Marketing Plan also contains information relating to core and other conditions that may apply to the operation of radiocommunications devices under the spectrum licence. However, the spectrum licences actually issued by the ACMA may contain additional or different conditions.

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

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

#### **Documents incorporated by reference**

The Marketing Plan incorporates the Australian Spectrum Map Grid 2012. The Australian Spectrum Map Grid (**ASMG**) is used to identify geographic areas of spectrum licences. The Australian Spectrum Map Grid 2012 describes the ASMG and the associated Hierarchical Cell Identifier Scheme (**HCIS**) that the Marketing Plan uses to define licences' geographic areas. The Australian Spectrum Map Grid 2012 is available from the ACMA's website: [www.acma.gov.au](http://www.acma.gov.au). The Australian Spectrum Map Grid 2012 is incorporated as existing from time to time, as permitted by subsection 314A(2) of the Act.

The Marketing Plan also incorporates the Radiocommunications Assignment and Licensing Instruction MS 32 (**the RALI**). The RALI sets out procedures to be followed when coordinating radiocommunications transmitters to be used under a spectrum licence with the devices whose use is protected by the RQZ. The RALI is available from the ACMA's website: [www.acma.gov.au](http://www.acma.gov.au). The RALI is incorporated as existing from time to time, as permitted by subsection 314A(2) of the Act.

The Marketing Plan also incorporates the International Telecommunication Union (**ITU**) Radio Regulations (**the Radio Regulations**). The ITU describes itself as the United Nations' specialised agency for information and communication technologies, and the Radio Regulations are an instrument made by decisions at World Radiocommunications Conferences. The Radio Regulations are available

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to be downloaded for free from the ITU's website: [www.itu.int](http://www.itu.int). The Radio Regulations are incorporated as existing from time to time, as permitted by subsection 314A(2) of the Act.

The Marketing Plan also incorporates the following Acts and legislative instruments (including by the adoption of definitions), or otherwise refers to them:

- > the Act;
- > the *Administrative Appeals Tribunal Act 1975*;
- > the Allocation Determination;
- > the *Australian Communications and Media Authority Act 2005*;
- > the *Income Tax Assessment Act 1997*;
- > the *International Tax Agreements Act 1953*;
- > the *Radiocommunications Advisory Guidelines (Managing Interference from Transmitters – 700 MHz Band) 2012*;
- > the *Radiocommunications Advisory Guidelines (Managing Interference to Receivers – 700 MHz Band) 2012*;
- > the *Radiocommunications (Interpretation) Determination 2015*;
- > the *Radiocommunications (Labelling) Determination 2013*;
- > the *Radiocommunications Licence Conditions (Apparatus Licence) Determination 2015*;
- > the *Radiocommunications (Mid-West Radio Quiet Zone) Frequency Band Plan 2011*;
- > the *Radiocommunications (Register of Radiocommunications Licences) Determination 1997*;
- > the *Radiocommunications Spectrum Marketing Plan (700 MHz Band) Variation 2016 (No. 1)*;
- > the *Radiocommunications (Trading Rules for Spectrum Licences) Determination 2012*;
- > the *Radiocommunications (Unacceptable Levels of Interference – 700 MHz Band) Determination 2012*;
- > the Re-allocation Declaration.

The Acts and legislative instruments listed above may be obtained from the Federal Register of Legislation (<http://www.legislation.gov.au>). The Acts listed above are incorporated as in force from time to time, in accordance with section 10 of the *Acts Interpretation Act 1901* and subsection 13(1) of the LA. The legislative instruments listed above are incorporated as in force from time to time, in accordance with section 6 of the Marketing Plan and subsection 14(1) of the LA.

### **Consultation**

Before the Marketing Plan 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 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.

### **Regulation Impact Statement**

Prior to making the Marketing Plan, the ACMA was informed that the Office of Best Practice Regulation (**the OBPR**) considered that the proposal to allocate licences for the 700 MHz

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(unallocated lots) band was sufficiently related to previous processes considered by the OBPR, including the allocation that occurred in 2013, 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 Marketing Plan**

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 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.

Subsection 39A(2) of the Act provides that the ACMA must, by legislative instrument, prepare a marketing plan for issuing spectrum licences that authorise the operation of radiocommunications devices at frequencies with a part or parts of the spectrum included in the Re-allocation Declaration. Subsection 39A(5) provides that a marketing plan may indicate:

- (a) the procedures to be followed for issuing spectrum licences in accordance with the plan;
- (b) the timetable for issuing spectrum licences in accordance with the plan;
- (c) how the spectrum dealt with under the plan is to be apportioned among spectrum licences to be issued;
- (d) how much of the spectrum dealt with under the plan is to be reserved for public or community services;
- (e) the conditions, or types of conditions, that may be included in spectrum licences to be issued.

Subject to compliance with allocation limits set out in the Residual 700 MHz Spectrum Direction, any person may apply to be allocated a spectrum licence in accordance with the Marketing Plan

### **Human rights implications**

The ACMA has assessed whether the Marketing Plan 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 does not engage any of those rights or freedoms.

***Conclusion***

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

**Notes to the *Radiocommunications Spectrum Marketing Plan (700 MHz unallocated lots band) 2016***

**PART 1 PRELIMINARY**

**Section 1 Name**

This section provides for the Marketing Plan to be cited as the *Radiocommunications Spectrum Marketing Plan (700 MHz unallocated lots band) 2016*.

**Section 2 Commencement**

This section provides for the Marketing Plan to commence immediately after the commencement of the *Radiocommunications Spectrum Marketing Plan (700 MHz Band) Variation 2016 (No. 1)*.

**Section 3 Authority**

This section identifies the provision that authorises the making of the Marketing Plan, namely section 39A of the *Radiocommunications Act 1992*.

**Section 4 Purpose of the instrument**

This section lists the main matters dealt with by the Marketing Plan. The Marketing Plan should be read in conjunction with the Allocation Determination for a more complete understanding of all allocation procedures.

**Section 5 Definitions**

This section defines a number of key terms used throughout the Marketing Plan, and indicates where other key terms are defined. A number of other expressions used in the Marketing Plan are defined in the Act.

**Section 6 References to other legislative instruments, other instruments or writing**

This section provides that in the Marketing 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.

**Section 7 References to frequency ranges**

This section provides that in the Marketing Plan the range of numbers that identifies a frequency range includes the higher, but not the lower, number.

**PART 2 ALLOCATION OF SPECTRUM LICENCES**

**Section 8 Simplified outline of this Part**

This section sets out a simplified outline of Part 2.



## **Section 9      Parts of the spectrum**

This section provides that spectrum licences in the 700 MHz (unallocated lots) band will be allocated and issued in the manner described in the Marketing Plan and Allocation Determination.

## **Section 10      How licences will be allocated**

This section provides that the primary means of allocating spectrum licences in the 1800 MHz band will be by auction using the SCA methodology. The rules and procedures that apply to the auction are set out in the Allocation Determination. However, the ACMA may offer to allocate spectrum licences for a pre-determined price if it considers that conducting an auction may not be necessary, in accordance with procedures set out in the Allocation Determination.

## **Section 11      Lots for the auction**

This section describes the lots for the auction. The 700 MHz (unallocated lots) band has been divided by the ACMA into smaller blocks (referred to as lots) for auction. Each lot is defined by a frequency range (and resultant bandwidth), as set out in Schedule 1 to the Marketing Plan (and Schedule 2 to the Allocation Determination), and a specific geographic area (region), as set out in Schedule 2 to the Marketing Plan.

There are two lots in the auction. The 10 MHz lot will consist of a block of 10 MHz in each of the lower and upper parts of the 700 MHz band, namely, 738 MHz to 748 MHz and 793 MHz to 803 MHz. The 5 MHz lot will consist of a block of 5 MHz in each of the lower and upper parts of the 700 MHz band, namely, 733 MHz to 738 MHz and 788 MHz to 793 MHz.

The region for each of the two lots is the National Region, which excludes the RQZ. The RQZ is defined in the *Radiocommunications (Mid-West Radio Quiet Zone) Frequency Band Plan 2011*.

This section also provides that an auction will be held in accordance with the procedures set out in the Allocation Determination. In some circumstances, the Allocation Determination allows the ACMA to allocate a spectrum licence without conducting an auction (see Part 5 of the Allocation Determination).

## **Section 12      Advertising the auction**

This section provides that the ACMA will advertise the details of the auction and invite persons to take part, in accordance with the Allocation Determination (which sets out requirements for this process in more detail). The ACMA will publish a notice to advertise the allocation process on its website.

## **Section 13      Taking part in the auction**

This section provides that detailed information about the auction and the application process will be made available by the ACMA in an applicant information package (AIP), to be published in accordance with the Allocation Determination. The AIP will be made available at the beginning of the allocation process. The mandatory contents of the AIP are set out in section 27 of the Allocation Determination.

The AIP will contain important information about the allocation process for potential participants. It will describe how to apply to participate in the allocation process, and will include copies of all necessary forms and documents to commence participation in the process.

This section also states that information about how to apply to participate in the auction is included in Part 4 of the Allocation Determination.

### **PART 3                      SPECTRUM LICENCES TO BE ISSUED**

#### **Section 14      Simplified outline of this Part**

This section sets out a simplified outline of Part 3.

#### **Section 15      Issue of licences**

This section sets out when the ACMA will issue spectrum licences in the 700 MHz (unallocated lots) band. A licence will be issued to a successful applicant or winning bidder as soon as practicable after that applicant or bidder has paid the part of the spectrum access charge that the Allocation Determination requires to be paid before a licence will be issued.

In accordance with the Residual 700 MHz Band Direction, the Allocation Determination allows a successful applicant or winning bidder to choose to pay the spectrum access charge in instalments. Accordingly, if the ACMA decides to allocate the spectrum under the Allocation Determination for a pre-determined price, the ACMA must issue a spectrum licence to a successful applicant for a pre-determined price as soon as practicable after the successful applicant pays the entire balance of the upfront pre-determined price or the first instalment of the pre-determined price. Similarly, if allocation is conducted by way of auction, the ACMA must issue a spectrum licence to a winning bidder as soon as practicable after the winning bidder pays the entire balance of the upfront winning price or the first auction instalment.

If electing to pay by instalments, a successful applicant or winning bidder must also provide to the ACMA the delayed pre-determined price bank guarantee, or delayed winning price bank guarantee (depending on whether the spectrum is allocated for a pre-determined price or through the auction process set out in the Allocation Determination), which secures the payment of part of the second and third instalments, or part of the second and third auction instalments, before being issued the licence.

If a spectrum licence is issued to a successful applicant after the first instalment, or to a winning bidder after the first auction instalment, is paid, that instalment and any subsequent instalment is not refundable in any circumstances.

If either or both of the second or third instalments, or the second or third auction instalments, as the case may be, is not paid by the date specified for payment in the Allocation Determination, a licensee may be in breach of the licence condition required to be included in the licence by section 67 of the Act. If a licensee contravenes a condition of its licence, the ACMA may suspend or cancel the licence (see Division 3 of Part 3.2 of the Act). The ACMA may also enforce the delayed pre-determined price bank guarantee, or the delayed winning price bank guarantee, if the second or third instalment is not paid by the date specified for payment in the Allocation Determination.

The Allocation Determination sets out the relevant procedures for payment of spectrum access charges in more detail.

#### **Section 16      Commencement and duration of licences**

This section explains that spectrum licences issued as a result of the auction, or for a pre-determined price, will be for a fixed term, commencing on 1 April 2018 and expiring on 31 December 2029, in accordance with the Residual 700 MHz Spectrum Direction. The expiry date is the same as the date on which other spectrum licences previously issued in the 700 MHz band, as a result of the

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*Radiocommunications (Spectrum Licence Allocation – Combinatorial Clock Auction) Determination 2012*, will expire.

### **Section 17 Core licence conditions**

Under section 66 of the Act, there are a number of core conditions which a spectrum licence must include. This section sets out the types of core conditions to be included in a spectrum licence allocated in accordance with the Marketing Plan, including the geographic area and frequency bands in which a radiocommunications device can be operated under a spectrum licence, and the out-of-area and out-of-band emission levels.

### **Section 18 Determining core licence conditions**

This section explains how the core conditions for spectrum licences issued in the 700 MHz (unallocated lots) band as a result of an auction, or for pre-determined price allocation, will be determined.

Each licence will specify a range of frequencies within which the licensee may operate radiocommunications devices. The range of frequencies will depend on the lots the licensee has been allocated in accordance with the Allocation Determination. If a licensee has been allocated both lots, the licence issued may specify the aggregate frequency range for the lots.

Each licence will also specify the geographic area within which the licensee may operate radiocommunications devices. The geographic area will be the National Region, described in Schedule 2 to the Marketing Plan.

The National Region is defined by an identifier scheme adopted by the ACMA in 2012 (the HCIS). Under the HCIS, areas are defined by referring to a set of identifiers which collectively correspond to a single area on the ASMG. The ASMG is described in more detail, including with the use of geographic co-ordinates to define the ASMG outer boundary, in the Australian Spectrum Map Grid 2012, available from the ACMA's website at [www.acma.gov.au](http://www.acma.gov.au).

The ASMG divides the Australian land mass into a grid of squares (**cells**) of four sizes, with their side lengths of the largest to smallest cells being, respectively, 3 degrees, 1 degree, 15 minutes and 5 minutes of arc. The HCIS names the cells in this tiered structure, with cells of each size given a unique identifier name. Under this system, the region for a lot is comprised of a collection of unique identifiers that cover the required geographic area on the ASMG. Spatial data files (in Shapefile format), which are available from the ACMA's website, may be used to generate a map of an area defined by a set of HCIS identifiers with geographic information software. A HCIS area description to Placemark conversion tool has also been developed and is available online at the ACMA website: [www.acma.gov.au](http://www.acma.gov.au).

An indicative map that illustrates the area of the National Region is shown in Schedule 2. The National Region covers the mainland of Australia and Tasmania, but excludes the RQZ. The ACMA's policy is to maintain low levels of radiofrequency emissions in the RQZ (near Boolardy Station, approximately 200 kilometres west of Meekatharra in remote Western Australia) to facilitate the development and use of radioastronomy technologies at the Murchison Radio-astronomy Observatory.

Subsections 18(2) and 18(3) of the Marketing Plan provide that the emission limits, which will be licence conditions included in the spectrum licences issued in accordance with the Marketing Plan, will be calculated in accordance with Schedules 3 and 4 to the Marketing Plan. These Schedules are,

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respectively, used to calculate the maximum emission limits allowable outside the geographic area, and outside the frequency band, of a spectrum licence, and they form part of the core conditions of each licence.

### **Section 19      Other licence conditions**

This section identifies other kinds of statutory licence conditions and other licence conditions that may be included in each spectrum licence issued under this allocation process, but which are not core conditions of the licence. These include the conditions in relation to payment to the ACMA of applicable charges, use by third parties, registration requirements for radiocommunications transmitters and residency requirements of the licensee. The ACMA may also include conditions about other matters, including conditions relating to interference management. Some of these conditions are included in the sample licence at Schedule 5.

In accordance with section 67 of the Act, a spectrum licence will include a condition to comply with obligations to pay the spectrum access charge. Under the Allocation Determination, where the successful applicant or winning bidder has chosen to pay in instalments, there is an obligation to pay the second and third instalment, or second and third auction instalment. Failure to pay these instalments is a failure to comply with the obligation to pay the spectrum access charge, and therefore may amount to a contravention of the licence condition required to be included by section 67 of the Act. If a licensee contravenes a condition of its licence, the ACMA may suspend or cancel the licence (see Division 3 of Part 3.2 of the Act).

Pursuant to section 71 of the Act, the ACMA may include conditions about such other matters as it thinks fit. The ACMA may also include conditions in a spectrum licence that are not included in the Marketing Plan or the sample spectrum licence. In particular, the ACMA may include a condition about giving the ACMA the delayed pre-determined price bank guarantee or the delayed winning price bank guarantee, where appropriate.

### **Section 20      Registration of transmitters**

Under Part 3.5 of the Act, the ACMA is required to register all spectrum licences, and certain details of radiocommunications devices (except in particular cases) that are operated under each spectrum licence. This section of the Marketing Plan states that all spectrum licences issued pursuant to the Marketing Plan will include a condition that prevents the operation of a radiocommunications transmitter unless all requirements for registering the transmitter under Part 3.5 have been met to the satisfaction of the ACMA. This is a mandatory licence condition for inclusion in all spectrum licences, under subsection 69(1) of the Act.

The ACMA has the discretion to refuse to register a transmitter under subsection 145(1) of the Act if it forms the view that operating the device in question will cause unacceptable levels of interference to the operation of other radiocommunications devices, either under the same licence or another licence. For the 700 MHz band, including the 700 MHz (unallocated lots) band, unacceptable levels of interference are defined in the *Radiocommunications (Unacceptable Levels of Interference — 700 MHz Band) Determination 2012* made under subsection 145(4) of the Act.

However, under subsection 69(2) of the Act, the ACMA may include an exemption from the registration requirements within the mandatory spectrum licence condition as set out in subsection 69(1) of the Act.

Transmitters that operate in the 700 MHz lower band with a maximum radiated true mean power of 23 dBm or less per occupied bandwidth, or in the 700 MHz upper band with a maximum radiated true

mean power of 30 dBm or less per occupied bandwidth, are proposed to be exempt from the requirement to be registered. These devices are still required to meet all the core and other conditions of the licence, including emission limit requirements. This exemption is included in Licence Schedule 3 of the sample spectrum licence at Schedule 5 to the Marketing Plan.

#### **Section 21      Draft sample licence**

This section provides that a sample spectrum licence is included at Schedule 5 to the Marketing Plan. The sample spectrum licence sets out the technical and other conditions that may apply to spectrum licences issued as a result of the allocation process. However, the conditions in the sample spectrum licence may not reflect the actual conditions included in a spectrum licence issued to a successful applicant or winning bidder.

#### **Section 22      Compatibility requirements**

This section provides that the purpose of the *Radiocommunications Advisory Guidelines (Managing Interference to Receivers – 700 MHz Band) 2012* and the *Radiocommunications Advisory Guidelines (Managing Interference from Transmitters – 700 MHz Band) 2012* is to provide a means of coordinating services operating under spectrum licences in the 700 MHz band.

### **PART 4                      AFTER ALLOCATION**

#### **Section 23      Simplified outline of this Part**

This section sets out a simplified outline of Part 4.

#### **Section 24      Registration of licences**

This section provides that, in accordance with Part 3.5 of the Act and the *Radiocommunications (Register of Radiocommunications Licences) Determination 1997 (the Register Determination)*, the ACMA must register the details of spectrum licences in the Register of Radiocommunications Licences (**Register**). The Register is a publicly available database that is available on the ACMA's website.

Part 3.5 of the Act and the Register Determination set out the information that the Register is required to contain, including the name and postal address of the licensee, the licence date of issue and expiry date. The Register may also include details of radiocommunications devices operated under a spectrum licence.

#### **Section 25      Third party use**

This section provides that a licensee may permit third parties to operate radiocommunications devices under any spectrum licences it holds. Any such arrangement must comply with Division 1 of Part 3.2 of the Act, which includes provisions governing third party use.

#### **Section 26      Trading in spectrum licences**

This section provides that a licensee may assign, or otherwise deal with, the whole or any part of a spectrum licence in accordance with Division 5 of Part 3.2 of the Act. The *Radiocommunications (Trading Rules for Spectrum Licences) Determination 2012* made under section 88 of the Act provides further details about rules for trading in spectrum licences. In part, these rules define the minimum block of spectrum and geographic area that may be traded to a third party, and must be retained by the licensee.

## **Section 27      Agreements about emission limits**

This section provides that a licensee in the 700 MHz band may enter into an agreement about emission limits. Licensees of licences that are adjacent to one another may wish to enter agreements that allow a licensee to exceed their emission limits set out in the Marketing Plan, or in the 2012 Marketing Plan, outside the frequency band or geographic area specified in the core licence conditions. The word ‘adjacent’ can refer to spectrum licences that share a geographic boundary, a frequency boundary, or both. This section states the conditions under which these agreements can be made by reference to Schedules 3 and 4 to the Marketing Plan.

When such an agreement is in place, that agreement effectively sets the emission limits that apply to that licence under section 18 of the Marketing Plan and in accordance with Schedules 3 and 4 to the Marketing Plan. Schedules 3 and 4 require that such an agreement must be in writing.

## **Section 28      Spectrum licences that are about to expire**

This section sets out the actions that the ACMA takes under the Act to determine market interest in spectrum licences which are about to expire. In accordance with section 78 of the Act, the ACMA will publish a notice about spectrum licences that are due to expire within the period specified in the notice. The notice will invite expressions of interest from persons wishing to obtain spectrum licences relating to the relevant parts of the spectrum. This information will be published on the ACMA’s website.

## **Section 29      Re-issue of licence**

This section sets out what the ACMA does under the Act when spectrum licences expire. Under Division 4 of Part 3.2 of the Act, the ACMA may decide to re-issue a spectrum licence to the existing licence holder when it expires, if the licence is used in a class of services determined by the Minister for which re-issuing licences to the same licensee would be in the public interest, or if special circumstances exist as a result of which the ACMA is satisfied it is in the public interest for that person to be re-issued the licence. Alternatively, the ACMA may offer the spectrum licence for re-allocation by auction, tender, or pre-determined or negotiated price. A re-issued licence may be different to the original licence, including by having different conditions placed on the licence.

## **SCHEDULE 1      LOTS**

This Schedule defines each lot that will be auctioned. There are two lots: the 10 MHz lot and the 5 MHz lot.

For each lot, Schedule 1 lists the lot number, lot name, lower and upper paired frequency ranges and bandwidth.

## **SCHEDULE 2      REGION**

This Schedule defines the geographic area (**region**) for spectrum licences to be allocated in accordance with the Marketing Plan. It provides the name for the region and a precise geographic definition.

To define the region, this Schedule lists a set of HCIS identifiers that correspond to the region on the ASMG.

A map of the region is also provided (for illustrative purposes only).

### **SCHEDULE 3                      EMISSION LIMITS OUTSIDE THE AREA**

This Schedule sets the method for calculating the limits that will be placed on radiofrequency emissions that are produced by radiocommunications devices operating under a spectrum licence outside a spectrum licence's geographic area (**the out-of-area core licence condition**). The limit is expressed as a radiated power limit that applies to all radiocommunications devices operated within the licence's geographic area.

Schedule 3 provides for base emission limits that apply to parts of the spectrum that are not covered by an agreement made between adjacent licensees to exceed the out-of-area core licence condition. A written agreement between a licensee and all affected licensees of frequency-adjacent and area-adjacent spectrum licences can allow the first licensee to exceed the limits in the out-of-area core licence condition up to a specified maximum level of radio emissions.

### **SCHEDULE 4                      EMISSION LIMITS OUTSIDE THE BAND**

This Schedule sets the method for calculating the limits that will be placed on radiofrequency emissions that are produced by radiocommunications devices operated under a spectrum licence outside the licence's authorised frequency band (**the out-of-band core licence condition**).

Schedule 4 provides for base emission limits for spurious and non-spurious emissions by radiocommunications devices operating in relevant parts of the 700 MHz band under a spectrum licence, which are not covered by an agreement made between adjacent licensees to exceed the out-of-band core licence condition. A written agreement between a licensee and all affected licensees of frequency-adjacent and area-adjacent spectrum licences can allow the first licensee to exceed the limits in the out-of-band core licence condition up to a specified maximum level of radio emissions.

Spurious emissions are emissions that are outside the licence's frequency band that are not deliberately generated or transmitted. These emissions include parasitic emissions, intermodulation products, harmonic emissions and frequency conversion products not associated with the transmission of information by the transmitter.

Non-spurious emissions are emissions that are outside the licence's frequency band that are generated in the process of generating the emission within the licence's frequency band. They include modulation products, wideband noise and switching transients produced as the transmitter is turned on and off.

### **SCHEDULE 5                      SAMPLE SPECTRUM LICENCE**

This Schedule sets out a sample spectrum licence for the 700 MHz (unallocated lots) band that will be allocated under the Allocation Determination. It is an example, constructed for the purposes of illustration only, and is not an actual licence. It includes five licence schedules, which are explained below.

#### **Licence Schedule 1    Licence details, bands and areas**

This licence schedule to the licence sets out the fields for the licensee, the licence issue and expiry dates, and other details of the licence, including the frequency bands of the licence and the geographic area over which they apply.

## **Licence Schedule 2 Core Conditions**

This licence schedule includes the core conditions of the licence. Licence schedule 2 also authorises the operation of radiocommunications devices in accordance with these core conditions.

The core conditions are the conditions in relation to the geographic area and frequency ranges within which devices may be used, the out-of-area core licence condition and the out-of-band core licence condition.

This licence schedule also makes provision for the licensee to exceed the out-of-area and the out-of-band core licence conditions in circumstances where there is a written agreement between the licensee and all affected licensees of frequency-adjacent and area-adjacent spectrum licences. Where such a written agreement exists, the licensee must comply with the maximum permitted level of radio emission specified in the agreement.

## **Licence Schedule 3 Statutory Conditions**

This licence schedule contains other statutory conditions that apply to the licence relating to liability for charges, third party operation of radiocommunications transmitters and transmitter registration requirements. It also includes conditions where a radiocommunications transmitter will be exempt from the requirement to be registered, and residency requirements for licensees.

In particular, where a licensee has elected to pay the spectrum access charge in instalments, a failure to pay the second or third instalments, or second or third auction instalments, may amount to a breach of the statutory licence condition required to be included by section 67 of the Act.

## **Licence Schedule 4 Other Conditions**

This licence schedule contains other licence conditions that may be included by the ACMA in accordance with section 71 of the Act. One such condition imposes on the licensee the responsibility to manage interference between radiocommunications devices operated under the licence and between radiocommunications devices operated under the licence and under any other spectrum licence held by the licensee (proposed conditions 2(a) and (b) in licence schedule 4). **Managing interference** is defined as including the investigation of the possible causes of interference and the taking of steps reasonably likely to reduce the interference to acceptable levels.

Other conditions included in the sample licence under this licence schedule are:

- > a condition in relation to interference management for radiocommunications devices that are co-sited (located within 200 metres of each other) (proposed condition 3);
- > a requirement to provide the ACMA with information to be included in the Register (proposed condition 4);
- > a requirement to prevent harmful interference to a receiver operating in another country and in accordance with the ITU Radio Regulations (proposed condition 5);
- > a requirement to comply with specified electromagnetic energy regulation (proposed condition 6);
- > a requirement to follow the procedures set out in the RALI in relation to the operation of radiocommunications transmitters in or around the RQZ (proposed condition 7);
- > a requirement to comply with record-keeping requirements for radiocommunications transmitters located at communal sites (proposed condition 8); and



- > an obligation for the licensee who elects to pay spectrum access charges by instalments to ensure that the delayed winning price bank guarantee (or the delayed pre-determined price bank guarantee as the case may be) is in force and that the ACMA and the Commonwealth have the benefit of the relevant bank guarantee (proposed condition 9).

### **Licence Schedule 5 Licence Notes**

Example licence notes are included in the sample licence for the purposes of clarification and guidance on the use of the spectrum licence.