

## EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Radiocommunications Act 1992*

### ***Radiocommunications (Unacceptable Levels of Interference — 2 GHz Band) Determination Variation 2017 (No. 1)***

#### **Authority**

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Unacceptable Levels of Interference — 2 GHz Band) Determination Variation 2017 (No. 1)* (**the Variation Instrument**) under subsection 145(4) of the *Radiocommunications Act 1992* (**the Act**).

Subsection 33(3) of the *Acts Interpretation Act 1901* 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.

#### **Purpose and operation of the instrument**

The purpose of the Variation Instrument is to amend the *Radiocommunications (Unacceptable Levels of Interference – 2 GHz Band) Determination 2016* (**the Determination**).

These amendments are made to:

- > update references from the sunseting *Radiocommunications (Register of Radiocommunications Licences) Determination 1997* (**the RRL Determination**) to the corresponding provisions in the new *Radiocommunications (Register of Radiocommunications Licences) Determination 2017* (**the remade RRL Determination**); and
- > remove the requirement for transmitters, operating under a spectrum licence in the 1920–1930 MHz and 2110–2120 MHz frequency ranges, to meet the device boundary criteria in the area defined by the excised MW4H6 HCIS identifier.

A spectrum licence permits a licensee, subject to specified conditions, to operate radiocommunications devices within the spectrum space defined by a frequency band and a geographic area. Interference occurring between adjacent spectrum licences consists of in-band interference, across the geographic boundaries, and out-of-band interference, across the frequency boundaries. Interference can also occur between spectrum licensed services and services operating under apparatus and class licensing arrangements.

Interference is generally managed by a set of interference management tools given effect by the Act and implemented by the ACMA. These tools include:

- > the core conditions of the spectrum licence;
- > a determination made under subsection 145(4) of the Act; and
- > advisory guidelines made under section 262 of the Act about managing interference in specific circumstances.

Under subsection 145(1) of the Act, the ACMA may, if it is satisfied that the operation of a radiocommunications transmitter could cause an unacceptable level of interference to other radiocommunications devices, refuse to register the transmitter. The Determination sets out what is meant by an ‘unacceptable level of interference’ in relation to a radiocommunications transmitter operated under a spectrum licence issued in the 2 GHz band.

A provision-by-provision explanation of the Variation Instrument is set out in the notes at **Attachment A**.

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

### **Documents incorporated by reference**

The Determination incorporates the following documents by reference:

- > The *Australian Spectrum Map Grid 2012* published by the ACMA. Copies can be obtained from the ACMA website at [www.acma.gov.au](http://www.acma.gov.au).
- > The GEODATA 9 Second Digital Elevation Model (DEM-9S) Version 3 (Australia and New Zealand Land Information Council unique identifier ANZCW0703011541), published by Geoscience Australia. Copies of DEM-9S can be obtained from the Geoscience Australia website at [www.ga.gov.au](http://www.ga.gov.au).
- > The Geocentric Datum of Australia 1994 (GDA94) gazetted in the Commonwealth of Australia Gazette No. GN 35 on 6 September 1995.
- > The Radio Regulations published by the International Telecommunication Union (ITU), as in force from time to time. Copies of the Radio Regulations can be obtained from the ITU at [www.itu.int](http://www.itu.int).

Unless the contrary intention appears, a reference to a legislative instrument in the Determination is a reference to that other legislative instrument as in force from time to time.

### **Background**

The 2 GHz band was re-allocated for spectrum licensing in the year 2000. Current spectrum licences in the 2 GHz band will expire on 11 October 2017. To prepare for the re-issue and/or re-allocation of spectrum licences in the 2 GHz band, the ACMA reviewed and updated the 2 GHz spectrum licensing technical framework. This included the Determination made under subsection 145(4) of the Act which commences on 12 October 2017.

In accordance with Part 4 of Chapter 3 of the *Legislation Act 2003*, the RRL determination is due to sunset on 1 October 2017. The ACMA formed the view that the RRL Determination was operating effectively and efficiently and, as such, continues to form a necessary and useful part of the legislative framework. Accordingly, the ACMA consulted on and remade it in a new instrument prior to the sunset date of 1 October 2017 without any significant changes, so that its ongoing effect is preserved.

The Determination includes reference to specific provisions of the RRL Determination.

From December 2016 to January 2017 the ACMA consulted on whether to recommend to the Minister that specific frequencies and areas in the 2 GHz and 3.4 GHz bands be designated for the issue of spectrum licensing. This consultation also included a proposal to amend the Determination to remove the need for transmitters operating in the 1920–1930 MHz and 2110–2120 MHz frequency ranges, to meet the device boundary criteria in the area defined by the excised MW4H6 HCIS identifier.

As a result of this consultation the ACMA recommended to the Minister that he designate the frequencies and areas consulted on. On the 21<sup>st</sup> April 2017 the Minister made the [Radiocommunications \(Spectrum Designation—2 GHz and 3.4 GHz Bands\) Notice 2017](#).

### **Consultation**

Before the Variation Instrument 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.

The ACMA consulted with stakeholders on remaking the RRL Determination and subsequent variations required to the Determination from 9 June to 11 July 2017. The ACMA made available a

discussion paper which outlined all the proposed changes. This discussion paper is available on the ACMA website at [www.acma.gov.au](http://www.acma.gov.au).

The ACMA received six submissions in response to its consultation process. One of these submissions commented on the proposed variation to the Determination. It was taken into account in finalising the form of the Variation Instrument. All written submissions from this consultation process are available on the ACMA website at [www.acma.gov.au](http://www.acma.gov.au).

The ACMA also consulted with stakeholders on making a recommendation to the Minister to designate for spectrum licensing specific frequencies and areas in the 2 GHz and 3.4 GHz bands as well as subsequent variations proposed for the Determination. This consultation was conducted from December 2016 to January 2017. The ACMA made available a discussion paper which outlined all the proposed changes. This discussion paper is available on the ACMA website at [www.acma.gov.au](http://www.acma.gov.au).

The ACMA received three submissions in response to its consultation process. Submissions were supportive of the proposed variation to the Determination. All written submissions from this consultation process are available on the ACMA website at [www.acma.gov.au](http://www.acma.gov.au).

### **Regulatory impact assessment**

The ACMA consulted with the Office of Best Practice Regulation (OBPR) on the requirement for a Regulation Impact Statement (RIS) for this instrument. The OBPR advised that the Variation Instrument did not warrant the preparation of a RIS because it is only likely to have minor and machinery impacts. The OBPR reference number is 21441.

### **Human rights implications**

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 *Legislation Act 2003* applies to cause a statement of compatibility to be prepared in respect of that legislative instrument.

The ACMA has assessed whether the Variation instrument 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.

The statement of compatibility set out in **Attachment B** has been prepared to meet that requirement.

### **Conclusion**

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

**Notes to the *Radiocommunications (Unacceptable Levels of Interference — 2 GHz Band) Determination Variation 2017 (No. 1)***

**Section 1 – Name**

Section 1 provides the name of the instrument is the *Radiocommunications (Unacceptable Levels of Interference — 2 GHz Band) Determination Variation 2017 (No. 1)*.

**Section 2 – Commencement**

Section 2 provides that instrument commences at the start of the day after the *Radiocommunications (Register of Radiocommunications Licences) Determination 2017* is registered on the Federal Register of Legislation.

**Section 3 – Authority**

Section 3 specifies the section of the Act the instrument is made under.

**Section 4 – Amendments**

Section 4 provides that Schedule 1 varies the *Radiocommunications (Unacceptable Levels of Interference — 2 GHz Band) Determination 2016*.

**Schedule 1 – Amendments**

**Item 1 Section 5 Interpretation**

This item adds two new definitions necessary for the interpretation of the Determination as varied.

**Item 2 Subsection 9(4)**

This item updates a cross reference to the remade RRL Determination. The item also adds a new subsection 9(5) to the Determination. This new subsection removes the requirement for transmitters, operating under a spectrum licence in the 1920–1930 MHz and 2110–2120 MHz frequency ranges, to meet the device boundary criteria in the area defined by the excised MW4H6 HCIS identifier. This is because there is no interference threat to devices operating in the excised area on those frequencies.

## Statement of Compatibility with Human Rights

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

### ***Radiocommunications (Unacceptable Levels of Interference — 2 GHz Band) Determination Variation 2017 (No. 1)***

The *Radiocommunications (Unacceptable Levels of Interference — 2 GHz Band) Determination Variation 2017 (No. 1)* 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 purpose of the Variation Instrument is to amend the Determination.

These amendments are made to:

- > Update references from the sunseting Radiocommunications (Register of Radiocommunications Licences) Determination 1997 (the RRL Determination) to the corresponding provisions in the new Radiocommunications (Register of Radiocommunications Licences) Determination 2017 (the remade Determination); and
- > Remove the requirement for transmitters, operating under a spectrum licence in the 1920–1930 MHz and 2110–2120 MHz frequency ranges, to meet the device boundary criteria in the area defined by the excised MW4H6 HCIS identifier.

The variation instrument is a legislative instrument that is subject to disallowance under section 42 of the *Legislation Act 2003*.

#### **Human Rights Implications**

The variation instrument does not engage any of the applicable rights or freedoms.

#### **Conclusion**

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