

## EXPLANATORY STATEMENT

*Radiocommunications Act 1992*

### **Radiocommunications (Spectrum Licence Limits—2 GHz Band) Repeal Direction 2017**

Issued by the Authority of the Minister for Communications

#### Purpose

The purpose of this instrument is to repeal an allocation limits direction, the *Radiocommunications (Spectrum Licence Limits—2 GHz Band) Direction No. 2 of 2000* (the 2000 Direction). The 2000 Direction is being repealed so that the Australian Communications and Media Authority (ACMA) is not required to include allocation limits applying to the 2 GHz band in allocation procedures it determines under section 60 of the Act. This instrument is made in preparation for an auction of unallocated lots in the 2 GHz band, which will be auctioned along with unallocated lots in the 1800 MHz, 2.3 GHz and 3.4 GHz bands in a multi-band residual lots auction.

#### Authority

This instrument, the *Radiocommunications (Spectrum Licence Allocation—2 GHz Band) Repeal Direction 2017*, is made under subsection 60(10) of the *Radiocommunications Act 1992* (the Act). This provision enables the Minister to direct the ACMA in relation to the exercise of the ACMA's power to determine procedures imposing limits on the allocation of spectrum licences.

Under subsection 33(3) of the *Acts Interpretation Act 1901* (AIA), where an Act confers a power to make, grant or issue any instrument of a legislative or administrative 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. This instrument is made under subsection 60(10) of the Act, in reliance on subsection 33(3) of the AIA, to repeal the 2000 Direction, which was itself made under subsection 60(10).

#### Background

The ACMA intends to conduct a multi-band residual lots auction to sell small amounts of unallocated spectrum in the 1800 MHz, 2 GHz, 2.3 GHz and 3.4 GHz bands. In April 2017, the Minister made the *Radiocommunications (Spectrum Designation—2 GHz and 3.4 GHz Bands) Notice 2017* designating the unallocated spectrum in the 2 GHz and 3.4 GHz bands for allocation by issuing spectrum licences in order to enable the ACMA to conduct this auction. The ACMA is enabled to conduct the auction for the other relevant parts of the spectrum by other designation notices or re-allocation declarations previously made by the Minister.

The 2000 Direction required the ACMA, when determining allocation procedures under section 60 of the Act, to include various allocation limits applying to the 2 GHz band. These limits would have had the effect that no person, or specified group of persons (each group comprising an applicant and their associates), would be able to use more than the specified amounts of the 7 specified parts of the spectrum in the 2 GHz band. The 2000 Direction was given in the context of a prior allocation process for spectrum licences in the 2 GHz band.

The Minister sought advice from the Australian Competition and Consumer Commission (ACCC) on appropriate allocation limits (also known as competition limits) for the current multiband residual lots auction. The ACCC undertook targeted consultation to inform the development of its advice and provided its advice to the Minister in August 2017.

The ACCC recommended that existing allocation limits in the 1800 MHz band be retained. The ACCC recommended that no allocation limits be imposed in the 2, 2.3 and 3.4 GHz bands. The recommendation that no allocation limits be imposed in the 2 GHz band requires that the existing allocation limits in that band be lifted.

The ACCC's assessment is that allocation limits in the 2, 2.3 and 3.4 GHz bands would not encourage the economically efficient use of spectrum, promote competition or facilitate a new entrant to the market. Furthermore, the ACCC advised that allocation limits in the 2 GHz band may result in inefficient allocation of spectrum due to the possibility of spectrum being left unsold at the end of the auction.

Consistent with the ACCC's recommendation, this instrument revokes the 2000 Direction. This means the ACMA is not required to include allocation limits applying to the 2 GHz band for the multiband residual lots auction.

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*. However, this instrument is not subject to disallowance or sunset, as it is a direction by a Minister to a person or body (see item 2 of section 9 and item 3 of section 11 of the *Legislation (Exemptions and Other Matters) Regulation 2015* respectively).

Details of the instrument are set out at Attachment 1.

### Regulation Impact Statement

The Office of Best Practice Regulation (OBPR) confirmed that the preparation of a Regulatory Impact Statement was not necessary, as the amendments have a nil or low impact on the economy or individuals. The OBPR ID for the advice is 22669.

### Consultation

In July and August 2017 the ACCC conducted targeted consultation on appropriate allocation limits for the unallocated spectrum to be sold in the multiband residual lots auction. The responses to this consultation assisted the ACCC in developing its advice to the Minister on allocation limits.

## **Attachment 1: Notes on sections**

### Section 1—Name

Section 1 provides for this instrument to be cited as the *Radiocommunications (Spectrum Licence Limits—2 GHz Band) Repeal Direction 2017*.

### Section 2—Commencement

Section 2 provides for the commencement of this instrument. This instrument will commence on the day after it is registered on the Federal Register of Legislation, which is currently accessible at <http://www.legislation.gov.au/>.

### Section 3—Authority

Section 3 identifies the power that authorises the making of this instrument, being subsection 60(10) of the *Radiocommunications Act 1992*.

### Section 4—Schedules

Section 4 enables Schedule 1 to this instrument, which contains the provision repealing the *Radiocommunications (Spectrum Licence Limits—2 GHz Band) Direction No. 2 of 2000*.

### Schedule 1—Repeals

#### ***Radiocommunications (Spectrum Licence Limits—2 GHz Band) Direction No. 2 of 2000***

##### Item 1—The whole of the Direction

Item 1 of Schedule 1 repeals the *Radiocommunications (Spectrum Licence Limits—2 GHz Band) Direction No. 2 of 2000* in its entirety.

This means the ACMA is not required to include limits on the amount of spectrum that may be allocated to persons or groups of persons in allocation procedures the ACMA determines under section 60 of the *Radiocommunications Act 1992* for allocating parts of the spectrum in the 2 GHz band previously covered by the 2000 Direction.