**EXPLANATORY STATEMENT**

Approved by the Australian Communications and Media Authority

*Radiocommunications Act 1992*

***Radiocommunications Spectrum Marketing Plan (2.3 GHz Band) Variation 2017 (No. 1)***

**Authority**

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications Spectrum Marketing Plan (2.3 GHz Band) Variation 2017 (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 (2.3 GHz Band) 2009* (**the 2009 Marketing Plan**). The changes made by the Marketing Plan Variation to the 2009 Marketing Plan are primarily to remove the five frequency ranges within specified geographic areas of Australia, collectively referred to as **the 2.3 GHz (unallocated lots) band**,from the operation of the 2009 Marketing Plan, from the date of commencement of the Marketing Plan Variation. The removed frequency ranges, and their corresponding geographic areas, are:

1. 2365 MHz to 2400 MHz in Cameron Corner, Geraldton/Kalgoorlie and Kimberley;
2. 2337 MHz to 2365 MHz in Central Australia, Gold Fields and Mid West Radio Quiet Zone;
3. 2302 MHz to 2330 MHz in Outer ACT;
4. 2302 MHz to 2400 MHz in Delamere and Telfer Mine; and
5. 2393 MHz to 2400 MHz in Melbourne and NSW East.

The identified geographic areas of Australia are defined in Schedule 2 to the *Radiocommunications Spectrum Marketing Plan (2.3 GHz unallocated lots band) 2017* (**the 2017 MarketingPlan**).

The 2017 Marketing Plan, will apply to the 2.3 GHz (unallocated lots) band from the date of commencement of the Marketing Plan Variation.

*Background*

In January 2000, the Minister for Communications, Information Technology and the Arts made the [*Radiocommunications (Spectrum Designation) Notice No. 1 of 200*](https://www.legislation.gov.au/Details/F2004B00494/Download)*0* (**the Designation Notice**). The Designation Notice provides that specified spectrum in the 2.3 GHz band, consisting of the frequency range 2302 MHz to 2400 MHz throughout Australia, be issued as spectrum licences. Existing apparatus licensees in the 2.3 GHz band were subsequently offered the opportunity to convert their apparatus licences to 15-year spectrum licences.

The majority of the existing apparatus licences in the band were converted to 15-year spectrum licences. The licences expired on 24 July 2015.

Spectrum that remained unallocated after the conversion process in 2000 was offered for allocation through an auction in 2012. The spectrum licences issued as a result of the 2012 auction expired on 24 July 2015.

On 9 February 2012, the Minister for Broadband, Communications and the Digital Economy, made the *Radiocommunications (Class of Services) Determination 2012* (**the class of services determination**) determining that it would be in the public interest to re-issue licences to licensees who used the licences to provide certain services in certain bands, including licensees who had used the licence to provide wireless broadband services in the 2.3 GHz band.

As a consequence of the class of services determination, the ACMA made an offer to spectrum licensees in the 2.3 GHz band to be re-issued licences under paragraph 82(1)(a) of the Act. The re-issued 2.3 GHz spectrum licences expire on 24 July 2030.

In each of the above processes, some spectrum remained unallocated. This unallocated spectrum is the 2.3 GHz (unallocated lots) band, and is a subset of the 2.3 GHz band subject to the Designation Notice.

*The 2.3 GHz (unallocated lots) band for allocation in 2017*

The ACMA intends to allocate the 2.3 GHz (unallocated lots) band, together with unallocated lots in the 1800 MHz, 2 GHz and 3.4 GHz bands, in a single process in 2017, known as **the multiband auction**.

Under subsection 39(1) 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 Designation Notice. The 2.3 GHz (unallocated lots) band was covered by the 2009 Marketing Plan, as part of the allocation of the 2.3 GHz band that occurred in 2012. However, in order to conduct a new allocation process for the 2.3 GHz (unallocated lots) band, the ACMA has made the 2017 Marketing Plan. The ACMA has therefore made consequential amendments to the 2009 Marketing Plan, to remove the 2.3 GHz (unallocated lots) band from the operation of the 2009 Marketing Plan.

*Marketing Plan Variation operation*

The Marketing Plan Variation removes the 2.3 GHz (unallocated lots) band from the operation of the 2009 Marketing Plan. It is one of a set of legislative instruments that enables the allocation of the 2.3 GHz (unallocated lots) band, including:

* the 2017 Marketing Plan;
* the Designation Notice;
* the *Radiocommunications (Spectrum Licence Allocation – Multi-band Auction) Determination 2017*;
* the *Radiocommunications (Unacceptable Levels of Interference – 2.3 GHz Band) Determination 2009*;
* the *Radiocommunications Advisory Guidelines (Managing Interference from Spectrum Licensed Transmitters — 2.3 GHz Band) 2013*; and
* the *Radiocommunications Advisory Guidelines (Managing Interference to Spectrum Licensed Receivers — 2.3 GHz Band) 2013*.

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 2009 Marketing Plan that incorporates a reference to the Marketing Plan Variation and the Designation Notice, and inserts notes that incorporate references to the Marketing Plan Variation, the 2017 Marketing Plan, the Designation Notice and the *Radiocommunications Spectrum Conversion Plan (2302 – 2400 MHz Band) 2000*.

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 2 August 2017, together with the explanatory information paper [*Draft allocation instruments for multiband spectrum— residual lots auction*](https://www.acma.gov.au/theACMA/multiband-residual-lots-auction). Consultation closed on 25 August 2017.

The ACMA received a total of four written submissions to this information paper. None of the submitters made any comments in relation to 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 via the multiband auction was sufficiently related to previous spectrum allocation processes considered by the OBPR, such that it was exempt from the requirement for a Regulation Impact Statement for this legislative instrument.

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***

In January 2000, the Minister for Communications, Information Technology and the Arts made the Designation Notice which provides that specified spectrum in the 2.3 GHz band, consisting of a frequency range 2302 MHz to 2400 MHz throughout Australia, be allocated by way of the issue of spectrum licences. Existing apparatus licensees in the 2.3 GHz band were subsequently offered the opportunity to convert their apparatus licences to 15-year spectrum licences. The majority of the existing apparatus licences in the band were converted to 15-year spectrum licences. The licences expired on 24 July 2015.

Spectrum that remained unallocated after the conversion process in 2000 was offered for allocation through an auction in 2012. The spectrum licences issued as a result of the 2012 auction expired on 24 July 2015.

On 9 February 2012, the Minister for Broadband, Communications and the Digital Economy, made the class of services determination, determining that it would be in the public interest to re-issue licences to incumbent licensees who had used the licence to provide wireless broadband services in the 2.3 GHz band. As a consequence of the class of services determination, the ACMA made an offer to spectrum licensees in the 2.3 GHz band to be re-issued licences under paragraph 82(1)(a) of the Act. The re-issued 2.3 GHz spectrum licences expire on 24 July 2030.

In each of the above processes, some spectrum remained unallocated. This unallocated spectrum is the 2.3 GHz (unallocated lots) band, and is a subset of the 2.3 GHz band.

The ACMA intends to allocate the 2.3 GHz (unallocated lots) band, together with unallocated lots in the 1800 MHz, 2 GHz and 3.4 GHz bands, in a single process in 2017, known as the multiband auction.

Under subsection 39(1) 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 Designation Notice. The Marketing Plan Variation removes the 2.3 GHz (unallocated lots) band from the operation of the 2009 Marketing Plan, to ensure that the 2017 Marketing Plan is the marketing plan that applies to the issue of spectrum licences in the 2.3 GHz (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.

**ATTACHMENT A**

**Notes to the *Radiocommunications Spectrum Marketing Plan (2.3 GHz Band) Variation 2017 (No. 1)***

**Section 1 Name**

This section provides for the Marketing Plan Variation to be cited as the *Radiocommunications Spectrum Marketing Plan (2.3 GHz Band) Variation 2017 (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 operates so that the *Radiocommunications Spectrum Marketing Plan (2.3 GHz Band) 2009* is amended as set out in Schedule 1.

**SCHEDULE 1 AMENDMENTS**

**Item 1**

This item adds a note to subsection 1.3(1) of the 2009 Marketing Plan. The note explains that after the commencement of the Marketing Plan Variation, the 2009 Marketing Plan ceases to deal with the 2.3 GHz (unallocated lots) band; the 2017 Marketing Plan deals with the 2.3 GHz (unallocated lots) band from that time.

**Items 2, 3 and 4**

These three items collectively repeal the definition of the ***2.3 GHz band*** from the 2009 Marketing Plan and substitute new definitions for the ***2.3 GHz band*** and the ***2.3 GHz (unallocated lots) band***. The effect of these new definitions is that, after the commencement of the Marketing Plan Variation, the 2.3 GHz band for the purpose of the 2009 Marketing Plan no longer includes the 2.3 GHz (unallocated lots) band (the five specific frequency ranges within certain identified geographic areas of Australia). Instead, the 2.3 GHz (unallocated lots) band will be dealt with by the 2017 Marketing Plan.

These items do not affect anything done in relation to the 2.3 GHz (unallocated lots) band in accordance with the 2009 Marketing Plan before the commencement of the Marketing Plan Variation.

**Item 5**

This item adds a note to the table at Schedule 3 to the 2009 Marketing Plan. The note explains that after the commencement of the Marketing Plan Variation, the 2009 Marketing Plan ceases to deal with the 2.3 GHz (unallocated lots) band; the 2017 Marketing Plan deals with the 2.3 GHz (unallocated lots) band from that time.