

# EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Radiocommunications Act 1992*

## ***Radiocommunications Spectrum Marketing Plan (1800 MHz Band) Variation 2017 (No. 1)***

### **Authority**

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications Spectrum Marketing Plan (1800 MHz 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 (1800 MHz Band) 2015* (**the 2015 Marketing Plan**). The changes made by the Marketing Plan Variation to the 2015 Marketing Plan are primarily to remove the five pairs of frequency ranges within the five identified geographic areas of Australia, collectively referred to as **the 1800 MHz (unallocated lots) band**, from the operation of the 2015 Marketing Plan, from the date of commencement of the Marketing Plan Variation. The removed five pairs of frequency ranges, and their corresponding geographic areas, are:

- (a) 1775 MHz to 1780 MHz and 1870 MHz to 1875 MHz in Dubbo;
- (b) 1775 MHz to 1785 MHz and 1870 MHz to 1880 MHz in Mackay;
- (c) 1745 MHz to 1750 MHz and 1840 MHz to 1845 MHz in Maryborough;
- (d) 1780 MHz to 1785 MHz and 1875 MHz to 1880 MHz in Regional Western Australia; and
- (e) 1750 MHz to 1755 MHz and 1845 MHz to 1850 MHz in Tasmania.

The identified geographic areas of Australia are defined in Schedule 2 to the *Radiocommunications Spectrum Marketing Plan (1800 MHz unallocated lots band) 2017* (**the 2017 Marketing Plan**).

The 2017 Marketing Plan, will apply to the 1800 MHz (unallocated lots) band from the date of commencement of the Marketing Plan Variation.

### *Background*

On 26 May 2015, following a recommendation from the ACMA, the Minister for Communications made a declaration that specific parts of the spectrum in the 1800 MHz band, within the identified geographic area of regional Australia, would be subject to re-allocation by spectrum licensing under section 153B of the Act. Two blocks of spectrum in the band were to be re-allocated, corresponding to the frequency ranges 1725 MHz to 1785 MHz and 1820 MHz to 1885 MHz (see the *Radiocommunications (Spectrum Re-allocation—Regional 1800 MHz Band) Declaration 2015* (**the Re-allocation Declaration**)). The 1800 MHz (unallocated lots) band is a subset of the 1800 MHz band subject to the Re-allocation Declaration.

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*Explanatory Statement to the Radiocommunications Spectrum Marketing Plan (1800 MHz Band) Variation 2017 (No. 1)*

### *Allocation of 1800 MHz in regional Australia in 2015/16*

The ACMA undertook an auction of the 1800 MHz band in regional Australia in 2015 and 2016, in accordance with the *Radiocommunications (Spectrum Licence Allocation—1800 MHz Band) Determination 2015*. There were twelve 2 x 5 MHz lots on offer in each of the twelve specified regions, in addition to three residual lots covering the spectrum which remained unallocated from previous allocation processes. There were six 2 x 5 MHz lots which were left unsold in that auction.

### *The 1800 MHz (unallocated lots) band for allocation in 2017*

The ACMA intends to allocate the 1800 MHz (unallocated lots) band, together with unallocated lots in the 2 GHz, 2.3 GHz and 3.4 GHz bands, in a single process in 2017, known as **the multiband 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 1800 MHz (unallocated lots) band was covered by the 2015 Marketing Plan, as part of the allocation of the 1800 MHz band in regional Australia that occurred in 2015 and 2016. However, in order to conduct a new allocation process for the 1800 MHz (unallocated lots) band, the ACMA has made the 2017 Marketing Plan. The ACMA has therefore made consequential amendments to the 2015 Marketing Plan, to remove the 1800 MHz (unallocated lots) band from the operation of the 2015 Marketing Plan.

### *Marketing Plan Variation operation*

The Marketing Plan Variation removes the 1800 MHz (unallocated lots) band from the operation of the 2015 Marketing Plan. It is one of a set of legislative instruments that enables the allocation of the 1800 MHz (unallocated lots) band, including:

- > the 2017 Marketing Plan;
- > the Re-allocation Declaration;
- > the *Radiocommunications (Spectrum Licence Allocation – Multi-band Auction) Determination 2017*;
- > the *Radiocommunications (Spectrum Licence Limits—Regional 1800 MHz Band) Direction 2015*;
- > the *Radiocommunications (Unacceptable Levels of Interference – 1800 MHz Band) Determination 2012*;
- > the *Radiocommunications Advisory Guidelines (Additional Device Boundary Criteria – 1800 MHz Lower Band) 2012*;
- > the *Radiocommunications Advisory Guidelines (Managing Interference to Spectrum Licensed Receivers – 1800 MHz Band) 2012*; and
- > the *Radiocommunications Advisory Guidelines (Managing Interference from Spectrum Licensed Transmitters – 1800 MHz Band) 2012*.

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 2015 Marketing Plan that incorporates a reference to the Marketing Plan Variation, and inserts notes that incorporate references to the Marketing Plan Variation and the 2017 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 1.4(2) of the 2015 Marketing Plan and 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\*](#). 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***

On 26 May 2015, following a recommendation from the ACMA, the Minister for Communications made a declaration that specific parts of the spectrum in the 1800 MHz band in regional Australia 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 1725 MHz to 1785 MHz and 1820 MHz to 1885 MHz (namely, the 1800 MHz band) in regional Australia, as defined in the Re-allocation Declaration. This spectrum was offered as part of the auction of the 1800 MHz band in regional Australia that was held in 2015

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*Explanatory Statement to the Radiocommunications Spectrum Marketing Plan (1800 MHz Band) Variation 2017 (No. 1)*

and 2016. At that auction, six of the 2 x 5 MHz lots were not allocated (namely, the 1800 MHz (unallocated lots) band).

The ACMA intends to allocate the 1800 MHz (unallocated lots) band, together with unallocated lots in the 2 GHz, 2.3 GHz and 3.4 GHz bands, in a single process in 2017, known as the multiband 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 1800 MHz (unallocated lots) band from the operation of the 2015 Marketing Plan, to ensure that the 2017 Marketing Plan is the marketing plan that applies to the issue of spectrum licences in the 1800 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 (1800 MHz 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 (1800 MHz 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 (1800 MHz Band) 2015* 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 **1800 MHz band** from the 2015 Marketing Plan and substitute new definitions for the **1800 MHz band** and the **1800 MHz (unallocated lots) band**. The effect of these new definitions is that, after the commencement of the Marketing Plan Variation, the 1800 MHz band for the purpose of the 2015 Marketing Plan no longer includes the 1800 MHz (unallocated lots) band (the five specific pairs of frequency ranges within the five identified geographic areas of Australia). Instead, the 1800 MHz (unallocated lots) band will be dealt with by the 2017 Marketing Plan.

These items do not affect anything done in relation to the 1800 MHz (unallocated lots) band in accordance with the 2015 Marketing Plan before the commencement of the Marketing Plan Variation.

**Items 4, 5 and 6**

These items repeal, respectively, subsections 2.3(3), 3.3(2) and 3.6(2) of the 2015 Marketing Plan, each of which related to spectrum that was unallocated after the allocation process in 2015 and 2016, or the licences to be issued in that spectrum. The ACMA intends to make such further allocation of the 1800 MHz (unallocated lots) band, in accordance with the 2017 Marketing Plan, therefore it is no longer necessary for the 2015 Marketing Plan to include details about such further allocations or licences.

**Item 7**

This item adds a note to the table at Schedule 1 to the 2015 Marketing Plan. The note explains that after the commencement of the Marketing Plan Variation, the 2015 Marketing Plan ceases to deal with the 1800 MHz (unallocated lots) band; the 2017 Marketing Plan deals with the 1800 MHz (unallocated lots) band from that time.

**Item 8**

This item adds a note to the table at Schedule 2. The note explains that after the commencement of the Marketing Plan Variation, the 2015 Marketing Plan ceases to deal with the 1800 MHz (unallocated lots) band; the 2017 Marketing Plan deals with the 1800 MHz (unallocated lots) band from that time.