

## EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Radiocommunications Licence Conditions (Fixed Licence) Determination Variation 2018 (No.1)*

### **Radiocommunications Act 1992**

#### **Authority**

The Australian Communications and Media Authority (**ACMA**) has made the *Radiocommunications Licence Conditions (Fixed Licence) Determination Variation 2018 (No.1)* (the **Variation Instrument**) under paragraph 107(1)(f) of the *Radiocommunications Act 1992* (the **Act**) and in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.

Paragraph 107(1)(f) of the Act provides that the ACMA may determine, by written instrument, conditions that apply in relation to a particular type of apparatus licence.

Subsection 33(3) of the AIA provides that where an Act confers a power to make a legislative instrument, the power shall be construed to include 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.

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

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

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

The purpose of the Variation Instrument is to amend the *Radiocommunications Licence Conditions (Fixed Licence) Determination 2015* (the **LCD**).

The 5600 MHz - 5650 MHz band (the **5.6 GHz band**) was identified, by the ACMA, as part of its public consultation on the future use of the 3.6 GHz band (further information concerning that consultation process is available here: [https://www.acma.gov.au/theACMA/future-approach-to-the-3\\_6-ghz-band](https://www.acma.gov.au/theACMA/future-approach-to-the-3_6-ghz-band)) for use by fixed wireless broadband services under point-to-multipoint apparatus licences. The Variation Instrument has been made to extend the operation of section 11T of Part 3E of the LCD to include the 5.6 GHz band.

#### **Background**

Paragraph 107(1)(f) of the Act empowers the ACMA to determine, by written instrument, conditions that will apply to particular types of apparatus licences. Section 11T of Part 3E of the LCD sets out how adjacent channel interference must be managed between point-to-multipoint apparatus licensees using time division duplex (**TDD**) in the 1900 MHz - 1920 MHz and 3400 MHz - 3700 MHz bands.

With the identification of the 5.6 GHz band for use by point-to-multipoint apparatus licences using TDD, a means to manage adjacent channel interference was considered by the ACMA to be necessary. As part of the ACMA's public consultation on point-to-multipoint apparatus licensing in the 5.6 GHz band (further information concerning that consultation process is available here: [https://www.acma.gov.au/theACMA/point-to-multipoint-apparatus-licensing-in-the-5\\_6-ghz-band](https://www.acma.gov.au/theACMA/point-to-multipoint-apparatus-licensing-in-the-5_6-ghz-band)) the ACMA proposed to address adjacent channel interference by applying the requirements of section 11T of Part 3E of the LCD to the 5.6 GHz band. This is because the band is expected to be used in a similar manner to that in which the 1900 MHz - 1920 MHz and 3400 MHz - 3700 MHz bands are used. This approach also provides flexibility to licensees on how best to manage interference on a case-by-case basis.

#### **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.

From 18 May to 29 June 2018, the ACMA publicly consulted on arrangements to introduce point-to-multipoint apparatus licensing in the 5.6 GHz band (further information concerning that consultation process is available here: [https://www.acma.gov.au/theACMA/point-to-multipoint-apparatus-licensing-in-the-5\\_6-ghz-band](https://www.acma.gov.au/theACMA/point-to-multipoint-apparatus-licensing-in-the-5_6-ghz-band)). This included proposed changes to the LCD as effected by the Variation Instrument.

Five submissions were received during the public consultation period. No submissions opposed the proposed changes to the LCD.

### **Regulatory impact**

The ACMA consulted with the Office of Best Practice Regulation (the **OBPR**) on the requirement for a Regulation Impact Statement (**RIS**). The OBPR advised that the Variation Instrument does not warrant the preparation of a RIS because the instrument is likely to have only minor and machinery impacts. The reference number for the OBPR's assessment is OBPR ID 23618.

### **Documents incorporated by reference**

There are no documents incorporated by reference to the LCD as a result of the Variation 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 with human rights 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 Variation Instrument**

Paragraph 107(1)(f) of the Act provides that the ACMA may determine, by written instrument, conditions that apply in relation to a particular type of apparatus licence.

The purpose of the Variation Instrument is to amend the *Radiocommunications Licence Conditions (Fixed Licence) Determination 2015* (the **LCD**).

The 5.6 GHz band has recently been identified for use by fixed wireless broadband services under point-to-multipoint apparatus licences. The variation to the LCD is made to extend the operation of subsection 11T(1) to include the 5.6 GHz band.

### **Human Rights Implications**

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.

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 Variation Instrument does not engage any of those rights or freedoms.

### **Conclusion**

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



## **ATTACHMENT A**

### **Detailed description of the instrument**

#### **Section 1 Name**

This section provides for the instrument to be cited as the *Radiocommunications Licence Conditions (Fixed Licence) Determination Variation 2018 (No.1)*.

#### **Section 2 Commencement**

This section provides that the instrument commences on 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 statutory provision that authorises the making of the instrument, namely paragraph 107(1)(f) of the *Radiocommunications Act 1992*.

#### **Section 4 Variation – *Radiocommunications Licence Conditions (Fixed Licence) Determination 2015***

This section provides that Schedule 1 varies the *Radiocommunications Licence Conditions (Fixed Licence) Determination 2015*.

#### **Schedule 1 – Amendment**

##### **Item 1 –Subsection 11T(1)**

This subsection is varied to include the 5600 MHz - 5650 MHz band.