

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications (Trading Rules for Spectrum Licences) Amendment Determination 2021 (No. 1)

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Trading Rules for Spectrum Licences) Amendment Determination 2021 (No. 1)* (**the Amendment Determination**) under section 88 of the *Radiocommunications Act 1992* (**the Act**) and subsection 33(3) of the *Acts Interpretation Act 1901* (**the AIA**).

Section 88 of the Act provides that the ACMA may determine rules for assignments of spectrum licences, and rules setting out the circumstances in which licences can be varied, issued or cancelled as the result of an assignment.

Subsection 33(3) of the AIA 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 *Radiocommunications (Trading Rules for Spectrum Licences) Determination 2012* (**the Determination**) sets out the rules for assignments of spectrum licences, in accordance with section 88 of the Act. Subsection 8(2) of the Determination provides that a spectrum licensee must not trade a part of their licence if the trade results in a licence with a bandwidth less than the minimum contiguous bandwidth (**MCB**) specified in the Schedule to the Determination. This effectively sets the MCB as the smallest contiguous bandwidth that can generally be traded, or left over as a result of a trade, and so ensures that the potential for fragmentation of spectrum licences in the various spectrum bands is reduced.

The Amendment Determination amends the Determination to set the MCB for the following parts of the spectrum at 5 MHz (collectively, the **850/900 MHz band**):

- 814 MHz to 845 MHz;
- 859 MHz to 890 MHz;
- 890 MHz to 915 MHz;
- 935 MHz to 960 MHz.

To be effective, an assignment of the whole or part of a spectrum licence must comply with the rules in the Determination (section 85 of the Act).

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

The Amendment Determination is a disallowable legislative instrument for the purposes of the *Legislation Act 2003* (**the LA**). The Determination is also subject to the sunset provisions in Part 4 of Chapter 3 of the LA.

Documents incorporated by reference

The Amendment Determination does not incorporate any document by reference.

Consultation

Before the Amendment Determination 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.

In December 2020, the ACMA set up a short-term industry technical liaison group (**TLG**) to support the development of a technical framework to assist with the introduction of 5th generation wireless broadband services in the 850/900 MHz band.

The TLG was asked to consider and provide advice to the ACMA on technical aspects required for the development of the spectrum licence technical framework in the 850/900 MHz band. These included:

- identifying relevant reference technologies;
- the development of the core conditions of the spectrum licensed band in accordance with section 66 of the Act;
- the development of a determination under subsection 145(4) of the Act;
- the development of any associated advisory guidelines to be made under section 262 of the Act; and
- the development of a MCB for spectrum licences in the 850/900 MHz band.

The ACMA developed papers which outlined its proposed approach to the spectrum licensing framework for the 850/900 MHz band. These papers were made available by the ACMA to the TLG members for comment. These papers can be found on the ACMA's website. The ACMA had regard to the views expressed by the TLG members when preparing the Amendment Determination and other instruments for the allocation of new spectrum licences in the 850/900 MHz band.

A draft version of the Amendment Determination was released for public consultation on 27 April 2021, together with the consultation paper *Draft instruments for the 850/900 MHz band auction*. Consultation closed on 24 May 2021.

There were no submissions received that related to the Amendment Determination.

Regulatory impact assessment

A preliminary assessment of the proposal to make the Amendment Determination was conducted by the Office of Best Practice Regulation (**OBPR**), based on information provided by the ACMA, for the purposes of determining whether a Regulation Impact Statement (**RIS**) would be required. OBPR advised that a RIS would not be required because the proposed regulatory change is minor or machinery in nature – OBPR reference number 43548.

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 instrument

Section 88 of the Act provides that the ACMA may determine rules for assignments of spectrum licences, and rules setting out the circumstances in which licences can be varied, issued or cancelled as the result of an assignment. The ACMA has made the Determination under this section. Subsection

8(2) of the Determination provides that a spectrum licensee must not trade a part of their licence if the trade results in a licence with a bandwidth less than the MCB specified in the Schedule to the Determination.

The Amendment Determination includes an MCB of 5 MHz for the trading of spectrum licences in the 850/900 MHz band.

Human rights implications

The ACMA has assessed whether the Amendment Determination 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 Amendment Determination and the nature of the applicable rights and freedoms, the ACMA has formed the view that the instrument does not engage any of those rights or freedoms.

Conclusion

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

Notes to the *Radiocommunications (Trading Rules for Spectrum Licences) Amendment Determination 2021 (No. 1)*

Section 1 Name

This section provides for the Amendment Determination to be cited as the *Radiocommunications (Trading Rules for Spectrum Licences) Amendment Determination 2021 (No. 1)*.

Section 2 Commencement

This section provides for the Amendment Determination to commence at the start of the day after the day it is registered on the Federal Register of Legislation.

The Federal Register of Legislation may be accessed free of charge at www.legislation.gov.au.

Section 3 Authority

This section identifies the provision of the Act that authorises the making of the Amendment Determination, namely section 88 of the Act.

Section 4 Amendments

This section specifies that Schedule 1 amends the *Radiocommunications (Trading Rules for Spectrum Licences) Determination 2012*.

Schedule 1

This Schedule sets out one amendment to the Determination, to amend Schedule 1 to the Determination to set the MCB at 5 MHz for spectrum licences in the 850/900 MHz band.