

# EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Radiocommunications Act 1992*

## ***Radiocommunications (Mobile-Satellite Service) (1980–2010 MHz and 2170–2200 MHz) Frequency Band Plan 2022***

### **Authority**

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Mobile-Satellite Service) (1980–2010 MHz and 2170–2200 MHz) Frequency Band Plan 2022* (**the instrument**) under subsection 32(1) of the *Radiocommunications Act 1992* (**the Act**).

Under subsection 32(1) of the Act, the ACMA may, by legislative instrument, prepare frequency band plans, each relating to one or more frequency bands.

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

Under paragraph 32(4)(a) of the Act, a frequency band plan must make provision in relation to the purpose or purposes for which the band or bands may be used.

The primary purpose of the instrument is to make provision in relation to the purposes for which the frequency bands 1980 MHz to 2010 MHz and 2170 MHz to 2200 MHz may be used. These frequency bands comprise the 2 GHz band.

Use of the 2 GHz band was previously subject to the requirements of the *Television Outside Broadcast (1980-2110 MHz and 2170-2300 MHz) Frequency Band Plan 2012* (**the television outside broadcast band plan**). This was revoked by the *Radiocommunications (Television Outside Broadcasting) (2010–2110 MHz and 2200–2300 MHz) Frequency Band Plan 2022*.

In January 2021, the ACMA concluded a review of the 2 GHz band with a decision to replan the band for mobile-satellite services. The introduction of mobile-satellite services in the 2 GHz band requires operators of television outside broadcast services to stop using the band.

The instrument makes provision for the 2 GHz band to be used for the purposes of:

- mobile-satellite services;
- television outside broadcast services, but only in certain circumstances described below; and
- point-to-point fixed services, where the radiocommunications transmitter used was authorised by a transmitter licence issued before the instrument commenced or by a subsequent renewal of such a licence.

The 2 GHz band may be used for the purposes of television outside broadcast services:

- before 1 March 2026 in a metropolitan area; or
- before 1 March 2024 in a place that is not a metropolitan area.

The purpose of these provisions is to provide certainty to existing and future apparatus licensees by setting dates for when radiocommunications transmitters for television outside broadcast services must cease operating in the 2 GHz band, to facilitate transition to alternative frequencies.

The instrument provides exceptions that permit use of the band for the purposes of television outside broadcast services after the specified deadlines. Such use may occur:

- when agreement in writing is obtained from each person who holds a certain type of apparatus licence for the operation of a radiocommunications device used for mobile-satellite services; or

- in circumstances where the ACMA is satisfied that the use would not cause harmful interference to a mobile-satellite service (for example, where no person uses the band for a mobile-satellite service).

In such circumstances, the ACMA may issue a transmitter licence authorising operation of a radiocommunications transmitter for television outside broadcast services in accordance with our usual licensing processes. The intention of these exceptions is to provide limited flexibility to support use of the band for the purposes of a television outside broadcast service in the specified circumstances, if it would not impact on the operation of a mobile-satellite service.

A further exception is provided in relation to some sporting and event venues in non-metropolitan areas where television outside broadcast services are used regularly. The band may be used for the purposes of television outside broadcast services in relation to these venues until 28 February 2026. The instrument provides a list of such venues, referred to as ‘designated areas’, and allows the ACMA to designate additional areas.

Under subsection 32(3) of the Act, a frequency band plan must not be inconsistent with the *Australian Radiofrequency Spectrum Plan 2021 (spectrum plan)*. The instrument is not inconsistent with the spectrum plan.

Operation of a radiocommunications transmitter is not authorised by a transmitter licence if it is not in accordance with the conditions of the licence (subsection 97(4) of the Act). Paragraph 108(2)(a) of the Act makes it a condition of each transmitter licence that the licensee, and any person authorised to operate a radiocommunications transmitter under the licence, must not operate, or permit the operation, of the transmitter for a purpose that is inconsistent with a purpose of a kind specified in the appropriate frequency band plan (if any).

It is an offence, and subject to a civil penalty, to operate a radiocommunications device otherwise than as authorised by a licence (section 46 of the Act). The Act prescribes the following maximum penalties for the offence:

- if the radiocommunications device is a radiocommunications transmitter and the offender is an individual – imprisonment for 2 years;
- if the radiocommunications device is a radiocommunications transmitter and the offender is not an individual – 1,500 penalty units (which is \$333,000 based on the current penalty unit amount of \$222);
- if the radiocommunications device is not a radiocommunications transmitter – 20 penalty units (\$4,440).

The Act prescribes the following maximum civil penalties:

- if the radiocommunications device is a radiocommunications transmitter – 300 penalty units (\$66,600);
- if the radiocommunications device is not a radiocommunications transmitter – 20 penalty units (\$4,440).

It is an offence, and subject to a civil penalty, to possess a radiocommunications device for the purpose of operating the device otherwise than as authorised by a licence (section 47 of the Act). The Act prescribes the same penalties for this offence and civil penalty contravention as for the offence and civil penalty contravention in section 46.

In addition, an apparatus licensee, or a person authorised under section 114 of the Act in relation to an apparatus licence, must not contravene a condition of the licence. Contravention is subject to a civil penalty (section 113 of the Act). The Act prescribes a maximum civil penalty of 100 penalty units (\$22,200).

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

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

The instrument is subject to the sunset provisions of the LA.

### **Documents incorporated by reference**

Section 314A of the Act provides that an instrument under the Act may make provision in relation to a matter by applying, adopting or incorporating (with or without modifications) matters contained in any Act or any other instrument or writing as in force or existing at a particular time or from time to time.

The instrument incorporates the Australian Spectrum Map Grid 2012, as existing from time to time. This document is published by the ACMA, and is available free of charge from the ACMA's website at [www.acma.gov.au](http://www.acma.gov.au).

The instrument incorporates the Geodetic Datum of Australia known as GDA94, gazetted in the Commonwealth of Australia *Gazette* No. GN 35 on 6 September 1995, as existing on that day. *Gazette* No. GN 35 is available free of charge from the Federal Register of Legislation at [www.legislation.gov.au](http://www.legislation.gov.au).

The instrument incorporates the spectrum plan, as in force from time to time. This legislative instrument is available free of charge from the Federal Register of Legislation website at [www.legislation.gov.au](http://www.legislation.gov.au).

### **Consultation**

Before making the instrument, the ACMA was satisfied that consultation was undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the LA.

Section 33 of the Act provides that, before the ACMA prepares a frequency band plan, the ACMA must by notice published on its website state that a draft of the plan is available for public comment, set out the draft plan, and invite interested parties to make representations about the draft plan on or before a day specified in the notice (at least one month later than the publication of the notice). The ACMA must give due consideration to any representations so made and may, having considered the representations, alter the draft plan.

On 17 December 2021, the ACMA commenced a [public consultation](#) on a review of the television outside broadcast band plan. A draft instrument was released as part of the consultation. In relation to the instrument, the consultation sought comment on the ACMA's proposals to:

- revoke the television outside broadcast band plan and replace it with two new frequency band plans (the instrument and the *Radiocommunications (Television Outside Broadcasting) (2010–2110 MHz and 2200–2300 MHz) Frequency Band Plan 2022*);
- establish deadlines for television outside broadcast services to stop using the 2 GHz band before 1 March 2024 in non-metropolitan areas and 1 March 2026 in metropolitan areas;
- define the geographical boundaries of metropolitan areas;
- allow a television outside broadcast service to be used in the 2 GHz band after the specified deadlines, when agreement in writing is obtained from each person who holds a certain type of apparatus licence for the operation of a radiocommunications device used for mobile-satellite services, or where the ACMA is satisfied that the use would not cause harmful interference to a mobile-satellite service (for example, where no person uses the band for a mobile-satellite service); and

- allow television outside broadcast services to continue using the 2 GHz band in some sporting and event venues in regional areas (termed ‘designated areas’) for an additional two years to the end of the metropolitan area transition period.

The ACMA received 14 written submissions in response to the consultation. Six respondents made comments in relation to the instrument. One respondent requested an extension of the deadline for television outside broadcast services to stop using the 2 GHz band, while another requested that the deadline be shortened. One respondent requested the ACMA to reconsider its decision to introduce mobile-satellite services in the 2 GHz band and instead dedicate half of the available spectrum to direct air-to-ground communications. Three respondents supported the proposals or had no objections.

After considering the submissions, the ACMA did not make any changes to the draft instrument. The ACMA considers the deadline to remain appropriate, given the flexibility in allowing some television outside broadcasting services to operate after the deadline, and considers the 2 GHz band remains suitable and appropriate for mobile-satellite services.

### **Regulatory impact assessment**

A preliminary assessment of the proposal to make the instrument 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 within scope of the previous RIS-like process conducted as part of the review of the 2 GHz band. OBPR confirmed that no further regulatory impact analysis is required – OBPR reference number 44173.

### **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**

The ACMA has made the *Radiocommunications (Mobile-Satellite Service) (1980–2010 MHz and 2170–2200 MHz) Frequency Band Plan 2022 (the instrument)* under subsection 32(1) of the *Radiocommunications Act 1992 (the Act)*. The instrument makes provision in relation to the purposes for which the frequency bands 1980 MHz to 2010 MHz and 2170 MHz to 2200 MHz may be used. These frequency bands comprise the 2 GHz band.

In January 2021, the ACMA concluded a review of the 2 GHz band with a decision to replan the band for mobile-satellite services. Introduction of mobile-satellite services in the 2 GHz band requires the television outside broadcast services currently using the band to cease operating and relocate to an alternative band.

The instrument is designed to achieve the following policy objectives:

- establish that the 2 GHz band may be used for mobile-satellite services, and in certain circumstances, television outside broadcast services;
- provide certainty to existing and future licensees in the 2 GHz band by setting dates for when television outside broadcast services must generally stop using the band; and
- support continuity for legacy fixed point-to-point services licensed prior to commencement of the instrument.

Operators of radiocommunications transmitters for television outside broadcast services are typically small video production firms that supply services to commercial television stations and subscription television providers. The instrument requires operators of transmitters for television outside broadcast services to cease operating in the 2 GHz band before 1 March 2026 in metropolitan areas and before 1 March 2024 in non-metropolitan areas.

The instrument provides some exceptions to this requirement to allow continued operation after these dates in the specified circumstances.

The instrument permits radiocommunications transmitters for mobile-satellite services to use the 2 GHz band. The Act prohibits the operation of a radiocommunications device in Australia, unless authorised by a licence issued by the ACMA. Operators of transmitters for mobile-satellite services typically provide communications services between one or more satellites orbiting Earth and mobile earth stations on land or sea.

### ***Human rights implications***

The ACMA has assessed whether the 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 instrument does not engage any of those rights or freedoms.

### ***Conclusion***

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

**Notes to the *Radiocommunications (Mobile-Satellite Service) (1980–2010 MHz and 2170–2200 MHz) Frequency Band Plan 2022***

**Section 1 Name**

This section provides for the instrument to be cited as the *Radiocommunications (Mobile-Satellite Service) (1980–2010 MHz and 2170–2200 MHz) Frequency Band Plan 2022*.

**Section 2 Commencement**

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

**Section 3 Authority**

This section identifies the provision of the Act that authorises the making of the instrument, namely subsection 32(1) of the Act.

**Section 4 Interpretation**

This section defines a number of key terms used throughout the instrument. A number of other expressions used in the instrument are defined in the Act or in an instrument made under subsection 64(1) of the *Australian Communications and Media Authority Act 2005*.

**Section 5 References to other instruments**

This section provides that in the instrument, unless the contrary intention appears:

- a reference to any other legislative instrument is a reference to that other legislative instrument as in force from time to time; and
- a reference to any other kind of instrument or writing is a reference to that other instrument or writing as in force, or existing, from time to time.

**Section 6 Purpose of 1980–2010 MHz and 2170–2200 MHz frequency bands**

This section specifies the purposes for which the 1980 MHz to 2010 MHz and 2170 MHz to 2200 MHz frequency bands may be used.

Subsection 6(1) specifies that the band 1980 MHz to 2010 MHz may be used for:

- the uplink part of a mobile-satellite service (Earth to space), used to transmit radiocommunications from a mobile earth station to a space receive station;
- a television outside broadcast service, subject to the provisions in section 7 of the instrument;
- the operation of a point to point station for a fixed service, subject to the provisions in section 8 of the instrument.

Subsection 6(2) specifies that the band 2170 MHz to 2200 MHz may be used for:

- the downlink part of a mobile-satellite service (space to Earth), used to transmit radiocommunications from a space station to a mobile earth station;
- a television outside broadcast service, subject to the provisions in section 7 of the instrument;
- the operation of a point to point station for a fixed service, subject to the provisions in section 8 of the instrument.

## **Section 7      Television outside broadcast services**

This section sets out the circumstances in which a television outside broadcast service may be used in a frequency band specified in section 6.

Subsection 7(1) provides that a television outside broadcast service may be used only in accordance with section 7.

Subsection 7(2) provides that the 2 GHz band may be used for the purposes of television outside broadcast services only before:

- 1 March 2026 in a metropolitan area; or
- 1 March 2024 in a place that is not a metropolitan area.

The geographical boundaries of metropolitan areas are defined in Schedule 1 to the instrument.

Subsection 7(3) provides for circumstances in which the band may be used for the purposes of television outside broadcast services on or after the dates specified in subsection 7(2). This subsection permits the use of the band for the purpose of television outside broadcast services if:

- the person who uses the frequency band does so by operation of a radiocommunications transmitter authorised by a transmitter licence; and
- before the transmitter licence was issued, the ACMA was satisfied that the operation of the radiocommunications transmitter in accordance with the licence would not cause harmful interference to a mobile-satellite service.

The ACMA may consider a radiocommunications transmitter for television outside broadcast services would not cause harmful interference to a mobile-satellite service, for example, when there is no mobile-satellite service in operation.

The ACMA issues transmitter licences under section 100 of the Act. A refusal to issue a transmitter licence is subject to merits review, including by the Administrative Appeals Tribunal (see Part 5.6 of the Act).

Subsection 7(4) provides for the circumstance in which the band may be used for the purposes of television outside broadcast services in a non-metropolitan area from 1 March 2024 to 28 February 2026. Use of this kind may occur only in a designated area. Designated areas are specified in Schedule 2 to the instrument.

Subsection 7(5) provides for use of the band for the purposes of television outside broadcast services on or after the dates specified in subsection 7(2) if the person who uses the frequency band has obtained agreement in writing from the licensee of each space licence in the frequency band and the licensee of each space receive licence in the frequency band. The person who uses the frequency band for the purposes of television outside broadcast services under these circumstances must:

- do so by operation of a radiocommunications transmitter authorised by a transmitter licence; and
- before the licence was issued:
  - obtain written agreement from each of the licensees specified above; and
  - provide a copy of each such agreement to the ACMA.

The ACMA issues transmitter licences under section 100 of the Act. A refusal to issue a transmitter licence is subject to merits review, including by the Administrative Appeals Tribunal (see Part 5.6 of the Act).

## Section 8 Point to point station

This section sets out the circumstances in which a frequency band specified in section 6 may be used for the purpose of the operation of a point to point station.

Subsection 8(1) provides that a point to point station for a fixed service may be used only in accordance with section 8.

Subsection 8(2) provides that the 2 GHz band may be used for the purposes of the operation of a point to point station authorised by a fixed licence if:

- the fixed licence was issued under section 100 of the Act before the commencement of the instrument; or
- the fixed licence was issued under section 130 of the Act as the result of one or more renewals of a licence first issued under section 100 before the commencement of the instrument.

## Schedule 1 – Metropolitan areas

Schedule 1 defines metropolitan areas for the purposes of sections 4 and 7 of the instrument. Each area that consists of the hierarchical cell identification scheme (**HCIS**) identifiers specified in column 2 of the table is a metropolitan area. HCIS identifiers refer to the cell grouping hierarchy scheme used to describe geographic areas in the Australian Spectrum Map Grid 2012, published by the ACMA on its [website](#).

## Schedule 2 – Designated areas

### Clause 1 Designated area

Subclause 1(1) provides that the ACMA may, by notifiable instrument, designate an area to be a **designated area** for the purposes of section 4 and paragraph 7(4)(c) of the instrument.

Subclause 1(2) requires that before making a notifiable instrument under subclause (1), the ACMA must have regard to:

- the effect on radiocommunications of the potential operation of a radiocommunications device, for the purposes of television outside broadcast services, in the area;
- the effect on radiocommunications of the potential operation of a radiocommunications device, for the purposes of mobile-satellite services, in and near the area; and
- all other matters the ACMA considers relevant.

Subclause 1(3) provides that the ACMA must not make a notifiable instrument under subclause (1) on or after 1 March 2026.

Subclause 1(4) provides that the ACMA may make an instrument under subclause (1) regardless of whether a person has made an application under clause 2.

Subclause 1(5) provides that each area that consists of the HCIS identifiers specified in column 2 of the table is also a **designated area**. HCIS identifiers refer to the cell grouping hierarchy scheme used to describe geographic areas in the Australian Spectrum Map Grid 2012, published by the ACMA on its [website](#).

## **Clause 2      Application for notifiable instrument to be made**

Subclause 2(1) provides that a person may apply in writing for the ACMA to designate an area under subclause 1(1).

Subclause 2(2) requires that an application under subclause 2(1) must be in a form approved by the ACMA (if such a form exists) and must be made in a manner approved by the ACMA (if any such manner has been approved).

Subclause 2(3) requires that the ACMA must decide whether to grant an application to designate an area within 90 days after the application is made, or such longer period as agreed between the ACMA and the applicant.

Subclause 2(4) provides that, within 14 days of deciding whether to grant an application to designate an area, the ACMA must give the applicant a written notice of the decision and, if the decision is not to grant the application, the reasons for the decision and the applicant's right to request a reconsideration of the decision under clause 3.

## **Clause 3      Reconsideration and external review**

Subclause 3(1) provides that, if the ACMA refuses to grant an application made under subclause 2(1), the applicant may, within 30 days after being notified under paragraph 2(4)(b), request the ACMA to reconsider the decision.

Subclause 3(2) requires that a request under subclause 3(1) must be made in writing and set out the reasons for the request.

Subclause 3(3) provides that the ACMA must, within 90 days after the request is received, reconsider the relevant decision and either:

- affirm the decision; or
- make a fresh decision to the effect that the ACMA must, within 14 days after the decision is made, make an instrument under subclause 1(1) designating the area specified in the application.

Subclause 3(4) provides that the ACMA must, within 14 days after affirming the decision or making a fresh decision under subclause 3(3), give the applicant a written notice of:

- whether the ACMA has affirmed the decision or made a fresh decision; and
- if the ACMA affirms the decision – the reasons for affirming the decision and the applicant's right to have the affirmation of the decision reviewed by the Administrative Appeals Tribunal under subclause 3(5).

Subclause 3(5) provides that if the ACMA affirms the decision under subclause 3(3), the applicant may apply to the Administrative Appeals Tribunal for review of the decision to refuse to grant the application.