

# EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Radiocommunications Act 1992*

## ***Radiocommunications (Science and Research) Frequency Band Plans Amendment Instrument (No.1) 2023***

### **Authority**

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Science and Research) Frequency Band Plans Amendment Instrument (No.1) 2023 (the instrument)* under subsection 32(1) of the *Radiocommunications Act 1992 (the Act)* and subsection 33(3) of the *Acts Interpretation Act 1901 (the AIA)*.

Subsection 32(1) of the Act provides that the ACMA may, by written instrument, prepare frequency band plans, each relating to one or more frequency bands.

Subsection 33(3) of the AIA relevantly provides that, where an Act confers a power to make, grant or issue an instrument of a legislative character, 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 instrument amends the *Radiocommunications 1.5 GHz Frequency Band Plan 2015 (the 1.5 GHz frequency band plan)*, the *Radiocommunications (Mobile-Satellite Service) (1980–2010 MHz and 2170–2200 MHz) Frequency Band Plan 2022 (the MSS frequency band plan)*, and the *Radiocommunications (Television Outside Broadcasting) (2010–2110 MHz and 2200–2300 MHz) Frequency Band Plan 2022 (the TOB frequency band plan)* (collectively, **the relevant frequency band plans**).

The ACMA has issued the *Radiocommunications (Science and Research) Class Licence 2023 (the science class licence)* under section 132 of the Act. The science class licence authorises persons to operate radiocommunications devices for a range of specified purposes, at frequencies in parts of the spectrum covered by the frequency band plans. The science class licence replaces the need for many persons operating devices for these purposes to be issued an apparatus licence under the Act.

Under section 137 of the Act, the ACMA must not issue a class licence that is inconsistent with a frequency band plan. Each of the relevant frequency band plans specifies the purposes for which certain frequency bands may be used. Before the instrument was made, none of those purposes included the operation of the kind of devices authorised by the science class licence. Consequently, the instrument amends the frequency band plans, to ensure that operation of devices under the science class licence in the frequency bands covered by the relevant frequency band plans is consistent with those plans.

Under subsection 32(3) of the Act, a frequency band plan must not be inconsistent with the spectrum plan prepared under section 30 of the Act. The amendments to the relevant frequency band plans do not make them inconsistent with the spectrum plan.

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

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*Explanatory Statement to the Radiocommunications (Science and Research) Frequency Band Plans Amendment Instrument (No.1) 2023*

The instrument is a disallowable legislative instrument for the purposes of the *Legislation Act 2003* (**the LA**). Each of the relevant frequency band plans, is subject to the sunset provisions in Part 4 of Chapter 3 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 other instrument or writing as in force or existing at a particular time, or from time to time.

The instrument amends each of the relevant frequency band plans to incorporate by reference the science class licence, as in force from time to time.

The instrument also amends the TOB frequency band plan to incorporate the *Australian Radiofrequency Spectrum Plan 2021* (**the spectrum plan**), as in force from time to time. The spectrum plan is prepared under section 30 of the Act.

The science class licence and the spectrum plan are available, free of charge, from the Federal Register of Legislation ([www.legislation.gov.au](http://www.legislation.gov.au)).

### **Consultation**

Before the 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.

Under section 33 of the Act, before preparing a frequency band plan, the ACMA must, by notice published on the ACMA's 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 the day specified in the notice. The day specified must be at least one month later than the day on which the notice is published. The ACMA must give due consideration to any representations so made, and may, having considered the representations, alter the draft plan.

On 5 December 2022, the ACMA published a notice of its consultation on a review of scientific licensing arrangements. The review was aimed at ensuring the ACMA's scientific licensing arrangements encourage spectrum users to develop, trial and assess new and innovative radiocommunications technologies and services.

As part of the review, the ACMA published a draft of the science class licence, and a consultation paper that, among other matters, sought views on proposed amendments to the relevant frequency band plans, and invited representations to be made by 28 February 2023.

The ACMA received seven submissions. These were from the Australian Mobile Telecommunications Association, Boeing Australia, Free TV, NBN Co, Optus, Radio Amateur Society of Australia and Telstra.

The submissions did not make any representations on the proposal to amend the relevant frequency band plans.

### **Regulatory impact assessment**

The ACMA consulted with the Office of Impact Analysis (**the OIA**) (formerly the Office of Best Practice Regulation (**OBPR**)) on the requirement for a Regulation Impact Statement (**RIS**). The OIA advised that the instrument does not warrant the preparation of a RIS because the proposed regulatory change to transition some apparatus licences to the science class licence is minor and machinery in

nature and therefore no further regulatory impact analysis is required – OBPR reference number 22-03565.

### **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 instrument amends the relevant frequency band plans to ensure that the operation of radiocommunications devices under the science class licence in the frequency bands covered by the relevant frequency band plans is consistent with those frequency band plans.

### ***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 (Science and Research) Frequency Band Plans Amendment Instrument (No.1) 2023***

**Section 1 Name**

This section provides for the instrument to be cited as the *Radiocommunications (Science and Research) Frequency Band Plans Amendment Instrument (No.1) 2023*.

**Section 2 Commencement**

This section provides for the instrument to commence at the start of the day after 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 Schedule**

This section provides that the instruments specified in Schedule 1 to the instrument are amended as set out in that Schedule.

**Schedule 1 – Amendments**

***Radiocommunications 1.5 GHz Frequency Band Plan 2015 (F2015L01271)***

**Item 1**

This item adds a new section 7 into the 1.5 GHz frequency band plan. The new section provides for the 1.5 GHz frequency band (1427 MHz to 1535 MHz) to be used for an additional purpose, namely, the operation of a radiocommunication device in accordance with the science class licence, as in force from time to time, or with another instrument that replaces the science class licence, as in force from time to time.

***Radiocommunications (Mobile-Satellite Service) (1980–2010 MHz and 2170–2200 MHz) Frequency Band Plan 2022 (F2022L00843)***

**Item 2**

Item 2 inserts a new paragraph 6(1)(d) into the MSS frequency band plan.

New paragraph 6(1)(d) specifies that the 1980 MHz to 2010 MHz frequency band may be used for the purpose of the operation of a radiocommunications device in accordance with the science class licence, or with another instrument that replaces the science class licence.

**Item 3**

Item 3 inserts a new paragraph 6(2)(d) into the MSS frequency band plan.

New paragraph 6(2)(d) specifies that the 2170 MHz to 2200 MHz frequency band may be used for the purpose of the operation of a radiocommunications device in accordance with the science class licence or with another instrument that replaces the science class licence.

***Radiocommunications (Television Outside Broadcasting) (2010–2110 MHz and 2200–2300 MHz) Frequency Band Plan 2022 (F2022L00842)***

**Item 4**

Item 4 makes a consequential amendment as a result of the amendment made by item 5.

**Item 5**

Item 5 inserts a new paragraph 7(1)(f) into the TOB frequency band plan.

New paragraph 7(1)(f) specifies that the 2010 MHz to 2110 MHz frequency band may be used for the purpose of the operation of a radiocommunications device in accordance with the science class licence or with another instrument that replaces the science class licence.

**Item 6**

Item 6 makes a consequential amendment as a result of the amendment made by item 7.

**Item 7**

Item 7 inserts a new paragraph 7(2)(f) into the TOB frequency band plan.

New paragraph 7(2)(f) specifies that the 2200 MHz to 2300 MHz frequency band may be used for the purpose of the operation of a radiocommunications device in accordance with the science class licence or with another instrument that replaces the science class licence.