

# EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Radiocommunications Act 1992*

## ***Radiocommunications (Area-Wide Licences – Limits, Authorisations and Transfers) Determination 2024***

### **Authority**

The Australian Communications and Media Authority (the **ACMA**) has made the *Radiocommunications (Area-Wide Licences – Limits, Authorisations and Transfers) Determination 2024* (the **instrument**) under subsections 102G(1), 115(1), and 131AC(1) of the *Radiocommunications Act 1992* (the **Act**).

Under subsection 102G(1) of the Act, the ACMA may, by legislative instrument, impose limits on the aggregate of the parts of the spectrum that, under spectrum licences, under existing transmitter licences, and as a result of the allocation or issue of transmitter licences, may be used by any one person or a specified person, or may, in total, be used by the members of a specified group of persons.

Under subsection 115(1) of the Act, the ACMA may determine, among other things, circumstances in which a person must not be authorised to operate a radiocommunications device under an apparatus licence.

Under subsection 131AC(1) of the Act, the ACMA may determine that particular types of apparatus licence are not transferrable under Division 8 of Part 3.3. of the Act, and that in specified circumstances an apparatus licence is not transferable under that Division.

Section 28C of the Act requires the ACMA to have regard to any relevant Ministerial policy statements when performing its spectrum management functions. The ACMA has had regard to the *Radiocommunications (Ministerial Policy Statement – 3.4-4.0 GHz) Instrument 2022* (the **3.4–4.0 GHz Statement**) in making the instrument.

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

The ACMA is preparing to allocate and issue area-wide licences (**AWLs**), a type of transmitter licence, in:

- the 3.8 GHz to 3.95 GHz frequency band (the **3.8 GHz band**) in two areas specified in the instrument (the **metropolitan area** and the **regional area**);
- the 3.75 GHz to 3.95 GHz frequency band (the **extended 3.8 GHz band**) in a third area specified in the instrument (the **rural area**);

(collectively, the **relevant AWLs**).

The allocation of the relevant AWLs (the **3.8 GHz allocation process**) is part of a larger allocation activity in which the ACMA is making spectrum available across the 3.4 GHz to 4 GHz frequency band. The ACMA has already conducted other allocation activities in the 3.4 GHz band, including the auction of spectrum licences in particular parts of the 3.4 GHz band in certain metropolitan areas and regional areas (which were designed for wide-area wireless broadband (**WA WBB**) use) (the **3.4/3.7 GHz band auction**), and the allocation of AWLs in the 3.4 GHz to 4 GHz band in remote areas.

Given the ACMA has already conducted the 3.4/3.7 GHz band auction, the ACMA considers that the relevant AWLs should principally be allocated and issued to support other use cases and users, such as local area wireless broadband use. As such, the ACMA has made the instrument to give a limited

priority in the 3.8 GHz allocation process to persons who do not hold spectrum licences in the 3.4 GHz band.

*Persons to whom the instrument applies*

In December 2023, the ACMA announced the results of 3.4/3.7 GHz band auction. As a result of this auction, and earlier allocations of spectrum licences, the only persons who hold spectrum licences in the 3.4 GHz band are, or are related bodies corporate of:

- NBN Co Limited;
- Optus Mobile Pty Limited;
- Telstra Limited; and
- Mobile JV Pty Limited;

(collectively, the **named persons**).

Each of these provides, or is capable of providing, WA WBB services using their spectrum licences. Accordingly, the instrument restricts the ability of the named persons, and any associates of the named persons, to be allocated and issued the relevant AWLs. An ‘associate’ of a named person is any related body corporate, director or secretary of the named person, and any foreign company for which the named person is a local agent.

*Allocation limits*

Under section 102G of the Act, the instrument imposes temporary limits on the aggregate of the parts of the spectrum that, as a result of the allocation and issue of the relevant AWLs, may be used by the named persons and their associates.

Each named person, and each associate of a named person, has a limit of nil MHz (the **nil limit**) imposed in relation to the allocation and issue of the relevant AWLs. This means that no named person, and no associate of a named person, may be allocated or issued a relevant AWL while the nil limit is imposed. The nil limit is imposed from the time the instrument commences until the end of 30 September 2024.

From 1 October 2024 until the end of 30 September 2025, different limits apply. During this period, the instrument imposes limits on the aggregate of the parts of the spectrum that, under existing spectrum licences and as a result of the allocation or issue of AWLs, may be used by any one person, or by a ‘relevant group of persons’. A ‘relevant group of persons’ consists of a named person and all the person’s ‘associates’.

The effect of these limits is that no person, and no relevant group of persons, may, under existing spectrum licences, under relevant AWLs, and as a result of the allocation and issue of a relevant AWL, use more than an aggregate of:

- 140 MHz in the 3.4 to 3.95 GHz band (the **3.4 GHz band**) in the metropolitan area; or
- 160 MHz in the 3.4 GHz band in the regional area or rural area;

(collectively, the **140/160 limit**).

Spectrum licences have already been allocated and issued to the named persons or their associates in the 3.4 GHz band. The combination of the 140/160 limit and the existing spectrum licences affects whether relevant AWLs may be allocated and issued to a named person or their associates.

In imposing the nil limit and the 140/160 limit, the ACMA intends that AWLs in the 3.8 GHz band first be made available to persons who have limited or no access to AWLs or spectrum licences in the 3.4 GHz band (enabled by the imposition of the nil limit), followed by those who have access to some AWLs or spectrum licences in the 3.4 GHz band, but less than 140 MHz in the metropolitan area or 160 MHz in the regional area or rural area (enabled by the lapse of the nil limit and the imposition of the 140/160 limit). After the 140/160 MHz limit lapses, any person can be issued an AWL in the 3.8 GHz band, regardless of how much access they have to AWLs or spectrum licences in the 3.4 GHz band.

#### *Authorisation under and transfer of AWLs*

Under subsection 114(1) of the Act, the licensee of an apparatus licence may authorise other persons to operate radiocommunications devices under the licence. However, the licensee must not authorise a person to do so if it would be inconsistent with a determination of the ACMA under section 115 of the Act.

Under subsection 131AB(1) of the Act, the ACMA may, on application and subject to section 131AC, transfer an apparatus licence into the name of the transferee specified in the application form.

The instrument prevents the licensee of a relevant AWL from authorising a named person or their associate to operate radiocommunications transmitters under the AWL during the period the nil limit is in force (under section 115 of the Act), and prevents the transfer of a relevant AWL to a named person or their associate during the period the nil limit is in force (under section 131AC of the Act).

#### *Other matters*

The ACMA is guided by the object of the Act (section 3 of the Act), which requires the ACMA to promote the long-term public interest derived from the use of the spectrum, including by facilitating the efficient planning, allocation and use of the spectrum and supporting the communications policy objectives of the Commonwealth Government.

Under section 28C of the Act, the ACMA is also required to have regard to any relevant Ministerial policy statements, in the performance of the ACMA's spectrum management functions or the exercise of the ACMA's spectrum management powers.

The 3.4–4.0 GHz Statement specifies certain Commonwealth Government communications policy objectives that apply in relation to the ACMA's performance of its spectrum management functions, and exercise of its spectrum management powers, in relation to the 3.4 GHz to 4 GHz band. The 3.8 GHz band and extended 3.8 GHz band fall within the 3.4 GHz to 4 GHz band, and accordingly the ACMA has had regard to the 3.4–4.0 GHz Statement in preparing the instrument.

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

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

The instrument is subject to the sunset provisions in Part 4 of Chapter 3 of the LA.

#### **Documents incorporated by reference**

Subsection 314A(1) 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) provisions of any Act as in force at a particular time, or as in force from time to time. Subsection 314A(2) of the Act provides that an instrument under the Act may make provision in relation to a matter by applying,

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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 incorporates the following Acts and legislative instruments by reference as in force from time to time, or otherwise refers to them:

- the Act;
- the *Acts Interpretation Act 1901*;
- the *Corporations Act 2001*;
- the LA;
- the *Radiocommunications (Interpretation) Determination 2015*, or another instrument that replaces that determination.

The Acts and legislative instruments listed above may be obtained, free of charge, from the Federal Register of Legislation ([www.legislation.gov.au](http://www.legislation.gov.au)).

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

Between 20 June 2023 and 1 August 2023, the ACMA consulted on:

- a draft instrument under section 102G of the Act to impose a nil MHz limit on the named parties and their associates (however, the draft instrument proposed that TPG Internet Pty Ltd would be named, rather than its related entity Mobile JV Pty Limited).
- a draft instrument under sections 115 and 131AC of the Act to restrict the ability of an AWL licensee to authorise, or transfer the licence to, a named person or the associate of a named person.
- a draft of the proposed frequency coordination and licensing procedures for AWLs in the 3.4 GHz to 4 GHz band.
- a draft amendment to the *Radiocommunications (Interpretation) Determination 2015*.

These were accompanied by a consultation paper, *Area-wide apparatus licences in the 3.8 GHz band in metropolitan and regional Australia (draft allocation consultation)*. The draft allocation consultation sought views on a range of matters relating to the allocation of the relevant AWLs, including the technical framework that would apply, licence tax arrangements, and licence duration and renewal. Relevantly to the instrument, the ACMA sought feedback on options for the approach to allocating the relevant AWLs in the 3.8 GHz band, the imposition of limits and restrictions on authorisation and transfer.

Broadly, the ACMA proposed two options for allocating relevant AWLs. In both options, the ACMA would ask for applications for relevant AWLs to be made during a 4-week 'application window'. The ACMA would consider the applications made during the window and decide whether any relevant AWLs should be issued to those applicants. After those decisions had been made, any future applications for relevant AWLs would either be considered in another 'application window', or

generally be considered on a ‘first-in-time’ basis. The options differed on how limits would be imposed:

1. The first option was to impose a temporary nil limit under subsection 102G(1), for a period of 3, 6 or 12 months, applying to the named persons and their associates. After the nil limit ceased, the ACMA would impose a temporary limit which placed a limit on the total amount of spectrum, in aggregate, any named person and its associates could be authorised to use in the 3.4 GHz band, as a result of being issued a relevant AWL (the **cross-band limit**). This subsequent limit would be in place for a period of 3, 6 or 12 months, commencing after the nil limit ceased. The cross-band limit would be 140 MHz in the metropolitan area, and either 140 MHz or 160 MHz in the regional area. These areas are divided into and renamed as a metropolitan area, a regional area and a rural area in the instrument.
2. The second option was to impose a temporary cross-band limit, similar to that proposed in the first option, for a period of up to 18 months (that is, there would be no nil limit).

In accordance with subsection 102G(6) of the Act, the ACMA consulted with the Australian Competition and Consumer Commission (the **ACCC**) about whether the ACMA should impose limits in relation to the allocation and issue of the relevant AWLs and, if so, the nature of the limits.

The ACMA indicated in its request that:

- it would propose an allocation limit of nil MHz on the named persons and associated parties from acquiring AWLs for a specified period of time; and
- following the cessation of the proposed nil MHz limit, the ACMA proposed to impose cross-band limits on the named persons and associated parties of 140 or 160 MHz in the 3.4 GHz band, for a period greater than 12 months beginning at the first time that the persons were able to apply for spectrum in these bands.

On 30 September 2023, the ACCC stated that:

- it supported the ACMA’s preferred nil limit to apply to the named persons. The ACCC recommended that the limit be imposed for at least 12 months.
- it supported the ACMA’s preferred cross-band limit to apply after the cessation of the nil limit, with a limit of 140 MHz applying in the metropolitan area and 160 MHz applying in the regional area and the rural area. The ACCC recommended that the cross-band limit be reviewed after a period of 3 to 5 years, if there remained spectrum available for allocation by that time.

The ACMA received 12 public submissions in response to the draft allocation consultation. Of the 12 submissions, 11 were relevant to the instrument.

#### *Temporary nil limit*

Some submitters suggested that the imposition of a limit would distort the true demand for relevant AWLs, which may result in discontinuous spectrum remaining after the nil limit ceases to be in force. In turn, this discontinuous spectrum may not be useful to WA WBB providers.

The ACMA considers that while the precise extent of demand for the spectrum from applicants other than the named persons is unknown, the intent of the temporary nil limit is to provide an opportunity for others to be issued the relevant AWLs. The ACMA has decided to impose a temporary nil limit, as the named persons (or their associates) are already spectrum licensees in the 3.4 GHz band. The

ACMA acknowledges that the leftover spectrum after the nil limit ceases to be in force may not be desirable to the named persons. However, on balance, the ACMA considers this is a low risk when traded off against the benefit of allowing new use cases to emerge and new users to be issued AWLs.

Submissions on the duration of the nil limit varied, from as short as possible to permanently imposed.

The ACMA considers a permanent nil limit is not tenable, as it may result in unused spectrum. Noting the burden of such an intervention, and concerns from submitters regarding the scarce supply of spectrum, the ACMA considers that the nil limit should be imposed only for a limited time.

A 3-month period may not be enough time to prioritise applicants other than the named persons. Although a 12-month period provides more opportunities for persons to develop a business case and apply for a relevant AWL, a longer period may diminish the value of the relevant AWLs to the named persons. In striking the balance between providing sufficient opportunity for applicants other than the named persons, and returning to 'normal' settings, the ACMA considers a nil limit ending on 30 September 2024 is appropriate to test demand for a range of different use cases and prioritise applicants other than the named persons.

#### *Transfers and authorisations*

One submitter did not support the proposed restrictions on authorising persons to operate radiocommunications devices under relevant AWLs and on transferring relevant AWLs, because it considered they unnecessarily restrict market activity.

The ACMA considers that the restrictions will support the temporary nil limit by reducing the possibility of 'gaming' the limit. The ACMA considers this is appropriately offset by the relatively short period of the temporary nil limit, as well as the benefit it confers by providing persons other than the named persons with the opportunity to be issued relevant AWLs.

#### *Associates*

For the proposed nil limit, the ACMA proposed that an 'associate' of a named person include:

- a related body corporate of the named person;
- a director or secretary of the named person;
- a foreign company for which the named person is a local agent;
- any person who has an arrangement, agreement or understanding with the named person or another associate of the named person or, alternatively, who acts in concert with a named person.

Three submissions suggested that the nil limit should not apply to any associates of a named person. The ACMA considers an associates policy is necessary for the imposition of any kind of limits on the allocation of spectrum licences or transmitter licences. The 3.8 GHz allocation process is intended to facilitate new use cases, and the ACMA considers that entities closely related to the named persons can use spectrum licences already held by the named persons or their related bodies corporate in the 3.4 GHz band. Allowing entities closely related to the named persons to use more spectrum would allow for the possibility of the named persons circumventing the imposed limits. However, in the interests of simplicity, the ACMA has decided not to include as an associate any person who has an arrangement, agreement or understanding with a named person or an associate of a named person, or who acts in concert with a named person.

Other mechanisms suggested by submitters to prevent such circumvention, such as a licence condition preventing the operation of radiocommunications transmitters under a relevant AWL for the purpose of a public mobile telecommunications network, would likely be less effective and more complex than imposing a limit. For example, this may involve some degree of complexity in drafting, and may introduce a risk that different entities are disproportionately affected.

#### *Cross-band limit*

The proposed cross-band limit was generally supported by the submissions, but submitters had different views on the substance of the limit.

Two submissions supported a cross-band limit of 140 MHz in the metropolitan area and the regional area, across the 3.4 GHz band. One submission proposed that the limits also take into account spectrum licences issued in the 2302 MHz to 2400 MHz frequency band (the **2.3 GHz band**).

The ACMA considers the cross-band limit should be consistent with the limits imposed in the ACMA's 3.4/3.7 GHz band auction (as set out in the *Radiocommunications (Spectrum Licence Allocation – 3.4/3.7 GHz Bands) Determination 2023*). As a result, the ACMA has imposed a cross-band limit of 140 MHz in the metropolitan area, and of 160 MHz in the regional area and the rural area. The cross-band limit only takes into account spectrum licences issued in the 3.4 GHz band, and not the 2.3 GHz band.<sup>1</sup>

One submission proposed the use of an 'insignificant holdings test' as was used in the 3.4/3.7 GHz band auction, in order to determine whether the metropolitan or regional/rural limit applied to an applicant.

The ACMA considers such a test is not necessary in this allocation. The nature of AWLs allows an applicant to apply for an AWL in very specific geographic areas. If the applicant holds spectrum licences in a geographic area that would cause them to exceed the application limit if a relevant AWL were issued to them covering that area, the applicant can tailor its application so that the AWL it applies for does not cover that area.

One submission proposed a permanent cross band limit; another submission proposed a permanent cross-band limit, but, failing that, supported a 12-month limit.

The ACMA considers that limits imposed under section 102G are an appropriate mechanism for temporarily correcting competitive imbalances. The benefits of this mechanism become less relevant the longer limits are in place. A person not subject to the limit has the opportunity to apply for a licence, and by not applying demonstrates that they have little demand for the licence. After a period allowing for the demonstration of demand for licences by persons not subject to the limit, the ACMA considers it is preferable to allow any person who has demand for a licence to apply for it, thereby facilitating the use of any vacant spectrum. Additionally, the issuing of licences, and the trading of spectrum licences and the transfer of apparatus licences are separately subject to review and action by the ACCC under section 50 of the *Competition and Consumer Act 2010*, which prohibits the acquisition of any asset that substantially lessens competition in any market.

#### **Regulatory impact assessment**

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<sup>1</sup> To avoid confusion and to align the areas with those used in the 3.4/3.7 GHz band auction, the proposed metropolitan area has been divided into a 'metropolitan area' and a 'regional area', and the proposed regional area has been renamed as the 'rural area' in the instrument.

A preliminary assessment of the proposal to make the instrument was conducted by the Office of Impact Analysis (the **OIA**), based on information provided by the ACMA, for the purposes of determining whether a Regulation Impact Statement (**RIS**) would be required. The OIA advised that a RIS would not be required because the proposal is unlikely to have a more than minor impact (OIA reference number OIA23-05294).

### **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 of the LA applies (disallowance) 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 is preparing to allocate and issue the relevant AWLs. The allocation of the relevant AWLs is part of a larger allocation activity in which the ACMA is making spectrum available across the 3.4 GHz to 4 GHz band. The ACMA has already conducted other allocation activities in the 3.4 GHz band, including the auction of spectrum licences in particular parts of the 3.4 GHz band in certain metropolitan areas and regional areas (which are designed for WA WBB use) and the allocation of AWLs in the 3.4 GHz to 4 GHz band in remote areas.

Given the ACMA has already allocated spectrum licences in the 3.4 GHz band that are designed for WA WBB use, the ACMA considers that the relevant AWLs should principally be allocated and issued to support other users and use cases, such as local area wireless broadband use. As such, the ACMA has made the instrument to give a limited priority to persons, other than certain named persons who provide WA WBB services and their associates, in the allocation and issue of relevant AWLs.

### ***Persons to whom the instrument applies***

Each of the named persons provides, or is capable of providing, wireless broadband services using their spectrum licences. Accordingly, the instrument restricts the ability of the named persons, and any associates of the named persons, to be allocated and issued the relevant AWLs. An associate of a named person is any related body corporate, director or secretary of the named person, and any foreign company for which the named person is a local agent.

### ***Allocation limits***

Under section 102G of the Act, the instrument imposes temporary limits on the aggregate of the parts of the spectrum that may be used by the named persons and their associates.

A nil limit is imposed on each named person, and each associate of a named person, in relation to the allocation and issue of the relevant AWLs. The nil limit is imposed from the time the instrument commences until the end of 30 September 2024.

From 1 October 2024 until the end of 30 September 2025, the 140/160 limit applies. During this period, the instrument imposes limits on the aggregate of the parts of the spectrum that, under existing spectrum licences and as a result of the allocation or issue of relevant AWLs, may be used by a named person, or by a 'relevant group of persons'. A 'relevant group of persons' consists of a named person and all that person's 'associates'.



The effect of the 140/160 limit is that no named person, and no relevant group of persons, may, under existing spectrum licences and relevant AWLs, and as a result of the allocation and issue of a relevant AWL, use more than an aggregate of:

- 140 MHz in the 3.4 GHz band in the metropolitan area; or
- 160 MHz in the 3.4 GHz band in the regional area or rural area.

Spectrum licences have already been allocated and issued to the named persons or their associates in the 3.4 GHz band. The combination of the 140/160 limit and the existing spectrum licences affects which relevant AWLs may be allocated and issued to a named person or their associates.

#### *Authorisation under and transfer of AWLs*

Under subsection 114(1) of the Act, the licensee of an apparatus licence may authorise other persons to operate radiocommunications devices under the licence. However, the licensee must not authorise a person to do so if it would be inconsistent with a determination of the ACMA under section 115 of the Act.

Under subsection 131AB(1) of the Act, the ACMA may, on application and subject to section 131AC, transfer an apparatus licence into the name of the transferee specified in the application form.

The instrument prevents the licensee of a relevant AWL from authorising a named person or their associate to operate radiocommunications transmitters under the AWL during the period the nil limit is in force (under section 115 of the Act) and prevents the transfer of a relevant AWL to a named person or their associate during the period the nil limit is in force (under section 131AC of the Act).

#### *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 (Area-Wide Licences – Limits, Authorisations and Transfers) Determination 2024***

**Section 1 Name**

This section provides for the instrument to be cited as the *Radiocommunications (Area-Wide Licences – Limits, Authorisations and Transfers) Determination 2024*.

**Section 2 Commencement**

This section provides that the instrument will commence at the start of the day after it is registered.

The Federal Register of Legislation may be accessed free of charge at [www.legislation.gov.au](http://www.legislation.gov.au).

**Section 3 Authority**

This section identifies the provisions of the Act that authorise the making of the instrument, namely under subsections 102G(1), 115(1), and 131AC(1).

**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.

**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 is a reference to that other instrument as in force or existing from time to time.

**Section 6 Schedule 1–Initial limits**

This section provides that, for the purposes of subsection 102G(1), 115(1), 131AC(1) of the Act, Schedule 1 has effect in the period starting when the instrument commences and ending at the end of 30 September 2024.

**Section 7 Schedule 2–Subsequent limits**

This section provides that, for the purposes of subsection 102G(1) of the Act, Schedule 2 has effect in the period commencing at the start of 1 October 2024 and ending at the end of 30 September 2025.

**Schedule 1–Initial Limits**

**Clause 1 Allocation and issue of area-wide licence not to exceed limit**

This clause imposes limits under paragraph 102G(1)(a) of the Act.

The effect of this clause is that no named person or associate of a named person may be allocated or issued a relevant AWL while Schedule 1 is in force.

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## **Clause 2 No authorisation of certain third party users under relevant area-wide licences**

This clause determines a class of persons who must not be authorised to operate radiocommunications transmitters under a relevant AWL, under paragraph 115(1)(b) of the Act.

This class of persons is determined to consist of each named person and each associate of such a named person.

The effect of this provision is that named persons and associates of a named person are not permitted to be authorised by a licensee to operate a radiocommunications transmitter under a relevant AWL while Schedule 1 is in force.

## **Clause 3 Relevant area-wide licence not transferrable to certain persons**

This clause specifies the circumstances in which a relevant AWL is not transferrable, under paragraph 131AC(1)(b) of the Act.

A relevant AWL cannot be transferred where the transfer is to a named person or an associate of a named person while Schedule 1 is in force.

## **Schedule 2–Subsequent limits**

### **Clause 1 Definitions**

This clause sets out the definition of ‘relevant group of persons’. A ‘relevant group of persons’ means a named person and all associates of that named person. A relevant group of persons can also be any two or more groups of that kind that have at least one member in common.

However, an individual is taken not to be a member in common between two or more groups that are comprised of a person (the **relevant person**) and the associates of that relevant person where all of the following apply:

- the individual is providing services as a company secretary (the **company secretarial services**) to one or more related bodies corporate of the relevant person in each group;
- the individual is providing the company secretarial services through a person or entity that is not a member of any of the groups, and carries on a business for the provision of professional services (including company secretarial services), and has, in the ordinary course of carrying on that business, been separately and independently engaged by an entity within each of the related groups, under a contract or other legally binding arrangement, to provide the company secretarial services;
- the individual is not, otherwise than by reason of providing the company secretarial services, an associate of any of the relevant persons;
- each of the related bodies corporate to which the individual is providing the company secretarial services is incorporated outside Australia.

### **Clause 2 Allocation and issue of area-wide licence not to exceed limit**

This clause imposes limits under paragraph 102G(1)(b) of the Act.

The allocation or issue of relevant AWLs must not result in a person exceeding the allocation limit for the metropolitan area, the regional area or the rural area.

The allocation limit for the metropolitan area is 140 MHz of spectrum in the 3.4 GHz band. The allocation limit for the regional area and the rural area is 160 MHz of spectrum in the 3.4 GHz band

A person would exceed the allocation limit for an area if they are allocated or issued a relevant AWL that causes them, the relevant group of persons that includes them, to be authorised to use, in aggregate, more spectrum in the 3.4 GHz band in the area than the allocation limit allows.

This clause sets out the types of authorisations which will be counted towards the aggregate amount of spectrum that a person or the relevant group of persons that includes the person is authorised to use in the 3.4 GHz band in an area:

- authorisations to operate radiocommunications devices in a specified part of the 3.4 GHz band in the area, where those authorisations are in spectrum licences that exist at the time (whether or not the spectrum licence has come into force). This includes licences allocated as a result of the 3.4/3.7 GHz band auction.
- authorisations to operate radiocommunications devices in a specified part of the 3.4 GHz band in the area, where those authorisations are in AWLs that exist at the time (whether or not the AWL has come into force).

This clause also sets out that the types of authorisations which will not be counted towards the aggregate amount of spectrum that a person or the relevant group of persons that includes the person is authorised to use in the 3.4 GHz band in an area:

- authorisations in transmitter licences that are not AWLs;
- authorisations under subsection 68(1) of the Act (about third party use and spectrum licences);
- authorisations under subsection 114(1) of the Act (about third party use and apparatus licences).

### **Schedule 3—Metropolitan area, regional area and rural area**

This Schedule defines the metropolitan area, regional area and rural area. To define each area, this Schedule lists a set of HCIS identifiers that correspond to the region in the Australian Spectrum Map Grid 2012.