

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications (Unacceptable Levels of Interference – 1800 MHz Band) Determination Variation 2024 (No. 1)

Authority

The Australian Communications and Media Authority (the **ACMA**) has made the *Radiocommunications (Unacceptable Levels of Interference – 1800 MHz Band) Determination Variation 2024 (No. 1)* (the **instrument**) under subsection 145(4) of the *Radiocommunications Act 1992* (the **Act**) and subsection 33(3) of the *Acts Interpretation Act 1901* (the **AIA**).

Section 145 of the Act provides that the ACMA may refuse to include details of a radiocommunications transmitter that is proposed to be operated under a spectrum licence in the Register of Radiocommunications Licences (**Register**), maintained by the ACMA under Part 3.5 of the Act, if the ACMA is satisfied that the transmitter could cause an unacceptable level of interference to the operation of other radiocommunications devices under that spectrum licence or any other licence.

Subsection 145(4) of the Act provides that the ACMA may determine, by written instrument, what are unacceptable levels of interference for the purposes of section 145 of the Act. Subsection 33(3) of the AIA relevantly provides that where an Act confers a power to make, grant or issue 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 purpose of the instrument is to amend the *Radiocommunications (Unacceptable Levels of Interference – 1800 MHz Band) Determination 2023* (the **ULI Determination**).

A spectrum licence permits a licensee, subject to specified conditions, to operate radiocommunications devices within a particular spectrum space, defined by a frequency band and a geographic area. Interference occurring between adjacent spectrum licences consists of in-band interference across geographic boundaries, and out-of-band interference across frequency boundaries. Interference can also occur between spectrum licensed services and services operating under apparatus licences and class licensing arrangements.

Section 69 of the Act requires each spectrum licence to include a condition that a radiocommunications transmitter must not be operated under the licence unless the requirements of the ACMA under Part 3.5 of the Act for registration of transmitters have been met.

The ULI Determination sets out what is meant by an ‘unacceptable level of interference’ in relation to a radiocommunications transmitter operated under a spectrum licence issued in the part of the spectrum known as the 1800 MHz band. If the ACMA is satisfied that the operation of the radiocommunications transmitter could cause an unacceptable level of interference of the kind set out in the ULI Determination, the ACMA will be able to refuse to register the radiocommunications transmitter. Refusal to register a radiocommunications transmitter is subject to internal reconsideration and review by the Administrative Appeals Tribunal (see paragraph 285(n) of the Act).

The instrument makes two amendments to the ULI Determination to correct two errors. These amendments make the ULI Determination consistent with the earlier instrument that was replaced by the ULI Determination because of sunseting.

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 ULI Determination is subject to the sunset provisions of the LA.

Documents incorporated by reference

The instrument does not incorporate any documents by reference.

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.

The ACMA publicly consulted on a draft instrument from 3 October 2024 to 31 October 2024 in order to give all interested parties an opportunity to comment on the proposed changes.

One submission was received during the public consultation period, which supported the proposed amendments. No change was made to the draft instrument.

Regulatory impact assessment

The ACMA consulted with the Office of Impact Analysis (the **OIA**) 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 instrument is likely to have only minor and machinery impacts. The reference number for the OIA's assessment is 44613.

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 69 of the Act requires each spectrum licence to include a condition that a radiocommunications transmitter must not be operated under the licence unless the requirements of the ACMA under Part 3.5 of the Act for registration of the transmitter have been met.

Subsection 145(1) of the Act provides that the ACMA may refuse to include details of a radiocommunications transmitter that is proposed to be operated under a spectrum licence in the Register if the ACMA is satisfied that the transmitter could cause an unacceptable level of interference to the operation of other radiocommunications devices under that or any other spectrum licence, or any other licence.

Subsection 145(4) of the Act provides that the ACMA may determine, by written instrument, what are unacceptable levels of interference for the purposes of section 145. The ULI Determination sets out what is meant by an 'unacceptable level of interference' in relation to radiocommunications transmitters operated under a spectrum licence issued in the part of the spectrum known as the 1800 MHz band.

The instrument makes two amendments to the ULI Determination to correct two errors. These amendments make the ULI Determination consistent with the earlier instrument that was replaced by the ULI Determination because of sunseting.

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 (Unacceptable Levels of Interference – 1800 MHz Band) Determination Variation 2024 (No. 1)*

Section 1 Name

This section provides for the instrument to be cited as the *Radiocommunications (Unacceptable Levels of Interference – 1800 MHz Band) Determination Variation 2024 (No. 1)*.

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.

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 instrument, namely subsection 145(4) of the Act.

Section 4 Amendments

This section provides that Schedule 1 varies the *Radiocommunications (Unacceptable Levels of Interference – 1800 MHz Band) Determination 2023*.

Schedule 1–Amendments

Item 1

The definition of **RP** in the formula for the device boundary criterion (excluding notes) has been repealed and replaced. The new definition amends the reference bandwidth to the correct value of 30 kHz.

Item 2

The equation for the calculation of propagation loss omits two elements that were incorrectly included.