

## **EXPLANATORY STATEMENT**

### ***Radiocommunications Act 1992***

## **RADIOCOMMUNICATIONS (SPECTRUM DESIGNATION)**

### **NOTICE NO. 1 OF 2012**

Issued by the authority of the Minister for Broadband, Communications and the Digital Economy.

#### **Legislative Provisions**

Subsection 36(1) of the *Radiocommunications Act 1992* (the Act) enables the Minister for Broadband, Communications and the Digital Economy, after consultation with the Australian Communications and Media Authority (ACMA), to give the ACMA a written notice designating a specified part of the radiofrequency spectrum to be allocated by issuing spectrum licences.

Subsection 36(2) of the Act requires the Minister to identify one or more specified areas to which the notice applies.

Subsection 36(3) of the Act enables the ACMA to make recommendations to the Minister about spectrum designation notices that should be given. Subsection 36(4) of the Act requires the ACMA to consult publicly before making a recommendation to the Minister to issue a notice.

A notice under subsection 36(1) may be issued in respect of parts of the spectrum that are encumbered as a result of existing apparatus licences, as well as in respect of parts of the spectrum that are unencumbered.

As a consequence of a notice being issued by the Minister, the ACMA:

- may, under section 37 of the Act, prepare or vary a frequency band plan;
- must, under section 38 of the Act, prepare a conversion plan detailing the procedures and timetable for issuing spectrum licences to replace any existing apparatus licences;
- must, under section 39 of the Act, prepare a marketing plan for issuing spectrum licences in respect of those parts of the spectrum, within the area or areas specified in the notice, that will not be used under spectrum licences issued in accordance the conversion plan; and
- must, under section 56 of the Act, offer to issue the holder of an existing apparatus licence a replacement spectrum licence, and provide details of the amount of the spectrum access charge that must be paid for the issue of the spectrum licence.

A spectrum designation notice is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

## **Background**

In Australia, the frequency range 2500–2690 MHz (the 2.5 GHz band) is currently licensed almost exclusively to commercial free-to-air television broadcasters and the Australian Broadcasting Corporation (the ABC) for television outside broadcasting, including electronic news gathering (ENG). This operation is authorised via Television Outside Broadcast Network (TOBN) apparatus licences.

In October 2010, the ACMA announced its intention to replan part of the 2.5 GHz band to facilitate new uses such as wireless access services (WAS), while retaining other parts of the band for use by current licensees for ENG. A range of other bands will be made available for ENG to enable provision of ENG service delivery that is equivalent to that currently provided.

In accordance with the ACMA's replanning process for the 2.5 GHz band, it is intended that apparatus licences in the frequency range 2570-2620 MHz ('the mid band gap') will be converted to spectrum licences. This is one important element in the overall 2.5GHz band replanning process. Before the conversion of apparatus licences to spectrum licences can occur, it is necessary for the Minister to give the ACMA a written notice under subsection 36(1) of the Act designating that part of the spectrum be allocated by issuing spectrum licences. The Minister may choose to issue such a notice in response to a recommendation from the ACMA and must consult with the ACMA before issuing the notice.

The effect of a notice from the Minister designating a part of the spectrum to be allocated by issuing spectrum licences is that the ACMA must undertake a range of processes to issue spectrum licences that replace any apparatus licences that are within that part of the spectrum. The new spectrum licences must, so far as is practicable, authorise the operation of radiocommunications devices to the same extent as, or to a greater extent than, the apparatus licences they replace. This process is referred to as 'conversion'. All radiofrequency spectrum in the mid band gap is currently regarded as encumbered spectrum and therefore the notice will not have the effect of allocating new or additional spectrum.

Consistent with the public consultation requirements in subsection 36(4) of the Act, in May 2011 the ACMA invited comments about its proposal to recommend that the Minister designate the mid band gap for conversion of ENG apparatus licences to spectrum licences on a nation-wide basis. Two areas were identified in the ACMA's proposal for exclusion from designation on a nationwide basis. Those areas include an area known as the Mid West Radio Quiet Zone (RQZ) and an area approximately 130 kilometres off the Dampier coastline in Western Australia.

The RQZ is an area approximately 300 kilometres north-east of Geraldton, Western Australia. The ACMA endeavours to maintain low levels of radiofrequency for this area in order to facilitate the development and use of new radio astronomy technologies at that location, and support Australia's bid to host the Square Kilometre Array (SKA). When built, the SKA will be the largest and most sensitive radio telescope. Australia and South Africa are currently shortlisted as potential locations for the SKA.

The ACMA has excluded the RQZ from the area designated for allocation in order to preserve licensing options for the Murchison Radioastronomy Observatory at the centre of the RQZ, and for other services in the areas around the centre of the RQZ, subject to their

compliance with conditions contained in the *Radiocommunications (Mid West Radio Quiet Zone) Frequency Band Plan 2011* to protect radioastronomy.

There is an existing apparatus licence relating to the area that is 130 kilometres off the Dampier coastline in Western Australia. The licence authorises one of a number of fixed links associated with communications operations associated with the North West Shelf oil and gas facilities. This existing apparatus licence should not be included under the Designation Notice and therefore the ACMA proposed that the area near the Dampier coastline be excised from the area designated for allocation.

The majority of submissions received in response to the ACMA's designation proposal were broadly accepting of the proposal.

Consistent with its earlier proposal, the ACMA made a recommendation to the Minister on 19 August 2011 that the Minister issue a notice under section 36 of the Act designating the 2570–2620 MHz band to be allocated by issuing spectrum licences. The recommendation also noted that the designation would apply on a nationwide basis, except for areas relating to the Mid West Radio Quiet Zone and off the coast of Dampier in Western Australia.

The Minister has accepted the ACMA's recommendation and issues the accompanying notice under subsection 36(1) of the Act.

As required under subsection 36(1) of the Act, the Minister has consulted with the ACMA before issuing the notice.

A Regulation Impact Statement - *Future arrangements for the 2.5 GHz radiofrequency spectrum band and long-term arrangements for electronic news gathering Regulation Impact Statement – Australian Communications and Media Authority (ACMA)* - has been prepared by the ACMA and has been approved and published by the Office of Best Practice Regulation (OBPR). The OBPR reference is 11300.

### **Statement of compatibility with human rights**

This statement of compatibility is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The Notice designates the frequency band between 2570 MHz and 2620 MHz as part of the spectrum to be allocated by the ACMA through the issuing of spectrum licences. The designation applies throughout a specified National Area that encompasses most of Australia. The Notice excludes the Mid West Radio Quiet Zone (the RQZ) and an area near the Dampier coastline in Western Australia from the National Area. These two exclusions are provided to facilitate the development and use of new radioastronomy technologies in the RQZ, and to preserve licensing options for the Murchison Radioastronomy Observatory in Western Australia.

The Notice is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. It does not engage any of the applicable rights or freedoms and does not raise any human rights issues.

## **Notes on the Clauses**

### **Clause 1 – Name of Notice**

Clause 1 provides for the citation of the Notice as the *Radiocommunications (Spectrum Designation) Notice No. 1 of 2012*.

### **Clause 2 – Commencement**

Clause 2 provides that the Notice commences on the day after it is registered on the Federal Register of Legislative Instruments.

### **Clause 3 – Definitions**

Clause 3 provides a definition for ‘National Area’ for the purposes of the Declaration by reference to the geographic coordinates set out in Table A of the Schedule. The area bounded by the given coordinates encompasses most of Australia, excluding the external territories.

### **Clause 4 – Designation of Frequency Band**

In accordance with subsection 36(1) of the *Radiocommunications Act 1992* (Act), the Minister may after consultation with the ACMA, give to the ACMA a written notice designating a specified part of the spectrum to be allocated by issuing spectrum licences.

In August 2011, the ACMA recommended to the Minister that he make a spectrum designation notice under subsection 36(1) of the Act to permit the 2570–2620 MHz mid-band gap to be allocated by issuing spectrum licences. Staff from the ACMA were consulted in the development of the written notice.

Clause 4 describes the part of the spectrum that is designated for allocation by the ACMA by issuing spectrum licences.

The frequency band between 2570 MHz and 2620 MHz is described as the designated part of the spectrum, noting that the range of numbers identified includes the higher, but not the lower number. The practice of including the higher, but not the lower number, when identifying a range of frequencies is used to prevent cases of frequency band overlap.

In accordance with subsection 36(2) of the Act, a Notice given under subsection 36(1) is to be expressed to apply to one or more specified areas. In this case, the Notice is expressed to apply ‘throughout the National Area’, except for the areas bounded by the coordinates set out in Tables B and C in the Schedule.

The expression ‘National Area’ is to be given the meaning set out in clause 3 of the Declaration.

## **Schedule**

The Schedule contains three tables, which each contain sets of coordinates that are used to describe different geographic regions.

The first table, Table A, contains coordinates which represent the outer boundary of an area encompassing most of Australia. The geographic area bounded by the coordinates in Table A is used in the definition of ‘National Area’ under clause 3.

The second and third tables contain coordinates for two separate regions that are excluded from the area that is designated for allocation under the Notice. The second table, Table B, contains coordinates for an area known as the Mid West Radio Quiet Zone (RQZ). The reasons for excluding this zone from the area that is designated for allocation are noted under the ‘Background’ heading in this explanatory statement.

The third table, Table C, contains coordinates for an area approximately 130 kilometres from the Dampier coastline in Western Australia. The reasons for excluding this area from the area that is designated for allocation are also noted under the ‘Background’ heading in this explanatory statement.