

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Radiocommunications Spectrum Conversion Plan (2.5 GHz Mid-band Gap) 2012

Radiocommunications Act 1992

Purpose

The purpose of the *Radiocommunications Spectrum Conversion Plan (2.5 GHz Mid-band Gap) 2012* (the **Conversion Plan**) is to set out the procedures and timetables for issuing spectrum licences (to replace existing apparatus licences) in the frequency band 2570-2620 MHz (the **2.5 GHz Mid-band Gap**). The Conversion Plan also sets out the conditions that will apply to those spectrum licences.

Legislative Provisions

Section 38 of the *Radiocommunications Act 1992* (the **Act**) provides that the Australian Communications and Media Authority (**ACMA**) must prepare a conversion plan if it receives a notice from the Minister under subsection 36(1) of the Act which designates a specified part of the spectrum to be allocated by issuing a spectrum licence. On 24 February 2012, the Minister designated the 2.5 GHz Mid-band Gap under the *Radiocommunications (Spectrum Designation) Notice No. 1 of 2012*.

The Conversion Plan is a legislative instrument under the *Legislative Instruments Act 2003*.

Background

The 2500-2690 MHz frequency band is used primarily by free to air broadcasters and the Australian Broadcasting Corporation for television outside broadcasting (**TVOB**), including electronic news-gathering (**ENG**). However, broadcasters have faced uncertainty about long-term spectrum arrangements in that frequency band since 2000, when the band was identified internationally for broadband wireless access services (**WAS**).

In January 2010, the ACMA commenced a review of the 2500-2690 MHz frequency band to:

- > plan and allocate the band to maximise the overall benefit derived from that spectrum; and
- > provide incumbent licensees with greater long-term certainty in light of strong emerging demand for the band to be used for competing purposes—for example, for WAS.

In January 2010, the ACMA released a discussion paper, '*Review of the 2.5 GHz band and long-term arrangements for ENG*'¹ (**January 2010 discussion paper**). The January 2010 discussion paper included the ACMA's preliminary view on its preferred approach for the band, which was broadly:

- > reallocation of the 2500–2570 MHz and 2620–2690 MHz bands for spectrum licensing, with technical frameworks that are technology flexible but are optimised for wireless access services;
- > conversion of ENG apparatus licences to spectrum licences in the 2570–2620 MHz band; and
- > facilitation of ENG/TVOB access to identified alternative bands.

¹ Full discussion paper can be accessed at http://www.acma.gov.au/webwr/_assets/main/lib311275/2.5ghz_discussion_paper_ifc01-10.pdf.

Following consideration of submissions received in response to the January 2010 discussion paper, in October 2010 the ACMA announced its intention to give existing ENG services access to the 2.5 GHz Mid-band Gap and to make the 2500-2570 MHz and the 2620-2690 MHz bands available in Australia to support WAS, including 4G mobile broadband.²

To assist stakeholders in understanding how the ACMA reached a view on appropriate future arrangements in the 2.5 GHz band and alternative bands, the ACMA released a response paper, 'Review of the 2.5 GHz band and long-term arrangements for ENG – Response to Submissions' which summarised the issues raised in response to the January 2010 discussion paper and set out the ACMA's preliminary response to those issues.³

To provide long term access in the 2.5 GHz Mid-band Gap the ACMA proposed to convert the ENG/TVOB apparatus licences in the 2.5 GHz Mid-band Gap to spectrum licences. To enable the conversion to spectrum licensing the ACMA is required to put in place a spectrum licence technical framework for the 2.5 GHz Mid-band Gap. The technical framework defines a spectrum licensee's rights and obligations and provides an interference management framework for the 2.5 GHz Mid-band Gap.

The Conversion Plan is part of a set of legislative instruments to give effect to the spectrum licence framework applicable to the 2.5 GHz Mid-band Gap. The other instruments required for this purpose are listed below:

- > *Radiocommunications (Spectrum Designation) Notice No. 1 of 2012;*
- > *Radiocommunications (Unacceptable Levels of Interference — 2.5 GHz Mid-band Gap) Determination 2012;*
- > *Radiocommunications Advisory Guidelines (Managing Interference from Transmitters – 2.5 GHz Mid-band Gap) 2012; and*
- > *Radiocommunications Advisory Guidelines (Managing Interference to Receivers – 2.5 GHz Mid-band Gap) 2012.*

Operation

The Conversion Plan explains how existing apparatus licences authorising the use of radiocommunications in the 2.5 GHz Mid-band Gap will be converted to spectrum licences and sets out the timetable for issuing the spectrum licences. The expiry date for spectrum licences issued in the 2.5 GHz Mid-band Gap as a result of the Conversion Plan will be 30 September 2029.

Schedule 2 to the Conversion Plan contains a sample spectrum licence which sets out information relating to the core conditions and other conditions applicable to the operation of a service under the spectrum licence.

The Conversion Plan also sets out the geographic region and frequency bands covered by the licences. No spectrum will be reserved for public or community services.

² See ACMA media release 132/2010 http://www.acma.gov.au/WEB/STANDARD/pc=PC_312322.

³ Response to submissions paper, and submissions received, can be accessed at: www.acma.gov.au/WEB/STANDARD/pc=PC_312013.

Consultation

The ACMA has consulted extensively with stakeholders about its plans to develop a spectrum licensing technical framework for the 2.5 GHz Mid-band Gap. The ACMA also undertook public consultation on a draft of the Conversion Plan.

In July 2011, the ACMA set up a number of short-term industry technical liaison groups (**TLGs**) to assist with the development of technical frameworks including the support of ENG/TVOB in the 2.5 GHz Mid-band Gap and the introduction of 4th generation broadband mobile/wireless access services in the 2500-2570 GHz and 2620-2690 MHz bands.

As part of the TLG process for the 2.5 GHz Mid-band Gap, existing licensees providing ENG/TVOB I were asked to consider and provide advice to the ACMA on technical aspects required for the development of the spectrum licence technical framework. These included:

- > the development of the core conditions of the spectrum licensed band in accordance with section 66 of the Act;
- > the development of the determination on unacceptable levels of interference made under section 145 of the Act;
- > the development of any associated advisory guidelines made under section 262 of the Act; and
- > the development of the draft spectrum licence.

The ACMA prepared several papers which outlined its proposed approach to the spectrum licensing framework for the 2.5 GHz Mid-band Gap. These papers were made available by the ACMA to ENG/TVOB licensees for comment.

The ACMA had regard to the views expressed by the ENG/TVOB licensees when preparing the Conversion Plan. There were no significant concerns raised by the licensees in relation to the Conversion Plan.

The ACMA also undertook wider public consultation in relation to the Conversion Plan. On 13 July 2012, the ACMA released the draft legislative instruments (including the Conversion Plan) for comment.⁴ These instruments were accompanied by an information paper to explain the draft instruments and provide context to assist interested parties in making a submission.⁵

Submissions to the consultation were open until 3 September 2012. A total of 4 responses were received. There were no specific or significant concerns raised by the licensees relating to the Conversion Plan.

Regulatory Impact Statement

The Office of Best Practice Regulation (the **OBPR**) advised in April 2012 that the Conversion Plan, being an outcome of the 2.5 GHz review, is covered by the existing Regulation Impact Statement (RIS) for the 2.5 GHz review (OBPR ID 11300) and that no further RIS is required.

⁴ See http://www.acma.gov.au/scripts/nc.dll?WEB/STANDARD/1001/pc=PC_410423.

⁵ The information paper can be accessed at:
http://www.acma.gov.au/scripts/nc.dll?WEB/STANDARD/1001/pc=PC_410423.

Documents incorporated into the Conversion Plan by reference

This Conversion Plan incorporates the Radio Regulations made by the International Telecommunication Union (**ITU**). This instrument is available for download for a fee from the ITU's internet site (www.itu.int).

Detailed Description of the Instrument

Further details of the Conversion Plan are set out in Attachment A.

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 *Legislative Instruments Act 2003* applies to cause a statement of compatibility to be prepared in respect of that legislative instrument. This statement is Attachment B.

NOTES ON SECTIONS

Section 1 – Title

This section provides that the name of the Conversion Plan is the *Radiocommunications Spectrum Conversion Plan (2.5 GHz Mid-band Gap) 2012*.

Section 2 – Commencement

This section specifies that the Conversion Plan will take effect from the day after it is registered.

Section 3 – Purpose

This section states that the purpose of the Conversion Plan is to set out the procedures and timetables for converting existing apparatus licences authorising the use of radiocommunications devices in the 2.5 GHz Mid-band Gap to spectrum licences.

Section 4 – Interpretation

This section provides definitions for terms used in the Conversion Plan. Some terms used in the instrument have the same meaning as in the Act.

Section 5 – Approval of Acceptance Form

This section explains that the ACMA will approve, in writing, a form (the **Acceptance Form**) for use by a licensee to accept an offer of a spectrum licence.

Section 6 – Preparation of draft spectrum licences

This section explains that the ACMA will prepare a draft spectrum licence to replace each existing apparatus licence. The draft licence will be sent to the licensee, and the licensee will be invited to make representations on the draft licence.

Section 7 – Sample spectrum licence

This section explains that a sample spectrum licence is set out in Schedule 2 of the Conversion Plan.

Section 8 – Core licence conditions

This section provides that the spectrum licence will contain core conditions as required under section 66 of the Act which will define the parts of the spectrum that can be used in the licence. The conditions will be included in the draft licence.

Section 9 – Other licence conditions

This section provides that the spectrum licence will set out other conditions which are not core conditions. These other conditions will be included in the draft licence.

Section 10 – Determination of core licence conditions

This section provides that the ACMA will identify the geographic areas and bands to be included in the proposed replacement spectrum licenses.

Section 11 – Emission limits

Spectrum licences cover a spectrum space defined by frequency and geographical area. This section provides that the methods for calculating the limit of emissions that can be caused outside of the defined frequency and geographical area are provided in Schedules 3 and 4 of the Conversion Plan.

Section 12 – Agreements about emission limits

This section provides that a licensee may enter into an agreement with another licensee about emission limits outside the defined frequency or geographic area that may be caused in that other licensee's spectrum space.

Section 13 – Extent of operation of devices under replacement spectrum licences

This section explains that the ACMA will, so far as is practicable, prepare a draft spectrum licence that authorises the operation of radiocommunications devices to the same, or to a greater extent than the apparatus licence it replaces.

Section 14 – Spectrum access charge

This section explains that a spectrum access charge is payable by a licensee for the issue of a spectrum licence that replaces the licensee's existing apparatus licence. The ACMA will determine the amount of the spectrum access charge and may be directed by the Minister in making that determination.

Section 15 – Representations about draft spectrum licences

This section provides that a licensee will have at least one month to make representations about the draft spectrum licence it receives. The ACMA will consider all representations made by the due date. The ACMA may discuss proposed changes to the draft spectrum licence with the licensee and will advise the licensee as to whether or not it has altered the draft spectrum licence as a result of the licensee's representations.

Section 16 – Formal offer of spectrum licence

This section explains that the ACMA will make a written offer to the licensee to issue a spectrum licence to replace the licensee's existing apparatus licence. This offer will be made as soon as practicable after the last day for making representations. The offer will be sent to the licensee's last known address, will specify a closing date (the last date on which the offer can be accepted), identify the spectrum licence that the ACMA proposes to issue and will specify the applicable spectrum access charge that has been determined by the ACMA.

Section 17 – Accepting the offer

This section provides that a licensee that wants to accept an offer for a spectrum licence must provide to the ACMA a written notice of acceptance by the closing date specified in the offer. The notice must be provided in accordance with the approved Acceptance Form (described in section 5). The Acceptance Form will contain a clause requiring the licensee to agree to pay the spectrum access charge.

Section 18 – Issue of spectrum licence

This section provides that the ACMA will issue the spectrum licences in accordance with section 57 of the Act. Spectrum licences will come into force on the date specified in the licence and immediately before it comes into force, the apparatus licence which it replaces will cease to be in force.

Section 19 – Failures to accept offers

This section explains that if a licensee does not accept an offer, the ACMA may allocate the spectrum licence to another person under procedures determined under section 60 of the Act.

Section 20 – Duration of spectrum licences

This section specifies the period for which spectrum licences will be issued. Licences issued under the Conversion Plan will be issued for a term of 15 years and have a common expiry date of 30 September 2029.

Section 21 – Registration of licences

This section explains that the ACMA will include details of spectrum licences on the Register of Radiocommunications Licences and a condition will prohibit the operation of transmitters that have not been registered. Subsections 21(4)-(6) set out the circumstances under which certain transmitters will be exempt from the registration requirement.

Section 22 – Re-issue of licences

This section provides that the ACMA may re-issue a spectrum licence at its expiry in accordance with Division 4 of Part 4.2 of the Act. The ACMA may re-issue an expiring spectrum licence to the same licensee in the circumstances specified in subsection 82(1) of the Act. However, the ACMA may also divide and distribute a spectrum licence in a manner that differs from the originally issued spectrum licence. Consequently, a licensee should not assume that a re-issued licence will be exactly the same as their previous licence. Although the ACMA may not re-issue a licence to the same licensee, that licensee is not precluded from applying for a lot covered by the new licence in a subsequent re-allocation process.

Section 23 – Guidelines

This section states that the ACMA may take into account any guidelines made by it when settling interference disputes.

Section 24 – Registration of collection stations

This section states that the ACMA will register the collection stations listed in Schedule 5 prior to the registration of any other devices operated under spectrum licences in the 2.5 GHz band.

Schedule 1 Geographic area covered by spectrum licences resulting from conversion in the 2.5 GHz Mid-band Gap

This schedule lists the co-ordinates for the geographic area covered by spectrum licences in the 2.5 GHz Mid-band Gap. There is also an indicative pictorial representation of the geographic area.

Schedule 2 Sample spectrum licence

This schedule contains a sample spectrum licence. It is an example licence only, constructed for the purposes of illustration. It should not be relied upon as if it were an actual licence. It includes 5 licence schedules which are explained below.

Licence Schedule 1 – Licence details, bands and areas

This licence schedule lists details about the licensee, the licence issue and expiry dates and other details of the licence including the frequency bands and geographic areas in which use of the spectrum is authorised under the licence.

Licence Schedule 2 – Core Conditions

This schedule contains the core conditions of the licence. The core conditions define the parts of the spectrum that can be used under the licence in terms of geographic area, frequency band and maximum permitted emission limits at the geographic and spectrum boundaries of the licence.

Licence Schedule 3 – Statutory Conditions

This schedule contains statutory conditions that apply to the licence including conditions relating to liability for charges, third party operation of transmitters, transmitter registration requirements and residency requirements for licensees.

Licence Schedule 4 – Other Conditions

This schedule contains other licence conditions that apply to the licence including conditions relating to:

- Interference management;
- Co-sited devices;
- Information to be included on the Register of Radiocommunications Licences;

- International coordination;
- Electromagnetic Energy Requirements (EME); and
- Interference management in relation to the Mid-West Radio Quiet Zone.

Licence Schedule 5 – Licence Notes

The licence notes are a postscript to the sample licence and provide clarification and guidance on the use of the licence.

Schedule 3 Emission limits outside the geographic area

This schedule specifies the maximum permitted radiofrequency emission levels outside the licence area.

Schedule 4 Emission limits outside the band

This schedule specifies the maximum permitted radiofrequency emission levels outside the licence band.

Schedule 5 Collection stations

This schedule lists the collection stations that were registered on the Register of Radiocommunications Licences prior to the issue of spectrum licences under the Conversion Plan. These stations will receive priority registration on the Register as provided for in section 25 of the Conversion Plan.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

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This legislative instrument 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*.

Overview of the Legislative Instrument

Under section 38 of the *Radiocommunications Act 1992* (**the Act**) the Australian Communications and Media Authority (**the ACMA**) must (after receiving a notice designating a part of the spectrum to be allocated by issuing spectrum licences), by written instrument, prepare a Conversion Plan that sets out the procedures and timetable for the issuing of spectrum licenses to replace existing apparatus licenses that authorise the operation of radiocommunications devices.

The purpose of the *Radiocommunications Spectrum Conversion Plan (2.5 GHz Mid-band Gap) 2012* (**the Conversion Plan**) is to set out the procedures and timetable for converting existing apparatus licences authorising the use of radiocommunications devices in the 2.5 GHz Mid-band Gap to spectrum licences.

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 *Legislative Instruments Act 2003* (**the LIA**) applies to cause a statement of compatibility to be prepared in respect of that legislative instrument.

The Conversion Plan is a legislative instrument subject to disallowance under section 42 of the LIA.

Human Rights Implications

The Conversion Plan does not engage any of the applicable rights or freedoms.

Conclusion

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