**EXPLANATORY STATEMENT**

**Australian Communications and Media Authority Act 2005**

Australian Communications and Media Authority (Spectrum Allocation – Post-Auction Review) Direction No. 1 of 2013

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

**Authority**

Section 14 of the *Australian Communications and Media Authority Act 2005* (the Act) provides that the Minister for Broadband, Communications and the Digital Economy (the Minister) may give written directions to the Australian Communications and Media Authority (the ACMA) in relation to the performance of its functions and the exercise of its powers.

**Purpose**

The purpose of this Direction is to direct the ACMA that it must report to the Minister on the appropriate procedures for the allocation of spectrum licences for the relevant spectrum by
1 September 2014.

**Background**

On 19 November 2011, the Minister declared spectrum in the 700 MHz band (in the ranges 703 MHz to 748 MHz and 758 MHz to 803 MHz) to be re-allocated by issuing spectrum licences. This spectrum is commonly referred to as the ‘digital dividend’ spectrum.

On 19 December 2012, the ACMA made the *Radiocommmunications (Spectrum Licence Allocation—Combinatorial Clock Auction) Determination 2012* under sections 60 and 294 of the *Radiocommunications Act 1992* (the Act). This determination set out the procedures the ACMA would apply in its allocation of the digital dividend spectrum (as well as spectrum in the 2.5 GHz band) and in fixing the spectrum access charges payable by licensees for issuing the spectrum licences. Shortly thereafter, the ACMA published an auction guide in which it stated, “Prospective bidders should not assume that unallocated lots will be offered for allocation soon after the auction, or that they will be offered for allocation at less than the initial prices set by the ACMA for the auction”.

The auction for the digital dividend (including spectrum in the 2.5 GHz band) commenced on 23 April 2013. The results of the auction were announced by the ACMA on 7 May 2013. Two lots of 15 MHz (30 MHz in total) in the 700 MHz band remain unallocated following the conclusion of the auction (referred to in the present Direction as the ‘relevant spectrum’).

This Direction requires the ACMA to report to the Minister by 1 September 2014 on the appropriate procedures for the allocation of spectrum licences for the relevant spectrum. Section 60 of the Act requires the ACMA to determine the procedures to apply in allocating spectrum licences by auction, tender or by allocation for a pre-determined price or a negotiated price. In reporting to the Minister on appropriate procedures for the allocation of licences for the relevant spectrum, the ACMA is required to have regard to both the prices achieved at the digital dividend and any prevailing market circumstances that may have an impact on the value of the relevant spectrum.

This Direction is a legislative instrument under the *Legislative Instruments Act 2003* but it is not subject to disallowance: item 41 of the table in subsection 44(2) of that Act specifies that ministerial directions to any person or body are not subject to disallowance.

**Consultation**

The Direction was released for public consultation by the Minister on 24 June 2013. Four submissions were received in response. The submissions were from industry participants (SingTel Optus Pty Ltd, Telstra Corporation Ltd, Vodafone Hutchison Australia Pty Ltd) and a member of the public. Two industry participants believed that the ACMA should be required by the Direction to publically consult in preparing its report. This was considered not necessary given the ACMA would ordinarily undertake public consultation in preparing such a report. Other submissions recommended deferring the time by when the report is to be made, specifying the particular use for the spectrum, making the final report publically available and having the report undertaken by a body other than the ACMA. Following consideration of these submissions, the Minister concluded no change was required to be made to the Direction that was publically released.

**Notes on Sections**

**Section 1** provides for the title of the Direction.

**Section 2** provides that the Direction commences on the day after it is registered. It is anticipated that the Direction will be issued to the ACMA on that same day.

**Section 3** provides that the Direction ceases to have effect as if repealed by another instrument on 1 December 2014.

**Section 4** defines the terms used in the Direction.

The term ‘relevant spectrum’ is defined to mean the parts of the spectrum from 733 MHz up to and including 748 MHz and from 788 MHz up to and including 803 MHz. This is the 2 × 15 MHz of spectrum that remained unallocated following the conclusion of the digital dividend auction.

**Section 5** specifies the direction.

Section 5 requires the ACMA to report to the Minister by 1 September 2014 on the appropriate procedures for the allocation of spectrum licences for the relevant spectrum, having regard to both the prices achieved for the spectrum allocated as a result of the digital dividend auction and the prevailing market circumstances that may have an impact on the value of the relevant spectrum at the time of the report.