

EXPLANATORY STATEMENT

Select Legislative Instrument 2013 No. 218

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

Radiocommunications Act 1992

*Radiocommunications Amendment (Datacasting Transmitter Licence) Regulation
2013*

Purpose

The *Radiocommunications Amendment (Datacasting Transmitter Licence) Regulation 2013* (the Regulation) is made under section 314 of the *Radiocommunications Act 1992* (the Act) by the Governor-General. Section 314 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted to be prescribed by the Act, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 5 of the Act defines the term datacasting transmitter licence to mean a transmitter licence for a transmitter that is for transmitting a datacasting service but does not include certain types of transmitter licences. Paragraph (c) of the definition provides that the definition does not include a prescribed transmitter licence.

The purpose of the Regulation is to prescribe a particular type of transmitter licence issued by the Australian Communications and Media Authority (ACMA), a Public Telecommunications Service (PTS) licence that authorises the provision of a Public Mobile Telecommunications Service (PMTS) Class B. PTS licences are primarily used to authorise the operation of base stations that provide mobile telecommunication services. The PMTS Class B typically is used by wireless mobile broadband services.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (LIA) (see paragraph 6(a) of the LIA).

The Regulation commences on the day after it is registered by the Federal Register of Legislative Instruments.

Details of the Regulation are set out in Attachment A.

Background

The ACMA conducted the auction of the digital dividend spectrum from 23 April 2013 to 7 May 2013. The successful bidders' spectrum licences will commence on 1 January 2015. The digital dividend spectrum is currently used for the transmission of digital television services and the remaining analog television services. These services will be progressively cleared from the digital dividend spectrum as a result of the switchover to digital-only television (which is due to be completed by the end of

2013) and the reorganisation or ‘restack’ of digital television services to a more efficient spectrum allocation. Once the restack is complete by the end of 2014, the digital dividend spectrum will be redesignated out of the broadcasting services bands (BSB). The BSB are part of the radiofrequency spectrum that is designated by the Minister under the Act as being primarily for broadcasting services.

Successful bidders in the digital dividend auction may wish to access the digital dividend spectrum as soon as it becomes available, even if it is available only in some areas, but before their spectrum licences commence (the ‘early access’ period). This will enable the successful bidders to undertake activities that would, among others, enable the full operation of next generation mobile broadband services, known as Long Term Evolution (LTE) 4G services, using PMTS networks on the commencement of their spectrum licences.

It is ultimately a decision for the ACMA whether to authorise and issue a licence for the commencement of new services, including LTE 4G services, before the digital dividend spectrum is redesignated out of the BSB. Where the ACMA decides to authorise early access to the digital dividend spectrum for such purposes, the ACMA proposes to use PTS licences, which it considers to be the most appropriate licence. This will ensure that the use of this spectrum in the ‘early access’ period is consistent with the technical framework that has been planned for its eventual spectrum-licensed use (i.e. mobile broadband networks using LTE 4G mobile telecommunications services). In addition, the ACMA has advised that a PTS licence would be the most appropriate licence to authorise use of a part of the BSB for a short period of time as these licences can be issued on a short term basis (unlike other transmitter licences).

Currently, if the ACMA issues a PTS licence, this may result in a LTE 4G service provider becoming subject to the datacasting regime under Schedule 6 to the *Broadcasting Services Act 1992* (the BSA) and the datacasting transmitter licensing regime in the Act.

Compliance with the datacasting regime would impose additional obligations, including genre restrictions, which do not currently apply to other providers of a public mobile telecommunications or broadband network offered outside the BSB. Such regulation would be undesirable, overly burdensome and may inhibit the establishment of new services until the redesignation of the BSB is completed.

By prescribing PTS licences for the purposes of paragraph (c) of the definition of a datacasting transmitter licence, the Regulation enables LTE 4G service providers to operate in the digital dividend spectrum, before that spectrum is redesignated out of the BSB, without being required to obtain a datacasting transmitter licence or to comply with the provisions in the Act that relate to datacasting transmitter licences.

Regulation Impact Statement

The Office of Best Practice Regulation has confirmed that the preparation of a Regulation Impact Statement is not necessary, as the Regulation has a nil or low impact on business or the economy or individuals.

Statement of compatibility with human rights (prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*).

The Regulation 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*.

The purpose of the Regulation is to remove the requirement for LTE service providers who hold a Public Telecommunications Service (PTS) licence to also hold a datacasting transmitter licence and to comply with the related requirements.

The Australian Communications and Media Authority (ACMA) may issue PTS licences to successful bidders of digital dividend spectrum to authorise early access to that spectrum to facilitate new services (such as LTE services) prior to the commencement of the successful bidder's spectrum licences on 1 January 2015.

If the ACMA agrees that a successful bidder may operate LTE services in the digital dividend spectrum in the early access period (that is, the period between the ACMA authorising access and the commencement of the bidder's spectrum licences), this may result in the successful bidder becoming subject to the datacasting regime under Schedule 6 to the *Broadcasting Service Act 1992* and the *Radiocommunications Act 1992* during that period

Requiring LTE service providers to comply with the datacasting regime would impose additional obligations during this transitional period that do not currently apply to similar LTE services offered outside the broadcasting services bands (BSB). The prescription of PTS licences would reduce some of these regulatory burdens.

Freedom of Expression

Australia is a signatory to the International Covenant on Civil and Political Rights (ICCPR), one of the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. Article 19(2) of the ICCPR protects freedom of expression, including the right to seek, receive and impart information and ideas of all kinds, and the means of their dissemination.

By prescribing a less onerous transmitter licence (a PTS licence) to be used instead of a datacasting transmitter licence, the Regulation may encourage additional services to emerge. The Regulation therefore promotes the freedom of expression by increasing the potential range of services available through which persons are able to exchange information and ideas.

The Regulation has no impact on any natural persons in the capacity of licensee. Only qualified companies are eligible to hold PTS licences.

Consultation

The ACMA was consulted regarding the licensing of LTE services in the digital dividend during the interim period.

Details of the Regulation are set out in the Attachment A.

ATTACHMENT A**Details of the *Radiocommunications Amendment (Datacasting Transmitter Licence) Regulation 2013*****Section 1 – Name of Regulation**

This section provides that the title of the Regulation is the *Radiocommunications Amendment (Datacasting Transmitter Licence) Regulation 2013*.

Section 2 – Commencement

This section sets out the date on which the Regulation commences. It provides that the Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments.

Section 3 – Authority

This section provides that the Regulation is made under the *Radiocommunications Act 1992*.

Section 4 – Schedule(s)

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Schedule 1 amends the *Radiocommunications Regulations 1993* (the Principal Regulations).

Item 1 – Regulation 32A

Item 1 of Schedule 1 to the Regulation, repeals and replaces Regulation 32A of the Principal Regulations.

The new regulation 32A prescribes for paragraph (c) of the definition of datacasting transmitter licence in section 5 of the Act, the following transmitter licences, as defined in the *Radiocommunications (Interpretation) Determination 2000*:

- (a) a PTS licence that authorises the operation of a Public Mobile Telecommunications Service Class B; and
- (b) a scientific licence (currently prescribed under regulation 32A of the Principal Regulations).

Where the ACMA is satisfied that circumstances exist which would allow the successful bidders of the digital dividend auction to commence services before the digital dividend spectrum is redesignated out of the BSB, the ACMA has indicated that it will issue a PTS licence that authorises the operation of a Public Mobile Telecommunications Service Class B.

The Regulation ensures that any such licence issued to the successful bidders will not be considered a datacasting transmitter licence. This means the successful bidders will not be required to hold a datacasting transmitter licence or comply with the related provisions in the Act.

Scientific licences are currently prescribed in Regulation 32A of the Primary Regulations and continue to be prescribed under the Regulation.