

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications (3.4 GHz Band) Spectrum Conversion Plan 2021

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (3.4 GHz Band) Spectrum Conversion Plan 2021* (**the Conversion Plan**) under section 38 of the *Radiocommunications Act 1992* (**the Act**).

Section 38 of the Act provides that, upon receiving a notice under subsection 36(1) of the Act designating a specified part of the spectrum to be allocated by issuing spectrum licences, the ACMA must prepare a conversion plan by legislative instrument. A conversion plan must set out the procedures and timetable for issuing spectrum licences to replace existing apparatus licences that authorise operation of radiocommunications devices at frequencies within the part of the spectrum and within the areas specified in the designation notice.

Purpose and operation of the instrument

The Conversion Plan sets out the procedures and timetable for issuing spectrum licences to replace existing apparatus licences authorising the operation of radiocommunications devices within specified frequency ranges and geographic areas as described in the *Radiocommunications (Spectrum Designation—3.4 GHz Band) Notice 2020* (**the designation notice**). The Conversion Plan also sets out requirements for spectrum licences issued in accordance with the Conversion Plan, including how many licences will be issued, the commencement and duration of the licences, and some of the core conditions of the licences.

Background

The designation notice was made on 10 December 2020. The designation notice provides that parts of the frequency range 3400 MHz to 3575 MHz within specific geographic areas (**the 3.4 GHz band**) should be allocated by issuing spectrum licences. The circumstances and reasons for designating this spectrum for spectrum licensing are explained in the explanatory statement to the designation notice.

In accordance with section 38 of the Act, the effect of the designation notice is that the ACMA must prepare a conversion plan, and offer to convert the apparatus licences authorising operation in the designated spectrum to spectrum licences.

Operation of the Conversion Plan

The Conversion Plan is one of a set of legislative instruments which is required to be made for the conversion of spectrum licences in the 3.4 GHz band. Other instruments relevant to the conversion of spectrum in the 3.4 GHz band include the following:

- *Radiocommunications (Spectrum Access Charges – 3.4 GHz Band) Determination 2021* (**the charges determination**)
- *Radiocommunications (Unacceptable Levels of Interference – 3.4 GHz Band) Determination 2015*
- *Radiocommunications Advisory Guidelines (Managing Interference to Spectrum Licensed Receivers – 3.4 GHz Band) 2015*

- *Radiocommunications Advisory Guidelines (Managing Interference to Spectrum Licensed Transmitters – 3.4 GHz Band) 2015.*

The ACMA has identified one apparatus licensee operating in the 3.4 GHz band, being NBN Co Ltd (**NBN**). As noted above, the Conversion Plan sets out the procedures to be followed by the ACMA and NBN, which will receive offers of conversion from the ACMA. Broadly, the conversion process in the Conversion Plan is as follows:

- The ACMA will prepare draft spectrum licences to replace existing apparatus licences in the 3.4 GHz band, which authorise the operation of radiocommunications devices to the same extent as, or to a greater extent than they are authorised under the existing apparatus licences to be replaced.
- The ACMA will provide the draft spectrum licences to NBN, and a notice inviting NBN to make representations on the draft spectrum licences before a date which the ACMA will set (**the representation deadline**).
- After considering any representations made, the ACMA will give NBN written offers for the issue of the replacement spectrum licences, as soon as practicable after the representation deadline.
- NBN may accept an offer in accordance with section 57 of the Act, and in doing so agree to pay the amount of the spectrum access charge specified in the charges determination. NBN must use the acceptance form provided in Schedule 1 to the Conversion Plan.
- If NBN accepts an offer of conversion and agrees to pay the amount specified in the charges determination, the ACMA must issue the spectrum licence identified in the offer in accordance with the Conversion Plan.
- If NBN fails to accept an offer of conversion, the ACMA may allocate the spectrum licence to another person using the procedures determined under section 60 of the Act.

The spectrum licences to be offered will be drafted in accordance with the conditions outlined in the Conversion Plan and other instruments. A provision-by-provision description of the instrument is set out in the notes at **Attachment A**.

The instrument is a disallowable legislative instrument for the purposes of the *Legislation Act 2003* (**the LA**).

Documents incorporated by reference

Subsection 314A(2) of the Act provides that an instrument under the Act may make provision in relation to a matter by applying, adopting or incorporating (with or without modifications) matter contained in any instrument or writing as in force or existing at a particular time or from time to time. The Conversion Plan incorporates the following documents by reference, as existing from time to time, or otherwise refers to them:

- the Australian Spectrum Map Grid 2012, published by the ACMA, and available free of charge from the ACMA's website at www.acma.gov.au.

The Conversion Plan incorporates the following Acts and legislative instruments, including by the adoption of definitions, or otherwise refers to them, as in force from time to time:

- the Act;
- the charges determination;
- the LA;
- the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020*.

The Conversion Plan incorporates the following documents as in force on the day the Conversion Plan commences:

- the designation notice;
- the *Radiocommunications (Spectrum Access charges – 3.4 GHz Band) Direction 2020*.

The Acts and legislative instruments are available, free of charge, from the Federal Register of legislation: www.legislation.gov.au.

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 arrangements in the frequency range 3400 MHz to 3575 MHz in April 2019, which included the proposed planning decision to convert spectrum in the 3.4 GHz band from apparatus licensed arrangements to spectrum licensed arrangements.

The Department of Infrastructure, Transport, Regional Development and Communications (**the Department**) publicly consulted on the designation of the 3.4 GHz band in September 2019. A total of 7 responses were received in response to that consultation, more information on which is available from the Department's website: www.communications.gov.au.

NBN is the sole apparatus licensee operating in the parts of the spectrum which are subject to the designation notice. The ACMA released a draft version of the Conversion Plan along with a draft version of the charges determination to NBN for consultation. NBN did not raise any issues relating to the content of the Conversion Plan.

Regulatory impact assessment

The ACMA consulted the Office of Best Practice Regulation (**OBPR**) about making the Conversion Plan. The changes arising from the Conversion Plan were considered in a certified independent review conducted by the ACMA regarding the optimising of arrangements in the frequency range 3400 MHz to 3575 MHz. The independent review undertook process and analysis equivalent to a Regulation Impact Statement. OBPR therefore considers that no further regulatory impact statement is required from the ACMA. The OBPR reference number is 25773.

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

On 10 December 2020, the *Radiocommunications (Spectrum Designation—3.4 GHz Band) Notice 2020* (the designation notice) was made. The designation notice provides that parts of the frequency range 3400-3575 MHz in named geographic areas, referred to as the 3.4 GHz band, are designated to be allocated by issuing spectrum licences.

Under section 38 of the *Radiocommunications Act 1992* (the Act), upon receiving the designation notice, the ACMA must prepare a conversion plan in order to convert existing apparatus licences authorised to operate radiocommunications devices in the 3.4 GHz band into spectrum licences. The *Radiocommunications (3.4 GHz Band) Spectrum Conversion Plan 2021* (the Conversion Plan) is made under section 38 of the Act. The ACMA has identified one apparatus licensee which will be affected as a result of the conversion process: NBN Co Ltd (NBN).

The Conversion Plan sets out the processes which the ACMA will follow in order to convert NBN's existing apparatus licences in the 3.4 GHz band into spectrum licences. The process is as follows:

- The ACMA will prepare draft spectrum licences to replace existing apparatus licences in the 3.4 GHz band, which authorise the operation of radiocommunications devices to the same extent as, or to a greater extent than they are authorised under the existing apparatus licences to be replaced.
- The ACMA will provide the draft spectrum licences to NBN, and a notice inviting NBN to make representations on the draft spectrum licences before the representation deadline.
- After considering those representations, the ACMA will give NBN written offers for the issue of the replacement spectrum licences, as soon as practicable after the representation deadline.
- NBN may accept an offer in accordance with section 57 of the Act, and in doing so agree to pay the amount of the spectrum access charge specified in the charges determination. NBN must use the acceptance form provided in Schedule 1 to the Conversion Plan.
- If NBN accepts an offer of conversion and agrees to pay the amount specified in the charges determination, the ACMA must issue the spectrum licence identified in the offer in accordance with the Conversion Plan.
- If NBN fails to accept an offer of conversion, the ACMA may allocate the spectrum licence to another person using the procedures determined under section 60 of the Act.

The Conversion Plan also sets out conditions which will apply to each spectrum licence allocated in accordance with the Conversion Plan.

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

Notes to the *Radiocommunications (3.4 GHz Band) Spectrum Conversion Plan 2021*

Part 1—Preliminary

Section 1 Name

This section provides for this instrument to be cited as the *Radiocommunications (3.4 GHz Band) Spectrum Conversion Plan 2021* (**the Conversion Plan**).

Section 2 Commencement

This section provides for the Conversion Plan 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 Conversion Plan, namely subsection 38(1) of the *Radiocommunications Act 1992* (**the Act**).

Section 4 Definitions

This section defines a number of key terms used throughout the Conversion Plan.

A number of other expressions used in the Conversion Plan are defined in the Act.

Section 5 References to other instruments

This section provides that in the Conversion Plan, unless the contrary intention appears:

- a reference to any other legislative instrument is a reference to that other legislative instrument as in force from time to time; and
- a reference to any other kind of instrument is a reference to that other instrument as in force from time to time.

A contrary intention appears in relation to the *Radiocommunications (Spectrum Access Charges – 3.4 GHz Band) Direction 2020* and the *Radiocommunications (Spectrum Designation – 3.4 GHz Band) Notice 2020* (see section 4), which are incorporated as they were in force on the day the Conversion Plan commenced.

Section 6 References to frequency ranges

This section provides that in the Conversion Plan, unless the contrary intention appears, a reference to a part of the spectrum or frequency range includes all frequencies that are greater than, but not including, the lower frequency, up to and including the higher frequency.

Part 2—Procedures and timetable for issuing spectrum licences

Section 7 Simplified outline of this Part

This section sets out a simplified outline of Part 2.

Section 8 Procedures and timetable – preparation of draft spectrum licences and consultation

This section describes the ACMA's obligation to prepare and consult on a draft spectrum licence.

The ACMA must first prepare a draft spectrum licence to replace one or more existing apparatus licences. The draft spectrum licence must authorise the operation of radiocommunications devices to the same extent as, or to a greater extent than, they are authorised under the existing apparatus licences to be replaced.

The ACMA must then, as soon as practicable after the Conversion Plan commences, send the draft spectrum licence to the licensee of the existing apparatus licences that are to be replaced, and invite the licensee to make representations on the draft spectrum licence on or before the day specified in the notice. This day is known as the representation deadline. Pursuant to subsection 54(2) of the Act, the representation deadline must be at least one month after the draft spectrum licence is provided to the licensee for comment.

Section 9 Procedures and timetable – offer of spectrum licences

This section describes the ACMA's obligation to offer the licensee a spectrum licence or licences to replace one or more of the licensee's existing apparatus licences in the designated spectrum.

As soon as practicable after the representation deadline, the ACMA must give a written offer to the licensee, to issue the licensee with a spectrum licence to replace one or more of its existing apparatus licences. Any written offers will be sent by email to the licensee's representative.

Section 10 Procedures and timetable – acceptance of offer

This section describes how the licensee may choose to accept an offer of a spectrum licence.

In accordance with section 57 of the Act, if the licensee decides to accept an offer, it must provide the ACMA with a written notice stipulating that it accepts the offer and agrees to pay the amount of the spectrum access charge as specified in the offer. The licensee's acceptance must be given to the ACMA on or before the day specified in the offer, and in accordance with the acceptance form.

Section 11 Procedures – acceptance form

This section provides that the acceptance form is set out in Schedule 1, and that the ACMA may give an offer of a spectrum licence to the licensee with a version of the acceptance form. The ACMA may include more information in the acceptance form, regarding the offer of conversion, and strike out irrelevant information.

The licensee must use the version of the form that the ACMA gives to it, in order to accept an offer of conversion.

Section 12 Procedures and timetable – issue of spectrum licences

This section provides that if the licensee accepts an offer of a spectrum licence in accordance with section 57 of the Act and the Conversion Plan, the ACMA must issue the licensee with the spectrum licence identified in the offer.

With regard to the inner-metropolitan spectrum licence, the ACMA must issue that spectrum licence as soon as practicable after the licensee accepts the offer.

With regard to acceptance of the outer-metropolitan and regional spectrum licence:

- If the licensee has elected that subsection 8(3) of the *Radiocommunications (Spectrum Access Charges – 3.4 GHz Band) Determination 2021 (the charges determination)* will apply, the ACMA must issue the outer-metropolitan and regional spectrum licence as soon as practicable after the licensee has paid the amount specified in paragraph 8(3)(a) of the charges determination.
- If the licensee has not elected that subsection 8(3) of the charges determination is to apply, the ACMA must issue the outer-metropolitan and regional spectrum licence as soon as practicable after the licensee has paid the amount specified in subsection 8(1) of the charges determination.

Section 8 of the charges determination allows the licensee to elect to pay for the outer-metropolitan and regional spectrum licence by either one single upfront payment, or 10 instalment payments.

Section 13 Procedures – failure to accept offer

If the licensee does not accept an offer in accordance with section 57 of the Act and the Conversion Plan, then the ACMA may allocate the spectrum licence or licences to another person through procedures determined under section 60 of the Act.

Section 14 Procedures – payment of spectrum access charge

If the licensee does accept an offer of a spectrum licence in accordance with section 57 of the Act and the Conversion Plan, the licensee must pay the spectrum access charge, for that licence, in accordance with the charges determination.

Part 3—Content of spectrum licences

Section 15 Simplified outline of this Part

This section sets out a simplified outline of Part 3.

Section 16 Spectrum licences – what will replace existing apparatus licences

This section describes the spectrum licences which the ACMA will offer to the licensee, to replace the licensee's existing apparatus licences in the 3.4 GHz band.

The ACMA will issue one spectrum licence to replace all existing apparatus licences that authorise the operation of radiocommunications devices in inner-metropolitan areas. Inner metropolitan areas are defined in section 18 of the Conversion Plan. This spectrum licence is called the inner-metropolitan spectrum licence.

The ACMA will issue one spectrum licence to replace all existing apparatus licences that authorise the operation of radiocommunications devices in any designated area (as specified in the *Radiocommunications (Spectrum Designation—3.4 GHz Band) Notice 2020*) which are not inner-metropolitan areas. This spectrum licence is called the outer-metropolitan and regional spectrum licence.

Section 17 Spectrum licences – commencement and duration

A spectrum licence issued in accordance with the Conversion Plan will come into force on the day on which it is issued. It will remain in force until the end of 13 December 2030 (unless earlier cancelled, resumed or surrendered).

Section 18 Spectrum licences – core conditions relating to parts of the spectrum and areas

This section describes the frequency ranges and geographic areas within which the spectrum licences issued in accordance with the Conversion Plan will authorise the operation of radiocommunications devices.

Separate frequency range and geographic descriptions are applicable for the inner-metropolitan spectrum licence and the outer-metropolitan and regional spectrum licence.

Section 19 Spectrum licences – core conditions relating to emission limits

This section provides that core conditions relating to emission limits will be included in any spectrum licence issued in accordance with the Conversion Plan.

Section 20 Spectrum licences – other conditions

This section provides that a spectrum licence issued in accordance with the Conversion Plan will include conditions about payment of charges, third-party use, the registration of radiocommunications transmitters, and residency and other matters.

This section also provides that, until 15 February 2022 for each unregistered radiocommunications transmitter with a maximum total radiated power of greater than 28 dBm per occupied bandwidth, the licensee must keep a record of:

- the geographic location;
- centre frequency;
- occupied bandwidth;
- antenna details;
- maximum true mean power; and
- maximum effective isotropic radiated power of that transmitter.

The licensee must give a copy of such a record to the ACMA upon the ACMA's request.

Other conditions not described in this section may also be included in a spectrum licence issued in accordance with the Conversion Plan.

Part 4—Other matters

Section 21 Simplified outline of this Part

This section sets out a simplified outline of Part 4.

Section 22 Registration of spectrum licences

This section provides that any spectrum licences issued in accordance with the Conversion Plan will be included in the Register of Radiocommunications Licences.

Section 23 Renewal of spectrum licences

This section provides that the ACMA will consider the renewal of spectrum licences in accordance with the amendments to the Act as described in Schedule 3 to the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020*.

Section 24 Advisory guidelines

This section provides that the ACMA or any other person, may take into account any advisory guidelines about interference with radiocommunications that relate to spectrum licences issued under the Conversion Plan, when exercising its power or performing its functions under the Act.

Schedule 1 Acceptance form

Schedule 1 sets out the acceptance form for the acceptance of a spectrum licence offered under the Conversion Plan.