



Radiocommunications (3.4 GHz Band) Spectrum Conversion Plan 2021

The Australian Communications and Media Authority makes the following plan under subsection 38(1) of the *Radiocommunications Act 1992*.

Dated: 22 March 2021

Creina Chapman
[signed]
Member

Brendan Byrne
[signed]
~~Member~~/General Manager

Australian Communications and Media Authority

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Part 1—Preliminary

1 Name

This is the *Radiocommunications (3.4 GHz Band) Spectrum Conversion Plan 2021*.

2 Commencement

This instrument commences on the day after the day it is registered on the Federal Register of Legislation.

Note: The Federal Register of Legislation may be accessed free of charge at www.legislation.gov.au.

3 Authority

This instrument is made under subsection 38(1) of the *Radiocommunications Act 1992*.

Note: Section 38 of the Act will be repealed by item 9 of Schedule 3 to the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020*. However, see item 112 of Schedule 3 to that Act in relation to offers of spectrum licences made in accordance with this instrument before item 112 commences.

4 Definitions

In this instrument:

acceptance form: see section 11 and Schedule 1.

Act means the *Radiocommunications Act 1992*.

charges determination means the *Radiocommunications (Spectrum Access Charges – 3.4 GHz Band) Determination 2021*.

charges direction means the *Radiocommunications (Spectrum Access Charges – 3.4 GHz Band) Direction 2020*, as in force on the day this instrument commenced.

designated area, for a designated frequency range, means the named area set out in column 2 of the designation table for the designated frequency range.

Note: The named areas are described using the hierarchical cell identification scheme set out in the Australian Spectrum Map Grid 2012, in the table at subsection 5(2) of the designation notice. The Australian Spectrum Map Grid 2012 is available, free of charge, from the ACMA's website: <http://www.acma.gov.au>.

designated frequency range means a part of the spectrum referred to in an item in column 1 of the designation table.

designation notice means the *Radiocommunications (Spectrum Designation – 3.4 GHz Band) Notice 2020*, as in force on the day this instrument commenced.

designation table means the table at subsection 5(1) of the designation notice.

draft spectrum licence means a document prepared, in accordance with this instrument, for the purposes of subsection 53(1) of the Act.

existing apparatus licence means an apparatus licence that authorises the operation of a radiocommunications device:

- (a) in a designated frequency range; and
- (b) in a designated area that relates to that designated frequency range.

inner-metropolitan area has the meaning given by clause 1 of Schedule 1 to the charges direction.

inner-metropolitan spectrum licence: see subsection 16(1).

outer-metropolitan and regional spectrum licence: see subsection 16(2).

representation deadline: see paragraph 8(3)(b).

Note: A number of other expressions used in this instrument are defined in the Act, including the following:

- (a) advisory guideline;
- (b) apparatus licence;
- (c) conversion plan;
- (d) interference;
- (e) radiocommunications device;
- (f) radiocommunications transmitter;
- (g) Register;
- (h) spectrum;
- (i) spectrum access charge;
- (j) spectrum licence.

5 References to other instruments

In this instrument, unless the contrary intention appears:

- (a) a reference to any other legislative instrument is a reference to that other legislative instrument as in force from time to time; and
- (b) a reference to any other kind of instrument or writing is a reference to that other instrument or writing as in force or existing from time to time.

Note 1: For references to Commonwealth Acts, see section 10 of the *Acts Interpretation Act 1901*; and see also subsection 13(1) of the *Legislation Act 2003* for the application of the *Acts Interpretation Act 1901* to legislative instruments.

Note 2: All Commonwealth Acts and legislative instruments are registered on the Federal Register of Legislation.

Note 3: See section 314A of the Act.

6 References to frequency ranges

In this instrument, unless the contrary intention appears, a reference to a part of the spectrum or a 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

7 Simplified outline of this Part

Under subsection 38(1) of the Act, on receiving the designation notice, the ACMA must prepare a conversion plan that sets out the procedures and timetable for issuing spectrum licences to replace existing apparatus licences.

This Part sets out those procedures and that timetable.

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

- (1) In accordance with section 53 of the Act:
 - (a) the ACMA must prepare a draft spectrum licence to replace one or more existing apparatus licences; and
 - (b) a draft spectrum licence must, so far as is practicable, 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.
- (2) The content of a draft spectrum licence must be consistent with Part 3 of this instrument.
- (3) As soon as practicable after this instrument commences, the ACMA must, in accordance with section 54 of the Act:
 - (a) send the draft spectrum licence to the licensee of the existing apparatus licences that are to be replaced by the draft spectrum licence; and
 - (b) invite the licensee to make representations on the draft spectrum licence on or before the day specified in the notice (*representation deadline*).

Note 1: Subsection 54(2) of the Act provides that the ACMA must give the licensee at least one month to make representations. Subsection 55(2) of the Act provides that the ACMA must give due consideration to these representations.

Note 2: The licensee may, at the time it makes representations, choose to identify a person to receive an offer under section 9.

9 Procedures and timetable – offer of spectrum licences

- (1) In accordance with subsection 56(1) of the Act, as soon as practicable after the representation deadline, the ACMA must give to the licensee of existing apparatus licences a written offer to issue to the licensee a spectrum licence to replace one or more existing apparatus licences.

Note: Section 56 of the Act imposes requirements on the offer, including in relation to the day on which the offer must close (which must be at least one month later than the day on which the offer is given to the licensee) and in relation to the spectrum access charge payable.

- (2) The ACMA will send the offer by email to the email address of a person known by the ACMA to be a representative of the licensee.

Example: A representative of the licensee may be a person with whom ACMA staff have dealt with in respect of apparatus licences or spectrum licences, or a person included on the Register, in relation to the licensee.

- (3) The offer must specify an email address for the purposes of paragraph 10(2)(c).
- (4) Where a spectrum licence would replace more than one existing apparatus licence, the offer must specify each existing apparatus licence that would be replaced by the spectrum licence.

Note: A single spectrum licence may replace more than one existing apparatus licence – see section 16.

10 Procedures and timetable – acceptance of offer

- (1) If a licensee of existing apparatus licences receives an offer, the licensee may accept the offer only in accordance with section 57 of the Act and this section.
- (2) The written notice by which the licensee accepts the offer and agrees to pay the amount of spectrum access charge specified in the offer must be:
 - (a) given on or before the day specified in the offer; and
 - (b) in the acceptance form, in accordance with section 11; and
 - (c) given to the ACMA by email to the email address specified in the offer.

Note: The acceptance form includes a statement by which the licensee agrees to pay the amount of spectrum access charge specified in the offer. The amount of spectrum access charge, and the time for payment, are set out in the charges determination. Failure to pay the spectrum access charge may be a breach of a licence condition – see section 67 of the Act.

11 Procedures – acceptance form

- (1) Schedule 1 sets out the *acceptance form*.
- (2) When the ACMA gives an offer of a spectrum licence to the licensee of existing apparatus licences, the ACMA may provide the licensee a version of the acceptance form:
 - (a) with additional factual information included about the offer, the spectrum licence identified in the offer, and other matters relevant to the offer; and
 - (b) with irrelevant information removed or struck out.

If the ACMA does so, the licensee must use this version of the acceptance form to accept the offer.

Note: The acceptance form may also be used to make the election in section 9 of the charges determination.

12 Procedures and timetable – issue of spectrum licences

- (1) If a licensee of existing apparatus licences accepts an offer in accordance with section 57 of the Act and this instrument, the ACMA must issue the spectrum licence identified in the offer as soon as practicable after:
 - (a) for the inner-metropolitan spectrum licence – the licensee accepts the offer; or
 - (b) for the outer-metropolitan and regional spectrum licence, if the licensee has elected that subsection 8(3) of the charges determination is to apply – the licensee has paid the amount specified in paragraph 8(3)(a) of the charges determination; or
 - (c) for the outer-metropolitan and regional spectrum licence, if the licensee has not elected that subsection 8(3) of the charges determination is to apply – the licensee has paid the amount specified in subsection 8(1) of the charges determination.

Note 1: An existing apparatus licence will cease to be in force immediately before the spectrum licence comes into force – see section 57 of the Act.

Note 2: An offer that is made before the commencement of item 112 of Schedule 3 to the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020* may be accepted, and a spectrum licence issued, after the commencement of that Part: see item 112.

Note 3: See section 9 of the charges determination for the election whether subsection 8(3) of that determination is to apply.

- (2) The content of a spectrum licence must be consistent with Part 3 of this instrument.

13 Procedures – failure to accept offer

If a licensee of existing apparatus licences does not accept an offer in accordance with section 57 of the Act and this instrument, the ACMA may allocate the spectrum licence to another person under procedures determined under section 60 of the Act.

Note: See item 112 of Schedule 3 to the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020* as to the actions the ACMA may take after the commencement of that item, where an offer was made before the commencement of that item.

14 Procedures – payment of spectrum access charge

If a licensee of existing apparatus licences accepts an offer in accordance with section 57 of the Act and this instrument, the licensee must pay the spectrum access charge for the spectrum licence in accordance with the charges determination.

Note: See also the charges direction.

Part 3—Content of spectrum licences

15 Simplified outline of this Part

Subsection 38(1) of the Act provides that a conversion plan must set out the procedures and timetable for issuing spectrum licences to replace existing apparatus licences. Subsection 38(3) of the Act provides that the conversion plan may contain such other additional matters as the ACMA thinks fit.

Section 53 of the Act requires the ACMA to prepare drafts of the spectrum licences to replace existing apparatus licences. Section 8 of this instrument provides that the draft spectrum licences must be consistent with this Part.

If an offer of a spectrum licence is accepted, section 57 of the Act requires the ACMA to issue a spectrum licence. Section 12 of this instrument provides that the spectrum licence must be consistent with this Part.

This Part sets out requirements for spectrum licences issued in accordance with this instrument, and for draft spectrum licences prepared in accordance with this instrument.

16 Spectrum licences – what will replace existing apparatus licences

- (1) A single spectrum licence will replace all the existing apparatus licences that authorise the operation of radiocommunications devices in inner-metropolitan areas (*inner-metropolitan spectrum licence*).
- (2) A single spectrum licence will replace all the existing apparatus licences that authorise the operation of radiocommunications devices in any designated area other than in inner-metropolitan areas (*outer-metropolitan and regional spectrum licence*).

17 Spectrum licences – commencement and duration

- (1) For the purposes of subsection 65(1) of the Act, a spectrum licence issued in accordance with this instrument will specify that it comes into force on the day on which it is issued.
- (2) For the purposes of subsection 65(2) of the Act, a spectrum licence issued in accordance with this instrument will specify that it remains in force for the period:
 - (a) commencing on the day the licence is issued; and
 - (b) ending at the end of 13 December 2030.

Note: Other spectrum licences in the 3.4 GHz band that are already in force will cease to be in force on 13 December 2030.

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

Inner-metropolitan spectrum licence

- (1) For the purposes of section 66 of the Act:
 - (a) the parts of the spectrum in which operation of radiocommunications devices is to be authorised under the inner-metropolitan spectrum licence are:
 - (i) 3400 MHz to 3425 MHz; and
 - (ii) 3492.5 MHz to 3542.5 MHz;

- (b) the areas within which operation of radiocommunications devices is to be authorised under the inner-metropolitan spectrum licence are the following:
- (i) Inner Adelaide;
 - (ii) Inner Brisbane;
 - (iii) Inner Canberra;
 - (iv) Inner Melbourne;
 - (v) Inner Perth;
 - (vi) Inner Sydney.

Outer-metropolitan and regional spectrum licence

- (2) For the purposes of section 66 of the Act, for the outer-metropolitan and regional spectrum licence:
- (a) the parts of the spectrum in which operation of radiocommunications devices is to be authorised are specified in an item in column 1 of the table below; and
 - (b) the area or areas within which, for a part of the spectrum specified in an item in column 1, operation of radiocommunications devices is to be authorised are specified in the corresponding entry in column 2.

Outer-metropolitan and regional spectrum licence			
Column 1		Column 2	
Item	Part of the spectrum	Area	
1.	3400 MHz–3425 MHz	(a)	Ballarat and Bendigo
		(b)	Outer Metropolitan Adelaide
		(c)	Outer Metropolitan Brisbane
		(d)	Outer Metropolitan Canberra
		(e)	Outer Metropolitan Melbourne
		(f)	Outer Metropolitan Perth
		(g)	Outer Metropolitan Sydney
		(h)	Toowoomba
2.	3400 MHz–3442.5 MHz	(a)	Regional NSW
		(b)	Regional Qld
		(c)	Regional SA
		(d)	Regional Vic
		(e)	Regional WA
3.	3400 MHz–3475 MHz		Remote WA
4.	3492.5 MHz–3542.5 MHz	(a)	Ballarat and Bendigo
		(b)	Outer Metropolitan Adelaide
		(c)	Outer Metropolitan Brisbane
		(d)	Outer Metropolitan Canberra
		(e)	Outer Metropolitan Melbourne
		(f)	Outer Metropolitan Perth
		(g)	Outer Metropolitan Sydney
		(h)	Toowoomba

Outer-metropolitan and regional spectrum licence				
Column 1		Column 2		
Item	Part of the spectrum	Area		
5.	3510 MHz–3542.5 MHz	(a)	Regional NSW	
		(b)	Regional Qld	
		(c)	Regional SA	
		(d)	Regional Vic	
		(e)	Regional WA	
<p>Note: A part of the spectrum, or a portion of a part of the spectrum, may appear in more than one item in the table.</p> <p>Example: The frequency range 3400 MHz–3425 MHz appears in items 1, 2 and 3 of the table, so that the outer-metropolitan and regional spectrum licence will authorise the operation of radiocommunications devices in that frequency range in all the areas specified in column 2 of those items.</p>				

Definitions

- (3) In this section, each of the following has the meaning given by clause 1 of Schedule 1 to the charges direction:
- (a) *Inner Adelaide*;
 - (b) *Inner Brisbane*;
 - (c) *Inner Canberra*;
 - (d) *Inner Melbourne*;
 - (e) *Inner Perth*;
 - (f) *Inner Sydney*.
- (4) In this section, each of the following has the meaning given by subsection 5(2) of the designation notice:
- (a) *Adelaide*;
 - (b) *Ballarat and Bendigo*;
 - (c) *Brisbane*;
 - (d) *Canberra*;
 - (e) *Melbourne*;
 - (f) *Perth*;
 - (g) *Regional NSW*;
 - (h) *Regional Qld*;
 - (i) *Regional SA*;
 - (j) *Regional Vic*;
 - (k) *Regional WA*;
 - (l) *Remote WA*;
 - (m) *Sydney*;
 - (n) *Toowoomba*.
- (5) In this section:

Outer Metropolitan Adelaide means that part of Adelaide that is not Inner Adelaide.

Outer Metropolitan Brisbane means that part of Brisbane that is not Inner Brisbane.

Outer Metropolitan Canberra means that part of Canberra that is not Inner Canberra.

Outer Metropolitan Melbourne means that part of Melbourne that is not Inner Melbourne.

Outer Metropolitan Perth means that part of Perth that is not Inner Perth.

Outer Metropolitan Sydney means that part of Sydney that is not Inner Sydney.

19 Spectrum licences – core conditions relating to emission limits

A spectrum licence issued in accordance with this instrument will include the core conditions required by paragraphs 66(1)(b) and 66(1)(d) of the Act.

20 Spectrum licences – other conditions

- (1) A spectrum licence issued in accordance with this instrument will include conditions about:
 - (a) payment of charges and taxes, as required by section 67 of the Act; and
 - (b) use by third parties, as required by section 68 of the Act; and
 - (c) registration of radiocommunications transmitters, as required by section 69 of the Act; and
 - (d) residency and other matters, as required by section 69A of the Act.
- (2) For the purposes of paragraph (1)(c), the condition about registration of radiocommunications transmitters will:
 - (a) prohibit the operation of a radiocommunications transmitter unless the requirements under Part 3.5 of the Act to have the transmitter registered have been met; and
 - (b) exempt the following radiocommunications transmitters from those requirements:
 - (i) radiocommunications transmitters with a maximum total radiated power of less than or equal to 28 dBm per occupied bandwidth;
 - (ii) until 15 February 2022, radiocommunications transmitters with a maximum total radiated power of greater than 28 dBm per occupied bandwidth.

Note: After 15 February 2022 the exemption to register radiocommunications transmitters with a maximum total radiated power of greater than 28 dBm per occupied bandwidth no longer applies.

- (3) For each radiocommunications transmitter referred to in subparagraph (2)(b)(ii):
 - (a) a licensee must keep a record of the geographic location, centre frequency, occupied bandwidth, antenna details (including manufacturer, model, type, gain, polarisation, azimuth and height above ground), maximum true mean power and maximum EIRP of that transmitter; and
 - (b) if the ACMA asks the licensee for a copy of such a record, the licensee must give the ACMA a copy as soon as practicable.

Note: Section 145 of the Act provides that the ACMA may refuse to include in the Register details of a radiocommunications transmitter that is proposed to be operated under a spectrum licence if the ACMA is satisfied that operation of the transmitter could cause an unacceptable level of interference. The ACMA may determine, under subsection 145(4), what are unacceptable levels of interference.

- (4) A spectrum licence issued in accordance with this instrument may include other conditions, as permitted by section 71 of the Act.

Part 4—Other matters

21 Simplified outline of this Part

This Part sets out other matters that may be relevant to the licensee of existing apparatus licences, before accepting an offer of a spectrum licence in accordance with this instrument.

22 Registration of spectrum licences

The ACMA will include details of any spectrum licences issued in accordance with this instrument in the Register.

23 Renewal of spectrum licences

Item 44 of Schedule 3 to the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020* will insert a new Division 3A of Part 3.2 into the Act, which will provide that:

- (a) a spectrum licensee may apply for renewal of a spectrum licence (new section 77A); and
- (b) the ACMA may request further information in relation to such an application and refuse to consider the application, or take any action in relation to the application, if the information is not provided (new section 77B); and
- (c) the ACMA may renew the spectrum licence, by issuing a new spectrum licence to the applicant or refuse to renew the spectrum licence (new section 77C).

Note: Because of new subsection 65A(21) of the Act, to be inserted by item 40 of Schedule 3 to the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020*, a spectrum licence issued in accordance with this instrument will not include a renewal statement.

24 Advisory guidelines

Any advisory guidelines about interference with radiocommunications that relate to the spectrum licences to be issued in accordance with this instrument may be taken into account when the ACMA or any other person exercises powers, or performs functions, under the Act (including in relation to the settlement of interference disputes).

Schedule 1—Acceptance form

(subsection 11(1))

Acceptance Form

For acceptance of an offer to issue a spectrum licence in the 3.4 GHz band

Subsection 57(1) of the *Radiocommunications Act 1992*

Section 10 of the *Radiocommunications (3.4 GHz Band) Spectrum Conversion Plan 2021*

Section 9 of the *Radiocommunications (Spectrum Access Charges – 3.4 GHz Band) Determination 2021*

Instructions for completion

Parts 1, 2 and 3 of this Acceptance Form must be completed by an authorised representative of the person to whom an offer to issue a spectrum licence was made (Licensee).

A signed Acceptance Form must be returned to the ACMA on or before the date specified in the offer, by email to spectrumallocations@acma.gov.au.

PART 1 – Licensee contact details

Name of Licensee

ABN/ARBN/ACN

Trading name

ACMA client number

Registered office address

PART 2 – Details of authorised representative

Full name of authorised representative of Licensee

Position in organisation

Contact details of authorised representative

Work phone:

Email:

PART 3 – Acceptance of offer and agreement to pay spectrum access charge, and instalment election

The Licensee:

1. acknowledges receipt of the written offer made by the Australian Communications and Media Authority to the Licensee pursuant to section 56 of the *Radiocommunications Act 1992* (the Act) dated [DD Month YYYY], to issue to the Licensee the spectrum licence attached to this Acceptance Form to replace apparatus licence numbers:
 - (a) [apparatus licence number]
 - (b) [apparatus licence number][complete as appropriate]
held by the Licensee (the Offer); and
2. in accordance with subsection 57(1) of the Act:
 - (a) accepts the Offer; and
 - (b) agrees to pay the spectrum access charge for the spectrum licence specified in the Offer and fixed by the *Radiocommunications (Spectrum Access Charges – 3.4 GHz Band) Determination 2021* (Charges Determination); and
3. if the Offer is for the outer-metropolitan and regional spectrum licence – for the purposes of the Charges Determination, elects to pay the spectrum access charge:
 - ☐ upfront, in accordance with subsection 8(1) of the Charges Determination;
 - ☐ by instalments, in accordance with subsection 8(3) of the Charges Determination.

(If no box is selected, or both are selected, the Licensee is taken to have elected to pay the spectrum access charge for the outer-metropolitan and regional spectrum licence upfront, in accordance with subsection 8(1) of the Charges Determination.)

Signature of authorised representative of Licensee

Full name of authorised representative of Licensee

Date

Signature of witness

Full name of witness

Date