

Explanatory Statement

Australian Communications and Media Authority Act 2005

Australian Communications and Media Authority (Radiocommunications – 3.4 and 3.6 GHz Bands Interference Management) Direction 2018 Instrument of Repeal 2021

Issued by the authority of the Minister for Communications, Urban Infrastructure, Cities and the Arts

Purpose

The purpose of the *Australian Communications and Media Authority (Radiocommunications – 3.4 and 3.6 GHz Bands Interference Management) Direction 2018 Instrument of Repeal 2021* (the **Instrument of Repeal**) is to repeal the *Australian Communications and Media Authority (Radiocommunications – 3.4 and 3.6 GHz Bands Interference Management) Direction 2018* (the **Direction**).

The Direction required the Australian Communications and Media Authority (ACMA) to take all reasonable steps to ensure certain interference management conditions were imposed on apparatus licences and spectrum licences respectively in the 3400 – 3575 MHz band (the **3.4 GHz band**). These conditions would require persons operating devices under those licences to take certain steps to manage radiocommunications interference in the wider the 3400 – 3700 MHz band (the **3.4 – 3.7 GHz band**) in cases where interference exceeds the compatibility requirement set out in the *Radiocommunications Advisory Guidelines (Managing Interference to Spectrum Licensed Receivers – 3.4 GHz Band) 2015* (the RAG).

As ACMA has imposed interference management conditions on licensees in the 3.4 GHz band in accordance with the Direction, and licensees have adopted a synchronised frame structure across the 3.4 – 3.7 GHz band, the purpose of the direction has been fulfilled. Additionally, the RAG is scheduled to sunset in 2025, and a new set of guidelines, or equivalent instrument, will take its place, while the relevant licences under the Direction will not expire until 2030. It is therefore appropriate to repeal the Direction, as its primary purpose is complete and it will become obsolete in future.

Authority

Subsection 14(1) of the *Australian Communications and Media Authority Act 2005* (the **ACMA Act**) enables the Minister for Communications, Urban Infrastructure, Cities and the Arts (the **Minister**), to direct ACMA in the performance of its functions or the exercise of its powers, including in relation to the conditions of licences issued under the *Radiocommunications Act 1992* (the **Act**).

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument.

Background

The Direction was made by the then Minister as part of preparations for the 3.6 GHz spectrum auction. In order to achieve maximum efficiency across the 3.4 – 3.7 GHz band, ACMA proposed that all licensees, including existing 3.4 GHz licensees and future 3.6 GHz licensees, adopt a synchronised 6:2:2 frame configuration for their devices. This configuration would promote the effective and efficient use of the spectrum and manage interference between different devices using the spectrum. The Direction required ACMA to have regard to these benefits when considering imposing conditions on 3.4 GHz licences.

ACMA imposed interference management conditions on licensees in the 3.4 GHz band in accordance with the Direction.

ACMA is currently undertaking a process to defragment spectrum licences in the 3.4 GHz band. To achieve this, it will vary spectrum licences in the band to increase spectrum contiguity for licensees. As part of this process, ACMA will be able to update licences to take into account the repeal of the Direction.

Regulation Impact Statement

The Office of Best Practice Regulation (**OBPR**) was consulted about the making of the Instrument of Repeal. OBPR noted the changes arising from the Instrument of Repeal were no more than a minor regulatory nature and that a regulatory impact statement was not required. The OBPR ID number is 44059.

Consultation

The ACMA was consulted by **the Department** and supports, the repeal of the Direction.

Notes on Sections

Section 1 – Name of instrument

This section provides that the name of the instrument is the *Australian Communications and Media Authority (Radiocommunications – 3.4 and 3.6 GHz Bands Interference Management) Direction 2018 Instrument of Repeal 2021*.

Section 2 - Commencement

This section provides that the Instrument of Repeal commences on the day after it is registered on the Federal Register of Legislation, which may be accessed online at www.legislation.gov.au.

Section 3 – Authority

This section provides that the Instrument of Repeal is made under subsection 14(1) of the *Australian Communications and Media Authority Act 2005* and subsection 33(3) of the *Acts Interpretation Act 1901*.

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to the 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 – Repeals

This schedule lists instruments to be repealed.

Item 1 of the schedule provides that the whole of the *Australian Communications and Media Authority (Radiocommunications Licence Conditions – 3.4 and 3.6 GHz Bands Interference Management) Direction 2018* is to be repealed.

Statement of Compatibility with Human Rights

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

Australian Communications and Media Authority (Radiocommunications – 3.4 and 3.6 GHz Bands Interference Management) Direction 2018 Instrument of Repeal 2021

This Disallowable 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 Disallowable Legislative Instrument

The Disallowable Legislative Instrument repeals the *Australian Communications and Media Authority (Radiocommunications – 3.4 and 3.6 GHz Bands Interference Management) Direction 2018* (the **Direction**).

The Direction required ACMA to take all reasonable steps to ensure certain interference management conditions were imposed on apparatus licences and spectrum licences respectively in the 3400 – 3575 MHz band. ACMA has imposed interference management conditions on licensees in the 3.4 GHz band in accordance with the Direction, and licensees have adopted a synchronised frame structure across the 3.4 – 3.7 GHz band, as a consequence, the Direction has no further purpose and can be repealed.

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

The Hon Paul Fletcher MP

Minister for Communications, Urban Infrastructure, Cities and the Arts