

# EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Radiocommunications Act 1992*

## ***Radiocommunications (Television Outside Broadcasting) (2010–2110 MHz and 2200–2300 MHz) Frequency Band Plan 2022***

### **Authority**

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Television Outside Broadcasting) (2010–2110 MHz and 2200–2300 MHz) Frequency Band Plan 2022* (**the instrument**) under subsection 32(1) of the *Radiocommunications Act 1992* (**the Act**) and subsection 33(3) of the *Acts Interpretation Act 1901* (**AIA**).

Under subsection 32(1) of the Act, the ACMA may, by legislative instrument, prepare frequency band plans, each relating to one or more frequency bands.

Subsection 33(3) of the AIA relevantly provides that where an Act confers a power to make a legislative instrument, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

### **Purpose and operation of the instrument**

Under paragraph 32(4)(a) of the Act, a frequency band plan must make provision in relation to the purpose or purposes for which the band or bands may be used. The instrument makes such provision.

The primary purpose of the instrument is to make provision in relation to the purposes for which the frequency bands 2010 MHz to 2110 MHz and 2200 MHz to 2300 MHz may be used.

Use of these frequency bands was previously subject to the requirements of the *Television Outside Broadcast (1980-2110 MHz and 2170-2300 MHz) Frequency Band Plan 2012* (**the 2012 band plan**). The 2012 band plan has been revoked by the instrument.

In January 2021, the ACMA concluded a review of the 2 GHz band (1980 MHz to 2010 MHz and 2170 MHz to 2200 MHz) with a decision to replan the band for mobile-satellite services. The 2 GHz band comprises a subset of frequency bands that were previously covered by the 2012 band plan. To make provision for the purposes for which these frequency bands may be used, the ACMA has made two new frequency band plans:

- the *Radiocommunications (Mobile-Satellite Service) (1980–2010 MHz and 2170–2200 MHz) Frequency Band Plan 2022*, which deals with the 2 GHz band; and
- the instrument, which deals with the remaining frequencies, namely 2010 MHz to 2110 MHz and 2200 MHz to 2300 MHz (**the TOB band**), which were not part of the review of the 2 GHz band.

The purpose of the instrument is to support the television outside broadcasting (**TOB**) operations of the free-to-air and subscription television broadcasters. The instrument provides for the same arrangements for the TOB band as specified in the 2012 band plan. The band remains planned and available for TOB purposes by existing licensees, as well as some other purposes (subject to restrictions) such as in relation to earth stations, fixed point-to-point links and defence aeronautical telemetry services.

The instrument makes provision for the TOB band to be used for the purposes of:

- TOB services;
- point-to-point fixed services (subject to restrictions);

- the operation of an earth station in the 2025 MHz to 2110 MHz frequency band (subject to restrictions);
- the operation of an earth receive station in the 2200 MHz to 2300 MHz frequency band (subject to restrictions); and
- any other service mentioned in the *Australian Radiofrequency Spectrum Plan 2021 (the spectrum plan)* for the entire TOB band or part of the TOB band.

The instrument places restrictions on the use of the TOB band for the purpose of point to point fixed services. A point to point fixed service operating in the 2010 MHz to 2110 MHz frequency band must not be used in the area defined by the table in item 1 of Schedule 1, which includes all Australian capital cities and substantial parts of the east coast.

Similarly, the instrument requires that the 2200 MHz to 2300 MHz frequency band must not be used for the purpose of a point-to-point fixed service in the area defined by item 2 of Schedule 1, which includes areas surrounding all capital cities, except Darwin. Item 2 describes a series of circles which comprise areas surrounding TOB receiving sites, many of which are overlapping because the receiving sites are often located in close proximity.

These restrictions were originally for the purpose of clearing fixed services from the band under the requirements of the 2012 band plan. They are now intended to provide confidence to persons using the band for TOB purposes in areas of high or frequent TOB operation, where co-channel sharing with other fixed services is not considered possible.

The instrument further provides that if the 2010 MHz to 2110 MHz frequency band is used for the purpose of point-to-point fixed services in the area defined by the table in Schedule 2, then those services are operated as a secondary service for the purposes of the spectrum plan. The area defined consists of regional areas. The spectrum plan provides that a secondary service must not cause harmful interference to a primary service using the frequency band, and cannot claim protection from harmful interference caused by a primary service using the frequency band.

The instrument also places restrictions on the use of the band for the purpose of operating earth stations and earth receive stations. The part of the 2010 MHz to 2110 MHz frequency band above 2025 MHz must not be used for the purposes of operating an earth station in the Perth area. The 2200 MHz to 2300 MHz frequency band must not be used for the purposes of operating an earth receive station in the Perth area. These restrictions were originally for the purpose of clearing earth and earth receive services from the band under the requirements of the 2012 band plan. The operation of earth and earth receive stations in the Perth area was considered likely to have an impact on TOB operations, and accordingly operators of these stations were required to stop using the band by specified dates.

These restrictions are now intended to provide confidence to persons using the band for TOB purposes in the Perth area that earth stations will not be permitted to operate in those bands.

Under subsection 32(3) of the Act, a frequency band plan must not be inconsistent with the spectrum plan. The instrument is not inconsistent with the spectrum plan.

Operation of a radiocommunications transmitter is not authorised by a transmitter licence if it is not in accordance with the conditions of the licence (subsection 97(4) of the Act). Paragraph 108(2)(a) of the Act makes it a condition of each transmitter licence that the licensee, and any person authorised to operate a radiocommunications transmitter under the licence, must not operate, or permit the operation, of the transmitter for a purpose that is inconsistent with a purpose of a kind specified in the appropriate frequency band plan (if any).

It is an offence, and subject to a civil penalty, to operate a radiocommunications device otherwise than as authorised by a licence (section 46 of the Act). The Act prescribes the following maximum penalties for the offence:

- if the radiocommunications device is a radiocommunications transmitter and the offender is an individual – imprisonment for 2 years;
- if the radiocommunications device is a radiocommunications transmitter and the offender is not an individual – 1,500 penalty units (which is \$333,000 based on the current penalty unit amount of \$222);
- if the radiocommunications device is not a radiocommunications transmitter – 20 penalty units (\$4,440).

The Act prescribes the following maximum civil penalties:

- if the radiocommunications device is a radiocommunications transmitter – 300 penalty units (\$66,600);
- if the radiocommunications device is not a radiocommunications transmitter – 20 penalty units (\$4,440).

It is an offence, and subject to a civil penalty, to possess a radiocommunications device for the purpose of operating the device otherwise than as authorised by a licence (section 47 of the Act). The Act prescribes the same penalties for this offence and civil penalty contravention as for the offence and civil penalty contravention in section 46.

In addition, an apparatus licensee, or a person authorised under section 114 of the Act in relation to an apparatus licence, must not contravene a condition of the licence. Contravention is subject to a civil penalty (section 113 of the Act). The Act prescribes a maximum civil penalty of 100 penalty units (\$22,200).

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**).

The instrument is subject to the sunset provisions of the LA.

### **Documents incorporated by reference**

Section 314A 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) matters contained in any Act or any other instrument or writing as in force or existing at a particular time or from time to time.

The instrument incorporates the Geodetic Datum of Australia known as GDA94, gazetted in the Commonwealth of Australia *Gazette* No. GN 35 on 6 September 1995, as existing on that day. *Gazette* No. GN 35 is available free of charge from the Federal Register of Legislation at [www.legislation.gov.au](http://www.legislation.gov.au).

### **Consultation**

Before making the instrument, the ACMA was satisfied that consultation was undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the LA.

Section 33 of the Act provides that, before the ACMA prepares a frequency band plan, the ACMA must by notice published on its website state that a draft of the plan is available for public comment, set out the draft plan, and invite interested parties to make representations about the draft plan on or before a day specified in the notice (at least one month later than the publication of the notice). The

ACMA must give due consideration to any representations so made and may, having considered the representations, alter the draft plan.

On 17 December 2021, the ACMA commenced a [public consultation](#) on a review of the 2012 band plan. A draft instrument was released as part of the consultation. In relation to the instrument, the consultation sought comment on the ACMA's proposals to:

- revoke the 2012 band plan and replace it with two new frequency band plans (the instrument and the *Radiocommunications (Mobile-Satellite Service) (1980–2010 MHz and 2170–2200 MHz) Frequency Band Plan 2022*);
- give effect to the same arrangements for the TOB band as specified in the 2012 band plan.

The consultation closed on 28 February 2022. The ACMA received 14 written submissions in response to the consultation. Several respondents commented that the draft instrument proposed changes to the arrangements for services in the TOB band (for example, earth stations) when compared to the 2012 band plan. They noted this was contrary to the ACMA's objective of no change to arrangements in these bands. These changes were unintentional. Before making the instrument, the ACMA revised the instrument to ensure it makes the same arrangements for the TOB band as were specified in the 2012 band plan.

### **Regulatory impact assessment**

A preliminary assessment of the proposal to make the instrument was conducted by the Office of Best Practice Regulation (**OBPR**), based on information provided by the ACMA, for the purposes of determining whether a Regulation Impact Statement (**RIS**) would be required. OBPR advised that a RIS would not be required because the proposed regulatory change is within scope of the previous RIS-like process conducted as part of the review of the 2 GHz band. OBPR confirmed that no further regulatory impact analysis is required – OBPR reference number 44173.

### **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**

The ACMA has made the *Radiocommunications (Television Outside Broadcasting) (2010–2110 MHz and 2200–2300 MHz) Frequency Band Plan 2022 (the instrument)* under section 32(1) of the *Radiocommunications Act 1992 (the Act)*. The instrument makes provision in relation to the purposes for which the frequency bands 2010 MHz to 2110 MHz and 2200 MHz to 2300 MHz may be used.

Use of these frequency bands was previously subject to the requirements of the *Television Outside Broadcast (1980-2110 MHz and 2170-2300 MHz) Frequency Band Plan 2012 (the 2012 band plan)*. The 2012 band plan has been revoked by the instrument.

In January 2021, the ACMA concluded a review of the 2 GHz band (1980 MHz to 2010 MHz and 2170 MHz to 2200 MHz) with a decision to replan the band for mobile-satellite services. The 2 GHz band comprises a subset of frequency bands that were previously covered by the 2012 band plan. To make provision for the purposes for which these frequency bands may be used, the ACMA has made two new frequency band plans:

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- the instrument, which deals with the remaining frequencies, namely 2010 MHz to 2110 MHz and 2200 MHz to 2300 MHz (**the TOB band**), which were not part of the review of the 2 GHz band.

The principal purpose of the instrument is to support the television outside broadcasting (**TOB**) operations of the free-to-air and subscription television broadcasters in the TOB band. The instrument provides for the same arrangements for the TOB band as specified in the 2012 band 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 instrument is compatible with human rights as it does not raise any human rights issues.

**Notes to the *Radiocommunications (Television Outside Broadcasting) (2010–2110 MHz and 2200–2300 MHz) Frequency Band Plan 2022***

**Section 1 Name**

This section provides for the instrument to be cited as the *Radiocommunications (Television Outside Broadcasting) (2010–2110 MHz and 2200–2300 MHz) Frequency Band Plan 2022*.

**Section 2 Commencement**

This section provides for the instrument to commence at the start of the day after the day it is registered on the Federal Register of Legislation.

**Section 3 Revocation**

This section revokes the *Television Outside Broadcast Service (1980–2110 MHz and 2170–2300 MHz) Frequency Band Plan 2012*.

**Section 4 Authority**

This section identifies the provision of the Act that authorises the making of the instrument, namely section 32(1) of the Act.

**Section 5 Interpretation**

This section defines a number of key terms used throughout the instrument. A number of other expressions used in the instrument are defined in the Act or in an instrument made under subsection 64(1) of the *Australian Communications and Media Authority Act 2005*.

**Section 6 References to other instruments**

This section provides that in the instrument, 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 or writing is a reference to that other instrument or writing as in force, or existing, from time to time.

**Section 7 Purposes of the 2010–2110 MHz and 2200–2300 MHz frequency bands**

This section specifies the purposes for which the 2010 MHz to 2110 MHz and 2200 MHz to 2300 MHz frequency bands may be used.

Subsection 7(1) specifies that the band 2010 MHz to 2110 MHz may be used for the purposes of:

- a television outside broadcast service;
- a fixed service (point to point), subject to the provisions in section 8 of the instrument;
- the operation of an earth station in the 2025 MHz to 2110 MHz frequency band, subject to the provisions in section 9 of the instrument; and
- any other service mentioned in the spectrum plan for the entire frequency band or part of the frequency band.

Subsection 7(2) specifies that the band 2200 MHz to 2110 MHz may be used for the purposes of:

- a television outside broadcast service, other than a service involving the operation of an airborne television outside broadcast station;
- a fixed service (point to point), subject to the provisions in section 8 of the instrument;
- the operation of an earth receive station, subject to the provisions in section 9 of the instrument;
- any other service mentioned in the spectrum plan for the entire frequency band or part of the frequency band.

## **Section 8 Fixed service (point to point)**

Subsection 8(1) provides that a fixed service (point to point) must be used only in accordance with section 8.

Subsection 8(2) provides that the 2010 MHz to 2110 MHz frequency band must not be used for the purposes of a fixed service (point to point) in an area described in item 1 of Schedule 1.

Subsection 8(3) provides that if the 2010–2110 MHz frequency band is used for the purposes of a fixed service (point to point) in the area described in item 1 of Schedule 2, the service is operated as a secondary service for the purposes of the spectrum plan (see section 6 of the spectrum plan).

Subsection 8(4) provides that the 2200 MHz to 2300 MHz frequency band must not be used for the purposes of a fixed service (point to point) in an area described in item 2 of Schedule 1.

## **Section 9 Use of earth stations and earth receive stations**

Subsection 9(1) provides that an earth station or earth receive station must be used only in accordance with section 9.

Subsection 9(2) provides that the part of the 2010 MHz to 2110 MHz frequency band above 2025 MHz must not be used for the purposes of operating an earth station in the Perth area.

Subsection 9(3) provides that the 2200 MHz to 2300 MHz frequency band must not be used for the purposes of operating an earth receive station in the Perth area.

Subsection 9(4) defines the *Perth area* to mean the area described by a circle with a radius of 15 kilometres whose centre is located at latitude 31.802522 South and longitude 115.885160 East.

## **Schedule 1 Areas not for fixed service (point to point)**

Item 1 specifies areas where a fixed service (point to point) must not be operated in the 2010 MHz to 2110 MHz frequency band for the purposes of subsection 8(2).

The table in item 1 defines the areas as a series of circles where each circle:

- (a) is centred at a point with the latitude in an item in column 1 and the longitude in the corresponding item in column 2; and
- (b) has a radius of 150 kilometres.

Item 2 specifies areas where a fixed service (point to point) must not be operated in the 2200 MHz to 2300 MHz frequency band for the purposes of subsection 8(4).

The table in item 2 defines the areas as a series of circles where each circle:

- (a) is centred at a point with the latitude in an item in column 1 and the longitude in the corresponding item in column 2; and
- (b) has a radius of 150 kilometres.

**Schedule 2 Areas for fixed service (point to point) – where secondary service**

Item 1 specifies the area where a fixed service (point to point) is treated as a secondary service in the frequency band 2010 MHz to 2110 MHz for the purposes of subsection 8(3) and the spectrum plan.

The table in item 1 defines the area as that bounded by the polygon:

- (a) starting at the point with the latitude in column 1 of item 1 and the longitude in column 2 of item 1 (*starting point*); and
- (b) moving sequentially through each point (after the starting point) with the latitude in an item in column 1 and the longitude in the corresponding item in column 2; and
- (c) after the last point, returning to the starting point;

but excluding each area described in item 2.

Item 2 specifies the areas excluded from the area defined in item 1. The table in item 2 defines the areas as a series of circles where each circle:

- (a) is centred at a point with the latitude in an item in column 1 and the longitude in the corresponding item in column 2; and
- (b) has a radius of 150 kilometres.