

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications (Trading Rules for Spectrum Licences) Amendment Determination 2025 (No. 1)

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Trading Rules for Spectrum Licences) Amendment Determination 2025 (No. 1)* (**the instrument**) under subsection 88(1) of the *Radiocommunications Act 1992* (**the Act**) and subsection 33(3) of the *Acts Interpretation Act 1901* (**the AIA**).

Subsection 88(1) of the Act provides that the ACMA may determine rules for assignments of spectrum licences, and rules setting out the circumstances in which licences can be varied, issued or cancelled as the result of an assignment.

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

The purpose of the instrument is to amend the *Radiocommunications (Trading Rules for Spectrum Licences) Determination 2023* (**the 2023 instrument**), which sets out the rules for the trading of spectrum licences, in accordance with section 88 of the Act.

A spectrum licence authorises the licensee to operate radiocommunications devices in the parts of the spectrum, and the geographic areas, specified in the conditions of the licence. Subsection 85(1) of the Act provides that the licensee of a spectrum licence may assign, or otherwise deal with, the whole or any part of the licence. Subsection 85(2) provides that an assignment must comply with any rules made under section 88 of the Act. Subsection 86(2) provides that an assignment cannot take effect before the Register of Radiocommunications Licences (**RRL**) is amended to take it into account. Subsection 146(1) provides that the ACMA must, as soon as practicable, make changes to the information in the RRL about a spectrum licence that the ACMA considers necessary or convenient for taking into account an assignment of a spectrum licence (including a variation to the licence as a result of the assignment).

The 2023 instrument was made under section 88 of the Act, and set rules for the assignment of spectrum licences. These rules include:

- that the ACMA must approve a form to be used by parties to an assignment of a spectrum licence, and outlines the kinds of information that must be included in the trading form. The parties to an assignment must give the ACMA a copy of the trading form with the required information.
- a requirement to trade in defined “standard trading units”, and for assignments to preserve a specified minimum contiguous bandwidth (**MCB**), unless permission is granted by the ACMA. There is a process for considering an application to undertake a spectrum licence trade that would result in a holding of less than the MCB, including providing timeframes relating to applications for approval for assignments resulting in less than the MCB.

The instrument amends the 2023 instrument to take into account the *Treasury Laws Amendment (Mergers and Acquisitions Reform) Act 2024 (the Merger and Acquisition Reform Act)*, which amended Australia's merger regime under the *Competition and Consumer Act 2010 (CCA)*. The new mandatory merger notification requirements commence on 1 January 2026. From that date, under the new regime, businesses contemplating acquisitions that meet certain thresholds must notify the Australian Consumer and Competition Commission (**the ACCC**) and wait for approval before their proposed acquisition can proceed.

The Merger and Acquisition Reform Act included in the Act provisions that deem certain actions done in relation to spectrum licences as falling within the scope of acquisitions captured by the new mandatory merger notification requirements. More information about the operation of these provisions is set out in the Explanatory Memorandum to the Treasury Laws Amendment (Mergers and Acquisitions Reform) Bill 2024. New subsection 146(3) of the Act has the effect that the ACMA need not make such changes to the RRL to take into account an assignment of the licence under section 85 of the Act, or a variation of the licence under section 87 of the Act that relates to the assignment, if:

- the assignment is a notified acquisition (within the meaning of the CCA);
- the latest notification of the acquisition has not been finally considered (within the meaning of the CCA);
- the ACCC has not decided to cease considering the latest notification of the acquisition under section 51ABZD of the CCA.

This means that the ACMA does not have to update the RRL to reflect a spectrum licence assignment or variation that is a notifiable acquisition until the ACCC has made its decision on the acquisition.

This instrument makes amendments to the 2023 instrument to take into account the amendments to the Act made by the Merger and Acquisition Reform Act. Specifically, the amendments would:

- Require that the form the ACMA must approve under subsection 8(1) of the 2023 instrument request parties to an assignment to indicate whether the assignment is a notified acquisition within the meaning of the CCA and provide relevant information about that notification. This will assist in expediting the ACMA's consideration of these matters should the assignment not be part of a notifiable acquisition or, if it is part of a notifiable acquisition, once the ACCC has made its decision.
- Amend timeframes relating to applications for the approval for assignments resulting in less than the MCB in section 10 of the 2023 instrument, so that any day that there is a pending ACCC decision regarding a notifiable acquisition is not to be counted. This ensures the ACMA will not be compelled to make a decision in relation to an assignment that may be pending a decision from the ACCC.

The 2023 instrument also makes provision for review to the Administrative Appeals Tribunal. That tribunal has been abolished and replaced by the Administrative Review Tribunal. Although transitional provisions mean that updating the references is not necessary, the ACMA has taken the opportunity to change those references to provide clarity for the reader.

To the extent the instrument deals with spectrum licences in the 3.4 GHz to 4 GHz frequency band, the ACMA had regard to the *Radiocommunications (Ministerial Policy Statement – 3.4-4.0 GHz) Instrument 2022*, as required by section 28C of the Act.

A provision-by-provision description of the instrument is set out in the notes at **Attachment A**.

The instrument is a legislative instrument for the purposes of the *Legislation Act 2003 (the LA)*, and is disallowable. The 2023 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 amends the 2023 instrument to incorporate parts of the CCA by reference. The CCA is available, free of charge, from the Federal Register of Legislation at 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.

In November 2025, the ACMA released a consultation paper discussing proposed amendments to the 2023 instrument to incorporate changes to Australia's merger regime made by the Merger and Acquisition Reform Act.

Two submissions were received. Neither proposed any changes to the instrument. One submission also noted that government charges on trades operated as a disincentive. The submission acknowledged that these charges were set by other entities and were not within the ACMA's control.

The ACMA had regard to these submissions in making the instrument. The ACMA did not make any changes to the instrument.

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 instrument amends the 2023 instrument, which sets out the rules for the trading of spectrum licences, in accordance with section 88 of the Act.

The instrument amends the 2023 instrument to take into account the Merger and Acquisition Reform Act, which has made changes to Australia's merger regime under the CCA. The new mandatory merger notification requirements start on 1 January 2026. From that date, under the new regime, businesses contemplating acquisitions that meet certain thresholds must notify the ACCC and wait for approval before their proposed acquisition can proceed. Relevant to this instrument this may include acquisitions involving the assignment of a spectrum licence. To that end, the instrument makes some changes including:

- Requiring that the form the ACMA must approve under subsection 8(1) of the 2023 instrument request that parties to an assignment indicate whether the assignment is a notified

acquisition within the meaning of the CCA and provide relevant information about that notification.

- Amend timeframes relating to applications for the approval for assignments resulting in less than the MCB in section 10 of the 2023 instrument, so that any day that there is a pending ACCC decision regarding a notifiable acquisition is not to be counted.

The 2023 instrument also makes provision for review to the Administrative Appeals Tribunal. That tribunal has been abolished and replaced by the Administrative Review Tribunal. Although transitional provisions mean that updating the references is not necessary, the ACMA has taken the opportunity to change those references to provide clarity for the reader.

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 (Trading Rules for Spectrum Licences) Amendment Determination 2025 (No. 1)*

Section 1 Name

This section provides for the instrument to be cited as the *Radiocommunications (Trading Rules for Spectrum Licences) Amendment Determination 2025 (No. 1)*.

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 Authority

This section identifies the provision of the Act that authorises the making of the instrument, namely subsection 88(1) of the Act.

Section 4 Amendments

This section provides that the 2023 instrument is amended as set out in Schedule 1.

Schedule 1

Item 1

This item repeals the expression ‘AAT’ and substitutes the expressions ‘ACCC’ and ‘ART’ (short for the Australian Review Tribunal) into the note at subsection 5(1) of the 2023 instrument. This includes the expressions within the list of expressions used in the instrument which are defined in the Act.

Item 2

This item inserts new paragraph (g) into subsection 8(2) of the 2023 instrument. This requires that the trading form, that must be approved by the ACMA under subsection 8(1) of the instrument, requires parties to an assignment to provide to additional information to the ACMA if the assignment is a notified acquisition within the meaning of the CCA. The additional information includes the name and Australian Company Number of each notifying company, any unique reference code used to identify the notified acquisition, the effective notification date of the notification and the end of the determination period for the notification.

Item 3

This item omits the reference to ‘AAT’ and substitutes ‘ART’ in subsection 10(13) of the 2023 instrument.

Item 4

This item inserts new subsection 10(14) into section 10 of the 2023 instrument. Section 10 of the 2023 instrument provides rules for assignments resulting in less than the MCB. The MCB for a frequency band is the typical minimum amount of spectrum (bandwidth) that can be assigned. However, licensees can apply to the ACMA for permission to assign less.

Subsection 10(5) of the 2023 instrument requires the ACMA to decide whether to give permission for such assignments within 90 days of receiving an application (unless a longer period is agreed between the ACMA and the licensee).

Where permission is given, subsection 10(7) of the 2023 instrument limits the period during which the assignment may occur to a period between 45 and 90 days.

Subsection 10(11) of the 2023 instrument sets a 90-day limit on internal review decisions. This is to cover circumstances where a person applies for permission and the ACMA refuses permission.

New subsection 10(14) provides that, for the purposes of the periods referred to in subsections 10(5), (7) and (11) of the 2023 instrument, any day that there is a pending ACCC decision regarding a notifiable acquisition is not to be counted. This ensures that, in respect of a notifiable acquisition, the ‘clock is stopped’ for the purposes of these provisions while the ACCC makes its decision.