Automatic sunsetting of legislative instruments:

Proposal to remake instruments for the 2.3 GHz spectrum-licensed band

Consultation paper

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# Issues for comment

We invite comments on the matters set out in this paper regarding the 2.3 GHz technical framework legislative instruments, including:

the draft Radiocommunications Advisory Guidelines (Managing Interference from Spectrum Licensed Transmitters – 2.3 GHz Band) 2023

the draft Radiocommunications Advisory Guidelines (Managing Interference to Spectrum Licensed Receivers – 2.3 GHz Band) 2023

the draft Radiocommunications (Unacceptable Levels of Interference – 2.3 GHz Band) Determination 2023

the proposed new structure for technical framework instruments

the proposed new draft legislative instrument Radiocommunications (Interpretation – Technical Framework) Determination 2023.

# Introduction

Under Part 4 of Chapter 3 of the *Legislation Act 2003*, most legislative instruments ‘sunset’ (that is, they are automatically repealed) on 1 April or 1 October that first occurs 10 years after they are registered. This is an automatic process applying to most legislative instruments regardless of their content.

Three legislative instruments (technical framework instruments) associated with the technical framework for spectrum licences in the 2300 MHz to 2400 MHz frequency band (2.3 GHz band) are due to sunset on 1 April 2024

The ACMA can decide to revoke and remake the technical framework instruments or allow them to sunset. If any of the instruments are still required, the ACMA’s approach has been to revoke the existing instrument and remake them after consultation. The technical framework instruments that will sunset on 1 April 2024 are:

[Radiocommunications Advisory Guidelines (Managing Interference from Spectrum Licensed Transmitters – 2.3 GHz Band) 2013](https://www.legislation.gov.au/Details/F2013L02143)

[Radiocommunications Advisory Guidelines (Managing Interference to Spectrum Licensed Receivers – 2.3 GHz Band) 2013](https://www.legislation.gov.au/Details/F2013L02150)

[Radiocommunications (Unacceptable Levels of Interference – 2.3 GHz Band) Determination 2013](https://www.legislation.gov.au/Details/F2021C00360).

We have formed the preliminary view that these instruments are operating effectively and efficiently and, as such, they continue to form a necessary and useful part of the regulatory framework.

This document outlines the proposals to remake the technical framework instruments and provides reasoning for any associated amendments.

Drafts of the proposed remade instruments are provided alongside this paper on the [ACMA website](https://www.acma.gov.au/have-your-say).

## Spectrum licence technical framework

A technical framework for a spectrum-licensed band consists of 3 interlocking regulatory elements provided for under the *Radiocommunications Act 1992*:

* The conditions specified in the spectrum licence – in particular, the core conditions that define the spectrum space (both frequency band and geographical area) and the level of emissions permitted inside and across the frequency boundaries of the licence (section 66 of the RadiocommunicationsAct). Section 71 of the RadiocommunicationsAct also provides for the ACMA to include other conditions in a spectrum licence.
* A determination of unacceptable interference for the purpose of device registration in each frequency band (section 145 of the RadiocommunicationsAct) – under a spectrum licence, a radiocommunications device must not be used unless it is registered on the Register of Radiocommunications Licences or exempt from registration. The ACMA may refuse to register a device if it is satisfied it would cause an unacceptable level of interference. A determination under section 145 defines what is an unacceptable level of interference, generally by reference to levels of radio emissions across geographical licence boundaries, and also by reference to various deployment constraints.

Radiocommunications advisory guidelines (RAG) – these provide assistance and advice for coordination with stations providing other services when and where required (section 262 of the RadiocommunicationsAct). This includes detailing interference management guidelines for apparatus and other spectrum licences.

While the conditions specified in the spectrum licence remain for the duration of the issued licence, the determination of unacceptable interference and RAGs are legislative instruments that sunset after 10 years.

Refer to [*Spectrum licensees*](https://www.acma.gov.au/publications/2012-12/guide/spectrum-licencees-know-your-obligations) *– know your obligations* for a comprehensive explanation of spectrum licence technical frameworks.

## Timeline for implementation of sunsetting decisions

The current technical framework instruments are due to sunset on 1 April 2024. Any new instruments made to replace them need to be in force before this date.

We aim make the new technical framework instrument in the first quarter of 2024 after considering the outcomes of this consultation process. It is intended that the remade technical framework instruments will revoke the current ones when they come into force.

# Proposed instrument considerations

As part of the review of the sunsetting technical framework instruments, we assessed each instrument to determine if it was still required. We concluded that the content of each instrument is still required, though some, mostly minor, amendments should be implemented. As such, we are not intending to significantly alter the content of the instruments.

Most changes to these instruments will be to ensure consistency between these technical frameworks and other recently reviewed technical frameworks relevant to the 2.3 GHz band. This includes changes made as part of the recent development and review of technical frameworks for the 700 MHz, 850/900 MHz, 1800 MHz, 2 GHz, 2.5 GHz, 3.4 GHz and 26 GHz bands.

The proposed remade instruments will be:

Draft Radiocommunications Advisory Guidelines (Managing Interference from Spectrum Licensed Transmitters – 2.3 GHz Band) 2023

Draft Radiocommunications Advisory Guidelines (Managing Interference to Spectrum Licensed Receivers – 2.3 GHz Band) 2023

Draft Radiocommunications (Unacceptable Levels of Interference – 2.3 GHz Band) Determination 2023.

The ACMA is also proposing to restructure to the legislative instruments to improve the readability of the instruments and consistency between spectrum licence bands. A new proposed instrument has been drafted that would consolidate all the common elements between the spectrum-licensed bands. The proposed new instrument is:

Draft Radiocommunications (Interpretation – Technical Framework) Determination 2023.

## Non-band-specific changes

While the technical framework instruments are specific to each band, they share some common elements. We are using this process to ensure, where possible, that there is consistency between these instruments. This includes incorporating changes made as part of our [ongoing program to review the technical frameworks of existing spectrum licence bands](https://www.acma.gov.au/spectrum-licence-technical-framework-review) to ensure currency and consistency with current technologies and operational practices.

### Radiocommunications Advisory Guidelines (Managing Interference from Spectrum Licensed Transmitters) (RAG Tx)

The RAG Tx generally provide guidance on coordination between spectrum-licensed transmitters and receivers operating under apparatus and class licences. The proposed non-band specific changes to the RAG Tx are intended to address formatting, structure, and definitions to ensure consistency across the bands.

### Radiocommunications Advisory Guidelines (Managing Interference to Spectrum Licensed Receivers) (RAG Rx)

The RAG Rx provide guidance on the protection of spectrum-licensed receivers. The RAG Rx instrument’s formatting, structure, and definitions are proposed to be updated to ensure consistency across the bands.

### Radiocommunications (Unacceptable Level of interference) (ULoI) Determination

The ULoI Determination sets out the circumstances in which devices are taken to cause unacceptable levels of interference, for the purposes of section 145 of the RadiocommunicationsAct. In 2021, the 2.3 GHz ULoI was updated to:

adopt a higher resolution Digital Elevation Model (DEM)

include provisions for device boundary criterion failures over ocean paths

include a transitional clause

correct/update Vincenty’s Direct Formulae.

The proposed 2.3 GHz ULoI Determination’s formatting, structure, and definitions are proposed to be updated to ensure consistency across different bands.

## Band-specific changes

In the review of the [Radiocommunications Advisory Guidelines (Managing Interference from Spectrum Licensed Transmitters – 2.3 GHz Band) 2013](https://www.legislation.gov.au/Details/F2013L02143) (2.3 GHz RAG Tx), we identified that the instrument was required and needs to be remade. We did not identify any band specific changes required to the guidelines. Therefore, no substantive changes are proposed in the remaking of the 2.3 GHz RAG Tx.

### Question 1

The ACMA seeks comment on the draft Radiocommunications Advisory Guidelines (Managing Interference from Spectrum Licensed Transmitters – 2.3 GHz Band) 2023.

In the review of the [Radiocommunications Advisory Guidelines (Managing Interference to Spectrum Licensed Receivers – 2.3 GHz Band) 2013](https://www.legislation.gov.au/Details/F2013L02150) (2.3 GHz RAG Rx), we identified that the instrument was required and needs to be remade. We did not identify any band-specific changes required to the guidelines. Therefore, no substantive changes are proposed in the remaking of the 2.3 GHz RAG Rx.

### Question 2

The ACMA seeks comment on the draft Radiocommunications Advisory Guidelines (Managing Interference to Spectrum Licensed Receivers – 2.3 GHz Band) 2023.

In the review of the [Radiocommunications (Unacceptable Levels of Interference – 2.3 GHz Band) Determination 2013](https://www.legislation.gov.au/Details/F2021C00360) (2.3 GHz ULoI), we identified that the instrument was required and needs to be remade. We did not identify any band-specific changes required to the guideline. Therefore, no substantive changes are proposed in the remaking of the 2.3 GHz ULoI.

### Question 3

The ACMA seeks comment on the draft Radiocommunications (Unacceptable Levels of Interference – 2.3 GHz Band) Determination 2023.

## New instrument structure

There are elements of the technical framework instruments that are common across the different spectrum-licensed bands. There are also elements that are common across the different instruments within the same band.

The proposed new instrument structure is intended to collate all the common elements of the different legislative instruments into a single legislative instrument: the draft Radiocommunications (Interpretation – Technical Framework) Determination (ITF Determination)*.*

This will allow the band-specific instruments to reference the requirements contained in the ITF Determination as needed, while providing band-specific requirements. This will allow the streamlining of the band-specific instruments, which should make them easier to read. It will also have the additional benefit of making the instruments easier to make and amend as required.

The proposed new structure does not change any of the requirements contained within the existing legislative instruments.

It is intended that, in the future, when the technical framework instruments for other spectrum-licensed bands are amended or remade, a similar approach will be taken.

### Question 4

The ACMA seeks comment on the proposed new structure for technical framework instruments.

### Question 5

The ACMA seeks comment on the proposed new draft Radiocommunications (Interpretation – Technical Framework) Determination 2023

# Invitation to comment

## Making a submission

We invite comments on the issues set out in this consultation paper.

[Online submissions](https://www.acma.gov.au/have-your-say) can be made by uploading a document. Submissions in PDF, Microsoft Word or Rich Text Format are preferred.

Submissions by post can be sent to:

The Manager

Wireless Broadband Section

Australian Communications and Media Authority

PO Box 78

Belconnen ACT 2616

The closing date for submissions is COB, **Friday** **13 October 2023**.

Consultation enquiries can be emailed to freqplan@acma.gov.au.

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