

Explanatory Statement

Radiocommunications Act 1992

Radiocommunications (Spectrum Re-allocation—3.6 GHz Band for Adelaide and Eastern Metropolitan Australia) Declaration 2018

Issued by the authority of the Minister for Communications

Purpose

The purpose of the *Radiocommunications (Spectrum Re-allocation—3.6 GHz Band for Adelaide and Eastern Metropolitan Australia) Declaration 2018* (the Declaration) is to declare the part of the radiofrequency spectrum from 3575 to 3700 MHz (the 3.6 GHz band) as being subject to re-allocation by the ACMA by issuing spectrum licences with respect to areas in Adelaide, Brisbane, Canberra, Melbourne and Sydney (area A). This enables the ACMA to allocate spectrum licences in the 3.6 GHz band in these areas, including parts of the band encumbered by apparatus licences.

The re-allocation period for the Declaration will commence 21 days after the Declaration commences, and will run for a period of 2 years (during which incumbent apparatus licences can co-exist with any newly issued spectrum licences). The re-allocation deadline for the Declaration is the end of the first year of the re-allocation period.

Two other instruments also declare the 3.6 GHz band subject to re-allocation with respect to other areas of Australia, namely the *Radiocommunications (Spectrum Re-allocation—3.6 GHz Band for Perth) Declaration 2018* with respect to Perth (area B) and the *Radiocommunications (Spectrum Re-allocation—3.6 GHz Band for Regional Australia) Declaration 2018* with respect to regional Australia (area C). The re-allocation period for the area B declaration is 5 years, and for the area C declaration is 7 years. The re-allocation deadline for all three declarations (collectively the 3.6 GHz band declarations) is the end of the first year of each re-allocation period.

Authority

Part 3.6 of the Act deals with the re-allocation of encumbered spectrum. Under section 153B of the Act, the Minister may make a declaration (a disallowable legislative instrument) that one or more parts of the spectrum are subject to re-allocation in relation to a specified period and, for each part, with respect to one or more areas.

A declaration must specify whether the spectrum is to be re-allocated by issuing spectrum licences or apparatus licences. It must also specify the re-allocation period (after which affected incumbent apparatus licences in that part of the spectrum will be automatically cancelled—see section 153H of the Act) and the re-allocation deadline (before which at least one spectrum licence is to be allocated—see section 153K of the Act).

Before making a declaration about any part(s) of the spectrum, the Minister must have received, and had regard to, a recommendation from the ACMA about the same part(s) of the spectrum (section 153E of the Act). The ACMA's recommendation must be developed and made in accordance with sections 153F and 153G of the Act. The ACMA's recommendation to make the Declaration was prepared in accordance with these sections of the Act, as detailed in the consultation section of this explanatory statement. The Minister had regard to

the ACMA's submission and the submissions made by stakeholders to the ACMA's consultation process in deciding to make the Declaration.

Background

An auction is being planned to allocate spectrum licences in the 3.6 GHz band through an allocation process in October 2018. The 3.6 GHz band declarations formally initiate the re-allocation process for the 3.6 GHz band, paving the way for the allocation of the spectrum.

The Government's goal in re-allocating the spectrum is to maximise the overall public benefit derived from the use of that spectrum. The re-allocation of this spectrum promises benefits to business, consumers, and the broader Australian community and economy in the form of service improvements, greater connectivity and productivity gains.

The 3.6 GHz band will be re-allocated by issuing spectrum licences. Spectrum licensing is considered to be the option most likely to ensure the efficient allocation and use of the spectrum and to provide licensees with the flexibility and security of tenure needed to encourage investment in infrastructure.

In October 2016, the ACMA released a discussion paper titled *Future use of the 1.5 GHz and 3.6 GHz bands*. Following international developments and strong domestic interest, the ACMA decided to prioritize the 3.6 GHz band over the 1.5 GHz band. The ACMA subsequently released a consultation package on the 3.6 GHz band, including a discussion paper titled *Future use of the 3.6 GHz band – Options paper* and a quantitative assessment of the highest value use for the 3.6 GHz band.

Spectrum in the 3.6 GHz band has historically been used for fixed satellite service earth stations, point-to-point links and site based wireless broadband services that are authorised under apparatus licences. The parts of the spectrum specified in the Declaration are considered to be useful for area-wide fixed and mobile broadband services. The demand for these services is growing, both nationally and globally in response to the development of 5G technologies. Responses to the ACMA's consultation package indicated there was a high demand for spectrum in the 3.6 GHz band. Furthermore the ACMA's analysis in the *Future use of the 3.6 GHz band—Highest value use assessment: Quantitative analysis* paper shows that the highest value use of the band has moved to wide-area broadband deployments in metropolitan and regional areas and that the 3.6 GHz band should therefore be re-allocated for spectrum licensing.

Incumbent apparatus licensees in parts of the spectrum may retain existing licences, including following the renewal of these licences, during the re-allocation period. This avoids delays to the re-allocation process which may occur if spectrum is required to be cleared prior to re-allocation. It also mitigates the risk of clearing spectrum unnecessarily, or prematurely, in relation to the demand for its use. For Adelaide, Brisbane, Canberra, Melbourne and Sydney (area A), the re-allocation period is 2 years beginning 21 days after the Declaration commences.

Apparatus licences in the subject part of the spectrum that are affected by the spectrum re-allocation declaration will be cancelled at the end of the re-allocation period, under section 153H of the Act.

Details of the Declaration are set out at Attachment 1.

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at Attachment 2.

Regulation Impact Statement

The Office of Best Practice Regulation (OBPR) confirmed that the preparation of a Regulatory Impact Statement was not necessary, as the Direction has a nil or low regulatory impact on the economy or individuals. The OBPR ID for the advice is 23261.

Consultation

The ACMA has been actively considering future uses of spectrum in the 3.6 GHz band since October 2016, when it released the *Future use of 1.5 GHz and 3.6 GHz bands* discussion paper. Following this consultation the ACMA decided to focus solely on replanning the 3.6 GHz band.

In June 2017, the ACMA released the *Future use of the 3.6 GHz band* consultation package seeking industry submissions about how best to replan the band. The ACMA received 35 submissions to its consultation package. After considering stakeholder feedback the ACMA released its *Future use of the 3.6 GHz band – Decisions and preliminary views paper*, which concluded that the 3.6 GHz band should be re-allocated and made available for other uses such as mobile broadband services. The ACMA's paper indicated that it considered such use to represent the highest value use of spectrum in the band.

The ACMA conducted public consultation on its draft re-allocation recommendation (in accordance with section 153G of the Act) between 26 October 2017 and 27 November 2017. The draft recommendation recommended that the Minister re-allocate the 3.6 GHz spectrum in metropolitan and regional Australia for spectrum licensing with a two year re-allocation period in Adelaide and eastern metropolitan Australia, a five year re-allocation period in Perth and a seven year re-allocation period in regional Australia. The ACMA received 19 responses. While telecommunications carriers (including Telstra, Vodafone Hutchison Australia and nbn) supported re-allocating the band for spectrum licences, a number of other stakeholders raised concerns about the effect that the re-allocation would have on wireless internet service providers (WISPs) and satellite operators' continued access to the band.

The extended re-allocation period of seven years was recommended for regional Australia in response to concerns about WISPs' access to the spectrum. The ACMA has also proposed to make available 40 MHz of spectrum in the 5.6 GHz band and investigate the suitability of part of the 28 GHz band in regional Australia for use by WISPs.

The extended re-allocation period of five years was recommended for Perth in response to concerns about Inmarsat's access to the spectrum, in order to give it time plan for the re-allocation of the band. The ACMA is also considering three small areas near Quirindi, Moree and Roma respectively to be excised for possible future earth station protection zones. One area near Uralla is also being excised to support the ongoing use of Lockheed Martin's earth station facility.

The minimum two year re-allocation period required under subsection 153B(4) of the *Radiocommunications Act 1992* will apply to Adelaide, Brisbane, Canberra, Melbourne and

Sydney so that the benefits of the 3.6 GHz spectrum licences in those areas are realised as soon as possible.

On 19 December 2017, the ACMA wrote to the Minister, in accordance with subsection 153F(1) of the Act, recommending that the Minister declare, under subsection 153B(1) of the Act, the 3.6 GHz band in the three areas (area A, area B and area C) subject to re-allocation by issuing spectrum licences.

Attachment 1: Notes on Sections

Section 1—Name

Section 1 provides that the Declaration may be cited as the *Radiocommunications (Spectrum Re-allocation—3.6 GHz Band for Adelaide and Eastern Metropolitan Australia) Declaration 2018*.

Section 2—Commencement

Section 2 provides that the Declaration will commence on the day after it is registered on the Federal Register of Legislation, which may be accessed online at <http://www.legislation.gov.au/>.

Section 3—Authority

Section 3 identifies the power that authorises the making of the Declaration, being subsection 153B(1) of the *Radiocommunications Act 1992*.

Section 4—Interpretation

Section 4 defines expressions used in the Declaration. In particular, it defines the Hierarchical Cell Identification Scheme (HCIS), which is the system used by the ACMA (in the Australian Spectrum Map Grid 2012) to define geographic areas for radiocommunications licensing. The alphanumerically coded HCIS cells are used in section 5 to define the geographic areas with respect to which the 3.6 GHz band is declared subject to re-allocation by issuing spectrum licences.

The areas in the Declaration are prescribed by reference to the HCIS in the Australian Spectrum Map Grid 2012 as it existed when the Declaration was made.

A document describing the ASMG and HCIS, as well as spatial datasets describing each HCIS area could, at the time this explanatory statement was prepared, be found on the ACMA's website at https://www.acma.gov.au/Industry/Spectrum/Radiocomms-licensing/Spectrum-licences/spectrum_21. Additionally, the lists of HCIS area descriptions in section 5 may be converted into Placemark files on the ACMA's website at <http://www.acma.gov.au/theACMA/convert-hcis-area-description-to-a-placemark>. A Placemark file may then be used by computer mapping software to visualise the areas covered by the Declaration.

Section 4 also provides that each reference to a part of the spectrum includes all frequencies greater than the lower frequency, up to and including the higher frequency. This means the part of the spectrum does not include the lower frequency.

Section 5—Spectrum re-allocation

Section 5 declares the part of the spectrum from 3575 to 3700 MHz (the 3.6 GHz band) as subject to re-allocation under Part 3.6 of the Act.

Paragraph 5(1)(a) states, for the purposes of subsection 153B(6) of the Act, that the 3.6 GHz band is to be re-allocated by issuing spectrum licences under Subdivision B of Division 1 of Part 3.2 (see section 153L of the Act).

Paragraph 5(1)(b) specifies, for the purposes of subsection 153B(3) of the Act, that the 3.6 GHz band is subject to re-allocation with respect to areas named Adelaide, Brisbane, Canberra, Melbourne and Sydney. The names of these areas are indicative only, and may include areas beyond the cities after which they are named. By way of example, the area named “Sydney” includes the city of Newcastle. Each of these named areas is defined in the table in subsection 5(3) by reference to a series of HCIS cell identifiers.

Paragraph 5(2)(a) specifies, for the purposes of subsection 153B(1) of the Act, that the re-allocation period for the Declaration is the period of 2 years beginning at the start of the 21st day after the Declaration commences. Section 2 provides for the commencement of the Declaration on the day after registration. During and after the re-allocation period, there are restrictions on the issue of licences by the ACMA otherwise than in accordance with the Act (see e.g. sections 153N and 153P). At the end of the re-allocation period, apparatus licences affected by the Declaration are cancelled (see sections 153D and 153H).

Paragraph 5(2)(b) specifies, for the purposes of subsection 153B(5) of the Act, that the re-allocation deadline for the Declaration is the end of the day before the first anniversary of the start of the re-allocation period (i.e. the end of the first year of the re-allocation period). If the ACMA has not allocated any licences in accordance with the Declaration by the re-allocation deadline, the Declaration will be taken to have been revoked immediately after this time (see section 153K).

Attachment 2: Statement of Compatibility with Human Rights

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

Radiocommunications (Spectrum Licence Re-allocation—3.6 GHz Band for Adelaide and Eastern Metropolitan Australia) Declaration 2018

This Declaration 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 purpose of the *Radiocommunications (Spectrum Re-allocation—3.6 GHz Band for Adelaide and Eastern Metropolitan Australia) Declaration 2018* is to declare the part of the radiofrequency spectrum from 3575 to 3700 MHz (the 3.6 GHz band) as being subject to re-allocation by the ACMA by issuing spectrum licences for areas in Adelaide, Brisbane, Canberra, Melbourne and Sydney. This enables the ACMA to allocate spectrum licences in the 3.6 GHz band in these areas, including parts of the band encumbered by apparatus licences.

Human rights implications

This Declaration does not engage any of the applicable rights or freedoms.

Conclusion

This Declaration is compatible with human rights as it does not raise any human rights issues.