

Explanatory Statement

Radiocommunications Act 1992

Radiocommunications (Spectrum Re-allocation—26 GHz Band) Declaration 2019

Issued by the authority of the Minister for Communications, Cyber Safety and the Arts

Purpose

The purpose of the *Radiocommunications (Spectrum Re-allocation—26 GHz Band) Declaration 2019* is to declare the parts of the radiofrequency spectrum from 25.1 to 27.0 GHz and 27.0 to 27.5 GHz as being subject to re-allocation by the Australian Communications and Media Authority (ACMA) by issuing spectrum licences. The re-allocation of the 25.1 to 27.0 GHz range will occur with respect to the named areas listed in items 1 to 27 in the table in subsection 5(4) of the declaration. The re-allocation of the 27.0 to 27.5 GHz range will occur with respect to the named areas listed in items 1 to 26, 28 and 29 in the table in subsection 5(4) of the declaration. This enables ACMA to allocate spectrum licences in the 26 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 three years (during which incumbent apparatus licences can co-exist with any newly issued spectrum licences). The re-allocation deadline for the declaration is 12 months before the end of the re-allocation period.

Authority

Part 3.6 of the *Radiocommunications Act 1992* (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 or parts of the spectrum, the Minister must receive, and have regard to, a recommendation from ACMA about the same part or parts of the spectrum (section 153E of the Act). ACMA's recommendation must be developed and made in accordance with sections 153F and 153G of the Act.

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.

Background

The 26 GHz band (24.25 to 27.5 GHz) has been identified globally as one of the first millimetre wave spectrum bands capable of supporting 5G wireless broadband services.

Historically, spectrum in the 26 GHz band has only been available for a limited range of uses (such as fixed satellite service earth stations). However, advances in radiofrequency technology have unlocked the band for fast, high capacity wireless broadband services, which will allow the band to be used for the deployment of 5G technologies in Australia.

In order to make the 26 GHz band available for these new uses, the declaration re-allocates parts of the band (25.1 to 27.0 and 27.0 to 27.5 GHz) for spectrum licensing.

The Government's goal in re-allocating the spectrum is to maximise the overall public benefit derived from the use of this 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. Spectrum licensing is considered to be the licensing framework 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. ACMA intends to hold an auction for these spectrum licences in early 2021.

Incumbent apparatus licensees in parts of the spectrum may retain and renew existing licences during the re-allocation period. Apparatus licences 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.

For the 29 named areas, the re-allocation period is 3 years, beginning 21 days after the declaration commences.

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 either a Regulatory Impact Statement or an independent review would be required for the declaration.

The Department of Communications and the Arts (the department) has certified an independent review. The OBPR reference number for this assessment is 25539.

Consultation

ACMA questions paper

ACMA has been actively consulting on future uses of the 26 GHz band since September 2017 when it released the *Spectrum for broadband in the millimetre wave bands: Questions for consultation* paper. This paper sought feedback from stakeholders on the suitability of the 26 GHz band for wireless broadband services. ACMA received 27 submissions. Noting the increasing interest in the 26 GHz band both domestically and internationally, coupled with its limited incumbency, ACMA proposed to prioritise the replanning of this band. Responses to this consultation process broadly supported this proposal.

ACMA options paper

In September 2018, ACMA released the *Wireless broadband in the 26 GHz band: options paper* which sought industry submissions on how best to replan the band. ACMA received 19 submissions to its consultation package. The mobile broadband sector was broadly supportive of ACMA's plan to re-allocate parts of the 26 GHz band for spectrum licensing. NBN Co Limited (NBN Co) raised its concerns of the prospect of interference to its satellite service in its submission.

ACMA decisions paper

After considering stakeholder feedback, ACMA released its decision paper *Future use of the 26 GHz band – Planning decisions and preliminary views* in April 2019, which concluded that parts of the 26 GHz band (25.1 to 27.0 and 27.0 to 27.5 GHz) should be re-allocated for spectrum licensing and made available for wireless broadband services. ACMA's paper indicated that it considered such use to represent the 26 GHz band's highest value use. In making its decision, ACMA noted that co-existence conditions should be introduced into the band to ensure the ongoing protected use of the 26 GHz band and adjacent bands by various incumbent fixed satellite, space research and passive earth exploration satellite services. In response to NBN Co's concerns, ACMA proposed additional conditions to safeguard NBN Co's satellite service. These conditions would apply to spectrum licences within an NBN Co satellite footprint area in the 27.0 to 27.5 GHz frequency range.

ACMA draft re-allocation recommendation

ACMA conducted public consultation on its draft re-allocation recommendation between 8 May 2019 and 6 June 2019 in accordance with section 153G of the Act. ACMA received 12 responses. Most mobile carriers (including Telstra, Vodafone Hutchinson Australia and Optus) supported re-allocating the band for spectrum licences per ACMA's draft recommendation. NBN Co reiterated its concern that the introduction of wireless broadband services in the 27.0 to 27.5 GHz portion of the band would interfere with its Sky Muster satellite service, which also uses this frequency range, and that the proposed protections were not sufficient to prevent interference to its services.

Departmental consultation on co-existence

To analyse the potential for interference to NBN Co's Sky Muster service, an independent study was commissioned to review both NBN Co and ACMA's modelling of the potential for interference in the 27.0 to 27.5 GHz range. This report, which is available at www.communications.gov.au, found that co-existence between these services was feasible within a significant margin and that ACMA's proposed protections are an appropriate safeguard against unwanted interference to NBN Co's services.

Departmental consultation on re-allocation declaration

On 13 September 2019, ACMA briefed the Minister, in accordance with subsection 153F(1) of the Act, recommending that the Minister declare parts of the 26 GHz band subject to re-allocation by issuing spectrum licences.

In its recommendation to the Minister, ACMA proposed that the parts of the spectrum to be re-allocated should be:

- the 25.1 to 27.0 GHz range in 27 named areas (including 26 core areas, and one named area for Perth/Bunbury)
- the 27.0 to 27.5 GHz range in 28 named areas (including 26 core areas, one named area for Perth, and one named area for Bunbury).

In its public consultation on the draft recommendation, ACMA originally proposed that the part of the spectrum to be re-allocated should be the 25.1 to 27.5 GHz range in 34 named areas. Based on stakeholder feedback about the potential for interference between neighbouring areas, ACMA made the decision to merge several of these areas together and reflected this in its recommendation to the Minister. In the case of the merged Perth/Bunbury area, the ACMA proposed to keep these areas separate in the 27.0 to 27.5 GHz range. These changes had the effect of reducing the number of named areas from 34 to 29.

In its recommendation to the Minister, ACMA also proposed increasing the re-allocation period from two-and-a-half to three years. ACMA made the decision to extend the recommended re-allocation period to three years to build additional flexibility into the re-allocation process in order to manage timing risks associated with the 26 GHz auction. This change was also in response to industry's preference to have greater clarity about planning decisions for the 28 GHz band. The ACMA released its decision paper on the 28 GHz band on 23 September 2019.

As ACMA's recommendation contained changes to some of the elements of the draft recommendation on which it had consulted with stakeholders, the department conducted additional consultation with stakeholders who had previously provided submissions to ACMA's consultation on its draft re-allocation recommendation. None of these stakeholders objected to the changes to the re-allocation recommendation.

In deciding to make the declaration, the Minister had regard to ACMA's recommendation, the submissions made by stakeholders to ACMA's consultation processes, the independent report on co-existence, and the submissions made by stakeholders to the department's consultation process.

Attachment 1: Notes on Sections

Section 1—Name

Section 1 provides that the declaration may be cited as the *Radiocommunications (Spectrum Re-allocation—26 GHz Band) Declaration 2019*.

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 www.legislation.gov.au.

Section 3—Authority

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

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 ACMA 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 parts of the 26 GHz band are declared subject to re-allocation by issuing spectrum licences.

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 parts of the spectrum from 25.1 to 27.0 GHz and 27.0 to 27.5 GHz 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 part of the spectrum from 25.1 GHz to 27.0 GHz 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 part of the spectrum from 25.1 GHz to 27.0 GHz is subject to re-allocation with respect to the named areas listed in Items 1 to 27 in the table in subsection 5(4).

Paragraph 5(2)(a) states, for the purposes of subsection 153B(6) of the Act, that the part of the spectrum from 27.0 GHz to 27.5 GHz 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(2)(b) specifies, for the purposes of subsection 153B(3) of the Act, that the part of the spectrum from 25.1 GHz to 27.0 GHz is subject to re-allocation with respect to the named areas listed in Items 1 to 26, 28 and 29 in the table in subsection 5(4).

Paragraph 5(3)(a) specifies, for the purposes of subsection 153B(1) of the Act, that the re-allocation period for the declaration is the period of 3 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. This has the effect of setting the timeframes for the re-allocation period during which there are restrictions on the issue of licences by ACMA (see for example sections 153N and 153P). It also sets the timeframe at which any apparatus licences affected by the declaration will be cancelled (see sections 153D and 153H).

Paragraph 5(3)(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 second anniversary of the start of the re-allocation period (i.e. the end of the second year of the re-allocation period). If 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).

Paragraph 5(4) specifies, for the purposes of subsection 153B(3) of the Act, that the named areas, which are listed in Column 1 in the table of this subsection, are to be ascertained as the composite of the areas, which are described using HCIS Identifiers in column 2 of the table of this subsection.

Attachment 2: Statement of Compatibility with Human Rights

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

Radiocommunications (Spectrum Re-allocation—26 GHz Band) Declaration 2019

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—26 GHz Band) Declaration 2019* is to declare the parts of the radiofrequency spectrum from 25.1 to 27.0 GHz and 27.0 to 27.5 GHz as being subject to re-allocation by issuing spectrum licences. The re-allocation of the 25.1 to 27.0 GHz range will occur with respect to the named areas listed in items 1 to 27 in the table in subsection 5(4) of the declaration. The re-allocation of the 27.0 to 27.5 GHz range will occur with respect to the named areas listed in items 1 to 26, 28 and 29 in the table in subsection 5(4) of the declaration. This enables the Australian Communications and Media Authority to allocate spectrum licences in the 26 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.