

EXPLANATORY STATEMENT

Radiocommunications Act 1992

RADIOCOMMUNICATIONS (SPECTRUM RE-ALLOCATION) DECLARATION NO. 1 OF 2011

Issued by the authority of the Minister for Broadband, Communications and the Digital Economy

Background

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. The spectrum can be re-allocated by issuing either spectrum or apparatus licences.

Incumbent apparatus licensees in subject parts of the spectrum have a period (which is described in the declaration as the 're-allocation period') to vacate the spectrum. This avoids delays to the re-allocation process which may be incurred if spectrum is required to be cleared prior to re-allocation. It also mitigates the risk of clearing spectrum unnecessarily or too early in relation to the demand for its use.

Certain apparatus licences that are affected by a spectrum re-allocation declaration will be cancelled at the end of the period specified in the declaration. However, there will be a number of broadcasting apparatus licences that are not automatically cancelled at the end of the re-allocation period. This is because of requirements elsewhere in the Act to ensure that apparatus licences of these kinds are in force for so long as the related broadcasting service exists. A number of incumbent apparatus licences for the parts of the spectrum covered by this Declaration are of the 'protected' kinds. The Australian Communications and Media Authority (ACMA) is responsible for managing the migration of these protected apparatus licences to spectrum outside the declared parts. This process is known as restacking.

The re-allocation period must begin within 28 days after the declaration is made, and run for at least 2 years.

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.

Only spectrum currently occupied by apparatus licences, or unoccupied spectrum, may be covered by a re-allocation declaration. The reason for allowing unoccupied spectrum to be covered is to facilitate the re-allocation of contiguous blocks of spectrum, rather than fragmented parts that are separated by intervals of unoccupied spectrum.

Purpose

On 24 June 2010, the Minister for Broadband, Communications and the Digital Economy announced the Australian Government's decision to release 126 Megahertz (MHz) of Broadcasting Services Bands (BSBs) spectrum as a 'digital dividend'. The BSBs are those

parts of the spectrum that have previously been designated by the Minister under section 31 of the Act as being primarily for the purpose of delivering wireless radio and television broadcasting services and, more recently, datacasting services.

The digital dividend comprises the frequency range 694-820 MHz. This spectrum is becoming available as a result of the switch to digital-only television broadcasting, which will be completed in Australia by 31 December 2013.

An auction is being planned to sell spectrum from the digital dividend band and the 2.5GHz band (which is subject to a separate spectrum re-allocation declaration) through a single process at the end of 2012. This declaration formally initiates the re-allocation process for the digital dividend band, paving the way for the auction of the spectrum.

Spectrum in the digital dividend is currently occupied by providers of television broadcasting services and users of low interference potential devices, such as wireless microphones operating under a class licence. The parts of the spectrum specified in this declaration are to be re-allocated to allow for new uses, such as Wireless Access Services (WAS). The demand for WAS is growing, both nationally and globally in response to technological advancements and consumer expectations.

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.

On 19 August 2011 the ACMA made a recommendation to the Minister that a spectrum re-allocation declaration be made declaring specified spectrum in the 700 MHz band to be subject to re-allocation. The ACMA recommended that:

- two 45 MHz blocks of spectrum, with frequency boundaries 703–748 MHz and 758–803 MHz, should be re-allocated nationally, excluding the Mid West Radio Quiet Zone (RQZ);
- the re-allocation period should start on 2 November 2011 and should end on 31 December 2014;
- the re-allocation deadline should be 31 December 2013; and
- Spectrum licensing should apply.

The spectrum from the 700 MHz band to be re-allocated does not include the guard bands at the top (803-806 MHz) and bottom (694-703 MHz) of the band or the 10 MHz mid-band gap (748-758 MHz). This will allow the excluded spectrum to be used for other purposes such as to relocate users of low interference potential devices should this prove to be technically feasible.

Spectrum licensing will apply to the spectrum being re-allocated. 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.

The ACMA undertook public consultation on the re-allocation of the 700 MHz (digital dividend) band in late 2010. It released a discussion paper titled *Spectrum re-allocation in the 700 MHz digital dividend band* seeking stakeholder comment on matters that would influence the ACMA's approach to the configuration and allocation of the band. In total, 45 submissions were received during the consultation period which closed on 6 December 2010. The discussion paper and submissions received have been published on the ACMA website at www.acma.gov.au.

The ACMA undertook consultation with affected apparatus licensees and the public as required under section 153G of the Act from 28 May to 15 July 2011. Nine submissions were received. These have been published on the ACMA website at www.acma.gov.au. The ACMA had regard to the comments made when developing its final recommendation to the Minister.

A regulation impact statement (RIS) titled *Regulation Impact Statement Realising the digital dividend: Section 153F recommendation that the minister make a spectrum re-allocation declaration* was prepared by the ACMA to inform its decision-making when making the recommendation to the Minister. The RIS has been published on the Office of Best Practice Regulation website at www.obpr.gov.au.

Notes on Clauses

Clause 1

Clause 1 provides for the citation of the Declaration as the *Radiocommunications (Spectrum Re-allocation) Declaration No. 1 of 2011*.

Clause 2

Clause 2 provides that the Declaration will commence on the day after it is registered on the Federal Register of Legislative Instruments.

Clause 3

Clause 3 sets out a number of definitions for the purpose of the Declaration.

‘Act’ is defined to mean the *Radiocommunications Act 1992*.

‘Mid West Radio Quiet Zone’ (RQZ) is defined by reference to the geographic coordinates set out in Table B of the Schedule.

The terms ‘re-allocation period’ and ‘re-allocation deadline’ have the same meaning as in section 153B of the Act.

Clause 4

Clause 4 sets out the parts of the spectrum that are subject to re-allocation under the Declaration, the specific areas to which the Declaration applies and a number of other relevant matters in accordance with section 153B of the Act.

Subclause 4(1) sets out the parts of the spectrum that are subject to re-allocation in relation to the re-allocation period under Part 3.6 of the Act in, in accordance with subsection 153B(1) of the Act.

Two separate parts of the spectrum are specified in subclause 4(1). The parts of the spectrum specified in paragraphs 4(1)(a) and (b) form part of the 700MHz frequency band.

Subclause 4(2) specifies the area to which the Declaration is to apply, for each part of the spectrum specified in the Declaration, as required by subsection 153B(3) of the Act. The area is described as the 'National Area', excluding the 'Mid West Radio Quiet Zone' (RQZ). Definitions for the National Area and the RQZ are provided in clause 3.

The specified area identified as the 'National Area' refers to the area bounded by the geographic coordinates set out in Table A to the Schedule. This area encompasses most of Australia, excluding the external territories. A pictorial representation of the 'National Area', and RQZ (in pink) based on the coordinates contained in Tables A and B of the Schedule is provided as Figure 1 below.

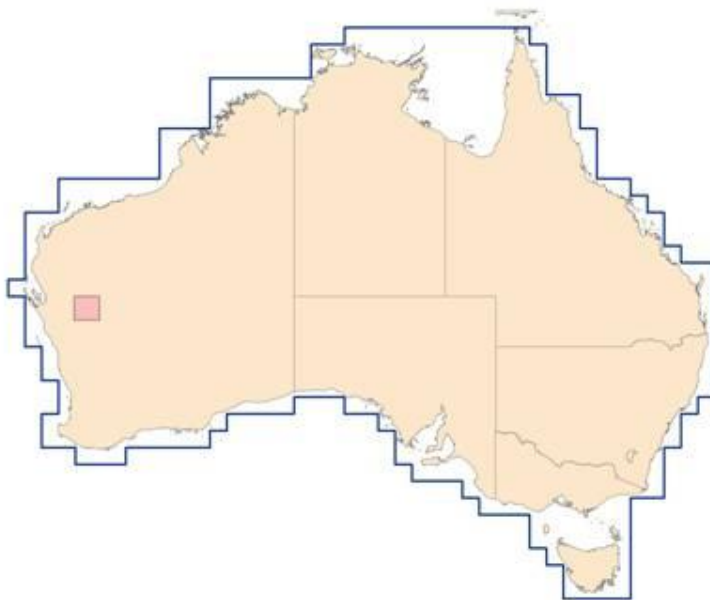


Figure 1

The RQZ is an area approximately 300 kilometres north-east of Geraldton, Western Australia. The ACMA endeavours to maintain low levels of radiofrequency for this area in order to facilitate the development and use of new radio astronomy technologies at that location, and support Australia's bid to host the Square Kilometre Array (SKA). When built, the SKA will be the largest and most sensitive radio telescope. Australia and South Africa are currently shortlisted as potential locations for the SKA.

The ACMA has excluded the RQZ from the area designated for allocation in order to preserve licensing options for the Murchison Radioastronomy Observatory at the centre of the RQZ, and for other services in the areas around the centre of the RQZ, subject to their compliance with conditions contained in the *Radiocommunications (Mid West Radio Quiet Zone) Frequency Band Plan 2011* to protect radioastronomy.

Subclause 4(3) sets out the re-allocation period in relation to the parts of the spectrum mentioned in subclause (4)(1). The re-allocation period is specified to begin on 2 November 2011 and end on 31 December 2014 for each part of the spectrum specified in subclause 4(1). This re-allocation period applies in respect of the area specified in subclause 4(2).

The most significant feature of the re-allocation period under the Act is that, at the end of the period, most apparatus licences will automatically be cancelled if they are in a part of the spectrum covered by the declaration (section 153H of the Act). However particular kinds of broadcasting apparatus licence are not automatically cancelled by operation of section 153H (paragraph 153H(3)(c) of the Act refers). This is because of requirements elsewhere in the Act to ensure that apparatus licences of these kinds are in force for so long as the related broadcasting service exists. A number of incumbent apparatus licences for the parts of the spectrum covered by this Declaration are of the 'protected' kind.

The ACMA is responsible for managing the migration of these protected apparatus licences to spectrum outside the declared parts. This migration process is known in the industry as 'restacking'.

In the restacking context it is important to note that the general prohibition on the ACMA issuing apparatus licences in declared spectrum during the re-allocation period does not apply to the issue of apparatus licences used for the transmission of broadcasting services (see section 153P of the Act). This exception to the general prohibition is designed to facilitate the restacking process while maintaining continuity of broadcasting services. The limited exception will end at the start of the designated re-stack day for a broadcasting licence area within the meaning of the *Broadcasting Services Act 1992* (subsection 153(4) of the Act refers).

Subclause 4(4) specifies the re-allocation deadline for the parts of the spectrum specified in subclause 4(1), as required by subsection 153B(5) of the Act. In accordance with subsection 153B(5) of the Act the re-allocation deadline must be at least 12 months before the end of the re-allocation period. Subclause 4(4) specifies a re-allocation deadline of 31 December 2013. If no spectrum licences are allocated in respect of the declared parts of the spectrum on or before 31 December 2013, section 153K of the Act will operate to revoke the Declaration immediately after the re-allocation deadline.

Subclause 4(5) provides that each part of the spectrum specified in subclause 4(1) of the Declaration may only be re-allocated by issuing spectrum licences under Division 1 of Part 3.2 of the Act. This provision is included in accordance with subsection 153B(6) of the Act, which states that for each part of the spectrum mentioned in the Declaration, the Declaration must state whether the part of the spectrum should be re-allocated by issuing spectrum licences under Division 1 of Part 3.2 of the Act, or apparatus licences under Division 2 of Part 3.3 of the Act.

Subclause 4(6) contains a provision which clarifies the end-points of the frequency ranges specified for each frequency band identified in subclause 4(1). Subclause 4(6) confirms that each frequency band includes all frequencies that are greater than the lower frequency, up to and including the higher frequency. The practice of including the higher, but not the lower number, when identifying a range of frequencies is used to prevent cases of frequency band overlap.