

Explanatory Statement

Radiocommunications Act 1992

Radiocommunications (Spectrum Re-allocation—Regional 1800 MHz Band) Declaration 2015

Issued by the Authority of the Minister for Communications

Legislative Authority

The *Radiocommunications (Spectrum Re-allocation—Regional 1800 MHz Band) Declaration 2015* (the Declaration) is made by the Minister for Communications under subsection 153B(1) of the *Radiocommunications Act 1992* (the Act) having regard to a recommendation made by the Australian Communications and Media Authority (ACMA) under subsection 153F(1) of the Act.

Purpose

The purpose of the Declaration is to require the ACMA to re-allocate spectrum under Part 3.6 of the Act in two parts of the spectrum: 1725-1785 MHz and 1820-1880 MHz in regional Australia (the regional 1800 MHz band) from apparatus licences to spectrum licences.

There is demand to use the regional 1800 MHz band for mobile broadband services. Spectrum in the 1800 MHz band is highly desirable for mobile broadband as it is used internationally for Long Term Evolution (LTE), or 4G, technology. In metropolitan Australia the 1800 MHz band is used for mobile broadband services. Since 2012 the ACMA has been working with stakeholders to facilitate access to the regional 1800 MHz band for mobile broadband use.

Currently, the regional 1800 MHz band is predominantly used for fixed services that are authorised under apparatus licences. The band has been under an ‘embargo’ by the ACMA since 2011. Spectrum embargoes are used by the ACMA as an administrative tool to facilitate orderly spectrum planning and provide a notice of the ACMA’s intention to restrict the allocation of new licences in a band, pending its replanning. Since this time the ACMA has also notified affected apparatus licensees of the proposed replanning processes. Apparatus licences have been renewed annually and are approaching expiry.

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 will benefit business, consumers and the broader Australian community and economy in the form of service improvements, greater connectivity and productivity gains.

The ACMA is proposing to hold an auction for the spectrum in November 2015. This declaration formally initiates the re-allocation process for the regional 1800 MHz band and will enable the ACMA to proceed with the auction.

In relation to this declaration, the ACMA made a recommendation to the Minister on 8 May 2015. The ACMA recommended the following:

- two 60 MHz blocks of spectrum, with frequency boundaries 1725-1785 MHz and 1820-1880 MHz, should be re-allocated throughout regional Australia;
- the re-allocation period should be two years in all parts of the spectrum;
- the re-allocation deadline should be 12 months before the end of the re-allocation period; and
- spectrum licences should be issued for the parts of the spectrum.

In recommending the minimum two year re-allocation period, the ACMA acknowledged concerns from affected apparatus licensees that it may not be possible to relocate all fixed links within this timeframe. The ACMA has the power under subsection 153P(3) of the Act to issue apparatus licences even after the end of a re-allocation period if it is satisfied that special circumstances exist which justify the issue of the licence. The ACMA plans to work with affected apparatus licensees to identify any fixed links where redeployment within the minimum two year reallocation period is impractical.

If, at the end of the re-allocation period, the ACMA considers that special circumstances apply, then the ACMA may issue apparatus licences to authorise continued operation of these links for a short time. This would result in part of the spectrum potentially being encumbered when the new spectrum licences commence. The ACMA will provide prospective auction participants with a list showing all fixed links where it is likely special circumstances will be found to apply, together with the expected maximum duration of any authorised continued operation.

The ACMA's strategy has been taken into account in applying a two year reallocation period. On balance, this approach is considered to provide greater benefits than a longer re-allocation period, as it will enable spectrum licences to commence sooner. Publication of a list and expected timeframes for spectrum that may remain encumbered for a short period after the end of the re-allocation period will provide transparency to bidders at auction.

The ACMA will re-allocate the parts of the spectrum by issuing spectrum licences. Spectrum licensing will lead to the most efficient allocation and use of the spectrum and will provide licensees with the flexibility and security of tenure needed to encourage investment in infrastructure. Spectrum licences issued during this re-allocation process will be subject to competition limits due to the *Radiocommunications (Spectrum Licence Limits—Regional 1800 MHz Band) Direction 2015* which will commence shortly after the commencement of the Declaration.

Background

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 that one or more parts of the spectrum are subject to re-allocation in relation to a specified period (the re-allocation period). The spectrum can be re-allocated by issuing either spectrum or apparatus licences.

Before making a declaration about any part(s) of the spectrum, the Minister must have received, during the previous 180 days, a recommendation from the ACMA about the same part(s) of the spectrum (under section 153E of the Act). In deciding whether to make the declaration the Minister must have regard to the recommendation. The ACMA must develop and make its recommendation in accordance with sections 153F and 153G of the Act, the latter of which requires the ACMA to consult on a draft recommendation prior to giving it to the Minister.

Only spectrum currently occupied by apparatus licences, or unoccupied spectrum, may be covered by a re-allocation declaration under subsections 153B(7) and (8) of the Act.

Existing apparatus licensees in the parts of the spectrum subject to the re-allocation declaration have a period to vacate the spectrum (which is described in the declaration as the 're-allocation period'). 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.

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

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

This Declaration is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*, but it is not subject to sunseting due to regulation 9 of the *Legislation Instruments Regulation 2004*.

Regulation Impact Statement

The Office of Best Practice Regulation has agreed that a Regulation Impact Statement is not required for the Declaration.

Statement of Compatibility with Human Rights

This statement of compatibility is prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

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

Consultation

The ACMA undertook consultation with affected apparatus licensees from 10 February 2015 to 11 March 2015, as required under section 153G of the Act. The ACMA also consulted on other matters relating to the spectrum and auction. Eight 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.

Notes on Sections

Section 1 – Name of instrument

Section 1 provides that the name of the Declaration is the *Radiocommunications (Spectrum Re-allocation—Regional 1800 MHz Band) Declaration 2015*.

Section 2 – Commencement

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

Section 3 – Interpretation

Subsection 3(1) defines terms used in the Declaration. It defines ‘regional Australia’, which comprises the areas where the parts of the spectrum specified in subsection 4(1) are subject to re-allocation under Part 3.6 of the Act. The areas are those specified in the table in clause 1 of Schedule 1, which is discussed below.

The note to subsection 3(1) sets out a non-exhaustive list of some terms relevant to the Declaration that are defined in the Act.

Subsection 3(2) provides that the lower number in a reference to a part of the spectrum is not included in that part of the spectrum, while the higher number is included. This is to prevent frequency band overlap.

Section 4 – Spectrum re-allocation

Section 4 sets out the parameters for the re-allocation of spectrum in accordance with section 153B of the Act.

Subsection 4(1) provides that two parts of the spectrum will be subject to re-allocation under Part 3.6 of the Act. These parts are 1725 MHz to 1785 MHz and 1820 MHz to 1880 MHz (the regional 1800 MHz band). Due to subsection 3(2), 1725 MHz and 1820 MHz are not included in the respective parts of the spectrum.

Subsection 4(2) provides that the declaration applies with respect to regional Australia. Regional Australia is defined in subsection 3(1) as those areas specified in the table in clause 1 of Schedule 1, which is discussed below. The effect of this subsection is to geographically limit the re-allocation of the parts of the spectrum in the regional 1800 MHz band to those parts of Australia specified in Schedule 1 as regional Australia. In metropolitan Australia, these parts of the spectrum are already licensed using spectrum licences.

Subsection 4(3) provides that, due to section 153L of the Act, the ACMA must re-allocate parts of the spectrum in the regional 1800 MHz band by issuing spectrum licences under Subdivision B of Division 1 of Part 3.2 of the Act in accordance with a marketing plan prepared under section 39A of the Act.

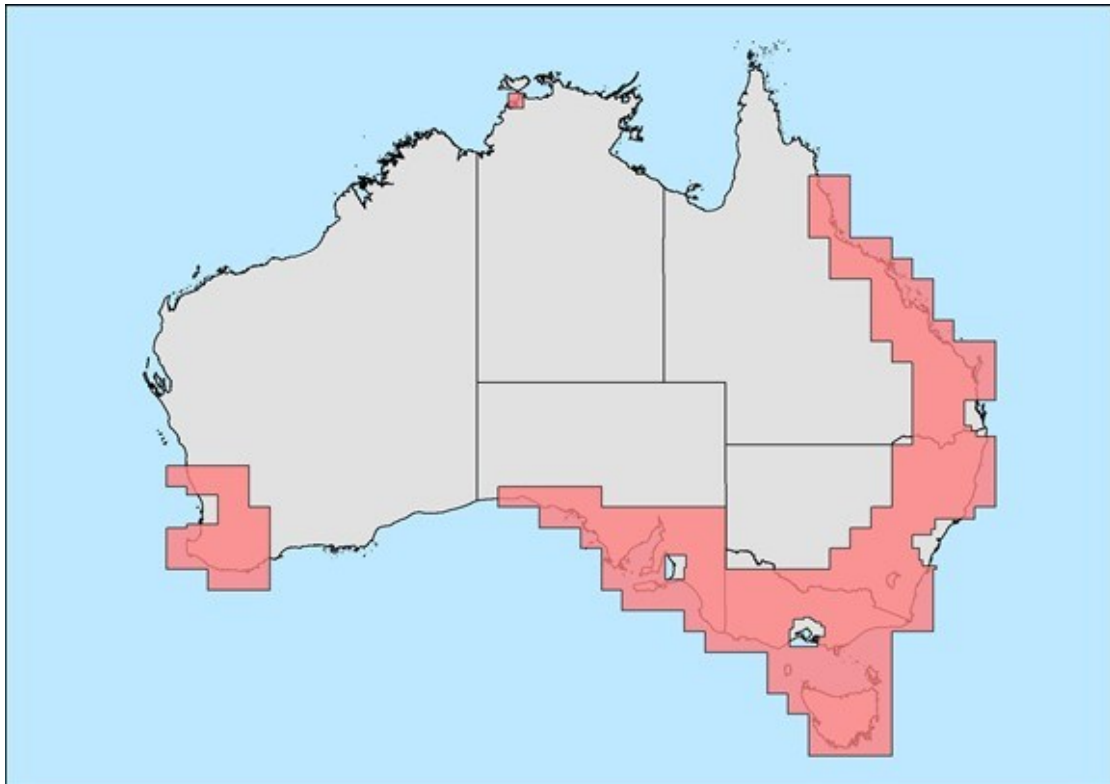
Subsection 4(4) provides that the re-allocation period for the declaration is two years beginning on the day that the Declaration commences. This is the period within which the ACMA is to complete the re-allocation process. Subsection 153B(4) of the Act requires the re-allocation period to begin within 28 days after a declaration is made, and run for at least two years. No new apparatus licences may be issued during the re-allocation period except by way of renewal, or in other circumstances specified in section 153P of the Act. All apparatus licences affected by the Declaration are cancelled under section 153H of the Act at the end of the re-allocation period. Apparatus licences may not be issued or renewed after the end of the re-allocation period except in circumstances specified in section 153P of the Act.

Subsection 4(5) provides that the re-allocation deadline for the declaration is the day before the first anniversary of the commencement of the Declaration. This is the day by which at least one licence must have been allocated by the ACMA. If no licences are allocated before the re-allocation deadline, the declaration is taken to have been revoked immediately after the re-allocation deadline by section 153K of the Act. Subsection 153B(5) of the Act requires the re-allocation deadline to be at least twelve months before the end of the re-allocation period.

Schedule 1 – Areas for re-allocation

Clause 1 – Regional Australia

The table in clause 1 sets out the areas which form regional Australia for the purposes of the Declaration. In turn, these areas are the areas which will be subject to re-allocation under Part 3.6 of the Act for the parts of the spectrum in the regional 1800 MHz band. An illustrative map of regional Australia for the Declaration (the areas marked in red) is included below.



These areas are set out using the ACMA's Hierarchical Cell Identification Scheme (HCIS). The HCIS is a naming convention for the Australian Spectrum Map Grid 2012 (ASMG). The ASMG is a system used by the ACMA to define geographic areas for radiocommunications licensing. A document describing the ASMG, as well as the spatial datasets describing each HCIS area was, at the time this explanatory statement was published, available on the ACMA's website at http://www.acma.gov.au/Industry/Spectrum/Radiocomms-licensing/Spectrum-licences/spectrum_23.

Additionally, the HCIS areas listed in the table may be converted into a Placemark file 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 such as Google Earth to visualise the areas proposed for re-allocation under the Declaration.