

EXPLANATORY STATEMENT

Radiocommunications Act 1992

Radiocommunications (Spectrum Designation—2 GHz and 3.4 GHz Bands) Notice 2017

Issued by the authority of the Minister for Communications

Authority

Subsection 36(1) of the *Radiocommunications Act 1992* (the **Act**) enables the Minister for Communications (the **Minister**), after consultation with the Australian Communications and Media Authority (the **ACMA**), to give to the ACMA a written notice designating a specified part of the spectrum to be allocated by issuing spectrum licences.

Subsection 36(2) of the Act provides that the notice is to be expressed to apply with respect to one or more specified areas.

Subsection 36(3) of the Act enables the ACMA to make recommendations to the Minister about spectrum designation notices that should be given under subsection 36(1). Subsection 36(4) of the Act requires the ACMA to consult publicly before making a recommendation to the Minister to issue a notice.

Purpose

The purpose of the *Radiocommunications (Spectrum Designation—2 GHz and 3.4 GHz Bands) Notice 2017* (the **Notice**) is to designate each of the following parts of the spectrum to be allocated by issuing spectrum licences with respect to the specified areas. The geographic boundaries for the areas named below are described in the instrument.

The following parts of the spectrum are being designated in the **2 GHz Band**:

- 1920-1930 MHz and 2110-2120 MHz in Adelaide, Brisbane A, Canberra B, Darwin, Hobart, Melbourne, Perth and Sydney A
- 1930-1960 MHz and 2120-2150 MHz in Adelaide, Brisbane A, Canberra A, Darwin, Hobart, Melbourne, Perth and Sydney A
- 1960-1980 MHz and 2150-2170 MHz in Adelaide, Brisbane A, Canberra A, Darwin, Hobart, Melbourne, Perth, regional east Australia, regional west Australia and Sydney A

The following parts of the spectrum are being designated in the **3.4 GHz Band**:

- 3439-3442.5 MHz in Adelaide, Hobart and Launceston
- 3489-3490 MHz in Hobart and Launceston
- 3490-3492.5 MHz in Brisbane B, Canberra A, Hobart, Launceston Rockhampton and Toowoomba
- 3542.5-3546 MHz in Brisbane B, Canberra A, Rockhampton, Sydney B and Toowoomba
- 3546-3547 MHz in Brisbane B, Canberra A, Rockhampton and Toowoomba
- 3547-3575 MHz in Brisbane B.

Background

The *Radiocommunications (Spectrum Re-allocation) Declaration 2000* (the **No. 1 of 2000 Declaration**) and the *Radiocommunications (Spectrum Re-allocation) Declaration No. 2 of 2000* (the **No. 2 of 2000 Declaration**) enabled the introduction of spectrum licensing in specified geographical areas of Australia in the 2 GHz Band and the 3.4 GHz Band respectively.

The No. 1 of 2000 Declaration and the No. 2 of 2000 Declaration are no longer in force, as they were taken to be repealed under then section 32 of the *Legislative Instruments Act 2003*. Consequently, the ACMA is unable to allocate vacant spectrum in the 2 GHz Band and the 3.4 GHz Band through the issue of spectrum licences without the Minister designating those bands by written notice under subsection 36(1) of the Act. These unallocated parts of the 2 GHz Band and the 3.4 GHz Band are interspersed amongst spectrum that is held as spectrum licences so it is preferable that spectrum in the 2 GHz Band and the 3.4 GHz band is subject to the same licence type.

Unallocated spectrum in the 2 GHz Band

In 2001, an auction was held for spectrum licences in the 2 GHz Band, pursuant to the No.1 of 2000 Declaration. Some parts of the 2 GHz Band have remained unsold since the auction. The spectrum licences that were issued as a result of the auction will expire on 11 October 2017. The Notice will enable the unsold spectrum and the spectrum that is not re-issued to incumbent licensees upon expiry to be allocated by issuing spectrum licences. In addition, the Notice enables spectrum in the 2 GHz Band for the Canberra area to be allocated by spectrum licences as the ACMA has identified it as now suitable for allocation.

Unallocated spectrum in the 3.4 GHz Band

In 2000, an auction was held for spectrum licences in the 3.4 GHz band, pursuant to the No.2 of 2000 Declaration. Some parts of the 3.4 GHz Band were passed in and have remained unsold since the auction. Some spectrum licences that were issued as a result of the auction expired on 13 December 2015 and remain unallocated as the incumbent licensee did not seek re-issue. The notice will enable the unsold spectrum and the spectrum that has not been re-issued to be allocated by issuing spectrum licences.

Issuing the Notice

In accordance with subsection 36(3) of the Act, the ACMA has made a recommendation to the Minister to issue the Notice. The Minister has considered the ACMA's recommendation and issues the Notice under subsection 36(1) of the Act.

The Office of Best Practice Regulation (**OBPR**) was consulted about the making of the Notice. The OBPR considered the changes arising from the Notice were machinery in nature and that no regulatory impact statement was required. The OBPR exemption numbers for the Notice are 21428 and 21441.

Consultation

The ACMA conducted public consultation (in accordance with subsection 36(4) of the Act) between 2 December 2016 and 13 January 2017. The ACMA received four responses, all of which supported the ACMA's proposal to make a recommendation for the spectrum in the 2 GHz and 3.4 GHz bands to be designated for spectrum licensing.

On 20 February 2017, the ACMA wrote to the Minister recommending, under subsection 36(3) of the Act, that the Minister give the ACMA a written notice under subsection 36(1) of the Act, designating the Relevant Spectrum for allocation as spectrum licences.

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*.

The Notice is made under subsection 36(1) of the Act and designates the 2 GHz Band and 3.4 GHz Band as spectrum to be allocated by issuing spectrum licences. The Notice has been issued after consultation with the ACMA and the public. The Notice provides for the continuation of current licensing arrangements and does not represent a significant change in policy.

The Notice 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*. It does not engage any of the applicable rights or freedoms and does not raise any human rights issues.

NOTES ON SECTIONS

Section 1 – Name of instrument

Section 1 provides for the Notice to be cited as the *Radiocommunications (Spectrum Designation—2 GHz and 3.4 GHz Bands) Notice 2017*.

Section 2 – Commencement

Section 2 provides that the Notice commences on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

Section 3 identifies the power that authorises the making of the Notice, being subsection 36(1) of the *Radiocommunications Act 1992*.

Section 4 – Interpretation

Section 4 defines expressions used in the Notice. 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 each part of the spectrum is designated to be allocated by issuing spectrum licences.

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

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 – Designation

Subsection 5(1) of the Notice designates the 12 parts of the spectrum in the 2 GHz and 3.4 GHz bands (listed on pages 1 and 2 of this explanatory statement) to be allocated by issuing spectrum licences, with respect to the areas named in the table. Each of the areas named in the table in subsection 5(1) are defined in the table in subsection 5(2) by reference to a series of HCIS cell identifiers.

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 http://www.acma.gov.au/Industry/Spectrum/Radiocomms-licensing/Spectrum-licences/spectrum_23. 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 this Notice.

For illustrative purposes only, the areas being designated in certain parts of the 2 GHz band and 3.4 GHz band have been represented by the shaded parts of the diagrams below. The 'Canberra A' and 'Canberra B' areas are described in more detail in the following two diagrams.

For Brisbane, Canberra and Sydney, there are two different sets of HCIS identifiers used in this section, for designation of different parts of the spectrum, as follows:

- Brisbane
 - 'Brisbane A' is the area designated for the relevant parts of the spectrum in the 2 GHz Band
 - 'Brisbane B' is the area designated for the relevant parts of the spectrum in the 3.4 GHz Band
- Canberra
 - 'Canberra A' is the area designated for the relevant parts of both the 2 GHz Band and the 3.4 GHz Band, except for the two parts of the spectrum below under 'Canberra B'
 - 'Canberra B' is the area designated for these parts of the spectrum: 1920-1930 MHz and 2110-2120 MHz
- Sydney
 - 'Sydney A' is the area designated for the relevant parts of the spectrum in the 2 GHz Band
 - 'Sydney B' is the area designated for the relevant parts of the spectrum in the 3.4 GHz Band

Figure 1: Areas designated for allocation by issuing spectrum licences in certain parts of the 2 GHz band (NB: see figures 3 and 4 for ‘Canberra A’ and ‘Canberra B’)

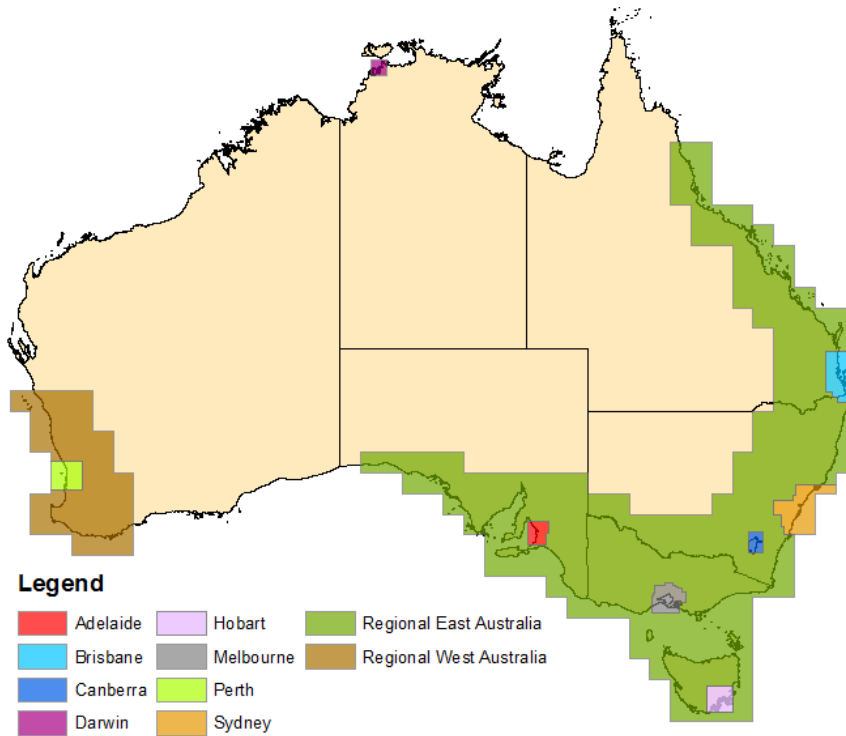


Figure 2: Areas designated for allocation by issuing spectrum licences in certain parts of the 3.4 GHz band

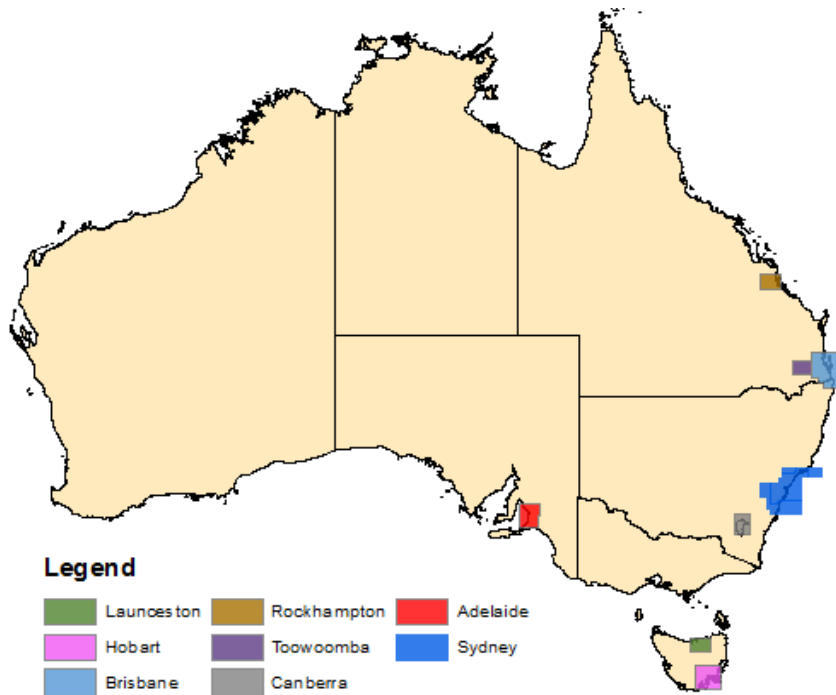


Figure 3: Canberra A

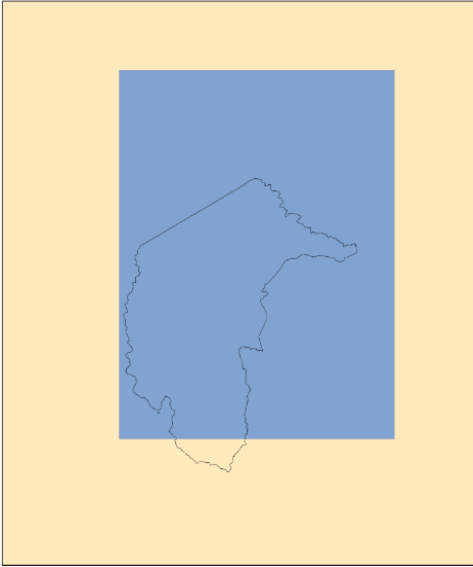


Figure 4: Canberra B (for 1920-1930 MHz and 2110-2120 MHz)

