



## **Radiocommunications (Spectrum Licence Limits—26 GHz Band) Direction 2020**

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I, Paul Fletcher, Minister for Communications, Cyber Safety and the Arts, give the following direction to the Australian Communications and Media Authority.

Dated 9 August 2020

Paul Fletcher  
Minister for Communications, Cyber Safety and the Arts

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## 1 Name

This instrument is the *Radiocommunications (Spectrum Licence Limits—26 GHz Band) Direction 2020*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument.	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under subsection 60(10) of the *Radiocommunications Act 1992*.

## 4 Interpretation

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) spectrum;
- (b) spectrum licence.

- (1) In this instrument:

**26 GHz band** means the part of the spectrum from 25.1 GHz to 27.5 GHz.

**ACMA** means the Australian Communications and Media Authority.

**Act** means *Radiocommunications Act 1992*.

**associate** means:

- (a) in relation to a person that is a body corporate:
  - (i) a director or secretary of the body; or
  - (ii) a related body corporate; or
  - (iii) a director or secretary of a related body corporate; or
  - (iv) an individual who controls at least 15% of the voting power or holds at least 15% of the issued shares in the body; or

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- (b) in relation to a person that is an individual:
    - (i) the individual's spouse; or
    - (ii) the individual's de facto partner within the meaning of the *Acts Interpretation Act 1901*; or
    - (iii) a body corporate in which the individual controls at least 15% of the voting power or holds at least 15% of the issued shares; or
    - (iv) a body corporate of which the individual is a director or secretary; or
    - (v) a body corporate that is a related body corporate in relation to a body corporate of which the individual is a director or secretary; or
  - (c) in relation to any person (the **first person**)—any other person (other than the Commonwealth when represented by the ACMA) who is party to a relevant agreement with the first person that either or both:
    - (i) is for the use by one party to the agreement of spectrum licensed to another party to the agreement under a spectrum licence for a part of the spectrum referred to in the re-allocation declaration;
    - (ii) relates to the acquisition of a spectrum licence for a part of the spectrum referred to in the re-allocation declaration.

**carrier** has the same meaning as in the *Telecommunications Act 1997*.

**designated area** means:

- (a) each of the named areas listed in Items 1 to 26 of the table in subsection 5(4) of the re-allocation declaration; and
- (b) the area which is the composite of each of the named areas listed in Items 27 to 29 of the table in subsection 5(4) of the re-allocation declaration.

**public mobile telecommunications service** has the same meaning as in the *Telecommunications Act 1997*.

**related body corporate** has the same meaning as in the *Corporations Act 2001*.

**relevant agreement** means an agreement, arrangement or understanding:

- (a) whether formal or informal, or partly formal and partly informal; and
- (b) whether written or oral, or partly written and partly oral; and
- (c) whether or not having legal or equitable force and whether or not based on legal or equitable rights;

other than a roaming services agreement or an agreement between carriers provided for by or under the *Telecommunications Act 1997* or Part XIC of the *Competition and Consumer Act 2010*.

**re-allocation declaration** means the *Radiocommunications (Spectrum Re-allocation—26 GHz Band) Declaration 2019*.

**roaming services agreement** means an agreement between two or more carriers for the principal purpose of enabling the supply of public mobile telecommunications services by one of those other carriers, in geographic locations where another of those carriers' public mobile telecommunications services are not available.

**specified group of persons** means either of the following:

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- (a) a person and all associates of that person;
  - (b) subject to subsection (3)—any 2 or more groups referred to in paragraph (a) that have at least one member in common.
- (2) In this direction, a reference to a part of the spectrum includes all frequencies that are greater than the lower frequency, up to and including the higher frequency.
- Note: This means the lower number in the reference to a part of the spectrum is not included in the part of the spectrum.
- (3) For the purposes of paragraph (b) of the definition of *specified group of persons*, an individual is taken not to be a member in common between 2 or more groups that are comprised of a person (*relevant person*) and the associates of that relevant person where all of the following apply:
- (a) the individual is providing services as a company secretary (*company secretarial services*) to one or more related bodies corporate of the relevant person in each of the groups;
  - (b) the individual is providing the company secretarial services through a person or entity (*third party service provider*) that:
    - (i) is not in any of the groups; and
    - (ii) carries on a business for the provision of professional services, including company secretarial services; and
    - (iii) has, in the ordinary course of carrying on that business, been separately and independently engaged by an entity within each of those groups, under a contract or other legally binding arrangement, to provide the company secretarial services;
  - (c) the individual is not, otherwise than by reason of providing the company secretarial services, an associate of any of the relevant persons;
  - (d) each of the related bodies corporate to which the individual is providing the company secretarial services is incorporated outside Australia.

## 5 Direction

- (1) I direct the ACMA to determine allocation procedures under subsection 60(1) of the Act that impose limits on the aggregate of the parts of the spectrum that may be used by a person or specified group of persons as a result of the allocation of spectrum licences under Subdivision B of Division 1 of Part 3.2 of the Act, in accordance with this section.
- (2) The limits imposed must:
- (a) apply to the allocation of spectrum licences in the 26 GHz band enabled by the re-allocation declaration in each designated area;
  - (b) ensure that no person or specified group of persons may, as a result of the allocation of a spectrum licence that is enabled by the re-allocation declaration, use more than an aggregate of 1 GHz of the 26 GHz band in each designated area.