

Explanatory Statement

Radiocommunications Act 1992

Radiocommunications (Spectrum Re-allocation—850/900 MHz Band) Declaration 2020

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

Purpose

The purpose of the Radiocommunications (Spectrum Re-allocation—850/900 MHz Band) Declaration 2020 is to declare the following parts of the radiofrequency spectrum:

- 814 MHz to 825 MHz;
- 859 MHz to 870 MHz;
- 890 MHz to 915 MHz; and
- 935 MHz to 960 MHz;

as being subject to re-allocation by the Australian Communications and Media Authority (ACMA) by issuing spectrum licences with respect to the named area listed in item 1 in the table in subsection 5(4) of the declaration. This enables ACMA to allocate spectrum licences in the 850/900 MHz band in these areas, including parts of the band encumbered by apparatus licences.

The re-allocation period for the declaration will commence at the beginning of the day the instrument commences, and end on 30 June 2024.

The re-allocation deadline for the declaration is 30 June 2023, being 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 900 MHz band is currently allocated to Telstra, Optus and TPG Telecom under apparatus licensing in a manner that is not conducive to the efficient deployment of 4G or 5G services. In practice, this means that large parts of the band are either not being used efficiently or, in some cases, at all.

The Government's goal in re-allocating this spectrum is to maximise the overall public benefit derived from the use of this spectrum. A band clearance and price-based allocation is the best way to achieve a reconfiguration of the 900 MHz band into a configuration that is more efficient for the delivery of 4G and 5G services.

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 late 2021.

Following a review in 2015, ACMA identified (and is progressively clearing) spectrum in the 800 MHz band with a view to creating 2 x 15 MHz of harmonised mobile broadband spectrum, referred to as the 850 MHz expansion band (809-824/854-869 MHz). The frequencies 809-814/854-859 MHz are not included in this Declaration as the Commonwealth Government has reserved this spectrum for a national Public Safety Mobile Broadband (PSMB) capability. Accordingly, 2 x 10 MHz of additional low-band spectrum will be made available for spectrum licensing.

Given the 850 MHz expansion band and 900 MHz band are at least partially substitutable, a combined allocation can enhance the efficiency of allocation and use of the spectrum by providing appropriate incentives for licensees in 900 MHz to potentially exit the band in favour of the 850 MHz expansion band. This could result in operators securing larger contiguous spectrum holdings in both the 850 MHz and 900 MHz bands, which is more efficient. In order to make the 850 MHz expansion and 900 MHz bands available for this allocation, the declaration re-allocates parts of the band (814 MHz to 825 MHz, 859 MHz to 870 MHz, 890 MHz to 915 MHz, and 935 MHz to 960 MHz) for spectrum licensing.

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 a Regulatory Impact Statement is not required for the declaration on the grounds that this is a continuation of the 850/900 MHz re-allocation process that has already been assessed as having nil regulatory impact by OBPR under IDs 26454, 21147 and 19557.

Consultation

ACMA decision paper

In December 2019, ACMA released its *Reconfiguring the 900 MHz band/Allocating the 850 MHz expansion band – Decision paper*. In this paper, ACMA stated that it was of the view

that the best way to achieve reconfiguration of the 900 MHz band is to undertake a band clearance and price-based allocation in conjunction with an allocation of spectrum in the 850 MHz expansion band.

ACMA draft re-allocation recommendation

In May 2020, ACMA released its *Draft spectrum re-allocation recommendation for the 850/900 MHz band – Consultation paper*, conducting public consultation and inviting comments from potentially affected licensees in accordance with section 153G of the Act. ACMA received 11 responses on the terms of the draft recommendation and had regard to all submissions in preparing the final version of its recommendation to the Minister.

ACMA re-allocation recommendation

On 7 September 2019, ACMA gave the Minister a written recommendation, in accordance with subsection 153F(1) of the Act, that the Minister declare the following frequencies be subject to re-allocation by issuing spectrum licences:

- 809–825 MHz;
- 854–870 MHz;
- 890–915 MHz;
- 935–960 MHz.

ACMA advised that respondents to its consultation were generally supportive of the terms of the draft recommendation and that after considering the views expressed, ACMA remained of the view that re-allocating the 850/900 MHz band across all of Australia (excluding the mid-west radio quiet zone) by spectrum licences is the best way to achieve the highest-value use of spectrum in the band and pave the way for the deployment of new mobile broadband technologies in the future.

In its public consultation on the draft re-allocation recommendation, ACMA originally proposed that the re-allocation period end 31 December 2023 for the 900 MHz band, and 30 June 2024 for the 850 MHz expansion band. In response to stakeholder feedback from Singtel Optus Pty Ltd and Telstra Corporation Ltd, ACMA recommended to the Minister that the re-allocation period for both bands end on 30 June 2024.

Attachment 1: Notes on Sections

Section 1—Name

Section 1 provides that the declaration may be cited as the *Radiocommunications (Spectrum Re-allocation—850/900 MHz Band) Declaration 2020*.

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 850/900 MHz 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

Subsection 5(1) declares the following parts of the spectrum as subject to re-allocation under Part 3.6 of the Act in accordance with subsection (2):

- 814 MHz to 825 MHz;
- 859 MHz to 870 MHz;
- 890 MHz to 915 MHz; and
- 935 MHz to 960 MHz.

Subsection 5(2) specifies that the frequencies in paragraph 5(1) are subject to re-allocation by issuing spectrum licences with respect to the named area listed in the table in subsection (4), which is the Australia-wide area.

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 beginning at the time this instrument commences and ending on 30 June 2024. 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 certain 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 on 30 June 2023. 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).

Subsection 5(4) specifies, for the purposes of subsection 153B(3) of the Act, that the named area, which is listed in Column 1 in the table of this subsection, is 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—850/900 MHz Band) Declaration 2020

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

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- 890 MHz to 915 MHz; and
- 935 MHz to 960 MHz;

as being subject to re-allocation by the Australian Communications and Media Authority (ACMA) by issuing spectrum licences with respect to the named areas listed in item 1 in the table in subsection 5(4) of the declaration. This enables ACMA to allocate spectrum licences in the 850/900 MHz 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.