

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications Spectrum Marketing Plan (26 GHz Band) 2020

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications Spectrum Marketing (26 GHz Band) 2020 (Marketing Plan)* under section 39A of the *Radiocommunications Act 1992 (the Act)*.

Subsection 39A(2) of the Act provides that the ACMA must, by legislative instrument, prepare a marketing plan for issuing spectrum licences that authorise the operation of radiocommunications devices at frequencies within a part or parts of spectrum specified in a re-allocation declaration made under section 153B of the Act, and within the area or areas specified in that declaration with respect to that part or those parts. Subsection 39A(5) provides that a marketing plan may indicate:

- (a) the procedures to be followed for issuing spectrum licences in accordance with the plan;
- (b) the timetable for issuing spectrum licences in accordance with the plan;
- (c) how the spectrum dealt with under the plan is to be apportioned among the spectrum licences to be issued;
- (d) how much of the spectrum dealt with under the plan is to be reserved for public or community services;
- (e) the conditions, or types of conditions, that may be included in spectrum licences to be issued.

Purpose and operation of the Marketing Plan

The Marketing Plan is for the issuing of spectrum licences that authorise the operation of radiocommunications devices in the frequency range 25.1 GHz to 27.5 GHz (**the 26 GHz band**), within the areas specified in the *Radiocommunications (Spectrum Re-allocation – 26 GHz Band) Declaration 2019 (Re-allocation Declaration)*.

Background

On 18 October 2019, the Minister for Communications, Cyber Safety and the Arts (**the Minister**) made the Re-allocation Declaration. The Re-allocation Declaration provides that each of:

- the frequency range 25.1 GHz to 27.0 GHz, with respect to particular geographic areas; and
- the frequency range 27.0 GHz to 27.5 GHz, with respect to particular geographic areas;

is subject to re-allocation by issuing spectrum licences.

The ACMA intends to allocate each part of the 26 GHz band specified in the Re-allocation Declaration by auctioning spectrum licences in 2021 (**26 GHz band spectrum auction**).

Operation of the Marketing Plan

The ACMA has made the Marketing Plan in relation to the 26 GHz band spectrum auction.

The Marketing Plan is one of a set of legislative instruments required for the allocation of spectrum licences in the 26 GHz band, including:

- the *Radiocommunications (Spectrum Licence Allocation – 26 GHz Band) Determination 2020 (Allocation Determination)*;

- *Radiocommunications (Unacceptable Levels of Interference – 26 GHz Band) Determination 2020 (Unacceptable Interference Determination)*;
- *Radiocommunications Advisory Guidelines (Managing Interference from Spectrum Licensed Transmitters – 26 GHz Band) 2020 (RAG Tx)*;
- *Radiocommunications Advisory Guidelines (Managing Interference to Spectrum Licensed Receivers – 26 GHz Band) 2020 (RAG Rx)*.

The Marketing Plan divides the 26 GHz band into three categories and 30 products, with each product defined by a frequency range and geographic region, set out in Schedule 2 to the Marketing Plan. Twenty-eight geographic regions have been defined in Schedule 3 to the Marketing Plan. Of the 29 named areas in the Re-allocation Declaration, two areas (Bunbury and Perth) have been combined into one Greater Perth Upper region.

Each product falls into one of three categories:

Category	Frequency range	Lot bandwidth	Number of products
Category 1	25.1 GHz to 27.5 GHz	200 MHz	24
Category 2	25.1 GHz to 27.0 GHz	100 MHz	3
Category 3	27.0 GHz to 27.5 GHz	100 MHz	3

Category 2 and category 3 relate to spectrum in the Greater Perth Upper, Greater Perth Lower, Hobart and Margaret River regions.

The technical conditions to be included in the spectrum licences allocated in accordance with the Marketing Plan and Allocation Determination are set out in the Marketing Plan, including the sample spectrum licence at Schedule 6. The broader technical framework is set out in the following legislative instruments:

- Unacceptable Interference Determination;
- RAG Tx;
- RAG Rx.

The technical framework places constraints on, and regulates the use of, spectrum licences to allow licensees to operate services without causing undue interference to other services operating in other (or the same) parts of the radiofrequency spectrum. Core conditions (in accordance with section 66 of the Act) will be included in spectrum licences to:

- define their geographic boundaries;
- define their range of frequencies;
- set out-of-area radio emission limits;
- set out-of-band (unwanted) radio emission limits.

The Marketing Plan and sample spectrum licence also set out other licence conditions proposed to be included on spectrum licences issued in the 26 GHz band.

Licence issue, commencement and duration are also described in the Marketing Plan. As required by the *Radiocommunications (Spectrum Access Charges – 26 GHz Band) Direction 2020 (Spectrum Access Charge Direction)*, the Allocation Determination makes provision for the winning bidders at the 26 GHz band spectrum auction to elect to pay their winning price upfront or in instalments. The ACMA will issue spectrum licences as soon as practicable after:

- if the winning bidder elects to pay the winning price upfront – the winning bidder pays the balance of the winning price in accordance with the Allocation Determination;

- if the winning bidder elects to pay the winning price in instalments – the winning bidder gives the ACMA a bank guarantee of a kind required by the Spectrum Access Charge Direction, the ACMA reaches an agreement for the payment of the winning price, and the winning bidder pays the first instalment.

Spectrum licences will commence on the later of:

- the day occurring 12 weeks after the auction manager tells all bidders in writing the names of all winning bidders, the frequency ranges for all the lots allocated in the auction, and the winning price to be paid (**the result announcement**); or
- the date the licence is issued.

All spectrum licences issued in the 26 GHz band will expire on a fixed date, being 15 years and 12 weeks after the result announcement.

The sample spectrum licence set out in Schedule 6 to the Marketing Plan contains information relating to core and other licence conditions that may apply to the operation of radiocommunications devices under the spectrum licence. However, the spectrum licences issued as a result of the auction may contain additional or different conditions.

A provision-by-provision description of the Marketing Plan is set out in the notes at **Attachment A**.

The Marketing Plan is a disallowable legislative instrument for the purposes of the *Legislation Act 2003* (**the LA**).

On the day the Marketing Plan was made, the Radiocommunications Legislation Amendment (Reform and Modernisation) Bill 2020 (**the Bill**) had been introduced to, but not passed by, Parliament. If the Bill is passed by Parliament, its provisions may affect the matters set out in the Marketing Plan or in a spectrum licence allocated in accordance with the Marketing Plan. Further information on spectrum reform can be found at www.communications.gov.au, or by emailing spectrumreform@communications.gov.au.

Documents incorporated by reference

Subsection 314A(2) of the Act provides that an instrument under the Act may make provision in relation to a matter by applying, adopting or incorporating (with or without modifications) matter contained in any other instrument or writing as in force or existing at a particular time or from time to time. The Marketing Plan incorporates the following by reference, as existing from time to time, or otherwise refers to them:

- the Australian Spectrum Map Grid 2012, published by the ACMA, and available free of charge from the ACMA's website at www.acma.gov.au;
- the Bill, available free of charge from the Federal Register of Legislation: www.legislation.gov.au;
- the Radiocommunications Assignment and Licensing Instruction MS 46 (**RALI MS 46**), published by the ACMA, and available free of charge from the ACMA's website: www.acma.gov.au;
- the Radio Regulations, published by the International Telecommunication Union (**ITU**). The Radio Regulations contain Articles, Appendixes, Resolutions and Recommendations of the ITU relating to international radiocommunications coordination. The Radio Regulations are available, free of charge, from the ITU's website: www.itu.int;

The Marketing Plan also incorporates the following Acts and legislative instruments (including by the adoption of definitions), or otherwise refers to them, as in force from time to time:

- the Act;
- the *Acts Interpretation Act 1901*;
- the *Administrative Appeals Tribunal Act 1975*;
- the Allocation Determination
- the *Australian Communications and Media Authority Act 2005*;
- the *Income Tax Assessment Act 1997*;
- the *International Tax Agreements Act 1953*;
- the LA;
- the *Radiocommunications (Interpretation) Determination 2015*;
- the *Radiocommunications Licence Conditions (Area-Wide Licence) Determination 2020*;
- the *Radiocommunications Licence Conditions (Apparatus Licence) Determination 2015*;
- the *Radiocommunications (Register of Radiocommunications Licences) Determination 2017*;
- the *Radiocommunications (Trading Rules for Spectrum Licences) Determination 2012*;
- the RAG Rx;
- the RAG Tx;
- the Re-allocation Declaration;
- the Spectrum Access Charge Direction;
- the Unacceptable Interference Determination.

The acts and legislative instruments listed above may be obtained from the Federal Register of Legislation (www.legislation.gov.au).

Consultation

Before the Marketing Plan was made, the ACMA was satisfied that consultation was undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the LA.

In November 2019, the ACMA set up a short-term industry technical liaison group (TLG) to support the development of a technical framework to support the introduction of 5th generation wireless broadband services in the 26 GHz band.

The TLG was asked to consider and provide advice to the ACMA on technical aspects required for the development of the spectrum licence technical framework in the 26 GHz band. These included:

- the development of the core conditions of the spectrum licensed band in accordance with section 66 of the Act;
- the development of a determination under subsection 145(4) of the Act;
- the development of any associated advisory guidelines to be made under section 262 of the Act;
- the development of a draft spectrum licence; and
- the development of a minimum contiguous bandwidth for spectrum licences in the 26 GHz band.

The ACMA developed papers which outlined its proposed approach to the spectrum licensing framework for the 26 GHz band. These papers were made available by the ACMA to the TLG members for comment. These papers can be found on the ACMA's website. The ACMA had regard to the views expressed by the TLG members when preparing the instrument.

A draft version of the Marketing Plan was released for public consultation on 9 July 2020, together with the consultation paper *Draft allocation instruments for the 26 GHz metropolitan and regional lots auction*. Consultation closed on 10 August 2020.

The ACMA consultation sought stakeholder views on several issues. The ACMA received eight written submissions in response to this consultation paper and the draft version of the Marketing Plan.

On the issue of licence term, submissions supported a 15-year licence term (the maximum currently permitted under the Act).

On the issue of licence commencement and expiry, the ACMA sought views on linking the commencement of the licence with the date payment is made for the licence to the ACMA. This could result in different licence expiry dates across the band. While submitters did not agree on the timing of licence commencement, the majority of submissions on this matter supported a common licence expiry date. Having considered these submissions, the ACMA considers a significant delay to licence commencement is not appropriate because the 26 GHz band is largely unencumbered. Therefore, the Marketing Plan:

- states that each licence will commence 12 weeks after the result announcement, or on the date the licence is issued, whichever occurs later for the licence;
- provides for a common expiry date for all licences of 15 years and 12 weeks after the result announcement.

On the issue of lot configuration, the ACMA proposed separate products for each geographic area subject to re-allocation, except the Bunbury, Perth and Perth/Bunbury areas, which were proposed to be a single region known as Greater Perth. A single lot bandwidth of 200 MHz was proposed for all products. Submissions expressed a diverse range of views about the most appropriate frequency and geographic configuration of spectrum for the 26 GHz band spectrum auction. Some stakeholders expressed concern that the strict constraint on permissible total radiated power levels above 27 GHz in parts of Greater Perth and Margaret River, and in Hobart, would result in a significant value difference between the 25.1 GHz to 27.0 GHz and the 27.0 GHz to 27.5 GHz frequency ranges in these areas.

Having considered these submissions, the ACMA has decided to divide the 26 GHz band in the manner explained in Attachment A, in order to allow bidders to better express their demand for spectrum below and above 27 GHz in these areas.

The majority of submitters expressed general support for the proposed technical conditions, although a range of amendments were proposed, mostly to provide additional protection to incumbent services or to increase deployment flexibility for new wireless broadband services. The ACMA considered this feedback and made a number of changes to the Marketing Plan in response.

Regulatory impact assessment

A preliminary assessment of the proposal to make the Marketing Plan was conducted by the Office of Best Practice Regulation (**OBPR**), based on information provided by the ACMA, for the purposes of determining whether a Regulation Impact Statement (**RIS**) would be required. OBPR advised that a RIS would not be required because the proposed regulatory change is minor or machinery in nature – OBPR reference numbers 25951 and 24947.

Statement of compatibility with human rights

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires the rule-maker in relation to a legislative instrument to which section 42 (disallowance) of the LA applies to cause a statement of compatibility with human rights to be prepared in respect of that legislative instrument.

The statement of compatibility set out below has been prepared to meet that requirement.

Overview of the Marketing Plan

On 18 October 2019, the Minister made the Re-allocation Declaration. The Re-allocation Declaration provides that each of:

- the frequency range 25.1 GHz to 27.0 GHz, with respect to particular geographic areas; and
- the frequency range 27.0 GHz to 27.5 GHz, with respect to particular geographic areas;

is subject to re-allocation by issuing spectrum licences.

The ACMA intends to allocate each of the parts of the 26 GHz band specified in the Re-allocation Declaration by auctioning spectrum licences in 2021.

Subsection 39A(2) of the Act provides that the ACMA must, by legislative instrument, prepare a marketing plan for issuing spectrum licences that authorise the operation of radiocommunications devices at frequencies within a part or parts of the spectrum specified in a re-allocation declaration, and within the area or areas specified in that declaration with respect to that part or those parts.

Subsection 39A(5) provides that the marketing plan may indicate:

- (a) the procedures to be followed for issuing spectrum licences in accordance with the plan;
- (b) the timetable for issuing spectrum licences in accordance with the plan;
- (c) how the spectrum dealt with under the plan is to be apportioned among spectrum licences to be issued;
- (d) how much of the spectrum dealt with under the plan is to be reserved for public or community services; and
- (e) the conditions, or types of conditions, that may be included in spectrum licences to be issued.

The ACMA has made the Marketing Plan under section 39A. Subject to the operation of certain allocation limits, any person may apply to be allocated a spectrum licence in accordance with the Marketing Plan.

Human rights implications

The ACMA has assessed whether the Marketing Plan is compatible with human rights, being the rights and freedoms recognised or declared by the international instruments listed in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* as they apply to Australia.

Having considered the likely impact of the Marketing Plan and the nature of the applicable rights and freedoms, the ACMA has formed the view that the Marketing Plan does not engage any of those rights or freedoms.

Conclusion

The Marketing Plan is compatible with human rights as it does not raise any human rights issues.

**Notes to the *Radiocommunications Spectrum Marketing Plan
(26 GHz Band) 2020***

Part 1—Preliminary

Section 1 Name

This section provides for the Marketing Plan to be cited as the *Radiocommunications Spectrum Marketing Plan (26 GHz Band) 2020*.

Section 2 Commencement

This section provides for the Marketing Plan to commence at the start of the day after the day it is registered on the Federal Register of Legislation.

The Federal Register of Legislation may be accessed free of charge at www.legislation.gov.au.

Section 3 Authority

This section identifies the provision of the Act that authorises the making of the Marketing Plan, namely section 39A of the *Radiocommunications Act 1992*.

Section 4 Purpose of the instrument

This section lists the main matters described by the Marketing Plan. For a more complete understanding of allocation procedures, the Marketing Plan should be read in conjunction with the Allocation Determination.

Section 5 Definitions

This section defines a number of key terms used throughout the Marketing Plan, and indicates where other key terms are defined.

A number of other expressions used in the Marketing Plan are defined in the Act.

Section 6 References to other instruments

This section provides that in the Marketing Plan, unless the contrary intention appears:

- a reference to another legislative instrument is a reference to that other legislative instrument as in force from time to time; and
- a reference to any other kind of instrument or writing is a reference to that other instrument or writing as in force or existing from time to time.

Section 7 References to frequency ranges

This section specifies that in the Marketing Plan, unless otherwise specified, a reference to a part of the spectrum, a frequency band or a frequency range includes all frequencies that are greater than but not including the lower frequency, up to and including the higher frequency.

Part 2—Allocation of spectrum licences

Section 8 Simplified outline of this Part

This section sets out a simplified outline of Part 2.

Section 9 Parts of the spectrum

This section provides that spectrum licences in the 26 GHz band will be allocated and issued in the manner described in the Marketing Plan and the Allocation Determination.

Section 10 How licences will be allocated

This section provides that spectrum licences in the 26 GHz band will be allocated by auction in accordance with procedures set out in the Allocation Determination.

Section 11 The auction

This section describes how the 26 GHz band has been divided by the ACMA into smaller blocks, referred to as lots, for auction. Each lot is defined by a frequency range (bandwidth) and a specific geographic area (region).

The Minister declared the 26 GHz band to be re-allocated in relation to 29 named areas. The Marketing Plan treats each area as its own region, except for the two areas of Bunbury and Perth, which are combined into a 'Greater Perth Upper' region. The named area of Bunbury/Perth is the 'Greater Perth Lower' region.

The 26 GHz band has been divided into products as described in Schedule 2 to the Marketing Plan. There are 30 products in total. Each product is described by its region and frequency range. Each product has a unique region, except:

- Hobart Lower and Hobart Upper, which have the same region (Hobart); and
- Margaret River Lower and Margaret River Upper, which have the same region (Margaret River).

The number of lots of each product that are available at auction is set out in column 5 of Table 1 in Schedule 2 to the Marketing Plan. Not all products have the same number of lots available. In total, there are 360 lots on offer in the 26 GHz band auction.

Products have been divided into three categories for the purpose of the auction, as described in Schedule 1 to the Marketing Plan, and summarised in the following table:

Category	Frequency range	Lot bandwidth	Number of products	Number of lots in each product	Products in category
Category 1	25.1 GHz to 27.5 GHz	200 MHz	24	12	Product with any region except Greater Perth Lower, Greater Perth Upper, Hobart and Margaret River
Category 2	25.1 GHz to 27.0 GHz	100 MHz	3	19	Products with Greater Perth Lower, Hobart or Margaret River as the region
Category 3	27.0 GHz to 27.5 GHz	100 MHz	3	5	Products with Greater Perth Upper, Hobart or Margaret River as the region

This section states that the ACMA will set a lot rating for the lots of each product in accordance with the Allocation Determination.

This section also gives a brief description of the manner in which the auction will be conducted, and provides that the auction will be held in accordance with the procedures set out in the Allocation Determination. Full details of auction procedures are set out in the Allocation Determination.

Section 12 Advertising the auction

This section provides that the ACMA will advertise the details of the auction and invite persons to take part, in accordance with the Allocation Determination. More details of how the auction will be advertised are in the Allocation Determination.

Section 13 Taking part in the auction

This section provides that detailed information about the application requirements and the auction process will be made available by the ACMA in an applicant information package (**AIP**), to be published in accordance with the Allocation Determination. The AIP will be made available when the ACMA advertises the auction under section 25 of the Allocation Determination. The mandatory contents of the AIP are set out in subsection 26(1) of the Allocation Determination.

The AIP will contain information about the allocation process for potential participants. It will describe how to apply to participate in the allocation process, and will include copies of all necessary documents to participate in the process.

This section also states that information about how to apply to participate in the auction is included in Part 4 of the Allocation Determination.

Part 3—Spectrum licences to be issued

Section 14 Simplified outline of this Part

This section sets out a simplified outline of Part 3.

A note to this section alerts potential participants in the auction that on the day the Marketing Plan was made, the Bill had been introduced to, but not passed by, Parliament. If the Bill is passed by Parliament, its provisions may affect the matters described by Part 3 of the Marketing Plan.

Section 15 Issue of licences and payment of spectrum access charge

This section sets out when the ACMA will issue spectrum licences in the 26 GHz band.

In accordance with the Spectrum Access Charge Direction, the Allocation Determination allows a winning bidder to choose to pay the spectrum access charge in five annual instalments.

If a winning bidder elects to pay the spectrum access charge upfront, a licence will be issued to a winning bidder as soon as practicable after the winning bidder has paid the part of the spectrum access charge that the Allocation Determination requires to be paid before a licence will be issued (the winning price less any eligibility payment already made). If a spectrum licence is issued after the spectrum access charge is paid, the spectrum access charge is not refundable in any circumstances.

Where a winning bidder elects to pay the spectrum access charge in instalments, the Spectrum Access Charge Direction requires the winning bidder to provide to the ACMA a bank guarantee, which secures the payment of part of the final four instalments, before the ACMA can agree, under paragraph 62(2)(b) of the Act, to the winning bidder paying in instalments in accordance with the Allocation Determination.

If a winning bidder elects to pay the spectrum access charge in instalments, a licence will be issued as soon as practicable after all of the following events have occurred:

- the ACMA notifies the winning bidder that it has received the election;
- the winning bidder provides the ACMA with a bank guarantee of the kind, and in the manner, required by this section and the Spectrum Access Charge Direction;
- the ACMA reaches an agreement for payment of the spectrum access charge in instalments in accordance with the Act;
- the winning bidder pays the first instalment (less any eligibility payment already made) in accordance with that agreement and the Allocation Determination.

If a spectrum licence is issued to a winning bidder after the first instalment is paid, that instalment and any subsequent instalment is not refundable in any circumstances.

If the remaining four instalments are not paid by the date specified for payment in the Allocation Determination, a licensee may be in breach of the licence condition required to be included in the licence by section 67 of the Act. If a licensee contravenes a condition of its licence, the ACMA may suspend or cancel the licence (see Division 3 of Part 3.2 of the Act). The ACMA may also enforce the bank guarantee, if any of the remaining four instalments are not paid by the date specified for payment in the agreement and the Allocation Determination.

The Allocation Determination sets out the relevant procedures for payment of spectrum access charges in more detail.

Section 16 Commencement of licences

This section provides that licences issued as a result of the 26 GHz band auction will come into force either 12 weeks after the auction manager complies with subsection 66(2) of the Allocation Determination, or the date the licence is issued, whichever is later.

Subsection 66(2) of the Allocation Determination specifies that the auction manager must notify all bidders of the results of the auction, including the names of all winning bidders, the frequency ranges for each lot allocated at auction, and the winning price for which the lot was won.

Section 17 Duration of licences

This section provides that all the spectrum licences issued will remain in force for a period starting on the day the licence comes into force and ending 15 years and 12 weeks after the auction manager complies with subsection 66(2) of the Allocation Determination. That is, all licences will end on the same day.

Section 18 Core licence conditions

Under section 66 of the Act, there are a number of core conditions which a spectrum licence must include. This section sets out the types of core conditions to be included in a spectrum licence allocated in accordance with the Marketing Plan, including the geographic area and frequency bands in which a radiocommunications device can be operated under a spectrum licence, and the out-of-area and out-of-band emission levels.

Section 19 Determining core licence conditions

This section explains how the core conditions for spectrum licences issued in the 26 GHz band as a result of an auction will be determined.

Each licence will specify a range of frequencies within which the licensee may operate radiocommunications devices. The range of frequencies will depend on the lots the licensee has been

allocated in accordance with the Allocation Determination. If a licensee has been allocated multiple lots, the licence issued may specify the aggregate frequency range for the lots.

Each licence will also specify the geographic area within which the licensee may operate radiocommunications devices. The geographic area will be the region, or regions, described in Schedule 3 to the Marketing Plan for the lots allocated in accordance with the Allocation Determination.

The regions are defined by an identifier scheme adopted by the ACMA in 2012, the Hierarchical Cell Identification Scheme (**the HCIS**). Under the HCIS, an area is defined by referring to a set of identifiers which collectively correspond to a single area on the Australian Spectrum Map Grid (**the ASMG**). The ASMG is described in more detail, including the use of geographic co-ordinates to define the ASMG outer boundary, in the Australian Spectrum Map Grid 2012, available from the ACMA's website at www.acma.gov.au.

The ASMG divides the Australian land mass into a grid of squares (cells) of four sizes, with the side lengths of the largest to smallest cells being, respectively, 3 degrees, 1 degree, 15 minutes and 5 minutes of arc. The HCIS names the cells in this tiered structure, with cells of each size given a unique identifier name. Under this system, the region for a lot is comprised of a collection of unique identifiers that cover the required geographic area on the ASMG. Spatial data files available from the ACMA's website may be used to generate a map of an area defined by a set of HCIS identifiers with geographic information systems software. A HCIS area description to Placemark conversion tool has also been developed and is available online at the ACMA website: www.acma.gov.au.

Indicative maps that illustrate the areas of the regions are shown in Schedule 3 to the Marketing Plan.

Subsections 19(2) and 19(3) of the Marketing Plan provide that the emission limits, which will be licence conditions included in the spectrum licences issued in accordance with the Marketing Plan, will be calculated in accordance with Schedules 4 and 5 to the Marketing Plan. These Schedules are, respectively, used to calculate the maximum emission limits allowable outside the geographic area, and outside the frequency band, of a spectrum licence, and they form part of the core conditions of each licence.

Section 20 Other licence conditions

This section identifies other kinds of statutory licence conditions and other licence conditions that may be included in each spectrum licence issued under this allocation process, but which are not core conditions of the licence. These include the conditions in relation to payment to the ACMA of applicable charges, use by third parties, registration requirements for radiocommunications transmitters and residency requirements of the licensee. The ACMA may also include conditions about other matters, including conditions relating to interference management. Some of these conditions are included in the sample licence at Schedule 6.

Each spectrum licence will also include a condition requiring the licensee to ensure that they protect any apparatus licence operating in an area subject to re-allocation in the 26 GHz band until the end of the re-allocation period. This condition ensures that incumbent apparatus licences that are authorised to operate in the band for a period of time after the new spectrum licences commence are protected from interference.

Existing apparatus licences in the areas specified in the Re-allocation Declaration will be protected until the end of the re-allocation period. At the end of the re-allocation period, the incumbent apparatus licences will be automatically cancelled in accordance with Part 3.6 of the Act.

Each spectrum licence will also include a condition requiring the licensee to take certain steps to manage interference with a radiocommunications device operated under another 26 GHz band spectrum licence, or certain apparatus licences, by synchronising operation of devices under their licence with those other devices in certain circumstances.

Each spectrum licence will also include a condition requiring the licensee to keep records of particular radiocommunications transmitters operated under the licence.

Each spectrum licence will also include a condition requiring the licensee to protect radiocommunications involving space receive stations and earth receive stations.

Pursuant to section 71 of the Act, the ACMA may include conditions about such other matters as it thinks fit. The ACMA may also include conditions in a spectrum licence that are not included in the Marketing Plan or the sample spectrum licence.

Where the winning bidder for a licence has elected to pay in instalments, the ACMA will include a condition in the licence about ensuring there is a bank guarantee in force securing 5% of the outstanding instalments owing to the Commonwealth at any point in time.

Section 21 Registration of radiocommunications transmitters

Under Part 3.5 of the Act, the ACMA is required to register all spectrum licences, and certain details of radiocommunications devices (except in particular cases) that are operated under each spectrum licence. This section of the Marketing Plan states that all spectrum licences issued pursuant to the Marketing Plan will include a condition that prevents the operation of a radiocommunications transmitter unless all requirements for registering the transmitter under Part 3.5 have been met. This is a mandatory licence condition for inclusion on all spectrum licences, under subsection 69(1) of the Act.

The ACMA has the discretion to refuse to register a transmitter under subsection 145(1) of the Act if it forms the view that operating the device in question will cause unacceptable levels of interference to the operation of other radiocommunications devices, either under the same licence or another licence. For the 26 GHz band, unacceptable levels of interference are defined in the Unacceptable Interference Determination made under subsection 145(4) of the Act.

Under subsection 69(2) of the Act, the ACMA may include a condition which exempts particular kinds of radiocommunications transmitters from the registration requirements detailed in the mandatory spectrum licence condition as required by subsection 69(1) of the Act.

A radiocommunications transmitter operating in the 26 GHz band will be exempt from the requirement to be registered if it:

- operates with a total radiated power of less than or equal to 23 dBm per occupied bandwidth; or
- is located indoors; or
- is a fixed transmitter which is not a base station and operates with a total radiated power of:
 - greater than 23 dBm per occupied bandwidth; and
 - less than or equal to 35 dBm per occupied bandwidth.

A base station generally:

- communicates with equipment operated by an end user of a radiocommunications service, or with other base stations;
- is capable of acting as a repeater to extend the coverage of a service or to link other base stations together;

- is located higher above ground level than the stations it communicates with;
- provides control and signalling information to other stations.

This exemption is included in Licence Schedule 3 of the sample spectrum licence at Schedule 6 to the Marketing Plan.

These devices are still required to meet all core and other conditions of the licence, including relevant emission limit requirements. Each spectrum licence will include a condition which requires the licensee to ensure that the operation of transmitters which are exempt from registration do not cause harmful interference to devices operated under another 26 GHz band spectrum licence or apparatus licence.

Section 22 Draft sample licence

This section provides that a sample spectrum licence is included at Schedule 6 to the Marketing Plan. The sample spectrum licence sets out the technical and other conditions that may apply to spectrum licences issued as a result of the allocation process. However, the conditions in the sample spectrum licence may not reflect the actual conditions included in a spectrum licence issued to a successful applicant.

Section 23 Advisory guidelines

This section provides that the RAG Rx and RAG Tx provide a means of coordinating services operating under spectrum licences in the 26 GHz band.

Part 4—After allocation

Section 24 Simplified outline of this Part

This section sets out a simplified outline of Part 4.

It should be noted that, on the day the Marketing Plan was made, the Bill had been introduced to, but not passed by, Parliament. If the Bill is passed by Parliament, its provisions may affect the matters described by this Part.

Section 25 Registration of spectrum licences

This section provides that, in accordance with Part 3.5 of the Act and the *Radiocommunications (Register of Radiocommunications Licences) Determination 2017 (the Register Determination)*, the ACMA must register the details of spectrum licences in the Register of Radiocommunications Licences (**the Register**). The Register is a publicly available database on the ACMA's website.

Part 3.5 of the Act and the Register Determination set out the information that the Register is required to contain including the name and postal address of the licensee, the licence date of issue and expiry date. The Register may also include details of radiocommunications devices operated under a spectrum licence.

Section 26 Third party use

This section provides that a licensee may permit third parties to operate radiocommunications devices under any spectrum licences it holds. Any such arrangements must comply with Division 1 of Part 3.2 of the Act, which includes provisions governing third party use.

Section 27 Trading in spectrum licences

This section provides that a licensee may assign, or otherwise deal with, the whole or any part of a spectrum licence in accordance with Division 5 of Part 3.2 of the Act. The *Radiocommunications*

(Trading Rules for Spectrum Licences) Determination 2012 made under section 88 of the Act provides further details about rules for trading in spectrum licences. In part, these rules define the minimum block of spectrum and geographic area that may be traded to a third party and must be retained by the licensee.

Section 28 Agreements about emission limits

This section provides that a licensee in the 26 GHz band may enter into an agreement about emission limits outside the frequency band of the licence. Licensees of licences that are frequency-adjacent to one another may wish to enter agreements that allow a licensee to exceed their emission limits specified in the core licence conditions. This section notes the provisions of Schedule 5 to the Marketing Plan which underpin such agreements.

When such an agreement is in place, that agreement effectively sets the emission limits that apply to that licence under section 18 of the Marketing Plan and in accordance with Schedule 5 to the Marketing Plan. Schedule 5 requires that such an agreement must be in writing.

The Marketing Plan does not provide for an agreement to be entered into about emission limits outside the geographic boundary of a spectrum licence.

Section 29 Spectrum licences that are about to expire

This section sets out the actions that the ACMA takes under the Act when spectrum licences are about to expire. In accordance with section 78 of the Act, the ACMA will publish a notice from time to time about spectrum licences that are due to expire within the period specified in the notice. The notice will invite expressions of interest from persons wishing to obtain spectrum licences relating to the relevant parts of the spectrum. The notice will be published on the ACMA's website.

Section 30 Re-issue of spectrum licence

This section sets out what the ACMA does under the Act when spectrum licences expire. Under Division 4 of Part 3.2 of the Act, the ACMA may decide to re-issue a spectrum licence to the existing licence holder when it expires, if the licence is used to provide a service included in a class of services determined by the Minister for which re-issuing licences to the same licensee would be in the public interest, or if special circumstances exist as a result of which the ACMA is satisfied it is in the public interest for that person to be re-issued the licence. Otherwise, the ACMA must offer the spectrum licence for re-allocation by auction, tender, or pre-determined or negotiated price. A re-issued licence may be different to the original licence, including by having different conditions placed on the licence.

It is possible that, prior to the expiry of any spectrum licences issued as a result of the 26 GHz band spectrum licence auction, the Bill may have been passed and may have amended the Act, affecting the re-issue process. Applicants should consider the available information about the Bill available at www.communications.gov.au or on the Federal Register of Legislation at www.legislation.gov.au.

SCHEDULE 1 Categories

This Schedule defines how products will be divided into three different categories. Table 1 in this schedule defines the category number, category name, the lower and upper frequencies of the products within the category and the bandwidth of lots within the category.

Products in the 26 GHz band are not generic, and as such, registered bidders may attribute different values to different products.

SCHEDULE 2 Products

*Explanatory Statement to the
Radiocommunications Spectrum Marketing Plan (26 GHz Band) 2020*

This Schedule defines the 26 GHz band products that will be offered during the auction. A product for the purpose of the Marketing Plan is the set of spectrum lots that have the same region and belong in the same category. For each product, this Schedule lists the product, category number, region, and number of lots available. Column 2, the product name, has been included to reflect the name of the product as it will appear in the auction system, and is for information only.

SCHEDULE 3 Regions

This Schedule defines the 28 geographic regions of the lots on offer under the Marketing Plan. It provides the names for the regions, and precise geographic definitions. To define a geographic region, this Schedule lists a set of HCIS identifiers that correspond to the region on the ASMG.

The regions in this schedule, with the exception of Greater Perth Upper, align with the areas declared for re-allocation by the Minister in the Re-allocation Declaration. In some cases there is a difference in the names of the area as expressed in the Re-allocation Declaration, and the name of the corresponding region in the Marketing Plan.

The Greater Perth Upper region covers the Bunbury and Perth areas specified in the Re-allocation Declaration (items 28 and 29 of the table in the Re-allocation Declaration).

A map of each region is also provided, for illustrative purposes only.

SCHEDULE 4 Emission limits outside the area

This Schedule sets the limits that will be placed on radiofrequency emissions outside a spectrum licence's geographic area that are produced by radiocommunications transmitters operating under a spectrum licence (**the out-of-area core licence condition**). The limits are expressed as a total radiated power limit that applies to all radiocommunications transmitters operated within the licence's geographic area.

Three separate limits are provided, depending on the frequency range and area that a radiocommunications transmitter is operating in. For radiocommunications devices which employ multiple antennas (an antenna array), the limits apply to the total aggregate power radiated from all antennas in the antenna array.

These limits are expressed as the maximum total radiated power within a 200 MHz bandwidth. Where a transmitter operates with a different occupied bandwidth, logarithmic scaling should be used to find the appropriated limit. For example, a radiocommunications transmitter operating in the frequency range 25.1 GHz to 27 GHz (where the maximum permissible total radiated power is 45 dBm/200 MHz) with an occupied bandwidth of 100 MHz must not operate with a total radiated power exceeding 42 dBm/100 MHz.

SCHEDULE 5 Emission limits outside the band

This Schedule sets the method for calculating the limits that will be placed on radiofrequency emissions outside the licence's authorised frequency band that are produced by radiocommunications devices operated under a spectrum licence (**the out-of-band core licence condition**).

This schedule provides for base emission limits for unwanted emissions by radiocommunications devices which operate in relevant parts of the 26 GHz band under a spectrum licence, and which are not covered by an agreement made between adjacent licensees to exceed the out-of-band core licence condition. A written agreement between a licensee and all affected licensees of frequency-adjacent and area-adjacent spectrum and apparatus licences (within the frequency range 24.7 GHz to 30.0 GHz) can allow the first licensee to exceed the limits in the out-of-band core licence condition,

within their spectrum space, up to the maximum level of radio emissions specified in the agreement. The word ‘adjacent’ can refer to spectrum or apparatus licences that share a geographic boundary, a frequency boundary, or both.

Different emission limits are set, depending on a number of factors, including the kind of radiocommunications transmitter operated, the location of the transmitter, the frequency band in which the transmitter operates, the frequency band in which the out-of-band emission occurs, and in some cases whether the transmitter was first operated before 1 September 2027 (in accordance with ITU Resolution 750 (REV.WRC-19)).

SCHEDULE 6 Sample spectrum licence

This Schedule sets out a sample spectrum licence for the licences that will be allocated in the 26 GHz band. It is an example, constructed for the purposes of illustration only, and is not an actual licence. It includes five licence schedules, which are explained below.

At the time the Marketing Plan was made, the Bill had been introduced to, but not passed by, Parliament. If the Bill is passed by Parliament, its provisions may affect the matters set out in the sample spectrum licence.

Licence Schedule 1 Licence Details, Bands and Areas

This licence schedule sets out the fields for the licensee, the licence issue, expiry and effect dates, and other details of the licence, including the frequency bands of the licence and the geographic area for the licence.

Licence Schedule 2 Core Conditions

This licence schedule includes the core conditions of the licence.

The core conditions are the conditions in relation to the geographic area and frequency ranges within which devices may be used, the out-of-area core licence condition and the out-of-band core licence condition.

This licence schedule also makes provision for the licensee to exceed the out-of-band core licence conditions in circumstances where there is a written agreement between the licensee and all affected licensees of frequency-adjacent and area-adjacent spectrum and apparatus licences. Where such a written agreement exists, the licensee must comply with the maximum permitted level of radio emission specified in the agreement.

Licence Schedule 3 Statutory Conditions

This licence schedule contains other statutory conditions that apply to the licence relating to liability for charges, third party operation of radiocommunications transmitters and transmitter registration requirements. It also includes conditions regarding when a radiocommunications transmitter will be exempt from the requirement to be registered, and residency requirements for licensees.

In particular, where a winning bidder has elected to pay the spectrum access charge in instalments, a failure by a licensee to pay any of the remaining four instalments may amount to a breach of the statutory licence condition required to be included by section 67 of the Act.

Licence Schedule 4 Other Conditions

This licence schedule contains other licence conditions that may be included by the ACMA in accordance with section 71 of the Act. One such condition imposed on the licensee is the responsibility to manage interference between radiocommunications devices operated under the

licence, and between radiocommunications devices operated under the licence and under any other spectrum licence held by the licensee (sample conditions 2(a) and (b) in Licence Schedule 4).

Managing interference is defined as including the investigation of the possible causes of interference, taking all steps reasonably necessary to resolve disputes about interference, taking all steps reasonably likely to reduce the interference to acceptable levels and negotiating with other persons to reduce interference to an acceptable level.

Other conditions included in the sample licence under this licence schedule are:

- a condition in relation to interference management for radiocommunications devices that are co-sited (located within 200 metres of each other) (sample condition 3);
- a requirement to provide the ACMA with information to be included in the Register (sample condition 4);
- a requirement to prevent harmful interference to a radiocommunications receiver operating in another country and in accordance with the ITU Radio Regulations (sample condition 5);
- a requirement to comply with specified electromagnetic energy regulation (sample condition 6);
- a requirement to comply with record-keeping requirements for radiocommunications transmitters located at communal sites and for high-powered outdoor radiocommunications transmitters that are not base stations (sample condition 7);
- a requirement to ensure that operation of a radiocommunications transmitter that is exempt from registration does not cause harmful interference to other radiocommunications devices operating under another spectrum licence or apparatus licence (sample condition 8);
- a requirement that radiocommunications transmitters comply with the protection requirements specified in Part 4 and Part 3 of the RAG Tx (sample conditions 9 and 11);
- a requirement that a radiocommunications transmitter is not to be operated in the frequency range 25.5 GHz to 27 GHz if it is located within the areas described by the listed HCIS identifiers, which are near the Canberra Deep Space Communications Complex (sample condition 10);
- a requirement to manage any interference between radiocommunications devices operated under the spectrum licence and those operated under a spectrum licence in the 26 GHz band, or area-wide licences in the frequency range 24.7 GHz to 29.5 GHz, by synchronising operation of their device with the other (affected) device in accordance with certain technical specifications (sample condition 12) and within a defined time period, unless an alternative time period is agreed (sample condition 13);
- a requirement to ensure the operation of any radiocommunications device under a spectrum licence does not interfere with the lawful operation of a device being operated within a re-allocation area under an apparatus licence (sample condition 14);
- where the winning bidder for a licence has elected to pay the spectrum access charge in instalments, a requirement to ensure that there is a bank guarantee in force securing part of the outstanding instalments (sample conditions 15 to 17).

Sample condition 12 sets out a process for managing interference between licensees if they cannot agree to a resolution between themselves. Broadly, this involves a requirement to ensure the relevant device uses a particular uplink-downlink time division duplex configuration and that the timing of that configuration is aligned with each of the other devices.

Licence Schedule 5 Licence Notes

Example licence notes are included in the sample licence for the purposes of clarification and guidance on the use and features of the spectrum licence.