



Australian Government

Department of Communications

Spectrum Review

Issues Paper

Public Consultation
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Background

On 23 May 2014, the Minister for Communications announced that a comprehensive review of the spectrum management framework would be undertaken in 2014. Current spectrum arrangements were put in place in 1992 and are now looking increasingly dated, with the last substantive review undertaken in 2002. The framework needs to be modernised to reflect changes in technology, markets and consumer preferences that have occurred over the past decade and to better deal with the increasing demand for spectrum from all sectors.

The Department will undertake the review in conjunction with the Australian Communications and Media Authority (ACMA).

The review will look at the operation of the *Radiocommunications Act 1992* (Radiocommunications Act) and other radiocommunications primary and subordinate legislation (including regulations and delegated instruments). The review will also consider the interaction of the Radiocommunications Act with other portfolio legislation including the *Broadcasting Services Act 1992*, *Telecommunications Act 1997* and the *Australian Communications and Media Authority Act 2005* (ACMA Act).

The review will consider the effectiveness of the current framework and identify opportunities to make arrangements more efficient, effective and flexible, while ensuring interference issues are appropriately managed and providing certainty for incumbents. It will also consider opportunities for reducing regulation and explore non-legislative reform approaches where possible.

The review will look at whether the framework can be improved by adjusting what is currently in place or whether more fundamental changes are required, with the aim of maximising the public benefit from the spectrum resource.

Terms of Reference

Under the Terms of Reference, the review will consider ways to:

1. simplify the framework to reduce its complexity and impact on spectrum users and administrators, and eliminate unnecessary and excessive regulatory provisions
2. improve the flexibility of the framework and its ability to facilitate new and emerging services including advancements that offer greater potential for efficient spectrum use, while continuing to manage interference and providing certainty for incumbents
3. ensure efficient allocation, ongoing use and management of spectrum, and incentivise its efficient use by all commercial, public and community spectrum users
4. consider institutional arrangements and ensure an appropriate level of Ministerial oversight of spectrum policy and management, by identifying appropriate roles for the Minister, the Australian Communications and Media Authority, the Department of Communications and others involved in spectrum management
5. promote consistency across legislation and sectors, including in relation to compliance mechanisms, technical regulation and the planning and licensing of spectrum
6. develop an appropriate framework to consider public interest spectrum issues
7. develop a whole-of-government approach to spectrum policy
8. develop a whole-of-economy approach to valuation of spectrum that includes consideration of the broader economic and social benefits.

Purpose of this paper

The Department seeks stakeholder views on the issues the review should consider.

The Terms of Reference are broad in scope but you may have a view that there are issues we:

- should better define, or align with other issues / activities
- have missed and should be added
- should not consider
- can address in the short term
- may need to address well after the review.

The Department is also interested in your views on the extent of reform needed. Can the framework be improved by adjusting what is currently in place or is more fundamental change required?

Issues for review

Term of Reference 1:

Simplify the framework to reduce its complexity and impact on spectrum users and administrators, and eliminate unnecessary and excessive regulatory provisions

This term of reference is about deregulation and ways to simplify the spectrum management framework.

The framework is a complex and multi-layered network of primary legislation, legislative and administrative instruments and policy statements. This can result in overly-complex processes, making it difficult to navigate and difficult and costly to interpret and implement.

There is a whole-of-government agenda – already underway – to reduce regulatory burdens for business and the community. On 14 March 2014, the ACMA revoked 24 spectrum-related spent or redundant instruments. These included spectrum marketing plans, spectrum licence allocation procedures and interference instruments.

The Government also has before Parliament its [Omnibus Repeal Day \(Autumn 2014\) Bill](#), which will amend the Radiocommunications Act to modernise publication requirements, remove duplication with the *Legislative Instruments Act 2003* and *Acts Interpretation Act 1901* (on consultation requirements and revocation/variation measures), and revoke redundant transitional and consequential provisions between previous Acts.

The review supplements this existing work and aims to reduce further unnecessary regulatory burdens by examining the underlying policy and processes embodied in radiocommunications regulation.

Under this term of reference the review will consider the scope for:

- simplifying the Objects of the Radiocommunications Act (section 3) and making them more relevant
- simplifying and streamlining the planning, allocation, licensing and re-issue processes within the Radiocommunications Act
- simplifying/reducing the regulatory burden of technical regulation and interference management requirements

- removing specific areas of the Act or the requirement for subordinate instruments that are little used or no longer relevant e.g. the continued relevance/usefulness of the Governor-General's powers to declare an emergency.

Term of Reference 2:

Improve the flexibility of the framework and its ability to facilitate new and emerging services including advancements that offer greater potential for efficient spectrum use, while continuing to manage interference

This term of reference is about making the framework more flexible, to improve responsiveness and promote innovation as technology and markets change. Flexibility, however, must be balanced against providing licence holders with an appropriate level of assurance regarding their rights and access, and how interference will be appropriately managed.

Under this term of reference the review will consider:

- whether planning instruments – such as the Australian Radiofrequency Spectrum Plan – can be made more flexible and accessible within the treaty framework established by the International Telecommunication Union radiocommunication sector
- whether allocation and licensing processes can be made more flexible, including exploring the feasibility of parameters-based licensing or making incremental improvements to existing processes
- whether the framework should support greater spectrum sharing, including whether legislative barriers to spectrum sharing/coexistence of services and licence types should be removed
- updating definitions and concepts in the framework to reflect converging and changing technologies and markets/supply chains
- alternative, more responsive, approaches to technical regulation, compliance and enforcement.

Term of Reference 3:

Ensure efficient allocation, ongoing use and management of spectrum, and incentivise its efficient use by all commercial, public and community spectrum users

This term of reference is about improving efficiency in the way spectrum is allocated and used. This will enable the spectrum to support a wider range of activities and services and assist in responding to increasing spectrum demand.

A key objective of the current framework is efficiency in the allocation and use of spectrum. Efficiency is embodied in the first object of the Radiocommunications Act; it is also central to the ACMA's [Principles for Spectrum Management](#). It is through efficient allocation and use that the overall public benefit derived from the use of the spectrum is maximised.

Spectrum licensing, price-based allocation methods and trading and third party authorisation (leasing) of spectrum were introduced into radiocommunications legislation to encourage a more market-based approach to spectrum management, with its emphasis on economic efficiency.

Other key elements of efficient use are technical efficiency (doing more with what we have) and dynamic efficiency (ensuring spectrum is allocated and used efficiently over time).

Under this term of reference the review will consider:

- whether the Objects of the Radiocommunications Act place an appropriate emphasis on economic and allocative efficiency
- whether changed planning arrangements could improve efficiency

- how reallocation of spectrum can be facilitated, including the approach to providing financial assistance to spectrum users displaced through reallocation processes and the value of tools such as incentive auctions
- how charging arrangements can incentivise efficient use, including the potential role of opportunity cost pricing and the effect of taxes levied, fee exemptions and concessional arrangements
- what non-price mechanisms are available and appropriate for improving efficiency, including greater spectrum sharing capabilities
- licence tenure, renewal processes and resumption and compensation rights
- whether there is sufficient information about the spectrum market available for users to make informed decisions about availability, use, sharing, leasing, sale or purchasing of spectrum
- other ways to facilitate the secondary market for spectrum.

Term of Reference 4:

Consider institutional arrangements and ensure an appropriate level of Ministerial oversight of spectrum policy and management, by identifying appropriate roles for the Minister, the Australian Communications and Media Authority, the Department of Communications and others involved in spectrum management

This term of reference is about the respective roles of the Governor-General, Minister, the ACMA, the Department of Communications, Australian Competition and Consumer Commission (ACCC), and others involved in spectrum management.

The Radiocommunications Act and ACMA Act give the Minister for Communications responsibility for, and a degree of oversight of, the spectrum management framework and establish the ACMA as the independent regulator and manager of the radiofrequency spectrum. The Department of Communications provides advice to the Minister in relation to the exercise of Ministerial and ACMA powers and has responsibility for spectrum policy. The Radiocommunications Act provides the Minister with powers to participate in specific processes. The Minister relies on the power under the ACMA Act to provide directions to the ACMA on the performance of its functions and exercise of its powers under the Radiocommunications Act.

The Governor-General has a legislated role in making regulations and declaring a period of emergency. The ACCC oversees the access regime for datacasting and digital radio multiplex licences, and is consulted by the ACMA in the making of procedures for allocating spectrum licences.

Others with a role – or potential role – in spectrum management under the Radiocommunications Act, include:

- technical accreditation, approving and certification bodies
- interference dispute conciliators.

Under this term of reference the review will consider:

- whether – under the Radiocommunications Act and ACMA Act – the Minister’s current powers are sufficient for the oversight of spectrum policy and management
- whether the Minister’s current powers are targeted at the right level of intervention
- whether the ACMA’s spectrum management responsibilities under the Radiocommunications and ACMA Acts are appropriate, including whether its satellite filing and coordination responsibilities should be explicitly recognised

- whether the ACMA as the spectrum manager has appropriate information sharing and compliance and enforcement powers
- the respective spectrum management roles of the Department and ACMA
- the extent to which other entities exercise the roles provided for them in the Radiocommunications Act and whether these should be retained
- whether other entities should play a greater role in spectrum management including in areas such as frequency assignment, interference management, private band management and technical regulation.

Term of Reference 5:

Promote consistency across legislation and sectors, including in relation to compliance mechanisms, technical regulation and the planning and licensing of spectrum

This term of reference is about creating a level regulatory playing field for spectrum users by treating users consistently and transparently. It is also about achieving efficiencies across legislation by streamlining and harmonising provisions, particularly in the areas of technical regulation and compliance mechanisms.

Under this term of reference the review will consider:

- whether it is appropriate to continue to retain different approaches to spectrum for different sectors, or whether a more consistent and simpler approach should be adopted
- how technical regulation and compliance and enforcement provisions in the Radiocommunications Act – including standards, labelling and offence provisions – can be made more consistent with other portfolio legislation
- the desirability of establishing avenues for international and domestic collaboration and international information sharing regarding the importation of non-compliant devices.

Term of Reference 6:

Develop an appropriate framework to consider public interest spectrum issues

This term of reference is about developing an effective approach to the planning, allocation, use and management of spectrum for public interest users, in order to provide greater clarity and guidance to users and decision-makers.

Under this term of reference the review will consider:

- whether public interest services are defined adequately (the Radiocommunications Act defines ‘public and community services’, and includes as a subset ‘agencies involved in the defence or national security of Australia, law enforcement or the provision of emergency services’)
- if the meaning of the term ‘adequate provision’ needs clarification (see 3(b) of the Radiocommunications Act)
- pricing of spectrum for public interest services and the broader issue of ‘value’ (links with Term of Reference 8 below)
- the incentives needed to ensure public interest services use spectrum efficiently, including sharing with other spectrum users where appropriate
- the scope and appropriateness of applying market-based principles to public interest services, including incentive auctions
- institutional arrangements for the management of Government spectrum.

Term of Reference 7:**Develop a whole-of-government approach to spectrum policy**

This term of reference is about developing an over-arching policy statement for the future direction of spectrum management, covering all spectrum users (commercial, public and community). The statement will provide consistency, clarity and guidance to users and decision-makers on the Government's short and long term spectrum management policy goals.

Under this term of reference the review will consider:

- what would be an appropriate overarching strategic vision/stretch goal for spectrum policy and management over the long term
- what would be appropriate near and long term objectives for spectrum policy and management
- what are the technological and international developments that will inform the future direction
- what should be the near and long term allocation priorities.

Term of Reference 8:**Develop a whole-of-economy approach to valuation of spectrum that includes consideration of the broader economic and social benefits**

This term of reference is about developing a consistent and transparent approach to valuing spectrum, both for the purpose of making allocation decisions where there is competing demand from commercial and public interest users, and for the purpose of setting reserve prices and administrative charges.

Under this term of reference the review will consider:

- how spectrum should be valued to inform reserve and re-issue/renewal prices and administrative pricing
- how different competing uses of the spectrum should be valued/evaluated to inform allocation decisions, both in economic and societal terms
- how spectrum's contribution to the economy and broader society can be valued.

Next steps

Once feedback has been received and considered, the Department will publish a final list of issues in third quarter 2014.

Questions for stakeholders

1. What additional issues should be considered by the review?
2. Are there any issues you think should be taken off the table?
3. Which issues should be given priority and why?
4. Which issues can be addressed in the short term (the next 12-18 months) and which should be considered over a longer period?
5. What should be the extent of reform – can the framework be improved by adjusting what is currently in place or are more fundamental changes required?

How to make a submission

Submissions should be lodged with the panel by **close of business Friday 20 June 2014**.

Submissions can be lodged in the following ways:

Email: spectrumreview@communications.gov.au

Post: The Project Manager
Spectrum Review
Department of Communications
GPO Box 2154
CANBERRA ACT 2601

Submissions must include the respondent's name, organisation (if relevant) and contact details. Submissions with no verifiable contact details will not be considered.

Respondents should be aware that submissions will generally be made publicly available, including on the website of the Department of Communications (www.communications.gov.au). The review reserves the right not to publish any submission, or part of a submission, which in the view of the panel contains potentially defamatory material, or where it considers it appropriate to do so for confidentiality or other reasons.

All submissions will be treated as non-confidential information unless the respondent specifically requests the submission, or a part of the submission, is kept confidential, and acceptable reasons accompany the request. Email disclaimers will not be considered sufficient confidentiality requests. Note that submissions will generally be subject to the *Freedom of Information Act 1982*.

The *Privacy Act 1988* establishes certain principles with respect to the collection, use, and disclosure of information about individuals. Any personal information respondents provide to the panel through their submission is used only for the purposes of consideration of issues raised in this paper. Respondents should clearly indicate in their submission if they do not wish to have their name included in any summary of submissions that the panel may publish.

Queries about the submission process can be directed to spectrumreview@communications.gov.au