



Australian Government

Department of Communications and the Arts

A proposed approach to transition from the 1992 Act to the Radiocommunications Bill

Consultation paper

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Summary of questions

Proposed approach

1. What are the major issues to be addressed in designing the transitional arrangements?
2. Are there other approaches to transition that could be considered?
3. Are there other measures that would reduce complexity during transition?

Proposed implementation

4. Should the Australian Radiofrequency Spectrum Plan be revised at commencement, or should it be considered “to be made” under the new arrangements/Bill?
5. Are there any existing legislative band plans that should be remade at commencement?
6. How should the transition to equipment rules occur? Should equipment rules start at commencement or should they be staged over time? Why?
7. Are there other elements of the new legislation that should start at commencement?
8. Are there any elements proposed to start at commencement that should be staged over time? Why?

Licensing

9. When should the work program for transition be available? What criteria should be used to determine which licences should transition when and in what order?
10. Is 12 months notification for licence transition sufficient?

Class licences

11. Should class licences become spectrum authorisations at commencement? Why/why not?
12. Are there any existing class licences that should not transition to spectrum authorisations upon commencement because of interdependencies with existing apparatus licences?
13. Should any interdependent class licences become spectrum authorisations as at commencement or remade as spectrum authorisations when the related apparatus licences are transitioned to the new licence system?

Spectrum licences

14. If considered a licence under the new Act, are there any elements of an existing spectrum licence that would be adversely affected?

Transition of existing licence types

15. Should licences be grouped to transition? If so, how (e.g. by category/band/combination)?
16. What is the appropriate duration of licence replacement windows?
17. Do you have any other comments regarding transitional arrangements?

Introduction

The Spectrum Review

The Department of Communications released its Spectrum Review (the review)¹ in March 2015. In August 2015 the Government announced it would implement the recommendations of the review, including agreement to:

1. replace the current legislative arrangements with new legislation that removes prescriptive process and streamlines licensing for a simpler and more flexible framework
2. better integrate the management of public sector and broadcasting spectrum to improve the consistency and integrity of the framework
3. review spectrum pricing to ensure consistent and transparent arrangements to support the efficient use of spectrum and secondary markets.

Purpose and scope

Spectrum is essential to a digitally networked economy and a major contributor to Australia's economic and social wellbeing. It is a resource that supports essential services such as safety-of-life and security and improves the quality of life of users. It is critical infrastructure, enabling production for industrial, commercial, educational and other social services. The economic value of Australia's spectrum to the national economy is estimated to be \$177 billion over 15 years.²

Technology has changed substantially since 1992 when the current regulatory framework was introduced. The framework has served the nation well and been a source of international competitiveness. However, sector wide changes are challenging the efficiency, productivity and accessibility of the current arrangements for spectrum management. As technology advances, there are increasingly novel ways to use spectrum to communicate and send information. This constant development means there is increasing demand for spectrum arising from an expanding array of uses. In addition, Australians as a whole are early adopters of new technologies, typically leading the world in the uptake of the latest technological products and services.

The extent to which the benefits of spectrum are realised or improved upon will depend in part on the ability of the spectrum management regulatory arrangements to accommodate rapid technological change and respond to increasing demand.

In August 2015, the Government announced it would replace the current spectrum management legislative arrangements with outcomes focused legislation. The new framework aims to be more efficient, flexible and sustainable. It seeks to support new and innovative technologies and services while providing certainty of spectrum access rights for users. The new Radiocommunications Bill (the Bill) does not prescribe how these outcomes are to be realised. It allows the regulator to operate with a greater focus on the objectives, performance outcomes or principles the Government wants to achieve.

The Bill seeks to simplify regulatory structures, streamline regulatory processes, provide for greater use of market mechanisms, rationalise licence categories and reform allocation processes and equipment regulation.

¹ *Spectrum Review 2015*, www.communications.gov.au/publications/spectrum-review-report

² 'The economic value of spectrum' – Research report prepared for the Department of Communications by the Centre for International Economics, January 2015.

In terms of the Bill itself, significant work will be required to prepare for implementation of the new framework. The regulator, the Australian Communications and Media Authority (the ACMA), will be responsible for designing and developing new spectrum management arrangements in accordance with the Bill. The ACMA intends to undertake further substantial stakeholder consultation as it designs and then settles its approach to giving practical effect to the new legislative and policy framework. The ACMA will engage with stakeholders as it develops work to give effect to the new arrangements under the Bill. It is most likely full transition to the new framework will take place over a number of years.

The move from the spectrum management arrangements under the 1992 Act to those to be designed by the ACMA under the Bill will impact on existing licensees, equipment manufacturers and suppliers, accredited persons, third party suppliers and potential future private band managers, amongst others.

The Government intends transitional arrangements to be simple and clear for users, and will develop a separate bill to address transitional arrangements and consequential amendments to other legislation – the Transitional and Consequential Bill (T&C Bill). The T&C Bill will provide a legislative framework for transition from the 1992 Act to the new Bill and will be introduced in the Parliament concurrently with the Bill.

This paper sets out:

- the principles to be achieved through transition from the 1992 Act to the Bill
- a potential approach to moving from the spectrum management arrangements under the 1992 Act to those to be designed by the ACMA under the Bill.

Issues surrounding the transition of broadcasting licences are not addressed in this paper. Accompanying this paper, the Minister for Communications and the Arts has released a consultation paper that covers potential reforms to the planning, allocation and licensing of broadcast spectrum. In addition, matters in relation to potential consequential changes to other Acts are not considered within the scope of this paper.

The purpose of this paper is to seek information and views from stakeholders on preferred approaches to transition. Industry views and stakeholder feedback will be used to develop the T&C Bill. More detailed information on timing and process for transition will depend on any administrative or other actions taken by the ACMA. Indicative questions have been provided to draw attention to key issues. There is no expectation that each question will be addressed in responses to the paper.

Principles underpinning transition

Challenges

As previously highlighted, the transition from the 1992 Act to the Bill will require significant work to implement the new framework. For example, the current licensing system is large and complex.

- There are currently 61 different licence types operating across multiple bands. There are over 160,000 licences.
- Spectrum licences are designed for specific needs and requirements of users and contain specific access rights over a long period.
- The ACMA has progressively established a series of administrative processes and IT systems to support licence issue, renewal and payments.
- For each licence type, there are dependencies on the incorporation by reference of a range of subordinate instruments under the 1992 Act or related primary legislation and administrative guidelines.

There are also other elements where transition to arrangements set out in the Bill require substantial consideration. These include:

- compliance and enforcement
- rules and regulations surrounding the use and supply of equipment
- planning
- pricing.

In addition, administrative documents will need to be produced to support spectrum management processes undertaken by the ACMA, accredited persons and delegates. This includes policy information papers, business operating procedures, frequency assignment procedures, radiocommunications assignment and licensing instructions, embargoes and application forms. The ACMA will also need to identify and develop subordinate legislative instruments to give effect to the Bill and design new processes and systems for the issue and handling of new licences.

The review and Legislative Proposals Consultation Paper³ set out recommendations to support transition and enable existing licence holders to continue to deliver services and maintain access to spectrum during the transition. Drawing on these, as well as stakeholder feedback to date, we propose a set of principles that will guide the development of transitional arrangements. These principles are that transitional arrangements should:

- be simple, with the least administrative and legislative burden for users
- be transparent and predictable
- be implemented with minimal disruption to user business activities
- make clear licensees rights and obligations during the transition period
- provide licensees with adequate consultation and/or notice in advance of transition of the licensing framework for them (expected to be at least 12 months).

Approaches to transition

To help stakeholders gain a greater understanding of how transition to the Bill may work in practice we have considered three broad approaches that could be used for transition. These are:

1. hard transition
2. soft transition
3. hybrid (hard and soft) transition.

1. 'Hard' transition

This approach is presented only to demonstrate the range of options available to transition to the Bill. The Government has clearly indicated that a 'hard' transition will not be adopted.

Under this approach, all new requirements under the Bill would apply and would need to be complied with from the commencement date of the Bill. All licences, for instance, currently issued under the 1992 Act would cease on commencement of the Bill. In practice this would mean that the ACMA would be required to issue new licences under the new Act to all licence holders. This would need to occur during the period between passage of the Bill and its commencement date (a maximum of 14 months after passage through Parliament).

³ *Legislative Proposals Consultation Paper 2016*, <https://www.communications.gov.au/have-your-say/spectrum-reform-legislative-proposals-consultation>

This approach would allow the benefits enabled under the Bill to be realised as soon as possible. The ACMA, for example, would be able to use the range of compliance and enforcement provisions surrounding interference to licensees immediately. It is simple to understand, transparent and predictable for users.

A hard transition, however, is administratively difficult for licensees, accredited persons and the ACMA. This approach would provide industry and the ACMA limited time to prepare for the new arrangements or to undertake any spectrum engineering work required to move to the new licence system. The ACMA would only have a maximum of 14 months to research, develop and consult with stakeholders on the design of the new arrangements and implement them. This may not provide an adequate timeframe for existing and prospective licensees to fully consider the impact the new arrangements have on their own needs. This approach could be quite demanding for licensees.

Spectrum licences under the 1992 Act have long tenure (up to 15 years), and the majority have only recently been issued or reissued on the payment of substantial taxes and charges. Accordingly, spectrum licensees may not wish to transfer to the new system immediately.

In addition, there would be a large number of subordinate instruments to be transitioned in a relatively short timeframe. This approach would therefore place considerable strain on the ACMA to ensure it had established and consulted on any subordinate legislation required.

Given the disadvantages associated with a hard transition, the Government has stated that the full transition to the new framework will take place over a number of years.

2. 'Soft' transition

Under this approach, the 1992 Act would operate in parallel with the new Act for several years. Licences would move to the new framework progressively and only when users and the ACMA are ready. It therefore limits the point in time impact of the administrative burden for users of having to operate under a new framework by providing more time for users to adjust.

The concurrent operation of two legislative systems would introduce additional legal and administrative complexity. This would impose a considerable regulatory burden on licensees who may hold multiple licences with different legal requirements and rights. Compliance and enforcement regimes would differ significantly given the substantial changes being proposed under the new Bill. Ultimately, any benefits of additional time to adjust business systems to the new framework could be cancelled out by the burdens of having to comply with two systems.

The ACMA would also be required to maintain two administrative systems in their entirety, including IT capability, and ensure compliance with multiple subsidiary instruments across both the 1992 Act and the new Act.

Similar to a hard transition, there are significant disadvantages associated with this approach.

3. 'Hybrid' transition

Most legislative change processes seek to maximise the benefits of both the 'hard' and 'soft' approaches, while minimising the disadvantages. A 'hybrid' approach provides scope for considered decisions about when and how to transition different licence groups and categories, thereby minimising disruption, while leveraging the benefits of the reform.

The 'hybrid' approach would enable implementation of some new legislative arrangements, particularly the move to a single licensing system, to be staged over a number of years. Noting that the ACMA will

ultimately determine the elements of the design of the spectrum management arrangements under the Bill, the Department provides the following example:

The Bill provides that licences may be issued in accordance with a licence issue scheme (LIS). A LIS sets out the rules of the scheme (including processes and procedures) that apply to licences issued under that arrangement. To facilitate a move to the new legislative arrangements, applications for particular types of licences could be processed and considered under a 'transitional' LIS. The transitional LIS could set out the existing list of apparatus licence types and their current application processes. Once reformed licences and licence processes are available, licensees would transition to the new arrangement after expiry. If a replacement is not available at expiry, the licence may be renewed under processes analogous to the 1992 Act for a timeframe consistent with development of the new arrangements.

The transitional provisions of the *Offshore Petroleum Act 2006* (now the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*) provide a useful example of a 'hybrid' approach. While not directly equivalent, the Offshore Petroleum Act was also a re-writing of an existing regulatory system (the *Petroleum (Submerged Lands) Act 1967*). The 1967 Petroleum Act provided a framework of rights, entitlements and responsibilities, allowing for the grant of interests (or 'titles'). This included a variety of authorisations and licences such as exploration permits, production licences, infrastructure licences and pipeline licences. The substantive provisions of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* came into effect on a single day fixed by proclamation, approximately two years after royal assent. However, in order to facilitate a smooth transition to the new Act, existing titles granted under the old Act did not lapse, but rather continued in force in accordance with the new Act.

Proposed approach

The three options presented all meet the guiding principles for the transition process to varying degrees. On balance, a 'hybrid' approach would facilitate a timely transition to arrangements enabled under the Bill, with some elements operating exclusively under the new arrangements at commencement.

The process to implement arrangements will be the responsibility of the ACMA. The Department will work with the ACMA and stakeholders to identify possible administrative preparations that could be implemented in the short term to mitigate or resolve any transition issues.

Final resolution of transition has yet to be settled. We are seeking stakeholder and industry views to establish a viable and workable conversion from the 1992 Act to the Bill.

Question 1

What are the major issues to be addressed in designing transitional arrangements?

Question 2

Are there other approaches to transition that could be considered?

Question 3

Are there other measures that would reduce complexity during transition?

Proposed implementation

Spectrum plan

The *Australian Radiofrequency Spectrum Plan (ARSP)* is a high level spectrum plan made under the 1992 Act. The ARSP was updated after the 2015 World Radiocommunication Conference (WRC). In line with International Telecommunication Union requirements and the WRC cycle, an update to the ARSP would be required after the WRC in 2019, coming into effect in January 2021.

As the Bill may commence before the ARSP is revised, arrangements would be made so that the ARSP would be considered to have been made under the Bill. This would also apply to any other legislative band plans, as changes to plans may occur as the ACMA designs the new licensing system. This approach provides existing licensees with predictability that current planning of services would remain in place at the time of commencement of the Bill.

In the event of any inconsistency with any other radiofrequency plans made under the Bill and the ARSP, it is proposed that the ARSP prevails.

Equipment rules

The Bill replaces a raft of existing provisions in the 1992 Act, relating to standards and technical regulation of radiocommunications equipment, with what will be termed 'equipment rules'. Equipment rules may be made by the ACMA by legislative instrument. The rules will relate to the operation and supply of equipment, and must be directed towards achieving a number of stated objectives. These objectives broadly include minimising interference to radiocommunications equipment, and management of risks to health and safety resulting from radio emissions. The Bill retains the fundamental elements of the equipment regulation arrangements under the 1992 Act, including ability for the ACMA to prescribe standards, testing requirements, labelling and record-keeping.

The ACMA has indicated it will seek industry views on the proposed equipment rules as they are developed. To remove unnecessary administrative burden, the intention is that equipment that has already been supplied to the market under the requirements of the 1992 Act will not need to comply with the equipment rules made under the Bill. It is expected that suppliers of new equipment will have the option of complying with either the 1992 Act or Bill arrangements for a specified period. However, to enable a smooth transition to the new arrangements, suppliers of equipment will be encouraged to comply with the equipment rules upon their commencement. Further information on equipment rules is provided on the ACMA's website.

Elements of the Bill to operate from commencement

It is proposed that some elements of the new spectrum management arrangements enabled under the Bill will operate from commencement. These elements could include:

- compliance and enforcement provisions (including penalties)
- inspector appointments
- accredited persons arrangements
- register Rules
- exemption determinations
- protected symbols determinations
- space objects determinations.

These elements have been suggested on the assumption that operating under the new arrangements will offer the greatest benefits (e.g. free up opportunities for users or remove barriers to innovation), are

dependencies for other priority arrangements, or are simple to implement. The ACMA has not made any decisions about the implementation of these elements or any others. The above list is only indicative and stakeholder views are sought on which provisions/elements of the new legislation should start on the commencement date.

Question 4

Should the ARSP be revised at commencement, or should it be considered 'to be made' under the new arrangements/Bill?

Question 5

Are there any existing legislative band plans that should be remade at commencement?

Question 6

How should the transition to equipment rules occur? Should equipment rules start at commencement or should they be staged over time? Why?

Question 7

Are there other elements of the new legislation that should start at commencement?

Question 8

Are there any elements proposed to start at commencement that should instead be staged over time? Why?

Licensing

The largest implementation challenge for the transition to arrangements set out in the Bill is the move to the single licensing system. As of 1 December 2016, there were 61 licence types and over 160,000 licences. All derive specific rights and obligations set out in over 300 legislative instruments and the conditions within the licences themselves.

The ACMA will need to design the new licensing system to achieve the major benefits of the Bill. Licence system design has implications for the transition of all other elements of the regulatory framework, including pricing, planning and device registration requirements. The ACMA will consult widely and in detail on any licensing design process. To facilitate a smooth transition it is likely that a staged approach would be used to move licences to the single licensing system. This is consistent with the hybrid approach previously proposed.

Which particular licences will transition at which particular time is a decision for the ACMA, in consultation with users. This is most likely to be done via licence type or band, or a combination of band and licence type. Further information on licensing design is available on the ACMA's website

The Government expects the ACMA to develop a clear work program to enable existing licensees to predict how and when any changes may affect them. The work program should help to remove barriers to innovation, and reduce uncertainty or transition costs. This work plan would enable users to have a 12 month advance notification period of when their licence would transition to the new system. It is anticipated that any new pricing arrangements arising from a change to a new system would be applied to the new licence.

Question 9

When should the work program for transition be available? What criteria should be used to determine which licences should transition when and in what order?

Question 10

Is 12 months notification for licence transition sufficient?

Class licences

A class licence sets out the conditions under which users are permitted to operate devices in designated parts of the spectrum, and cover a wide and diverse range of ubiquitous services. Class licences do not involve the payment of fees to the ACMA and do not come with the protection from interference rights offered by the other categories of licence. On commencement, existing class licences are proposed to be treated as spectrum authorisations, where applicable.

There is an interdependency between some existing class and apparatus licences. In these cases, it could be more efficient and effective to transition the class licence at the same time as the associated apparatus licences. For example, the Cellular Mobile Devices Class Licence, the Space Objects Class Licence, and the Overseas Amateur Visiting Australia Class Licence may be best transitioned with the related apparatus licences.

Spectrum authorisations will permit use of radiocommunications subject to conditions similar in nature to the previous class licence. This approach makes it simple for users, who are generally unaware of the conditions and structures of their common use of the spectrum. In addition, there may be no need to review the policy behind such authorisations, as the vast majority of existing class licences were recently reviewed and revised as part of the 'sunsetting' process for legislation. Under Part 4 of Chapter 3 of the

Legislation Act 2003, most legislative instruments are automatically repealed on 1 April or 1 October that first occurs 10 years after they are registered. The ACMA assessed and consulted on the relevance of each class licence in prior to 1 October 2016 and remade them substantially in their existing form.

Question 11

Should class licences become spectrum authorisations at commencement? Why/why not?

Question 12

Are there any existing class licences that should not transition to spectrum authorisations upon commencement because of interdependencies with existing apparatus licences?

Question 13

Should any interdependent class licences become spectrum authorisations as at commencement or remade as spectrum authorisations when the related apparatus licences are transitioned to the new licence system?

Spectrum licences

The Government has stated spectrum licences will continue until expiry unless licensees agree with the ACMA to transition earlier. Agreement would only occur where new arrangements are made available by the ACMA.

The intention is that the effect of current licences would be grandfathered under the new Bill by treating licences in force under the 1992 Act as though they had been issued under the Bill. These spectrum licences would expire at the end of their existing tenure. The vast majority of existing spectrum licences have recently been reviewed and re-issued for 15 years and it is unlikely that licensees will be looking to amend or transition spectrum licences until a number of years closer to expiry. The T&C Bill would not specify renewal rights for existing spectrum licences.

The timing of the design, consultation and development of new arrangements, should existing spectrum licensees wish to transition prior to expiry, is a decision for the ACMA.

Question 14

If deemed to be a licence under the new Act, are there any elements of an existing spectrum licence that would be adversely affected?

Apparatus licences

Apparatus licences provide the most challenging aspect for transition to the single licensing system. The sheer number of individual licences (over 160,000) and the different existing categories highlight the size and scope of the task.

The ACMA has made preliminary observations to assist stakeholders in considering and responding to the Bill on the transition path for apparatus licences in its consultation paper on licensing. This paper can be found on the ACMA's website. The ACMA has indicated in its paper that it is considering the use of 'replacement windows' for transition of apparatus licences. Licences would be grouped together to be transitioned during the relevant timeframe. Grouping would be done either by licence category, by band, or by a combination of category and band. The ACMA would consult on which licence will transition during which window after the Bill has received royal assent.

There are a number of ways transition of apparatus licences could take place. The Department has developed one scenario for when existing licence types could transition (see [Table 1](#)), with an indicative timeline ([Table 2](#)). This scenario is provided only to stimulate discussion.

Table 1: Transition of existing licence types – an indicative timetable

Time	Licence Type
Commencement	Most Class licences
Within 1 year	<u>Group A:</u> Public telecommunications service licences Fixed
Within 2 years	<u>Group B:</u> Amateur Maritime Other unassigned
Within 3 years	<u>Group C:</u> Land mobile Radiodetermination
Within 4 years	<u>Group D:</u> Aircraft/Aeronautical Earth Space Defence
Within 5 years	Any remaining apparatus licences
Ongoing	Spectrum licences (until expiry or on agreement to move to new licence)

This scenario is for discussion only. Your comments and views will inform the timeline for licences to transition and drafting of the T&C Bill. The ACMA remains responsible for the design and implementation of the single licensing system and will consult further on its operation following the passage of the Bill.

Table 2: Indicative timeline for transition

	New Act commences 14 months after assent	After 1 year:	After 2 years:	After 3 years:	After 4 years:	After 5 years:	
Royal assent of the Bill, and T&C Bill	<ul style="list-style-type: none"> • Class licence to Spectrum Authorisations Compliance and Enforcement provisions (including penalties) <ul style="list-style-type: none"> • Inspector appointments • Accredited persons arrangements • Register rules • Exemption determinations • Protected symbols determinations • Space objects determinations 	Group A: <ul style="list-style-type: none"> • PTS • Fixed 	Group B: <ul style="list-style-type: none"> • Amateur • Maritime • Other unassigned 	Group C: <ul style="list-style-type: none"> • Land mobile • Radio determination 	Group D: <ul style="list-style-type: none"> • Aircraft • Aeronautical • Earth • Space • Defence 	Any remaining apparatus licences	Spectrum licences on expiry or agreement

Question 15

Should licences be grouped to transition? If so, how (e.g. by category/band/combination)?

Question 16

What is the appropriate duration of licence replacement windows?

Question 17

Do you have any other comments regarding transitional arrangements?

Conclusion and next steps

As outlined, there are various ways to approach transitional arrangements from the 1992 Act to the proposed new arrangements. To ensure that transition is simple and clear for users, we consider that the hybrid approach set out in this paper would enable the most effective transition from the 1992 Act to the Bill. Responses to this paper will inform the development of the T&C Bill. In addition, we will discuss transition arrangements with interested parties. However, implementing the transition process itself will be the remit of the ACMA.

Passage of the Bills

Before becoming an Act the Bills need to undergo a parliamentary process.

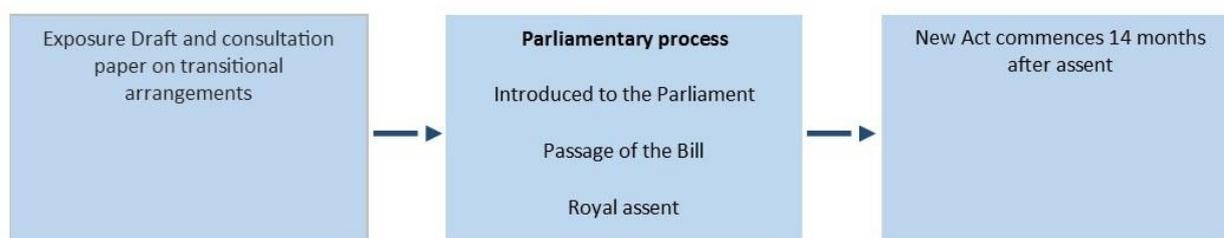
The first stage is for the Bills to be introduced into Parliament. It is anticipated that the Bills will be introduced in the 2017 Spring sittings. After the Bills are introduced there may be parliamentary amendments to the Bills. To become an Act the same version of the Bill must be passed by both Houses of

Parliament (House of Representatives and the Senate). This means if one House amends the Bill, the other House must consider whether it agrees to the amendments.

When both Houses of Parliament have passed the Bills they then go to the Governor-General for 'royal assent'. Assent completes the enactment of the Bills and they are now Acts. The new Acts are proposed to commence on a day fixed by Proclamation which must be no later than 14 months after the Bills received the royal assent. The delay between passage of the Act and commencement of the substantive provisions is intended to provide licensees and the ACMA time to move to new arrangements. [Figure 1](#) provides an illustration of the process before commencement of the Bills.

The delayed commencement of the Bills provides the ACMA with a period to develop and consult on new arrangements required at commencement or to be implemented soon after.

Figure 1: Timeline for commencement



Feedback options

The Government welcomes feedback on the ideas presented in this paper and any other ideas to make the transition from the existing 1992 Act to the new Bill simpler, clearer and workable. The easiest way to provide feedback is to visit our website at www.communications.gov.au/what-we-do/spectrum/spectrum-reform.

Alternatively, you can provide written comments to:

- Spectrum Reform
Department of Communications and the Arts
GPO Box 2154
Canberra ACT 2601
- Or by email to spectrumreform@communications.gov.au

Submissions close on 30 June 2017.

Please include:

- contact name
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- contact details, including telephone number, postal and email addresses
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