



Australian Government

Department of Communications and the Arts



Broadcasting Spectrum

Consultation paper

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Contents

Summary of proposals and questions	4
Proposals	4
Questions	4
Introduction	5
The Spectrum Review.....	5
Purpose and scope	5
Current framework.....	6
Designation of broadcasting services bands	6
Commercial and community broadcasters	7
National broadcasting	7
Other licences.....	7
Digital radio	8
Principles of reform	8
Proposals	9
Ministerial oversight	9
Planning of broadcasting services	10
Broadcasting licensing.....	11
Radiocommunications licensing.....	12
Digital radio	12
Secondary trading and spectrum sharing	13
Transitional arrangements	13
Feedback options	14
Appendix A: List of Acronyms	15
Appendix B: Comparison of current law and new approach	16

Summary of proposals and questions

Proposals

1. Remove the broadcasting services band (BSB) concept and Ministerial designations of BSBs and devolve responsibility for spectrum designations and high-level planning decisions to the Australian Communications and Media Authority (ACMA). Ministerial policy statements will be introduced to guide the ACMA.
2. In planning spectrum for use by national, commercial and community broadcasters and high powered open narrowcasters, the ACMA will have regard to the objects and the planning criteria similar to the current section 23 of the Broadcasting Services Act.
3. Licence area plans and television licence area plans will be combined and simplified. Simplified licence area plans will not include technical specifications (which will instead be included as conditions of individual radiocommunications licences).
4. Change terminology of broadcasting licences from broadcasting services band to 'licences for the provision of broadcasting services planned in a licence area plan'. These will be known as LAP planned licences.
5. Reforms will maintain the linkage between licences under the *Broadcasting Services Act 1992* and access to licences under the Radiocommunications Bill for incumbents.
6. Remove digital radio channel plans and move into a new single licensing system.
7. Incorporate the process for issuing digital radio multiplex transmitter licences into a new licence issue scheme.
8. Consolidate the digital radio multiplex licence issue entitlements and broadcasters' access-seeking entitlements.
9. Incorporate greater flexibility into the new framework to allow for trading and sharing of spectrum.

Questions

1. Do you consider the change in approach to spectrum planning will have any practical implications?
2. What matters should be considered for inclusion in the broadcasting Ministerial policy statement?
3. Will consolidating the existing radio LAPS and TLAPs into a general LAP category have any negative implications for licensees?
4. Are there any other existing rights that broadcasters have in relation to their licences which need to be addressed in the proposed framework?
5. Will any of the changes to digital radio create unintended consequences or operational impediments?

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 years².

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.

This paper sets out the proposed approach to reform of the allocation and management of spectrum used for broadcasting and invites feedback from interested stakeholders. It outlines the current arrangements and potential reforms to the spectrum planning, allocation and licensing for commercial, community and national broadcasters as well as narrowcasters. A comparison of key rights under the current and proposed approach is provided at [Attachment A](#).

The reform is part of the Government's implementation of the Spectrum Review. Recommendation 1(b) suggested government integrate the management of broadcasting spectrum, including planning, licensing and pricing into the general spectrum management framework, recognising that the current holders of broadcasting licences and the national broadcasters would be provided with certainty of access to spectrum to deliver broadcasting services. This paper seeks views on how to achieve this outcome.

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.

The following matters are out of scope for this paper:

- a) spectrum not used for transmitting broadcasting services. Any spectrum not currently classified under a BSB will fall under the new spectrum framework. See *A Radiocommunications Bill 2017: a platform for the future* for information about the broader spectrum framework
- b) legislative amendments to simplify and streamline the digital radio framework that are being undertaken in consultation with the Digital Radio Planning Committee for Regional Australia. It is anticipated that changes to the digital radio framework that may occur in that context will be progressed prior to implementation of the broader spectrum reforms
- c) potential reforms to datacasting licensing
- d) reforms to broadcasting pricing.

In the 2017-18 Budget, the Government announced its intention to abolish broadcasting licence fees and introduce a price for the use of broadcasting spectrum that better reflects its value. The proposals in this paper are not intended to impact these 2017-18 Budget measures.

The Minister for Communications and the Arts, Senator the Hon Mitch Fifield has also released separate consultation papers on Spectrum Pricing, Commonwealth Held Spectrum and Transitional Arrangements. Those consultation papers can be found at www.communications.gov.au/what-we-do/spectrum/spectrum-reform; feedback is due by 30 June 2017.

Current framework

Arrangements for the allocation and management of broadcasting spectrum currently vary depending on the category of broadcasting service. A key difference in how spectrum is managed arises from the extent to which a category of service has guaranteed access to spectrum.

Designation of broadcasting services bands

The general process for planning and licensing broadcasting services is initiated by the Minister designating part of the spectrum as being primarily for broadcasting services under section 31 of the *Radiocommunications Act 1992* (Radiocommunications Act). Designations made under section 31 are not subject to statutory consultation requirements or merits review. After a designation has been made, the relevant spectrum is referred to the ACMA for planning under Part 3 of the *Broadcasting Services Act 1992* (Broadcasting Services Act).

The part of the spectrum designated under section 31 of the Radiocommunications Act is known as the 'broadcasting services bands' under the Broadcasting Services Act. Section 26 of the Broadcasting Services Act requires the ACMA to prepare, by legislative instrument, licence area plans and television licence area plans (LAPs and TLAPs). These determine the number and characteristics, including technical specifications, of broadcasting services that are to be available in particular areas (licence areas) of Australia through the use of the BSBs. This includes both the spectrum usage and the mix of broadcasting services. Technical specifications relate to spectrum matters only. They may include frequency, maximum effective radiated power, the site of transmitters and any special conditions relating to radiation patterns, and other technical conditions.

In making these plans, the ACMA is required to promote the objects of the Broadcasting Services Act and have regard to the planning criteria in section 23 of the Broadcasting Services Act.

Commercial and community broadcasters

Before allocating a new commercial or community broadcasting licence (other than a temporary community broadcasting licence), the ACMA must, under section 29 of the Broadcasting Services Act, designate a licence area for the licence. As LAPs and TLAPs are legislative instruments, consultation with stakeholders would be required in most cases when a LAP or TLAP is made or varied (as per section 17 of the *Legislation Act 2003*). Neither LAPs nor TLAPs are subject to merits review.

Broadcasting services licensed under Part 4 (commercial) or Part 6 (community) of the Broadcasting Services Act generally use the BSBs for their provision. These commercial and community broadcasting licences remain in force for five years under sections 45 and 89 respectively of the Broadcasting Services Act, with the exception of commercial television satellite licences that remain in force for 10 years.

Under section 46 of the Broadcasting Services Act, the ACMA may renew a commercial broadcasting licence if a renewal application is made and renewal fees paid in accordance with certain requirements. On receiving such an application, the ACMA is required to renew these licences under section 47 of the Broadcasting Services Act unless the renewal application process has not been followed or the ACMA decides the person is unsuitable on the grounds outlined under section 41(2) of the Broadcasting Services Act. If the ACMA decides that section 41(2) applies to the licence, it must refuse to renew the licence. A decision under section 41(2) is subject to review under section 204 of the Broadcasting Services Act.

Under section 102 of the Radiocommunications Act, the ACMA is required to issue transmitter licences to access the BSBs to holders of licences issued under Parts 4 and 6 of the Broadcasting Services Act. Effectively, these licensees are guaranteed access to the spectrum necessary to deliver their broadcasting services. This entitlement to spectrum remains as long as the broadcaster holds a current BSB licence under the Broadcasting Services Act.

National broadcasting

The provision of national broadcasting services by the Australian Broadcasting Corporation (ABC) and the Special Broadcasting Services (SBS) is authorised by other legislation, as these services are not licensed under the Broadcasting Services Act. Instead of being licensed, these services are authorised by their respective enabling Acts (i.e. the *Australian Broadcasting Corporation Act 1983*, the *Special Broadcasting Service Act 1991* and the *Parliamentary Proceedings Broadcasting Act 1946*). As such, these services do not need to be planned for in a LAP to be authorised. However, in practice these services are often planned in a LAP, as this facilitates the issuing of transmitter licences. The transmission of national broadcasting services is licensed under NBS (national broadcasting service) transmitter licences issued under section 100 of the Radiocommunications Act. The Minister may also require the ACMA to reserve capacity in the BSBs for national (and community) broadcasters under section 31 of the Broadcasting Services Act, although no reservation is currently in place.

Other licences

Subscription radio broadcasting, subscription radio narrowcasting, subscription television narrowcasting, open narrowcasting radio and open narrowcasting television services are provided under class licences determined by the ACMA under Part 8 of the Broadcasting Services Act. Under the current framework, these broadcasters do not generally hold any guaranteed rights to spectrum as a result of providing content authorised by a Broadcasting Services Act class licence.

Some of these services (particularly high-powered open narrowcasting (HPON) radio services) use BSB spectrum, with technical specifications for such services currently included in LAPs. However, inclusion of HPON services in a LAP does not trigger any licensing processes under the Broadcasting Services Act

and does not by itself allow any person to apply for a transmitter licence (as access to spectrum for HPON services in the BSBs is typically provided through a 'drop-through' decision, e.g. under section 34(1)(f) of the Broadcasting Services Act). Transmitter licences for HPONs are usually issued by auction.

Drop-through, or section 34 decisions, are typically considered by the ACMA on a case-by-case basis and access to spectrum will only be granted where spectrum has not been allocated to a mainstream broadcasting service, and the assignment will not compromise reception of broadcasting services.

Subscription television broadcasting services are licensed under Part 7 of the Broadcasting Services Act. Services provided under these licences have generally not used BSB spectrum (e.g. some subscription television services are delivered by way of satellite, and others by fixed-line cabling).

Digital radio

While digital radio services are also licensed, planned and operate under the provisions of the Broadcasting Services Act and Radiocommunications Act, the digital radio technology used in Australia, Digital Audio Broadcasting Plus (DAB+), operates in a multiplex arrangement. Unlike analogue radio and digital television broadcasting, where each broadcaster has its own transmitter, with DAB+ individual broadcasters form joint venture companies which aggregate their content onto a shared multiplex, using compression technology to increase the number of services. Technical specifications for digital radio multiplex transmitters are planned under digital radio channel plans (DRCPs) under the Radiocommunications Act. These have some similarities to the technical planning provided under LAPs.

Incumbent commercial radio broadcasting licensees with a broadcasting service licence in place at the time digital radio provisions commenced in the Radiocommunications Act in 2007 have the first opportunity to apply for shares in joint venture companies formed to hold one or more 'foundation' digital radio multiplex licences for a licence area in each of the five mainland state capital cities. In addition, each incumbent commercial licensee has, through a legislated access regime, a standard access entitlement to capacity on a multiplex to provide commercial digital radio broadcasting services.

Certain eligible community broadcasting services also have rights to access multiplex transmission capacity on a digital radio multiplex and to collectively apply to subscribe to shares in the licensee company. When making a DRCP for a licence area, the ACMA must also reserve channels and plan a digital radio multiplex licence to be jointly held and used by the national broadcasters.³

Broadcasters who are licensed under the Broadcasting Services Act to provide digital radio broadcasting services are not currently guaranteed access to spectrum under the Radiocommunications Act. Instead, certain broadcasting licensees and the national broadcasters may seek access to multiplex capacity on a digital radio multiplex operated by a digital radio multiplex transmitter licensee in their Broadcasting Services Act licence area in accordance with the Australian Competition and Consumer Commission's (ACCC) access regime established under Division 4B of Part 3.3 of the Radiocommunications Act.

Principles of reform

The Government is proposing changes to the Radiocommunications Act and consequential changes to the Broadcasting Services Act that are, overall, intended to simplify and streamline the legislative framework for users of spectrum.

As broadcasters currently access spectrum for broadcast purposes under different arrangements to most spectrum users, the goal of this reform is to embed planning, allocation and licensing

³ Section 44A, Radiocommunications Act

arrangements for broadcast spectrum within the new framework while maintaining the same arrangements, including entitlements, as broadcasters currently have.

The reforms proposed in this paper are intended to maintain current broadcasting policy objectives and the spectrum holdings of any broadcaster.

The proposed reforms included in this paper would not result in a reduction of legislated entitlement to a licence to access spectrum under the Radiocommunications Act (a radiocommunications licence) to transmit services that are authorised under a related broadcasting services licence. The current statutory requirement for the ACMA to issue commercial and community broadcasters (excluding digital radio) with a licence to access spectrum if their broadcasting service licence is in force will be retained.

The national broadcasters, the ABC and the SBS, will also continue to have access to spectrum to fulfil their commitments in line with the objectives of their respective enabling Acts. The arrangements for providers of content under a Broadcasting Services Act class licence will reflect that level of spectrum guarantee that already exists – that is, HPONs will continue to have access to spectrum for their existing coverage area as currently applies and low power open narrowcasters (LPONs) will not have any guarantee of access to spectrum.

Consistent with the current law, no licensee will be provided with permanent tenure over a particular part of spectrum. While changes to the frequencies allocated to broadcasters may be appropriate from time to time, they are rare and challenging, technically and commercially. The Government has no current plans to change the frequencies used by broadcasters.

Proposals

Ministerial oversight

Proposal 1

Remove the BSB concept and Ministerial designations of BSBs and devolve responsibility for spectrum designations and high-level planning decisions to the ACMA. Ministerial policy statements will be introduced to guide the ACMA.

A key element to integrating the broadcasting spectrum provisions into the general spectrum management framework is removing the BSB concept and Ministerial designations of BSBs. Spectrum planning will be managed within the same framework as applies to all other spectrum users (i.e. as determined by the ACMA within a radiofrequency plan).

The intent in removing Ministerial designations of the BSBs is to further devolve responsibility for spectrum designations and high-level planning decisions from the Minister to the ACMA. This better reflects the ACMA's technical knowledge and regulatory spectrum planning expertise. It is important to recognise that it does not remove the Minister's role in strategic policy settings governing the broadcasters' access to spectrum. A broader policy discussion on this issue can be found in the *Radiocommunications Bill 2017: a platform for the future* information paper.

Ministerial policy statements will be introduced into the radiocommunications policy framework as a formal, transparent but non-binding mechanism for the Government to issue the ACMA with policy guidance. A Ministerial policy statement on spectrum for current BSB commercial, community and national broadcasters as well as HPON use will be developed to clearly state the Government's expectations of the ACMA in planning broadcasting spectrum. The Ministerial policy statement will also include the policy that, in planning spectrum, the frequencies currently used by the existing commercial,

community and national broadcasters and HPONs within current licence areas should be allocated on a primary basis for broadcasting. Industry stakeholders will be consulted on the draft Ministerial policy statement. More detail on the Ministerial policy statement can be found in the *Radiocommunications Bill 2017: a platform for the future* information paper.

In addition, the Minister will retain the power to issue directions to the ACMA under section 14 of the *Australian Communications and Media Authority Act 2005* in relation to planning spectrum, including that for use by broadcasters.

Question 1

Do you consider this change in approach to spectrum planning will have any practical implications?

Question 2

What matters should be considered for inclusion in the broadcasting Ministerial policy statement?

Planning of broadcasting services

Proposal 2

In planning spectrum for use by national, commercial and community broadcasters and HPONs, the ACMA will have regard to the objects and the planning criteria similar to the current section 23 of the Broadcasting Services Act.

Proposal 3

Licence area plans and television licence area plans will be combined and simplified. Simplified licence area plans will define the geographic scope of licence areas and set out the number and category of services that will be available in those areas. They will not include technical specifications, which will instead be included as conditions of individual radiocommunications licences.

The ACMA will undertake planning spectrum for broadcasting under the new general radiocommunications framework by making radiofrequency plans, without reference to the BSBs. However, the ACMA will be required, in planning spectrum for use by national, commercial and community broadcasters and HPONs, to have regard to objects and the updated planning criteria similar to that currently in section 23 of the Broadcasting Services Act. This requirement will continue to include the management of potential interference to broadcasting services, either from other broadcasting services or from other uses of spectrum.

Instead of planning the BSBs, the purpose of section 26 of the Broadcasting Services Act will be to plan certain broadcasting services that are to be available in particular areas of Australia with the use of radiofrequency spectrum. In planning of broadcasting services, the number and types of national, commercial and community broadcasting and HPON services will still be determined by the ACMA through LAPs made under section 26, with regard to the section 23 criteria (with minor amendments). However, the LAPs will no longer determine the technical specifications of broadcasting services, with these now being included as conditions of each broadcaster's individual radiocommunications licence. The reference to 'technical specifications' of services will be removed from section 26 of the Broadcasting Services Act.

Since the technical planning of spectrum will no longer be under the Broadcasting Services Act, LAPs will only plan the number and types of broadcasting services in each licence area. Television and radio licence planning functions will remain separate and there will be no merging of licence areas.

As legislative instruments, LAPs will continue to be subject to consultation requirements, Parliamentary scrutiny and disallowance. The ACMA will be required to publish details of the licences on the Register of Radiocommunications Licences.

Moving technical specifications out of LAPs will enable the ACMA to recover costs, if appropriate (under section 60 of the *Australian Communications and Media Authority Act 2005*), related to the technical planning and administrative work involved in issuing or varying a spectrum access licence for a broadcasting service. This is consistent with the charges levied on other users of the spectrum. Further work and consultation, if appropriate, will be undertaken with the ACMA and stakeholders to consider the possible impact on all broadcasters.

Question 3

Will consolidating the existing radio LAPS and TLAPS into a general LAP category have any negative implications for licensees?

Broadcasting licensing

Proposal 4

Change terminology of broadcasting licences from broadcasting services band to 'licences for the provision of broadcasting services planned in a licence area plan'. These will be known as LAP planned licences.

The licensing of broadcasting services will remain as is for licences allocated under Parts 4 (commercial) and 6 (community) of the Broadcasting Services Act. As previously set out, these licences will continue to remain in force for five years under sections 45 (commercial) and 89 (community) of the Broadcasting Services Act (with the exception of commercial television satellite licences that will continue in force for 10 years). The ACMA will continue to be obliged to renew these licences under section 46 of the Broadcasting Services Act, unless the applicant is identified as unsuitable on the grounds outlined under section 41(2) of the Broadcasting Services Act. A decision that an applicant is unsuitable will continue to be subject to review under section 204 of the Broadcasting Services Act.

It is proposed that, with the removal of the BSBs, the Radiocommunications Act and the Broadcasting Services Act will refer to the allocation of Broadcasting Services Act licences for the provision of broadcasting services planned in a LAP (LAP-planned licences). This articulation will also ensure that national broadcasting services and HPON licences are covered.

National broadcasters currently have a charter under their respective enabling Acts to provide national broadcasting services throughout Australia. Technical specifications and other conditions regarding the use of spectrum for transmitting their services would be contained in a national broadcaster's spectrum access licence.

The arrangements for the allocation of commercial or community broadcasting licences that are currently outside of the scope of LAPs will, from the perspective of licensees, effectively remain as is. This would include those services outside the BSB such as commercial television services provided by satellite (section 38C), other commercial licences (section 40) and other community broadcasting

licences (section 82). It would also include those services within the BSB that currently have no ongoing guarantee of spectrum such as HPON/LPONS and temporary community broadcasting licences.

Question 4

Are there any other existing rights that broadcasters have in relation to their licences which need to be addressed in the proposed framework?

Radiocommunications licensing

Proposal 5

Reforms will maintain the linkage between licences under the Broadcasting Services Act and access to licences under the Radiocommunications Bill for incumbents.

Access to radiofrequency spectrum for certain commercial and community broadcasters will reflect the current relationship between the two Acts. Those broadcasters will remain entitled to be issued with a radiocommunications licence under the Radiocommunications Bill authorising the transmission of those services.

National broadcasters will be entitled to be issued with radiocommunications licences authorising the transmission of broadcasting services.

In addition, any broadcaster may seek access to spectrum to transmit their services through other means (e.g. using a third-party). This will provide the broadcasters with some flexibility as to how to access spectrum. However, regardless of how they access spectrum, broadcasters will still be required to comply with the other obligations such as content, ownership and control provisions.

Narrowcasters do not currently have legislative guaranteed rights to spectrum. This is not intended to change. Licences will continue to be issued and priced on this basis. While there is no current legislative requirement for HPONs to be included in LAPs, the ACMA has chosen to do so as part of its existing planning process and this discretion will remain.

In line with existing arrangements, the ACMA would be able to allocate spectrum for a temporary community broadcasting licence or LPON service without that service being planned in a LAP. This would continue to provide the ACMA with the flexibility to provide these services in a more timely and discretionary manner without affecting the integrity of the LAP process. The existing constraints on these services such as the limited timing or guarantee of spectrum would remain in place.

Digital radio

Proposal 6

Remove digital radio channel plans and move into a new single licensing system.

Proposal 7

Incorporate the process for issuing digital radio multiplex transmitter licences into the new licence issue scheme.

Proposal 8

Consolidate the digital radio multiplex transmitter licence issue entitlements and broadcasters; access-seeking entitlements.

It is recognised that the digital radio framework across both the Broadcasting Services Act and Radiocommunications Act differs from the arrangements that are in place for the analogue radio and digital television planning and licensing processes. There is also an existing process to adjust the digital radio framework to facilitate the rollout of digital radio into regional Australia. It is intended that reform remains consistent with any changes made by the Government in consultation with the Digital Radio Planning Committee for Regional Australia.

It is proposed that DRCPs will be removed, with the function moving into a new single licensing system.

The statutory process for issuing digital radio multiplex licences in sections 102C-102F of the Radiocommunications Act will be incorporated into the arrangements for issuing licences under Part 6 of the Bill, including licence issue schemes.

The current access regimes with the ACCC and for accessing transmission towers, associated facilities and sites would be retained.

Question 6

Will any of the changes to digital radio create unintended consequences or operational impediments?

Secondary trading and spectrum sharing

Proposal 9

Incorporate greater flexibility into the new framework to allow for trading and sharing of spectrum.

Currently, commercial broadcasting licensees do not actively share or trade spectrum. There are a number of technological limitations and interference issues that significantly limit the ability for broadcasters to engage in secondary market activity, particularly for non-broadcasting purposes.

However, technology is moving rapidly and trading and sharing arrangements may be attractive to broadcasters in the future. The new general licensing framework provides the flexibility for trading and sharing of spectrum so that these activities can be accommodated. It is important to note that any such arrangements would need to be initiated by broadcasting spectrum holders, and agreed by Government. It should also be noted that existing legislated content and ownership and control provisions in the Broadcasting Services Act will continue to apply.

The Government will not impose forced sharing or trading arrangements.

Transitional arrangements

The transitional arrangements outlined in *A proposed approach to transition from the 1992 Act to the Radiocommunications Bill* consultation paper will generally apply to radiocommunications licences issued to broadcasters prior to the commencement of the new approach and will ensure that the current entitlements of broadcasters are maintained. The Government will discuss any proposed changes with industry stakeholders to assist in a smooth transition to the new arrangements.

Feedback options

The Government welcomes feedback on the ideas presented in this paper and any other ideas to make broadcasting spectrum planning, access and licensing simpler. 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
- organisation name, if applicable
- contact details, including telephone number, postal and email addresses
- confirmation whether or not your submission can be made public – published – or kept confidential.

All submissions to be made public need to meet the [Digital Service Standard](#) for accessibility. Any submission that does not meet this standard may be modified before being made public.

If your submission is to be made public, please ensure you do not include any personal information that you don't want to be published.

Appendix A: List of Acronyms

ABC	Australian Broadcasting Corporation
ACCC	Australian Competition and Consumer Commission
ACMA	Australian Communications and Media Authority
BSB	Broadcasting Services Bands
DAB+	Digital Audio Broadcasting Plus
DRCP	Digital Radio Channel Plan
DRMT	Digital Radio Multiplex Transmitter
HPON	High Powered Open Narrowcasting
LAP	Licence Area Plan
LPON	Low Powered Open Narrowcasting
NBS	National Broadcasting Service
SBS	Special Broadcasting Service
TLAP	Television Licence Area Plan

Appendix B: Comparison of current law and new approach

The following table lists some key rights for broadcasters and how these are affected by the proposed approach.

Policy Area	Broadcaster Licensee	Current law	New law
Planning	Commercial Broadcasting Licensees	ACMA plans the spectrum, consistent with international treaty obligations, by making spectrum plan and frequency band plans which deal with the purpose or purposes for which parts of the spectrum may be used (Radiocommunications Act s30, 32).	ACMA plans the spectrum, consistent with international treaty obligations, by making radiofrequency plans which deal with the purpose or purposes for which parts of the spectrum may be used (cl ^24 of the Bill).
	National Broadcasting Licensees Community Television and Radio Licensees	<p>Minister designates part of the spectrum primarily for broadcasting purposes – BSBs (Radiocommunications Act s 31(1)(a)).</p> <p>The BSB frequencies are at the discretion of the Minister.</p> <p>The designation is a non-legislative instrument, meaning there is no Parliamentary scrutiny and disallowance or requirement to publish the instrument.</p> <p>BSBs referred to the ACMA for planning under the Broadcasting Services Act (Radiocommunications Act s 31(1)(b)).</p> <p>The Minister may reserve capacity in the BSBs for national or community broadcasters (Broadcasting Services Act s 31).</p> <p>The Minister has a general power to direct the ACMA in relation to the performance of its spectrum management functions and exercise of its spectrum management powers under s 14 of the <i>Australian Communications and Media Authority Act 2005</i> (ACMA Act).</p>	<p>Broadcasting spectrum will be planned in accordance with the general framework; i.e. frequencies will be set out in a radiofrequency plan, which is a legislative instrument subject to consultation requirements and publication, but not disallowable (cl ^24 of the Bill).</p> <p>A Ministerial policy statement will outline commitment to broadcasting: expectation that the ACMA will have regard to the current (BSB) frequencies used by broadcasters (cl ^18 of the Bill). Clause ^19 of the Bill requires the ACMA to have regard to relevant Ministerial policy statements in the performance of its spectrum management functions and exercise of its spectrum management powers.</p> <p>The Minister will continue to have the power to direct the ACMA in relation to its spectrum management functions and powers under s 14 of the ACMA Act.</p>

Policy Area	Broadcaster Licensee	Current law	New law
		<p>LAPs plan the number, characteristics and technical specifications of radio broadcasting services in BSB spectrum in accordance with the planning criteria (s23) specified in the Broadcasting Services Act</p> <p>Nationals are frequently planned in LAPs, but are not required to be planned in LAPs to be authorised to provide services.</p> <p>TLAPs plan the channels (including allotment) and characteristics (including technical specifications) of TV broadcasting services in BSB spectrum (Broadcasting Services Act Part 3).</p>	<p>A single LAP power will be available to plan broadcasting services. Television and radio licence area planning will, in practice, remain separate.</p> <p>Technical specifications will be relocated from LAPs and TLAPs into individual radiocommunications licences. Allotment of channels to broadcasters is able to be done at licence issue, renewal or variation (subject to restrictions on the ACMA’s power to vary the conditions of an existing or renewed licence).</p>
	Digital Radio Multiplex Transmitter Licensees	<p>A DRCP allots channels, reserves frequency channels, specifies types of licences and technical specifications of digital radio multiplex transmitter (DRMT) licences for commercial Broadcasting Services Act licence areas where digital radio is to be licensed (Radiocommunications Act s 44A).</p>	<p>DRCPs will not be retained, with the function moving to the new single licensing system. Allotment of channels to DRMT licensees is able to be done at licence issue, renewal or variation (subject to restrictions on the ACMA’s power to vary the conditions of an existing or renewed licence).</p> <p>No change to planning of digital radio multiplex transmitter licences, except in the context of the Government’s consideration of possible amendments to the digital radio framework in conjunction with the Digital Radio Planning Committee for Regional Australia.</p>

Policy Area	Broadcaster Licensee	Current law	New law
	<p>Temporary Community Broadcasting Licensees</p> <p>Low Powered Open Narrowcasting Licensees (LPONs)</p> <p>High Powered Open Narrowcasting Licensees (HPONs)</p> <p>Subscription Narrowcasting Licensees</p> <p>Subscription Broadcasting Licensees</p>	<p>The ACMA makes a (non-legislative) 'drop-through' determination, having regard to certain criteria for spectrum access, to allow the BSBs to be used for alternative purposes (Broadcasting Services Act s 34 and Radiocommunications Act s 31(2)-(4), s 100(2)).</p> <p>The designation is a non-legislative instrument, meaning there is no Parliamentary scrutiny and disallowance or requirement to publish the instrument.</p>	<p>A drop-through determination will no longer be required due to the removal of the BSB concept.</p>
Spectrum access and licensing	Commercial Television and Radio Licensees	<p>If a commercial broadcaster holds a BSB licence (those issued under <i>Broadcasting Services Act</i> Part 4, other than s 38C or 40 licence and not being a digital radio multiplex transmitter licence), the ACMA must issue a transmitter licence for the purposes of transmitting the broadcasting service/s concerned (Radiocommunications Act s 102(1)).</p>	<p>The current statutory guarantee to access spectrum will be retained for incumbent commercial broadcasters, consistent with current arrangements.</p> <p>Licence issue would be subject to Part 6 licensing arrangements in the Radiocommunications Bill.</p>
	National Television and Radio Licensees	<p>National broadcasters may be issued with a licence to access spectrum in the BSBs if the service is planned in a LAP (Radiocommunications Act s 100(3AA)).</p>	<p>National broadcasters will have guaranteed access to spectrum where services are enabled under their respective Acts.</p>

Policy Area	Broadcaster Licensee	Current law	New law
	Community Television and Radio Licensees	If a community broadcaster holds a BSB licence (those issued under the Broadcasting Services Act Part 6), other than a s 82 licence and not being a digital radio multiplex transmitter licence, the ACMA must issue a transmitter licence for the purposes of transmitting the broadcasting service/s concerned (Radiocommunications Act s 102(1)).	The current statutory guarantee to access spectrum will be retained for incumbent community broadcasters.
	Temporary Community Broadcasting Licensees	<p>There is no guarantee of access to spectrum for temporary community broadcasting licences.</p> <p>A temporary community broadcasting licences may apply to the ACMA for a transmitter licence upon being issued with a licence under the Broadcasting Services Act (Radiocommunications Act s 99). The ACMA may issue a temporary community transmitter licence authorising the operation of one of more transmitters in accordance with the broadcasting licence (Radiocommunications Act s 101A).</p>	A temporary community broadcasting licensee will continue to not have guaranteed spectrum access, but will continue to be able to apply for a transmitter licence.
	Low Powered Open Narrowcasting Licensees	There is no guarantee of access to spectrum for LPONs. LPONs generally must apply to the ACMA for a transmitter licence to access spectrum (Broadcasting Services Act s 34, Radiocommunications Act s 100(2)).	No change to narrowcasters' spectrum access. LPONs will not be prohibited from being planned in a LAP, but will not be guaranteed an entitlement to spectrum access. LPON broadcasters will continue to need to apply for a transmitter licence.
	High Powered Open Narrowcasting Licensees	<p>There is no guarantee of access to spectrum for HPONs. HPONs generally must apply to the ACMA for a transmitter licence to access spectrum. (Broadcasting Services Act s 34, Radiocommunications Act s 100(2)).</p> <p>HPONs have been included in Licence Area Plans by the ACMA as part of its existing planning processes.</p>	No change to narrowcasters' spectrum access. The ACMA may continue at its discretion to plan a HPON in a LAP. Planning a HPON in a LAP will not guarantee an entitlement to spectrum access. HPON broadcasters will continue to need to apply for a transmitter licence to access spectrum.

Policy Area	Broadcaster Licensee	Current law	New law
	Subscription Narrowcasting Licensees	There is no guarantee of access to spectrum for subscription narrowcasters. Subscription narrowcasting licensees generally must apply to the ACMA for a transmitter licence to access spectrum (Broadcasting Services Act s 34, s 117, Radiocommunications Act s 100(2)).	No change to narrowcasters' spectrum access. Subscription narrowcasters will not be prohibited from being planned in a LAP, but will not be guaranteed an entitlement to spectrum access. Subscription narrowcasters will continue to need to apply for a transmitter licence.
	Subscription Broadcasting Licensees	There are no existing entitlements to guaranteed spectrum access for subscription broadcasting licensees. A subscription broadcaster can apply to the ACMA for a transmitter licence to access spectrum.	No change to subscription broadcasters' spectrum access. Subscription narrowcasters will not be prohibited from being planned in a LAP, but will not be guaranteed an entitlement to spectrum access. Subscription broadcasters will continue to need to apply for a transmitter licence to access spectrum.
	Digital Radio Multiplex Transmitter Licensees	Spectrum has been planned by the ACMA for use by digital radio multiplex transmitter licensees. Commercial, community and national broadcasters have statutory entitlements to multiplex capacity in certain circumstances (Radiocommunications Act s102 C, D and E).	DRCPs will be removed. No change to planning of digital radio multiplex transmitter licences, except in the context of the Government's consideration of possible amendments to the digital radio framework in conjunction with the Digital Radio Planning Committee for Regional Australia.
Sharing and/or trading	All licensees	Cannot share or lease the transmitter licence. BSB licensees, other than BSA class licence holders, cannot trade the transmitter licence separately to the broadcasting licence – if the BSB licence is transferred, the transmitter licence is taken to be issued to the person to whom that licence is transferred (Radiocommunications Act s 102(2))	Subject to any limitations stated in a radiocommunications licence, a licence may be transferred separately to the broadcasting licence at the discretion of the broadcaster. Approval from the Government will be required if a broadcaster wants to share/trade/lease for non-broadcasting uses of spectrum.