



DELEGATION AND MANAGEMENT RIGHTS

Introduction

The Bill will set out provisions that enable the Australian Communications and Media Authority (ACMA) to delegate any or all of its general licensing functions or powers to an eligible Australian corporation.

Issue

The Act provides spectrum users with limited opportunities to participate in spectrum management. The Bill will expand the potential for third parties to manage parts of the spectrum while maintaining the ACMA's role as the principal regulator. This has the potential to facilitate more innovative management arrangements (such as increased spectrum sharing and flexible management arrangements) that better meet the specialty needs of different kinds of spectrum users and encourage the efficient use of spectrum. Delegation will be at the discretion of the ACMA. For example, an eligible Australian corporation may be delegated any or all of the ACMA's general licensing functions and powers in relation to licences issued for a particular part of the spectrum in a particular geographic area.

Detail

The Bill will enable the ACMA to delegate any or all of its general licensing functions or powers to an eligible Australian corporation (a company registered under Part 2A.2 of the *Corporations Act 2001* or established under law for a public purpose). The ACMA may make delegation rules setting out requirements that must be complied with by delegates and may also issue binding directions

to a delegate. Any delegation may be supported by a management rights agreement between the delegate and the ACMA, as described below.

Management rights agreement

A management rights agreement is the specific written agreement between the delegate and the ACMA, outlining the terms of the delegation arrangement. A management rights agreement may set out the relationship between the delegate and the ACMA regarding the ACMA's:

- > power to vary delegation
- > power to revoke delegation
- > ability to exercise delegated functions of powers
- > power to delegate general licensing functions to other corporations.

The agreement may also provide for payment between the ACMA (acting on behalf of the Commonwealth) and the delegate. Payment options may include:

- > the delegate will pay the ACMA to enter into and subsist the agreement
- > the ACMA may pay the delegate to perform delegated functions
- > the ACMA may pay the delegate to terminate the agreement before its expiry.

Checks and balances

Certain decisions made by the delegate are subject to review by the Administrative Appeals Tribunal following a process of reconsideration by the ACMA. For example, reviewable decisions may include a decision to:

- > refuse to issue a licence
- > include a condition in a licence
- > suspend a licence
- > cancel a licence.

In addition, the ACMA will be empowered to develop a series of rules called delegation rules.

Delegation rules will set out what delegates need to comply with in the exercise of their powers.

To ensure appropriate levels of certainty for government, industry and users, the ACMA will have some limits on the functions and powers that are able to be delegated. Certain spectrum management functions and powers will not be delegable. This includes determining the operation and scope of the legislation, enforcement, and powers that may trigger payments from the Commonwealth. Other powers that are excluded from potential delegation are those exercisable by the Minister. All delegations will be published on the ACMA website.

Examples of what can and cannot be delegated

Can be delegated	Cannot be delegated
> Licence issue	> Enforcement
> Development of a licence issue scheme	> Development of rules
> Inclusion of conditions on a licence	> Any Ministerial decisions
> Inclusion of designated statements on a licence	> Accreditation of persons
> Conditions about payment of spectrum access charges	
> Variation	
> Renewal	
> Maintaining the Register of Radiocommunications Devices	