

The licensing system

Supporting material for the Exposure Draft of the Radiocommunications Bill 2017

MAY 2017

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Purpose of the ACMA supporting material

The ACMA will be responsible for designing and developing new spectrum management arrangements in accordance with the Exposure Draft of the Radiocommunications Bill 2017 (the exposure draft of the Bill), should the Bill be enacted in its current form.

The ACMA's supporting material is intended to provide stakeholders with a greater understanding of how the ACMA envisages key aspects of the Bill may operate, should the Bill be enacted, in order to facilitate consideration of the exposure draft of the Bill.

The ACMA has a particular interest in the views of stakeholders that could inform its approach to transitioning to and implementing the reformed legislation. While the exposure draft of the Bill is available for consultation, the ACMA will join the Department of Communications and the Arts (DoCA) in its stakeholder engagement activities so that the ACMA can benefit from those discussions. However, stakeholders should direct submissions on the package to DoCA as it is the agency responsible for this process.

The ACMA intends to undertake further substantial stakeholder consultation as it designs and then settles on its approach to giving practical effect to the new legislative and policy framework, should the Bill be enacted in its current form.

All views expressed in the ACMA supporting material are preliminary observations only, and have been developed to assist stakeholders in considering and responding to the exposure draft of the Bill. **The supporting material cannot and does not fetter the Authority's discretion in the making of future decisions about the matters discussed in this material or any other matter.** The ACMA will assess each decision it makes under the *Radiocommunications Act 1992*, and under any future legislation, on its merits and in accordance with the requirements of any applicable legislation and administrative law.

No person should rely on statements made in the ACMA supporting material as an indication or explanation of future or present rights and obligations. Neither the ACMA nor the Commonwealth accepts any responsibility or liability for any damage, loss or expense incurred as a result of reliance on any part of the ACMA supporting material. Any person reading this supporting material is advised to also consult the exposure draft of the Bill and DoCA's explanatory materials.

Existing arrangements

The *Radiocommunications Act 1992* (the 1992 Act) provides for the use of radiocommunications devices to be authorised by one of three licence kinds—spectrum, apparatus or class.

The legislative provisions for each kind of licence are largely separated. The legislative provisions to support allocation of licences are different for spectrum and apparatus licences. The potential for conversion between licence types is limited. There is limited capacity for apparatus and spectrum licences to coexist in the same spectrum.

The Spectrum Review has identified a range of inflexibilities in the current legislative framework in relation to licence allocation and spectrum management. The time taken to allocate spectrum licences and to reissue them under the 1992 Act has been a matter of particular note. The lack of flexibility created by the division between spectrum and apparatus licences has also been noted.

Radiocommunications Bill 2017

NB: This paper excludes treatment of any licence under the 1992 Act that is related to a broadcasting service or datacasting service for the purposes of the *Broadcasting Services Act 1992*. More information about the treatment of those licences can be found in the Department of Communications and the Arts' (DoCA's) *Broadcasting Spectrum* consultation paper.

Radiocommunications licensing and spectrum authorisations

Under the Radiocommunications Bill 2017 (the Bill), if passed, there will be only one licensing system, under which there are likely to be a number of licence categories representing the broad uses of spectrum.

The Bill also provides for spectrum authorisations that are analogous to class licences in that they can authorise use of devices in a particular part of the spectrum by a group of spectrum users without an application process. Their expected use includes to authorise use of devices by reference to a defined group of users or for a defined type of use.

Licences

The Bill would have the effect of removing the legislative barrier between spectrum and apparatus licences, and would therefore enable the ACMA to design licences that could have the characteristics of either or both. Once issued in accordance with the Bill, the operation of devices under a licence and the subsequent treatment of licences would generally be determined through two mechanisms:¹

1. Licences issued under the Bill will include conditions. The ACMA will also have the ability to impose conditions on licences. Some of these conditions can be set by a legislative instrument setting out common conditions, much like the function of a licence condition determination currently.
2. Licences issued under the Bill will include 'designated statements'. Designated statements, in general, restrict the manner in which the licence may be treated, including in relation to renewal, and restrictions on subdivision and third-party authorisation, among other matters.

A licensing system defined in part by the conditions on licences and by designated statements will allow for effective responses to new technologies and demands for spectrum.

It is also proposed that a number of uses of spectrum could be enabled through spectrum authorisations rather than by licences.

¹ It is also possible that licences would include regulatory undertakings. Such undertakings, if included in a licence (the original licence), would require the ACMA to ensure that specified steps have been undertaken before issuing other licences or making spectrum authorisations in relation to the operation of radiocommunications transmitters in the part or parts of the spectrum to which the original licence authorises the operation of radiocommunications devices.

Issuing licences under the Bill

Under the Bill, the ACMA will have discretion about whether to authorise the use of a radiocommunications device through the issue of a licence, or through making a spectrum authorisation.

The Bill provides for licences to be issued in accordance with licence issue schemes (LISs), with the ACMA retaining a capacity to issue licences on application. Many of the mandatory statutory procedural steps in issuing spectrum licences under the 1992 Act will be removed under the Bill.

Licence tenure—duration and end-of-term arrangements under the Bill

The Bill will allow the ACMA to give longer term licences than under the 1992 Act. It may do so by issuing licences for up to 20 years, by specifying renewal rights in the licence or by a combination of these methods.

As with the present spectrum licensing regime, the Bill allows the ACMA to resume licences before expiry on payment of compensation. However, experience suggests this capacity is not likely to be used often. While a small number of spectrum licences have been surrendered, no spectrum licence has ever been resumed for compensation under the 1992 Act.

Proposed approach

The Spectrum Review provides a generational opportunity to reconsider how spectrum is managed and how spectrum use is permitted. The design of the new licensing system is a central challenge, because it is at the core of the legislative framework that authorises the operation of radiocommunications devices.

Planned approach to giving effect to the Bill

Developing a licensing system that provides durable mechanisms for achieving the objects of the Bill requires that the system be responsive and adaptive to changing circumstances in technology, markets and use of spectrum. The ACMA will take an evidence-informed approach consistent with the government's policies on best-practice regulation and deregulation.

The objects of the Bill include to promote the long-term public interest derived from the use of the spectrum, by providing for the management of the spectrum in a manner that:

- > facilitates the efficient planning, allocation and use of the spectrum; and
- > facilitates the use of the spectrum for defence, public and community purposes; and
- > supports the communications policy objectives of the Commonwealth Government.

The Bill, if enacted, would provide the ACMA with broad discretions in how it designs individual licences and the licensing system to advance these objects, including by:

- > providing for a single kind of radiocommunications licence so that there are no longer legislative barriers between different licence types that exist under the 1992 Act
- > extending the maximum term of licences and clarifying end-of-term processes for licences
- > reducing the detail in the legislation around the processes for issuing licences and managing spectrum.

If provided with this increased flexibility by enactment of the Bill, the ACMA would have a range of options in designing the new licensing system. Design factors to be considered would include:

- > providing for a more market-oriented approach where practicable
- > accommodating an appropriate balance of flexibility and predictability for spectrum users
- > deciding the extent of change to licence issue processes and licence design
- > determining the period over which changes to licence issue and licence design occur, especially with respect to spectrum-sharing, licence renewal, re-farming and trading
- > determining the extent to which the ACMA may seek to liberalise control of spectrum management by use of management rights or reconfigured licences.

Ideally, the licences would be flexible enough to allow spectrum users, and the market more broadly, to respond to changes in the highest value use of spectrum with little or no need for intervention from the ACMA. The incompatible signal propagation characteristics of different spectrum uses mean this is not always practicable. However, a key goal of a well-designed licensing system should be to maximise the

flexibility and degree of substitutability of licences—their ‘technological flexibility’—noting this will at times require compromise with other goals, such as technical efficiency, and the need in some circumstances for limits on the amount of spectrum licensed to an individual entity.

In developing a new licensing system, it would be open to the ACMA to shift away from the current relatively high levels of centralised control of spectrum access (especially in relation to apparatus licensing) to a more decentralised approach. This could be achieved by taking advantage of some of the flexibility provided in the Bill, including by, for example, either:

- > increasing the use of long-duration, technologically neutral, wide-area ‘spectrum space’ licences²
- > using the management rights provisions of the Bill to facilitate private band management.

Where appropriate, any such shift in licensing design would be informed by the availability and maturity of relevant new technologies and management models³ that facilitate more effective decentralised management of spectrum. For example, dynamic spectrum access (DSA) allows for spectrum-sharing by using technology to allow secondary users⁴ to be aware of their environment in order to access spectrum, while coexisting with primary users/uses of the band.

While accommodating productive and sought-for change in a number of different respects of spectrum management, the ACMA would be guided by the objects of the Bill, any relevant ministerial policy statements and the desirability of achieving an appropriate balance between flexibility and predictability for spectrum users. The ACMA would seek stakeholder input on the extent to which existing and prospective licensees are seeking, or would benefit from, changes to licensing arrangements.

The Bill challenges the ACMA to undertake a root-and-branch review of licensing, to put in place a system that reflects the recommendations of the Spectrum Review and the objects of the Bill. Examples of questions the ACMA is likely to consider are:

- > Are there opportunities for greater use of wide-area ‘spectrum space’ licences?
 - > Wide area ‘spectrum space’ licences may be more technologically flexible and open to trading in certain circumstances.
- > Is there scope to make greater use of spectrum authorisations instead of licences?
 - > Spectrum authorisations can place a lower administrative burden on spectrum users and facilitate the introduction of new devices and technologies.
- > What other opportunities are there for greater involvement by third parties in the management and coordination of spectrum use in bands?
 - > In keeping with the recommendations of the Spectrum Review, there may be opportunities for entities other than the ACMA to manage spectrum use, potentially more efficiently.

² ‘Spectrum space licence’ refers to a wide-area licence that is defined by a geographical boundary and an upper and a lower frequency boundary. Typically, the licensee must avoid causing interference outside the boundaries of the ‘spectrum space’ thus defined, but enjoys flexibility as to how and where it operates within its spectrum space.

³ See, for example, <http://telecoms.com/461372/france-claims-first-licensed-shared-access-pilot/>.

⁴ In this context, a secondary user is a user that has lower priority compared to a primary user under a DSA arrangement (that is, it does not have the same meaning as primary and secondary as defined in ITU Radio Regulations Article 5).

- > Where (that is, in what frequency ranges and for what services) is it appropriate to give greater regulatory and technological flexibility in licences?
 - > Greater regulatory and technological flexibility can potentially give rise to greater trading of licences, or changes of use by existing licensees, without ACMA involvement; however, the regulatory framework to support this will need to be developed.
- > Is there scope to improve the substitutability of licences by reducing unnecessary differentiation between licence types and any unnecessary complexity in licence conditions?
- > How does the ACMA optimise licence terms, processes preceding licence expiry, and renewal statements?

In answering these questions and choosing the options with the greatest net benefit, the ACMA would gather the best available evidence, including through seeking the views of current and prospective spectrum users and other key stakeholders. It would expect to implement the necessary changes in a staged way to manage the transition between the current legislative scheme and the new legislative scheme effectively and in a manner that acknowledges the operational practicalities of spectrum users, consistent with the objects of the Bill and best practice in spectrum management.

The ACMA will need to make informed judgements about the appropriate pace and scope of change. Some major changes may be appropriate at the time of transition to the new arrangements, while other changes may be better made over a course of years.

The ACMA may need to maintain the status quo with a number of licensing arrangements during the transition, to adequately manage the balance of flexibility and predictability for spectrum users. For example, a radically different way of coordinating spectrum access may have potential, but may not yet be feasible. Transition is not the end of the process of implementing the new spectrum management arrangements, but merely the first step, with scope for further changes to occur over a longer time frame. Whether opportunities for reform of arrangements are sufficiently mature at the time of transition or are adopted subsequently will depend on the particulars of each case, but the ACMA will seek to harness opportunities for reform whenever they are available to it.

How the ACMA will engage with stakeholders on implementing the Bill

A central implementation principle is that stakeholders, including existing and prospective licensees, be consulted on the ACMA's approach to implementation of the Bill.

Following the release of the exposure draft of the Bill, and prior to enactment of new legislation, the ACMA will take up the opportunity to consult stakeholders on the options that may be available to it in implementing the Bill, if the Bill becomes law, including the design of the licensing system, and the issues to be addressed in considering those options.

While the exposure draft of the Bill is available for consultation, the ACMA will seek to join DoCA in its stakeholder engagement activities so that the ACMA can benefit from these discussions.

During the period prior to the Bill becoming law, the ACMA expects to articulate a broad outline of spectrum management improvement opportunities. This will identify

the major themes the ACMA expects to explore as it develops its approach to transition and implementation.

The ACMA will over this time refine its understanding of international spectrum management trends, focusing on the best-practice regulatory approaches and their relevance and applicability to the Australian context. Fundamentally, the ACMA is concerned to understand how it can best maximise the freedom of spectrum users and markets to determine the best uses of spectrum. Relevant analysis is expected to build on the Spectrum Review and include licensing innovations and any emerging alternatives to traditional licensing (such as spectrum usage rights⁵, privatised spectrum management rights⁶ and DSA mechanisms⁷), ensuring that the ACMA has an up-to-date understanding of the relevant options available to spectrum regulators.

The ACMA expects to discuss and seek feedback on specific Spectrum Review implementation issues through processes such as issues papers and conducting stakeholder forums (for example, ‘tune-ups’). The ACMA expects to share with stakeholders its next round of thinking about possible approaches to Spectrum Review implementation prior to the Bill becoming law. The ACMA also expects its regular Radcomms conference in 2017 will provide a forum for discussion with industry on its approach to implementing the Spectrum Review.

Prior to finalising its approach, the ACMA expects to canvass a range of licensing system reform options, including the shape of the new licensing system, and the nature of the proposed replacement licences and spectrum authorisations for all existing apparatus, spectrum and class licences. The ACMA also expects to engage with stakeholders on the considerations to inform the prioritisation and timetabling of the transition of apparatus licences after the commencement of the main provisions of the Bill.

As a result of this process of active regulatory development and stakeholder engagement, the ACMA aims to be well prepared to seek stakeholder feedback on the formal arrangements to implement both the overarching design for the new licensing system and a transition process for existing licences, if the Bill becomes law. These formal arrangements are expected to include the instruments to support the licensing system (for example, licence issue schemes and legislative instruments that provide for conditions applicable to a number of licences) and the arrangements to support the move of groups of apparatus licences to the new system.

Approach to licensing design under the Bill

The ACMA expects that the licensing system should:

- > provide an appropriate balance of flexibility and predictability for spectrum users
- > reflect the outcomes of consultation with current and prospective spectrum users
- > be developed and implemented in a staged way to effectively manage the transition between the current legislative scheme and the new legislative scheme
- > recognise the close interrelationship between the licensing and technical planning frameworks that underpin spectrum management and the consequent need to accommodate technical planning considerations.

⁵ <http://stakeholders.ofcom.org.uk/consultations/sur/summary>

⁶ [http://www.rsm.govt.nz/about-rsm/spectrum-policy/acts-and-regulations/overview-of-licensing-regime-in-nz/management-rights?searchterm=spectrum management rights](http://www.rsm.govt.nz/about-rsm/spectrum-policy/acts-and-regulations/overview-of-licensing-regime-in-nz/management-rights?searchterm=spectrum%20management%20rights)

⁷ See, for example, <http://telecoms.com/461372/france-claims-first-licensed-shared-access-pilot/>.

There are costs attached to complexity in a licensing system. Complexity can arise from the conditions and other provisions of individual licences, the extent of differentiation between licences and/or licence types, or the rules which support the issue and use of licences. All other things being equal, increased complexity has the potential to:

- > place limits on the divisibility of licences and, conversely, on the aggregation of licences
- > discourage trading of licences because it reduces the substitutability of licences
- > place unjustified transaction costs on spectrum users
- > discourage competition in the issue of licences and use of spectrum.

The current licensing system involves the categorisation of licences in a number of ways. The Radiocommunications (Specified Radiocommunications Receivers and Types of Transmitter Licences and Receiver Licences) Determination 2014, Radiocommunications (Interpretation) Determination 2015 and taxation arrangements for apparatus licences establish the current suite of apparatus licence types and the taxes for each type.⁸ Some licence condition determinations also rely upon this categorisation. Administrative documents such as Radiocommunications Assignment and Licensing Instructions (RALIs) also rely upon this categorisation by outlining the recommended coordination methodology between two (or more) uses of the spectrum. Similarly, the *Australian Radiofrequency Spectrum Plan 2017* provides a form of differentiation between apparatus licences on the basis of the permitted services for particular bands, while also allowing use of some devices by spectrum licensees and under class licences for some services that are not specified in the plan. The Bill provides an opportunity to consider whether the existing categorisation of licences is optimal. It may be that greater simplicity can be achieved in the licensing system, while continuing to support the existing needs of licensees to operate services.

Appendix A provides two sample licences illustrating how licences could be configured under the Bill.

- > The sample area-based licence authorises operation of devices in the 1800 MHz band within a specified geographical area. It resembles a spectrum licence under the 1992 Act.
- > The sample location-based licence authorises operation of devices in the 400 MHz band at specified geographical locations. It is a type of licence where individual assignments are coordinated with other users according to rules or policies developed by the ACMA. It resembles an apparatus licence for a fixed point-to-point service under the 1992 Act.⁹

As the ACMA is yet to consult about the design of the new licensing system, these sample licences are indicative only and are designed solely to assist spectrum users in consideration of the exposure draft of the Bill.

⁸ See, for example, the current [Apparatus licence fee schedule](#) (April 2016), which summarises the current taxes imposed by the taxation Acts and instruments for different licence types.

⁹ In relation to the sample location-based licence, the service type permitted by the licence is not recorded explicitly on the face of the licence. In the case of a fixed point-to-point licence under the 1992 Act, the service type is specified on the licence and reflected in the relevant RALI. As the coordination arrangements that apply to a particular licence require knowing the type of service, such information is expected to be made clear to the licensee and to any accredited persons dealing with the licence. How to best meet this requirement would be considered as part of the development of the licensing system.

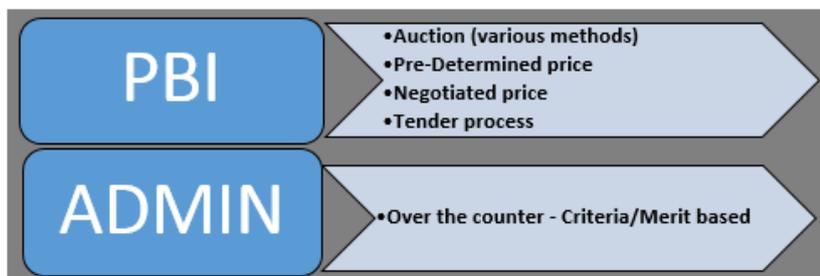
Appendix B provides a table that describes the conditions, designated statements and other matters that the Bill would permit or require to be included in licences, and outlines the considerations the ACMA expects to take into account in determining the content of those conditions and designated statements. In general, in determining the appropriate characteristics of licences, the ACMA will be guided by the objects of the Bill, including overall efficient management of spectrum, any relevant ministerial policy statements and any relevant ministerial directions.

Approach to licence issue schemes (LISs) under the Bill

It is expected that LISs will codify the manner in which the large majority of licences will be issued. In determining what form of LIS to use, the ACMA expects to take into account market conditions. For example, in relation to geographic areas and/or frequencies where licences are in high demand, allocative efficiency may be best achieved by a price-based process for issuing licences. In cases where there is little contention for the spectrum, ‘over-the-counter’ processes for a fixed amount might well be appropriate (that is, the ACMA will consider whether to issue a licence in response to an application made in accordance with a relevant LIS, for a fixed spectrum access charge and/or applicable tax).

Currently, the ACMA issues licences through both price-based allocation and administrative means. This provides a starting point for designing LISs under the Bill, using well-understood approaches.

In developing LISs, the ACMA expects to have at least a set of processes for dealing with price-based issue (PBI) and a set of processes for dealing with administrative or ‘over-the-counter’ issue. Price-based processes may be used by the ACMA where appropriate, consistent with any relevant ministerial policy statements or directions and consultation processes.



The LIS arrangements identified by the ACMA will be designed to meet the objects of the Bill. To achieve this requires:

- > an appropriate balance between providing predictability and transparency for licensees and prospective licensees
- > efficiency of licence issue process
- > a capacity for the ACMA to identify the highest value use or uses of spectrum, leading to the overall public benefit derived from the use of the spectrum being maximised.

Under the Bill, a LIS may confer a power on the ACMA to make decisions such as determining the group of licences that are to be issued by a process under the LIS, the date for applications and commencement of an auction or other market-based approach, and approving forms in relation to an auction.

A LIS could also set out the common rules that apply to each auction process (for example, how to submit forms, the process for issuing a licence after an auction, the

process for assessing compliance with any licence issue limits, the consequences for breach of the LIS or the rules of the auction). More detailed rules and procedures specific to each process may also be included.

Examples of the potential scope of the two broad types of LIS identified to date are provided below.

The following comments represent indicative thinking only and are provided for the sole purpose of assisting stakeholders in responding to the Bill. Before settling the details of LISs following passage of the Bill, the ACMA expects to consult publicly.

The ACMA expects that a single LIS could form the basis of a number of different administrative issue processes. Similarly, one LIS may be used to provide rules about a number of different price-based issue processes.

Under the Bill, LISs may make reference to documents or instruments either in existence at the time of making the LIS or that may be prepared for such a purpose. For example, a price-based allocation LIS may refer to an intention that, in relation to auctions, a prospectus document similar to an applicant information package, or a marketing plan under the 1992 Act, would be prepared. The tables below summarise the expected key features of both forms of LIS.

| Administrative issue LIS |
|--|
| Any requirements that a person must satisfy in order to be eligible to apply for a licence (for example, operator qualifications). |
| Any criteria that the ACMA must take into account when deciding whether, or to whom, to issue a licence |
| Any circumstances in which the ACMA may, must, may not, or must not issue a licence. |
| Rules for the process by which a licence is issued. |
| A requirement for information provided to the ACMA as part of a licence issue process to be verified by statutory declaration. |
| Specification of the forms to be completed to apply for a licence. |
| A requirement for the provision of information relating to technical specifications within certain bounds or frequency coordination information. |

| Price-based issue LIS |
|--|
| Any requirements that a person must satisfy in order to be eligible to participate in a process for a licence. |
| Any criteria that the ACMA must take into account when deciding whether, or to whom, to issue a licence, if relevant. |
| Any circumstances in which the ACMA may, must, may not, or must not, issue a licence. |
| Rules for the process by which a licence is issued. |
| A requirement for information provided to the ACMA as part of a licence issue process to be verified by statutory declaration. |
| The consequences of a contravention, by a participant in a process, of a provision of a scheme which is applicable to the participant. |
| Any circumstances in which a licence issue process (for example, an auction) may be terminated. |
| Rules for establishing the successful applicant or, alternatively, empowering the ACMA to make or approve those rules. The rules could provide for specific auction rules or rules for a tender process. |
| A requirement for payment of application or entry fees, or eligibility payment. |
| Specify which forms to be completed and other information required in order to apply for licences. |
| Specify any circumstances in which applicants may or must be excluded from the process. |

The Bill would empower the ACMA to declare, by notifiable instrument, that a specified LIS is the sole method for issuing a licence in a specified class of licences; if the ACMA made such a declaration, the ACMA could not issue that licence otherwise than in accordance with that LIS. This should provide confidence in licence issue procedures such as auctions, as it will ensure that if an auction process is underway, relevant licences can only be issued in accordance with the auction rules as described or referred to in the LIS.

Approach to licence tenure—duration and end-of-term arrangements under the Bill

The tenure of a licence contributes significantly to the degree of predictability the licensee has about its future use of the licensed spectrum, encouraging long-term investment in the use of the spectrum. Under the Bill, there are opportunities to increase the duration of licences and for licensees to have greater predictability about end-of-term arrangements including licence renewal. The new legislation will allow the ACMA to maximise predictability about tenure, whether through issuing long-duration licences, the creation of strong rights of renewal, or a combination of these measures.

The very long potential duration of licences (up to 20 years) means that, for some licences, trade-offs may be necessary between the length of the term and the predictability of renewal. Issues relating to end of licence term arrangements will not always be foreseeable at the time of licence issue. The appropriate valuation for renewal of the spectrum may be impossible to foresee so far in advance. The passage of time might also mean that the licence is sub-optimally configured or located in light of technological advances or international changes in use of the band, or there may have been a change of highest value use that is incompatible with current licensing

arrangements. The ACMA will be called on to consider how best to deal with these potential scenarios when designing the provisions of the licences it issues, managing flexibility and predictability with a view to maintaining the efficient use of spectrum.

In some cases, predictability of the processes preceding licence expiry can offer similar benefits to longer tenure. For example, a high level of uncertainty about renewal is likely to deter significant new investment or spectrum trading during the last five years of a long-duration licence. A provision in a licence that provided confidence about end of licence term processes, at least five years prior to expiration of a long-duration licence, could potentially address this uncertainty.

The ACMA's initial disposition is that it would seek to provide the holders of long-duration licences with as much predictability as feasible about the processes that will apply at the end of licence term, including renewal, while maintaining a sufficient degree of flexibility to optimise spectrum access arrangements in the band in light of new information.

For longer duration and higher value licences (for example, wide-area 'spectrum space' licences in high-demand bands), the ACMA expects to work with stakeholders to design arrangements that provide a sufficient degree of predictability about the processes preceding licence expiry. Four examples of arrangements that could be included in a licence or made in relation to licences under the Bill are provided here for illustrative purposes only.

1. The licensee has a right to renew the licence if the ACMA has not commenced a process for issue of a new licence for the same spectrum through a price-based process set out in a LIS a specified period before the expiry of the licence.
 - > The pre-expiry period specified could be directly related to the duration and value of the licence—longer 'pre-expiry periods' might be specified for relatively longer or higher value licences.
 - > The Bill would operate such that the ACMA had no discretion other than to renew the licence, if the licence issue process had not commenced and assuming that the statutory discretion not to renew a licence (which can arise when, for example, a licensee had breached licence conditions or where renewal would contravene another law of the Commonwealth) did not apply.
 - > The new licence issued on renewal would be subject to payment of any spectrum access charge set under clause 193 of the Bill.
 - > The licensee would need to apply for renewal within the renewal application period specified in the licence.
2. The licensee has a right to renew the licence at a price to be set by the ACMA. This could have the following character:
 - > By a certain period prior to expiry, the ACMA will make an offer by which the licensee can apply for renewal of its licence, subject to payment of any spectrum access charge set under clause 193 of the Bill.
 - > If the licensee does not apply for renewal by 12 months prior to the expiry of the licence, the ACMA must not renew the licence. The ACMA would then determine what to do with the spectrum.
3. The ACMA adopts a policy for an end-of-term process for the licence and includes a statement in the licence that the licensee may be renewed at the discretion of the ACMA. The policy would provide guidance on the ACMA's exercise of its discretion and could have the following character:

- > By a certain period prior to expiry (for example, five years for long-duration licences), the ACMA will determine, after having followed a specified consultation process, whether the licensed spectrum is required by the government (for example, as part of a re-farming exercise) or should be put to the market (for example, to determine the market value of the spectrum).
 - > If government does not require the spectrum authorised by the licence to be returned, or it is not appropriate to be put to market, by a later period prior to expiry (for example, 18 months), the ACMA will make an offer by which the licensee can apply for renewal of the licence, or make a decision about renewal on application of the licensee, having regard to the policy decision whether the government requires the spectrum to be returned or be put to the market, subject to payment of any spectrum access charge set under clause 193 of the Bill.
 - > If the licensee does not apply for renewal by the end of the renewal application period (for example, 12 months prior to the expiry of the licence), the ACMA will not renew the licence. The ACMA would then determine what to do with the spectrum.
4. The licence may be renewed at the discretion of the ACMA, without the ACMA making any policy statement about the possible process. This option provides the least predictability for the licensee, but may be appropriate in certain circumstances. For example, there may be a circumstance where the ACMA can foresee a need to reassess the highest value use over a 10-year horizon and so issues a licence for 10 years without a right to renewal.

For licences that are of lower value, including many location-based licences, it will be important to decide whether, and how, to give longer term rights of spectrum access, including whether longer duration is appropriate, or shorter duration with greater predictability about the processes preceding licence expiry including renewal rights.

This choice is related to the issue of upfront versus incremental payments of taxes and charges. The ACMA awaits the outcome of the spectrum pricing review before commenting further on what considerations will be relevant to setting the taxes and spectrum access charges (if any) in relation to renewed licences. Typically, taxes and charges are updated from time to time. This may be a case where the ACMA is unable to provide predictability about the exact quantum of taxes and charges applicable to future renewal, but may instead offer predictability and transparency about the mechanism by which revised taxes and charges would be determined.

The choice of tenure and end-of-term rights for lower value over-the-counter licences may also be influenced by the likelihood of re-farming or other major changes in spectrum access arrangements in future. If tenure or renewal predictability is limited for these reasons, it will be important for the ACMA to ensure licensees are kept informed of the likely timing of major changes so as to maximise predictability of spectrum access. The ACMA expects to consider whether, in such circumstances, it should as a matter of policy always signal the minimum number of years before a change is expected.

Implementation and transition

Transitioning between the existing and new legislative frameworks

The ACMA notes that DoCA's consultation paper on transition describes hard, soft and hybrid transition models, while expressing a preference for the hybrid model. The paper also raises some questions for consultation about the nature and timing of changes in licensing. At this stage it has not been determined which provisions of the 1992 Act will be preserved (or have their effect preserved) for a defined period after the commencement of the main provisions of the Bill.

The ACMA's description of transition below is based on the assumption that the hybrid model is adopted. It reflects one of the possible transition paths considered, by assuming that the existing licensing framework under the 1992 Act applies to licences until a suitable replacement is created under the new legislation.

The ACMA understands that a Transitions and Consequential Bill relating to the Bill will be drafted and is likely to establish the legislative framework for a staged transition to the new licensing scheme over a number of years. This approach recognises the complexity of the existing licensing scheme and its importance to the smooth functioning of the industries and activities that rely on spectrum access.

Principles the ACMA expects to guide the transition process include:

- > Transparency—stakeholders will be consulted on the approach to transition and the considerations that may guide transition.
- > Predictability—this major change to the radiocommunications regulatory regime may affect significant interests of a large variety of stakeholders. As a result, ensuring those stakeholders can predict how and when any changes may affect them will greatly assist the transition process.
- > Consideration of impact—different approaches to transition will have different impacts on stakeholders (including licensees and potential licensees, accredited persons, delegates, other stakeholders and the ACMA), potentially leading to some additional costs for particular stakeholders. Changes that confer the most immediate benefits should be given higher priority while any potential for the transition to result in additional costs without corresponding gain should be recognised and minimised.

Additionally, the government has previously advised that a guiding principle for transition is that the rights of existing licensees will not be diminished in the transition.¹⁰ The ACMA would expect to be guided by this principle, as far as practicable, in its implementation of a system for spectrum management under the new legislative framework. The ACMA will consult appropriately with stakeholders in relation to any decisions that may affect the rights of existing licensees.

¹⁰ www.minister.communications.gov.au/malcolm_turnbull/news/next_stage_of_spectrum_reform_to_commence, Attachment A, p. 2.

Existing spectrum licences—replacing licences under the new system with licensee’s agreement

Spectrum licences are typically of long (up to 15 years) duration. Full payment is usually required up front, prior to commencement.¹¹ They are fully tradable (subject to any determination made under clause 88 of the Act) and confer a right on licensees, broadly speaking, to use any radiocommunications devices within particular frequency ranges, in particular geographic areas. The government has indicated that existing spectrum licences will continue until expiry unless the licensee voluntarily decides to replace the spectrum licence with a licence under the Bill before expiry.¹² This creates the potential for spectrum licences to continue for a number of years following the commencement of the main provisions of the Bill. Existing spectrum licences will not begin to expire until 2021 and the last spectrum licence that is currently issued is not expected to expire until 2032.

At commencement of the main provisions of the Bill, most spectrum licences will have many years left to run and will have been issued, or reissued, on terms that were the result of detailed consultation with licensees. The ACMA’s early thinking is that it would aim to offer the option of conversion to licences issued under the Bill well in advance of the expiry of existing spectrum licences, unless there were particular reasons for changing planning arrangements in a band that might preclude renewal or reissue. Potential enhanced predictability around processes preceding licence expiry is seen as a key attraction of voluntary transition to licences issued under the Bill prior to the expiration date of existing spectrum licences. However, the ACMA expects to consider any licensee interest in earlier conversion when developing its transition work program. If and when desired, the ACMA will look to enable the voluntary transition of existing spectrum licences to the new licensing system quickly and in consultation with affected licensees.

Making available any spectrum in existing spectrum-licensed bands that is unallocated at the time the main provisions of the Bill commence could pose particular challenges for transition. To facilitate spectrum trading and interference management, and to ensure consistent treatment of all licences in the band, any future arrangements for available spectrum in spectrum-licensed bands should as far as possible be consistent with those of surrounding spectrum licences that are already issued. The ACMA will seek to ensure, as far as is feasible and appropriate, that all such available spectrum has been put to market prior to commencement of the main provisions of the Bill.

Depending on progress of any replanning work on foot at the time the Bill become law, the ACMA may be in the process of re-farming bands through the allocation of new spectrum licences at the time the main provisions of the Bill commence. At this stage, it is not possible to anticipate whether and where this issue might arise. However, the ACMA expects to take into account the desirability of:

- > if in the public interest, moving more quickly where the new processes permit
- > as far as possible ensuring that transition to the new legislation does not delay re-farming work.

¹¹ The recent ministerial direction in relation to the 700 MHz unsold lots, the Radiocommunications (Spectrum Licence Allocation—Residual 700 MHz Spectrum) Direction 2016, requires the ACMA to make provision for an option for instalment payments for those spectrum licences, including payments after the commencement of the licences: (<https://www.legislation.gov.au/Details/F2016L01929>)

¹² www.minister.communications.gov.au/malcolm_turnbull/news/next_stage_of_spectrum_reform_to_commence, Attachment A, p. 2.

Existing apparatus licences—progressive replacement with licences under the new system

There are currently over 150,000 individual apparatus licences. On average, each week the ACMA renews nearly 3,000 licences and issues 300 new licences. There are currently 16 transmitter licence types, in excess of 40 transmitter licence subtypes, and five receiver licence types. Unlike spectrum licences, apparatus licences are typically of short duration, up to five years but most frequently 12 months, with annual licence tax payments. They have a much greater diversity of characteristics than spectrum licences.

Some common types of apparatus licence include:

- > Large-area licences over blocks of spectrum space. These are similar to spectrum licences in allowing greater planning flexibility to licensees.
- > Licences that allow operation from a specific site or sites and on specific terms, using frequencies that have been coordinated with other spectrum users. An example is a 'fixed-link' licence that authorises broadband microwave communication between two towers.
- > 'Unassigned licences' that do not authorise the operation of a radiocommunications device on a specific frequency, but allow operation on any frequency in one or more specified bands subject to conditions. An example is an amateur licence.

Given the size and complexity of the apparatus licensing scheme, a staged approach to transition is needed.

It is intended that all apparatus licences would be replaced by licences under the new system within five years of commencement of the main provisions of the Bill. Where a person currently holds an apparatus licence, it is expected that at least 12 months' notice would be given of any change to existing arrangements.¹³ It is proposed that, subject to the provisions of the Transitionals and Consequential Bill, existing apparatus licences would continue under the current framework until expiry and a suitable 'replacement' licence is available. If a replacement is not available at expiry, the licence may be renewed for a period consistent with development of the new arrangements. It is proposed, subject to the provisions of the Transitionals and Consequential Bill, that those seeking new licences would generally be issued licences under the old arrangements until the new system is in place and a licence category suitable for their proposed use is available. Any new pricing arrangements arising from a change to a new system licence would be applied to the new licence.

To ensure an orderly, predictable transition for all apparatus licences, and, subject to the final form of the Transitionals and Consequential Bill, the ACMA is planning consultation about the design of the new licensing system in the period between the release of the exposure draft Bill and, if the Bill becomes law, the Bill becoming law. This would be followed by consultation about the prioritisation of existing licences for replacement. Existing apparatus licences would then be assigned to one of a series of 12-month 'windows', during which replacement of 1992 Act licences with new ones would typically occur at the time of licence expiry.

To manage the very large task of replacing all apparatus licences, the ACMA is proposing to group all licences into one of several 'replacement windows'. Grouping would be done either by licence category, band or a combination of category and band

¹³ www.minister.communications.gov.au/malcolm_turnbull/news/next_stage_of_spectrum_reform_to_commence, Attachment A, p. 2

(for example, 'all PMTS licences in the 1800 MHz band will be replaced during window A').

Assuming this process is consistent with the final form of the Transitionals and Consequentials Bill, for each identified group, the ACMA expects to consult stakeholders on the details of the proposed replacement licences, and then finalise proposed licence templates, providing existing licensees with at least 12 months' notice of the move from the existing to the new licensing system. Meanwhile, the 1992 Act licences may continue to be renewed on application (in accordance with existing ACMA policy) until the start of the relevant replacement window. As most licences are issued or renewed for a 12-month term, the ACMA is considering replacement windows of 12 months. When a 1992 Act licence expires during the relevant replacement window, it may be replaced by a licence issued under the new legislation. Consideration will need to be given to dealing with licences with a term longer than one year, as expiry may not always fall during the relevant replacement window.

Existing class licences—potential for replacement with spectrum authorisations

Class licences currently authorise a wide variety of services. Unless there are reasons for change, the ACMA expects that users of devices currently permitted under the existing 13 class licences will at commencement of the main provisions of the Bill continue to be authorised under the same or substantially similar conditions to those class licences. For the purpose of transitioning class licences to the new arrangements following the commencement of the main provisions of the Bill, the ACMA could consider class licences in two groups:

- > Class licences that are linked to apparatus licences. The class licences authorising the use of mobile phone handsets are examples of class licences that are closely related to apparatus licences. They are related to the apparatus licences that authorise provision of mobile telephony services in the relevant bands.
- > Class licences not associated with other licences. The Radiocommunications (Citizen Band Radio Stations) Class Licence 2015, which authorises CB radio devices, is an example of a class licence that is not associated with any other existing licence.

Consideration will also be given to transitioning the relevant provisions of the class licences authorising some ultra-wideband applications such as ground-penetrating radar in spectrum where there are existing spectrum licences (on the basis that the class-licensed device has little potential to interfere with any devices operated under the spectrum licence).¹⁴

The ACMA anticipates that a staged approach would be most desirable. Where a class licence is not associated with any spectrum or apparatus licences, it may be a relatively simple matter to replace the existing class licence with a spectrum authorisation; for example, at the commencement of the Bill. As part of the transition to the new arrangements under the Bill, it is expected that some permissions embodied in existing class licences will be carried over to the new framework and reflected in spectrum authorisations from commencement of the main provisions of the Bill.

Where there is a relationship between existing class licences and apparatus licences, however, it may be simpler to align transition with those licences. Most class licences are also drafted to be dependent on other instruments (for example, the

¹⁴ Radiocommunications (Low Interference Potential Devices) Class Licence 2015.

Radiocommunications (Interpretation) Determination 2015). Further consideration will be given to the transition of those class licences related to spectrum-licensed bands.

Unless there are reasons for substantive change to a class licence, the ACMA is likely to prioritise replacement with a focus on minimising complexity for spectrum users.

New spectrum space licences

A key priority for the ACMA will be to make sure it is able to issue new long-duration 'spectrum space' licences¹⁵ in any case where spectrum licensing would have been appropriate under the 1992 Act, as early as needed. The ACMA will consult on the design of those licences as part of its consultation on the design of the new licensing system.

ACMA forward projects

The new legislative framework offers up a number of opportunities for substantial change. The ACMA anticipates a number of projects focused on changes to the licensing system, so that it best reflects the objects of the Bill. The following projects are provided as illustrative examples, but the ACMA expects to progressively update its projects and priorities. The ACMA will engage with stakeholders as it considers which of these projects could be undertaken as part of the transition to the new legislative framework, and which may be best undertaken as part of a longer term change strategy.

Potential to convert some licences into spectrum authorisations

The ACMA currently issues a number of apparatus licences for which there is no individual frequency assignment. These are commonly referred to as non-assigned licences and are as follows:

- > Amateur foundation
- > Amateur standard
- > Amateur advanced
- > Maritime Coast—Limited Coast Non-Assigned
- > Maritime Ship—Ship Station Class B Non-Assigned
- > Maritime Ship—Ship Station Class C Non-Assigned
- > Outpost—Outpost Non-Assigned
- > Scientific—Scientific Non-Assigned.

Collectively, these licences account for over 25,000 of the apparatus licences in place. In some cases, there is potential to consider whether a spectrum authorisation would provide a sufficient mechanism under the Bill to enable users of these apparatus licences to access spectrum. There may well be potential to do so in such a way that the regulatory burden experienced by these spectrum users was reduced and the administrative burden on the ACMA in issuing licences and managing spectrum was also reduced. The ACMA would consult with affected stakeholders on any proposed changes and the merits or otherwise of such an approach.

¹⁵ 'Spectrum space licence' refers to a wide-area licence that is defined by a geographical boundary and an upper and a lower frequency boundary. Typically, the licensee must avoid causing interference outside the boundaries of the 'spectrum space' thus defined, but enjoys flexibility as to how and where it operates within its spectrum space. It would be similar in concept to a spectrum licence under the 1992 Act.

While in many cases it may be a condition of these licences that the licensee holds some qualifications, there is no in-principle reason why these and other requirements could not be a condition of a relevant spectrum authorisation. Qualification requirements have been incorporated in class licences to date. So far as consistent with any new legislative regime, the ACMA would maintain its existing requirements for amateur and maritime qualifications, consistent with Australia's international obligations as a consequence of the International Telecommunication Union's Radio Regulations.

There is also potential to consider whether some rights currently granted through apparatus licences for which frequencies are coordinated could instead be conferred through a spectrum authorisation under the Bill. Simplification of current arrangements through use of spectrum authorisations might be possible in relation to some low-power devices, in geographic areas of low spectrum congestion or for discrete groups of spectrum users.

Potential for contestable spectrum management

To date, spectrum management has been largely the preserve of the ACMA as regulator. Spectrum licences coupled with the potential for third-party authorisation have already provided some opportunity for decentralised management and control of spectrum under the 1992 Act. The ACMA has also largely withdrawn from the assignment of spectrum for apparatus licences, by accrediting third-party service providers to issue 'frequency assignment certificates' in accordance with general planning rules promulgated by the ACMA. The ACMA issues many apparatus licences on the strength of such certificates and observes principles of competitive neutrality when providing assignment services itself. However, as with spectrum licences, the ACMA retains responsibility for the actual issue of licences.

The Bill specifically provides for a model of private band management by delegation of relevant spectrum management powers, rather than just by holding the relevant licence. These provisions are a new potential tool to allow for more decentralised spectrum management. This is an important initiative because it exposes spectrum management to the potential that it is contested, thereby driving efficiencies in how spectrum management is practised. An existing example of a private band management model that goes beyond Australian arrangements is the New Zealand model of 'management rights', under which third parties are allocated the 'right' to issue licences either to themselves or other users within a block of spectrum space.

In order for spectrum management to be contestable, it would be necessary for competitors to ACMA management of spectrum to be able to compete on the same footing as the ACMA. A precondition for contestability of public sector provision of services such as spectrum management is, to the extent possible, the removal of implicit or explicit competitive advantages of the public sector provider. The ACMA will need to consider how best to facilitate private band management in that context.

The ACMA intends to explore opportunities for private band management under the Bill and to consider the optimal licensing design to support it. The ACMA expects to draw on international experience in spectrum management and in other markets for management of common pool resources in developing models for private band management.

Review of re-farming mechanisms

The capacity for changes in use of spectrum over time so that, at any given time, the current use of spectrum represents the highest value use of that spectrum, is an inherent part of the objective of efficient issue and use of spectrum.

To meet that objective, fit-for-purpose mechanisms for re-farming spectrum are required. These will have an impact on individual licence characteristics such as licence tenure and processes preceding licence expiry (including licence renewal statements). They will also have an effect on what licences the ACMA issues in the aggregate and the extent to which the provisions of those licences are aligned.

Providing effective re-farming mechanisms in such a way that system flexibility is achieved, while providing appropriate predictability to licensees, is an exercise in balance for the ACMA. The ACMA will work with stakeholders to review the potential for using the terms of licences as a vehicle for more efficient re-farming mechanisms.

International experience in spectrum management and licence system design

The ACMA is connected with other spectrum regulators through its engagement in international forums such as the International Telecommunication Union Radiocommunications Sector and the Asia–Pacific Telecommunity, as well as direct relationships with many other spectrum regulators around the world. There are strong international parallels in the challenges regulators face in accommodating new demands on spectrum while maintaining adequate access for existing users.

As Australia is a standards- and equipment-taker, spectrum regulation needs to be continuously informed by international developments. Future options for licensing will be informed by international experience and precedents.

Appendix A—Sample licences

Below are two sample licences illustrating how licences could be configured under the Bill.

- > The sample area-based licence authorises operation of devices in the 1800 MHz band within a specified geographical area. It resembles a spectrum licence under the 1992 Act.
- > The sample location-based licence authorises operation of devices in the 400 MHz band at specified geographical locations. It is a type of licence where individual assignments are coordinated with other users according to rules or policies developed by the ACMA. It resembles an apparatus licence for a fixed point-to-point service under the 1992 Act.

Spectrum Access Licence

Issued by Delegate of the Australian Communications and Media Authority
Issued in accordance with section 33 of the [Radiocommunications Act]

LICENCE DETAILS

| | |
|------------------|---|
| Customer ID | XXXXXX |
| Licensee | Company XXXXX Pty Ltd |
| Licensee address | Number Street, SUBURB, TOWN/CITY, STATE POSTCODE |

| | |
|-------------------------------|---------------------|
| Licence number | XXXXXX |
| Band Release (optional) | 1800 MHz band |
| Date of issue | Day/Month/Year |
| Date licence comes into force | Day/Month/Year |
| Licence Duration | X number days/years |
| Date of expiry | Day/Month/Year |

GENERAL CONDITIONS section 46

Example text:

GC1: This licence authorises the operation of radiocommunications devices in the frequency band(s) and within the geographic areas set out in Table 1.

Table 1: frequency bands and geographic areas applicable to the licence

| Identifier | Frequency bands (MHz) | | | | Geographic area HCIS identifiers |
|------------|-----------------------|-------------|-------------|-------------|--|
| | Lower band | | Upper band | | |
| | Lower limit | Upper limit | Lower limit | Upper limit | |
| A | 1710 | 1725 | 1805 | 1820 | IW3E8, IW3E9, IW3F4, IW3F5, IW3F6, IW3F7, IW3F8, IW3F9, IW3G4, IW3G5, IW3G6, IW3G7, IW3G8, IW3G9, IW3H4, IW3H5, IW3H6, IW3H7, IW3H8, IW3H9, IW3I2, IW3I3, IW3I5, IW3I6, IW3I8, IW3I9, IW3J, IW3K, IW3L, IW3M2, IW3M3, IW3M5, IW3M6, IW3M8, IW3M9, IW3N, IW3O, IW3P, IW6A2, IW6A3, IW6A5, IW6A6, IW6A8, IW6A9, IW6B, IW6C, IW6D, IW6E2, IW6E3, IW6E5, IW6E6, IW6E8, IW6E9, IW6F, IW6G, IW6H, JW1E4, |

| Identifier | Frequency bands (MHz) | | | | Geographic area HCIS identifiers |
|------------|-----------------------|-------------|-------------|-------------|--|
| | Lower band | | Upper band | | |
| | Lower limit | Upper limit | Lower limit | Upper limit | |
| | | | | | JW1E7, JW1I1, JW1I4, JW1I7, JW1M1, JW1M4, IW3E5, IW3E6 |
| B | | | | | |
| C | | | | | |
| etc. | | | | | |

NB: The range of numbers that identifies a frequency band includes the higher, but not the lower, number. The geographic areas are described by the sequence of Hierarchical Cell Identifier Scheme (HCIS) identifiers. Further information on the HCIS is available on the ACMA website.

REGISTRABLE DEVICES CONDITION section 47

Conditions in relation to the registrable devices would be placed in this section

Example text:

RD1: The licensee must not operate a registrable device under this licence unless:

- (a) the information in the Register about this licence includes such information about the device as is specified in Register rules made for the purposes of section 92 of the Act; or
- (b) for the purposes of paragraph 47(1)(b) of the Act, the registrable device is either:
 - (i) a mobile transmitter that operates with a radiated power of less than or equal to 39 dBm EIRP per occupied bandwidth; or
 - (ii) a fixed transmitter that operates with a radiated power less than or equal to 33 dBm EIRP per occupied bandwidth.

PAYMENT CONDITIONS section 48

Conditions in relation to the payment of a licence would be placed in this section

Example text:

PC1: The licensee must meet all of its obligations to pay:

- > charges fixed by determinations made under section 60 of the *Australian Communications and Media Authority Act 2005*;
- > spectrum access charges fixed by determinations made under section 193 of the Act.

OTHER CONDITIONS section 51

Any other condition included in the licence would be placed in this section. Text within brackets (i.e. [and]) is for explanatory purposes only and would not be part of the conditions of the licence

Example text:

[The information provided below outlines the technical framework and other conditions for the licence; that is, the technical requirements for the operation of radiocommunications devices. These effectively set the terms by which a radiocommunications device may be deployed and operated within the defined geographic area and frequency outlined in the licence. They are designed to be technology flexible and representative of those technologies considered likely to be deployed during the tenure of the licence.]

Conditions AA to AE describe the **non-spurious emission** limits that apply to the licence. Non-spurious emissions are those that are modulation-generated noise or intermodulation products caused by the transmission of information, or broadband noise generated by the transmitter.]

OC1: The licensee must ensure that radiocommunications devices operated under this licence comply with the following conditions:

AA: Radiocommunication devices operated under the licence must not exceed the non-spurious emission limits in clauses AC and AD.

AB: For any frequency where an emission limit described in clause AE is less than an emission limit described in clauses AC or AD, the emission limit in clause AE applies.

AC: The non-spurious emission limits in Table 2 apply:

(a) at frequencies outside the 1710–1785 MHz and 1805–1880 MHz frequency bands; and

(b) offset from 1785 MHz, 1805 MHz and 1880 MHz;

where:

f_{offset} : is the frequency offset from the 1785 MHz, 1805 MHz and 1880 MHz band edges. The centre frequency of the specified bandwidth is placed at f_{offset} .

Table 2: Radiated maximum true mean power non-spurious emission limits

| Frequency offset range | Radiated maximum true mean power (dBm EIRP) | Specified bandwidth |
|--|---|---------------------|
| $0 \text{ Hz} \leq f_{\text{offset}} < 200 \text{ kHz}$ | 2 | 30 kHz |
| $200 \text{ kHz} \leq f_{\text{offset}} < 900 \text{ kHz}$ | $2 - 15 \times (f_{\text{offset}}(\text{MHz}) - 0.2)$ | 30 kHz |
| $900 \text{ kHz} \leq f_{\text{offset}} < 5.6 \text{ MHz}$ | -8.5 | 30 kHz |
| $f_{\text{offset}} \geq 5.6 \text{ MHz}$ | -18.5 | 30 kHz |

AD: The non-spurious emission limits in Table 3a and 3b apply:

(a) at frequencies outside the 1710–1785 MHz frequency band; and

(b) offset from 1710 MHz;

where:

f_{offset} : is the frequency offset from the 1710 MHz band edge. The centre frequency of the specified bandwidth is placed at f_{offset} .

Table 3a: Radiated maximum true mean power non-spurious emission limits

| Frequency offset range | Radiated maximum true mean power (dBm EIRP) | Specified bandwidth |
|---|---|---------------------|
| $0 \text{ Hz} \leq f_{\text{offset}} < 500 \text{ kHz}$ | -8.5 | 30 kHz |
| $f_{\text{offset}} \geq 500 \text{ kHz}$ | -33.5 | 30 kHz |

Table 3b: Radiated peak power non-spurious emission limits

| Frequency offset range | Radiated peak power (dBm EIRP) | Specified bandwidth |
|---|--------------------------------|---------------------|
| $0 \text{ Hz} \leq f_{\text{offset}} < 300 \text{ kHz}$ | 10 | 300 kHz |

AE: The non-spurious emission limits in Table 4 apply:

(a) at frequencies outside the upper or lower frequency limits as set out in Table 1; and

(b) offset from the upper or lower frequency limits set out in Table 1;

where:

f_{offset} : is the frequency offset from the upper or lower frequency limits set out in Table 1. The centre frequency of the specified bandwidth is placed at f_{offset} .

Table 4: Radiated maximum true mean power non-spurious emission limits

| Frequency offset range | Radiated maximum true mean power (dBm EIRP) | Specified bandwidth |
|--|---|---------------------|
| $0 \text{ Hz} \leq f_{\text{offset}} < 200 \text{ kHz}$ | 21.5 | 30 kHz |
| $200 \text{ kHz} \leq f_{\text{offset}} < 1 \text{ MHz}$ | $2 - 13.125 \times (f_{\text{offset}}(\text{MHz}) - 0.2)$ | 30 kHz |
| $1 \text{ MHz} \leq f_{\text{offset}} < 5.8 \text{ MHz}$ | -8.5 | 30 kHz |
| $f_{\text{offset}} \geq 5.8 \text{ MHz}$ | -13 | 30 kHz |

[Conditions AF to AH describe the **spurious emission limits** that apply to the licence. Spurious emissions are emissions including intermodulation products, harmonics and frequency conversion products not associated with the transmission of information by the transmitter.]

AF: Radiocommunications devices operated under this licence must not exceed the spurious emission limits in clauses AG or AH.

AG: For radiocommunications transmitters operated under this licence, the spurious emission limits in Table 5 apply at frequencies outside the 1710–1785 MHz and 1805–1880 MHz frequency bands.

Table 5: Radiocommunications transmitter spurious emission limits

| Frequency range (f) | Radiated mean power (dBm EIRP) | Specified bandwidth |
|--|--------------------------------|---------------------|
| $9 \text{ kHz} \leq f < 150 \text{ kHz}$ | -36 | 1 kHz |
| $150 \text{ kHz} \leq f < 30 \text{ MHz}$ | -36 | 10 kHz |
| $30 \text{ MHz} \leq f < 1 \text{ GHz}$ | -36 | 100 kHz |
| $1 \text{ GHz} \leq f < 3.5 \text{ GHz}$ | -2 | 1 MHz |
| $3.5 \text{ GHz} \leq f < 12.75 \text{ GHz}$ | -30 | 1 MHz |

AH: For radiocommunications receivers operated under this licence, the spurious emission limits in Table 6 apply at frequencies outside the 1710–1785 MHz and 1805–1880 MHz frequency bands.

Table 6: Radiocommunications receiver spurious emission limits

| Frequency range (f) | Radiated mean power (dBm EIRP) | Specified bandwidth |
|--|--------------------------------|---------------------|
| $9 \text{ kHz} \leq f < 1 \text{ GHz}$ | -57 | 100 kHz |
| $1 \text{ GHz} \leq f < 3.5 \text{ GHz}$ | -19 | 1 MHz |
| $3.5 \text{ GHz} \leq f < 12.75 \text{ GHz}$ | -47 | 1 MHz |

*[Conditions AI to AK describe the **maximum permitted level of radio emission by a radiocommunications device** operated under the licence for the purposes of managing intermodulation product interference and receiver overload.]*

AI: Clauses AJ and AK apply in relation to those areas that are outside the geographic areas set out in Table 1.

AJ: The maximum permitted level of radio emission for a geographic area described in Table 1 caused by operation of radiocommunications devices under this licence must not exceed a radiated maximum true mean power of 54.5 dBm EIRP per 30 kHz.

AK: A person will be deemed to comply with clause AJ if they do not operate a radiocommunications device under this licence in excess of a radiated maximum true mean power of 54.5 dBm EIRP per 30 kHz.

*[Conditions OC2 to OC4 describe **the conditions the ACMA has placed on the licensee** to ensure effective management of the radiofrequency spectrum.]*

OC2: The licensee must notify any person who the licensee authorises to operate radiocommunications devices under this licence of the conditions included in this licence, and the requirement in section 52 of the Act that the person not contravene those conditions.

OC3: If information is specified in Register rules, made under section 96 of the Act, to be information the Register is required to contain about a licence, the licensee must provide that information to the ACMA.

OC4: The licensee must give written notice to the ACMA that information in the Register about this licence is incorrect or incomplete, as soon as practicable after the licensee becomes aware that information in the Register is incorrect or incomplete.

RENEWAL STATEMENTS section 59

Statements in relation to the renewal of a licence, including, a statement specifying a renewal application period would be placed in this section.

[See discussion in the accompanying supporting document]

THIRD PARTY AUTHORISATION STATEMENTS sections 42, 43

Statements as to when a licensee cannot authorise a third party, or restrictions or limitations on when a licensee can authorise a third party, would be placed in this section.

SUBDIVISION STATEMENTS sections 78, 79

Statements in relation to when a licensee cannot subdivide a licence, or restrictions or limitations on when a licensee can subdivide a licence, would be placed in this section.

Example text:

SA1: The licensee cannot instruct the ACMA to subdivide the licence if the subdivision would result in the ACMA issuing a licence that authorises the use of radiocommunications devices:

- (a) in a part of the spectrum with a bandwidth that is less than 5 MHz; or
- (b) in a geographic area smaller than a HCIS Level 1 cell.

ASSIGNMENT STATEMENTS sections 81, 82

Statements in relation to when a licensee cannot assign a licence, or restrictions or limitations on when a licensee can assign a licence, would be placed in this section.

SUSPENSION STATEMENTS section 66

Statements in relation to the supplementary circumstances in which a licence may be suspended would be placed in this section.

CANCELLATION STATEMENTS section 69

Statements in relation to the supplementary circumstances in which a licence may be cancelled would be placed in this section.

VARIATION STATEMENTS section 58

Statements in relation to restrictions or limitations on the ACMA's power to vary the licence (by including, revoking or varying any conditions or designated statements) would be placed in this section.

Example text:

VS1: The ACMA must not vary the following conditions of this licence without the prior consent of the licensee [insert conditions that may not be varied without licensee agreement].

VS2: The ACMA must not vary the following designated statements of this licence [insert designated statements that may not be varied without the prior consent of the licensee].

REGULATORY UNDERTAKINGS section 53

Undertakings that the spectrum covered by the licence would not be also covered by another licence without the ACMA taking specified steps.

Spectrum Access Licence

Issued by Delegate of the Australian Communications and Media Authority
 Issued in accordance with section 33 of the [Radiocommunications Act]

LICENCE DETAILS

| | |
|------------------|---|
| Customer ID | XXXXXX |
| Licensee | Company XXXXX Pty Ltd |
| Licensee address | Number Street, SUBURB, TOWN/CITY, STATE POSTCODE |

| | |
|-------------------------------|---------------------|
| Licence number | XXXXXX |
| Callsign (optional) | XXXXXX |
| Date of issue | Day/Month/Year |
| Date licence comes into force | Day/Month/Year |
| Licence Duration | X number days/years |
| Date of expiry | Day/Month/Year |

GENERAL CONDITIONS section 46

Example text:

GC1: This licence authorises the operation of radiocommunications devices on the specified assigned frequencies and at the locations set out below:

LOCATION 1:

| | | |
|---------------------|---|----------------|
| Assigned Frequency | 461.2 MHz (TX) | 451.7 MHz (RX) |
| Allocated Bandwidth | 25 kHz | 25 kHz |
| Site ID | ACMA1 | |
| Site Address | Red Building Benjamin Offices, 1 Chan Street, BELCONNEN ACT 2617 | |
| Co-ordinates | Lat -35.241789 Long 149.066836 | |

LOCATION 2:

| | | |
|---------------------|--|----------------|
| Assigned Frequency | 451.7 MHz (TX) | 461.2 MHz (RX) |
| Allocated Bandwidth | 25 kHz | 25 kHz |
| Site ID | ACMA2 | |
| Site Address | Melbourne Central Tower, 360 Elizabeth Street, MELBOURNE VIC 3004 | |
| Co-ordinates | Lat -37.810639 Long 144.962032 | |

REGISTRABLE DEVICES CONDITION section 47***Conditions in relation to the registrable devices would be placed in this section***

Example text:

RD1: The licensee must not operate a registrable device under this licence unless the information in the Register about this licence includes such information about the device as is specified in Register rules made for the purposes of sections 92 of the Act.

PAYMENT CONDITIONS section 48***Conditions in relation to the payment of a licence would be placed in this section***

Example Text:

PC1: The licensee must meet all of its obligations to pay:

- > charges fixed by determinations made under section 60 of the *Australian Communications and Media Authority Act 2005*;
- > spectrum access charges fixed by determinations made under section 193 of the Act.

OTHER CONDITIONS section 51***Any other condition included in the licence would be placed in this section.***

Example Text:

OC1: When the radiocommunications transmitter is coupled to an antenna the level of all discrete spurious components caused by the radiocommunications transmitter when measured at the connection to the antenna must not exceed -30 dBm. The broadband noise floor of the radiocommunications transmitter measured at the same point must not exceed -47 dBm in a 16 kHz bandwidth for frequency offsets greater than 300 kHz from the transmit frequency.

OC2: The licensee must notify any person who the licensee authorises to operate radiocommunications devices under this licence of the conditions included in this licence, and the requirement in section 52 of the Act that the person not contravene those conditions.

OC3: If information is specified in Register rules, made under section 96 of the Act, to be information the Register is required to contain about a licence, the licensee must provide that information to the ACMA.

OC4: The licensee must give written notice to the ACMA that information in the Register about this licence is incorrect or incomplete, as soon as practicable after the licensee becomes aware that information in the Register is incorrect or incomplete

RENEWAL STATEMENTS section 59

Statements in relation to the renewal of a licence, including, a statement specifying a renewal application period would be placed in this section.

[See discussion in the accompanying supporting document]

THIRD PARTY AUTHORISATION STATEMENTS sections 42, 43

Statements in relation to when a licensee cannot authorise a third party, or restrictions or limitations on when a licensee can authorise a third party, would be placed in this section.

Example text:

TP1: The licensee cannot authorise a person to operate radiocommunications devices under this licence if both the following circumstances exist:

- (a) the person was the licensee of a licence of the same type, or a licence for the same type of radiocommunications device, that was suspended or cancelled,
- (b) the authorisation occurs not later than two years after that licence was suspended or cancelled.

SUBDIVISION STATEMENTS sections 78, 79

Statements in relation to when a licensee cannot subdivide a licence, or restrictions or limitations on when a licensee can subdivide a licence would be placed in this section.

Example text:

SS1: This licence cannot be subdivided.

ASSIGNMENT STATEMENTS sections 81, 82

Statements in relation to when a licensee cannot assign a licence, or restrictions or limitations on when a licensee can assign a licence would be placed in this section.

Example text:

AS1: This licence cannot be assigned to a person (the ***intended assignee***) if both the following circumstances exist:

- (a) the licensee is exempt from the payment of licence tax,
- (b) the intended assignee of this licence is not also exempt from the payment of licence tax.

AS2: This licence cannot be assigned to a person (the ***intended assignee***) if both the following circumstances exist:

- (a) the licensee is eligible for a licence tax concession, and
- (b) the intended assignee is not either:
 - (i) also eligible for a licence tax concession; or
 - (ii) exempt from the payment of licence tax.

SUSPENSION STATEMENTS section 66

Statements in relation to the supplementary circumstances in which a licence may be suspended would be placed in this section.

CANCELLATION STATEMENTS section 69

Statements in relation to the supplementary circumstances in which a licence may be cancelled would be placed in this section.

VARIATION STATEMENTS section 58

Statements in relation to restrictions or limitations on the ACMA's power to vary this licence (by including, revoking or varying any conditions or designated statements) would be placed in this section.

Example text:

VS1: The ACMA must not vary the following conditions of this licence without the prior consent of the licensee [*insert conditions that may not be varied without licensee agreement*].

VS2: The ACMA must not vary the following designated statements of this licence without the prior consent of the licensee [*insert conditions that may not be varied without licensee agreement*].

REGULATORY UNDERTAKINGS section 53

Undertakings that the spectrum covered by the licence would not be also covered by another licence without the ACMA taking specified steps.

Appendix B—Characteristics of licences

NB: In addition to conditions included in individual licences, clause 50 of the Bill would provide the ACMA with the capacity to determine conditions by legislative instrument, that are taken to be included in each licence or to be included in a specified class of licences.

| Characteristic | ACMA considerations |
|---|--|
| <p>1. DURATION subclauses 33(4)-(6)</p> <p>A licence comes into force on the day on which it is issued or such later date as is specified in the licence, and subject to the legislation remains in force for the period specified in the licence.</p> | <p>Licences may be issued for up to 20 years. The considerations that may be relevant to determining the duration of licences under the new single licensing system include:</p> <ul style="list-style-type: none"> > the purpose of the licence; > forward spectrum planning considerations (including international developments); > indicators of change in the highest value use of bands (and the need for future re-farming) > the period of time over which investments in associated infrastructure and business models could be expected to be amortised. |
| <p>2. GENERAL CONDITIONS clause 46</p> <p>A licence must include a condition specifying the part or parts of the spectrum in which the radiocommunications devices are authorised to operate.</p> <p>A licence must also include, for each part of the spectrum in which radiocommunications devices are authorised to operate, either a condition specifying the area within which radiocommunications devices are authorised to operate, or a condition specifying the location at which radiocommunications devices are authorised to operate.</p> <p>The part of the spectrum specified may be the same as, or overlap, a part that is specified in another licence, or in a condition of a spectrum authorisation referred to in paragraph 100(2)(a).</p> <p>This applies even if the operation of radiocommunications devices is authorised under another licence or under a spectrum authorisation in the same or overlapping area in which, or is in the vicinity of the location at which operation of radiocommunications devices is authorised under another licence.</p> | <p>Licences can either be area-based (sub-paragraph 46(1)(b)(i)) or location-based (sub-paragraph 46(1)(b)(ii)). The ACMA expects it will consider the most appropriate option depending on the intended use of the licence and consistently with the objects of the Bill, including efficient management and use of spectrum.</p> <p>In establishing general conditions that may be included in a licence, the ACMA expects to consider the importance of ensuring the efficient coordination of devices authorised under the licence with other devices and consistency with Australia’s international treaty obligations. To the extent possible, the ACMA would seek to minimise service-specific licence conditions in order to maximise the tradability of the licence.</p> <p>In determining whether a licence should be location-based or area-based, the ACMA would consider a number of factors including the following:</p> <ul style="list-style-type: none"> > Location-based licences usually operate in bands where the ACMA intends to retain overall responsibility for coordination of multiple different uses and users. > Area-based licences are appropriate for services where flexibility about transmitter siting or use is desirable; for example, where an application is mobile or nomadic in nature. |

| Characteristic | ACMA considerations |
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| | <ul style="list-style-type: none"> > Depending on geographical area, spectrum bandwidth and other design features, other potential advantages of area-based licences include increased flexibility for licensees as to siting and use, opportunities for greater tradability via licence aggregation and splitting, and greater flexibility to accommodate changes in future use. > Area-based licences potentially devolve responsibility for the coordination of uses, and users, to licensees. <p>Sample area-based licence The sample licence identifies a block of spectrum in the 1800 MHz band covering the geographic area specified in the list of HCIS¹⁶ identifiers. The particular spectrum block and geographic areas chosen for this example are arbitrary.</p> <p>Sample location-based licence The sample licence identifies two locations and two specific assigned frequencies in the 400 MHz band, as may be appropriate for a fixed-link service. The particular locations and frequency chosen for this example are arbitrary.</p> |
| <p>3. REGISTRABLE DEVICES CONDITION clause 47</p> <p>A licence must include a condition that a radiocommunications transmitter must not be operated under the licence unless either:</p> <ul style="list-style-type: none"> > the transmitter is registered, under clause 92, in relation to the licence > the transmitter is included in a class of radiocommunications transmitters specified in the licence for the purposes of this clause > the transmitter is included in a class of radiocommunications transmitters specified in a determination under subclause 47(2). | <p>This condition is critical to coordinating the location and technical configuration of transmitters and receivers in adjacent spectrum. Registration in a public database creates a resource for planning and the management of interference to and from stations operating under that licence, aids efficient investigation and resolution of interference complaints by the ACMA, and aids coordination of other services.</p> <p>In formulating the applicable register rules, the ACMA expects to consider the most appropriate registration requirements to meet coordination requirements to support efficient spectrum management.</p> <p>These conditions may also assist in implementing measures to use ‘white space’.</p> <p>The Bill provides the ACMA with the flexibility to exempt some radiocommunications transmitters from the requirement for registration through specification in the licence itself (paragraph 47(1)(b) or in a determination (subclause 47(2)).</p> <p>Sample area-based licence The sample licence places a condition on the licence requiring that radiocommunications transmitters not be operated under the licence unless they have been registered in accordance</p> |

¹⁶ HCIS stands for hierarchical cell identifier scheme. A HCIS identifier is a unique identifier used to describe a geographical area in the HCIS as set out in the Australian Spectrum Map Grid 2012 (ASMG). The ASMG is published on the ACMA website.

| Characteristic | ACMA considerations |
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| | <p>with the register rules, and also provides for exemptions from the registration requirement for certain mobile and fixed transmitters. (These are provided as examples only and should not be taken to be indicative of likely conditions for any particular licence that may be issued.)</p> <p>Sample location-based licence The sample licence places a condition on the licence requiring that radiocommunications transmitters not be operated under the licence unless they have been registered in accordance with the register rules.</p> |
| <p>4. PAYMENT CONDITION clause 48 A licence must include a condition that the licensee meet all obligations (if any) of the licensee to pay:</p> <ul style="list-style-type: none"> > charges fixed by determinations made under section 60 of the <i>Australian Communications and Media Authority Act 2005</i> > the spectrum access charges fixed by determinations made under clause 193. | <p>Following the government's review of spectrum pricing, the ACMA expects to consider the method of payment of charges and taxes; for example, whether an upfront amount is payable. The ACMA's approach or approaches may be influenced by outcomes of the government's review of spectrum pricing and any ministerial policy statements. The ACMA also expects to undertake further analysis to consider the appropriate combination of licence terms, payment points and processes preceding licence expiry (for example, options concerning renewal) that best supports the efficient allocation of spectrum.</p> |
| <p>5. OTHER CONDITIONS clause 51 The ACMA may include such other conditions in a licence as it thinks appropriate. The following are examples of conditions that may be included:</p> <ul style="list-style-type: none"> > A condition specifying the maximum permitted level of radio emission, in parts of the spectrum outside the part or parts of the spectrum in which operation of radiocommunications devices is authorised under the licence, that may be caused by operation of radiocommunications devices under the licence. > A condition specifying the maximum permitted level of radio emission, outside the area within which operation of radiocommunications devices is authorised under the licence, that may be caused by operation of radiocommunications devices under the licence. | <p>There is wide scope for other conditions to be included in a licence. These conditions can relate to applications or uses permitted by the licence and can describe how the spectrum or technology can be used under the licence, whether on a technical (quantitative) or descriptive (qualitative) basis. This provision will allow the ACMA the discretion to include both conditions specific to individual licences and conditions applying to multiple licences. In determining the technical conditions applying to a licence, the ACMA expects to be guided by the objects of the Bill including overall efficient management of spectrum and the desirability of creating licences that are as technologically neutral as possible. Generic conditions that apply to distinct groups of licences may be applied through a legislative instrument while specific conditions would continue to be applied on the licence itself.</p> <p>Sample area-based licence The sample licence includes technical conditions relating to non-spurious and spurious emissions, and the maximum permitted level of emission, in line with international standards defining mobile broadband services. The sample licence also includes a condition requiring a licensee to inform authorised third</p> |

| Characteristic | ACMA considerations |
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| | <p>parties about their obligations under the licence, and a condition about the provision of information to the ACMA to maintain the integrity of the register.</p> <p>Sample location-based licence The sample licence places technical conditions relating to spurious emissions and the broadband noise floor.</p> <p>The sample licence also includes a condition requiring a licensee to inform authorised third parties about their obligations under the licence, and a condition about the provision of information to the ACMA to maintain the integrity of the register.</p> |
| <p>6. RENEWAL STATEMENTS clause 59</p> <p>A licence must include a statement to the effect that:</p> <ul style="list-style-type: none"> > there is a right to renew the licence in specified circumstances, or > the licence may be renewed at the discretion of the ACMA, or > the licence cannot be renewed. <p>A licence must specify the period during which licensees may apply for renewal, as well as allowing the original licence to include a statement regarding the characteristics of the renewed licence.</p> | <p>Please see pages 11-13 of this paper (above) for a detailed discussion of the considerations that might guide the development of a renewal statement.</p> <p>Sample area-based licence No example text</p> <p>Sample location-based licence No example text</p> |
| <p>7. THIRD-PARTY AUTHORISATION STATEMENTS clause 41, clause 42, clause 43</p> <p>The licensee of a licence may authorise one or more other persons to operate radiocommunications devices under the licence. However, the licensee is not entitled to authorise a person under subclause 41(1) if either:</p> <ul style="list-style-type: none"> > the licence includes a statement to the effect that the licence cannot authorise one or more other persons to operate radiocommunications devices under the licence > both: <ul style="list-style-type: none"> > the licence includes a statement setting out restrictions or limitations on the licensee’s right to authorise one or more other persons to operate radiocommunications devices under the licence > the authorisation would contravene any of those restrictions or limitations. | <p>Third-party authorisations are generally permitted, unless there is a designated statement on the licence that limits such authorisations.</p> <p>The ACMA would expect that it would set limits to the licensee’s ability to authorise third-party users only in limited circumstances; for example:</p> <ul style="list-style-type: none"> > if the licensee was exempt from taxation or the licence was not subject to a spectrum access charge > if the licence was issued in the public interest for a particular purpose > if the licensee was a member of a class of licensees that received tax or charges concessions > if the licence related to a particular type of service and the third party was not qualified or certified in relation to that type of service. |

| Characteristic | ACMA considerations |
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| | <p>Sample area-based licence</p> <p>It is unlikely that for a spectrum space licence such as this sample licence, that there would be any restrictions on third-party authorisations.</p> <p>Sample location-based licence</p> <p>The sample licence restricts the ability of the licensee to authorise certain persons to use the licence. These examples have been chosen arbitrarily and should not be taken to reflect likely restrictions the ACMA may include in any future licences.</p> |
| <p>8. SUBDIVISION STATEMENTS, clause 77, clause 78, clause 79</p> <p>A licence may include a statement to the effect that the licence cannot be subdivided.</p> <p>A licence may include a statement setting out restrictions or limitations on the licensee's right to instruct the ACMA to subdivide the licence.</p> | <p>Subdivision of licences can assist in allowing market forces to move spectrum to the highest value use or uses.</p> <p>In considering whether to include restrictions on the subdivision of licences, the ACMA expects to limit issuing licences that are too small (in frequency range) to be practical, and to adopt a consistent approach to the geographic division of licences (for example, in accordance with the HCIS), which would support greater trading.</p> <p>Sample area-based licence</p> <p>The sample licence provides for a minimum bandwidth of 5 MHz for any subdivision. This is to guard against the risk of spectrum being subdivided into inefficiently small blocks. This is an example only and should not be taken to reflect likely restrictions the ACMA may include in any future licences.</p> <p>Sample location-based licence</p> <p>The sample licence prevents the licence from being subdivided, in keeping with the technical characteristics of the authorisation (for a point-to-point service).</p> |
| <p>9. ASSIGNMENT STATEMENTS, clause 80, clause 81, clause 82</p> <p>A licence may include a statement to the effect that the licence cannot be assigned.</p> <p>A licence may include a statement setting out restrictions or limitations on the licensee's right to assign the licence.</p> | <p>The ACMA considers that facilitating trades (for example, assignment) of licences assists in allowing market forces to move spectrum to the highest value use or uses.</p> <p>Sample area-based licence</p> <p>It is unlikely that for a spectrum space licence such as this sample licence that there would be any restrictions on assignment.</p> <p>Sample location-based licence</p> <p>The sample licence restricts the ability of the licensee to assign the licence to another person if the licensee benefits from exemptions or concessions in relation to licence taxes and charges. This is an example only and should not be taken to reflect likely restrictions the ACMA may include in any future licences.</p> |

| Characteristic | ACMA considerations |
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| <p>10. SUSPENSION STATEMENTS, clause 64, clause 66</p> <p>A licence may include a statement setting out supplementary circumstances in which the licence may be suspended.</p> <p>11. CANCELLATION STATEMENTS clause 67, clause 69</p> <p>A licence may include a statement setting out supplementary circumstances in which the licence may be cancelled.</p> | <p>In addition to the ability in the new Bill for the ACMA to suspend or cancel a licence if a condition of the licence has been contravened, the designated statements in a licence could set out any supplementary circumstances in which suspension or cancellation may occur.</p> <p>In considering whether to include such statements, the ACMA may take into account the present arrangements under the 1992 Act where the ACMA may suspend or cancel a spectrum licence if a licensee or an authorised third party has operated a device in breach of any other Commonwealth, State or Territory law whether statutory or otherwise.</p> <p>The reasons for the suspension (or cancellation) will be set out in a written notice.</p> <p>Sample area-based licence No example text</p> <p>Sample location-based licence No example text</p> |
| <p>12. VARIATION STATEMENTS, clause 57, clause 58</p> <p>A licence may include a statement setting out restrictions or limitations on the ACMA's power to vary the licence.</p> | <p>Variation statements can provide assurance to licensees that the ACMA may not vary conditions or statements in the licence without the licensees' agreement, or except in particular circumstances.</p> <p>It should be noted that, in the absence of a statement restricting or limiting the ACMA's power to vary a licence, all conditions and statements in the licence can be varied under clause 57 of the Bill. The duration of a licence cannot be varied (though the licence may be cancelled, surrendered or resumed under particular circumstances, thereby bringing the licence to an earlier end).</p> <p>In considering whether to include a variation statement on a licence, the ACMA expects to consider:</p> <ul style="list-style-type: none"> > the benefits of predictability for licensees; > whether certain conditions are fundamental to the licence and so should not be varied without the licensee's agreement (perhaps, for example, those conditions nominated as 'core conditions' of spectrum licences in the 1992 Act) > whether certain statements are fundamental to the licence and so should not be varied without the licensee's agreement. The renewal statement may be such a statement for some licences. <p>Sample area-based licence The sample licence provides that the ACMA will not vary or revoke specified conditions or statements without the licensee's agreement.</p> |

| Characteristic | ACMA considerations |
|---|---|
| | <p>Sample location-based licence The sample licence provides that the ACMA will not vary or revoke specified conditions or statements without the licensees' agreement.</p> |
| <p>13. REGULATORY UNDERTAKINGS, clause 53, clause 54, clause 55, clause 56</p> | <p>Ability to facilitate coexistence and sharing Regulatory undertakings could enhance licensees' confidence that the spectrum covered by the licence would not be also covered by another licence without the ACMA taking specified steps.</p> <p>In considering whether to include a regulatory undertaking relating to sharing spectrum, the ACMA would expect to consider issues including the feasibility of issuing licences for other services in encumbered spectrum, and the effect sharing will have on the existing licensee's ability to provide its service.</p> <p>The ACMA expects to develop a policy statement about this potential.</p> |