

# **Interference management**

## 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

There are almost as many ways to cause interference as there are ways to use radiofrequency spectrum. Interference may result from a failure of licensees to comply with licence conditions, the supply and operation of non-standard devices, technical fault conditions in devices or incidental emissions from devices. In some cases, interference can occur without any party being in breach of the *Radiocommunications Act 1992* (the 1992 Act). Occasionally, interference results from a failure of the planning arrangements or from unusual propagation conditions. Interference is largely caused inadvertently without the relevant equipment operator being aware that they are causing interference.

Radiofrequency planning, transmitter licensing and device regulation are the three primary mechanisms employed by the ACMA to minimise the risk of interference between authorised devices (there are millions of authorised devices in Australia and just over one thousand complaints to the ACMA each year). The 1992 Act also provides for the prohibition of specific types of device, which by nature of their operation would substantially interfere with or disrupt radiocommunications.

Part 4.2 of the 1992 Act provides for several offences relating to interference. A range of conduct is prohibited; most significantly, it is an offence to engage in conduct and be reckless as to whether the conduct will result in substantial interference with, or substantial disruption or disturbance of, radiocommunications.<sup>1</sup> These offences are intended to both deter a person from engaging in conduct that causes interference, as well as provide the government with the ability to respond to interference where offences have been committed.

The criminal sanctions for many of these offences carry maximum penalties upon conviction of up to five years' imprisonment.

Part 4.3 of the 1992 Act allows the ACMA to appoint a conciliator for the purpose of settling specific interference disputes.<sup>2</sup> A complaint or matter may be referred to a conciliator if any act or omission is likely to cause interference or cause any other disruption or disturbance to radiocommunications.

Spectrum licensees may also pursue civil remedies by applying to the Federal Court, under section 50 of the 1992 Act, for relief from interference in cases where the interference is caused by the operation of radiocommunications devices otherwise than in accordance with a licence.

The 1992 Act provides for the appointment of inspectors with enforcement powers to investigate suspected criminal offences. In addition to the exercise of statutory enforcement powers the ACMA has traditionally provided an interference diagnosis service in response to interference events.

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<sup>1</sup> Sections 192–199, in particular section 197.

<sup>2</sup> Sections 202–204.

# Radiocommunications Bill 2017

## Settlement of interference disputes

Part 9 of the Exposure Draft of the Radiocommunications Bill 2017 (the Bill) aims to simplify the legislative arrangements relating to resolving interference disputes. The Bill provides for:

- > a holder of a licence to make a complaint to the ACMA about interference to radiocommunications, where the interests of the complainant are likely to be affected
- > a discretionary power for the ACMA to make interference management guidelines (the guidelines) regarding procedures for resolving interference complaints
- > a discretionary power for the ACMA to investigate interference complaints and for it to inform the complainant of the results of the investigation
- > the provision by the ACMA of an alternative dispute resolution service directed towards resolving the interference complaint. The ACMA may also refer interference complainants to one or more providers of dispute resolution services.

Part 5 of the Bill also provides for a right of action available to licensees in the Federal Court.

## Inspector powers

The Bill, if passed, provides for inspectors to be appointed by the ACMA. The standard investigatory provisions and powers of inspectors relating to contraventions of civil penalty and offence provisions would then be adopted from Part 3 of the *Regulatory Powers (Standard Provisions) Act 2014*. This means that only the inspector powers and provisions specific to radiocommunications—specifically, in relation to interference management and device regulation—remain in the Bill (Part 9 and Part 15). These specific provisions include:

- > clause 116—the ability for the ACMA to direct a licensee about the installation, maintenance and operation of their station for the avoidance, minimisation or reduction of interference
- > clause 119—the ability for an inspector to enter unoccupied premises without warrant or consent and adjust transmitters where the transmitter is interfering with radiocommunications that are essential to safety of human life
- > clause 185—the ability for an inspector to require a person to produce specific documents, for example, their licence, third-party authorisation, permit, compliance records.

## Offences and civil penalty provisions

Subclause 114(1) of the Bill, if enacted, would make it a criminal offence to engage in conduct causing substantial interference to, or substantial disruption or substantial disturbance to, radiocommunications in particular circumstances, such as conduct that will, or is likely to:

- > endanger the safety of another person; or
- > cause another person to suffer or incur substantial loss or damage; or
- > affect the radiocommunications carried on by the Royal Flying Doctor Service, Australian Federal and State Police, or an emergency service.

Subclause 114(3) would make conduct that is likely to cause substantial interference to, or substantial disruption or substantial disturbance to, radiocommunications subject to a civil penalty. The civil penalty provisions in the Bill, if passed, will allow greater flexibility in the choice of appropriate sanction than is currently the case under the 1992 Act.

# Proposed approach

The ACMA will take an evidence-informed approach to implementing the Bill, consistent with the government's policies on best practice regulation and deregulation. In 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.

## Guidelines

The ACMA anticipates creating guidelines, as provided under clause 112 of the Bill and in consultation with industry, to assist licensees and other users resolve their interference disputes.

The objective would be to provide guidance to parties involved in an interference complaint, including licensees and any third party service providers, about how to respond to interference issues and work together to arrive at a timely and fair resolution to their interference dispute.

The guidelines would also set out the policy of the ACMA about when it would investigate complaints. The guidelines would be informed by the ACMA's interference management principles as well as the new legislation and government policies such as increased user involvement in management of the spectrum.

The guidelines could set out (but may not be limited to) the following matters:

- > the obligations and expectations of a complainant and any person the subject of a complaint in relation to managing and attempting to resolve the interference dispute
- > the policy of the ACMA about its involvement in the resolution of complaints
- > the role of alternative dispute resolution
- > ACMA cost-recovery principles.

In doing so the guidelines would promote practices that:

- > most efficiently and effectively resolve the interference
- > recognise that a punitive compliance response is not usually appropriate where interference is inadvertent
- > promote alternative resolution strategies in advance of seeking recourse to the ACMA
- > impose the least resource impact on all parties, including the ACMA and the Commonwealth
- > foster alternative, cost competitive, industry-operated interference diagnosis services.

The ACMA would generally have regard to the guidelines in exercising its discretion whether to investigate a complaint of interference.

# Implementation and transition

The ACMA considers that the full suite of compliance and enforcement arrangements provided for by the Bill could come into force upon commencement of the main provisions of the Bill, if passed. These would replace the 1992 Act provisions for all interference events occurring on or after commencement of the main provisions of the Bill.

The ACMA would also aim to have guidelines for the settlement of interference dispute in place as soon as practicable following the commencement of the Bill. This measure would complement and support greater user involvement in spectrum management in accordance with the alternative dispute resolution and private right of action provisions in the Bill.

Prior to commencement of the main provisions of the Bill, the ACMA will continue to have regard to its established practices and processes for prioritising and responding to interference complaints made under the 1992 Act.

An indicative timing for developing the guidelines under clause 112 of the Bill is as follows:

- > If the Bill is passed by Parliament and becomes law, the ACMA will seek to develop interference dispute resolution guidelines through stakeholder engagement and public consultation and comment.
- > In advance of commencement of the main provisions of the Bill, or as soon as practicable thereafter, the ACMA will publish interference dispute resolution guidelines.

# Related matters

The ACMA will continue to have regard to its compliance and enforcement policy, and internal compliance and enforcement procedures in carrying out and meeting its statutory compliance and enforcement obligations.<sup>3</sup>

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<sup>3</sup> [www.acma.gov.au/theACMA/About/Corporate/Responsibilities/compliance-enforcement-policy](http://www.acma.gov.au/theACMA/About/Corporate/Responsibilities/compliance-enforcement-policy)