



**Australian Government**

**Department of Infrastructure, Transport, Regional Development and Communications**

# 2020 Radiocommunications Reform— consultation paper

June 2020

© Commonwealth of Australia 2020

June 2020 / INFRASTRUCTURE

## Ownership of intellectual property rights in this publication

Unless otherwise noted, copyright (and any other intellectual property rights, if any) in this publication is owned by the Commonwealth of Australia (referred to below as the Commonwealth).

### Disclaimer

The material contained in this publication is made available on the understanding that the Commonwealth is not providing professional advice, and that users exercise their own skill and care with respect to its use, and seek independent advice if necessary.

The Commonwealth makes no representations or warranties as to the contents or accuracy of the information contained in this publication. To the extent permitted by law, the Commonwealth disclaims liability to any person or organisation in respect of anything done, or omitted to be done, in reliance upon information contained in this publication.

### Creative Commons licence

With the exception of (a) the Coat of Arms; and (b) the Department of Infrastructure, Transport, Regional Development and Communications photos and graphics; copyright in this publication is licensed under a Creative Commons Attribution 4.0 Australia Licence.

Creative Commons Attribution 4.0 Australia Licence is a standard form licence agreement that allows you to copy, communicate and adapt this publication provided that you attribute the work to the Commonwealth and abide by the other licence terms.

Further information on the licence terms is available from <https://creativecommons.org/licenses/by/4.0/>. This publication should be attributed in the following way: © Commonwealth of Australia 2020.

### Use of the Coat of Arms

The Department of the Prime Minister and Cabinet sets the terms under which the Coat of Arms is used. Please refer to the Commonwealth Coat of Arms — Information and Guidelines publication available at [www.pmc.gov.au](http://www.pmc.gov.au).

### Contact us

This publication is available in hard copy or PDF format. All other rights are reserved, including in relation to any Departmental logos or trade marks which may exist. For enquiries regarding the licence and any use of this publication, please contact:

Director—Publishing and Communications  
Communication Branch  
Department of Infrastructure, Transport, Regional Development and Communications  
GPO Box 594  
Canberra ACT 2601  
Australia

Email: [publishing@communications.gov.au](mailto:publishing@communications.gov.au)

Websites: [www.infrastructure.gov.au](http://www.infrastructure.gov.au) | [www.communications.gov.au](http://www.communications.gov.au) | [www.arts.gov.au](http://www.arts.gov.au).

## Contents

<b>Introduction</b> .....	<b>4</b>
Background: Spectrum Review and previous consultation .....	5
Purpose and scope of the amendments.....	5
The consultation process .....	6
<b>Overview of the amendments</b> .....	<b>7</b>
Object of the Act .....	7
Ministerial policy statements.....	7
ACMA work programs .....	8
Streamlined allocation and re-allocation processes .....	8
Greater flexibility for ACMA to allocate spectrum and apparatus licences .....	9
Direct allocation.....	9
Allocation limits .....	10
Re-allocation of encumbered spectrum .....	10
Reducing regulatory barriers between spectrum and apparatus licences .....	11
Greater maximum licence terms .....	11
Clearer processes governing licence renewal.....	11
Renewal statements .....	12
Public interest test .....	12
Modernised equipment rules .....	13
Further scope for use of accreditation schemes.....	14
A modernised compliance and enforcement regime .....	14
Appropriate information gathering powers .....	15
Repeal of unused provisions.....	16
Transitional arrangements.....	16
<b>Questions for consideration</b> .....	<b>17</b>
<b>Next steps and conclusion</b> .....	<b>18</b>

## Introduction

Spectrum is an essential resource in a digital society and it must be efficiently managed in order to support the social and economic benefits that come from our rapidly-changing technological landscape. All industries rely on spectrum, either directly or indirectly. In 2015, the economic value to Australia of spectrum was estimated at \$177 billion over 15 years.<sup>1</sup> However, this economic value is changing and will continue to change as a result of new technologies, new demands and emerging uses of spectrum.

The technological landscape has changed significantly since the current legislative framework was first introduced in 1992. Regulatory arrangements for spectrum management must not only respond to these changes, but also be flexible enough to adapt to future innovation and changing demand for spectrum.

In October 2019, the Government committed to progressing a set of targeted amendments that will update and streamline the provisions in the *Radiocommunications Act 1992* (the Act). These amendments have been developed following consideration of recommendations from the 2015 Spectrum Review (dealt with in more detail below) and the views expressed in previous consultation processes.

The proposed amendments are designed to add flexibility to the legislative framework, remove unnecessary prescription and legislative barriers, and improve processes, helping ensure the framework remains fit for purpose in a rapidly changing environment. This will be done, for example, by more clearly delineating the roles of the Minister and the Australian Communications and Media Authority (ACMA) in spectrum allocation processes, devolving more decisions to ACMA and granting it greater flexibility, while enabling the Minister to give policy guidance to ACMA. In addition, the processes for allocating and re-allocating spectrum will be more streamlined, the maximum licence term will be extended to 20 years to improve investment certainty for licensees, and there will be clearer processes governing renewal of licences. ACMA will also have access to a greater range of enforcement and compliance mechanisms, and additional information-gathering powers.

The Department of Infrastructure, Transport, Regional Development and Communications (the Department) is now seeking feedback from industry and spectrum users on the content of these amendments. This paper outlines the changes contained in the Exposure Draft of the Radiocommunications Legislation Amendment (Reform and Modernisation) Bill 2020 (the Bill) and provides a high-level discussion of the policy intent behind these amendments, to help inform discussion and feedback from interested parties.

ACMA, as the regulator, will be responsible for developing and implementing new spectrum management arrangements in accordance with the amended legislative framework.

---

<sup>1</sup> 'The economic value of spectrum'—Research report prepared for the Department of Communications by the Centre for International Economics, January 2015.

## Background: Spectrum Review and previous consultation

The Spectrum Review was finalised in March 2015. This review was intended to consider the policy and regulatory reforms that would be needed to cope with changes in technology, demand for spectrum, markets and consumer preferences. In its [final report](#), the Spectrum Review made three recommendations and a series of sub-recommendations, which supported replacing the existing legislative framework with one that was outcomes focussed, more consistent and which delivered improved certainty. This was to be done by simplifying regulatory structures, streamlining processes, clarifying the respective roles of the Minister and ACMA, and through a review of spectrum pricing arrangements.

In 2015, after accepting the recommendations of the Spectrum Review, the Government announced it would repeal and rewrite the Act. In line with the recommendations of the Spectrum Review, the aim was to create more streamlined, consistent processes, with less unnecessary prescription, and a framework that was flexible enough to adapt to changing spectrum needs and technologies. Reviews of spectrum pricing and Commonwealth-held spectrum also took place, with the final reports for both presented in 2018.

In May 2017, a public consultation process commenced on a partial exposure draft of the Radiocommunications Bill 2017. Following consideration of the views expressed during that consultation process, the Government decided in October 2019 that, rather than completely rewriting the legislation, it would instead pursue targeted amendments to address priority issues and deliver tangible benefits to industry and consumers, while reducing the transitional costs and burden on spectrum users.

## Purpose and scope of the amendments

The amendments covered by this Bill focus on priority reforms that are central to modernising the legislative framework for spectrum management.

In particular, the reforms are designed to:

- clarify the object of the Act and the roles of the Minister and ACMA: the Minister will have less involvement in spectrum management decisions that are more properly the responsibility of the regulator, and will have the power to issue Ministerial policy statements to guide ACMA in the performance of its spectrum management functions. In addition, ACMA will also be required to prepare annual work programs to provide transparency around how it will perform its spectrum management functions
- streamline spectrum allocation and re-allocation processes: ACMA will have greater flexibility to develop fit-for-purpose allocation arrangements in order to bring spectrum to market within shorter timeframes where this is appropriate
- improve flexibility and reduce regulatory barriers between licence types: the maximum licence term for both apparatus licences and spectrum licences will be extended to 20 years, with less regulatory barriers and more flexibility in the allocation process, and clearer processes governing renewal of licences
- better reflect modern spectrum needs and supply chains: device supply schemes and equipment regulation will be streamlined, and ACMA will be empowered to provide new exemptions in appropriate circumstances to facilitate testing, development and manufacturing of otherwise controlled devices

- introduce a modernised compliance and enforcement regime with more graduated enforcement mechanisms for breaches of the framework: this will give ACMA a greater range of options beyond the institution of criminal proceedings.

Many of these reforms were included in the exposure draft of the 2017 Radiocommunications Bill (which also included other elements which are not being pursued). The input received from industry through that consultation process helped refine policy thinking and identify areas of priority, which have been reflected in the current draft Bill.

The Department is continuing to work on technical aspects of the drafting of the Bill while the consultation process is underway.

## The consultation process

These amendments are designed to deliver significant reform to the spectrum management framework. Feedback from industry and spectrum users is important to ensuring that these new arrangements are practical and address existing concerns. Following consideration of the views expressed through this consultation process, the Government intends to introduce a bill to Parliament as soon as possible.

This paper accompanies an exposure draft of the Bill, and explanatory notes on the draft provisions that are designed to assist stakeholders in understanding the intent and proposed application of the draft provisions. Specific questions for consideration have been included at the end of this paper.

The Department would welcome written submissions on the exposure draft and is available to meet with stakeholders to discuss the reforms. [Instructions](#) on how to make a submission are provided at the end of this paper. If you have any questions on the exposure draft or the consultation process, or would like to arrange a meeting with the Department, please send an email to [spectrum.reform@communications.gov.au](mailto:spectrum.reform@communications.gov.au) or contact:

Rachel Blackwood  
A/g Assistant Secretary  
Spectrum & Telecommunications Deployment Policy Branch  
Department of Infrastructure, Transport, Regional Development and Communications  
Telephone (02) 6271 1591

## Overview of the amendments

### Object of the Act

The object provision sets out the purpose of the legislation and assists the Courts, the regulator and others to interpret the legislation.

The object of the 1992 Act has eight sub-objects, without a clear hierarchy and with repetition between the general object and some of the sub-objects. This can lead to confusion and an assumption that all sub-objects have equal weighting.

The amended object clause is designed to provide greater clarity, while continuing to emphasise that the primary object of the Act is to promote the long-term public interest derived from management of the spectrum. Three sub-objects are listed: facilitating the efficient planning, allocation and use of the spectrum; facilitating use of the spectrum for both commercial and non-commercial purposes; and supporting public policy objectives.

While there is no specified hierarchy to these three aims, they all serve the primary object of promoting the long-term public interest derived from the use of the spectrum and avoid both the repetition, and the references to the means by which the objects should be pursued, which currently exist in the Act.

### Ministerial policy statements

One of the recommendations of the 2015 Spectrum Review was to clarify the roles and responsibilities of the Minister and ACMA under the spectrum legislative framework.<sup>2</sup> The amendments propose to do this by providing ACMA with greater independence in a number of process-based operational decisions, while reaffirming the Minister's role and responsibility in setting policy direction and strategic priorities.

The Minister will now have the power to issue Ministerial policy statements setting out the government's policy goals for spectrum management. ACMA must have regard to these policy statements in the exercise of its spectrum management powers and functions. Ministerial policy statements are therefore guidance to ACMA, but do not have the same force as directions.

The Minister will retain a broad power, under Section 14 of the *Australian Communications and Media Authority Act 2005* (the ACMA Act), to direct ACMA in relation to the performance of its functions and the exercise of its powers. The Minister also retains specific directions powers under the Act, giving the Minister the discretion to choose to intervene, if warranted, to direct ACMA on the setting of allocation limits (as noted below) or the setting of spectrum access charges.

Ministerial policy statements will focus on ACMA's spectrum management functions and powers, and have the scope to be either broad or deal with specific issues. In this way, they can provide detail about the Government's overall communications policy objectives and how ACMA is expected to work towards these. For allocation processes currently underway, the Minister has issued communications policy objectives administratively—Ministerial policy statements could be developed as a way of providing this sort of guidance on a transparent and ongoing basis.

---

<sup>2</sup> 'Spectrum Review', Department of Communications, March 2015, p. 7.

Ministerial policy statements will be notifiable instruments. As a result, they will be published on the Federal Register of Legislation ([www.legislation.gov.au](http://www.legislation.gov.au)), where they will be publicly accessible.

## ACMA work programs

The amendments will introduce a legislative requirement for ACMA to prepare and publish an annual work program in relation to its spectrum management functions and powers. These work programs will each cover a minimum five-year period, setting out a detailed work program for the upcoming financial year and an outlook over the five-year time horizon. ACMA is required to consult as it considers appropriate before determining a work program.

This approach was proposed by the 2015 Spectrum Review, as part of its recommendation on clarifying the roles and responsibilities of the Minister and ACMA.<sup>3</sup> The annual work program will build on ACMA's current Five-Year Spectrum Outlook (FYSO), providing ongoing transparency and clarity.

These work programs will provide the Minister and stakeholders with information about ACMA's priorities, significant spectrum planning and other emerging issues, which will assist stakeholders with forward planning. The legislation also allows for ACMA to prepare new work programs as needed, providing scope for ACMA to respond to changing circumstances or priorities. It is intended that work programs will be consistent with, and guided by, Ministerial policy statements.

It is proposed that ACMA will use its Annual Report to provide information on its progress against the current work program.

We welcome stakeholder views on whether this legislated work program approach is likely to provide significant benefits in terms of transparency and certainty, compared to the current, administrative FYSO process (see 'Questions for consideration' at the end of this paper).

## Streamlined allocation and re-allocation processes

The 2015 Spectrum Review made several sub-recommendations about the need to provide for timely and transparent spectrum allocation and re-allocation processes.<sup>4</sup> In line with this, the amendments related to allocations and re-allocations aim to clarify the respective roles of the Minister and the regulator in these processes, remove unnecessary prescription, create more discretion for ACMA and provide an additional power for ACMA to directly allocate spectrum licences.

Recent experience has shown that increased flexibility is needed in order for allocation and re-allocation processes to best contribute to spectral efficiency and spectrum management outcomes. These amendments are designed to streamline allocation processes and remove legislative barriers to replanning. This will respond to stakeholder concerns that the current processes are unnecessarily lengthy and create uncertainty, as well as giving ACMA more scope to conduct processes that are tailored to the needs of each situation and band.

In line with the overall intent of these amendments, the changes to allocation and re-allocation processes will also provide ACMA with greater independence for administrative processes, while retaining the Minister's power to direct ACMA when appropriate, both under specific provisions of this Act and under the ACMA Act.

---

<sup>3</sup> 'Spectrum Review', Department of Communications, March 2015, pp. 22–24.

<sup>4</sup> 'Spectrum Review', Department of Communications, March 2015, p. 7.



## Greater flexibility for ACMA to allocate spectrum and apparatus licences

The amendments aim to simplify the process of allocating unencumbered spectrum and provide ACMA with greater flexibility. It is proposed to achieve this, in part, by removing the prescription related to designation notices and conversion processes from the Act.

Under the proposed amendments, ACMA will be able to prepare a marketing plan for any part of the spectrum where an apparatus license is not in effect, and issue licences, without having first received a notice from the Minister designating that part of the spectrum for spectrum licences as currently required under Part 2.2. of the Act.

In addition, by removing the designation process, the amendments propose to remove the general prohibition on ACMA issuing apparatus licences in the same bands of frequency in which it is able to issue spectrum licences. This means ACMA would have the discretion to license parts of the spectrum by spectrum licence, apparatus licence, or a combination of both. Removing this general prohibition will prevent bands from becoming locked into spectrum licensing, which currently removes flexibility and limits ACMA's discretion to make licensing decisions as circumstances change.

Protections will remain in place to protect incumbent licensees, including:

- that marketing plans can only deal with unencumbered spectrum, except as part of a re-allocation process (outlined below)
- a prohibition on ACMA issuing apparatus licences in parts of the spectrum already proposed to be allocated using spectrum licences, as covered by a marketing plan
- restrictions that would prevent spectrum licences being issued in parts of the spectrum already licensed under spectrum licences; and
- the protections currently provided by subsection 36(5) for broadcasting services and digital radio broadcasting services, which will now be addressed in section 39.

Removing the power to designate bands for spectrum licences also removes the need for the conversion process and the amendments propose to remove provisions related to conversion from the Act. The conversion process will be partially replaced by ACMA's new power to directly allocate spectrum licences, explained in more detail below.

### Direct allocation

It is proposed that ACMA be given the power to directly allocate spectrum licences under section 60 of the Act. This will provide another tool for ACMA to use in the exercise of its spectrum management powers and functions, in line with the policy aims of these amendments.

Direct allocation will serve to partially replace the current conversion processes (as outlined above) and will also provide a more straightforward process than is currently available in the legislation, for use in situations where it is preferable to allocate a spectrum licence to a particular person. This could include supporting the object of the Act insofar as it relates to defence, public safety and community purposes.

## Allocation limits

Consistent with the policy intent of devolving more spectrum management decisions to ACMA, the amendments empower ACMA to set allocation limits to apply to allocations of spectrum licences or apparatus licences under section 60 and section 106, respectively. However, this is balanced by the retention of specific powers enabling the Minister to choose to direct ACMA on allocation limits for spectrum allocations or price-based allocations of apparatus licences, recognising that there may be occasions upon which the Minister considers this appropriate and in the public interest.

Allocation limits are an important tool to help promote competition and allocative efficiency in markets that rely on spectrum, which in turn can help promote the long-term public interest derived from the use of the spectrum. They can be imposed to limit the amount of spectrum any one licensee can acquire through an allocation process (thereby preventing monopolisation of the spectrum), or may be used to establish conditions that encourage the participation of new entrants in the market.

The amendments propose to introduce an explicit requirement for ACMA to consult with the Australian Competition and Consumer Commission (ACCC) on appropriate allocation limits. This requirement would apply to allocation processes determined under section 60 and those allocation limits set in accordance with subsection 60(5), as well as to allocation processes determined under section 106.

Some changes in the wording of sections 60 and 106 are also proposed, so that the power to set allocation limits will be expressed in the same manner in both sections. This will allow ACMA to set allocation limits so that they place limits on the aggregate parts of the spectrum that may be used by a person (or group of persons) as a result of the allocation process, taking into account the whole of a potential licensee's spectrum holdings. ACMA would have the power to set the maximum spectrum holdings an individual licence holder could have within relevant parts of the spectrum where this is desired (for example, where the relevant parts of the spectrum are closely substitutable in the services).

Changes to section 100 would mean ACMA would also be able to have regard to aggregate spectrum holdings when deciding whether or not to issue or renew an apparatus licence outside of section 106 allocation processes.

## Re-allocation of encumbered spectrum

As with the proposed changes to the allocation process, it is proposed to empower ACMA to become the decision-maker for re-allocation processes. This means that ACMA would have the power to issue, vary and revoke spectrum re-allocation declarations, after conducting consultation as appropriate and reasonably practicable, and informed by policy guidance from the Minister. This will help streamline re-allocation processes, reducing delays, while providing existing spectrum users with appropriate notice and opportunities for input.

Should ACMA determine that a particular band should be re-allocated for a new use, it would have the power to choose which tools are most appropriate to facilitate a re-allocation. There may be circumstances where it decides to rely on a combination of other powers granted by these amendments (for example, utilising renewal statements (discussed below) and its flexibility to issue new spectrum or apparatus licences). There may be other circumstances where ACMA decides a re-allocation declaration is the best way to notify a group of incumbent apparatus licensees of a proposed re-allocation, and facilitate a planned re-allocation of the band. We are seeking

stakeholders' views on the merits of retaining the ability for ACMA to issue a re-allocation declaration (see 'Questions for consideration' at the end of this paper).

Also in line with the proposed changes to allocation processes, ACMA would be able to issue a declaration for re-allocating spectrum by issuing spectrum licences, apparatus licences, or a combination of both. It is also proposed to remove the general prohibition on ACMA issuing further apparatus licences in a part of the spectrum that has been subject to a re-allocation declaration, once the re-allocation period is over. Protections would, however, still exist for incumbent spectrum licence holders under section 105 as amended, which places restrictions on the issue of apparatus licences, including where spectrum licences are in place.

The amendments to re-allocation declarations also propose to reduce the minimum re-allocation period from two years to one, in order to ensure ACMA can set timeframes that are reasonable, appropriate and suit the process being planned. This will help avoid disproportionate delay or uncertainty in re-allocation processes.

Under these amendments, ACMA would have the power to revoke and vary re-allocation declarations. However, a provision has been added that ACMA will only be able to vary a re-allocation declaration relating to an area for which it has already begun allocating licences if there are exceptional circumstances. This acknowledges the significant impost on industry if a re-allocation declaration is varied after an allocation has already begun. However, such a variation may be necessary if, for example, there is a significant change in the market after ACMA has advertised an auction, necessitating a change in auction settings.

## Reducing regulatory barriers between spectrum and apparatus licences

### Greater maximum licence terms

To create greater flexibility across spectrum licences and apparatus licences, the maximum duration for both spectrum licences and apparatus licences will be extended to 20 years. This will help balance the benefits that longer licences can present in some cases (by providing greater certainty and encouraging innovation and investment) with the need to retain flexibility in spectrum management processes (such as by issuing shorter duration licences where appropriate) in order to adapt to changing circumstances.

ACMA will have discretion to make decisions about licence terms and it is not necessarily envisaged that licensees will generally seek to be issued licences for the new maximum term of 20 years. The length of particular licences will be informed by a range of factors, such as the licence purpose, technology and investment cycles, and long-term spectrum planning requirements.

### Clearer processes governing licence renewal

The amendments provide greater clarity to licensees about the prospect and process for having a further licence issued at the expiry of an existing licence, such as through the introduction of renewal statements (see below).

When renewing licences, flexibility in the legislation will give ACMA the discretion to use different kinds of processes where appropriate, including computerised decision making or automated processes, streamlining the process both for the regulator and for licensees. This will help improve

clarity and is consistent with other proposed measures to better align spectrum licences and apparatus licences.

To promote efficient spectrum management and allow spectrum to move where its highest value use changes over time, there is no presumption that a further licence will be issued.

ACMA has the discretion to offer licensees a further licence with different conditions to those in the licence it succeeds, or for a period of time different to that in the licensee's application. If an application is refused or if ACMA decides to issue a further licence but on different conditions, ACMA must issue a notice of decision and a statement of reasons to the applicant, providing transparency. Both these decisions will also be reviewable.

### Renewal statements

The proposed amendments aim to provide licensees with greater predictability about the arrangements that will apply at the end of the term of a licence. In line with this aim, it is proposed that spectrum licences will include a renewal statement, as may apparatus licences. As there is no presumption that a further licence will be issued, the renewal statement will serve to clarify from the moment of issuing the initial licence whether no further licence will be issued, whether a further licence may be issued at the discretion of ACMA and whether there are any conditions that will need to be met in order for ACMA to consider issuing a further licence. Few licences are likely to be issued with a renewal statement that completely rules out the issuing of a further licence. Renewal statements will provide greater clarity for licence holders around timeframes and the prospect of renewal, as well as helping ACMA consider and communicate its expectations or requirements early on.

If a renewal statement allows a further licence to be issued, the statement must also specify when an application for a further licence must be submitted, giving the licensee greater certainty of process. ACMA will also be able to make a renewal decision-making period statement that sets the period for making a decision on the issuing of a further spectrum licence, with a default of six months from receiving the application if there is no renewal decision-making period statement. This is intended to help avoid uncertain and lengthy bureaucratic processes. A decision on the renewal of an apparatus licence is to be made within 90 days. If ACMA requests further information from the applicant, where a renewal decision-making period statement is in place these timeframes are extended by any period between when ACMA requests further information from the applicant and the applicant responding to the request. If a renewal decision-making period statement is not in place, the relevant decision-making period commences once the applicant has provided all the required information to ACMA. If a decision is not made within the timeframes specified in the legislation, ACMA will be taken to have made a decision refusing the application, which will be a reviewable decision.

ACMA will have the power to vary a renewal statement for both apparatus and spectrum licences. For apparatus licences, ACMA will also have the power to add or remove (without necessarily replacing) a renewal statement. To improve licensee certainty, a decision by ACMA to vary a renewal statement without the agreement of the licensee will be a reviewable decision.

### Public interest test

Given the proposal to extend the maximum duration of spectrum licences and apparatus licences, the amendments also extend the current provisions in section 82 of the Act regarding public interest tests. A public interest test will now apply to the issuing of both further apparatus licences and further

spectrum licences, where the further licence is for a period of 10 years or more. This means that ACMA cannot issue this further licence unless it is satisfied that it is in the public interest to do so. The public interest test is designed to ensure that spectrum is being used efficiently, by preventing it being locked up in uses that are no longer the highest-value use. ACMA will also, at its discretion and as part of its normal spectrum management functions, be able to apply a public interest test when considering applications for a further licence of less than 10 years' duration.

The definition of the public interest may vary for different parts of the spectrum, but in making its decision ACMA may take into account the object of the Act, Ministerial policy statements, advice from the ACCC, any additional information it may request from the applicant and any other information ACMA considers relevant. It is essential that ACMA has the right information to make these decisions as part of its spectrum planning functions and so the regulator will have the discretion to seek relevant information about current and future planned uses for the spectrum from licensees, as outlined in the information gathering section below.

Some of the matters that ACMA may consider relevant in making a decision about the public interest could include:

- if the licence is used to supply essential public services and there is the potential that a change in licensees may put at risk delivery of services to a significant number of people
- whether the incumbent licensee can demonstrate substantial investment and past long term use of the licensed spectrum
- whether the incumbent licensee can demonstrate that their operations would be significantly harmed if the further licence were not issued, which could have flow on effects for relevant markets or sectors of the economy.

The general intent of these amendments is not to alter the arrangements applying to licence holders with broadcasting licences. As such, certain licence types (including apparatus licences issued under section 101A or section 102 and digital radio multiplex transmitter licences) will be excluded from a number of changes, including those regarding renewal statements.

## Modernised equipment rules

The current technical regulation framework in the Act regulates equipment that uses or is affected by radio emissions, in order to contain interference, promote electromagnetic compatibility of equipment, establish standards and enable compliance with these, control the sale and supply of non-standard devices, and protect the health and safety of those using the equipment. This is done primarily through setting technical standards and requirements for testing, labelling and record-keeping.

Experience has demonstrated that this approach to equipment regulation is insufficiently flexible for the current environment, where modern supply chains are more complex and diffuse than they were in the past. The proposed amendments seek to address a number of identified issues within the current framework, including:

- excessive prescription in relation to labelling and record-keeping
- a reliance on criminal offences and limited enforcement tools
- difficulties targeting the right person in a supply chain, in terms of responsibility for compliance (especially in supply chains that involve drop shipping)
- insufficient flexibility to regulate devices proportionate to risk and specific circumstances

- a lack of flexibility to group or separate different kinds of requirements.

The amendments therefore propose to replace Part 4.1 of the Act with a new framework, which will empower ACMA to determine technical regulation requirements through equipment rules. This will provide ACMA with additional regulatory options, and reduce the burden on suppliers and manufacturers, as ACMA can better target those within the supply chain that are responsible for different aspects of compliance.

As outlined in the compliance and enforcement section below, the amendment Bill aims to provide ACMA with a range of graduated responses to non-compliance. This includes access to a number of tools specific to technical regulation, such as permanent bans, interim bans and recall notices for non-compliant devices.

It is also proposed to amend the definition of 'supply' and include 'offer to supply', to reflect modern supply chains, which often involve intermediaries. At the moment, ACMA is not able to impose obligations such as record-keeping rules on persons in the supply chain who are not manufacturers, importers or agents of importers, even in situations where intermediaries are the most appropriate entity to regulate. The amendments would grant ACMA greater flexibility in identifying who in a supply chain is responsible for device compliance.

The amendments also propose new exemption powers. These will allow for the development and testing of equipment that would otherwise be unlawful, to be undertaken in Australia, where ACMA is satisfied that it is in the public interest. ACMA will be empowered to grant exemptions from compliance provisions related to the equipment rules (including offences related to the supply, offer of supply, operation or possession of equipment subject to a permanent ban or an interim ban) and operating a radiocommunications device without a licence. These measures are designed to help promote innovation and industry development opportunities within Australia.

## Further scope for use of accreditation schemes

Accreditation schemes play an important role in helping ACMA perform its spectrum management functions. The accreditation scheme in the Act allows ACMA to outsource certain kinds of administrative or technical work to qualified individuals, freeing up ACMA to focus on other regulatory work and creating new business opportunities within the radiocommunications industry.

Given the success of this scheme and the recommendation of the Spectrum Review that spectrum users be given more opportunities to participate in spectrum management, these amendments propose to expand the scope of the accreditation scheme.

Under these amendments, ACMA would be able to provide accreditations in accordance with accreditation rules made under section 266. The amendments would also allow ACMA to apply this accreditation model to other areas of its work under the Act.

## A modernised compliance and enforcement regime

ACMA investigates and acts on regulatory non-compliance and issues such as interference, non-standard devices and breaches of licence conditions. The Spectrum Review highlighted the need to introduce a greater range of graduated enforcement mechanisms that will allow ACMA to respond to

breaches in proportionate and targeted ways, meaning that minor breaches can be dealt with more quickly and efficiently.<sup>5</sup>

The proposed amendments aim to modernise the enforcement and compliance regime, by providing new ways for ACMA to deter and respond to breaches of the legislative framework. These amendments adopt the standard investigatory provisions and powers of inspectors found in the *Regulatory Powers (Standard Provisions) Act 2014*, as well as some additional compliance and enforcement mechanisms that are particularly useful in the radiocommunications space, where interference is often inadvertent. These include remedial directions, forfeiture notices and public warning notices.

Under the proposed amendments, ACMA would have access to a range of tools and powers, including:

- issuing infringement notices
- seeking an injunction or other civil penalties
- accepting an enforceable undertaking
- giving a remedial direction
- issuing public warning notices about contraventions of certain provisions of the Act, when it is in the public interest to do so
- using forfeiture notices to seek the voluntary surrender and forfeiture of things involved in the contravention of provisions of the Act
- referring matters for prosecution to seek conviction and criminal penalties
- suspending and/or cancelling licences
- withdrawing accreditation and authorisations.

These new regulatory options will give ACMA greater flexibility to address instances of non-compliance and reduce the prevalence of equipment that can be used to cause interference, while also removing the administrative and financial burden of having to conduct lengthy criminal investigations for potentially minor breaches. This will more effectively protect the rights of spectrum users, as well as reduce the need for more coercive enforcement powers to be used in situations where this is not a proportionate response. Criminal penalties and sanctions will remain available in a limited number of cases, where this is justified by the seriousness of the potential breach.

## Appropriate information gathering powers

Proposed new information gathering powers are intended to support ACMA in carrying out its spectrum management functions, including spectrum planning, interference management, monitoring compliance and targeting its education initiatives, all of which can be constrained by limited access to information. In the 2017 consultation process, stakeholders expressed concerns regarding the burden of having to produce large amounts of information under a broad information gathering power. In response, the proposed amendments provide powers to seek information only where it is reasonably likely that the information would assist ACMA in performing its spectrum management functions, or is otherwise relevant to the operation of the Act and the equipment rules, or the operation of radiocommunications devices. The proposed information gathering powers have been targeted to support ACMA in its spectrum management functions, consistent with the information gathering powers of other regulatory bodies.

---

<sup>5</sup> 'Spectrum Review', Department of Communications, March 2015, pp. 31–32.

ACMA would be able to exercise certain information gathering powers only where it believes on reasonable grounds that a person has information or a document that is reasonably likely to assist ACMA in managing, limiting or preventing interference, or managing health and safety concerns. ACMA would also be able to seek information for the purposes of gathering information about how licences are used and about potential non-compliance with licence conditions. This will allow ACMA to fulfil its obligations with regards to spectrum planning, licensing, interference management and compliance.

ACMA would also be empowered to seek information from licensees about future or potential uses of spectrum, so that ACMA may make spectrum planning decisions that are based on an understanding of planned and emerging spectrum uses.

Under the proposed amendments ACMA would have the power to issue a written notice requiring a person to give information or produce documents, within the limits explained above. Failure to produce this information in the time period and form specified by ACMA could result in civil penalties.

## Repeal of unused provisions

The proposed amendments will also repeal unused provisions of the Act. These are powers or frameworks that have not been used to date. These amendments relate to ACMA's power to undertake public inquiries and to the datacasting transmitter licensing framework.

## Transitional arrangements

The provisions of the exposure draft Bill are expressed to commence on a date to be determined by proclamation, within six months of the Bill receiving the Royal Assent.

As the processes provided for by the reforms are generally more flexible than the existing provisions of the Act, the Bill provides for the new provisions to take effect from this commencement date. To ensure processes underway at the time the reforms commence are able to continue without disruption, the Bill contains transitional provisions that:

- provide that spectrum re-allocation declarations and any marketing plans that are currently in force will continue to apply, so that major spectrum allocations currently underway are not disrupted
- allow any ongoing processes to convert apparatus licences to spectrum licences to continue where an offer of a spectrum licence has been made prior to the commencement
- allow existing applications for the renewal of an apparatus licence to be continued under the existing arrangements
- only require new licences to contain a renewal statement and a renewal application period statement
- allow the existing standards and compliance labelling notices to serve as the initial equipment rules, to give ACMA time to consult with industry on the content and operation of the first set of equipment rules to be issued under the reforms.

The Department and ACMA will continue to provide advice to stakeholders on the implementation of the reforms, and will work together on transitional plans to support a smooth commencement of the new arrangements.



## Questions for consideration

The Department seeks your views on all aspects of the proposed reforms as set out in the exposure draft, including whether the proposed amendments are fit for purpose and whether they raise any operational or administrative burden that could be remedied prior to implementation. In addition, the Department seeks your views on the following specific matters covered by the reforms:

1. Given the established administrative practice of ACMA preparing the Five-Year Spectrum Outlook on an annual basis, does the proposed legislative ACMA annual work program provide stakeholders any additional benefit in terms of certainty and transparency?
2. Under the reforms, there will be several legislative mechanisms to provide transparency, clarity and, potentially, review rights to existing licence holders where ACMA is seeking to re-allocate spectrum (such as the annual work program and licence renewal statements). In these circumstances, does the spectrum re-allocation declaration process continue to be of use to stakeholders?
3. The reforms are intended to permit ACMA to facilitate the development and testing of banned devices in Australia through the exemptions framework provided for in relation to the revised Part 4.1 of the Act, while still protecting existing licence holders from interference. Do the proposed exemption provisions achieve this aim?
4. The reforms introduce graduated compliance mechanisms for ACMA to regulate and enforce the provisions of the Act. Are ACMA's proposed powers appropriate and are there any additional regulatory tools that stakeholders would like to see be made available to ACMA to perform its spectrum management functions?
5. Are there any additional transitional matters or grandfathering of processes that should be considered? For example, do you consider that any additional existing processes or provisions should be retained for current licences, with the new provisions only applying to licences issued after the reforms commence?
6. Are there any additional reforms the Department should consider as part of the proposed amendments to the Act, or that should be considered further as part of future reforms to the spectrum management framework?

## Next steps and conclusion

A modernised and streamlined legislative framework will allow industry and the regulator to better adapt to changes in spectrum needs and uses. Providing greater certainty and more streamlined processes, while maintaining appropriate oversight and transparency, will help encourage investment and innovation, and support the regulatory framework to better meet changes in demand.

As noted above, the Department would welcome written submissions on the exposure draft and is available to meet with stakeholders to discuss the reforms. To provide a written submission, please email [spectrum.reform@communications.gov.au](mailto:spectrum.reform@communications.gov.au). When making a submission, please include:

- Contact name
- Organisation name, if applicable
- Contact details, including telephone number, postal and email addresses
- Confirmation whether or not your submission can be made public—published—or kept confidential

All submissions to be made public need to meet the Digital Service Standard for accessibility. Any submission that does not meet this standard may be modified before being made public. If your submission is to be made public, please ensure you do not include any personal information that you don't want to be published. If your submission is confidential, please ensure each page of the submission is marked as confidential

If you have any questions on the exposure draft or the consultation process, or would like to arrange a meeting with the Department, please send an email to [spectrum.reform@communications.gov.au](mailto:spectrum.reform@communications.gov.au) or contact:

Rachel Blackwood  
A/g Assistant Secretary  
Spectrum & Telecommunications Deployment Policy Branch  
Department of Infrastructure, Transport, Regional Development and Communications  
Telephone (02) 6271 1591

Taking into account the feedback received through this consultation, the Government will seek to finalise a bill to introduce to Parliament as soon as possible. As part of finalising the Bill, the Department will contact stakeholders where any additional information or clarification is needed regarding a submission.

The development of future amendment packages to further improve efficiency and flexibility in spectrum management, will be considered following the passage of the first bill and further opportunities for consultation.