



13 July 2020

AMSA: D20/155831

Exposure draft of Radiocommunications Legislation Amendment (Reform and Modernisation) Bill

Australian Maritime Safety Authority (AMSA) has prepared the following comments (in the Annex) on the Exposure draft of the *Radiocommunications Legislation Amendment (Reform and Modernisation) Bill 2020* (the Bill) consultation by the Department of Infrastructure, Transport, Regional Development and Communications (DITRDC).

Radiocommunications and the devices that rely on it are crucial for protecting life at sea, on land and in the air. Our comments focus on five themes:

- availability and protection of spectrum for maritime and search and rescue
- improving transparency and availability of information related to spectrum use,
- lessons-learned from a graduated compliance approach to regulation,
- opportunity to improve government-wide use of spectrum, and
- motivation to improve the 406 MHz beacon system.

The point of contact within AMSA for any further enquiries is Stuart Shepard, Senior Advisor, Maritime Communications, on +61 2 6279 5703 or stuart.shepard@amsa.gov.au.

Yours sincerely

Brad Groves
GENERAL MANAGER
STANDARDS

Level 5, 82 Northbourne Avenue, Braddon ACT 2612
GPO Box 2181, Canberra ACT 2601
p + 61 2 6279 5050
e gm.standards@amsa.gov.au

Annex

Introduction

Use of radiofrequency spectrum by search and rescue (SAR) and the maritime community varies widely, with AMSA responsible for aspects related to SOLAS (International Convention for the Safety of Life at Sea, 1974) vessels, the Global Maritime Distress and Safety System (GMDSS), the Convention on International Civil Aviation¹, COSPAS-SARSAT and the domestic commercial vessel fleet. In addition, AMSA contributes to, and often leads internationally, on maritime radiocommunication matters related to recreational vessels.

Radiocommunication is crucial for protecting life at sea and in the air. This may include a range of systems/services including:

- satellite-based positioning, navigation and timing systems and their augmentation systems
- 406 MHz distress beacons (incorporating ELT, PLB and EPIRB)
- mobile telecommunication networks
- MF/HF and VHF communication systems
- satellite telecommunication networks
- radiodetermination
- automatic identification system (AIS) and the nascent VHF Data Exchange System

In addressing the questions in the consultation paper, our comments focus on five themes, which may be directly relevant to the finalisation of the Bill, or future implementation by the ACMA, including:

- availability and protection of spectrum for maritime and search and rescue
- improving transparency and availability of information related to spectrum use,
- lessons-learned from a graduated compliance approach to regulation,
- opportunity to improve government-wide use of spectrum, and
- motivation to improve the 406 MHz beacon system.

¹ AMSA is responsible for the civil aviation SAR service.

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?

Progressive improvement in ACMA's delivery of the Five-Year Spectrum Outlook (FYSO) has increased transparency in ACMA processes and anticipated work output, albeit, with a focus on 'high-value' initiatives.

A yearly work plan allows individual activities to be captured, noting it will not cater to all industry sectors, but the broader five-year outlook should aim to provide a summary of spectrum and regulatory pressures on each sector, noting this year (IFC 09/2020), the draft FYSO did not discuss maritime issues.

In addition, the development of the FYSO is likely limited by the absence of published Government policy on radiocommunication in general. This is evident in the delay, and subsequent reduced scope, for new radiocommunication legislation. AMSA would encourage the Minister to publish a Ministerial Policy Statement (MPS) outlining the Government's policy for radiocommunication when the Bill receives Royal Assent.

A previously beneficial companion to the FYSO was the *Frequency Audit Table*, which divided the spectrum (closely aligned to the *Australian Radiofrequency Spectrum Plan - ARSP*) into parts, identifying its current use, if there were identified pressures on that spectrum, if a change in the framework were envisaged and other general information.

Acknowledging that this was a significant effort to maintain, a similar companion, or standalone, would be advantageous, particularly if its elements were online, interactive and updated by ACMA staff as required. It would also allow the ACMA to relate the technical and regulatory framework of those parts of the spectrum to create a 'one-stop shop' for information on spectrum usage in Australia.

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?

AMSA is concerned that, in the absence of implementation advice from ACMA about twenty-year licences, how the annual work program and its five-year outlook are an effective tool for replicating or signalling a re-allocation process.

As noted in the consultation paper, licence tenure and terms will be influenced by "... *the licence purpose, technology and investment cycles, and long-term spectrum planning*

requirements". As spectrum is increasingly scarce, and spectrum-sharing technologies are not realised in the Australian environment, re-allocation in less than five years seems more and more unlikely.

AMSA predominantly operates its radiocommunication systems under apparatus licences in spectrum identified in the ARSP for maritime-mobile services, although we licence some radiodetermination, fixed and satellite services. In addition, via a *Business Operating Procedure*², AMSA is responsible for authorising non-shipborne automatic identification system (AIS) applications, which are then third party authorised.

The long-term security of our spectrum holdings, many of which are for safety services identified in the *Radio Regulations* and ARSP, means a five-year outlook may not provide the necessary certainty for our use of the spectrum.

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?

Opportunities to develop and test technology in Australia should be encouraged by Government. It should be a simple process for developers to gain access to spectrum as long as safeguards exist to protect incumbent use.

The provisions of section 302 provide transparency in why an exemption is made, but do not provide transparency in where devices are operating. AMSA would encourage an authorisation regime that is easy to access, limits case-by-case examination by ACMA, and provides transparency for incumbent users of 'banned' devices. The framework should be administrative, with the types of equipment permitted, or persons permitted to operate them, defined in ACMA policy.

Applicants could apply to the ACMA for authorisation, recording their details and duration of the use. Authorisation should be limited with the intention to update equipment rules to cater for long-term use, if agreed via public consultation. This approach may be an extension to subsection 10(4) and 10(5) of the ARSP that permits use of a frequency band for an unspecified service, or experimental purposes.

If DITRDC envisage an administrative policy framework being a burden for the ACMA, then a legislative process likely does not provide the flexibility and timeliness for testing and development of banned devices.

² *Frequency assignment and licensing arrangements for automatic identification systems in the VHF maritime mobile band*

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?

In undertaking its statutory role, AMSA is committed to implementing its Statement of Regulatory Approach³, Compliance Strategy⁴ and the Commonwealth Government’s Regulator Performance Framework⁵. This means ensuring compliance and enforcement approaches are risk based, streamlined and coordinated, and proportionate to the risks being managed.

AMSA’s graduated compliance approach is reflected in the pyramid below. It details four levels of industry action, and the response that AMSA will take to ensure that industry comply.

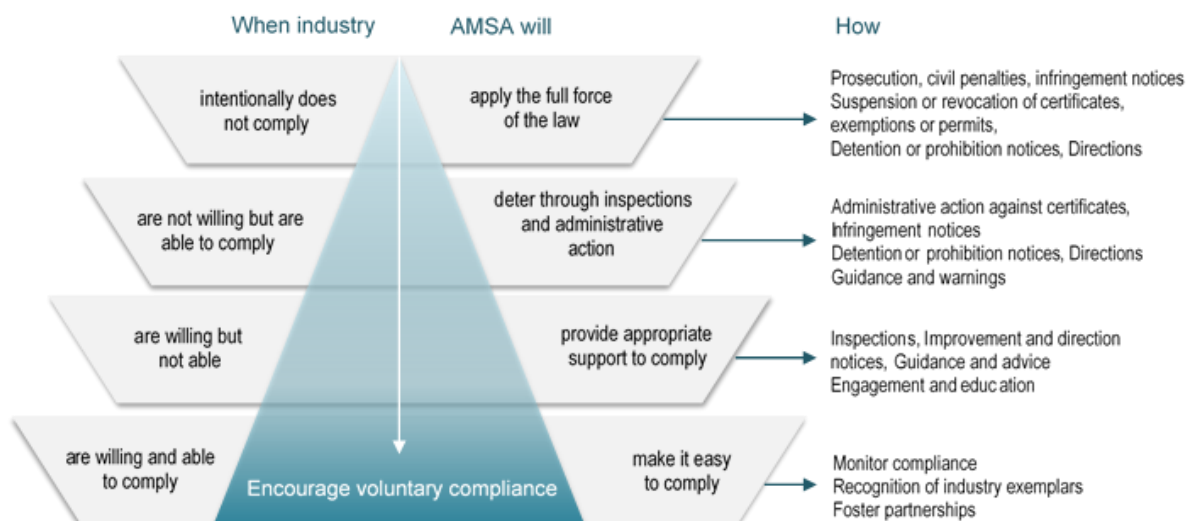


Figure 1: How AMSA will approach compliance

AMSA focuses its resources on industry engagement and education to encourage voluntary compliance with the policy and regulation aimed at improving maritime safety and protection of the marine environment. When required, AMSA will apply the full force of the law when maritime safety or protection of the marine environment are compromised and industry intentionally does not comply.

³ Statement of regulatory approach 2018, <https://www.amsa.gov.au/about/corporate-publications/statement-regulatory-approach-2018>

⁴ Compliance strategy 2018–2022, <https://www.amsa.gov.au/about/corporate-publications/compliance-strategy-2018-2022>

⁵ <https://www.pmc.gov.au/resource-centre/regulation/regulator-performance-framework>

Whilst we do not have any specific observations on drafting in the Bill, a lesson-learned from our compliance and enforcement action is that criminal penalties in legislation should include an 'up to' clause to permit discretion. For example, a first offence may receive the same penalty as subsequent and systemic offences.

Further information on AMSA's compliance and enforcement framework is provided on our website at <https://www.amsa.gov.au/about/corporate-publications/compliance-and-enforcement-policy-2018>.

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?

AMSA does not anticipate an impact from transition or grandfathering processes.

In considering the implementation of licence renewal statements, AMSA is interested in options for increasing licence duration for critical use that supports AMSA functions and looks forward to the opportunity to engage with ACMA on the development of licence tenure policy and how that might apply to our apparatus licences.

As a government spectrum holder⁶, AMSA understands that its use of the spectrum will be considered as part of the broader government holding.

AMSA has sought opportunities through the Government Spectrum Steering Committee (GSSC) (which has not met since 19 March 2019) technical working group (TWG) to identify where Commonwealth departments and agencies can collaborate on spectrum usage, including contractual arrangements for like or similar services. AMSA would encourage DITRDC to advise GSSC members of its future work expectations.

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?

AMSA provides a SAR service to anyone in distress, no matter where they are in the Australian SAR region. This is a statutory function under the *Australian Maritime Safety Authority Act 1990*, and is provided for vessels at sea and aircraft. SAR services for those in distress on land are provided by AMSA in response to requests from State and Territory Police under the *Inter-Governmental Agreement (IGA) on National Search and Rescue Response Arrangements*.

⁶ As reported in the *Australian Government held spectrum report* dated 5 April 2019

AMSA maintains a comprehensive website (<https://beacons.amsa.gov.au/>) detailing the benefits of the 406 MHz distress beacon system and maintains the register of beacon and maritime mobile service identities (MMSI). We also use our social media channels and trade show presence to deliver our messages.

The 406 MHz satellite-based beacon detection system (COSPAS-SARSAT) is undergoing incremental improvement, with the launch of more medium earth orbit satellites and most beacons fitted with a global-navigation satellite service (GNSS) receiver that improves geo-location capability.

Despite the advancements in system capability, AMSA is concerned that inadvertent and malicious activation of 406 MHz distress beacons is increasing. This is of particular concern given that SAR authorities respond to every distress alert on the assumption it is real distress – this can become a costly and time-consuming exercise.

There are also difficulties with encouraging registration (or maintaining it) that helps in identifying and locating anyone in distress and managing inadvertent or malicious activation.

AMSA is motivated to work with DITRDC and ACMA to identify solutions, including mandating 406 MHz distress beacon registration through amendments to existing legislation and a graduated compliance and enforcement response to address inadvertent and malicious activation. Implementing these or other solutions may require amendment of the *Radiocommunication Act 1992*.