P.McGill (Accredited Person)-Comments on Exposure Draft of Radcommunications Act

I wish to thank the Department for presenting the exposure draft for public review. In addition, your consultation road-show provided stakeholders with an opportunity to ask questions directly. The following response is a sanitized/redacted version of my full analysis of the exposure draft: I am doing this to avoid raising issues that may be nugatory: given more time to research the intent, meaning, parentage and externalities of each clause in the draft.

There is an obvious opportunity here to produce a world's best, most innovative radiocommunications legislation that will, through bi-partisan support- have a long and fruitful existence. The exposure draft does not go far enough to achieve a world ranking status, but rather it appears to be a Rev 1.x of the current Act, not Rev2.0 : it is possible to make this Act not only innovative, but also agile enough to have a long and fruitful existence.

Some limited comments on the draft are provided to focus the reader, and perhaps set an agenda for a more deeper reform:

Generic/definitions

1. The term radiofrequency spectrum (and radiocommunications) should be used throughout.
2. The definitions should align with ITU (CS/RR). Definitions in particular defining scope to cover only "Hertzian waves" & "Near Fields", and "Harmful Interference". Radiofrequency Spectrum should also define all of its attributes eg frequency-space-time.
3. The Radiocommunication device definition goes beyond reasonable regulation as a device can only consume/deny radiofrequency spectrum when actually connected to an antenna. A transmitter sitting in a showroom should be of no concern to the Commonwealth.

Ministerial policy

1. Would it not be better, and to foster bi-partisanship, for this to be "Government or Parliament" that gives direction to ACMA?

ACMA Work plan

1. Why should a normal administrative/management function be made part of an Act? Would this be more applicable in the ACMA Act?

Radiofrequency Plans

1. Could this be better managed by Standards Australia?

Operation of radiocommunications

1. This section appears to have too much red-tape, it is still reflective of the original 1905 Wireless Telegraphy Act and does not reflect today's contemporary, ubiquity and operation of radiocommunication devices- often unknowingly by the user/operator.
2. There is a strong case for operation of a radiocommunication device that is contained (ie causes no harmful interference outside the confines of that premises) within one's own premises (eg. a Crown Allotment in fee simple) is no business of the Commonwealth, and may go beyond its Constitutional powers.
3. The proposed penalties imply a reverse onus of proof: surely there must be intent to cause Harmful Interference? To be clear- if no harmful interference is caused, there should be no criminal or civil case!
4. Being in possession of a Radiocommunications device should be not an offence- connecting it to an antenna and having intent to radiate, is only basis for indictment, if no valid license applies.

Licences

1. If a licence grants implied property rights (eg Spectrum licenses) why/when should the Australian taxpayer provide any assistance to the licencee in policing harmful interference? Could ordinary common law rights and precedents – such as theft/trespass/etc -apply?
2. Should licenses include a use-it-or-loose it provision? Spectrum monitoring often reveals instances where one carrier is fully loaded while another is less full. Why can't other carriers have access to spare or unused capacity?
3. Should a licence for a secondary or lesser precedence licence be cheaper?

Regulatory undertakings

1. Scope should include time of use to allow for innovative (eg online purchase short term event licence) licencing etc

Varying licences, Renewing , Cancelling, Surrender, seem to have too much red-tape . Why is a public register of disqualified persons needed?

Interference management

1. Radio spectrum space that is wholly within a person's/entity's physical fee-simple property/ leasehold etc cannot be deemed to cause any interference within that spectrum space. The interference technical definition is a well known- it is used as a part of spectrum technical management- and these standards can be used for testing compliance for Harmful interference.
2. In my own "castle" I should be able to use whatever spectrum I want as it is my own business to fulfil use of my property. If I built a faraday cage/screened room of good performance, then there is no way anyone outside of it, could be interfered with!

3. It should not be business of government to interfere within one's own property usage where no harm is done!! Note this would allow for mobile jammers to be legal provided they only work within an owners premises spectrum space.
4. Must be clear we mean "Harmful Radiofrequency interference" only. All radiocommunication systems are designed to mitigate acceptable levels of interference. A Radiocommunications thing can be "interfered with" through kinetic means etc- such "interference" should not be concerned with this Act.
5. ACMA should define limits for all radiofrequency spectrum, where emissions below those limits, can never be deemed to cause interference.

Authorizations

Authorization to undertake say frequency coordination, should be a right for any competent person. The national Accrediting Authority (eg Engineers Australia for Engineering competency) should manage these authorized persons, not ACMA.

Accordingly, use of the term ACMA "May authorize", cannot be justified: a person who is competent to perform a function eg operate a radio or plan a spectrum allocation should be automatically entitled to practice?

Equipment

Is this provision (along with other regulatory -service oriented provisions) WTO compliant?

Inspectors

Why must an inspector be a Government employee? What about a contractor or private sector business?

Conclusion:

The above examples provide a non-exhaustive summary of areas where the draft Act could be enhanced. My wise counsel is that there is no urgency in revising the Act and, that we should take the opportunity to make it a "world beating" legislation that fosters innovation and agility. I look forward to participate in any further development of this important Act.

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