



TELSTRA CORPORATION LIMITED

A proposed approach to transition from the 1992 Act to the Radiocommunications Bill

Public submission

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Executive Summary

Telstra welcomes the opportunity to comment on the “A proposed approach to transition from the 1992 Act to the Radiocommunications Bill” consultation paper. We commend the Government for progressing this reform work and believe the new framework is an important step in the right direction to providing a framework which is simpler, more flexible, and more efficient. This will assist Australia to fully realise the benefits of new radiocommunications technologies and keep Australia at the forefront of technological advancements

We believe arrangements for transition to the proposed *Radiocommunications Bill 2017* (the new Bill) are pivotal to the successful implementation of the new framework and it is important to get these right at the outset. We recommend below a number of important additional considerations as the transition legislation is drafted:

- **Transition to the new licensing framework must not undermine rights of existing licensees:** 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.¹ We support this position and believe this element should be clearly and comprehensively provided for in the transitional arrangements. However, this is not clear from the material in the consultation paper. Therefore, we suggest there needs to be a legislative backstop in the Transitional and Consequential Amendments Bill (T&C Bill) to ensure spectrum rights are not diminished in transitioning to the new regime.
- **The industry should be consulted on a full draft of the T&C Bill:** We believe it is important that there is extensive consultation with industry on a full draft of the T&C Bill before it is finalised for introduction to Parliament. This T&C Bill will establish a legislative framework for a staged transition to the new licensing scheme over a number of years and a smooth transition is heavily reliant on getting it right. We also believe examples of the licence issue schemes (LIS), designated statements and contents of the regulatory undertakings designed to protect incumbents need to be considered with industry before the draft Bill is finalised, so that any elements in these instruments that are critical for a successful transition can be referenced in the draft Bill.
- **Incentives to encourage existing licence holders to transition to the new Bill as quickly as practicable:** In addition to improved licence conditions, such as increased certainty about renewal arrangements, we also recommend that longer tenure terms (for example, ten years) be offered for the new licences that replace apparatus licences under the current framework.
- **Impact on existing business activities:** We concur with the set of principles as proposed in the consultation paper. However, we believe a key principle missing from the consultation paper is that business as usual (BAU) activities, in particular spectrum allocation processes, should not be held up during the transition period, nor should there be a “moratorium” on allocations in the lead-up to the commencement of the new Bill. This is important for ensuring the radiocommunications industry can continue to invest and deliver benefits for the Australian economy during the transition period.

¹ Minister of Communications, “Next stage of spectrum reform to commence”, 25 August 2015, www.minister.communications.gov.au/malcolm_turnbull/news/next_stage_of_spectrum_reform_to_commence, Attachment A, p2.



We are pleased to see the Australian Communications and Media Authority (ACMA) create a new Spectrum Review Implementation Branch, which will concentrate on spectrum reform work. However, we like to emphasise that the resourcing of this team should not take focus away from BAU activities, including the timely auction of new spectrum allocations to support new mobile services and technologies for Australian consumers and businesses, and keeping Australia at the forefront of global mobile service developments.

The transitional arrangements are of highest importance to the industry for the successful implementation of the reforms, and it is vital that the path for the transition is mapped out in close consultation with the industry. We look forward to engaging further with the Department of Communications and the Arts (the Department) on the next round of consultation concerning the T&C Bill, and ongoing consultation with the ACMA on the detailed design of the transitional arrangements.



01 Approaches to Transition

Question 1

What are the major issues to be addressed in designing transitional arrangements?

We believe that the most important issue to consider in designing transitional arrangements is the protection of incumbent licensee rights. 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.² We support this position and believe that it is imperative that existing rights and conditions associated with all types of licences be continued under the new regime for the remaining term of the licences. It is critical that existing licence holders continue to have certainty for their investment in existing licences, especially for spectrum licenses which are typically of long duration and have a high value. Certainty for incumbents needs to be built into the transitional legislation and not left for future planning. Therefore, we suggest a legislative backstop needs to be included in the Transitional and Consequential Amendments Bill (T&C Bill) to ensure spectrum rights are not diminished in transitioning to the new regime.

Licensees should be given a timeframe and deadlines to transition, but should have the opportunity and incentives to transition to the new scheme as early as practicable. In addition to improved licence conditions, such as increased certainty about renewal arrangements, we also recommend that longer tenure terms be offered for the new licences that replace apparatus licences under the current framework. In terms of longer tenure for apparatus licences, we suggest ten years could be a reasonable compromise.

Most apparatus licences have a duration of 1 year so there will be a convenient opportunity to move them to licences under the new framework at a relatively early stage in the transition process, provided the ACMA is ready to issue the new licences.

We also stress the importance of ensuring that transition to the new legislation does not delay the benefits to Australian society of re-farming bands through the allocation of new spectrum licences. In other words, we believe it is in the public interest to continue such BAU activities without delay. We cannot afford to have any 'moratorium' on or pausing of the ACMA's allocation activities in the lead-up to the commencement date of the proposed new Act.

Adequate ACMA resourcing for the transition is an important issue and the challenges of transition should not be underestimated. We are pleased that extra resourcing is being mobilised at the ACMA to address the extra demand that will be placed on the organisation through the creation of the new Spectrum Review Implementation Branch. However, we again emphasise that resourcing should not take focus away from BAU activities, including the timely auction of new spectrum allocations to support new mobile services and technologies for the benefit of Australian economy. We also note that resourcing must also include appropriate financial investment in IT and other systems which will be needed to support both the transition and the new licensing system.

We believe a significant number of band plans and Radiocommunications Assignment and Licensing Instructions (RALIs) may need to be updated or remade. We anticipate this work will be a complex and lengthy task which needs to be adequately factored into designing the transitional arrangements. We explain this further in our answer to [Question 5](#) below.

² Minister of Communications, "Next stage of spectrum reform to commence", 25 August 2015, www.minister.communications.gov.au/malcolm_turnbull/news/next_stage_of_spectrum_reform_to_commence, Attachment A, p2.



Lastly, we cannot stress enough the importance of the transitional arrangements to industry, and that the approach taken needs to be consulted on closely with all relevant stakeholders. We believe extensive consultation with industry on the full draft of the T&C Bill will be required before it is finalised for introduction to Parliament.

Question 2

Are there other approaches to transition that could be considered?

We agree with the Department that, on balance, a hybrid approach is most suitable and provides scope for considered decisions about when and how to transition in order to minimise disruption, while leveraging some of the benefits of the new scheme from commencement. We look forward to providing further comments on specific transition proposals once more detail on the T&C Bill and associated documents is provided.

We highlight the need for the Department and ACMA to remain flexible during the transition period. We suggest the ACMA should be prepared to take opportunities to transition licensees earlier than scheduled, where there is an appetite from licensees for that to occur.

Question 3

Are there other measures that would reduce complexity during transition?

We believe there are opportunities for the ACMA to reduce its workload during transition. For example, the ACMA should consider if its proposed delegation powers under the new Bill could assist in easing the transition workload for the ACMA. Certain apparatus licensed bands may be appropriate for private management to assist with the transition activities. If the ACMA considers it is worthwhile to pursue the use of delegated management rights to assist the transition, the T&C Bill should address how this would work. For example, the T&C Bill could include a list of delegated management rights that will apply (or may apply) to industry associations representing licensees with certain licence types, to assist with the transition.

In line with our submissions on Part 13 of the new Bill, the use of industry codes and other industry developed mechanisms may also provide a useful mechanism for the ACMA to share the transition workload and ensure industry is properly engaged with the transition issues that affect it. We suggest, the ACMA should consider whether it wishes to ask segments of the industry or industry groups (for example, the Australian Mobile Telecommunications Alliance (AMTA) or Communications Alliance) to develop codes or other instruments that relate to particular elements of the transition.

As an ongoing project after the passage of the new Bill, the ACMA should seek to identify bands and licence types that can be simplified, consolidated or dealt with under alternative provisions of the new Bill. The transition also creates an opportunity for the ACMA to audit and "clean up" the Register of Radiocommunications Licences before migrating to the new system. We suggest this would involve conducting a data integrity review, removing any duplicate licensing records, and removing any "zombie" registrations where licensees are no longer in existence or operating services.



02 Proposed implementation

2.1. Spectrum Plan

Question 4

Should the ARSP be revised at commencement, or should it be considered ‘to be made’ under the new arrangements/Bill?

We agree with the Department’s view that the Australian Radiofrequency Spectrum Plan (ARSP) should be considered “to be made” under the new Bill. Our view is that the ARSP should not be revised before World Radiocommunication Conference 2019 (WRC-19), as this would seem to be premature and unnecessary. Unless, of course, the ARSP has to be updated to address any terminology or other interdependencies with the new licensing framework.

Question 5

Are there any existing legislative band plans that should be remade at commencement?

We note that a significant number of band plans and RALIs may need to be updated or remade as they refer to apparatus licences. Although the basic structure of these plans will remain the same in light of the ongoing operation of legacy systems and it is generally only terminology that needs to be updated, we anticipate this may not be simple and could be a major task to be considered in designing the transitional arrangements. There may also be an opportunity for simplification when remaking legislative band plans – for example, the ACMA may consider removal of some provisions or definitions from plans or RALIs that will be redundant under the new Bill.

The complexity of re-making band plans is another reason why the industry needs to be given adequate opportunity to review the T&C Bill before it is finalised.

2.2. Equipment Rules

Question 6

How should the transition to equipment rules occur? Should equipment rules start at commencement or should they be staged over time? Why?

We are not an equipment manufacturer and so may not have insight into all of the relevant complexities around equipment rules. However, we consider that ideally equipment rules should commence on the same day as the main provisions of the new Bill as we believe the proposed 12-14 month period between passing of the new Bill and commencement should be sufficient lead-time for equipment providers to prepare for compliance with the new equipment rules. This means that equipment rules need to be ready from passage of the new Bill. However, the ACMA’s indicative timeline as outlined in “Equipment rules – Supporting material for the Exposure Draft of the Radiocommunications Bill 2017” shows that the ACMA would potentially only finalise the equipment rules between the new Bill becoming law and the commencement of the main provisions of the new Bill. In our view, this timeline needs to be expedited and consultation on the equipment rules should commence as soon as possible and before passage of the new Bill, to facilitate a speedy transition to the new equipment rules.



We agree with the view expressed by the Department and the ACMA that existing equipment at commencement should continue to be covered by the old equipment rules. However, we believe it is important that the enhanced enforcement mechanisms available under the new Bill, particularly around interference management, are available to licensees from commencement, including in relation to equipment that is governed by the old equipment rules.

Although the ACMA has indicated that it expects suppliers to move to new arrangements as soon as practicable, we would be interested to see what incentives the ACMA intends to offer suppliers to encourage early transition to the new equipment rules.

2.3. Elements of the Bill to operate from commencement

Question 7

Are there other elements of the new legislation that should start at commencement?

In addition to the equipment rules (which as stated at [Question 6](#) should transition in their entirety at commencement subject to grandfathering), we agree with the Department's view that some elements of the new spectrum management arrangements enabled under the new Bill should operate from commencement as per the following list:

- compliance and enforcement provisions (including penalties);
- inspector appointments;
- accredited persons arrangements;
- register rules;
- exemption determinations;
- protected symbols determinations; and
- space objects determinations.

In addition to the above, we suggest Part 13 – Industry Codes and Part 17 – Delegation should operate from commencement, in order to allow the ACMA to use industry developed codes and instruments, and delegate certain functions, where doing so would free up ACMA resources and potentially assist transition, as described in our answer to [Question 3](#) above.

Question 8

Are there any elements proposed to start at commencement that should instead be staged over time? Why?

We believe there are no elements proposed to start at commencement that need to be delayed or staged over time. In fact, in line with the hybrid approach proposed by the Department, we believe it is important to seek bringing elements of the new legislation forward for areas where it is possible to gain the most immediate benefits.



2.4. Licensing

Question 9

When should the work program for transition be available? What criteria should be used to determine which licences should transition when and in what order?

An initial work program for transition should be made available to industry for consultation before passage of the new Bill. This work program should be updated (if/as appropriate) after passage and before commencement of the new Bill, in order to provide certainty and clarity for incumbent licensees. It will also need to be kept updated during the transition period to identify milestones met or missed, and any changes to the program.

In terms of the criteria and appropriate order for transition, please see our comments in response to [Question 15 below](#).

Question 10

Is 12 months notification for licence transition sufficient?

Yes. The required notice period for transition will depend on each licence type, but we do not consider that more than 12 months' notice of transition will be necessary for apparatus licences and class licences as proposed by the government³. We note that the current proposed timetable gives up to 5 years to transition certain licences – presumably some holders of licences could be given much longer than 12 months' notice of their required transition date.

Many apparatus licences could be transitioned at the time they are due for renewal subject to availability of a suitable replacement licence, which implies a window of less than 12 months. Therefore the ACMA should not be artificially constrained from achieving such early transition by having to comply with a minimum 12 month notification period.

2.5. Class licences

Question 11

Should class licences become spectrum authorisations at commencement? Why/why not?

Yes, our view is that transitioning class licences to spectrum authorisations could generally occur at commencement. However, care will be needed in drafting the transitional provisions to ensure that converting a class licence to a spectrum authorisation does not diminish any protections in the class licence that exist to protect apparatus and spectrum licensees..

We consider it important that protections in the current Act around the interaction between class licences and spectrum licences are preserved in the new Bill and the T&C Bill. Consultation may be required with existing licensees to ensure that conversion from class licences to spectrum authorisations will not have any unintended adverse effects on existing licensees' rights.

³ Minister of Communications, "Next stage of spectrum reform to commence", 25 August 2015, www.minister.communications.gov.au/malcolm_turnbull/news/next_stage_of_spectrum_reform_to_commence, Attachment A, p. 2



Question 12

Are there any existing class licences that should not transition to spectrum authorisations upon commencement because of interdependencies with existing apparatus licences?

Ensuring that class licences are transitioned to spectrum authorisations in a manner that does not cause any adverse impacts to potentially affected licensees should avoid the need to keep class licences that are not associated with other licences in place after commencement. We recommend that the appropriate time to transition class licences that are linked to apparatus licences is the same time that the associated apparatus licence is transitioned, so that any interdependencies can be tested and unintended consequences that may arise from conflict, overlap, or gaps between the two regimes can be identified.

For example, the Radiocommunications (Cellular Mobile Telecommunications Devices) Class Licence 2014 currently authorises the use of mobile handsets that communicate with base stations licensed under a PTS (apparatus) licence. It may be that this class licence cannot be fully transitioned to a spectrum authorisation until all of the related PTS licences have been transitioned. If the transition of these PTS licences was to occur in a staged process (i.e. when each PTS licence came up for renewal), it may be that there needs to be a parallel spectrum authorisation and a class licence in place until all PTS licences are transitioned – to ensure that handsets are authorised regardless of how the base station they are communicating with is licensed.

We would welcome the opportunity to discuss with the ACMA whether any alternative mechanisms to spectrum authorisations (for example, deemed sharing arrangements, sub-licensing arrangements) are being considered by the ACMA as a replacement for certain class licences. If such mechanisms are being considered, we would be interested in discussing how these arrangements would work.

Question 13

Should any interdependent class licences become spectrum authorisations as at commencement or be remade as spectrum authorisations when the related apparatus licences are transitioned to the new licence system?

We agree that the appropriate time to transition class licences that are linked to apparatus licences is at the same time the associated apparatus licence is transitioned, and not at commencement (unless the associated apparatus licence is also transitioned at commencement).

2.6. Spectrum Licences

Question 14

If deemed to be a licence under the new Act, are there any elements of an existing spectrum licence that would be adversely affected?

This is a crucial aspect of transition, and we consider that it is difficult to answer this question without being provided with:

- the full draft of the T&C Bill;
- examples of the regulatory undertakings that will be attached to spectrum licences once transitioned to the new provisions;



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- examples of the LIS that will be used to transition spectrum licensed users; and
 - examples of the new licences that will be issued to replace existing spectrum licences for the remainder of those spectrum licence terms.

In the current consultation, the only information provided from the list above, is the sample area-based licence in Appendix A to the ACMA's paper on the licensing system. However, this is offered as an initial example of the ACMA's thinking and does not include critical elements such as regulatory undertakings.

Our initial thoughts on the transition of spectrum licences are set out below.

Specific drafting in the T&C Bill

Due to the broad nature of the new Bill as currently drafted, and the wide scope of potential powers given to the ACMA in relation to licences, spectrum authorisations and related concepts, there is a wide scope for existing spectrum licence rights to be adversely affected through erosion of the value of the spectrum that is licensed. For this reason, we suggest it is crucial that the T&C Bill include detailed drafting designed to protect existing spectrum licensees.

In our view the T&C Bill should include detailed provisions (likely in a schedule or annexure) setting out how each right attaching to a spectrum licence will be protected following transition of that spectrum licence. The practical method for protecting these rights is likely to be a regulatory undertaking in most cases, and the content of such undertakings should be prescribed in the T&C Bill to the maximum extent possible. We have provided in [Attachment A](#) to this submission a draft list of elements in a spectrum licence that should be protected in the T&C Bill or in regulatory undertakings. We envisage that this list will likely be added to, amended and expanded on following further consultation on the transition arrangements.

Compensation

We suggest that a compensation regime should be established by the T&C Bill to ensure that if a spectrum licensee loses an existing right through transitioning to a new licence, either inadvertently due to legislative error or omission, or through election by that licensee, that licensee is adequately compensated.

Timing of consultation

It is also crucial that spectrum licensees be given adequate time to consider and comment on the proposed drafting of any regulatory undertakings and LIS that will apply to existing spectrum licences once transitioned. These documents will be crucial in ensuring that grandfathering of existing spectrum licence rights is properly achieved and will likely require extensive consultation with licence holders.

Incentives

Our view is that the Department and the ACMA should consider what incentives can be used to encourage early transition of spectrum licensees to new licence types. The ACMA has indicated that a key attraction of voluntary transition to licenses issued under the new Bill prior to expiration date is "potential enhanced predictability around processes preceding licence expiry⁴. While this may be helpful it may not be sufficient. Consideration should also be given to other measures which could act as incentives, such as delegating management rights to give licensees more control over certain activities within their spectrum holdings.

⁴ ACMA, *The licensing system – Supporting material for Exposure Draft of Radiocommunication Bill 201*. p16



Clarification note

For the sake of clarification, we note that the ACMA paper on the licensing system at page 16 suggests spectrum licences will be governed by the current Act until those licences expire. Our understanding is that the ACMA and the Department's preference is that this will be achieved through mechanisms such as the T&C Bill, LIS and regulatory undertakings that replicate the features of the current Act, rather than keeping the current Act on foot for the duration of the spectrum licences.

2.7. Apparatus Licences

Question 15

Should licences be grouped to transition? If so, how (e.g. by category/band/combination)?

Our view is that apparatus licences should be organised by a combination of both category and band, as well as by use and common applications. Apparatus licences should be ranked according to the complexity and risk faced by licensees in the transition process.

"High-risk" licences that underpin significant commercial investment or mission critical functions should be given a longer window to transition than "low-risk" licence types that are less complex or do not underpin significant commercial enterprise or mission critical functions. Identifying which licence types are more risky and complex to transition will require detailed consultation with spectrum users and industry. Our initial thoughts on staging the transition are as follows:

- Low-risk apparatus licences should be transitioned first. In Telstra's view, examples of such low risk licences include amateur or non-assigned licences, which should be transitioned (if renewal is being sought) as each expires. The category with fewest licences should transition first, followed progressively by categories with larger quantities of licences.
- Higher-risk location-specific apparatus licences (e.g. fixed point-to-point, point-to-multipoint, maritime licences, aircraft, aeronautical) could be transitioned next. These should be sequenced as above based on the total number of licences in each category.
- Wide-area apparatus licences could be the last to transition (e.g. Public Telecommunication Service licence (PTS) and land mobile licences).

We suggest all apparatus licences be transitioned before spectrum licences (unless spectrum licensees volunteer to transition earlier).

We also recommend the ACMA consider apparatus licences that overlap with or are an adjunct to spectrum licence bands – e.g. 1800 MHz and 2100 MHz PTS licences. Such licences may need to be dealt with in a manner consistent with transitional arrangements applying to the related spectrum licences.

Question 16

What is the appropriate duration of licence replacement windows?

Our view is that 12 months is a sufficient period for licence replacement windows. Most apparatus licences have a 12 month term, or are subject to annual payments. Therefore, each transition can be done at either licence expiry or licence anniversary.



We suggest that there is significant scope for voluntary early transition in apparatus licensed bands, as a great many of licences are likely to come up for renewal during each replacement window. As noted in our response to Question 1, our view is that apparatus licensees should be incentivised to transition to new licence types when licences come up for renewal. In addition to improved licence conditions, such as increased certainty about renewal arrangements, we recommend that longer tenure terms (for example, 10 years) be offered for the new licences that replace apparatus licences under the current framework.

Question 17

Do you have any other comments regarding transitional arrangements?

Vacant spectrum lots

We are of the view that all vacant spectrum should be under ACMA management from commencement, including spectrum that was at one time part of a spectrum licensing designation⁵ or a spectrum re-allocation declaration⁶ but is unassigned at the time that the new legislation comes into force. These are typically unassigned fragments of spectrum within a band that has already been assigned for spectrum licensing. This would mean the ACMA can then deal with that spectrum immediately as it sees fit, and not be constrained by the mismatch between the status of these remaining fragments (which fall under the new legislation) and the adjacent incumbent licences (which remain spectrum licensed until their transition).

The ACMA in its paper on the licensing system indicates that, “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...” and that, “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”.⁷ However, we suggest that as a safety mechanism, provision should be made in the T&C Bill for vacant spectrum to be managed as we propose below, in order to cover situations where the ACMA does not succeed in allocating all vacant spectrum prior to commencement of the new Bill.

- Vacant spectrum that was at one time part of a spectrum licensing designation / re-allocation declaration should be able to be restacked by ACMA with other spectrum that was also part of the same spectrum licensing designation / re-allocation declaration, should all impacted licensees agree to this.
- Vacant spectrum that was at one time part of a spectrum licensing designation / re-allocation declaration should be able to be sold by the ACMA and inherit all the characteristics of the surrounding incumbent spectrum licences. This would enable a purchaser of that vacant spectrum the option of merging it with an existing spectrum licence, so that the vacant spectrum would enjoy all the same rights and properties of the spectrum licence until licence expiry.
- Alternatively, the purchaser could elect to have a new licence under the new arrangements issued for that vacant spectrum – this might be desirable as part of a planned transition of the adjacent incumbent spectrum licence.

⁵ Under s36 of the current Act.

⁶ Under s153B of the current Act.

⁷ ACMA, *The licensing system: Supporting material for the Exposure Draft of the Radiocommunications Bill 2017*, p16.

Remaking the ASMG

We suggest that Australian Spectrum Map Grid (ASMG) should be remade by ACMA in conjunction with the commencement of the new Bill, as the current ASMG is too arbitrary in terms of its distance from the coastline of Australia (see Figure 1).

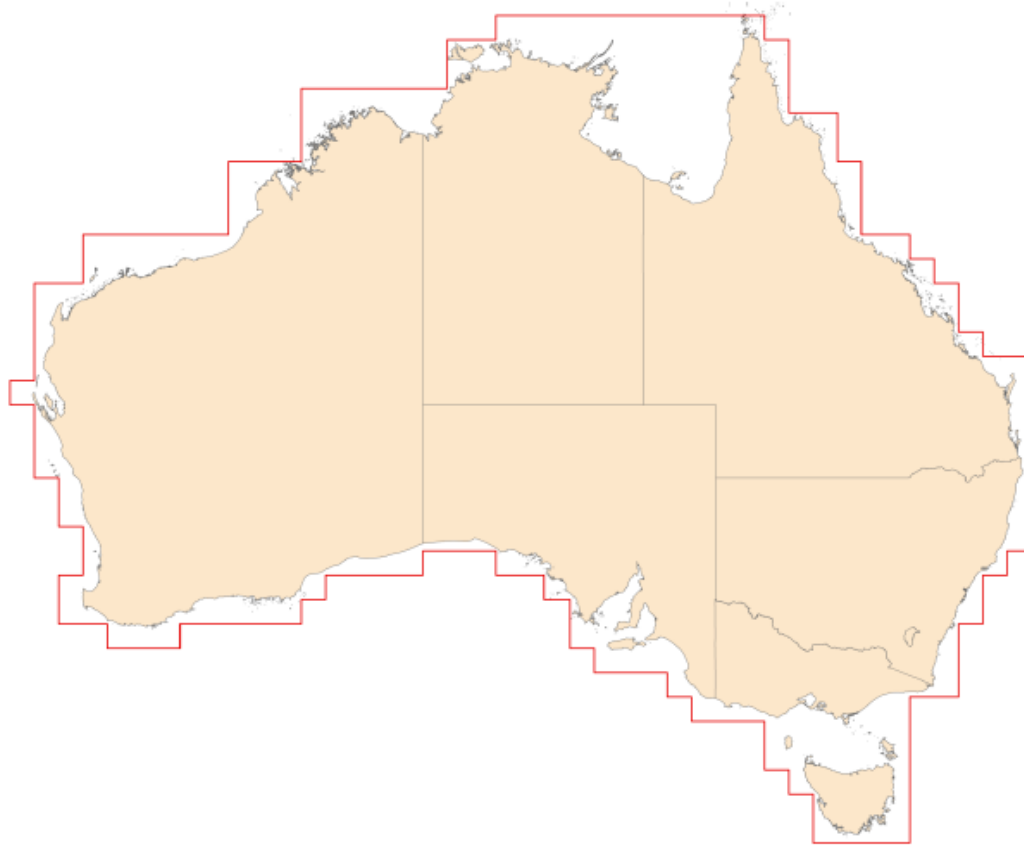


Figure 1 – Current ASMG (2012)

This grid defines the ocean limits of any area-based licence, with the characteristic that emissions that spill beyond the ASMG boundary (hence beyond that's licence's limits) do not constitute a boundary violation under that licence.

The distance of the ASMG from the Australian coastline varies from as little as 2 km near Bathurst Island in the Northern Territory to over 850 km in the Gulf of Carpentaria.

The problem is that where the ASMG extends far beyond the coastline, transmitter boundary violations may occur purely over the ocean between geographically adjacent licensees, but within the ASMG. Such violations are not legal under spectrum licence conditions, even though no services on land would be impacted by such transgressions. This situation has the unusual consequence that an irrelevant transgression over the ocean may limit a licensee's spectrum utility on land.

However, if the ASMG boundary is close to the shore, there is less risk of ocean-only boundary violations to occurring between geographically adjacent licensees. If there is an ocean boundary violation in this situation, it is also highly likely that there are also boundary violations on land hence the transgression is not and should not be allowed.



Hence depending entirely on the “luck of the draw” as to how close or far away from the coast the ASMG boundary is, and the position of the ocean licence boundary between two geographically adjacent licensees, an ocean boundary violation a given distance offshore in one part of the country may be compliant while a similar violation in another part of the country will not be compliant. Such inconsistent and arbitrary outcomes are not reflective of good spectrum management and consistent and defensible public policy.

The ASMG should be remade so that the boundary is no more than approximately 35km from the Australian shoreline at any point (i.e. defined to a “tight” HCIS Level 2 granularity instead of the current “loose” HCIS Level 3 granularity). This is roughly consistent with Australia’s 12 nautical-mile (22 km) territorial limit.

Finally, the current ASMG does not cover some islands in Australian Territory – e.g., in the Torres Strait. It would be also beneficial to fix this anomaly in issuing the new area-based licences.

In addition, we recommend that external Australian territories and offshore islands, while not part of the ASMG, should be explicitly listed in a note to section 11 of the new Bill for avoidance of doubt: Christmas Island, Cocos (Keeling) Islands, Ashmore & Cartier Islands, Norfolk Island, Lord Howe Island (part of NSW), Coral Sea Islands Territory, Macquarie Island (part of Tasmania), Heard & McDonald Islands. This will clarify for readers of the legislation which are external Territories and which are part of a state or territory; and the precise jurisdiction of the new legislation beyond the boundaries of the Australian continental mainland. This has been the subject of much confusion in the past and is worthy of a clarification note.

Resourcing

As we have stated above and in previous consultations on spectrum reform, it is our view that the most important aspect of transition is ensuring the rights of existing licence holders are not diminished throughout transition. Transition obviously involves a significant amount of detail to work through, and the resourcing and time to effect transition should not be underestimated. While we are encouraged that the ACMA has created a new Spectrum Review Implementation Branch, which will provide a focus on spectrum reform work, we emphasise that resourcing should not take focus away from BAU activities including the timely auction of new spectrum allocations to support new mobile services and technologies for the benefit of Australian economy. Resourcing must also include appropriate financial investment in IT and other systems which will be needed to support both the transition and the new licensing system.



ATTACHMENT A: Spectrum licence rights to be preserved after transition

The following is a working list of elements of current spectrum licences that Telstra considers need to be preserved in transitioned licences through provisions in the T&C Bill or the relevant regulatory undertakings attaching to spectrum licences (and the content of such undertakings should be prescribed in the T&C Bill to the maximum extent possible).

- 1 All devices authorised for use under the current licences to continue to be authorised under the transitioned licence.
- 2 The expiry date of the transitioned licence should be no sooner than the expiry date of the current licence, and only subject to the same limited qualifications as under the current Act.
- 3 All other standard and other conditions in the current licence to be replicated in the transitioned licence.
- 4 ACMA rights to cancel or suspend the transitioned licence should be no greater than under the current licence.
- 5 Existing protections from re-allocation, re-planning, re-farming, issue of overlapping or otherwise interfering apparatus and class licences etc. during the term of the current licence to be replicated in the transitioned licence.
- 6 Clear identification of transitioned licences and the rights attaching to them in all relevant planning documents and public registers, to ensure those licences are accounted for in all planning and licensing considerations.
- 7 Preservation of conversion and marketing plans under which current licences were issued and application of those plans to the transitioned licences – and causes of action for licensees if those plans have not been complied with to be preserved.
- 8 Any exemptions from transmitter registration requirements relevant to the current licence to be preserved in the transitioned licence.
- 9 Abilities to trade and authorise third party uses under the transitioned licence should be no less flexible than under the current licence. (Should management rights entirely succeed third party authorisations as we suggest in our response to the Exposure Draft, then those management rights should not be of a lesser nature than the existing right to issue authorisations to third parties.)
- 10 Resumption of transitioned licence to only be through consent or by Ministerial direction, with compensation calculated in accordance with the current 1992 Act (or a better outcome under the new Bill).
- 11 ACMA to continue to consider the effect on the transitioned licences of other licence issues (i.e. issue of apparatus licence-like licences under the new Bill).
- 12 Licence conditions determined by legislative instrument designed to protect spectrum licences to be replicated in new and transitioned apparatus licences (where relevant).
- 13 Transitioned licences should preserve licensee rights to be consulted before issue of any spectrum authorisations (previously class licences).



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- 14 Any standards, permits, labelling requirements and device prohibitions relevant to or intended to protect rights attaching to current licences to be replicated for new licences.