



nbn's submission on spectrum reform proposals



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Submission on spectrum reform proposals

Thank you for the opportunity to comment on the proposals and questions in the:

- *'Radiocommunications Bill 2017: a platform for the future, Information paper'*, May 2017 (Radcomms Paper)
- *'A proposed approach to transition from the 1992 Act to the Radiocommunications Bill, Consultation paper'*, May 2017 (Transitional Paper)
- *'Spectrum Pricing, Consultation paper'*, May 2017 (Pricing Paper)
- *'Commonwealth Held Spectrum, Consultation paper'*, May 2017 (Commonwealth Spectrum Paper).

We set out our response to the proposals and questions below and would be happy to provide further information.

1 Introduction

nbn considers that the Australian spectrum management framework can, and should, be modernised to address increasing demand and to reflect current and emerging changes in technology, markets and consumer preferences. **nbn** supports the Government's decision to implement the Spectrum Review's main recommendations¹ noting these objectives.

nbn's consideration of spectrum is focused on ensuring that it meets the Federal Government's expectation that all Australians have access to fast broadband as soon as possible, at affordable prices, and at least cost to taxpayers, and that **nbn** will be able to ensure upgrade paths are available as required.²

To enable **nbn** to continue providing and upgrading services most effectively in accordance with the Government's expectations, **nbn** requires continued access to spectrum under current terms and conditions, together with enhanced opportunities to acquire, manage and trade spectrum that may be provided by appropriate developments to the spectrum management framework.

nbn fully supports a transition to a simpler, streamlined and more flexible framework that preserves existing rights and interests.

2 Radiocommunications Bill 2017

nbn generally supports the proposed approach in the Radcomms Paper, subject to the comments provided below and the provision of further detail in coming months, including about the interaction between these reform proposals and the implementation of the recommendations of the final report on the review of the Australian

¹ As set out in the report released by the then Department of Communications in May 2015:

- 'Replace the current legislative arrangements with new legislation that removes prescriptive process and streamlines licensing, for a simpler and more flexible framework.
- Better integrate the management of public sector and broadcasting spectrum to improve the consistency and integrity of the framework.
- Review spectrum pricing to ensure consistent and transparent arrangements to support the efficient use of spectrum and secondary markets.'

² Statement of Expectations dated 24 August 2016



Communications and Media Authority (ACMA). The detail of subordinate regulations and other administrative arrangements and issues arising in the practical implementation of the proposed framework will also be relevant.

2.1 Policy principles

nbn supports the principles of simplicity, flexibility, transparency, certainty and efficiency guiding the development of the *Radiocommunications Bill 2017* (proposed Bill).

In **nbn**'s view, an opportunity remains to consider the implementation of a true single licensing framework that regulates all of current spectrum, apparatus and class licences under a single framework, rather than creating a separate 'spectrum authorisation' regime in respect of current class licences. It is not apparent, for example, that the 'no interference' characteristic associated with existing class licences could not be efficiently accommodated under a true single licensing framework.

Such an approach would be consistent with both the simplicity and efficiency principles directing the review, and has the potential to provide greater clarity to spectrum users and the public by avoiding the creation of a somewhat artificial distinction between a 'licence' and an 'authorisation'.

2.2 Objects of Bill

nbn supports the proposed objects, including the continued objective that spectrum be managed in a manner that supports the Government's communications policy objectives.

2.3 Role of the Minister and Ministerial policy statements

nbn generally supports reducing the need for the Minister to be actively involved in the day-to-day administrative processes of the ACMA, as well as the proposal to implement a framework in which the Minister sets strategic priorities guiding the ACMA in the delivery of its spectrum management regulatory functions. **nbn** also supports an approach by which decisions which have significant public policy implications remain under the Minister's oversight. This support is subject to the comments below and the further detail on practical implementation required to develop a fully informed position.

nbn notes that the Minister's power to provide directions is distinct to that of providing policy guidance. Further, that the new framework proposes to retain the Minister's ability to provide direction to the ACMA under the *Australian Communication and Media Authority Act 2005* (ACMA Act). **nbn** supports the retention of the Minister's ability to provide such direction to the ACMA.

nbn submits the following in terms of implementation:

- The Radcomms Paper states that the Department will advise the Minister on relevant matters to be contained in Ministerial policy statements. It is not presently clear how, or by whom, such statements would be initiated. Clarification on this aspect would therefore be useful.
- The interaction between a Minister's direction (the Minister's general directions power available under the ACMA Act and the proposed Bill) and any subordinate regulations or administrative arrangements (that the Radcomms Paper notes will contain much of the detail) also requires further clarification.
- **nbn** supports consultation being undertaken prior to finalisation of any Ministerial policy statements.
- Further consideration should be given to the question of how to ensure Ministerial policy statements do not run the risk of becoming de facto directions.



- It would be useful to have further clarification of the policy rationale behind the proposal that the validity of legislative instruments made by the ACMA not be affected, in the event the ACMA does not have regard to relevant Ministerial policy statement(s) Exposure Draft, s19(2). Further, clarification of the more general consequences of a failure to have regard to a Ministerial policy statement, and the practical approach to the ACMA's consideration of statements, would be useful.
- As implied in the Paper, the full range of matters that Ministerial policy statements may cover (other than those identified) will likely only become evident over time. This is particularly the case given timing considerations, including that the implementation of the ACMA review recommendations is ongoing, and much of the detail in respect of the proposed Bill will be in subordinate regulations or administration arrangements.
- We note that it is intended that the majority of the Ministerial policy statements initially proposed³ will be developed prior to the commencement of the new legislation. It would be useful if a detailed consultation and implementation timeline could be developed so that industry can provide informed views with regard to the overall framework and various related processes (including, for example, the ACMA's consultation processes on the licensing scheme and the implementing of the ACMA review recommendations mentioned above).
- The final report on the review of the ACMA includes recommendations that the Department and the ACMA develop shared strategies for international engagement. It would be useful to have further detailed information on the proposed interaction between these recommendations and the role of the Minister in spectrum management under the proposed Bill.
- The policy rationale for the apparent removal of the requirement for guidelines in respect of emergency orders (as required under the current framework in respect of restrictive orders (*Radiocommunications Act*, s222 and s230) is not evident.
- The interaction between the proposed Bill in respect of emergency orders and the proposed telecommunications sector security reforms also requires further consideration. For example:
 - **nbn** submits that an approach aligned with sections 315A and 315B of the proposed Telecommunications Sector Security Reforms Bill (TSSR Bill) should be considered.
 - Carriers could, for example, potentially receive an emergency order under the proposed Bill, and also a direction from the Attorney-General under the TSSR Bill, in relation to the same underlying facts. There is a possibility that carriers may receive directions and orders that are inconsistent, or difficult to implement contemporaneously.
 - The provisions should therefore take account of each other in some manner, giving carriers comfort that they are not potentially subject to competing obligations in times of national emergencies.

³ Radcomms Paper - the ACMA's annual work program; the single licensing system, including license issue and conditions and end of licence term processes and renewal rights; the protection arrangements for the radio quiet zone for the square kilometre array; and matters relating to broadcasting spectrum.



2.4 ACMA's work program

nbn supports this proposal so as to further improve transparency and enable improved forward planning for industry and the ACMA, and provides the following comments:

- The ACMA should continue to be flexible and responsive to stakeholders' needs irrespective of the content of any published work program.
- The Exposure Draft provides that the ACMA may only vary a work program where the variation is of a minor nature. The circumstances, reasons and limits underlying minor variations of a work program are unclear.
- **nbn** submits that a minimum period consultation of 28 days would be more appropriate as opposed to the currently proposed 14 days.
- The interaction between the ACMA's work program and any Ministerial policy statement needs to be considered with reference to circumstances such as implementation time lags.
- The ACMA's work program should include the level of resourcing allocated to each area of work. This could assist industry in identifying potential areas for greater user involvement (for example, under industry codes or the proposed delegation powers).⁴
- The ACMA's work program should identify the work being conducted in preparation for international fora (such as World Radiocommunication Conferences and other ITU meetings) and include the ACMA's short and long term objectives in these fora.⁵

2.5 Radiofrequency plans

nbn generally supports simplifying the radiocommunications planning framework but considers that further detail is required on implementation aspects. For example, it is unclear how the ACMA's ability to issue short-term licences in special circumstances inconsistent with a radiofrequency plan would operate, including in respect of any affected incumbent licensees.

2.6 Operation of radiocommunication devices

nbn understands that under the new framework, a person would require a licence to operate, or possess for the purposes of operation, a radiocommunications transmitter, but that radiocommunications receivers would no longer require a licence as they have no potential to cause interference. However, it is unclear whether there would always be sufficient awareness of receiver locations for the purposes of interference management in situations where locations are important or critical, but they are not registered.

2.7 Single licensing framework

nbn generally supports the key objective of the reformed licensing framework to simplify processes and improve timeliness and efficiency by removing unnecessary regulatory complexity.

⁴ **nbn** submission on 'Legislative Proposals Consultation Paper – Radiocommunications Bill 2016' dated 29 April 2016.

⁵ **nbn** submission on 'Legislative Proposals Consultation Paper – Radiocommunications Bill 2016' dated 29 April 2016.



nbn believes that further consideration should be given to amending the single licensing framework proposal so that class licences are also covered by the same single framework. Development of a true single licensing framework would be consistent with the simplicity and efficiency principles guiding the implementation of Spectrum Review recommendations and that the opportunity to develop a new simpler and more flexible legislative arrangement should be fully utilised.

nbn notes the intention that licences would be flexible enough to allow spectrum users and the market more broadly to respond to changes in the highest value use of spectrum with little or no need for intervention from the ACMA. We assume that the proposed framework, including the new licensing system, would continue to incorporate the total welfare standard as part of the overarching framework as appropriate.

The development of fully flexible domestic technical frameworks for spectrum arrangements (including for mobile broadband services) can conflict with international spectrum harmonisation and technology standardisation. Equipment vendors are, for example, constrained in what they can economically produce by a number of factors including international standards and the technology choices of larger global operators. This can impose practical limits on the likely technology choices for a frequency band. Attempting to make technical frameworks too flexible can therefore potentially result in a less useful, 'lowest common denominator' outcome which may increase the unnecessary complexity in implementing appropriate standardised technology without making significant and expensive compromises in respect of equipment.⁶

It will be important to ensure that the ability to tailor licences (with characteristics including conditions, designated statements and regulatory undertakings) is appropriately balanced in the new framework with the goal of enhanced tradability. Tailored licences are likely, by definition, to be less attractive to potential acquirers than more general licences.⁷

nbn considers that a new licensing framework, if appropriately developed and implemented, has the potential for providing increased certainty for long-term investment and business planning.

Issue of licences

Licence issue schemes

In respect of the proposals that the ACMA issue licences on written application in accordance with a licence issue scheme (LIS) or as directed by the Minister, and that the ACMA make a limited number of LIS determinations to cover the primary methods of allocation, we suggest that the ACMA be required to develop and publish a policy statement as to how, and in what circumstances, it will exercise its discretion to issue licences. The policy should include the factors affecting the ACMA's decision as to which path would be relevant to issuing a licence, and the scope of licences covered by a LIS.

nbn suggests that this policy be made public on ACMA's website and adhered to by ACMA in accordance with general administrative law principles. **nbn's** view is that this will help to ensure that ACMA's discretions are exercised in a transparent way that is understood by industry and can be anticipated prior to industry submitting applications for licence issue or variation.

⁶ **nbn** submission to 'Beyond 2020 – A spectrum management strategy to address the growth in mobile broadband capacity' dated 23 October 2015.

⁷ **nbn** submission on 'Legislative Proposals Consultation Paper – Radiocommunications Bill 2016' dated 29 April 2016.



nbn notes the proposal that the need for a marketing plan (prospectus) would be detailed in administrative documents prepared by the ACMA as part of the licence issue process. We look forward to considering the further detail on this aspect.

The Radcomms Paper provides that the LIS determination would be a non-disallowable legislative instrument and that the ACMA would be required to have regard to any relevant Ministerial policy statements when making the LIS. However, as noted earlier, the Exposure Draft provides that the validity of such instrument would not be affected in circumstances where the ACMA has not had regard to any relevant statements. It is not clear why LIS determinations made without regard to relevant statements ought to be valid.

nbn notes the proposals that the ACMA will have discretion about whether to authorise use of a radiocommunications device through the issue of a licence, or through making a spectrum authorisation, and that a number of uses of spectrum could be enabled through spectrum authorisations rather than by licences. We consider further clarity is required on the circumstances and factors that the ACMA would consider in making this type of decision. For instance, it is unclear how consistency in the use of the ACMA's discretion across the same spectrum band would be achieved and the extent to which industry would be consulted on the potential exercise of the discretion.

Ministerial direction to issue licence

nbn supports the retention of the Minister's ability to provide direction to the ACMA.

Licence duration

See comments under 'Renewing licences' below.

Licence issue limits

nbn supports retaining the ACMA's ability to impose licence issue limits, and submits that decisions regarding the nature of any limits will need to consider the relevance of all proposed characteristics of the licences under the new framework including conditions, designated statements and regulatory undertakings.

Third party use

nbn supports continuing the existing arrangement which enables licence holders to authorise third parties to operate devices under that licence, subject to the restrictions in the licence.

Conditions of licences (including designated statements)

As previously submitted, **nbn** considers it to be important that the ability to tailor licences (including in respect of conditions, designated statements and regulatory undertakings) is appropriately balanced in the new framework with the goal of enhanced tradability. The tailored licences are likely, by definition, to be less attractive to potential acquirers than more general licences unless clear provisions are included to enable acquirers to vary licences where appropriate.⁸

nbn notes that further clarity is required in respect of the characteristics (including conditions, designated statements and regulatory undertakings) of licences under the new framework, including in respect of:

⁸ **nbn** submission on 'Legislative Proposals Consultation Paper – Radiocommunications Bill 2016' dated 29 April 2016.



- The interaction between conditions, designated statements (additional constraints) and regulatory undertakings.
- The process for the creation of particular conditions, designated statements and regulatory undertakings on a particular licence. **nbn** understands that the ACMA would develop a number of standard licence options with standard characteristics.
- The process to ensure that licence characteristics (including conditions, designated statements and regulatory undertakings) are apparent to potential licensees.
- The process by, and the extent to, which characteristics of a licence could be varied, including the circumstances in which licence holder consent would be required.

Regulatory undertakings

nbn notes that to facilitate sharing and leasing of spectrum, the proposed Bill authorises the ACMA to issue a licence (or make a spectrum authorisation) within parts of the spectrum for which the ACMA has already issued a licence or provided an authorisation. Recognising the need to protect against interference and respect the rights of incumbents, the proposed Bill allows the ACMA to include ‘regulatory undertakings’ (see Part 6, Division 5) in licences. This requires the ACMA to ensure specific steps are undertaken before exercising its ability to issue further licences or authorisations over the same spectrum. The ACMA’s ability to impose regulatory undertakings on a particular licence without the agreement of the licence holder may not be suitable or appropriate in the relevant circumstances. **nbn** also notes the balance discussed earlier between enhanced tradability and the ability to tailor (or otherwise affect) licences. Sharing of spectrum may, for example, require detailed coexistence rules in respect of geographical boundaries and compliance may be difficult for the ACMA to monitor unless there is mutual agreement of participating parties.

nbn notes that it is proposed that ‘high value licences’ may include a specified step that the ACMA would be required to obtain the approval of the incumbent before issuing any other licence or spectrum authorisation. Further clarity is required as to what would constitute a ‘high value licence’.

Varying licences

nbn notes the proposal that the ACMA be able to vary the conditions, designated statements and regulatory undertakings without the agreement of the relevant licence holder. **nbn** notes that certainty in respect of spectrum holdings is required for long-term investment and business planning, and that further detail is required as to the extent to which this power may be used, and what appropriate oversight will apply, under the new regime.

Renewing licences

As previously submitted, **nbn** agrees that the current spectrum reissue process lacks certainty in some circumstances, is time consuming, and would benefit from greater clarity balancing planning flexibility with certainty of licensees’ rights.⁹ **nbn** generally supports the inclusion of a statement with a licence regarding renewal to improve certainty, subject to the detail on implementation being provided.

⁹ **nbn** submission on ‘Legislative Proposals Consultation Paper – Radiocommunications Bill 2016’ dated 29 April 2016.



nbn notes the proposal for a maximum licence duration for up to 20 years. Further, that a Ministerial policy statement on end of term arrangements could be issued and that the ACMA would develop a number of options which set out processes for end of licence terms and how they would be implemented.

The extent to which a longer licence duration would be beneficial depends on the relevant circumstances and the conditions of the relevant licence. Longer licence durations are likely to require particular care in relation to the appropriate conditions, including how to deal with the potential for conditions, designated statements, and/or regulatory undertakings to be varied or updated during the licence term .

A longer licence duration would, of course, be beneficial to the extent that it provides certainty for long-term business planning.

nbn submits that general licence term and renewal rights should be considered as part of any decision regarding imposing competition limits. See comments under ‘Licence issue limits’ above.

Suspension and cancellation of licences

nbn notes the proposal that a licence can be suspended or cancelled in circumstances specified in the licence, that may not involve wrongdoing by the licensee. It is not clear that this ability would be appropriate, warranted or practical in all relevant circumstances and further detail including on the full range of proposed circumstances should be provided.

Subdivision of licences

nbn submits that the ACMA should be able to subdivide a licence by both frequency and geography where appropriate.

Assigning and dealing with licences

As noted, **nbn** submits that it will be important to ensure that the ability to tailor licences (in the context of conditions, designated statements and regulatory undertakings) is appropriately balanced in the new framework with the goal of enhanced tradability, particularly the extent to which tailored licences are likely, by definition, to be less attractive to potential acquirers than more general licences.¹⁰

Resumption of licences

See comments under ‘Varying licences’ above, in circumstances where only part of a licence is resumed.

nbn notes that the new framework provides for the ACMA to compulsorily resume licences on written approval of the Minister. As certainty in respect of spectrum holdings is required for long-term investment and business planning, further information is required as to the circumstances in which this power would be used and the interaction with the proposal to attach characteristics to a particular licence (including the proposal to provide more certainty regarding renewal of that licence).

2.8 Spectrum authorisations

See comments under ‘Single licensing framework’ in respect of incorporating spectrum authorisations under a true single licensing framework, and ‘Regulatory undertakings’.

¹⁰ **nbn** submission on ‘Legislative Proposals Consultation Paper – Radiocommunications Bill 2016’ dated 29 April 2016.



2.9 Interference management

As previously submitted, **nbn** generally supports the proposal for enhanced scope for licensees to resolve interference and disputes, without mandatory recourse to the ACMA in the first instance.¹¹ **nbn** supports a more effective compliance and enforcement regime (including the introduction of civil penalties) to enable the ACMA to act in a timely manner to breaches in a more graduated manner. Further detail is required on the content of the non-binding administrative interference management guidelines. See also comments under ‘Information gathering powers and enforcement’.

2.10 Emergency orders

See comments under ‘Role of the Minister and Ministerial policy statements’.

2.11 Accreditation

nbn supports the proposal, subject to detail on implementation.

2.12 Information gathering powers and enforcement

nbn supports a more effective compliance and enforcement regime (including the introduction of civil penalties) to enable the ACMA to act in a timely manner to breaches in more graduated manner; further information about the extent to which costs may be recovered where a licensee experiences significant interference would be useful.

It would also be useful to have a detailed understanding of when the ACMA would consider using particular powers and in what circumstances noting, for example, that penalties that could be imposed in court proceedings can be significantly greater than those imposed under an infringement notice.

2.13 Spectrum access charges

nbn notes the proposals and refers to the comments in respect of the Pricing Paper below.

2.14 Delegation

nbn considers that the ACMA should take a phased approach to greater use, with operational aspects such as fee collection, interference management and dispute resolution considered in the first instance.

Potential conflicts of interests would need to be managed carefully in respect of any proposed delegation and processes for dealing with potential conflicts should be transparent. Further consideration should be given to potentially restricting delegates from exercising certain functions, including the ACMA's general licensing functions or powers with respect to itself or a related body corporate or in a way that substantially lessens competition.

¹¹ **nbn** submission on ‘Legislative Proposals Consultation Paper – Radiocommunications Bill 2016’ dated 29 April 2016.



Delegation by the ACMA should also likely be subject to a process of consultation and appropriate ongoing oversight to ensure, for example, that the delegate is not a competitor, or in the industry, relevant to the decisions it will make as delegate.

Industry should also have sufficient confidence that delegates will be bound, in the way the ACMA and Australian public service is bound, to protect information and to ensure decision making transparency. A delegate's approach to decision making should be guided by published policy statements made by the ACMA itself.

3 Radiocommunications Bill 2017 transitional arrangements

nbn's comments below are subject to further detail being provided in respect of implementation of the proposed Bill and the drafting of the Transitional and Consequential Bill.

3.1 Approaches to transition

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

nbn generally supports the proposed set of principles¹² that will guide the development of transitional arrangements, subject to the below comments.

nbn submits that all of the existing rights in respect of spectrum should continue under the new framework, including during the transitional arrangements. To the extent that there are multiple elements that would need to commence at the same time, or in a particular sequence, for this occur, this should be considered in the overall transitional arrangements.

nbn notes that 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.¹³

nbn supports, in principle, the concept of having elements of the new arrangements operating from commencement where this is feasible, so that the benefits of operating under the new arrangements can be realised as early as possible, noting that further detail is required on implementation and the overall transitional framework. **nbn** also considers that the impact of any transitional plan needs further clarification, including whether the implications are consistent across industry players.

¹² These principles are that transitional arrangements should:

- be simple, with the least administrative and legislative burden for users
- be transparent and predictable
- be implemented with minimal disruption to user business activities
- make clear licensees rights and obligations during the transition period
- provide licensees with adequate consultation and/or notice in advance of transition of the licensing framework for them (expected to be at least 12 months).', Transitional Paper, p7

¹³ ACMA, 'The licensing system, Supporting material for the Exposure Draft of the Radiocommunications Bill 2017', p15



The practical impact of the transition to the new framework needs further clarification, for example, in respect of preservation of rights and obligations and record-keeping. Further, the appropriateness of the commencement of the new Act 14 months after assent is currently unclear.

In respect of the different issues raised in the Transitional Paper in respect of the 'hard', 'soft' and 'hybrid' transition approaches, we note:

- The ability for the transitional framework to be developed so that the benefits enabled under the Bill (for example, the ACMA's increased range of enforcement powers) would be applied to each of current spectrum, apparatus and class licences on enactment of the new Act should be further explored.
- It is unclear to us why, and the extent to which, additional spectrum engineering work would be required in respect of spectrum holdings under the current framework as part of transitioning to the new framework.¹⁴
- Incentives on a spectrum and apparatus licensee to transition to the new system 'immediately' and in general are unclear. Further, any subsequent impact on industry, including on a participant basis needs to be clarified.
 - For example, whether additional characteristics (including conditions, regulatory undertakings, and designated statements) could be provided under the new system in respect of a particular licence held by a licensee as part of the transition process. **nbn** notes that the ACMA has stated that '[p]otential enhanced predictability around processes preceding licence expiry is seen as a key attraction of voluntary transition to licences issued under the Bill prior to the expiration date of existing spectrum licences'.¹⁵
 - There is currently insufficient information to consider the financial and taxation implications of the proposed new regime (including whether the implications are consistent across industry players).
 - **nbn** notes that the Transitional Paper states that '[i]t is anticipated that any new pricing arrangements arising from a change to a new system would be applied to the new licence'. **nbn** seeks further detail to be able to provide further comment on this matter.
- **nbn** notes that the ACMA has stated that it '...will seek to ensure, as far as is feasible and appropriate, that all such available spectrum [any spectrum in existing spectrum-licensed bands that is unallocated at the time the main provisions of the Bill commence] has been put to market prior to commencement of the main provisions of the Bill'. Further detail regarding such available spectrum would be useful so that **nbn** can provide further comment on this matter.

2. *Are there other approaches to transition that could be considered?*

nbn has no additional comment on this currently, noting that other approaches to transition may need to be considered in future.

3. *Are there other measures that would reduce complexity during transition?*

¹⁴ Transitional Paper, p8

¹⁵ ACMA, 'The licensing system, Supporting material for the Exposure Draft of the Radiocommunications Bill 2017', p16



nbn submits that the consultation and implementation timeline needs to be developed so that industry is in a position to provide informed views with regard to the overall framework given the various related processes, including the ACMA's consultation processes on, for example, the licensing scheme and the implementing of the ACMA review recommendations.

Further, **nbn** submits that adequate resourcing must be provided to the ACMA, noting that '[t]he process to implement arrangements will be the responsibility of the ACMA'. **nbn** generally supports the implementation of the new framework but notes however that the ACMA needs to be in a position to continue to support the on-going business-as-usual needs of industry and that of Australia internationally.

3.2 Proposed implementation

4. Should the Australian Radiofrequency Spectrum Plan be revised at commencement, or should it be considered "to be made" under the new arrangements/Bill?

nbn considers that, in the absence of any extenuating factors, the ARSP should continue to operate until such time as it would have been revised under the current framework, namely, following WRC-19 and taking effect in January 2021. If any extenuating factors arise, **nbn** considers that consultation should be conducted at that point in time.

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

nbn submits that further clarification is required as to the impact of an existing legislative band plan being remade at commencement

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

nbn submits that further clarification is required, including for example, as to the extent to which obligations under existing equipment rules will remain the same or be different under the new equipment rules. **nbn** submits that consideration should be given to ensuring that any work conducted to comply with, for example, record-keeping provisions under the current framework is recognised under the new framework.

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

nbn has not identified particular elements of the new legislation that should start at commencement, noting that further detail is required on implementation and the overall transitional framework.

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

nbn has not identified any elements proposed to start at commencement that should be staged over time, noting that further detail is required on implementation and the overall transitional framework..



3.3 Licensing

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?

nbn notes that as the Transitional Paper states ‘[l]icence system design has implications for the transition of all other elements of the regulatory framework, including pricing, planning and device registration requirements’. The work program for transition should therefore be made available as soon as possible.

nbn submits that all existing rights in respect of spectrum should continue under the new framework, including during the transitional arrangements. The detail and implications of transitioning to the new regime are currently not sufficiently clear to enable relevant criteria to be determined. All relevant impacts on industry need to be identified and considered, including whether the implications are consistent across industry players.

10. Is 12 months notification for licence transition sufficient?

nbn submits that all existing rights in respect of spectrum should continue under the new framework, including during the transitional arrangements. The implications to transitioning to the new regime and the demands that would be placed on participants are not yet sufficiently clear to determine whether 12 months notification would be sufficient.

3.4 Class licences

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

As noted previously, **nbn** submits that all of its existing rights in respect of spectrum should continue under the new framework, including during the transitional arrangements. The **nbn** satellite service relies on the current *Radiocommunications (Communication with Space Object) Class Licence 2015*, in conjunction with an associated apparatus-licensed space service. To the extent that there are multiple elements that would need to commence at the same time, or in a particular sequence, for all of **nbn**’s existing spectrum rights to continue, this should be considered in the overall transitional arrangements.

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

See **nbn**’s comments under 11 above.

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

See **nbn**’s comments under 11 above.



3.5 Spectrum licences

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

nbn notes that '[t]he Government has stated spectrum licences will continue until expiry unless licensees agree with the ACMA to transition earlier'. **nbn** submits that further detail is required on the implications of transitioning an existing spectrum licence to a licence under the new Act, for example, whether additional characteristics (including conditions, regulatory undertakings, and designated statements) could be implemented under the new system in respect of transitioned spectrum licences. **nbn** notes that the ACMA has stated that '[p]otential enhanced predictability around processes preceding licence expiry is seen as a key attraction of voluntary transition to licences issued under the Bill prior to the expiration date of existing spectrum licences'.

3.6 Transition of existing licence types

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

See comments under 16 below.

16. What is the appropriate duration of licence replacement windows?

nbn submits that all of its existing rights in respect of spectrum should continue under the new framework, including during the transitional arrangements. Further detail is required on the implications of transitioning existing spectrum arrangements to the new Act. The rationale for, or implications of, grouping licences to transition is unclear at this point. The impacts on **nbn** in transitioning to the new framework (for example - from a practical perspective, record-keeping) also require further clarification, which may be relevant to the appropriate duration of licence replacement windows. The impact on an industry and participant level also needs to be clarified.

17. Do you have any other comments regarding transitional arrangements?

nbn would be happy to comment further on transitional arrangements as further information is made available regarding implementation.



4 Spectrum pricing and Commonwealth held spectrum

To enable **nbn** to continue providing services in the Fixed Wireless and Satellite footprint in accordance with the Government's expectations of **nbn**, **nbn**'s corporate plan and business case are premised on continued access to current spectrum at costs reflective of the current rates **nbn** pays.

nbn generally supports the draft pricing principles set out on pp.10-12 of the pricing consultation paper (efficiency, cost recovery, consistency and simplicity, and transparency noting that these build on the existing principles that govern the ACMA's general spectrum management activities¹⁶). However **nbn** notes the following:

- Practical implementation and allocation considerations should not be compromised as a result of the spectrum pricing principles (for example, simplicity may not always be achievable)
- Effective spectrum management should consider the long-term public interest derived from spectrum, including the non-commercial value of spectrum
- The single licensing system should provide flexibility for spectrum to be sold and priced in geographic lots as well as, where appropriate, on a national basis
- Certainty in respect of spectrum holdings is required for long term investment and business planning.

nbn's views are subject to further detail being provided on implementation of the proposed pricing proposals, including the draft spectrum tax act and accompanying explanatory memorandum.

nbn's views are subject to further detail being provided on the implementation of the licensing framework and the proposed Bill, including:

- Interaction with implementations of the ACMA Review (if any)
- Further details on how the ACMA determines spectrum access charges¹⁷, as well as how the Minister would consider the value of spectrum when directing the ACMA to determine spectrum access charges.¹⁸

nbn looks forward to working with the Department of Communications and the Arts in encouraging the efficient use of spectrum by GBE spectrum holders, including **nbn**.

¹⁶ <http://www.acma.gov.au/Industry/Spectrum/Spectrum-planning/About-spectrum-planning/australian-spectrum-management-principles-spectrum-planning-acma>

¹⁸ See section 194(d) of the proposed Bill

¹⁸ See section 194(d) of the proposed Bill



4.1 Allocation decisions

1. Does industry seek any specific guidance from the ACMA on how it approaches spectrum pricing decisions? Where is clarity required in the decision making process?

nbn supports the Government's proposal that the ACMA publish guidelines on how it approaches its spectrum pricing decisions. **nbn** submits that, as part of the guidelines, there should be greater clarity on the following:

- The methodology and process used to set reserve price for spectrum lots being offered via market-based allocations (i.e. \$/MHz/pop), including the process in circumstances when the reserve price has not been met and the manner in which industry can provide input on a reserve price.
- The ACMA's approach to the choice of allocation and pricing mechanisms (i.e. auctions, administered pricing, or bespoke arrangements), including how the ACMA factors in the geographic boundaries of spectrum licences into its decision making process.
- The ACMA's approach to opportunity cost pricing, including how the ACMA factors in the public benefits of spectrum and non-spectrum inputs (discussed below).
- The ACMA's and Minister's approach to determining the value of spectrum access charges (in circumstances where this charge is not set by an auction).

2. What reasons justify the Government entering bespoke pricing arrangements? How can these arrangements ensure efficient allocation of spectrum?

See comments under 3 below.

3. Are there times where the Government should not charge users the same amount for the same type and amount of spectrum, through the use of bespoke pricing arrangements?

nbn supports the Government's proposal for the use of bespoke pricing arrangements and the continued use of bespoke fees (such as spectrum access charges)¹⁹ where appropriate.

nbn considers the use of bespoke pricing arrangements may be justified for the following reasons (as outlined in the Pricing Paper):

- It allows the Government to consider the physical limitations of spectrum as well as broader public policies²⁰ and the long-term public interest derived from spectrum.²¹
- It creates stability for spectrum users and can incentivise spectrum users that provide a public good.²²

nbn supports the publication of reasons for bespoke pricing arrangements.

¹⁹ Pricing Paper, p24

²⁰ Pricing Paper, p6

²¹ Pricing Paper, p7

²² Pricing Paper, p9



4.2 Market-based allocations

4. Are there specific bands that industry would seek to have transitioned from administratively set fees to competitive market-based allocations? What is an ideal timeframe to achieve this?

nbn considers that there are a number of spectrum bands that may warrant a transition to market-based allocation, but notes that this transition could reduce certainty for incumbent spectrum holders and reduce incentives for long term investment of incumbent spectrum holders.²³

nbn further submits the ACMA should consider the needs of **nbn** in respect of its fixed wireless and satellite services noting that long term investment and planning decisions require certainty of spectrum holdings.

- [C-i-C] [C-i-C]

5. How can government ensure that reserve prices allow upwards movement while still managing competitive behaviour?

nbn agrees that the ACMA should set reserve prices at a level that manages competitive behaviour. In order to do so, the ACMA should undertake consultation before setting reserve prices, particularly in regional and remote areas where there is likely to be less demand.

Further, **nbn** submits that reserve prices should take into account the term of licences as well as the future value and use cases of spectrum. This includes taking into account other licence conditions (e.g. renewal rights, conditions imposed on the licence in respect of renewal prices, regulatory undertakings, etc.)

6. Under what limited scenarios will short-term installments be an appropriate approach for market-based licence payments?

nbn considers that market based licence payments must be structured in such a way as to ensure only genuine bidders participate in market-based allocations.

7. Other than the parameters listed above, are there any additional parameters that should be incorporated into the formula?

²³ Pricing Paper, p13

nbn submits that spectrum values determined by the administrative pricing formula should take into account developments in wireless technology involving large increases in spectrum (e.g. 500 MHz channels instead of 20 MHz channel) relative to the same or similar number of end users based on population.

nbn considers that frequency reuse should be factored into the ACMA's approach to both administratively and opportunity cost pricing. Price incentives to practice frequency reuse (e.g. discounts) would encourage greater spectrum efficiency.

The ACMA should also regularly update the administered pricing formula to take into account the future value and use cases of spectrum. This includes taking into account the overall implementation of the licensing scheme and proposed new characteristics of a licence.

- [C-i-C] [C-i-C].

8. Are there scenarios where opportunity cost pricing is not a valid pricing approach for pricing spectrum?

nbn requires greater clarity on ACMA's approach to opportunity cost pricing to determine the suitability of the proposal to **nbn**'s fixed wireless services and satellite services, including the particular spectrum allocations (frequency and geography) in which the ACMA would consider implementing opportunity cost pricing. [C-i-C] [C-i-C]

Opportunity cost pricing should take account for the public good value of spectrum, as outlined in the consultation paper. [C-i-C] [C-i-C]

nbn welcomes the recent tax reductions in Ka-band using opportunity cost pricing principles, however reiterates its previous view²⁴ (and that of the Communications Alliance) that there should be further tax reductions (in the order of 50-60%, rather than 30%) in respect of Australia-wide and high-density area licences.

nbn notes that opportunity cost assessments only reflect a point in time, as outlined in the paper. Greater clarity is needed on how the review of fees by opportunity cost pricing might occur as market conditions change, as well as how incremental adjustments to opportunity cost factor in non-spectrum inputs (such **nbn**'s fixed line network).²⁵

9. How can the ACMA improve its approach to opportunity cost pricing?

See comments under 8 above.

4.3 Legislative and cost recovery framework

10. Are there any barriers that would limit a spectrum framework as described above? Does the revised spectrum framework sufficiently simplify the current spectrum pricing framework? Are any components above unnecessary, or are any additional components necessary?

²⁴ **nbn** submission to IFC 19/2016, p1

²⁵ See *Guidelines for the review of spectrum pricing methodologies and the preparation of spectrum fee schedules*, ITU-R, p16



See comments under 11 below.

10. Should both costs and value be priced into the fee for spectrum? Should costs be explicitly recovered through a separate tax? What level of transparency of costs and fees would most help users?

nbn considers there is a lack of clarity as to how the proposed taxation arrangements for spectrum will operate in practice. **nbn** considers that both during transitional arrangements and under the single licensing framework, there should be greater transparency on how charges, fees and taxes are differentiated to reflect the costs of managing spectrum, on the one hand, and the value of spectrum on the other. Further, any consolidation of existing taxes must, of course, be consistent with section 55 of the Constitution (laws imposing tax can deal only with the imposition of the tax, and can deal with one subject of taxation only). Separately, **nbn** considers that the imposition of stamp duty on spectrum is a disincentive to spectrum trading and should be removed.

nbn looks forward to continuing to work with DoCA and the ACMA in relation to further consultation on proposed spectrum taxation arrangements. **nbn** notes that the ACMA expects to make announcements about the taxation arrangements for high-density areas of this band in 2016–17 and that further consultation about high-density areas will be undertaken over the next three years.

4.4 Commonwealth Spectrum Holdings

nbn notes the proposal that '[a]s part of the wider spectrum reforms, the Department of Communications and the Arts will consider how to encourage efficient use of spectrum for GBE spectrum holders'²⁶ and looks forward to continuing to work with the Department on this matter.

²⁶ Commonwealth Spectrum Paper, p6