

AF25476720

**The Manager**

Project Office (Review of the ACMA)

Department of Communications and the Arts

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Canberra ACT 2601

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Dear Sir/Madam,

# Defence Submission on Review of the ACMA Draft Report (May 2016)

1. Defence welcomes the opportunity to provide comment on the above report.
2. Defence supports the conclusions of the Review that the ACMA has performed well and efficiently in its operations. However, Defence would like to highlight that the ACMA’s role as the regulator of radiofrequency spectrum is critically important for Australian interests that go beyond the requirements of communications sector.
3. The enclosed submission focuses on the radiocommunications aspects of the ACMA’s regulatory functions including the need to better define and account for the national interest aspects of spectrum in the draft report and the spectrum regulatory framework.
4. Defence re-states the suggestion of establishing a national Spectrum Coordination Committee, comprising representatives of government agencies, to improve coordination of spectrum across government. Such a committee would aid implementation, and reduce risk, in spectrum reform; but would also have ongoing value, in supporting the operation of the new regulatory framework.
5. I can offer the opportunity for a face-to-face discussion with the review panel members and/or DoCA on the topics raised, if you think this would be of benefit.
6. My Point of Contact on the Defence response is the Director Defence Spectrum Office, Mr David Murray.

Yours sincerely

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Enclosure: 1. Defence Submission on Draft Report of Review into the ACMA

AF25299032

## INTRODUCTION

1. Defence welcomes the opportunity to provide comment on this draft report.

## SCOPE OF DEFENCE RESPONSE

1. Defence recognises that the ACMA has a diverse regulatory portfolio covering various aspects of radiocommunications, telecommunications and media.
2. Defence comments in this paper are focussed on regulation affecting Defence use of the radiofrequency spectrum (radiocommunications). The primary legislation is the Radiocommunications Act 1992 (currently being redrafted).

## DEFENCE USE OF SPECTRUM (RADIOCOMMUNICATIONS)

1. The draft report naturally focuses on the ACMA’s role as the regulator for the communications sector. However, notwithstanding the convergence that has occurred since the ACMA was established in 2005, the ACMA’s role as the regulator of radiofrequency spectrum through the *Radiocommunications Act 1992* continues to be of critical importance to sectors outside even today’s broad communications sector.
2. Defence is critically dependent on effective access to spectrum, not only for communications (some of which can be carried on commercial communications networks, but much of which must be carried on secure military systems), but for weapons systems, navigation and timing, and intelligence, surveillance and reconnaissance systems – in particular radar systems. Sufficient allocation of spectrum must be made to accommodate these systems in order for Defence to be able to effectively defend Australia and its national interests.
3. There are number of other sectors that are also reliant on access to spectrum for uses outside what might be considered the communications sector. Many of these sectors include key government agencies, with Defence perhaps the most significant, as well as industry that provides critical infrastructure. These sectors include:
   1. Defence;
   2. Maritime and Civil Aviation Safety;
   3. Transport;
   4. Meteorology;
   5. Mining and Agriculture; and
   6. Science and Research.
4. Defence assumes that it is the intention of the authors of the draft report that the regulation of all use of radiofrequency spectrum will continue to be within the remit of the ACMA. If the ACMA is to retain this regulatory power, it must be resourced to manage spectrum issues arising in these sectors outside what may be considered the conventional communications market.
5. Market mechanisms are generally much less effective as a tool for managing spectrum use outside of the communications sector. The reasons for this include competing government policy objectives (indeed many of the spectrum requirements are for government agencies) and regulation from other sectors, for example aviation safety. It is therefore important that the ACMA retain technical expertise and sufficient independence from the communications sector in relation to decisions about spectrum allocation. This resourcing is necessary to enable the ACMA to appropriately address the spectrum requirements of users outside the communications industry.
6. Defence has previously suggested (Ref 1) that a national Spectrum Coordination Committee (Spectrum CC) established outside of the ACMA could provide:
   1. higher-level visibility to Government;
   2. coordination of spectrum reform implementation, on a continuing basis; and
   3. identification and consideration of critical spectrum issues, that cover other domains; eg space, national resilience.
7. Such a committee could provide a level of support to ACMA decision-making in areas outside what might be included in ministerial expectations focused on the communications sector.

## DETAILED COMMENTS ON THE DRAFT REPORT

1. Detailed comments are provided in Annex A.

**REFERENCE**

1. AF24897761 Defence Submission on Legislative Proposals Consultation Paper – Radiocommunications Bill 2016.

## ACRONYMS

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| ACMA | Australian Communications and Media Authority |
| ARSG | Australian Radiocommunications Study Group |
| ARSP | Australian Radiofrequency Spectrum Plan (2013 Edition) |
| DoCA | Department of Communications and the Arts |
| DFAT | Department of Foreign Affairs and Trade |
| ITU | International Telecommunication Union |
| PP | ITU Plenipotentiary Conference (governing body for the ITU) |
| WRC | ITU World Radiocommunication Conference |

## ANNEX A – RESPONSES TO DRAFT REPORT HEADINGS

The following detailed responses are structured to match the headings in the draft report.

### PART ONE – THE ACMA’s OPERATING ENVIRONMENT

1. Evolution of spectrum use: There are many worldwide developments in spectrum use by Defence forces, government and industry, that are not accommodated well by current regulatory frameworks. A regulatory framework, or more specifically a radiocommunications licensing framework that is designed to address the spectrum requirements of fixed infrastructure, does not readily translate to addressing the dynamic spectrum requirements of Defence. In such an environment, sharing of spectrum between users and services with radically different applications is problematic.
2. If, as has been proposed in the review of the current spectrum regulatory framework, some of the ACMA’s spectrum management functions are delegated to *private band managers*, the ACMA must retain the regulatory authority and technical expertise to intervene to ensure spectrum is made available for government use in the national interest, such as for Defence purposes, when required. Conversely, if government agencies such as Defence are given the necessary powers to manage portions of spectrum as a *private band manager*, the ACMA must maintain the ability to coordinate government spectrum use and provide consistent oversight over how these portions of spectrum are managed.
3. One suggestion from Defence to a previous review (Ref 1) would be to use a devolved community of *private band managers*, modelled on the Domain Registry system used for the internet. The topic of *private band managers* is worthy of a separate, specific consultation.

### PART TWO - DESIGN OF A CONTEMPORARY REGULATOR

1. Draft Proposal 4: Defence is ambivalent about the need for DoCA to be responsible for head of delegation roles to key international policy-setting forums. However, Defence does agree that there is a need for greater involvement from DoCA to provide a greater policy focus in the development of Australia’s positions at such forums.
2. Defence has historically supported DoCA and the ACMA in key international forums, such as:
   1. the ITU WRC and PP Conferences
   2. Regional conferences in support of the ITU WRC cycle
3. Defence expects to provide future support to the above forums as well as the domestic component, largely through the ARSGs. Note that beneficial outcomes will require the commitment of relevant technical expertise within DoCA, ACMA and other agencies over the four-year period of each WRC cycle. In particular, DoCA should have greater engagement at the ARSG level, prior to the next WRC (WRC-19).
4. Whether the role of head of delegation in such international policy-setting forums rests with the ACMA, DoCA or indeed DFAT, it must be recognised that contentious issues at such forums are rarely about technical details. Australia, through the ACMA’s leadership at such forums, has gained respect as being an honest arbiter on technical issues; however this approach often leaves Australia out of the negotiation when it comes to issues impacting trade and foreign policy.
5. Whoever is given the responsibility for head of delegation roles is less important than ensuring that Australia’s positions on agenda items at such conferences are not unduly influenced by foreign interests. In the WRC process, such views are often actively represented within the preparatory groups by Australian consultants with no clear ties to Australian industry. In order to prevent such undue influence, it is necessary for Government positions on trade and foreign policy issues to be strongly represented by the relevant policy-making departments throughout the international engagement process. This is particularly important early in the WRC cycle as Australian positions are developed, and is less important at the international forums themselves because positions have already been agreed at the national level.
6. Draft Proposal 12: Defence supports the provision of a clear set of overarching policy objectives, to guide the decision-making of ACMA. Where contention or interpretation is required, this could be referred to the Spectrum CC.

### PART THREE – ENHANCING REGULATOR PERFORMANCE

1. Defence comment on Draft Proposal 19: The Spectrum CC proposed earlier could be a mechanism for informing the Statement of Expectations and Statement of Intent.

### PART FOUR – RESOURCES

1. Defence supports the conclusions of the Review that the ACMA has performed well and efficiently in its operations. This is particularly the case in relation to spectrum management where resourcing is significantly below that of comparable overseas regulators. This comparatively low level of resourcing carries risk, particularly to the management of spectrum for national interest applications such as defence.
2. The following suggestions will require human and financial resources to establish and maintain. This should be seen as an investment in proactive risk reduction, as well as implementing reform proposals from the ACMA Review. This is particularly important as the spectrum regulatory framework is undergoing significant change, as we attempt to establish new paradigms, such as *private band managers*.
3. Accredited Persons: Defence recommends improvement of the knowledge network supporting frequency assignment processes (currently highly dependent on accredited persons). Options could include:
   1. Development of a standard training syllabus (ACMA together with support from universities, professional bodies and industry associations.
   2. Short Course delivery
   3. Develop competency-based testing
   4. Inclusion of the Accredited Person certification in existing professional registration schemes, such as those sponsored by Engineers Australia, Professionals Australia, Australian Computer Society.
4. Information Management and Sharing: Key information such as the Australian Radiofrequency Spectrum Plan (ARSP) is only provided in document form. ACMA should provide this reference data in electronic database form, to facilitate better access, and analytics on this information, particularly as it undergoes change. Defence has previously supplied detail to the ACMA on this recommendation, and can speak further on this. Modern examples, from other regulators, are listed below:

<http://spectruminfo.ofcom.org.uk/spectrumInfo/>

[www.efis.dk](http://www.efis.dk)

1. Information Management and sharing: Defence suggests the creation of workspace(s) on the ACMA sharepoint facility for:
   1. Tracking request/response information between Accredited Persons and the ACMA. This would have the following benefits:
      1. Improved security and reliability compared to currently used email.
      2. Improved corporate knowledge and business continuity, for both customers and the ACMA.
   2. General knowledge exchange and professional development for Accredited Persons (Community of Practice).
2. Evolve a Community of Practice, through:
   1. Above measures
   2. Opportunities for information sharing and networking, eg a practitioner event adjacent to the annual Radcomms conference.

### PART FIVE – THE CASE FOR FURTHER REGULATORY REFORM

1. National Interest: Defence wishes to emphasise the existing statement in the draft report. The communications sector and government policymakers and regulators must be cognisant of other national requirements for spectrum.
2. National Interest: Defence suggests a stronger definition of National Interest be employed, rather than the statement “is also of importance”. Further:
   1. If adequate provisions are not made for spectrum access by Defence, the national consequences could be much more significant than economic or commercial considerations. *In extremis*, these consequences could include loss of Australian lives and Australian resources.
   2. The successful implementation of the ACMA Review and the Spectrum Review will require a high degree of coordination across government. The Defence submission to the Spectrum Review (Ref 1) recommends the establishment of an Australian Government Spectrum Coordination Committee (Spectrum CC) as an enabler for these implementations.
3. Values and Safeguards: The previous suggestion of the spectrum CC could be a useful mechanism for oversight and governance across government.