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Spectrum & Telecommunications Deployment Policy Branch
Department of Infrastructure, Transport, Regional Development and Communications

By email: spectrum.reform@communications.gov.au

Dear A/g Assistant Secretary

Submission to DITRDC – 2020 Radiocommunications Reform consultation

I am pleased to provide comment to the Department of Infrastructure, Transport, Regional Development and Communications (DITRDC), on behalf of the NSW Government Telecommunications Authority (NSW Telco Authority), on the 2020 Radiocommunications Reform – consultation paper, released by DITRDC in June 2020.

The NSW Telco Authority is constituted by, and functions under, the *Government Telecommunications Act 2018* (NSW) to operate and maintain mission-critical operational communications services for public safety and government agencies within New South Wales. The Authority holds responsibility for coordinating telecommunications services support during emergencies under the *State Emergency and Rescue Management Act 1989* (NSW), has a central role in coordinating spectrum holdings on behalf of government agencies and manages several major digital connectivity programs for the State.

The NSW Telco Authority supports reform of the *Radiocommunications Act 1992* (Cth) and is generally supportive of the proposed amendments aimed at increasing the efficacy of spectrum management processes including through a realignment of powers available to the Australian Communications and Media Authority (ACMA).

The devolution of some current Ministerial powers of a regulatory decision-making nature will allow the Minister to focus on higher-level strategic and policy matters, leading to efficiencies in the ACMA's spectrum management activities guided by the proposed Ministerial policy statements and directives. Similarly, the provision of further new powers to the ACMA for compliance, enforcement and information gathering activities will benefit all legitimate users of spectrum.

Certain issues from the exposure draft Bill are addressed individually below, in addition to answers to several questions presented in the discussion paper.

Object of the Act

The proposed new and simplified Object is clearer and more easily interpreted than the current, and the initial reference to promoting the 'long-term public interest' use of spectrum is an appropriate descriptor for this purpose. In general terms, the proposed Object is an improvement on this basis, however, the Authority retains concerns about the potential

practical effect of the rephrasing and resulting changed emphasis applied in relation to ‘non-commercial purposes’, which include ‘public safety’ purposes.

The current Object in the *Radiocommunications Act 1992* (Cth) includes the requirement to ‘*make **adequate provision** of the spectrum for use by agencies involved in the defence or national security of Australia, law enforcement or the provision of emergency services...*’ (s 3(b)(i)). As similarly noted in the Authority’s submission to the Radiocommunications Bill 2017 consultation, the proposed new Object in the current Radiocommunications Legislation Amendment (Reform and Modernisation) Bill 2020 exposure draft also dilutes the existing requirement that ensures ‘adequate provision’ of spectrum for public safety and emergency management purposes.

While the proposed Object ‘facilitates the use’ of spectrum for these purposes, there is no assurance of the sufficient level of spectrum provision required to deliver these critical services, as was intended when the Act was drafted. This crucial requirement to support delivery of law enforcement and emergency services must be maintained and protected in the legislation in the public interest.

Should the proposed Object be legislated, the adequate provision of spectrum for law enforcement and emergency services purposes must be preserved in another appropriate section of the Act.

Ministerial policy statements

The NSW Telco Authority is supportive of the proposal to implement Ministerial policy statements to provide high-level policy guidance to the ACMA on its functions, the exercising of its powers and its planning and reporting obligations. This is central to the proposed realignment of Ministerial and ACMA functions under the Act by ensuring government policy and priorities are applied to ACMA decision-making, further backed by the retention of the Minister’s powers to direct the ACMA in its actions and performance.

Streamlined allocation and re-allocation processes

The NSW Telco Authority supports the general provisions to increase the flexibility and efficiency of spectrum allocation and re-allocation as an administrative function of the ACMA, noting that the Minister retains the power to direct actions under those functions.

Greater flexibility for ACMA to allocate spectrum and apparatus licences

Independence for the ACMA to prepare marketing plans and issue licences for unencumbered spectrum, without requiring ministerial designation of bands as being for spectrum licencing, would enable agility of future spectrum use and, noting the protections for existing spectrum licences, be advantageous to more potential users of this spectrum. This would be beneficial as new technological developments introduce new uses for spectrum and highest-value use cases change.

Direct allocation

Enabling the ACMA to directly allocate spectrum licences is consistent with the proposed reforms. The NSW Telco Authority notes the example in the consultation paper of supporting the Object of the Act regarding allocations to, inter alia, ‘public safety’ purposes, and sees this as an appropriate and efficient mechanism to facilitate such spectrum allocations as it is a non-commercial purpose.

Allocation limits

The NSW Telco Authority supports provisions enabling the ACMA to directly set allocation limits in consultation with the Australian Competition and Consumer Commission.

Renewal statements

The NSW Telco Authority supports the amendments regarding the implementation of renewal statements as these will give licence holders clarity of the processes and obligations related to their individual licence renewal circumstances.

Public interest test

The NSW Telco Authority supports the implementation of a public interest test for spectrum licence renewals of periods of 10 years or longer. While the spectrum use itself should be tested against criteria, such as proposed in the consultation paper, it should also be tested against alternative uses which may have a greater public interest value.

Greater maximum licence terms

The NSW Telco Authority supports the extension of the maximum duration of spectrum and apparatus licences to 20 years. In specific use cases requiring long-term investment this will provide greater surety for investment decisions where significant resources are required, such as the establishment of communications networks or major product and service development.

Consultation questions

1. Given the established administrative practice of ACMA preparing the Five-Year Spectrum Outlook on an annual basis, does the proposed legislative ACMA annual work program provide stakeholders any additional benefit in terms of certainty and transparency?

The proposed legislative requirement to publish an annual five-year work program, essentially ratifying the current administrative-based Five-Year Spectrum Outlook processes, is sound and will work effectively in alignment with the Ministerial policy statement regime. The Bill allows flexibility of structure for the work plan, which would be beneficial to enable the annual five-year planning cycle to continue to evolve in alignment with government policy.

The ability for stakeholders to contribute to development of the ACMA's forward work plan remains essential and improves spectrum users' ability to plan against the ACMA's priorities and timelines.

2. Under the reforms, there will be several legislative mechanisms to provide transparency, clarity and, potentially, review rights to existing licence holders where ACMA is seeking to re-allocate spectrum (such as the annual work program and licence renewal statements). In these circumstances, does the spectrum re-allocation declaration process continue to be of use to stakeholders?

Similarly to the other proposed amendments which empower the ACMA with direct responsibility to administer spectrum management processes, enabling the ACMA to determine re-allocation decisions would deliver process efficiencies. In making any re-allocation declarations, the Minister would currently be informed by advice from the ACMA

based on its consultative processes and analysis culminating in a recommendation. As, upon implementation of this reform, this information would continue to be assessed in an equivalent manner, the devolution of spectrum re-allocation determinations to the ACMA is a reasonable proposition.

3. The reforms are intended to permit ACMA to facilitate the development and testing of banned devices in Australia through the exemptions framework provided for in relation to the revised Part 4.1 of the Act, while still protecting existing licence holders from interference. Do the proposed exemption provisions achieve this aim?

The NSW Telco Authority's experience of engaging with the ACMA towards the testing prohibited devices is that the current procedural requirements and regulations are a hindrance to a timely resolution. The proposed provisions would enable the ACMA to more-efficiently facilitate testing for future spectrum uses and to promote innovation where this is appropriate.

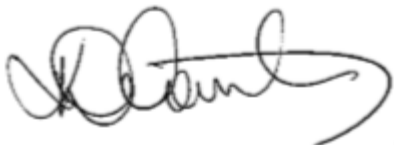
The NSW Telco Authority notes that the ACMA is concurrently undertaking a 'Review of radiocommunications prohibitions and exemptions framework', releasing a discussion paper in May 2020.

4. The reforms introduce graduated compliance mechanisms for ACMA to regulate and enforce the provisions of the Act. Are ACMA's proposed powers appropriate and are there any additional regulatory tools that stakeholders would like to see be made available to ACMA to perform its spectrum management functions?

The proposal to introduce graduated and flexible options for compliance and enforcement is logical and appropriate to enable effective and efficient responses to infringements.

Should you wish to discuss this submission, please contact Alison Port, Director Engineering and Spectrum, NSW Telco Authority on 02 8522 7447 or email at alison.port@customerservice.nsw.gov.au.

Yours sincerely



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Managing Director, NSW Telco Authority

17 July 2020