

Wireless Internet Service Provider Association  
of Australia Inc

**Response to : Radiocommunications Legislation  
Amendment (Reform and Modernisation) Bill**



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

GPO Box 594  
Canberra ACT 2601  
Australia

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Thank you for the opportunity to provide a response to Radiocommunications Legislation Amendment (Reform and Modernisation) Bill, the Association represents a wide variety of carriers in Metropolitan and Regional areas, typically smaller operators who have limited access to spectrum.

**Questions for consideration**

The Department seeks your views on all aspects of the proposed reforms as set out in the exposure draft, including whether the proposed amendments are fit for purpose and whether they raise any operational or administrative burden that could be remedied prior to implementation. In addition, the Department seeks your views on the following specific matters covered by the reforms:

**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?**

No, changing the established practice from a voluntary annual undertaking by the ACMA to one compelled by legislation makes it more difficult to change in the future, however as this exercise demonstrates Act's can simply be repealed or amended.

**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?**

We would suggest a complete overhaul of the licensing process, the current system and the minor changes proposed in this legislation fundamentally keeps the same outdated structure. Governments around the world have been implementing dynamic spectrum license management systems, these are far more adaptable to the rapidly changing telecommunications landscape. It's clear that the proposal to extend licenses to 20 years and provide greater power for the ACMA to declare uses will do nothing to support innovation and simply maintain the status quo.

**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?** No, Comment

**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?**

No, the powers that are being proposed to be granted to the ACMA give them the ability to impose financial penalties through infringement notices without due process, too often are administrative bodies given powers to be Judge, Jury and Executioner. We emphatically oppose this measure and strongly suggest these be excluded from the amendments.

**5. Are there any additional transitional matters or grandfathering of processes that should be considered? For example, do you consider that any additional existing processes or provisions should be retained for current licences, with the new provisions only applying to licences issued after the reforms commence?** No Comment

**6. Are there any additional reforms the Department should consider as part of the proposed amendments to the Act, or that should be considered further as part of future reforms to the spectrum management framework?**

Overall this legislation is does provide more clarity and transparency, however it transfers a substantial amount of power out of the hands of the elected representatives and into the hands of the bureaucracy, given the bureaucracy is much less accountable we see this as a significant risk, both in terms of over-reach and potential undue influence from larger more influential stakeholders.

***The Bill proposes to repeal Section 3 of the Act and replace it with a new, simpler object, which is to promote the long-term public interest derived from the use of the spectrum by providing for the management of the spectrum in a manner that:***

- (a) facilitates the efficient planning, allocation and use of the spectrum; and***
- (b) facilitates the use of the spectrum for:***
  - (i) commercial purposes; and***
  - (ii) non-commercial purposes (including defence, public safety and community purposes); and***
- (c) supports the communications policy objectives of the Commonwealth Government.***

We certainly support the introduction of promoting the long-term public interest, however there is no precise definition of precisely what this means. This is either an oversight or an intentional tack to allow the bureaucracy of the day to redefine the term as they please.

***Long-term public interests may take into account the merits of providing investment certainty to radiocommunications users for the roll out of infrastructure to deploy services using the spectrum.***

It could be argued that this approach is not in the long-term public interest and only serves to destroy competition and guarantee future profits for dominant carriers.

The public interest is best served by the provision of services in a competitive market environment.

The term “radiocommunications users” is misleading and factually inaccurate, users do not roll out infrastructure or deploy services using spectrum, users consume services provided by telecommunications carriers.

It is these carriers the Government is attempting to provide certainty to, the only certainty the Government can provide is access to spectrum and in turn market share for a large upfront investment.

This serves the Government in the form of higher tax revenue from spectrum and carriers in the form of guaranteed market share without competition, it is difficult to see how this is in the public interest short or long term.

***The first aim about efficient planning, allocation and use of the spectrum, will require ongoing assessment of the best use of the spectrum as a finite resource and will enable***

***spectrum uses to adapt to emerging technological and market needs.***

The Government should not be the body responsible for assessing how the spectrum is used, this should be left to free market mechanisms, the spectrum should go to the highest bidder.

***The second aim about use for commercial and non-commercial purposes reflects the importance the Act gives to the object of managing the spectrum not only for commercial services that use the spectrum, but also for non-commercial spectrum uses, some of which are the traditional responsibility of governments.***

Why can't the interests of commercial and non-commercial users be settled through market pricing mechanisms ? Without this consideration it becomes political rather than economic.

Removing price signals will mean those seeking access for non-commercial uses have no incentive to increase efficiency, all efforts will be focused on lobbying decision makers instead.

Why not simply allocate a public budget to these non-commercial operators and allow them to compete with commercial operators, the price paid will be an effective net neutral for the government and the true market value can be known.

**This broader expression is intended to encompass, by way of example only, national security, law enforcement, science services (such as meteorology) and the provision of emergency services.**

What the Government is attempting to do is obscure the opportunity costs by granting preferential treatment to "Public or Community" services.

A much more transparent mechanism for truly weighing the costs of allocation of spectrum to non-commercial users is as mentioned above, require all those that seek access to spectrum to bid for it, given that the Government is likely to both supply the funds and collect the taxes, the true cost (which is not the price but the alternative uses) will be known and properly considered.

Preferential political treatment is simply dishonest and designed to obscure the true costs to the public.

Regards, Dainen Keogh

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