

**COMMUNICATIONS
ALLIANCE LTD**



**DEPARTMENT OF INDUSTRY, INNOVATION AND
SCIENCE**

**REFORM OF THE SPACE ACTIVITIES ACT 1998
AND ASSOCIATED FRAMEWORK
LEGISLATIVE PROPOSALS PAPER**

COMMUNICATIONS ALLIANCE SUBMISSION

APRIL 2017

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INTRODUCTION

Communications Alliance welcomes the opportunity to provide this submission in response to the *Reform of the Space Activities Act 1998 and associated framework* Legislative Proposals Paper by the Department of Industry, Innovation and Science (Consultation Paper).

Executive Summary

Communications Alliance supports the government's timely focus on the Australian space sector, sees potential benefit being derived from this review and encourages the Government to facilitate Australia's growing space industry in a holistic manner. We wish to highlight the following in our submission:

- the existing legislation would benefit from further clarification and updating but care should be taken if the legislation is to be completely rewritten, as has been suggested.
- the proposed approach to the introduction of new licences is seen as a good step forward, as long as the oversight remains within the objects of the Act, namely on launches and returns.
- future wireless technologies may emerge that could potentially utilise the 18 to 100 kilometres layer. Legislation would be beneficial to provide adequate protection to existing services, without restricting the introduction of these new technologies.
- the focus on insurance in the legislation has misled applicants. We support the removal of the condition to determine maximum probable loss (MPL) and for further clarity and direction for new applicants.
- the proposal for the development of an appropriate charging model is lacking in detail. At a minimum it should be reasonable, fair and non-discriminatory, with fees that are clear, up-front and based on an incentivised charging model.
- an option for a phased application process will assist new applicants and provide useful feedback. In parallel, retaining a single stage process may in certain circumstances be favoured and more efficient for more established applicants.

Communications Alliance also recognises that there is growing support for the establishment of an Australian Space Agency. Such an entity, if created, should be designed to support industry and assist government coordination/liaison, rather than having a regulatory function. The Government should carefully consider the roles and functions of a space agency and also any Ministerial delegated powers associated with the agency. We would welcome further consultation on this topic if the concept is under serious consideration.

The submission provides general comments by way of an introduction, addressing some issues not covered in the Consultation paper. This is followed by specific comments against the numbered proposals in the Consultation paper.

About Communications Alliance

Communications Alliance is the primary telecommunications industry body in Australia. Its membership is drawn from a wide cross-section of the communications industry, including carriers, carriage and internet service providers, content providers, equipment vendors, IT companies, consultants and business groups.

Its vision is to provide a unified voice for the telecommunications industry and to lead it into the next generation of converging networks, technologies and services. The prime mission of

Communications Alliance is to promote the growth of the Australian communications industry and the protection of consumer interests by fostering the highest standards of business ethics and behaviour through industry self-governance. For more details about Communications Alliance, see <http://www.commsalliance.com.au>.

General comments

Communications Alliance supports the government's timely focus on the Australian space sector and in reviewing the legislation that underpins its growing potential. Our Satellite Services Working Group (SSWG), whose membership comprises more than fifteen companies working within the satellite sector and including satellite operators and service providers, teleport operators, satellite and equipment manufacturers, ground-station installers and sectoral experts (a copy of the membership of the SSWG is attached), has its focus in the delivery of satellite-based network and facilities services on a wholesale and/or retail basis. It is from this perspective that the comments in our submission have been presented.

The Consultation Paper presents a broad review of Australia's space legislation and although many of the issues do not directly impact on the communications satellite services market, our members have contributed their expertise to provide input for this submission to assist the Government in formulating the new legislation.

Communications Alliance sees potential benefit being generated by this review and encourages the Government to facilitate Australia's growing space industry in a holistic manner.

It is noted that at this point in time in Australia's space community, there is more interest in space objects, and specifically in satellites, than there is in spacecraft launches.

It is of interest that the findings set out in the Consultation Paper do not appear to correlate with Professor Steven Freeland's Report¹, which followed the extensive consultation process in 2015/2016. For example, Professor Freeland's Report called for, among other things, a legislative focus on development of a space industry that is both competitive and responsible. He also recommended a reduction in the insurance/financial requirements under the Act to accord with standards of other countries. These principles have not been fully reflected in the Consultation Paper.

Australian Space Agency

Communications Alliance recognises that there is growing support for the establishment of an Australian Space Agency. If such an agency were to be considered, this would impact on a number of proposals in the Consultation Paper and the Government would need to carefully consider the roles and functions of such a development. Although we consider it premature to couch our response with the prospect of a Space Agency in situ, Communications Alliance would like to offer some observations if such a proposal is to be entertained.

An Australian Space Agency should be designed primarily as an organisation to provide industry facilitation and government coordination/liason. As there is a number of Australian Government Agencies already involved in the space environment, an Australian Space Agency would be the central 'go-to place', a body that would assist applicants and other interested parties with their space-related needs.

An Australian Space Agency should not be given regulatory powers. The Australian Communications and Media Authority (ACMA) is the established sectoral regulator and has the necessary powers. The Civil Space and Cyber Security section of DIIS provides regulatory and policy oversight, to the sector, suggesting therefore that a Space Agency could take on

¹ *Public Submissions into the Australian Government's Review of the Space Activities Act 1998 Analysis Report*, Professor Steven Freeland, August 2016

a complementary, light-handed role to promote industry, coordinate with the existing regulator and provide the necessary links to the relevant Government Departments. Any delegation of Ministerial powers, as proposed in the Consultation Paper, would also need to be considered in this context.

It is worth noting that Australia is one of the few OECD countries without a national Space Agency. Having a Space Agency in place may improve our situation and involvement in the international community made up of all the overseas space agencies, which may in turn drive investment in Australia and open up opportunities for Australia in the future.

As the Department would be well aware, the forthcoming International Astronautical Congress being held in Adelaide in September would provide an opportunity for Australia to promote the outcomes of the reform of the Space Activities Act and provide a catalyst for the ongoing development of the Australian space industry.

Comments on specific proposals

The following table provides comments from our members on the specific proposals in the Consultation Paper.

No	Proposal	Communications Alliance comment
4.2.1	<p>4. Proposed changes to legislation</p> <p>4.2 Structure</p> <p>That new (rather than amendments to existing) legislation be developed which provide a higher level of flexibility and responsiveness in meeting stakeholder needs and at the same time achieve desirable Government outcomes.</p>	<p>Communications Alliance agrees that the existing legislation would greatly benefit from further clarification and updating but care should be taken if the legislation is to be completely rewritten to avoid the introduction of unnecessary or burdensome obligations being imposed on existing players or a nascent and evolving industry.</p> <p>We suggest that appropriate consideration by Government be taken to clearly define what outcomes are being sought.</p>
4.2.2	<p>Subordinate instruments may deal with more operational issues such as, for example, the application process/requirements.</p>	<p>Communications Alliance agrees that subordinate disallowable instruments provide a more flexible and pragmatic approach to deal with operational issues.</p>
4.3.1	<p>4.3 Purpose</p> <p>That the purpose of the legislation remains the same.</p>	<p>It is felt that the existing scope and purpose of the legislation is appropriate.</p> <p>The Consultation Paper provides approaches that, in part, appear to be contrary. On one hand, there is a focus on launches and returns but on the other hand, the concept of obligations on the entire life of payloads is also canvassed. Communications Alliance believes that scope should remain focused on launches and returns.</p> <p>Communications Alliance also observes that coordination with the Radiocommunications Act,</p>

No	Proposal	Communications Alliance comment
		which also addresses space objects, needs to be considered.
4.4.1	<p>4.4 Objects</p> <p>That the objects of the legislation be streamlined, to emphasise appropriately balancing risk and Australian benefit, including a focus on Australia's international obligations and the establishment of a system of regulation for those activities.</p>	<p>Communications Alliance observes that a balance between making Australian space more attractive and accessible against how liability is addressed needs careful consideration.</p> <p>Communications Alliance agrees that the objects of the Act, with the exception of deleting defunct Russian agreements, remain the same.</p> <p>Communications Alliance has some concern that any rewriting of the objects may result in unwarranted regulation of new areas.</p>
4.5.1	<p>4.5 Title</p> <p>For the title of the new Act to be a variant on the Space Activities Act reflecting its purpose to regulate the launch and return of space objects. For example: Space Activities (Launches and Returns) Act.</p>	<p>Agreed that qualifying the title of the Act as proposed will better reflect its purpose.</p>
4.7.1	<p>4.7 Authorisations</p> <p>(i) Payload licence</p> <p>That introduction of a licence type to authorise payloads be considered.</p>	<p>In principle, the proposed approach to the introduction of new licences is seen as a good step forward, as long as the oversight remains within the objects of the Act, namely on launches and returns. It is noted that the regulation of the entire lifecycle of the payload does not fall with that stated scope.</p> <p>Any change to legislation needs to take into account its effect in encouraging industry without unintentionally inhibiting it, including the potential to introduce layers of onerous reporting, unnecessary costs and complexity to the existing arrangements.</p> <p>Communications Alliance supports removing any unnecessary distinction between launches of a payload in Australia and launches overseas.</p> <p>Communications Alliance has concerns over any proposal to extend regulation to post-launch activities of a space object over the life of a payload, with the exception of frequency and orbital slot allocation, which is considered to be relevant (and is managed by ACMA). We question the benefit to Australia for a qualitative assessment of the purpose of the payload. The underlying intention of this proposal requires further clarity.</p>
4.7.2	<p>(ii) Launch facility</p> <p>That requirements currently outlined in the Space</p>	<p>The proposed change appears to be encouraging the establishment of a launch industry in Australia. Communications Alliance advocates avoiding</p>

No	Proposal	Communications Alliance comment
	Activities Regulations 2001, which are more relevant to launch rather than establishment of a launch facility, be transferred to the proposed new 'Australian launch permit'.	unnecessary duplication and to take into account reciprocity arrangements. A customer of an Australian launch provider who has been issued their permit from their own country overseas may not always need another permit from the Australian Government. Communications Alliance is aware that New Zealand is also considering legislative changes, including those relating to launch licences.
4.7.3	(iii) Australian launch permit That the launch facility licence provisions include sea launch platforms based in Australian territory; while an Australian launch permit (or variant of it) include a launch from Australian vehicles in flight or (potentially) from Australian airspace.	Agreed to support this proposal on the basis that the objective is to facilitate a space industry in Australia.
4.7.4	That DIIS consider cases of potential return of Australian launched payloads (without a launch vehicle) to Australia.	Communications Alliance supports this proposal, with the understanding that this would be to address potential payload returns in the future to cater for the growing CubeSat industry.
4.7.5	(iv) Requirements associated with launch from Australia That the Flight Safety Code be retained, and refreshed in the future.	Communications Alliance agrees that the retention and updating if the FSC appears to be a sensible proposal.
4.7.6	To retain a framework whereby designated and protected assets can be identified on an as needed basis. Suggestions in relation to identification of assets are requested.	Agreed for the <i>List of Designated and Protected Assets</i> , dated 17 June 2002, to be considered and updated. This would be seen to fall under the role of the ACMA as the regulator.
4.7.7	(v) 'High altitude' activities That consideration be given to the drafting of a new subordinate instrument, for 'high altitude' activities as described/specified in the subordinate instrument.	Communications Alliance recognises that future wireless technologies may emerge that could potentially utilise the atmospheric layer between 18 kilometres and 100 kilometres. Current interest by organisations such as Google (Project Loon, Titan) and Facebook (Aquila) suggests that the timing is right for the existence of such instruments. With this in mind, benefit is seen in developing new subordinate instruments for 'high altitude' activities that is measured, in order not to restrict the

No	Proposal	Communications Alliance comment
		<p>introduction of these technologies but also provide adequate protection to existing services.</p> <p>The Department will be aware that there are expectations of new services around the 6.5 GHz band, as forecasted in WRC-19 Agenda Item 1.14, for the consideration 'on the basis of ITU R studies in accordance with Resolution 160 (WRC-15), appropriate regulatory actions for high-altitude platform stations (HAPS), within existing fixed-service allocations.'</p>
4.7.8	<p>(vi) Accepted launch facilities</p> <p>For a list of 'standard' launch facilities to be prepared and made available (in either a subordinate instrument or elsewhere), to streamline the application process.</p>	<p>Communications Alliance supports any initiative that will streamline the application process.</p> <p>The current arrangements requiring applicants to provide the necessary information is very expensive, such as the need to seek certified translations. To avoid these costs for each application would be welcomed.</p> <p>Rather than the proposal for a public listing of launch facilities, which may in part have some utility, the important aspect here is for Department staff to have the means to familiarise themselves with the safety and legal framework and arrangements for key standard launch providers.</p> <p>It is not just a matter of maintaining a list facilities. There are other criteria that should be taken into account, such as the relative environmental safety aspects, legal arrangements and agreements that are in place. Having this information available for the appropriate Department staff for internal purposes would be beneficial.</p> <p>Again, such initiatives would greatly assist the nascent CubeSat space industry in Australia.</p>
4.7.9	<p>(vii) Safety officers</p> <p>That the functions of the Launch Safety Officer and accident safety investigator remain.</p>	<p>Section 50 of the current Act states that for each licensed launch facility, the Minister must appoint a Launch Safety Officer (LSO). Communications Alliance agrees that the LSO functions should remain.</p>
4.8.1	<p>4.8 International obligations</p> <p>(i) Debris mitigation</p> <p>That consideration be given to the new Act including a high level statement committing applicants to consider the space environment. Detail on how this might be achieved may be provided in a subordinate instrument and/or guidance material. The ability for the Minister to</p>	<p>An in-principle statement in the Act for applicants to consider the space environment, a good example is in managing the spacecraft end-of-service phase, is seen as reasonable and in line with being a good international citizen.</p> <p>Having said that, Communications Alliance cautions in providing the Minister with the ability to provide exemptions, particularly in light that what is being proposed for inclusion in the Act is a high-level statement.</p> <p>If the legislation is drafted with the intention for the Minister to exempt applicants from having regard to internationally accepted voluntary guidelines,</p>

No	Proposal	Communications Alliance comment
	provide exemption from this requirement is also proposed.	then providing this ability is questioned. The <i>United Nations Space Debris Mitigation Guidelines of the Committee on the Peaceful Uses of Outer Space 2010</i> , is a voluntary Guideline and not legally binding under international law. The Guidelines encourage Member States to voluntarily take measures to implement space debris mitigation practices and procedures, recognising that exceptions to the implementation of the guidelines may be justified.
4.8.2	(ii) Nuclear power sources That consideration be given to applicants being required to indicate the presence of both fissionable material and nuclear power sources.	Although this proposal does not impact the application of communications satellites, as it relates to risk mitigation, it appears to be reasonable.
4.8.3	(iii) Contamination Consideration be given to applicants having regard to the COSPAR Planetary Protection Policy, as appropriate.	Communications Alliance has no specific comment but agrees that it is appropriate to consider that applicants have regard to the <i>COSPAR Planetary Protection Policy (20 October 2002; Amended 24 March 2005)</i> .
4.8.4	(iv) Registration That access arrangements to the domestic register be updated and streamlined.	Communications Alliance agrees that this proposal appears to be appropriate.
4.8.5	(v) Liability and associated insurance requirements To allow greater flexibility in relation to updating as need arises, that consideration be given to insurance and fees being located in a subordinate instrument.	Communications Alliance is aware that the focus on insurance in the legislation has misled many applicants, notably for those applying for overseas launch of CubeSats. In practice, the expended efforts in calculating maximum probable loss (MPL) to satisfy insurance and financial requirements has resulted in much wasted time and resources for the industry and for the Department. In light of this, Communications Alliance supports the removing of the condition to determine MPL. Furthermore, what is needed in the legislation and subordinate instruments is for clarity to point applicants in the correct direction in the first instance. Applicants who will be launching objects into space create legal risk for both the Commonwealth and the taxpayer. These applicants need to take appropriate steps to mitigate this risk. One way is to for the holder of a launch permit to use best efforts to ensure that their launch contract requires the launch provide to name the Commonwealth as an insured party to avoid having the permit holder being insured for up to \$750 million.

No	Proposal	Communications Alliance comment
		The objective is to foster an Australian industry that is acting prudently, is well informed and is doing the right thing.
4.8.6	<p>Other matters</p> <p>That DIIS consider cases, including the likelihood of cases, where Australia may be responsible under the Outer Space Treaty, but not liable under the Liability Convention.</p>	<p>Communications Alliance has no specific comment on Australian liability under the Liability Convention and the Outer Space Treaty.</p> <p>We wish to reaffirm that the five UN international treaties governing outer space, including the Outer Space Treaty, should remain as Schedules in the Act or be linked in to the Act in some way so as to be within the common legislated instrument.</p>
4.9.1	<p>4.9 Fees</p> <p>That an appropriate charging model be developed.</p>	<p>Communications Alliance observes that the Consultation Paper is lacking in detail in proposing that an appropriate charging model be developed. Without further visibility of the Department's thinking in this area, Communications Alliance wishes to make the following suggestions. The model:</p> <ul style="list-style-type: none"> • will benefit industry if the fees are clear and up-front. • should be reasonable, fair and non-discriminatory (in particular for scientific, educational and other entities who may qualify for reduced fees). • should be based on an incentivised charging model. • should not discourage start-ups or introduce obstacles for innovators. • should discourage those who are along for a 'free ride'. <p>It is also noted that the model:</p> <ul style="list-style-type: none"> • in not providing a clear fee structure, will not foster certainty within industry and has the potential to discourage investment, considered essential for a healthy space sector. • provides a risk for discriminatory outcomes derived from subjective criteria.
4.10.1	<p>4.10 Exemption</p> <p>That exemption in entirety from each of the authorisations and in in addition, in relation to element/s associated with each authorisation, based on considerations including emergency, safety and liability be considered.</p>	<p>Communications Alliance notes that this proposal appears to be reasonable based on the examples given in the Consultation Paper (national security, foreign relations).</p> <p>Having said that, in the future, in a more dynamic and active Australian industry, the situation may become onerous and potentially challenging for a Minister to take on the role of providing exemptions. This role suggests taking on a greater responsibility and the potential for exemptions to</p>

No	Proposal	Communications Alliance comment
		be politicised. For example, there would be a valid concern if environmental or safety standards were sacrificed in any manner.
4.10.2	That the Australian Government be invited to be guided by the new legislation, as it considers appropriate. That the Government be invited to provide information consistent with that of a non-Government entity (as appropriate), when authorisation is in relation to a public/private partnership.	The Act should apply to both the private and public sectors. Communications Alliance observes that this proposal appears to be allowing the Government to enjoy an exemption from the Act, with an opportunity to voluntarily provide information in a similar fashion to non-government operators. Communications Alliance suggests that here is an opportunity for the Government to show leadership to the space community by following its own processes and providing consistency in the application of the Act.
4.11.1	4.11 Application process That the ability for the Minister to delegate his powers, be provided for in the new legislation.	Communications Alliance agrees with the proposal, subject to further and careful consideration of the powers that can be delegated.
4.11.2	Launch facility licence That provision be made in relation to payload and launch facility authorisations for establishing a phased application process.	Communications Alliance agrees with the proposal to have an option for a phased application process. Providing certain applicants with a three-stage approach to submit and be assessed will assist in their application and provide useful feedback with regards to their likelihood of success. This is a pragmatic approach and will greatly facilitate new entrants such as those representing the CubeSat industry. For established applicants, those with more experience, may not require a multi stage approach, as a single stage process may in certain circumstances be favoured and more efficient. Any approach, whether it be a single-stage or phased approach, is welcomed as long as it is designed to be efficient and not repetitive, cumbersome or overbearing.
4.11.3	That DIIS continue its current practice of utilising information already provided by an applicant with their permission; while requesting additional information as needed.	Communications Alliance agrees with the proposal, seeing practical benefit in the Department reusing existing applicant's information to avoid unnecessary duplication.
5.1	5. Guidance material That DIIS coordinate summary information from the Australian Government	Communications Alliance agrees with the proposal, seeing it reasonable and sensible and a potential role for an Australian Space Agency.

No	Proposal	Communications Alliance comment
	(and make it available in one place).	

Attachment 1

Satellite Services Working Group membership

Australian Private Networks (APN)
Coutts Communications
Mississippi Consulting
Foxtel
FreeTV
Intelsat
Ipstar
Nbn
Omnispace
Optus
Orion Satellite Systems
Pivotel Satellite
SES
Skybridge
Space Systems/Loral
Speedcast
Step Electronics
Telstra
ViaSat



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