

**COMMUNICATIONS
ALLIANCE LTD**



DEPARTMENT OF COMMUNICATIONS
SPECTRUM REVIEW
POTENTIAL REFORM DIRECTIONS

COMMUNICATIONS ALLIANCE SUBMISSION
4 DECEMBER 2014

EXECUTIVE SUMMARY

Communications Alliance welcomes the opportunity to respond to the Department of Communications Consultation Paper on Spectrum Review Potential Reform Directions.

Communications Alliance would like to thank the Department of Communications for taking a pro-active stance in this consultation paper. The following responses are aligned with the questions posed in the paper.

Some important points raised in this submission relate to an unstated or yet to be developed role of industry in the future envisaged for spectrum management, clearer accountabilities and relationships, licensing arrangements, and pricing considerations.

Communications Alliance also understands that individual organisations will be providing separate submissions to the Department of Communications in response to 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>.

INDUSTRY COMMENTS

Communications Alliance would like to make the following comments on the question posed to stakeholders in the Consultation Paper.

1 What changes should be made to the proposals outlined in this paper to make them work more effectively?

Communications Alliance suggests that further thought should be given to how the Department of Communications makes decisions given the role of the ACMA as the spectrum manager which authorises operational activity and industry and where the role of industry can be better utilised in this process.

Communications Alliance notes that the proposals need to be reviewed against the new regulator performance framework proposed by the Department of Prime Minister and Cabinet.

2 What additional proposals should be considered?

Communications Alliance notes that the proposals currently are focused on the relationship of the ACMA with the Minister. We suggest that the next phase should embrace broader relationships with those involved with policy creation and spectrum stakeholders.

Communications Alliance also suggests there is still a need to undertake a detailed audit of the building blocks of the existing framework and determine which parts of the framework are functioning well and which ones are not.

Any amended or new legislation needs to preserve the objects of the *Radiocommunications Act 1992* which define why the Government manages spectrum.

Any amended or new legislation should explicitly recognise the involvement of interested stakeholders in developing Australian positions taken to international fora such as ITU-R meetings, APT meetings and WRCs – the current ARSGs need to be preserved, recognised and enhanced and the role that industry plays needs to be recognised and valued.

The importance of the international aspects of radiocommunication policy and implementation to Australia's economy need to be recognised and commitments made to resource these activities properly so that Australia is able to continue to take a leadership role regionally and make significant contributions internationally.

3 What timeframes (short-term and longer-term) should apply to implementation of the reform proposals?

Communications Alliance has identified the following three time frames emerging from the proposed reform:

- issues that can be addressed immediately, e.g. refining the technical regulations dealing with the supply of devices to unlicensed persons and

simplifying the licence reissue process are both achievable in the short term;

- issues that depend on world cycles, e.g. from the WRC; and
- issues that depend on the lifetime of current licences, e.g. Spectrum Licences.

Any strategy should take into consideration the above timeframes during the migration from the existing arrangements to any new arrangements.

Communications Alliance suggests a second round of consultation once the proposals for change are more concrete. Industry can then comment on how specific changes might work and avoid speculating on changes that might be proposed. The Consultation Paper does not have sufficient detail concerning how the proposals for change might or might not work in practice. It is suggested that once this consultation round has been completed, the Department will have the opportunity to refine its thoughts and seek further input on a more defined set of proposals.

4 What transitional arrangements should be put in place?

Communications Alliance would welcome any additional information on the existing proposals before commenting on transitional arrangements.

PROPOSALS

Communications Alliance would like to make the following comments on the eleven proposals in the Consultation Paper.

Policy framework

1 Implement a clear and simplified framework of policy accountability

- *Minister to publicly issue over-arching policy statements, against which the ACMA must act consistently.*
- *Minister to have direction powers in the Radiocommunications Act to enable Ministerial intervention for specific purposes such as to reserve spectrum in a plan, allocate or reallocate spectrum.*
- *The ACMA to be required to notify the Minister of certain decisions and provide an annual work program and key priorities over a three-five year timeframe.*

Communications Alliance supports the aim in having a clear and simplified framework of policy accountability. This proposed policy framework needs to be managed transparently. Each policy statement should be released with explanation of the likelihood of and criteria for their review or revocation and any updates to or revocations of the policies should be justified at the time they are updated or revoked. Further clarity is sought on the delineation between the roles of the Minister, the Department and the ACMA, including the reporting and consultation activities.

Communications Alliance supports a return to the Minister making policy based on advice received from the Department and for the ACMA to implement that policy. We suggest that currently the lines are blurred. Where possible, ministerial direction powers should be clearly defined and only exercisable following public consultation.

The ACMA reporting requirements to the Minister are unclear. For example, how do they differ from existing arrangements which include the ACMA Annual Report?

At present the paper mentions the ACMA would consult with stakeholders but does not appear to consider a role for industry. Industry would welcome additional information on how the Department of Communications views the role of industry in spectrum management.

It is noted that the proposed annual work programme needs to be coordinated with the ACMA Five Year Spectrum Outlook and the Annual Report. There may be a need to streamline these various documents and to avoid duplication. In addition, the industry views should be considered in the process of developing the annual work program.

Single licensing framework

2 Establish a single licensing framework

- *Establish a single licensing framework by consolidating the three licence categories (apparatus, class and spectrum) and provide the ACMA with flexibility to set licence parameters, for example, to include band frequency, payment, sharing and trading arrangements.*
- *Tenure of licences to be a parameter, with a maximum term of 15 years to be specified in the legislation.*
- *Renewal of licences to also be a parameter. If the licence provides for a presumption of renewal, the legislation would specify the circumstances under which the ACMA is not required to renew.*

Communications Alliance notes the value in exploring this proposal but highlights the need for further detail to understand truly what is intended. For example, it would help to see a template of what the Department of Communications has in mind.

Ensuring that the licensing reforms will improve the overall regime is essential and further consultation will be required before more informed views can be given by industry.

Additional case studies outlining how such a new framework would work in practice and outlining the objectives of such a change would be helpful. Any such changes need to be made in consultation with industry, the details of timing and format would need to be developed.

The current report dwells on a coalescence of Spectrum Apparatus and Class Licences. A fourth category of unlicensed activity is widely recognised overseas. This latter category would fit well with Class Licences, and the relationship between Spectrum and Apparatus Licences probably offers great scope for combining. It is

hard to see how Class Licences could also be integrated without further explanation.

Allocation and reallocation

3 More flexible allocation and reallocation processes

- *Provide the ACMA with greater flexibility to determine the most appropriate allocation process and method.*
- *The ACMA's annual work program to specify timing of allocation processes and the ACMA to report against these.*
- *Allow the ACMA to reallocate spectrum without the need for a Ministerial determination.*
- *Manage changes of use by setting appropriate licence terms that allow for replanning.*
- *Authorise the ACMA to allocate encumbered spectrum enabling incumbent users to continue operating in the band following reallocation.*

Communications Alliance notes the need to establish clear lines of demarcation between actions that the ACMA is able to take and the circumstances that need to exist for the Minister to make a determination. For example, under what circumstances would the ACMA be expected to make a decision, and under what (exceptional) circumstances would the Minister make a decision and issue a Determination in the manner indicated above?

Pricing and market information

4 Establish a more transparent and flexible approach for spectrum pricing to promote efficient use and re-use of spectrum

- *Prices for spectrum to be market-based, with the ability for Ministerial intervention to determine otherwise on an exception basis.*
- *Pricing for administrative allocations of spectrum to be reviewed, simplified and made consistent and transparent.*

Communications Alliance recognises that pricing principles need to be established with the benefit of participation by industry. The formulation of these principles are critical for the marketplace and the industry should be provided with the opportunity to provide input into these processes. One of the key areas is price setting which is an issue that needs to be coordinated among the Minister, the Department and the ACMA.

An important consideration is the shift to market-based pricing mechanisms. Like other ministerial powers, it is important that any price-setting powers be clearly defined and only exercisable in very limited circumstances following public consultation.

Communications Alliance observes that there is a current perception that fees are based on the revenue needs of the Government rather than on market realities. Every effort should be taken to make spectrum pricing more transparent and to reflect the realities of the radiocommunication market.

Communications Alliance would like to raise for further consideration that a component of the spectrum fees be retained by the ACMA to assist it in undertaking its role in this area. For example, some of the fees could be dedicated to assist the ACMA in representing Australia at APT and ITU meetings and to head more international delegations.

5 Structuring payment schedules for licences

- *Provide flexibility in the timing and approach for payment of licence fees.*

Communications recognises that industry requires certainty in the licensing conditions. Clarity is sought on the 'use it or lose it' principle and under what conditions would exclusivity apply? Industry sees this as a critical and seminal consideration.

Australia is recognised as one of the most expensive licensing environments in the world. While a shift to market-pricing may result in the increase of some licensing fees and the decrease of others, it remains important the framework as a whole be designed to lower compliance cost burdens for licensees.

The overall framework of fees should otherwise be in line with international benchmarks and must be aligned with Australian taxation laws in order to not erode the current tax treatment of licences.

6 The ACMA to take an open data approach to substantially improve the range, availability and quality of information provided to support an efficient spectrum market

- *The ACMA to report to the Minister through its annual work program on its efforts to improve and maintain the range, availability and quality of information to support the spectrum market.*
- *Provide the ACMA with authority to collect information from industry relevant to the performance of its functions and exercise of its powers.*

Communications Alliance has concerns about the scope of this proposal and the potential increase in regulation and goes against the government's red tape reform efforts. Properly understanding the purpose and scope of this proposal is necessary before the costs and benefits can be weighed up. While industry understands the importance of fact based decision making, industry would like a more detailed explanation of this proposal before supporting it. Commercial sensitivities need to be factored in. It is unclear at present what is the:

- intended scope of work;
- desired data set and nature of any information that might be sought;

- resourcing and process to manage the data and how onerous would this data collection be for industry;
- limit to the information collection powers.

Compensation

7 Payment of compensation for resuming all or part of a licence

- *Provide for common compensation provisions for resumption of licences.*
- *Whether compensation is payable in event of resumption to be a licence parameter.*

Communications Alliance agrees with the concept of a clearly articulated compensation scheme and recognises there is value in compensating affected stakeholders when moving spectrum to different uses over time. Further detail on this proposal would need to be developed, e.g. as a default parameter for all licences (currently only applies to spectrum licences).

User involvement in spectrum management

8 Facilitate greater user involvement in spectrum management

- *Allow the ACMA to delegate spectrum management functions to other entities.*

Communications Alliance would welcome additional information on this proposal. We observe that there are some similarities with the New Zealand method of spectrum management and their industry band managers. What role is envisaged for industry here? Industry support for such an approach would be essential.

Communications Alliance is open to band management models that will deliver efficiencies (such as lower costs) but thinks it would be difficult to outsource some elements of the ACMA's enforcement and compliance functions.

We highlight the need to establish a clear framework for spectrum management before any such exercise can be attempted. Success needs to be quantifiable, for example with falling spectrum prices being an appropriate measure.

A question arising from the proposal is whether or not there might be a greater scope for industry codes and guidelines in radiocommunications.

Communications Alliance sees value in avoiding a situation where well-financed organisations have the ability to control the availability of spectrum by accumulating management rights to highly contested and desirable bands. All industry participants should have the opportunity to acquire spectrum for their needs if it conforms to national band plan requirements.

Technical regulation

9 **Develop more principles-based device supply regulation**

- *Provide the ACMA with increased flexibility to construct device supply schemes appropriate to specific circumstances.*
- *Increase incentives for users and suppliers to manage risk and resolve interference and disputes in the market.*
- *ACMA to develop and publish guidelines as to its dispute management process.*
- *Minimise to the extent appropriate existing record-keeping and labelling requirements having regard to risk factors.*
- *Reform the definitions relating to supply to oblige all persons in the supply chain to take reasonable steps to ensure that compliant devices are supplied to the Australian market.*

Communications Alliance does not object to principles-based regulation but would like assurance that relaxing 'black letter' requirements does not result in diminished compliance as a result of any potential reduced enforcement effort. The reforms must raise the level of compliance by spectrum users and allow users to do so in a more efficient manner. Carriers require certainty that the agreed minimum technical and compliance standards are being applied and complied with.

A suggestion is to consider the existing device registration process as it may inform the development of a simpler, more flexible registration process.

Compliance and enforcement

10 **Improve regulation by extending the suite of enforcement measures available to the ACMA**

- *Substitute civil penalties for the existing criminal offences, where appropriate.*
- *Enable the ACMA to impose civil penalties, issue remedial directions and formal warnings for the purposes of managing and controlling interference or a breach of licence conditions.*
- *Apply strict liability provisions and infringement notices to a broader range of offences where appropriate, for example, operation of prohibited devices and interference endangering safety.*
- *Provide the ACMA with powers to issue recalls, interim bans formal warnings and public warnings to manage the supply of non-compliant devices.*

Communications Alliance feels that a swift and responsive regime would be the most effective in order to properly address deficiencies in the technical regulations, but otherwise supports the proposed flexibility, which can be delivered through a

more graduated approach. Additional information such as sample implementation guidelines would be useful.

Communications Alliance supports the proposal to substitute civil penalties for the existing criminal offences, where appropriate. Criminal penalties have a higher threshold and civil penalties (e.g. on-the-spot fines) can be a more effective deterrent against offending.

We recommend to move away from the current 'softly, softly' approach to enforcement. Civil penalties will aid such a switch as the burden of proof lower.

Moving spectrum to its highest value use

11 *The ACMA to continually review options for allocating spectrum to alternative / higher value uses and to ensure that barriers to achieving this are reviewed and removed where appropriate*

Communications Alliance raises concern that a literal interpretation of the proposal suggests a reduction of the necessary certainty for licensed spectrum holders. Any impact on certainty, e.g. the certainty of tenure, will have adverse impact on investment.

Communications Alliance supports this proposal so far as it is intended to be focused on ensuring there are more avenues for engaging with the ACMA to consider emerging international trends and emerging technologies to support innovation.

However, an overly-active process for formally reviewing spectrum usage could undermine the commitments made by licensees in acquiring licences, especially in the case of long term licences. While the principle is sound, the approach needs to provide comfort to industry that its spectrum resources won't be resumed randomly because an alternative user has made case for 'higher value' use.



Published by:
**COMMUNICATIONS
ALLIANCE LTD**

Level 9
32 Walker Street
North Sydney
NSW 2060 Australia

Correspondence
PO Box 444
Milsons Point
NSW 1565

T 61 2 9959 9111
F 61 2 9954 6136
TTY 61 2 9923 1911
E info@commsalliance.com.au
www.commsalliance.com.au
ABN 56 078 026 507

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