



22nd April 2016

Department of Communications and Arts,
GPO Box 2154,
Canberra ACT 2601.

Ref: Radiocommunications Bill 2016 – Legislative Proposals Consultation Paper.

The Australian Radio Communications Industry Association (ARCIA) is an organisation that represents the interests of the land mobile radio industry in Australia. We represent a wide range of members from across the entire radio communications industry, ranging from manufacturers/importers, through dealers and ancillary product suppliers through to licenced users. In preparing our response to the Legislative Proposals Consultation paper we have consulted with our membership, as well as having canvassed inputs from others who have an interest in the good management of the spectrum.

As indicated during previous meetings with Departmental staff, our Association is generally supportive of the proposed changes and we enjoy a healthy relationship with the Australian Communications and Media Authority. In preparing our response to the issues raised in the consultation paper we have attempted to present our responses in a manner that represents the best use and management of the spectrum, rather than presenting a narrow opinion relative only to the specific needs of the land mobile radio industry.

As we review the current situation and changes that have happened since the last review of the Act in 1992, there are several areas where changes have occurred and must be recognised as part of any review of the Act –

1. The Radiocommunications market is now a global entity and as such there is a need to recognise that there will be some constraints regarding how the spectrum can be managed in this environment. For instance, manufacturers are now being forced by market economics to produce products that are for common use in all markets. This means that spectrum decisions must also recognise those parameters and spectrum management must always take external constraints into account.
2. The limited size of the Australian market in the global environment means that there is little chance for products to be modified or specified to meet local standards. This is of particular concern if decisions are made locally to auction large blocks of spectrum that have historically been dedicated to particular technologies on a global basis providing economies of scale. The loss of such spectrum would severely impact the Australian market.



3. Over recent years the direction from Government has been that spectrum should be made available for the highest value use, a sensible and practical approach. The concern arises when the proposals for spectrum usage are generated by economists and the only way that 'highest value' is determined is by applying economic principles with little or no value ascribed to other factors such as indirect contribution to employment or Gross Domestic Product nor indeed in many ways to the value of safety of life and property. The present situation where economics are paramount is removing other considerations and placing decision-making at the lowest common denominator level.
4. As a result of the economic decision-making model, there is more pressure to gain maximum dollar value for spectrum which means that there is little scope for innovation in spectrum use. At present much of the innovation in communications is coming from the 'application level' on existing communication platforms, eg., Smartphone Apps. For there to be true innovation there needs to be access to spectrum, plus there needs to be sufficient spectrum available for a commercially viable innovation to become marketable. The present trend to auction off every large block of spectrum 'in total' means that no vacant spectrum is left for other options. Trends such as the 'Internet of things' could well benefit from having other dedicated spectrum available, yet at present this is not configured within the spectrum management frameworks.
5. The other trend from Government to ease the regulatory burden on businesses has a potential negative impact that must be considered as part of the whole spectrum management arena. If the regulatory regime is reduced 'to allow the market to decide the best outcome', then the resultant lack of regulations and guidelines will create an environment similar to that in the USA where there is now a specialised field of 'Communications lawyers' who sort out the issues in court. This might make it easier for the regulator, however, it adds significantly to the overall cost of spectrum usage and creates the opposite effect to the original plan of less regulation. It adds to the restrictive burdens on spectrum access through litigation costs and creates a market were again the biggest dollar controls spectrum access.

With these factors in mind, we present our response to the consultation paper and commend it to your earnest consideration. As always, our Association welcomes the opportunity to be involved in discussions and debate on spectrum management and we would draw the attention to the opening section of our outline on our web site – *"ARCIA is a not-for-profit, incorporated association that seeks to promote issues such as the protection and better utilisation of the radio communications section of the spectrum"*. One of the major factors under-pinning our Association is the need to both act as a responsible 'spectrum citizen' as well as encourage the best possible spectrum management principles.

Yours sincerely,

Australian Radio Communications Industry Association (ARCIA) Inc.
Ian Miller – Executive Officer



Response to DOCA discussion paper on Radiocomms Act (2016)

The following comments relate to the Legislative Proposals Consultation Paper – March 2016

Section 1 – Objects and Span

ARCIA supports the proposals outlined and agrees with the intents indicated. We are especially pleased to see that there is specific mention of the ‘supply chain’ in the outline of rights, powers and obligations. This is seen by our industry as being a positive action given the impact of market changes on supply due to the internet and imports from alternative sources to the actual product manufacturers.

Section 2 – Application.

ARCIA again supports the proposed approach, however, we suggest that the configuration of the new Act should also include the understanding of the changes to the market due to the more globalised approach to equipment manufacture and supply, plus the effects of product supply through unregulated sources via the internet and on-line marketing systems. Product supply is no longer constrained by geographic borders and so the Act must recognise the concerns and issues that may arise from this change in supply and demand. An associated aspect to be addressed, is Australia’s “limited” definition of radio communications (RC) which does not align with the mature ETSI regime or indeed New Zealand and affects the crossover point between EMC and RC regimes creating unnecessary confusion about compliance.

Section 3 – Ministerial direction powers, policy guidance and accountability.

The proposed approach will simplify the role of the ACMA and make it easier for actions to be taken as part of regular planning and changes that become necessary due to market demands. The renewal of the Spectrum Licences for the public carriers recently was an instance of where the ACMA should have had the flexibility to make changes without having to refer any changes for Ministerial decision. ARCIA supports the move towards more flexibility with retention of the accountability to the Minister. This means that in the event of contention regarding application of spectrum allocation mediation can take place before any referral to the Minister for final determination.

Section 4 – Annual spectrum work plan.

ARCIA supports this proposal as it basically reflects the existing practice of the Five Year Spectrum Outlook. It will be nice to see notification of changes to timing or priorities reflected in the document, as well as an overview of the previous year’s performance as a measure of effectiveness of the work plan and its implementation.



Section 5 – Radiofrequency planning.

As the existing system is generally working successfully we also endorse the new proposed system following similar lines. Our only area of concern is that with the present ‘planning system’ resources being oriented towards selling large blocks of spectrum to meet the ‘highest value use’ model, there is little opportunity for new technologies or new applications for spectrum to be accommodated. In particular for new innovations, the present format is a disincentive to invest as the available spectrum is either already encumbered, or it will require investments in large blocks of spectrum (via the auction system) to have spectrum to innovate with, this is ruling out applications simply because of the cost of getting unencumbered spectrum. Planning needs to be more flexible than a basic ‘auction off in large blocks’ format to encourage more efficient use of spectrum. Efficiency does not always relate to money up front. Such an approach limits Australia to being a follower not a leader.

Section 6 – Licensing of spectrum.

ARCIA strongly supports the proposed changes to the licensing system and the single class of licence, in conjunction with the introduction of ‘Spectrum authorisations’ to replace the present Class Licensing system is sound. We would highlight that although the systems are being promulgated as being more favourable towards a secondary market for spectrum, the small size of the Australian market in combination with the significant economic gap between small and large spectrum holders means that a secondary market is not as practical as the economists would wish. This may change in the future, however, it is our opinion that any such change will take many years to develop.

One area of concern that we do wish to raise is the matter of Third Party Authorisations’ and this is an area that perhaps needs to be incorporated into the licensing records. The present system relies heavily on the existing licensee maintaining accurate records and that they are immediately available to the ACMA Field Operations personnel. If these records are not accurate or immediately available, resolution of interference issues becomes a more onerous task and rectification takes longer. In a world where competitive alternatives exist the spectrum licensees are entitled to operate in a spectrum that is ‘fit for purpose’, interference robs them of this basic right and business operators cannot afford to have to wait for resolution for any extended period.

Section 7 – Licence issue.

ARCIA supports this proposal and looks forward to an environment where details are readily available and fully documented.

Section 8 – Licensing limits.

Again ARCIA supports this proposal, however, it must also be noted that the relevant documents and guidelines should be put in place well ahead of any concerns and be available to all concerned. Any variations to the conditions outlined in the relevant sections should be widely advertised and advised to industry rather than changes made to suit a particular application or under request from an involved licensee.



Section 9 – Licensing – Renewal rights.

ARCIA supports this proposal and believes that it can lead to a better understanding of the licensee’s rights. The one area we would like to see changed is recognition of the relevant capital expenditure involved to actually use the spectrum. In essence, spectrum itself is of no worth, it is only by investing in equipment that the spectrum becomes usable and there should be recognition of the extent of the capital investment when proposing changes. This was the defining issue with regard to the abandonment of the handing back of spectrum at the end of the licence period for re-auction. The public carriers had extensive capital investment and it was argued that there needed to be continuity to maintain the investment. Other services such as trunked radio networks also have significant investment and should be accorded similar consideration. For a simple land mobile base-to-mobiles system the investment is minimal, whereas a wide-area trunked radio network will have large investment. This should be recognised as part of the ‘right of renewal’ process.

Section 10 – Licensing – resumption.

Although the new Bill will simplify matters to some extent, the mere fact that the possibility of compensation for resumption of a licence raises some concerns. As outlined above there are often significant capital expenditures involved in association with licences and so this can create problems if the alternative frequency options are not within the spectral range of the existing equipment. Another area of concern is regarding systems such as SCADA networks, where control and monitoring systems are embedded into the operations and these types of systems cannot be ‘off air’ for any period at all. A resumption of a licence could well mean that a complete new network has to be designed and commissioned ahead of the resumption of the old licence, thus involving very significant expense. These factors should at least be recognised within any resumption protocol.

Section 11 – Spectrum authorisations (class licenses).

ARCIA supports this proposal fully.

Section 12 – Interference management.

This is an area that is of concern to ARCIA, The proposed approaches mean that the ACMA can either abrogate the responsibility to provide a spectrum ‘fit for purpose’ and pass responsibility to the licensees to sort out, or the ACMA can respond in their own time and as outlined in the response to Section 10 above. Competitive pressures on licensees will mean that the problem is such that it causes damage to the operations and reputation of the licensee’s business. Out of this proposal we envisage a future where licensees would need to have their own ‘Spectrum lawyer’ to be able to ensure quick resolution through the courts and in such a litigious environment the only winners are the legal fraternity. ARCIA very strongly recommends that the ACMA must be required to maintain a direct involvement in interference management.

ARCIA does support the ability to institute civil proceedings in the case of interference issues or other licence infringements as outlined in other sections following.



Section 13 – Equipment regulation.

ARCIA supports this proposal, with the proviso that there are actual ‘Equipment rules’ documented and in place as part of the process, if overseas equipment standards are to be recognised then any variations such as frequency bands and other technical variations must be documented and not just left as open ended rules. Industry supports the concept of common approaches across all jurisdictions, however, to maintain the concept of the spectrum being ‘fit for purpose’ there must be some form of documented minimal equipment operating parameters, with corresponding expectations regarding interference management. Underlying the premise of commonality of equipment is the recognition that the ITU has three separate zones and each has slightly different band allocations. These must be formally recognised and catered for in order to clarify to potential equipment suppliers that there are documented rules to cover the variants and that not all equipment is suitable for use within Australia.

ARCIA is of the opinion that the present Standards Australia system no longer meets industry needs as the manufacturing of equipment is now done on a more global scale, plus the alignment between Australia and New Zealand also seems to be cutting back in equipment standards areas. With this in mind we would suggest that there is a role for Industry Associations to become involved in supporting the ACMA in the preparation of the ‘Equipment rules’ on an agreed cost recovery basis.

Section 14 – Compliance and enforcement.

In essence ARCIA supports the proposal, with the proviso that we would not wish to see a situation develop where the use of civil penalties encourages the introduction of ‘Spectrum lawyers’ as this would result in more difficult conditions and higher expenses for licensees.

Section 15 – Information provision.

ARCIA supports this proposal, at present it is difficult for industry to access information regarding spectrum usage or associated matters. We believe that there should be meaningful reporting to indicate whether long-held spectrum allocations are actually being utilised and to allow for unused spectrum to be returned for other uses or allocation to other licensees.

Section 16 – User involvement: accreditation, delegation and industry codes.

ARCIA supports this proposal in principle and believes there is an opportunity for recognised Industry Associations to take a role in some areas of spectrum management. The proviso we put forward for consideration is that the ACMA should not expect that these functions be provided on a voluntary basis, essentially giving the ACMA facilities and resources at no cost. This might provide a saving for the ACMA with regard to operating costs, however, any future change would then see the ACMA requiring to take back functions and a workload for which they would not have budget, possibly to the detriment of other works. ARCIA also supports the ‘Code of conduct’ concept and believes that this is a way of helping to assure that the spectrum is maintained as being ‘fit for purpose’.



Section 17 – Broadcasting.

We would submit we are not in a position to comment in any meaningful manner on this section. Our only concern is that the broadcasters continue to put forward that they should get free access to spectrum because of the other restrictions they face as part of the media content regulations. ARCIA suggests that the requirements of the competing Media rules and spectrum licensing be separated clearly and that the broadcasters recognise the need to pay for spectrum access like all other spectrum users and not ask for spectrum access fees to be offset against other access regulations.

Section 18 – Review of decisions.

ARCIA supports this proposal and sees no problem once other issues raised as part of this response are reviewed and incorporated. The review process appears to be reasonable and should address all concerns.

Section 19 – Transitional arrangements.

In principle ARCIA agrees with the transitional arrangements outlined.

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