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Spectrum and Telecommunications Deployment Policy Branch,  
Department of Infrastructure, Transport, Regional Development and Communications,  
GPO Box 594,  
Canberra ACT 2601

Attn: Ms Rachel Blackwood – A/g Assistant Secretary

Reference: 2020 Radiocommunications Reform – consultation paper

The Australian Radio Communications Industry Association (ARCIA) is pleased to have the opportunity to respond to this consultation paper, as the Department is aware we represent approximately 60,000 holders of apparatus licences in the Land Mobile Radio (LMR) spectrum segments. One of the main aims of our Association as outlined in our Aims and Mission Statement is to protect electromagnetic spectrum and ensure that it remains a valued resource protected from interference or poor practices. As part of this aim we have been consistently pressing the ACMA for higher levels of transparency in all spectrum management areas. To this end we have been comfortable with the developments shown within the ACMA Five Year Spectrum Outlook (FYSO) and we concur that it is a valuable tool for the regulator to both report to the Minister through the Department, as well as to the users of the spectrum and the public. Although not a perfect document yet it is well on the way to being a highly valuable management tool.

In addition to our historical links to the LMR spectrum, we are now seeing many of our members and users from within the LMR spectrum areas beginning to move towards mobile data in their operations and so we have a vital interest in spectrum for Private LTE (PLTE) systems. This is going to be a developing market and will lead to the next wave of efficiency and productivity gains for many industry segments, as such there has to be consideration given to the specific needs of spectrum in these markets. We have referred to this need in our response to question 2 of the consultation paper. We are concerned that there has to be a balanced approach regarding equitable access to spectrum as well as providing a level of certainty for licensees who will have invested significant capital into providing services.

During the processes involved in the previous review of the Radiocommunications Act and the many working group sessions, our Association has been a willing participant and presented opinions and suggestions that are not only specific to our areas of interest but in general across many spectrum segments and user sectors. One of the main aims of our Association as outlined in our Aims and Mission Statement is to protect electromagnetic spectrum and ensure that it remains a valued resource protected from interference or poor practices. As part of this aim we have been consistently pressing the ACMA for higher levels of transparency in all spectrum management areas. To this end we have been comfortable with the developments shown within the ACMA Five Year Spectrum Outlook (FYSO) and we concur that it is a valuable tool for the regulator to both report to the Minister through the Department, as well as to the users of the spectrum and the public. Although not a perfect document yet it is well on the way to being a highly valuable management tool.



When we read through the documents associated with the present review of the Act, there are many excellent practices that are shown within the context of the Act, however, some of these do raise concerns for our industry. For instance, in the section where the modernised equipment rules are outlined we welcome the concept and can see benefits in moving away from the rigid standards regime managed by Standards Australia (SA), where products are manufactured locally we can see the need for SA to be involved, but in the modern market where products are sourced from off-shore suppliers the SA regime is no longer viable. The weakness in the proposed system will be maintaining access to the relevant equipment rules, as even with the present system there is little information available from the ACMA web site that indicates to potential users of the spectrum what the actual equipment standards are. How can we expect non-technical importers or users to access information if even technical people cannot navigate the supposed source of the data?

As we move to the compliance and enforcement areas of discussion we have ongoing concerns about this for the longer term, even today it is becoming more difficult to have the ACMA Field Operations staff respond to interference problems in a timely manner in areas outside of the main centres. The new Act would seemingly be trying to improve the potential for ensuring compliance and enforcement, yet without some form of protection of the resources to provide these services the Act will be full of 'hollow promises'. It is our belief that there needs to be some form of link between the funds generated by the enforcement actions of the ACMA Field Operations team and the resources they are provided to continue the work.

One of the biggest concern for our members is the risk that poor management of the spectrum will result in loss of efficiency to the many users of the spectrum, and this will inevitably result in a loss of efficiency for our national economy. The proposals under the revised Act will give the ACMA many powers to make the management and regulation of the spectrum a much simpler and easier process, we do not want to see any watering down of the resources or the will of the ACMA to implement and manage these new facilities. When we look at the increasing of powers regarding accrediting external bodies to assist with the ACMA workload, maybe consideration should be given to extending some of the powers to enable licensed users of the spectrum to take civil action where their use of the spectrum is being interfered with by others.

In summation, we support the proposed changes to the Act and as outlined in our response to question 6, we feel that maybe the role of the Act is changing and will soon encompass most of that covered by the Telecommunications Act at present. This merging of technologies, plus the development of new technologies opens up the risk that unless the Act brings actions as well as words, the electromagnetic spectrum will suffer significant degradation and a valued resource will be compromised. The revisions of the Act are generally positive and we would sincerely hope that they will be embraced by both the regulator and the users in general. From a Government and ACMA perspective we would trust that the past situation of a high degree of emphasis on the provision of spectrum to one group of users, the public carriers, will be tempered by the need to recognise that other demands exist for spectrum and that grouping large blocks of spectrum to cover large geographic areas is not necessarily the only or best possible solution.

Yours sincerely,  
Australian Radio Communications Industry Association (ARCIA) Inc.

Ian Miller, - Executive Officer



## Questions for consideration

The Department seeks industry 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 opinions 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?

### ***ARCIA response -***

Unless there are specific legislative changes that are going to occur, we would believe that the FYSO as a practical and working document will be of more benefit to industry. The developments that have been incorporated into the FYSO documents over recent years have now meant that it gives a more detailed overview of the ACMA plans within specific spectrum segments, and the utilisation of FYSO to report against previous plans gives transparency. Although the ACMA would perhaps not welcome the additional workload, the ability for an update on previous FYSO work-plans being included at the release of the draft version of the next FYSO document would give industry a better chance to comment on progress rather than waiting for the final version of FYSO to see outcomes from the past year.

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?

### ***ARCIA response -***

With reference to the section on 'Allocation limits' where the recommendation is that the ACMA may refer to the ACCC to ensure that spectrum allocations do not exceed levels that could be construed as being monopolistic, we would suggest that this also needs to be considered in other ways as well. Over recent years our Association has been quietly lobbying for recognition of the need for many industries to have access to spectrum for Private LTE (PLTE) systems. As part of this there are a couple of significant factors that must be taken into account –

- ) In many industries where they classify their communications as being 'Business critical' there is a high degree of reticence to place the critical communications delivery into the business plans of a third-party. This is because with many mobile data applications any disruption of the data stream can have significant safety-related and operational effects. For instance, in the mining industry autonomous operation is becoming one of the new drivers of efficiency and profitability, but a short break in the data stream caused by a third-party failure will potentially mean the whole operation has to be stopped and re-started, a situation that can take several hours and with operating costs very conservatively rated at being in excess of \$50,000 per hour it becomes an expensive situation. The need for total control of the mobile data networks and facilities is recognised as being an integral part of this modern technology in business critical environments.



J With industries such as these, the need for spectrum is not recognised as being the main driver for the installation of the technology, the users will develop a business case based on efficiency gains and then will look at the costs involved, both capital and operational. The need for spectrum is then considered once the business case has been evaluated and the cost benefit analyses have been done, this then means that forecasting spectrum needs and bidding for suitable spectrum in auction processes is counter-intuitive to the development of the actual user's needs. It is also not suitable when considered against the standard format of the ACMA developing the marketing plan for spectrum based on large blocks of spectrum covering large geographic areas.

When these factors are taken into account it means that the competitive allocation discussions must also include the comparisons of overall spectrum held by licensees across the full range of spectrum, as well as the potential for other users to require spectrum in localised areas and under apparatus licence conditions. In these cases the public benefit has to consider those benefits that will accrue to the Australian economy through indirect means rather than just for the actual income from the spectrum auction process.

We note that there are several references to the decisions of the ACMA being 'reviewable' as part of the regulations within the Act, although this is commendable we have concerns about exactly how they would be reviewed and whether small industries or holders of small spectrum amounts through apparatus licences would have a review process that is commensurate with the concerns. If the review process is designed in such a way that it becomes impossible for smaller spectrum users to fight against an unfair decision then the review process is of little use. As the body representing over 60,000 holders of apparatus licences, we would suggest that there needs to be consideration given to the actual processes as well as having the option included in the Act.

There is also mention in the notes about the default period for decisions on non-renewal of licences, we note that there are different periods identified between spectrum licences and apparatus licences, and this is not justified in any way. Although the common misconception is along the lines of holders of spectrum licences having much higher capital investment and therefore needing longer periods for discussion and negotiation of non-renewal processes. We would suggest that in many cases holders of apparatus licences have a pro-rata investment which can be much higher than those with spectrum licences, for example, a client with a Signal Control and Data Acquisition (SCADA) system can have extensive investment in equipment that has a critical performance factor and to be required to cater for a non-renewal of an apparatus licence would pose significant issues to be managed, these could be much longer than a public carrier being required to de-activate a part of their network which would most likely already be operating across several spectrum segments.

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?

**ARCIA response -**

We believe that the exemption process is most likely the best format for this purpose, and if there are then to be changes made to facilitate devices being permitted to be used in the future, the RALI process in combination with equipment rules being developed will ensure orderly development of potential markets.



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?

***ARCIA response –***

We believe that the proposals will be an excellent addition to the present powers of the ACMA. Although at this stage we cannot suggest how it may be accomplished, we feel that if there is some way that licensees were able to undertake civil actions under the Act to follow up on interference issues that have caused damage to the licensees business or operations might be of benefit. If there were specific clauses within the Act that could be referred to by a licensee as part of a civil action that held a degree of definition within the legislation, then it might facilitate potential action without the ACMA being directly involved. In the future with the possible expansion of the Accreditation roles this might be a convenient facility?

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?

***ARCIA response –***

One significant issue that has already arisen is when the ACMA web site is changed to reflect a 'Whole of Government' appearance and as such information becomes difficult to locate. It will be important that as the Act transitions from being based on published standards, as managed by Standards Australia, to the new era of 'Equipment rules' defined and managed by the ACMA, then there will have to be better facilities for users of all levels to be able to quickly and easily identify where the rules are located and what they actually mean in general language. At present much of the information regarding equipment labelling and performance standards has been lost in the review of the ACMA web site, and it would be virtually impossible for any well-meaning importer or communications purchaser to find the relevant regulations. This is something that must be addressed within the Act to ensure that the relevant information is updated and readily available to all spectrum users, or potential users. Without this the compliance with regulations and protection against interference will be seriously deficient.

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?

***ARCIA response –***

With the changes in modern technology we would suggest that there should be consideration given to the future merging of the Telecommunications Act and the Radiocommunications Act. Even now the telecommunications industry are becoming more aligned with the radio communications industry as the bulk of mobile phone calls are really just voice converted to data, and mobile data is far more common than voice calls amongst the younger generation. It might be worth considering changing the name from Radiocommunications to become the Wireless Communications Act as a pre-cursor to the future trend?