

29 April 2016

Department of Communications
GPO Box 2154
Canberra ACT 2601

By email: spectrumreform@communications.gov.au

Dear Sir / Madam

**Submission in response to Legislative Proposals Consultation Paper:
Radiocommunications Bill 2016**

Commercial Radio Australia Limited (**CRA**) is the peak industry body representing commercial radio broadcasting stations in Australia.

CRA welcomes the opportunity to comment on the *Legislative Proposals Consultation Paper: Radiocommunications Bill 2016* issued in March 2016 (**Consultation Paper**). Our members have a keen interest in the matters raised in the Consultation Paper and this submission is made on matters where there is broad consensus amongst our members. Our members may also make separate submissions on discrete issues.

The Consultation Paper proposes a series of far and wide reaching reforms to the licensing and regulatory construct that will apply to commercial radio broadcasters (and other users of spectrum) under the Radiocommunications Act.

While reform to broadcast and spectrum regulation is always challenging and complex, CRA considers that further industry consultation is needed on a range proposed changes. CRA is particularly concerned about the Department's proposal to:

- replace apparatus and spectrum licences with a single generic licence category that applies across all sectors; and
- rationalise the regulatory arrangements that govern the use of the broadcasting services, including the replacement of Licence Area Plans (**LAPs**) and Digital Radio Channel Plans (**DRCPs**) with terms within individual licences.

CRA will not be able to support amending the Radiocommunications Act until it can obtain comfort that these changes (amongst others) will not undermine regulatory certainty for commercial radio broadcasters.

In light of these concerns, CRA submits that the preparation of new draft legislation is premature and more detailed consultation is needed to achieve greater alignment on the path forward. CRA wishes to work closely with the Department on this forward path.

Substantive comments

The Consultation Paper is a highly conceptual document. It provides high level guidance on proposed changes and the objectives behind those changes but lacks sufficient detail to allow the industry to make an informed assessment of the Department's proposals.

While there are a number of proposals within the Consultation Paper that appear to be sensible, such as a rationalisation of the objectives of the Radiocommunications Act, CRA has identified a number of critical issues with the Department's proposals which we consider to be problematic and which should be subject to further consultation with the industry.

In particular, CRA is particularly concerned that the Department's preference for flexibility goes too far in many areas, at the expense of commercial and regulatory certainty.

Our initial views on key elements of the Consultation Paper are summarised below:

1. Replacement of apparatus licences with single licence category is unnecessary and potentially problematic

- The radio sector is constantly evolving to reflect changing listener habits and technological developments. While some increased flexibility may be desirable in certain areas, the current licensing framework in the Broadcasting Services Act and the Radiocommunications Act has allowed commercial radio broadcasters to innovate and adapt their business models.
- The move to a single licence category that effectively integrates broadcasting spectrum into a general licensing framework, which also includes commercial television and mobile services, appears problematic given the range of business models that would need to be accommodated within a generic framework.
- CRA is extremely concerned that this approach could heavily disadvantage commercial radio broadcasters relative to other spectrum users and also potentially undermine advertising based business models and innovation based on certainty of spectrum access.
- Any model must take account of the unique public policy arguments that apply to the use of spectrum by broadcasters. Radio broadcasting is driven by public interest considerations, which focus on content and are reflected in the local content, material of local significance and Australian music obligations, all of which are contained in the Broadcasting Services Act.
- The commercial radio sector plays a significant economic, cultural and democratic role in Australia and there is a strong public interest in preserving and protecting such broadcasting services. It is vital that commercial radio broadcasters have certainty of term with automatic renewal of licences. The industry also requires consistent and predictable technical management and planning. The Consultation Paper provides no guidance as to how this might be achieved under a single licence category.

2. Recognising the importance of BSB spectrum

- The commercial radio sector cannot support any proposal that erodes access to the BSB spectrum. There are strong public policy reasons underlying the preservation of a strong broadcasting sector, of which continued access to BSB spectrum is a fundamental part.
- While CRA recognises that the Department proposes to integrate broadcasting spectrum into the general spectrum management framework *“in a manner that provides certainty of access to spectrum to deliver broadcasting services under the new framework”* and that *“Government policy would require the ACMA to set aside spectrum...primarily for broadcasting use”*, CRA is concerned at the watering down of the current legislative protections that exist in this area.
- The need for continued and guaranteed access to BSB spectrum is absolutely critical for the commercial radio sector. Of particular concern is the proposal to remove the requirement on ACMA to issue a radiocommunications licence to commercial broadcasters if their broadcasting licence is in force. Similarly, CRA has significant concerns about proposed legislative changes that would potentially allow other entities that do not currently have rights to BSB spectrum to use that spectrum to provide services.
- The International Telecommunication Union (ITU) recently implicitly affirmed the importance of terrestrial broadcasting by ensuring that spectrum necessary for digital television and radio would remain exclusively allocated to broadcast services in the ITU Region 1 for at least the next decade.¹ The ITU’s decision recognises the unique role that broadcasters play in maintaining social cohesion. It also recognises the policy reasons underlying broadcaster protection, particularly the certainty needed maintain investment and to innovate, for example in transitioning broadcast to digital technology.

3. Licence grant should be for the long term

- The commercial radio sector requires long term licences in order to attract the investment in infrastructure, content and advertising that it needs in order to survive. Its investment, innovation and business decisions have all been made on the expectation of continued right of access to the underlying BSB spectrum.
- The Consultation Paper proposes licence terms of up to 20 years but does not specify the actual licence term that would be available to commercial radio broadcasters under the new framework.

¹ World Radiocommunication Conference 2015. ITU Region 1 comprises Europe, Africa, Middle East, Armenia, Azerbaijan, Russian Federation, Georgia, Kazakhstan, Mongolia, Uzbekistan, Kyrgyzstan, Tajikistan, Turkmenistan, Turkey and Ukraine.

- In practice, this may mean that licences could be issued for significantly lesser periods than is currently the case (i.e. 5 years typically or 15 years for digital radio multiplex licences), or without the certainty that is currently available as a matter of practice in respect of renewals.
- Similarly, there is a risk that existing BSB spectrum could be more readily repurposed under the proposed re-structure of the Radiocommunications Act. If the Department wishes to move ahead with a single spectrum licencing category and to move away from the current approach to BSB spectrum, then CRA's preference is establish certainty upfront by grandfathering existing arrangements in relation to commercial radio broadcasters' rights of access to spectrum. This would involve existing apparatus licences being carried over into the new legislative environment and being available for the exclusive benefit of commercial radio broadcasters for an extended period (e.g. 20 years).

4. Renewal mechanism

- Commercial radio licensees must also have certainty that their licences will be renewed. This can be achieved either through an automatic renewal process, or through a strong presumption of renewal. CRA strongly supports the use of clear legislative parameters that would govern the renewal of rights to use spectrum.
- CRA is concerned to see that the Consultation Paper proposes replacing the current legislative provisions that govern the renewal of apparatus licences in favour of including a statement within each licence that outlines the licensee's renewal rights.
- The Department's proposed approach appears to heavily favour flexibility at the expense of certainty in relation to on-going rights of access to spectrum. Such proposals raise fundamental issues for our members, particularly in light of the fact that significant investment decisions in relation to commercial broadcasting services that have been made on the expectation of continued right of access to the underlying BSB spectrum. It is difficult to see how the industry could continue in its current form if rights of renewal were eroded.
- It is also worth noting that commercial radio infrastructure is critical to the safety of Australians in times of emergency or natural disaster. These services must remain accessible and resilient in order to protect Australians and should be allowed to operate with a strong presumption of renewal.

5. Rights of resumption

- Commercial radio broadcasters have acquired spectrum and made significant investment decisions on the assumption that commercial radio broadcasting licences and associated apparatus licences will effectively operate in perpetuity.

- The Department's proposal appears to extend the framework for the resumption of spectrum licences to apply in respect to any licence. It also envisages watering down the current approach to compensation for resumption. CRA is concerned that this proposal will operate to further undermine the commercial certainty for commercial radio broadcasters relative to the status quo.

6. Transitional arrangements

- The Consultation Paper does not provide any meaningful explanation of how the transitional arrangements would work under the new draft legislation. This is a source of significant concern for our members.
- As noted above, our preference would be to grandfather existing arrangements in relation to rights of access to spectrum if the proposed re-structure of the Radiocommunications Act were to move forward and for this to provide commercial radio broadcasters with long term certainty.

7. No change to fee structure for apparatus licence

- CRA does not consider that any changes to the current approach to fees for apparatus licences should be made for commercial radio broadcasters, even if there is a move towards a single licence category for all spectrum users.

8. Other issues

- The commercial radio industry supports the proposal that the ACMA issues an annual spectrum work plan, provided that there is an opportunity for public comment prior to finalisation of the plan.
- The industry would resist the imposition of too much discretionary power, either at Ministerial or regulator level, as this may erode regulatory certainty. Certainty is vital for the radio broadcast industry, given that its investment and planning has always been made on the basis of perpetual access to spectrum.
- Subject to seeing further detail, the industry is likely to support efforts to streamline the dispute resolution process, provided that this results in an affordable and informal means of resolving disputes, particularly regarding interference.

9. Streamlining of Radiocommunications Act

- While CRA has concerns regarding many of the current proposals in the Consultation Paper, it broadly supports the Department's efforts to streamline the Radiocommunications Act and to facilitate the efficient use of spectrum.

- CRA submits that this may be best achieved by engendering a practical and collaborative approach between industry and the regulator, particularly on technical matters, where the industry can assist the regulator by undertaking much of the technical work.
- The commercial radio industry and the ACMA have worked together effectively in the past by adopting such an approach. For example, when planning the metropolitan DAB+ rollout, the ACMA initially allocated very low power for transmission. The commercial radio industry did its own research, using mechanisms such as terrain limited coverage planning and beam tilt to manage overspill. The ACMA accepted this research and hence quickly found a workable solution to the problem, by permitting transmission at a higher power. In this way, industry and the regulator worked efficiently together to achieve cost effective and practical solutions which delivered robust digital radio coverage in the 5 mainland capitals.
- Another example of cooperative planning between regulator and industry is the work of the technical subcommittee of the Digital Radio Planning Committee. The Committee is chaired by CRA and includes representatives from industry, ACMA and the Department. The Committee oversees the complex task of agreeing the technical planning for digital radio roll out to 100 regional licence areas within a finite allocation of 14MHz of VHF Band III spectrum.
- Unfortunately, there are other instances where strict adherence to process threatens to obstruct efficiency:
 - one of CRA's regional networks has 3 translator requests before the ACMA in Toowoomba, Newcastle and Coffs Harbour. The applications were made 5 years ago;
 - one of CRA's members made an application approximately 3 years ago for an FM translator in regional Victoria. The application has still not been granted; and
 - the AM to FM conversion process has been ongoing for over a year with some confusion as to whether applications submitted were actually submitted. CRA submits that this process may have been undertaken more efficiently had the industry been permitted to undertake the work and take it to the ACMA for approval.
- The industry encourages the Department to provide for practical collaboration, for example by permitting industry to come up with technical solutions for the ACMA's approval, wherever possible when streamlining the Radiocommunications Act.

Further consultation is needed

In light of the substantive issues raised above, we consider that the development of an exposure draft is likely to be premature at this stage.

There is very little detail in the Discussion Paper, particularly regarding the way in which amendments to the Radiocommunications Act will be reconciled with the broadcasting policy and spectrum licence provisions in the Broadcasting Services Act.

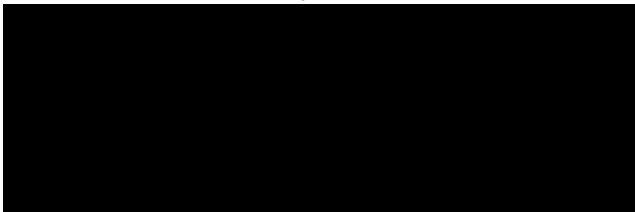
CRA submits that more detailed consultation in relation to the Department's proposals is needed as a preliminary step to ensure that there is a greater level of alignment between the Government and the industry on these critical issues.

Further, as the Consultation Paper is a highly conceptual document, it follows that a more detailed consultation is likely to raise a range of additional issues that have not been identified in the Consultation Paper and which are likely to be highly relevant to the industry.

In light of the above, we consider that there would be merit in the Department producing a more detailed consultation paper that takes account of this round of industry feedback and which provides more concrete proposals on how these changes to the Radiocommunications Act will be effected.

CRA looks forward to working with the Department on this important legislative area.

Yours sincerely



Joan Warner
Chief Executive Officer