



Deputy Secretary

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Contact: Charles Hausknecht [REDACTED]

Mr Ian Robinson
Deputy Secretary – Infrastructure and Consumer
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Dear Mr Robinson

Spectrum Review - Legislative Proposals Consultation Paper: Radiocommunications Bill 2016

Thank you for the opportunity to provide comments on the Legislative Proposals Consultation paper concerning the Radiocommunications Bill 2016 (the Consultation Paper) released by the Department of Communications and the Arts (DoCA). I am pleased to provide the Department of Infrastructure and Regional Development's (the Department) response, which has been developed in consultation with our portfolio agencies. I apologise for the delay in responding.

As an overarching comment we note that the Consultation Paper, as was the case with previous consultation papers concerning spectrum reform, is pitched at a conceptual level. It is difficult to offer specific comments in the absence of greater detail on the proposed legislative approach. The Department will be in a better position to offer more targeted comments on specific initiatives as these mature and are canvassed by DoCA with stakeholders, for example when a proposed exposure draft of the Bill is available.

The key strategic policy issue for the Department remains the need for Government to ensure the continued security and continuity of access, and protection of spectrum for all transport modes (road, rail, maritime and aviation) to ensure that significant "public good" and safety-of-life functionality in the delivery of transport services is not compromised or at risk, including where Australia has international obligations to protect specific spectrum bands to support globally compatible systems.

We consider it is critical to apply a precautionary approach to the concept of spectrum sharing of existing allocations within the transport sector. A strong evidentiary basis, including robust safety risk assessments, would be critical for any serious future consideration of this approach, undertaken on a case-by-case basis. As a general position we do not support allowing access by other users to existing spectrum allocations, particularly where specific frequency bands are a critical enabler to safety outcomes, unless international and authoritative studies clearly indicate that sharing is feasible.

As raised in our previous submissions, the Consultation Paper provides no substantive recognition of the importance of Government spectrum holdings supporting "public good" outcomes, and the operation of national infrastructure frameworks and platforms. This is surprising as the current spectrum reform process provides an ideal opportunity to establish a higher degree of certainty by seeking to enshrine clearly in the new legislative framework the need for some spectrum to be held by Government in order to provide national systems delivering "public good" and safety-of-life outcomes.

The Department would expect to see the review, prior to finalisation of the draft legislation package, indicate how the “public good” role of the spectrum for certain users might be assessed, considered, recognised and protected in the future policy approach and management framework.

In this regard we understand that the DoCA is undertaking further work as a basis for formulating reform options regarding Government spectrum holdings and spectrum pricing/valuation, for stakeholder consultations later in 2016.

We look forward to the opportunity to consider more detail on these reform proposals, and to assisting DoCA to progress work in these policy areas, which we see as critical to providing greater certainty for all stakeholders including Government agencies and industry in their future planning, and which is increasingly tied to access to spectrum.

We have also provided specific comments against each of the individual sections of the Consultation paper, where relevant, at **Attachment A**.

The contact officer for the Department is Charles Hausknecht, Director, Air Traffic Infrastructure, Air Traffic Policy [REDACTED]

Yours sincerely

[REDACTED]
/ Shane Carmody

10 May 2016

Enc

Comments on individual sections of Legislative Proposals Consultation Paper concerning the Radiocommunications Bill 2016

1. Objects and span

The Department supports the proposed approach conditional on adequate recognition of the critical role of existing government spectrum holdings supporting national platforms and delivery models in the various transport modes and particularly safety-of-life functionality within the proposed language of the Objects, or supporting explanatory material.

In this respect ideally there would be reference to national transport systems generally, or sectorally (e.g. maritime, aviation), if not specifically (e.g. Intelligent Transport Systems - ITS) in the objects of the new legislation or in supporting explanatory statements consistent with promoting long-term public interest in relation to increased public safety and to maximise the use and efficiency of existing transport infrastructure.

This recognition is particularly important where national allocations reflect obligations in relation to Australia being a signatory to international treaties such as the Convention on International Civil Aviation and International Maritime Organization (IMO) Conventions.

It is also critical where there are broader global compatibility advantages for Australia, e.g. in the car industry where smart cars would be able to operate in the same ITS environment and on the same wavelengths without modification to operate in Australia. In this respect, the former Deputy Prime Minister requested the former Communications Minister in late 2015 to have ITS included in the Objectives to guide the Australian Delegation at the World Radiocommunication Conference 2015.

2. Application

Noted. The Department does not have specific comments in relation to this section.

3. Ministerial direction powers, policy guidance and accountability

The Department supports the articulation of clear accountability arrangements, and clarification of roles and responsibilities of the Minister and the Australian Communications and Media Authority (ACMA) in the proposed new legislation.

We note the proposed general approach in the draft Bill is to devolve more day-to-day operational decision making and power to ACMA - either powers currently exercised by the Minister and/or policy functions performed by DoCA, and to focus the role of the Minister on strategic priority and policy setting.

The Department supports the proposed approach, provided that sufficient administrative measures and requirements are included in the new legislative framework to support administration of these functions by ACMA, and robust provision is made for reporting to Government.

Ministerial policy statements being made as legislative instruments, which still provide for a level of agility and responsiveness for agencies to respond to short-term issues, also establish a legal requirement for compliance. This approach would also provide transparency (parliamentary scrutiny and public accessibility via the Federal Register of Legislation) and a good framework for planning and progress reporting on compliance by the agency to Government as part of a broader reporting framework.

The Department supports retention of a mechanism for Ministerial intervention in the event of significant issues under certain circumstances, e.g. where a decision by ACMA might impose significant costs on a Commonwealth agency in terms of compliance.

4. *Annual spectrum work plan*

The Department supports the development and publication of an annual work plan and sees value in extending this to a strategic workplan that identifies near, medium and long-term priorities.

5. *Radiofrequency planning*

The Department supports the approach outlined, conditional on adequate recognition of existing government spectrum holdings supporting national platforms and delivery models in the different transport modes and particularly safety-of-life functionality, within the proposed language of the likely resultant suite of planning documents to be produced by ACMA.

6. *Licensing of spectrum*

The Department is concerned that exclusion of the current class licences from the proposed single licence type has the potential to reduce the protection for class licensed spectrum from that able to be applied under the existing legislative scheme and seeks assurance that, as a minimum, a commensurate level of protection will remain in place under the new legislative arrangements.

7. *Licence issue*

The Department supports an approach requiring ACMA to develop administrative documents setting out the issue process well in advance of any change of legislation, and consequent administrative arrangements and processes, in the interests of transparency, stakeholder understanding and to provide more certainty to industry and other users about licensing under the proposed new arrangements.

8. *Licensing – limits*

In moving from a legal direction by the Minister under legislation to a determination by ACMA, the Department's preference would be for the new approach to require ACMA for consistency and transparency to also make a legislative instrument (non-disallowable).

With references to consideration and handling of competition issues it is unclear what reference to "... consultation by ACMA and ACCC where appropriate and reasonably practicable" means in practice, and at face value may be a subjective judgement in the absence of any criteria supporting this decision making on whether to consult the ACCC or not.

A formal "Statement of Reasons" would be a useful document in support of individual spectrum decisions and could be included as part of an Explanatory Statement to again provide a level of transparency, consistency and certainty for stakeholders, particularly in relation to process.

9. *Licensing – renewal rights*

Noted – the Department does not have specific comments in relation to what is proposed in this section of the Consultation Paper but would emphasise that there is currently a well-established presumption of renewal for apparatus licences. This consequently puts great importance on the contents of the statement on licensee renewal rights and highlights the need for any review of whether a licence is likely to be renewed to be undertaken well in advance of a decision to renew or not.

10. *Licensing – resumption*

Noted – the Department does not have specific comments in relation to what is proposed in this section of the Consultation Paper, on the assumption that legislative changes would not provide for the compulsory acquisition/resumption in respect of any licence with regard to Government held spectrum which enabled critical national platforms and infrastructure and safety-of-life functionality.

11. *Spectrum authorisations (class licences)*

Noted – the Department does not have specific comments in relation to what is proposed in this section of the Consultation Paper other than to reiterating our comment under Section 6 above.

The Department seeks clarification on the proposed legislative nature of spectrum authorisations, specifically whether these would be “disallowable” legislative instruments under the proposed new arrangements.

12. *Interference management*

Noting that the existing arrangements appear to work reasonably well, the Department considers a core function of ACMA is to enforce regulations and interference resolution would appear a core regulatory role in this regard (i.e. to protect legitimate spectrum licensees from harmful interference).

The Department would not object to a process involving an initial step requiring parties to seek to resolve interference issues between themselves in the first instance. However, the Department considers that if this option is exhausted without satisfactory resolution there must be provision for escalation to ACMA as the regulator to resolve the issue.

13. *Equipment regulation*

Noted – the Department does not have specific comments in relation to what is proposed in this section.

14. *Compliance and enforcement*

Noted – the Department does not have specific comments in relation to what is proposed in this section.

15. *Information provision*

The Department supports the provision/publication of data by ACMA to provide transparency and to support informed decision making by stakeholders, subject to ACMA being able to satisfy relevant disclosure considerations and sensitivities regarding the release of such information.

16. *User involvement: accreditation, delegation, industry codes*

The Department questions whether there is a strong case for supporting industry codes which are not legally enforceable by the regulator and do not have regulatory authority, particularly if the industry sector fails to act in specific instances in a timely manner or is generally ineffectual. There is a risk in such cases that the Code of Conduct provides little functionality beyond that provided by Guidelines.

Proposals for ACMA to devolve or delegate band/spectrum management to facilitate private sector spectrum management need to be tempered by the understanding that agencies will not necessarily have an existing capacity to execute that role and will need to build the required capability.

There is a risk that this approach may simply result in cost shifting to other agencies from ACMA, without providing a more effective, efficient or appropriate administrative model.

The Department suggests this proposal and its possible application would need to be examined on a case-by-case basis.

17. *Broadcasting*

Noted – the Department does not have specific comments in relation to what is proposed in this section.

18. *Review of decisions*

Noted – the Department does not have specific comments in relation to what is proposed in this section.

19. *Transitional arrangements*

Transitional arrangements will be a critical component in migrating stakeholders to a new spectrum framework and legislative regime, particularly where there are potential impacts on operational arrangements. Consequently, we see it as important in being able to provide more detail and clearly articulate the main elements of the transition and mechanisms for dealing with specific operational policy issues. This will be particularly important in cases where there may be significant potential or unforeseen cost impacts for portfolio agencies, industries and other stakeholders.

For example, it is not clearly explained in the paper the status of spectrum currently under embargo and how that will be handled under the new arrangements. The 5.9GHz band is currently subject to embargo 48 and until this band is allocated and licensed by ACMA it is not available for ITS applications. For the Department the question remains if allocation and licensing were delayed until after passage of the proposed Bill, would the embargo still protect the 5.9GHz band for future ITS use?