Submission to Department of Communications and the Arts

Legislative Proposals Consultation Paper – Radiocommunications Bill 2016

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Executive Summary

The Associations strongly support the Government's commitment to fundamental reform of the regulatory framework for the allocation and management of spectrum, on the basis that it will deliver:

- more timely and efficient allocation processes;
- reduced costs for industry, the ACMA and the Australian Government; and
- more flexibility to enable the deployment and adoption of new technologies.

The short-comings of the existing licensing framework are well understood. The timely allocation and management of spectrum has been hindered by:

- excessive prescriptiveness and rigidity in licence design and band planning;
- uncertainty and inconsistency in licence pricing; and
- blurred boundaries of responsibility between the Australian Government and the ACMA in the allocation of spectrum.

The Associations consider reform of the licensing regime as fundamental to reform of the spectrum management framework.

We suggest that the object of the Bill should be:

> *To promote the overall public interest derived from the radiofrequency spectrum resource by facilitating the economically efficient allocation and sustainable use of spectrum.*

The Associations welcome the proposal to clearly delineate the roles and responsibilities of the Minister and the ACMA, and support the intention for the Minister's role to be limited to setting strategic policy priorities to guide the delivery of the ACMA's spectrum management regulatory functions.

With regard to the licensing framework, we suggest that the framework should comprise the following key elements:

- **Simplicity.** Only a limited number of licence issue schemes.
- **Technology neutrality.** Subject to our international treaty obligations, the framework should avoid using purpose-based licence-issue schemes.
- **Flexibility.** Licences should support multi-purpose use through flexible, "common denominator" conditions that facilitate re-farming or re-allocation without the need for regulatory intervention.
- **Future-focussed.** To accommodate technological progress, licence holders should be permitted to change licence conditions by agreement with the ACMA.[1]

[1] The ACMA should only agree to the proposed changes if the change satisfies a "no harms" criteria (i.e., neighbouring users are not adversely impacted by the change). Any changes to an individual's licence should be reflected in amendments to the licence issue scheme to promote equivalence and offered to other licence holders to ensure non-discrimination. (Individual licences should not be amended if the proposed changes undermine the transferability of the licence).

- **Certainty.** The Bill should include a legislative presumption of re-issue for licences to promote investment and maintain the transferability of licences particularly toward the end of the licence term. The presumption of re-issue should only be set aside if the ACMA undertakes a consultation process to determine, that it is not in the public interest for the licence to be re-issued. In the case of 20 year licences, we believe the consultation process should be commenced no later than five years before the licence is due to expire.
- **Universality.** The ACMA should favour the allocation of spectrum even in circumstances where the immediate demand for its use is not clear. Making spectrum available before the case for its use is clear is consistent with the Government's desire to foster and facilitate innovation.

The Associations submit that the effective management of interference issues to protect the rights granted to spectrum licensees is critical to the integrity of the spectrum management framework. The ACMA must be properly resourced and empowered to enforce spectrum property rights.

The ACMA's resources for interference management need to reflect the expectation of access to clear unencumbered spectrum as set out in the terms of a spectrum licence, and the significant investment mobile network operators (and other licensees) have made and will continue to make in acquiring spectrum assets.

We note that there remain gaps between the current legislative framework and the proposals put forward in this Paper and previous consultations. We understand there will be further consultation with respect to the approach to transition arrangements, pricing of spectrum and government use of spectrum, however even allowing for these consultations, gaps remain. We have noted some of these gaps in **Appendix C** and look forward to further engagement to clarify and complete the proposed legislative reforms that will be contained in the Bill.

The Associations also note that there have been significant gaps in time between consultation processes in which there has been little engagement with stakeholders. We would appreciate the opportunity for greater engagement with the Department as it develops its thinking prior to the next phase of consultation.

Further, as the pricing component of the reform package, Government spectrum holdings, and transitional arrangements are still to be considered, industry is unable to provide substantive comments. The Associations believe that these are critical components of the new spectrum management framework that can be progressed separately, but also need to be brought together and considered as a whole with the core legislative reforms.

Finally, the Associations stress that fundamental reform of spectrum management must remain a priority for Government, and that limiting reform to incremental improvements to the existing legislative framework should be avoided. Also, lessons learnt from recent replanning and licence re-issue processes should be front-and-centre of the reform process to ensure the spectrum management framework evolves as a driver and not an inhibitor of innovation.

Background

The Australian Mobile Telecommunications Association (AMTA) is the peak industry body representing Australia's mobile telecommunications industry. Its mission is to promote an environmentally, socially and economically responsible, successful and sustainable mobile telecommunications industry in Australia, with members including the mobile Carriage Service Providers (CSPs), handset manufacturers, network equipment suppliers, retail outlets and other suppliers to the industry. For more details about AMTA, see www.amta.org.au.

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.

AMTA and Communications Alliance (the Associations) welcome the opportunity to make comments on the Department of Communications and the Art's (the Department) *Legislative Proposals Consultation Paper – Radiocommunications Bill 2016* (the Paper).

Introduction

The Associations understand that the Paper outlines the proposed features of a new Radiocommunications Bill (the Bill) which will comprise the future legislative framework for spectrum management.

The Associations are generally supportive of the proposals presented in the Paper, but suggest that more clarity and/or detail would be useful prior to progressing to an exposure draft stage with regard to some of the proposals. For example, consideration should be given to how each proposal satisfies the key reform principles of transparency, efficiency, flexibility, certainty and simplicity.

The Associations note that while some progress has been made in developing the principles to guide the development of the Bill there is some duplication of issues that industry has already commented on in responses to the November 2014 *Spectrum Review Potential Reform Directions Consultation Paper* (the Potential Reform Directions Paper) and March 2015 *Spectrum Review* Final Report (Final Report). (**Appendix A** outlines the consultation process and industry submissions to date).

Further, we note that while the Department has now developed several iterations of the reform proposals, there has been no visibility of how stakeholders' responses have been taken into account in refining or adjusting proposals. The Associations suggest that it would be useful for all stakeholders to understand how the Department's thinking about reform proposals has evolved in response to stakeholder consultation.

The Associations also note that there remain gaps between the current legislative framework and the proposals put forward in this Paper and previous consultations. Most notably, there is a significant lack of detail on the single licensing framework in the Paper. We understand there will be further consultation with respect to the approach to transition arrangements, the pricing of spectrum and government use of spectrum, however even allowing for these consultations, gaps remain. We have noted some of these gaps in **Appendix C** and look forward to further engagement to clarify and fill out the remaining detail with regard to the proposed legislative reforms that will be contained in the Bill.

At the Australian Communications and Media Authority's (ACMA) Radcomms Conference held in March 2016, AMTA stressed the importance of a thorough reform process with close engagement with industry. The Associations note that there have been significant gaps in time between consultation processes and that there remain large gaps in the detail provided for industry comment that will underpin the development of an exposure draft of the Bill. Most notably, the lack of detail on the single licensing framework leads to the industry only being able to speculate on, the impacts of, for example, spectrum sharing and the newly-named 'spectrum authorisations'.

Further, as the pricing component of the reform package, Government spectrum holdings and transitional arrangements are still to be considered, industry is unable to provide substantive comments. The Associations believe that these are critical components of the new spectrum management framework that, while they can be progressed separately, they also need to be brought together and considered as part of a whole package which includes the core legislative reforms.

Finally, the Associations stress that fundamental reform of spectrum management must remain a priority for Government, and that limiting reform to incremental improvements to the existing legislative framework should be avoided. Also, lessons learnt from recent replanning and licence re-issue processes should be front-and-centre of the reform process to ensure the spectrum management framework evolves as a driver not inhibitor of innovation.

1. Objects and span

1.1 Objects

1.1.1 The need for a clear and useful Object in the Bill

The Associations support the Bill retaining objects that are clear and useful in providing guidance to the administration and application of the legislation.

These objects should reflect the need to promote the public interest derived from spectrum use.

The existing object of the *Radiocommunications Act 1992* (the Radcomms Act) is to 'provide for management of the radiofrequency spectrum' in order to achieve eight separate aims, some of which are overlapping. The Associations agree that the application of the current objects can lead to conflict and a lack of specificity. Accordingly the Associations agree in-principle that the object of the proposed Bill should be streamlined to provide a single clear objective. Alternatively, if there are several objects (or subordinate objects), they should be clearly prioritised in the Bill.

1.1.2 Industry concerns about the Object proposed in the Paper

The Associations would like to understand the rationale and justification for changing the language of the 'overall public benefit' of the existing object to 'the long term public interest' as a proposed object.

Also, it is not clear how the term 'innovative' as part of an object of the Bill could be used to objectively assess future spectrum use.

The terminology 'public and community services' is similarly vague. The use of the same terminology in section 3(b) of the object of the existing the Radcomms Act provides the context that 'public and community services' includes agencies involved in defence, national security, law enforcement and emergency services. The Associations are concerned that reference to 'public and community services' on its own is so broad and all-encompassing, that the object of the Bill could be used inappropriately to allocate spectrum for services not intended to be covered by this special category of use in the first place. Including 'public and community services' as part of the single object of the Bill, would appear to give it greater weight than the other aims. The Associations believe that 'the provision of spectrum for public or community services' is a subordinate point to what the Associations believe should be the overriding objective of the proposed Bill (as set out in more detail in 1.1.3 below):

> *To promote the overall public interest derived from the radiofrequency spectrum resource by facilitating the economically efficient allocation and sustainable use of spectrum.*

With regard to consideration of spectrum use for public or community services, the Bill or Explanatory Memorandum could state:

> *'by having regard for the net social benefits arising from the provision of spectrum for public or community services.'*

Finally, the Associations believe that the object should 'facilitate an economically efficient allocation and sustainable use' rather than 'ensuring allocation and use'. This would avoid the need for the regulator to exercise judgements on the specifics of how spectrum should be used. The Associations

submit that it would be highly undesirable for the regulator to make such a judgement. More specifically, as players in a competitive industry, mobile network operators have a strong incentive to employ the most effective combination of technology, network topology and spectrum utilisation possible to maximise the capacity that can be delivered to their respective customers. We believe that mobile network operators are therefore best-placed to make a decision on how and when to use their spectrum holdings most effectively to deliver capacity to its customers.

For example, in May 2011, the ACMA first proposed review of licensing arrangements for the 900 MHz 'GSM' band (890-915 MHz / 935-960 MHz) in its consultation paper *The [803-960] MHz band—Exploring new opportunities*. The proposal was driven by the fact that the original apparatus licences issued in the early 1990s—each 2 x 8.2 MHz or 2 x 8.4 MHz paired—were not optimal for the next generation of cellular technology (then LTE) as specified by 3GPP. In its decision paper the ACMA's long-term strategy for the 803-960 MHz band in November 2015, the ACMA again set out its intention to reorganise the 900 MHz GSM band into 5 MHz lots (noting that the ACMA is yet to confirm it position on future allocation arrangements for the 900 MHz band.). While the ACMA's initiative to discuss how to facilitate more efficient use of the spectrum holdings of licensees is welcome, the intervention is also inconsistent with the principle of technology neutrality. The Associations submit that, if the licensing framework had better supported market mechanisms, optimising licences for use by future technologies would have potentially been resolved in a far simpler manner and without (or with minimal) ACMA intervention.

1.1.3 The Associations suggest the following for consideration as a draft object:

> *To promote the overall public interest derived from the radiofrequency spectrum resource by facilitating the economically efficient allocation and sustainable use of spectrum.*

Where:

- ***'economically efficient allocation'*** is intended to capture allocative and dynamic efficiency – through allocation to the highest value use via processes that are timely and cost effective and through technology neutral licensing which fosters transferability and market-based re-assignment; and

- ***'sustainable use***' is intended to encompass appropriate technical regulatory settings and compliance frameworks to both manage the risk of interference and provide the flexibility required to foster innovation. It encourages policy and regulatory behaviours that protect and enhance the utility of the spectrum asset as well as ensuring the integrity of radiocommunications services.

1.2 Span

1.2.1 Definitions

The Associations note that the Department has not clarified whether it plans to review key definitions in the current Act. If any key definitions are to be reviewed, we suggest that these be aligned, as far as possible, with common or overlapping definitions specified in Article 1 of the ITU Radio Regulations.

One important exception to this general rule that the Associations believe should persist, is the discrepancy between the ITU terminology and the existing definitions of the Radcomms Act for *emission* and *transmitter*:

- ***radio emission*** in the Radcomms Act explicitly includes unintended emissions, whereas the ITU (in RR No. 1.138) explicitly excludes these as radiation that is not an emission[2]
- ***transmitter*** in the Radcomms Act explicitly includes anything capable of radio emission irrespective of its purpose (i.e. both radiocommunications transmitters and other devices which are not designed for radiocommunications but still generate radio waves), while the ITU (in Recommendation ITU-R V.573-4) limits a transmitter as an "apparatus producing radiofrequency energy for the purpose of radiocommunications". As this is quite confusing it would be preferable for the Bill to explicitly identify both radiocommunications transmitters and non-radiocommunications transmitters.[3]

1.2.2 Span must cover all transmitters and supply chain

The Associations support the need for the span of the Bill to specify the rights, powers and obligations of the Minister and users of the radiofrequency spectrum, and strongly supports the proposal for the obligations of persons involved in the supply chain of devices to be included in the span of the Bill.

In order for the ACMA to properly regulate the supply chain of devices, the Associations would like to ensure that the span of the Bill adequately addresses the use of non-radiocommunications devices and systems which may interfere with radiocommunications (e.g., LED lights, solar panels and Broadband over Power Lines (BPL) telecommunications systems). All radiocommunications and non-radiocommunications transmitters (i.e. "any other thing, irrespective of its use or function or the purpose of its design, that is capable of radio emission" as defined in the Radiocommunications Act 1992) should remain within the scope of the new legislative framework.

[2] ITU Radio Regulations 2012
[3] ITU Recommendations\

2. Application

The Paper indicates that the scope of the application of the new legislative framework will be largely the same as that in Section 1.4 of the Act. The Associations note this and have no concerns.

The Paper also states that relevant court decisions will be reviewed to determine whether this would impact the application of the Bill. The Associations recommends that industry be advised of any proposed changes to the application of the Bill on the basis of court decisions prior to or as part of the exposure draft consultation phase.

3. Ministerial direction powers, policy guidance and accountability

3.1 Minister's role

The Associations welcome the Department's proposal to clearly delineate the roles and responsibilities of the Minister and the ACMA, and support the intention for the Minister's role to be limited to setting strategic policy priorities to guide the delivery of the ACMA's spectrum management regulatory functions.

The Associations also note that under Section 14 of the ACMA Act, the Minister will continue to have the power to direct the ACMA in relation to the performance of its spectrum management functions.

It is unclear whether this power will remain applicable to Ministerial intervention in or overriding of processes that are intended to be shifted from the Minister to the ACMA—for example, allocation and reallocation of spectrum and setting of competition limits (discussed further in Sections 7 and 8, respectively).

It is also unclear what (if any) powers of direction or intervention will be granted to the Minister and/or the Department under the new licensing framework, aside from Ministerial Policy Statements and the Minister's power under Section 14 of the Australian Communications and Media Authority Act 2005. To provide clear guidance and avoid arbitrary applications of the powers, the Associations believe that it would be beneficial for the new licensing framework to:

- specify the Ministerial powers of direction or intervention (if any);
- clarify the intention for them to be exercised on an 'exception basis' only after adequate public consultation; and
- specify the situations in which this power could be exercised.

3.2 Ministerial Policy Statements

The Associations support the introduction of overarching Ministerial Policy Statements, provided that the details of the policy statements are subject to transparent public consultation.

The Associations submit that Ministerial Policy Statements should detail:

- how long they will remain in effect;
- circumstances and processes for their review; and
- circumstances and processes for update and/or withdrawal.

In addition, Explanatory Statements (not necessarily as separate documents) should accompany the formulation, review, update and withdrawal of Ministerial Policy Statements.

3.3 International Engagement

Under the new framework, the Associations also support the Minister, with advice from the Department, developing high-level strategic policy positions. These policy positions should be based on a multi-stakeholder consultation process, to underpin Australia's engagement in international fora such as the ITU and used to guide the ACMA's preparations for participation in these fora.

4. Annual spectrum work plan

The Associations see utility in the proposal for the ACMA to be required to prepare and publish an Annual Spectrum Work Plan. However, there is a risk of the Work Plan simply becoming red- tape, if industry is not actively engaged in its development and if it is not used to hold the ACMA to account.

It is therefore important that the ACMA be required to report on and be accountable for its performance as measured against tasks identified in the Annual Spectrum Work Plan. Tasks identified under the Annual Spectrum Work Plan should also be listed in order of priority and include details on resource allocation. This reporting process should be public and transparent so that stakeholders can be aware of ACMA targets and how these targets are being met. If there is a change in prioritisation there should be a public update to the Work Plan's prioritisation schedule.

As an example, the Associations note that in the Potential Reform Directions Paper, the Department had proposed that the ACMA would be required to set a target for the timing of proposed allocations and reallocations in its annual work program. AMTA agrees that this requirement would provide guidance to spectrum users and government on how long these processes are expected to take as well as provide accountability if timing diverges from estimates.

5. Radiofrequency planning

The Associations support in-principle the proposal to consolidate planning powers for spectrum plans, frequency band plans and broadcasting licence area plans into a single, discretionary, legislated power.

The Associations would appreciate further detail on how the new power, the proposed transition arrangements, and implementation plans that outline how transition to a new frequency planning framework will work in practice.

Spectrum reform should aim for maximum flexibility and minimise prescription in the framework. A recent trend is emerging where the ACMA is moving away from the development of legislative band plans and, in some instances, going a step further and sun-setting, for example, the existing VHF Mid-, VHF High- and 900 MHz-Band Plans in favour of replacing them with administrative band plans in the form of Radiofrequency Assignment and Licensing Instructions (RALIs). Experience demonstrates that legally binding frequency band plans can unnecessarily constrain licensing in certain circumstances, particularly in the context of technology development. There is scope through the reform process to reduce regulatory burdens and make RALIs more responsive to innovation through the use of, for example, self- or co-regulatory approaches.

Regardless of whether they are administered by the ACMA or industry, it is critical for administrative frequency planning policy documents be maintained in the new framework. Indeed, they must be regarded as an essential modern instrument for managing the radiofrequency spectrum in accordance with the new legislative framework.

5.1 Embargoes

The Associations consider that the ACMA's need to use licensing embargoes to facilitate spectrum re-planning should be reduced under the new spectrum management regime. Embargoes are intended to minimise service disruption by preventing new frequency assignments in a band that is to be replanned. Some embargoes can end up remaining in place for many years, until the ACMA prioritises the planning work and consults on the proposed changes. This process results in spectrum being inefficiently used, or under-utilised, over extended periods of time. As set out in our comments in section 6, under the new regime, reallocation processes should become less frequent and planning will not be designed around specific uses (except to comply with international obligations). If re-planning is required to accommodate new uses, it should be possible to do this without also placing an embargo on trades or new assignments of rights, in a similar fashion to 're-zoning' of land, where transfers of property rights can continue to occur at any stage during the 're-zoning' process.

The only situation where a licensing embargo may still be required is while a band is being reallocated through a market process. In this situation, an embargo would provide certainty to bidders that there would be no expansion of incumbent licensing during the period leading up to the transfer of the spectrum to the new holders.

6. Licensing of spectrum

6.1 The need for flexibility and certainty in the licensing framework

The use of licensing as a means of managing spectrum is intended to promote coordination of radiocommunications systems, prevent spectrum congestion and manage the risk of interference. Effective licensing regimes will also maximise the economic and social value of the spectrum by facilitating coordination between complementary uses and ensuring spectrum transitions from low value to high value uses in a timely and efficient manner. The inter-temporal dimension to spectrum management requires the licensing system to provide **certainty** to users to encourage investment while ensuring there is **flexibility** for spectrum to transition to new uses.

The Associations consider that the objective of the licensing framework is to maximise the efficient allocation of the spectrum, while managing the risk of interference, either now or in the future.

Efficient allocation necessitates a licensing framework that supports dynamic efficiency. This requires making licensing as technology agnostic as possible. The Associations note, however, that a poorly defined licensing framework may lead to less than efficient use of the spectrum and limit any flow on economic or productivity benefits.

6.2 Economic and social considerations

Several economic and social considerations are also important in ensuring an effective licensing framework for spectrum management:

1. Exclusivity – private property rights are exclusive rights, with the benefits of costs of owning and using the resource flowing to the owner.
2. Universality – all scarce resources are owned by someone.
3. Transferability – ensure resources can be allocated from low yield to high yield uses.
4. Enforceability – ensure property rights are secure from misappropriation by others.
5. Diversity – preserving the availability of spectrum for a range of different uses.
6. Competition – preventing monopolisation of spectrum resources in contestable industries.

Conflict between these considerations can be minimised through an incentive approach. For example, if spectrum sharing is regarded as an important policy objective then the holders of exclusive rights should be enabled by the licensing structure to obtain commercial benefit from voluntarily permitting other users to share their spectrum. Other forms of incentive could include licence fee rebates.

6.3 Proposals for a new licensing framework

The mobile industry has, in previous stages of the Spectrum Review process, advocated for a licensing framework which will facilitate greater use of market mechanisms for allocation and reallocation of licences and encourage a secondary trading market. The Paper acknowledges the shortcomings of the existing licensing framework with the Spectrum Review Final Report recommending reforms that would facilitate greater market-based activity.

The foundation for greater market-based activity is a licensing framework that delivers a set of simple but well-defined access rights. This is not the case with the set of spectrum, apparatus and class licences that are used today. As such, the Associations support the proposed approach for the new licensing framework to establish a single licence category, provided it promotes greater transferability of licences between different uses than the existing framework and the access rights of existing licensees are not compromised. We also support the proposal for the new licensing framework to facilitate and encourage secondary market activity by allowing assignment, sharing, aggregation and subdivision, contingent on any licence restrictions. However, this proposal is very high level and the lack of detail on the single licence category—it is not even clear whether this is still based on the single parameter-based licence concept—prevents more detailed comment on the issue.

The Associations also support a generic licensing mechanism which clearly records subordinate uses and can be used to accommodate incumbents in licence transfers, including the initial allocation of encumbered spectrum. We suggest that this could be achieved by requiring parameter based licensing to include a pro-forma arrangement for recording such uses. More specifically, this could be implemented with a special form of parameter based licence that is issued by the lessor and linked to the lessor's licence.

6.3.1 The Associations envisage the proposed licensing framework as comprising the following key elements:

- **Simplicity.** Only a limited number of licence issue schemes.

- **Technology neutrality.** Subject to our international treaty obligations, the framework should avoid using purpose-based licence-issue schemes.

- **Flexibility.** Licences should support multi-purpose use through flexible, "common denominator" conditions that facilitate re-farming or re-allocation without the need for regulatory intervention.

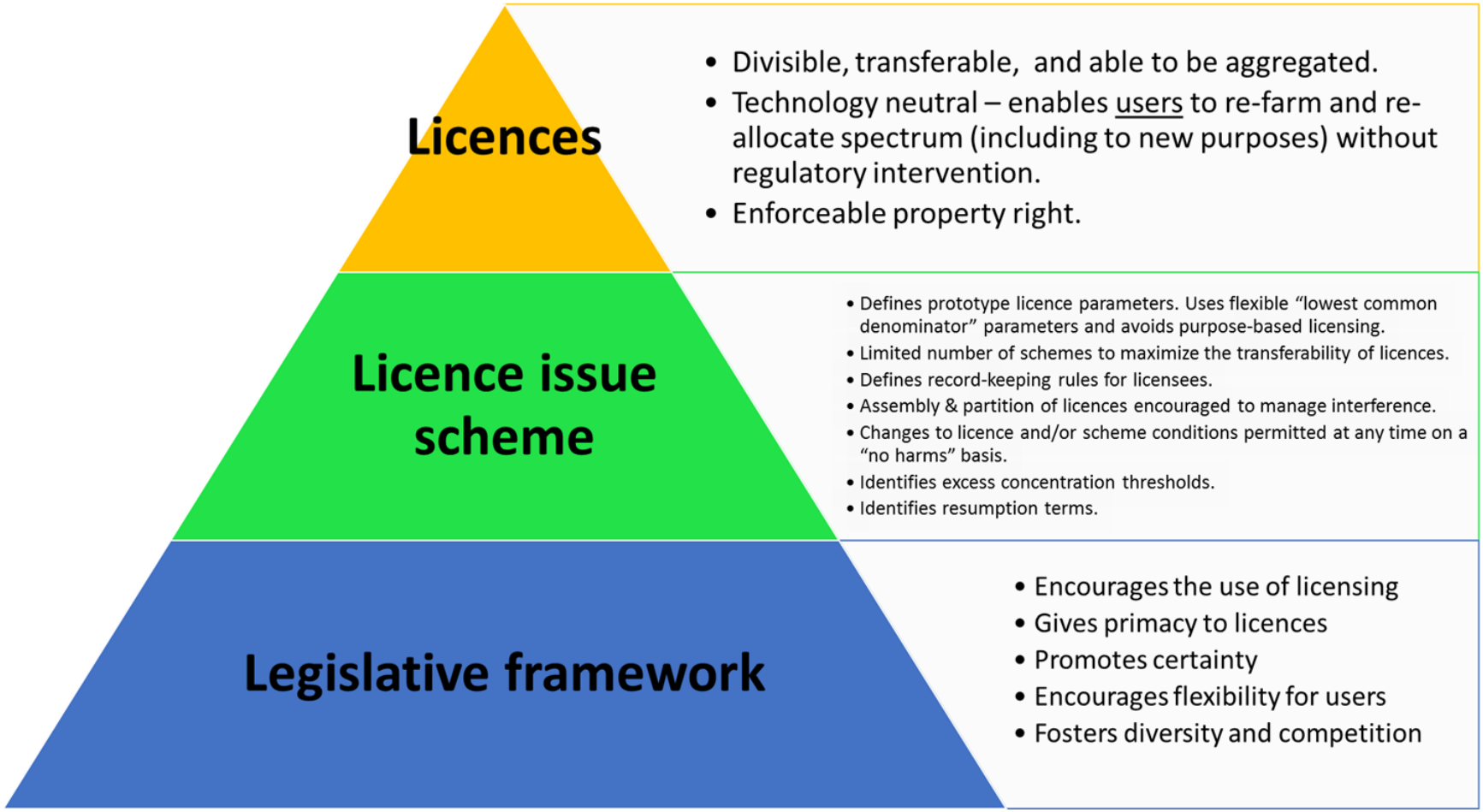
- **Future-focussed.** To accommodate technological progress, licence holders should be permitted to change licence conditions by agreement with the ACMA.[4]

- **Certainty.** The Bill should include a legislative presumption of re-issue for licences to promote investment and maintain the transferability of licences particularly toward the end of the licence term. The presumption of re-issue should only be set aside if the ACMA undertakes a consultation process to determine, that it is not in the public interest for the licence to be re-issued. In the case of 20 year licences, we believe the consultation process should be conducted no later than five years before the licence is due to expire.

- **Universality.** The ACMA should favour the allocation of spectrum even in circumstances where the immediate demand for its use is not clear. Making spectrum available before the case for its use is clear is consistent with the Government's desire to foster and facilitate innovation. Typically, private and public sector licence holders have an incentive to maximise the value of their spectrum assets including through the transfer of assets to users with high value uses. By contrast, the ACMA does not have the same incentive to maximise the value of unused spectrum or to speculate on the potential use of under-utilised spectrum (e.g. the 2700-2900 MHz band). Under the new regime, reallocation processes should become less frequent as the licences should be commoditised such that they can switch between uses more easily than they do today. If there is merit in changing licensing conditions to accommodate new uses this could be done via changes to licence conditions or to licence issue schemes in a similar fashion to the ‘re-zoning’ of land property lots. The ‘re-zoning’ of licences could occur before or after a licence has transferred.

[4] The ACMA should only agree to the proposed changes if the change satisfies a "no harms" criteria (i.e., neighbouring users are not adversely impacted by the change). Any changes to an individual's licence should be reflected in amendments to the licence issue scheme to promote equivalence and offered to other licence holders to ensure non-discrimination. (Individual licences should not be amended if the proposed changes undermine the transferability of the licence).

Figure 1: Licenses and the Legislative Framework



6.4 Licence term

The Associations note the proposed extension of maximum licence tenure to up to 20 years. If a maximum licence term is implemented, the shortcomings of the current spectrum licence re-issue process must be avoided. This is closely related to renewal rights discussed in section 9 of this submission. We believe that the new Bill should direct the ACMA to issue licences for the default 20 year term unless a shorter term is agreed between the ACMA and licensees.

6.5 Spectrum sharing arrangements

The Associations believe that the issue of licences in already-licensed spectrum space to facilitate spectrum sharing should be approached with great caution. Spectrum sharing risks undermining property rights and deterring innovation, especially considering that the potential widespread proliferation of spectrum sharing devices may result in unacceptable interference that cannot subsequently be controlled.

The Associations therefore submit that as a principle, spectrum-sharing arrangements cannot be imposed on a licence holder.

The spectrum licence holder must be the only one able to decide if their spectrum assets can be shared.

The Associations suggest that when a licensee is agreeable to share use of the spectrum they hold; they should have the ability to make arrangements to share with other users, either by a sub-leasing or direct authorisation process. Such a process or arrangement would not need to involve the ACMA.

6.6 Licence payment structures

Finally, with respect to payment structures, the Associations support:

- the proposal that terms and timing of payment of applicable charges for future obligations (including taxes) be included as core conditions of a licence (to provide certainty);
- greater flexibility in fee payment options (including provision for either upfront or instalment payments) and timing;
- enshrining in the Bill the now common practice to align payment timing with spectrum licence start dates;
- the preservation of the current treatment of spectrum licences under Australian taxation laws as capital expenditure; and
- the removal of stamp duty on licence transactions, which is a demonstrated barrier to spectrum trading. We recognise that the Commonwealth is progressing discussions with the States via COAG to achieve this outcome and suggest that more incentives for the States could assist progress this change. [5]

[5] Currently, duty is still payable on spectrum trades in NSW, QLD, WA and the NT (SA abolished conveyance duty on the transfer of business assets with effect from 18 June 2015). Although these jurisdictions had previously agreed with the Commonwealth Government to abolish duty on the transfer of business assets (including spectrum licences) by 1 July 2013 this did not occur. NSW has passed legislation to abolish duty on the transfer of business assets with effect from 1 July 2016. The NSW State budget due on 21 June, should reveal whether NSW will further defer the abolition of the duty. QLD, WA and the NT have all announced the indefinite deferral of the abolition of duty on the transfer of business assets.

7. Licence issue

Previous iterations of Departmental consideration in earlier stages of the Spectrum Review process included clear intentions to provide the ACMA with greater autonomy with respect to spectrum allocation and reallocation.

For example, proposals contained in both the Potential Reform Directions Paper and the Final Report indicated that the ACMA would be empowered to allocate and reallocate spectrum (where consistent with Ministerial Policy Statements).[6] It was also indicated that the ACMA would have the discretion to determine the appropriate allocation or reallocation mechanism (such as auctions, tenders or administrative mechanisms) and the authority to allocate or reallocate encumbered spectrum.

However, the proposals put forward in this Paper do not appear to directly refer to those previous proposals and the Paper also does not seem to include any specific proposals to allow the ACMA to allocate and reallocate spectrum.

Rather, the Paper now refers to:

- Provisions in the Bill that would empower the ACMA to issue licences on written application or in accordance with a licence issue scheme. Licence issue schemes will be legislative instruments that set out the procedures and rules for the issue of licences by various allocation mechanisms; and
- Development by the ACMA of administrative documents setting out the licence issue process—including the type of auction and details on how to participate in the auction—for a particular allocation. [7]

It is unclear whether the licence issue schemes are to be made by the ACMA or the Minister, and therefore whether the ACMA can exercise its (previously) proposed discretion to determine the most appropriate allocation process and method.

The Associations are therefore concerned to better understand the underlying policy proposal for any instrument—legislative or administrative—by which the ACMA can formally allocate spectrum. Specifically, we note that the language in this phase of the consultation process has shifted from referring to *spectrum allocation* to *licence issue* and the Associations request clarity on the intent of this change and further guidance on its practical consequences.

The proposals for a spectrum allocation process appear to be limited to:

- an intention to issue licences in the ACMA's annual work plan;
- followed by the development of licence issue schemes and administrative documents setting out the issue process; and
- the issuing of the licence itself.

[6] Potential Reforms Direction Paper, Proposal 3, page 8; Spectrum Review Final Report, Section 2.5, pages 25-26.
[7] Section 7, Page 10 of the Consultation Paper

The Associations seek clarification as to whether it was intended to omit a proposal for an allocation instrument or whether it was intended to form part of the licence issue scheme. The Associations' request further detail on the proposed mechanisms by which the ACMA (or the Department) can allocate or reallocate spectrum.

Of course, the use of an allocation instrument is most relevant to spectrum currently licensed under the spectrum licence regime, in accordance with a Ministerial determination to allocate the relevant spectrum space for spectrum licensing. Currently, apparatus licences are not made under any particular allocation other than the general allocation of frequency bands to radiocommunications services in the *Australian Radiofrequency Spectrum Plan* and in frequency band plans (legislative) and RALIs (administrative), discussed in Section 5 of this submission.

Referring back to the licence issue schemes, the Paper does not propose specific allocation mechanisms, the procedures and rules of which would be specified in licence issue schemes. It would be useful to understand if this is intentional. The Associations note that the Potential Reform Directions Paper and the Spectrum Review Final Report included examples such as auctions and incentive auctions, tenders and administrative mechanisms as potential allocation mechanisms. However, the Associations' are unclear how these will be enabled through the legislative framework, particularly whether they form part of a licence issue scheme or part of specific legislation governing allocation instruments.

The Associations note that in section 10 of the Paper, in the context of the resumption of licences, it is proposed that the new legislative framework would enable the ACMA to enter agreements with licensees to make payments as an incentive to surrender a licence. We believe that this concept should be extended more broadly to the allocation/licence issue process, and propose that the Bill make provision for proceeds from spectrum sales to be made available to cover costs incurred by displaced incumbents in order to encourage incumbents to migrate to alternative options.

8. Licensing – limits

The Associations note the proposal for the new legislative framework to enable the ACMA to determine—in writing but not through legislative instrument—competition limits for licence issue without first having to be directed by the Minister.

The Associations also note that the Minister may direct the ACMA on the competition limits through section 14 of the ACMA Act 2005.

The Paper states that the ACMA will not be required, as a mandatory step in its decision making process, to seek the counsel of the competition regulator, the Australian Competition and Consumer Commission (ACCC) on licence issue limits.

The Associations have reservations about having two separate agencies being responsible for assessment of competition issues. Such an approach has the potential for an inconsistent application of regulation, particularly for industries such as telecommunications which are regulated by both the ACCC and the ACMA. Assuming the ACMA manages the allocation process and the ACCC provides advice on allocation limits, the Associations recommend that the Bill:

- ensure the ACCC has regard to the auction design, where an auction is used to allocate the spectrum, and the reserve prices in forming its advice to the ACMA;

- mandate that the ACCC adopt a public inquiry process, publish and consult on a draft advice outlining its recommendations and then publish its final advice;

- specify the test to be used by the ACCC in providing advice to the ACMA about whether competition limits should apply and if so what they should be;

- require the ACMA to adopt the recommendation of the ACCC; and

- extend protection from section 50 of the *Competition and Consumer Act 2010 (Cth)* (CCA) to all participants both if competition limits have been applied and complied with and if there has been an assessment that no competition limits should apply (because the latter would indicate that there is no competition concern justifying the imposition of any remedy).

Finally, the Associations would like to point out that there is an inter-play between the tests used by the Radcomms Act and the CCA that is appropriate here, so some analysis of how these two pieces of legislation and the relevant tests and review mechanisms work together will be required.

9. Licensing – renewal rights

The Associations do not agree with the proposal for licence renewal rights to be limited to a licence condition. We strongly believe that a right to renewal—*presumption* of renewal in fact—should be enshrined in the legislation as a principle. The right to renewal should be broad ranging and automatic, with the onus on the ACMA to prove why a licence should not be renewed.

Exceptions to the presumption of renewal can be dealt with as exceptional circumstances that should be clearly outlined in a Ministerial Policy Statement.

The Associations suggest that such exceptional circumstances would be limited to:

- non-conformity with international obligations;
- licences intended to be non-renewable (and this would be included in the licence conditions);
- material breaches of licence conditions; or
- where the ACMA has demonstrated that it is contrary to the overall public interest.

Further, a decision not to renew a licence must only be made after the ACMA has conducted a consultation process with affected licensees and any other relevant stakeholders.

Where a licence is not automatically renewed under the presumption of renewal principle due to a licence breach, this should expressly exclude minor or immaterial breaches, as this would in effect be equivalent to licence cancellation at the end of the licence term. Rather, a graduated approach to licence breaches should be adopted as proposed in section 14 of the Paper.

10. Licensing – resumption

If a decision is made to resume a licence, either in full or in part, the Associations consider that it is appropriate for compensation to be paid on fair terms.

The Associations agree with the proposal for the new legislative framework to enable the ACMA to enter into agreements with licensees for the purpose of making a payment as an incentive to surrender a licence.

11. Spectrum authorisations (class licences)

The Associations support the proposal to replace class licences with 'spectrum authorisations' rather than incorporate them in the single licensing framework.

As noted in section 6 of this submission, the proposal is for the ACMA to be able to expressly authorise the ACMA to make a spectrum authorisation within parts of the spectrum for which the ACMA has issued a licence. The Associations are opposed to the ACMA being able to make spectrum authorisations in licensed spectrum without the agreement of the licensee, since it is otherwise very unlikely that there would be reliable interference management arrangements in place. Doing so can have the effect of reducing the value and integrity of the corresponding property right. The types of devices that could be authorised by a spectrum authorisation can be prolific and ubiquitous in nature, and therefore it would be difficult to coordinate and control any future interference from such devices.

With a view to facilitating such spectrum sharing with—and only with—the agreement of the licensee of the corresponding spectrum space, the Bill should enable financial incentives to be part of such agreements, considering that the licensee would be accepting some degree of interference risk.

The Associations submit that the Bill should enable licensees, to issue spectrum authorisations in spectrum space covered by their licences. Without further detail, it is not known whether the revised legislation related to third party authorisations under the single licensing framework is able to satisfy this objective, or whether a separate power for licensees to issue spectrum authorisations within their licensed spectrum space is required.

12. Interference management

12.1 ACMA must be empowered to manage interference

The Associations submit that the effective management of interference issues is critical to spectrum management framework. The ACMA must be properly empowered under the Bill to enforce spectrum property rights.

The risk of interference is expected to increase with the explosion in the number of wireless devices, especially in relation to the Internet of Things. The number of non-radiocommunications devices also continues to grow rapidly as more aspects of daily life become automated by electrical and electronic systems.

The Associations note the substantial investments made by mobile carriers in both purchasing interference free spectrum as well as in infrastructure and technologies to make use of the spectrum. This investment by the mobile industry further provides significant social and economic benefits to Australia as noted by the ACMA's own research which found that mobile broadband has:

- increased the growth rate of the Australian economy by 0.28 per cent each year from 2007 to 2013; and
- led to an increase in Australia's economic activity of $33.8 billion in 2013.[8]

The Associations note that AMTA met with the ACMA in February 2016 and the ACMA shared its thinking with regard to 8 draft principles for interference management that were under consideration. These draft principles are not referenced in the Paper. The Associations would like to understand if and how these draft principles might be incorporated into the reform framework.

12.1.1 Licensees should be able to take civil action

The Associations support the proposal to enable licensees to take civil action in relation to interference, which will enable licensees to pursue their own action to prevent misappropriation of their spectrum property.

The Associations also support in-principle the proposal for the ACMA to develop non-legislative interference management guidelines to assist stakeholders in their resolution of interference disputes. The dispute resolution guidelines should:

- be developed in consultation with industry;
- define the rights of the licensee and the obligations on other parties not to cause interference to operation authorised by radiocommunications licences;
- outline the steps of the dispute resolution process; and
- clearly specify the point at which the ACMA would engage to resolve the dispute.

The Associations stress that its support for the proposals discussed in this section—including the ability for licensees to take civil action and the dispute resolution guidelines—are contingent on them serving as *additional* interference management tools available to the ACMA, and that they should in no way seek to diminish the ACMA's role in managing interference. As noted above, the ACMA must be adequately resourced to continue carrying out the important spectrum management functions of investigating and taking action against interference, and intervening in interference disputes where necessary.

12.1.2 ACMA must have the capability and resources to manage interference

The Associations believe that it is important that the ACMA's interference investigation and enforcement capability is maintained and properly resourced so that the property rights of spectrum licence holders are appropriately and reasonably protected from interference.

AMTA has recently made representations to the ACMA about its resource allocation for managing interference investigations and compliance and enforcement activities (see **Appendix B**). While the Associations understand that resource allocation for the ACMA is out of scope in terms of the

[8] '*The economic impacts of mobile broadband to the Australian economy, from 2006-2013* ' Centre for International Economics, p 2

development of the Bill; we are keen to reiterate that the 'interference management' powers of the ACMA need to be retained and enhanced. Also, this must be accompanied by an increase in resources dedicated to this function so the increasing challenge in handling investigation and enforcement activities can be expediently and efficiently met.

The ACMA's resources for interference management need to reflect the expectation of access to clear unencumbered spectrum as set out in the terms of a spectrum licence, and the significant investment mobile network operators have and will continue to make in spectrum assets.

13. Equipment regulation

13.1 An outcomes-based approach

The Associations support the proposal for the adoption for an outcomes-based approach with respect to 'Equipment regulation'. We understand that—as is currently stipulated in Part 4.1 of the existing Act—the ACMA will continue to be able to prescribe technical standards and testing, labelling and record-keeping requirements to satisfy objectives including electromagnetic compatibility of equipment, contain interference and protect the health and safety of persons from radio emission, among others.

The difference is that the legislation pursuant to which ACMA makes standards and technical requirements will not be prescriptive (as is currently the case), rather that the ACMA will be able to make *equipment rules*—by legislative instrument—in accordance with a specified scope of ACMA powers and with a view to achieving the specified objectives mentioned earlier.

The Associations are keen to understand the format the proposed *equipment rules* will take as there is little detail in the Paper. The Associations would appreciate further detail prior to progression to the exposure draft consultation

The replacement of prescriptive requirements on the ACMA with an outcomes-based approach provides the ACMA with the flexibility to prepare equipment rules commensurate with risk of the equipment and type of supply chains.

13.2 Regulating the supply chain

The Associations propose that the preparation of equipment rules should be prepared in consultation with the relevant sectors of industry involved in and potentially impacted by particular types of equipment and/or types of supply chain that will be required to comply with the particular set of equipment rules. One major aim of such consultation is to develop a view of the relative risk of different types of devices. The Associations also support proposals included in the Potential Reform Directions Paper to broaden definitions under the new equipment regulation framework. We believe this would give the ACMA the flexibility to impose obligations on as many people, involved in supply chains, as possible and necessary to ensure that compliant devices are supplied to the Australian market and for those involved to take the appropriate level of responsibility. We strongly support this principle being introduced into the new legislated framework.

More specifically, the Associations support that the provisions of section 301 of the Act:

- be carried over into the new legislated framework; and
- extended such that this future provision would prohibit supply of devices where the intended end-user is (or is likely to be) unlicensed or unauthorised to use the devices. This makes parties higher up the supply chain accountable rather than just the party that directly supplies the device to the (unlicensed) end-user, to which the provisions of section 301 of the Act are currently limited.

The Associations also suggest that the scope of equipment rules continue to include non-radiocommunications transmitters, the definition of which was discussed under Section 2 of this submission. There is increasing proliferation of non-radiocommunications devices and systems which may interfere with radiocommunications (e.g., LED lights, solar panels, Broadband over Power Lines (BPL) telecommunications systems) and therefore a growing need to ensure that equipment regulations exist for and apply to such devices. Furthermore, in the development of equipment rules, the cumulative nature of interference from multiple devices and the effect of typical installations should be taken into account.

In addition, the Associations suggest that an important aspect of the equipment regulation process being used to contain interference involves the ACMA improving consumer and supplier awareness about the equipment rules. Consumer awareness campaigns are a useful tool for informing people and businesses about legitimate use of the radiofrequency spectrum.

14. Compliance and enforcement

14.1 ACMA must be empowered to enforce compliance

The Associations believe it is important that the ACMA is properly empowered under the Bill to enforce compliance so that the property rights of spectrum licence holders are appropriately and reasonably protected from interference. Compliance and enforcement is another area in which we believe it is critical that the ACMA maintain its expertise and be properly resourced to do so.

14.1.1 Graduated approach to penalties

The Associations support the proposal for the legislative framework to provide for a graduated approach to offences and penalties, which will help ensure that the penalty is proportionate to the risk created by a breach. This is an especially welcome proposal due to the fact that the ACMA is currently limited to suspending or cancelling a licence in response to a breach of a spectrum licence condition, which has the potential to have disastrous consequences for mobile network operators. The introduction of new enforcement tools such as remedial directions and formal warnings may be effective mechanisms. Infringement notice powers—such as that of the ACCC—are also supported by the Associations as a mechanism to deter unlicensed operation and resolve interference issues swiftly as they arise.

The Associations support the introduction of civil penalties. However the introduction of these civil penalties will only serve as an adequate deterrent to stop interference with mobile networks if the ACMA is able to apply them readily and if the ACMA is diligent in investigating and prosecuting the civil offences. Furthermore, criminal penalties (e.g. relating to offences currently specified in

sections 46 and 197 of the Act) would still need to be retained in legislation as an effective deterrent to interference to carrier mobile networks which are used to provide essential services and considered to be critical national infrastructure.

14.1.2 Equipment regulation

The following comments relate to compliance and enforcement with respect to equipment regulation as discussed in Section 13 of this submission.

The Associations believe that the outcomes-based approach should *not* translate to a reduction in the level of compliance by licensees. Also, there is a growing need to ensure that non-radiocommunications devices are compliant, in accordance with robust equipment rules.

As discussed in Section 12, the Associations support the proposal to enable licensees to take civil action in the case of interference. However, to maximise the value of this interference management measure, this right should be extended to taking action against importers, distributors and retailers of non-standard devices and devices intended for use by unauthorised end-users. In other words, the right to take civil action should be extended to offences that are currently included in Section 301 and Parts 4.1 and 4.2 of the Act, and a successful prosecution of the user of a device that caused interference should not be required before action against the distributor, importer or manufacturer of the same device can be taken.

To reduce the evidentiary burden that may be required to convict parties of an offence or take action against them—particularly where the offending parties may be based overseas—the Associations supports the use of a 'whitelist/blacklist' approach. Such an approach would require the ACMA to publicly identify parties involved in the chain of supply of compliant 'eligible radiocommunications devices' and those involved in the chain of supply of non-compliant devices.

The Associations support the introduction of new enforcement tools particular to equipment regulation, including bans and recalls. AMTA also supports measures previously proposed in the Potential Reform Directions Paper: to provide the ACMA with the power to order cease of supply, to issue warnings to the public, suppliers and/or importers and to apply consumer warning labels.

The combination of broadening the scope of the new legislative framework to include all parties involved in the supply chain, and the graduated approach to offences and penalties, facilitates a reasonable and proportionate shift of accountability from the end-user to the supplier. Currently, the heavy penalties in the Act means that the ACMA is understandably reluctant to take action against members of the public, while anonymity of suppliers means that no one is held responsible for harmful interference caused to licensed services.

This shift also allows the ACMA to adopt a consumer protection role where members of the public are protected from the consequences of unintentional unauthorised operation of devices, where those individuals are actually the 'victims' of the actions of importers and suppliers. AMTA notes that these cases are of low priority for the ACCC that would normally take on such a consumer protection role, and considers that the ACMA is best-placed to manage this.

15. Information provision

The Associations strongly oppose the proposal to enable the ACMA to require persons or entities to provide information on the value of the consideration paid in respect to licence trades or third party authorisations.

Our main concern is that there will be a burdensome reporting requirement on industry for no real benefit. The Department has not explained the intended benefits of this proposed reporting requirement. We encourage the Department to consult with industry on its thinking, as further details on the scope and intent behind this proposal will allow industry to properly consider the resulting costs and benefits. In particular, the Department should consider how this proposal works together with the Government's objectives to reduce red tape.

In terms of existing information provided by the ACMA, the Associations support:

- requiring the ACMA to improve and maintain the range, availability and quality of information it administers, with regard to the Register of Radiocommunications Licences (RRL); and
- enabling the ACMA to require provision of device supply-related information from equipment manufacturers for the purposes of managing interference.

16. User involvement: accreditation, delegation, industry codes

The Associations:

- support the proposal to continue to enable the ACMA to accredit other persons to issue certificates, such as frequency assignment certificates; and
- provide in-principle support for industry to be able to develop codes.

The ACMA must be empowered to undertake its spectrum management functions – including the management of interference.

This will, in turn, require adequate resourcing of the ACMA.

The Associations do not oppose out-sourcing of ACMA functions if that is a more effective and efficient use of their resources, provided that this will deliver more effective outcomes and lower costs to industry.

16.1 Industry codes

The Associations support flexibility being provided for the use of codes developed by industry, where this would make sense for delivering outcomes to industry that are more cost effective, flexible and timely. However, there are a number of questions that need to be considered before introducing any such codes, and it would be worth considering these as this section of the Bill is developed:

- under what industry umbrella the disparate users of spectrum would be organised to develop a code;
- who would fund code development, and whether costs incurred by industry in code development would be cost recoverable from government;

- how and whether licensees/entities within scope of code obligations would be legally bound to comply;
- how compliance and enforcement would be managed, and by what regulatory body; and
- whether the code development process would align with the current framework under the *Telecommunications Act 1992* and associated legislation.

17. Broadcasting

The Associations broadly support the proposal for the new licensing framework to integrate broadcasting spectrum into the general spectrum management framework.

18. Review of decisions

The Associations support the proposal that legislation will continue to provide for certain decisions of the ACMA to be able to be reviewed by the ACMA and then the Administrative Appeals Tribunal (AAT).

19. Transitional arrangements

The Associations consider that the proposal for spectrum licences to transition until expiry is reasonable.

The Associations stress that the rights of existing spectrum licences must be maintained during the transition period. Provided that all rights and technical licence conditions are able to be transitioned, the Associations support the option for early transition to the new licensing framework. Considering that licensing under a simpler, more streamlined licensing framework should lead to fiscal benefits, we consider that financial incentives should be available in the case of early transition by existing spectrum licensees.

The proposal in the consultation paper for apparatus licences will transition to the new framework "over a period of time in a staged approach" is unclear. The Associations cannot provide comment without further detail, although it appears implicit that apparatus licences will not be required to transition by the existing expiry date, even if the new framework is in place before that date.

The Associations recommend that the Department consult with the ACMA and industry on how apparatus licences under the current framework, and licences issued under the new single licensing framework, will be recorded in a common database during the transition period to ensure that radiofrequency coordination can be maintained.

Finally, we support the proposed 'as-soon-as-practicable' transition of class licences to spectrum authorisations.

Conclusion

The Associations strongly support the Government's commitment to a fundamental reform of the regulatory framework for the allocation and management of spectrum and believe it will result in more timely and efficient allocation processes, reduced costs and greater flexibility to enable innovation and the adoption of new technologies.

The Associations look forward to further engagement on the proposed Bill. As noted, there are still many gaps (see **Appendix C**) between our understanding of the current and proposed legislative frameworks and we look forward to further discussion and debate on the outstanding issues.

For any questions about this submission, please contact Lisa Brown, Policy Manager, AMTA at [redacted] or Mike Johns, Communications Alliance [redacted]

Appendix A:

Reform Process – Summary of Engagement

Date	Consultation/Announcements	Industry Response
23 May 2014	Spectrum Review Issues Paper (including Terms of Reference for the Review)	AMTA submission, 20 June 2014
11 Nov 2014	Potential Reform Directions Paper	AMTA submission 16 Dec 2014
		AMTA submission 16 Feb 2015
26 May 2015	Spectrum Review Report	AMTA letter to Drew Clarke, 5 June 2015
March 2016	**Legislative Proposals Consultation Paper**	**AMTA/Communications Alliance (this submission)**

Appendix B:

17 March 2015

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Mr Giles Tanner
General Manager, Digital Economy Division
Australian Communications & Media Authority

CC: Mr Mark Loney, Spectrum Operations & Services

[redacted]

Dear Mr Tanner,

The Australian Mobile Telecommunications Association (AMTA) is very concerned about a noticeable increase in incidences of interference caused by unauthorised use of licensed spectrum held by mobile carriers.

While we understand that the ACMA is working diligently to investigate reported cases of interference, AMTA is concerned that without an increase in resources dedicated to this work, the ACMA faces a considerable challenge in handling investigation and enforcement activities expediently and efficiently.

The mobile carriers have made substantial investments in both purchasing licences as well as in infrastructure and technologies to make use of the spectrum. This investment by the mobile industry further provides significant social and economic benefits to Australia as noted by the ACMA's own research which found that mobile broadband has:

- increased the growth rate of the Australian economy by 0.28 per cent each year from 2007 to 2013; and
- led to an increase in Australia's economic activity of $33.8 billion in 2013.[9]

AMTA believes it is therefore important that the ACMA's interference investigation and enforcement capability is properly resourced so that the property rights of spectrum licence holders are appropriately and reasonably protected from interference.

AMTA requests that the ACMA review current resource levels and consider:

- increasing ACMA resources committed to compliance and enforcement activities;
- how response times for investigating reports of interference could be improved; and
- increasing resources allocated to broader public education and awareness.

AMTA would be happy to discuss in more detail how industry can best support the ACMA in the management of interference issues.

Yours sincerely,

[redacted]

Chris Althaus
AMTA CEO

[9] '*The economic impacts of mobile broadband to the Australian economy, from 2006-2013* ' Centre for International Economics, p 2

Appendix C:

Gap Analysis: Matters not addressed in the Legislative Proposals Consultation Paper: Radiocommunications Bill 2016, dated March 2016

Please note: The questions in this table should not be read as a suggestion that the Associations want these features retained in the new Bill. Rather, we wish to highlight that there has been no indication of the Department's views on these features of the existing legislation. We would appreciate an indication of the Department's thinking around these issues to support further constructive engagement on the proposed reforms.

Provisions in current Act	Topic area	Commentary
Interpretative Provisions Part 1.3	Key definitions in the Act	Are amendments proposed to key definitions in the Act e.g. "radiocommunications device" "radio emission", "transmitter"? We are keen to understand whether the Department envisages any amendments to definitions of key terms in the Act to adapt the act to developments in technology. We think it would be helpful if the terms in the Australian legislation were aligned as closely as possible to ITU regulations.
Application of the Act Part 1.4	Territorial application of the Act	The consultation paper makes no reference to any change to the territorial application of the Act or the relationship of the Act to International laws. We assume no changes are proposed? Has the Department given any consideration about how to improve the ability for foreign manufacturers of equipment to be caught by the provisions of the Act? Will there be any changes to the matters stated in Division 4 of Part 1.4 to which the Act specifically does not apply?
Ministerial Direction Powers	Various	Will all of the Minister's specific direction powers be retained? Or subsumed by a general power to issue Ministerial Policy Statements?
Radiofrequency	Spectrum plans,	Will the marketing plans be subsumed under the general discretionary planning power?

Provisions in current Act	Topic area	Commentary
Planning Chapter 2	frequency band plans and marketing plans	Will industry have a right to consultation when the general discretionary planning power is exercised? What arrangements will be in place in relation to compensation for incumbent spectrum licensees where bands are replanned?
Suspension or cancellation of spectrum licences Division 3 Part 3.2	Suspension/cancellation of licence provisions	What aspects of the current procedures for suspension/cancellation of licences will be preserved?
Resumption of spectrum licences Part 3.2 Division 6	Resumption of spectrum licences	What aspects of the current procedures for resumption of licences will be preserved? What position will the Bill take on the issue of compensation payments for resumption of licences?
Conditions of class licences Part 3.4	New spectrum authorisation regime	In the conversion of existing class licences how conditions be dealt with? Will they be a condition of the authorisation? Is the intention that the same set of general conditions will apply? What provisions will be made for variation of authorisations? The current s138 specifies considerations the ACMA must take into account in issuing a class licence. Will the same requirements be carried over into the new regime in relation to spectrum authorisations?
Requests for advice on the operation of radiocommunications devices Part 3.4, Division 2	New spectrum authorisation regime	Will the process for seeking advice from the ACMA on the operation of a radiocommunications device under a class licence (or, under the new regime, an existing authorisation) be preserved?
Registration of licences Part 3.5	Registration of licences and remedies for refusal to register	Will registration of transmitters still be required?

Provisions in current Act	Topic area	Commentary
	or operation of a transmitter without registration	
Re-allocation of unencumbered spectrum Part 3.6	Proposed ACMA power to grant authorisations/allocate/reallocate already encumbered spectrum	Which elements of the existing process for reallocation of unencumbered spectrum are proposed to be carried over into the proposed new power for the ACMA to grant authorisations in respect of already encumbered spectrum?
Emissions from non-standard devices Part 4.1	Proposed reformed equipment regulation regime	Will there be any amendment to the non-standard transmitter regime or processes for certification of devices? How is it proposed that the Bill will deal with interference potential from other devices (not transmitters)?
Declarations of emergency and restrictive orders/ Restricted use zones Part 4.4	Governor – General power to proclaim a period of emergency Ministerial power to make restrictive orders re restricted use zones	Will these provisions be preserved under a new Bill? Will the triggers remain the same?
Role of the ACMA re administration and enforcement Chapter 5	Administration and enforcement	We understand that clarity on the intention around these provisions may be linked to the completion of the ACMA review. Are any changes proposed to the areas of responsibility that the ACMA can devolve to other agencies? How much of the existing regime around search and seizure will be preserved? What will be the thresholds for the ACMA to be involved in disputes and enforcement? How will adequate funding for these activities be secured?