

AF24897761

INTRODUCTION

1. Defence has provided submissions to all previous phases of the Spectrum Review.
2. In this submission on the Legislative Proposals Consultation, Defence wishes to focus attention on the following fundamentals:
 - Having explicit mention of Defence in the Objects of the Act and the priority of Defence.
 - Establishing mechanisms for sustainable use of the spectrum resource, including clarifying the functions to be performed under planning versus licensing.
 - Improving Whole-of-Government (WoG) support to implementation and transitional arrangements and ongoing national coordination of spectrum.
3. These fundamentals should not be deferred as “implementation” topics, since they affect the fundamental concepts to be embodied in the new Radiocommunications Bill.

OBJECTS AND SPAN

4. Defence does not accept that the bundling of Defence into general statements in the Explanatory Memorandum is an appropriate level of recognition of the critical importance of adequate provision of spectrum for Defence. The explicit reference in the *Radiocommunications Act 1992* (the current Act) to provisioning spectrum for Defence (Objects 3(b)(i)) should be retained in the Objects of the new Bill.
5. The Defence White Paper 2016 (p11) states: *To keep our nation safe and protect our way of life for future generations is a fundamental responsibility of the Australian Government; the safety and security of the Australian people and the defence of our territory and interests is our first and abiding priority.*
6. The preceding quote is a recent statement from the current Government, in the highest level strategic policy document. This indicates the intent of highest priority for Defence. This priority should be stated in the Objects of the new Radiocommunications Bill.
7. The current Act directly makes provision of spectrum for Defence through the exemptions in Part 1.4, Division 4 and the requirement to designate spectrum for the general purposes of defence in the spectrum plan in Section 30. These clauses do not simply provide arrangements for the provision of spectrum to Defence; they do so directly and must be retained in the new Bill. This deals with the difficulty of applying licensing to Defence spectrum use, which involves diverse types of systems and patterns of use.

PARTICULAR DEFENCE CONSTRAINTS

8. Defence has many systems that are dependent on multiple specific portions of spectrum. These are usually long-lived, having a 5–10 year development/acquisition period, followed by an operational life that can exceed 30 years. Re-engineering of such systems to operate in different portions of spectrum cannot be done quickly, or without major impacts to Defence military preparedness, and associated high costs.

SUSTAINABLE USE OF SPECTRUM (PLANNING VERSUS LICENSING)

9. Under the current Act there are numerous mechanisms used to define constraints on how spectrum can be used and for what purposes. This is particularly the case for apparatus licences, where over time, a complex set of arrangements have developed that ultimately serve to apply conditions to a given licence.
10. In order to meet the objective of a simpler and more flexible licensing framework, the Bill must contain sufficient mechanisms to allow some of the licensing complexity to be transferred into planning instruments that are applicable to all users of a given frequency band. Such plans would need to contain clear guidance on interference management, particularly on how spectrum is to be shared between services, and could include parameters such as protection criteria and coordination requirements. Such guidance would be necessary, but could also provide a mechanism to delegate planning powers, for private band management.
11. Although there is a clear need for a legislative planning power, Defence supports the use of administrative mechanisms where possible as the preferred means of providing detailed technical assignment and licensing instructions. Such arrangements are more flexible and more readily updated to reflect changes in use and technology.
12. The proposal for the Bill to empower the ACMA to make *licence issue schemes* may incorporate some of the necessary framework to allow licences to be made more generic; however the interaction between licence issue schemes and other planning functions should be carefully considered during drafting of the legislation.
13. The revised Radiocommunications Bill should:
 - a. Provide a clear distinction of the functions to be performed by spectrum planning versus spectrum licensing. The revised legislation should prescribe that:
 - i. licensing activities are to be a result of planning activities focused on the long-term public interest, rather than short-term economic interests¹; and
 - ii. licensing is not to be used as a defacto planning method.
 - b. Specify the new licensing governance arrangements, in terms of:
 - i. decision factors affecting licensing;
 - ii. process for review, analysis and decision (including referral to higher authorities); and
 - iii. who has decision rights (ACMA, DoCA, Committee, Minister).
 - c. Facilitate the resolution of inconsistencies that currently exist between the ARSP and the Radiocommunications Act that affect the Defence Licence Type.

NATIONAL SPECTRUM COORDINATION

14. The significance of space to Australia's interests is recognised by the existence of a national coordination committee (refer table below). As cited in the Spectrum Review

¹ Using a resource analogy: Annual fishing quotas are usually set after review of current resource stocks and demand pressures, with expert scientific input to reduce the risk of overfishing, and provide sustainable use of the resource.

consultation and recommendations, spectrum is of similar-level interest (for defence, national security and economic reasons).

15. The current spectrum environment (policy, regulation, operations) is characterised by:

- a. the increasing criticality of spectrum for security and economic reasons; and
- b. the increasing changeability of spectrum access arrangements.

16. Defence recommends that a similar structure be established for national coordination of spectrum (refer table below). The Australian Government Spectrum Coordination Committee (Spectrum CC) would support:

- higher-level visibility to Government;
- coordination of spectrum reform implementation, on a continuing basis; and
- identification and consideration of critical spectrum issues, that cover other domains, eg space, national resilience.

<i>Australian Government Coordination Framework for Civilian Space Activities</i>	<i>Australian Government Coordination Framework for Spectrum Use</i>
Australian Government Space Coordination Committee (SCC)	Australian Government Spectrum Coordination Committee (Spectrum CC)
The SCC is supported by working groups on specific topics and interfaces to state, territory governments and industry, research organisations.	The Spectrum CC would be supported by working groups on specific topics and interfaces to state, territory governments and industry, research organisations. Existing groups such as NCCGR, LESRSC could provide input to the Spectrum CC.
Ref: <i>Australia's Satellite Utilisation Policy</i> , p24 Figure 1.	

17. The Spectrum CC could establish an initial working group to support the implementation of recommendations from several current reforms that have many dependencies. Namely:

- a. The Spectrum Review (Radiocommunications Bill);
- b. The Pricing Review;
- c. Reporting of public sector spectrum holdings; and
- d. The ACMA Review.

ANNEX A – RESPONSES TO CONSULTATION PAPER HEADINGS

The following detailed responses are structured to match the headings in the consultation paper.

APPLICATION

1. The language of the provisions in Division 4 should be reviewed to ensure they correctly encompass the nature of the modern Defence enterprise. The Defence workforce includes Defence personnel who are ADF or APS members, as well as contractors. Defence is also increasingly reliant on partnership with industry and visiting forces who also have requirements to access spectrum to support Defence objectives.

MINISTERIAL DIRECTION POWERS, POLICY GUIDANCE AND ACCOUNTABILITY

2. As stated in previous responses, a mechanism to ensure ministerial consultation is required.

ANNUAL SPECTRUM WORK PLAN

3. Defence recommends that better scheduling of milestones and coordination across Government be reflected in the Annual Spectrum Work Plan, rather than the ACMA developing this in isolation. The Annual Spectrum Work Plan could be endorsed by the Spectrum CC, to gain better visibility and buy-in across Government.

RADIOFREQUENCY PLANNING

4. See detailed discussion above concerning planning versus licensing. The requirement for the spectrum plan to designate one or more bands to be used primarily for the general purposes of defence should be retained.

LICENSING OF SPECTRUM

5. Defence supports the principle of merging Spectrum and Apparatus licences into a single licence type.
6. Defence supports the principle of treating Class licences outside the single licence type by using a differentiating term such as “authorisations”.
7. Defence supports the simplification of the Third Party Authorisation Process.

LICENCE ISSUE

8. Defence generally supports this principle, but may have reservations depending on the implementation details.

LICENSING - LIMITS

9. Defence generally supports this principle, but may have reservations depending on the implementation details.

LICENSING – RENEWAL RIGHTS

10. Defence generally supports this principle, but may have reservations depending on the implementation details

LICENSING RESUMPTION

11. Defence generally supports this principle, but may have reservations depending on the implementation details

SPECTRUM AUTHORISATIONS (CLASS LICENCES)

12. Defence generally supports this principle, but may have reservations depending on the implementation details

INTERFERENCE MANAGEMENT

13. Defence generally supports this principle, but may have reservations depending on the implementation details.

EQUIPMENT REGULATION

14. Defence generally supports this principle, but may have reservations depending on the implementation details.

COMPLIANCE AND ENFORCEMENT

15. Defence generally supports this principle, but may have reservations depending on the implementation details.

INFORMATION PROVISION

16. There are security constraints on shareability of some spectrum information by Defence. As such, it is necessary to retain provisions for this information to be kept confidential as is provided for in Section 152 of the current Act.
17. For spectrum, a generalised Registry Model, with associated business rules, should be considered at the stage of drafting the new Bill. Such models are successfully used to manage entities in a devolved, federated sense. Examples include:
- e. the Internet Domain Name System, administered by numerous commercial registrars; and
 - f. the register of aircraft assets, operated under the Mobile Assets Protocol of the Capetown Treaty.
18. Such a model, would also assist in organising the spectrum for particular groupings, such as:
- a. Band/Service type as traditionally used in the ITU RR and ARSP; and
 - b. Organisation of specific portions of spectrum to be managed by a private/public “band Manager”.

USER INVOLVEMENT: ACCREDITATION, DELEGATION, INDUSTRY CODES

19. Defence generally supports this principle, but may have reservations depending on the implementation details.

BROADCASTING

20. Defence generally supports this principle, but may have reservations depending on the implementation details.

REVIEW OF DECISIONS

21. Defence generally supports this principle, but may have reservations depending on the implementation details.

TRANSITIONAL ARRANGEMENTS

22. Defence generally supports this principle, but may have reservations depending on the implementation details.

23. Defence recommends close tracking of:

- a. the type and owner of existing/new licences held; and
- b. planned transition dates for the above.

24. The above suggestion of a Registry mechanism could be useful for the (extended) transition period (years) and continuing management.