



Government of **Western Australia**
Department of **Commerce**
Office of the Director General

Our Ref: A14493236

20 May 2016

Via Email: spectrumreform@communications.gov.au

Dear Sir/Madam

Legislative Proposals Consultation Paper – Radiocommunications Bill 2016

Thank you for the opportunity to provide comment on the above consultation paper.

The Department of Commerce is the Western Australian Government's representative on the National Coordinating Committee for Government Radiocommunications and provides the attached feedback on behalf of the State's Tier One Radiocommunications Group.

The group is comprised of senior radiocommunications representatives from the State's emergency services agencies, namely, WA Police, the Departments of Fire and Emergency Services, Corrective Services, Parks and Wildlife and St John Ambulance.

Should you have any enquiries regarding this feedback, contact Joseph Patroni

Yours sincerely

Anne Driscoll
A/DIRECTOR GENERAL

Att.



Government of **Western Australia**
Department of **Commerce**

Department of Communications and the Arts
***Legislative Proposals Consultation Paper –
Radiocommunications Bill 2016***

Response from the
Department of Commerce
in collaboration with Western Australia's
Tier One Radiocommunications Group (TORG)
of emergency services
May 2016

The Department of Commerce (Commerce) is the State's representative on the National Coordinating Committee for Government Radiocommunications (NCCGR). NCCGR was established to address the core issues of spectrum and inter-jurisdictional operations, and to ensure that the relevant issues are considered and discussed within a national framework.

As a result Commerce, as a NCCGR representative, in collaboration with the State's Tier One Radio Communications Group (TORG) of emergency services, has prepared a response to those sections in the *Legislative Proposals Consultation Paper – Radiocommunications Bill 2016* (the Paper) deemed relevant to those and other spectrum users. The TORG comprises WA Police, the Departments of Fire and Emergency Services, Parks and Wildlife, Corrective Services and St John Ambulance.

1. **Section 4. Annual spectrum work plan.**

With reference to the 'Annual spectrum work plan' the proposed approach states "The ACMA [Australian Communications and Media Authority] will also be expected to give the Minister reasonable notice..." The TORG notes that there is an expectation that the Minister would be advised of significant issues and that it is not necessary to legislate as it would be part of usual practice.

2. **Section 7. Licence issue.**

The TORG supports the simplification of processes for issuing licences. However, in regard to licence application and issue processes more information is required of the proposed approach to enable informed review and comment, especially in relation to the processes proposed for the auction of spectrum.

As part of the development of specifications for the auction of spectrum the TORG notes that greater clarification is required regarding how the legislation would address issues and risks in relation to potential non-competitive practices. For example, if purchasers with significant funds, be they large companies, agencies, or corporations, buy large amounts of spectrum with a view to on-selling frequencies at considerable additional cost to secondary purchasers. How would the legislation ensure smaller end users are not disadvantaged through higher costs from on-selling or by having to enter into costly ongoing business relationships with the provider?

3. **Section 8. Licensing – Limits.**

Currently the ACMA can "...only implement [competition] limits on a direction from the Minister" and when "determining allocation procedures must consult the Australian Competition and Consumer Commission (ACCC) on whether the procedures should include a requirement for the ACMA to provide specified information to the ACCC".

Currently, "when a competition limit is imposed, s 50 of the *Competition and Consumer Act 2010* (CCA) continues to apply to the relevant spectrum acquisition". Section 50 prohibits the acquisition of shares or assets [that could]... substantially lessen competition...and... has not created practical difficulties to date..." However, the proposed "legislation will provide that s 50 of the CCA will not apply to particular licences issue if limits have been set" and will allow the ACMA to set these limits for licence issue without the Minister's direction.

The TORG notes that the proposed approach may reduce or remove entirely, the protections provided by competition, and may result in disadvantage to end users, especially the small users. The TORG notes that market competition is required to ensure appropriate protection especially for the small users.

Further, it is not a requirement under current Legislation, but rather “as usual practice” that the ACMA consults the ACCC on the actual limits. Therefore, if the Minister directs the ACMA to implement limits it is expected to consult the ACCC. However, the proposed approach states “The ACMA will consult with the ACCC on licence limit issues where *appropriate and reasonably practicable*.”

The TORG raised concern about amending a currently defined practice with that of using undefined terms such as “appropriate” and “reasonably practicable”. These terms require further clarification and definition due to their potential significant impact.

4. Section 9. Licensing – renewal rights.

Currently “...the Act enables the licensees to apply for licence renewal and refusal by the ACMA...is a reviewable decision”. Further, the discussion paper states “the [Spectrum] Review noted that while stakeholders want a more flexible licencing system, they also seek certainty particularly in regard to renewal rights”.

The TORG supports the proposed approach in-principle however the inclusion of a provision for review or further detail is required in relation to the “statement outlining the licensee’s right to renewal and the circumstance when that will apply” will provide further certainty regarding the process.

The TORG notes concern that under the proposed approach to “..refuse renewal if the licence to be renewed is inconsistent with the current radiofrequency plans...” that a sufficient transition time is required. In the case of the ACMA’s *400 MHz Plan for Harmonised Government Spectrum* (HGS), there have been significant financial and logistical impacts on many government agencies that has necessitated resource intensive and prolonged transitioning to achieve compliance. In the proposed approach, in the event of the ACMA making changes to a radiofrequency plan, minimum grace periods will be required to achieve compliance.

Further, the TORG noted that the licensee could “...be refused renewal...if the renewal would breach another law of the Commonwealth.” The Act, as it relates specifically to radiocommunications, needs to be the primary legislative tool.

5. Section 10. Licensing – resumption.

For licensees the consequences of compulsory resumption can be extreme so it is recommended to include in the Bill recognition of the need for early disclosure of reasons relevant to the resumption, emphasise on the transparency of the resumption process, and to detail recourse and compensation models.

The TORG supports the inclusion of consultation to determine the content of the cited ‘legislative instruments’ pertaining to licence resumption, as there is concern due to the potential significant impact of this clause.

6. Section 11. Spectrum authorisations (class licences).

The TORG notes that due to the potential significant impact of the spectrum being compromised due to technical differences that where the proposed approach states “...spectrum authorisations *may include* conditions such as technical requirements...” technical requirements need to be outlined.

For example, the 4.9GHz class licence that Western Australia’s emergency services use could be severely undermined by equipment that is capable of taking up the whole frequency range. Through the National Coordinating Committee for Government Radiocommunications there exist requirements for how the equipment is to operate to prevent some users taking the full frequency range.

7. Section 12. Interference management.

The TORG respondents to this paper noted that, with reference to interference management, it is recommended that the proposed approach list interference and dispute resolution actions in order of escalation, or as a stepped process of negotiation where "...extending eligibility to take civil action..." should be a latter option, after consultation and reconciliation, rather than listed first as it currently appears to avoid the perception that the first in the series of options is the primary course of action.

Instruments such as the ACMA's Radiocommunications Assignment and Licensing Instructions are deemed to be an effective mechanism to address, and ultimately attempt to resolve in a timely manner, issues related to what can be significant problems regarding interference. The TORG raised a concern about the possible ineffectiveness of "...non-legislative interference management guidelines...." due to no provision for sufficient and enforceable penalty.

8. Section 14. Compliance and enforcement.

The TORG supports introducing a range of tools for compliance and enforcement, however it is noted that all required provisions need to be included in the Act. This is to ensure that amendments over time do not unintentionally dilute or remove reference to and/or the protections afforded to radiocommunications under those Acts.

9. Section 16 User involvement: accreditation, delegation, industry codes.

The TORG noted that the proposed approach "to enable the ACMA to delegate spectrum management functions"; may have significant implications for licencees and may only be considered after full and comprehensive options and risk assessment of delivery of the spectrum according to the regulations. It is recommended that the Act include clear description of how the spectrum will be managed, through governance and delegated authorities.

This concern has been highlighted by the example of implementing the HGS illustrated within the noticeable differences between the ACMA's Accredited Persons and others who simply allocate available frequencies on an 'ad hoc' fee paying basis compared with the critical need for the State's spectrum to be managed strategically while accommodating current and anticipating future requirements.

10. Section 18. Review of decisions.

The TORG recommends that in the list of "...decisions of the ACMA to be able to be reviewed by the ACMA and the Administrative Appeals Tribunal" to include the following in the proposed approach:

- interference management
- technical equipment requirements; and
- confidential requirements of law enforcement agencies.

The TORG recommends that if a decision regarding an interference issue is disputed or deemed inappropriate, a means of contesting that decision is required. The same should also apply to decisions regarding the technical requirements of equipment.

In addition to the feedback above, the TORG requests further consideration be given, when re-drafting the Radiocommunications Bill 2016 (the Bill), to additional issues of concern and perceived risk, including:

- Many agencies have continued to use specific spectrum allocations for many years and as a result have invested in and accommodated the essential requirements of equipment and related licences.

Concerns were raised about the significant cost implications for licencees if these existing allocations were to be changed, in any way, without sufficient consultation with affected agency/agencies.

In particular, unplanned changes to allocations may result in the need to purchase new unbudgeted terminal and network equipment which would ultimately have a critical impact on service delivery, especially for the emergency services.

The TORG recommends inclusion of a process whereby specific provision is made for comprehensive consultation with all/any parties likely to be affected if allocations are to change in the Bill.

- The TORG also recommends to include the same powers of entry to land and/or property as those afforded to commercial carriers, as currently stipulated in *Schedule 3 Carriers Powers and Immunities Part 1 General provisions Division 1 Simplified outline and definitions* of the *Telecommunications Act 1997* in the Bill.

Specifically, the TORG recommends to have powers to enter land and/or property to install LMR (land mobile radio) equipment that is deemed critical or essential to service an area or location.

This is deemed necessary as, although Western Australia's emergency services can invoke powers to enter land and/or property, under Western Australia's *Emergency Management Act 2005*, these powers come into force only when an emergency has been declared and the specific geographical boundaries of that emergency delineated. Currently entry to relevant land and/or property cannot be guaranteed and delays could prove detrimental to providing critical community service.

Should LMRs be required to be installed outside the defined emergency area, or for operations not resulting from a declared emergency, then Commercial carriers do have the access to land and/or property as required.