Australian Mobile Telecommunications Association and Communications Alliance

Submission to the Department of Communications and the Arts

Radiocommunications Bill 2017 and Spectrum Reform

28 July 2017

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2. Executive Summary

2.1 The Australian Mobile Telecommunications Association (AMTA) and Communications Alliance (the Associations) recognise that the Bill and associated reform package marks a pivotal step in the reform of Australia's spectrum management framework. We support the Government's approach of undertaking a comprehensive reform of the framework to enable the benefits of next generation technologies, including 5G, to be fully realised and for these benefits to be shared across the broader economy.

2.2 Radiofrequency spectrum is a finite and critical resource and the proposed reform package marks a significant step forward in simplifying the legislative and regulatory framework that has been in place since 1992. The Associations note the complexity of the task and recognise the substantial work undertaken by DoCA and the ACMA to design an improved framework to support this critical infrastructure and associated services and applications. The proposed new regulatory framework adopts a non-prescriptive approach and simplifies the existing arrangements and provides an improved level of flexibility; that will foster continued investment in spectrum resources, enabling the many benefits of the next generation of technological products and services to be realised across the broader Australian economy.

2.3 The Associations support the need for a single licensing framework to provide improved flexibility for the ACMA in terms of managing the licence system; balanced with the need for certainty to encourage continued investment by licence holders.

2.4 The Associations note the need for the Spectrum Review principles of simplicity, flexibility, transparency, certainty and efficiency to underpin the legislative and regulatory framework. We note that, at this stage, we have concerns that not all of these principles have been fully translated into the draft legislation:

- **Simplicity** – The Bill has effectively simplified the licensing framework in many ways; however there is still a lack of clarity and level of complexity that has been introduced in some areas where it could be avoided. For example, 3rd party authorisations where the requirement to keep a register duplicates processes and adds an unnecessary regulatory burden. Overall, the framework is not yet clear or simple, or easy to understand, as required by this principle.
- **Flexibility** - Flexibility needs to be tempered with appropriate checks and balances so that investors have the requisite certainty and the regulator's discretion is appropriately fettered.
- **Transparency** - Discretionary powers must be balanced by an obligation to consult with stakeholders. For example, we strongly suggest that Ministerial Policy Statements should be legislative instruments rather than notifiable instruments to ensure that consultation is a legislative requirement and that transparency is achieved in practice. Further, transparency can be achieved by good consultation practices and while it may not be appropriate to include requirements for consultation in the legislation; industry takes the strong view that robust consultation processes must be built into the overall regulatory framework, including subordinate instruments and the ACMA's processes.

- **Certainty** – Licence holders need to have certainty and confidence in the regulatory framework. For example, Regulatory Undertakings by the regulator should not be revokable; rather, undertakings should only be able to be varied by agreement following consultation. Also, transition arrangements must ensure that there is no risk to licensees' existing property rights.
- **Efficiency** - Payment for access to spectrum must be aligned with ability to use the spectrum or the licence commencement date. Spectrum property rights are comparable to real property rights and payments for acquiring those assets and property rights should be treated similarly. This has been an issue under the current framework, and we suggest that the new framework should enable the ACMA to consult with stakeholders on when payments for spectrum access should occur as well as flexible arrangements for payment options.

2.5 We note the need for transparency and full consultation and request that the Department release an updated road-map of the next steps of the consultation and drafting process.[1]

2.6 The Associations have questions around how Ministerial Policy Statements (MPS) will be used and have suggested that there is a mandatory stakeholder consultation process built into the Bill with regard to the drafting and issuing of MPS.

2.7 The Associations also have questions around how Regulatory Undertakings will be implemented and have raised the concern that they may result in unnecessary complexity as well as have the potential to undermine the property rights of existing spectrum licence holders.

2.8 The Associations acknowledge and support the aim of providing greater flexibility to the ACMA, and the introduction of Licence Issue Schemes (LIS) is an example of providing the ACMA with the ability to evolve the licensing regime with technology and the requirements of industry. We support the concept of LIS and broadly support their introduction along the lines of the Bill, with a few concerns as outlined in this submission.

2.9 The Associations note that there is (and should be) a clear distinction between valuation of spectrum and price-setting mechanisms and processes. The valuation of spectrum is important in considering how spectrum should be allocated, for example, to mobile broadband or to some other use. However, setting the price for spectrum should generally be based on the principle of opportunity cost. Setting the price for spectrum should include both consideration of the value of spectrum, in terms of its social and economic benefits, as well as the opportunity cost in relation to any specific transaction. These principles can be applied as equally important factors to be considered in price-setting and/or decisions around the appropriate mechanisms for the allocation or sale of spectrum.

[1] Attachment A, Ministerial Media Release 25 August 2015

2.10 While spectrum price setting is a matter for regulatory guidelines, there should be full transparency, including consultation, around the processes for setting prices as well as the decision-making process involved in choosing the appropriate mechanism for allocations e.g. market-based allocations, such as auctions, administered pricing or other methods.

2.11 The Associations believe that comprehensive reform of the spectrum management framework must include broadcasting spectrum and the Associations are very disappointed to see the exclusion of broadcasting spectrum from the new Bill. The exclusion of broadcasters means they will continue to gain access to spectrum via licences under the *Broadcasting Services Act 1992 (Cth)* and under a separate spectrum pricing regime. The Associations see no reason for the exclusion of broadcast spectrum from the draft Bill, and request the Government stand by its 2015 commitment to implement the recommendations of the Spectrum Review.

2.12 While it sits outside the legislation, the issue of stamp duty in relation to spectrum transactions is important and we have outlined our concerns that some State/Territory jurisdictions continue to impose stamp duty on these transactions in section 10 of this submission.

2.13 The Associations look forward to the next steps in the consultation program and continued active engagement with both DoCA and the ACMA as the legislative drafting process continues and the regulatory framework is further developed.

3. Introduction

3.1 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.

3.2 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 www.commsalliance.com.au.

3.3 AMTA and Communications Alliance (the Associations) welcome the opportunity to provide comments to the Department of Communications and the Arts (DoCA) on the Exposure Draft of the Radiocommunications Bill 2017 (the Bill) and accompanying factsheets and background papers.

4. Background

4.1 Consultation Process

4.1.1 The Associations note that consultation on the reform of Australia's spectrum management legislative and regulatory framework commenced in May 2014 and has consisted of five phases of consultation to date as outlined in the table below:

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 submission – 17 May 2016
May 2017	**Spectrum Reform Package(including Exposure Draft of Radiocommunications Bill 2017) released**	

4.1.2 We note that while there have been several stages of lengthy consultation, and substantial industry feedback, no detail on the reasons for rejecting feedback has been provided as each iteration of the proposed reforms has progressed. For example, no justification was provided as to why industry comments on the Object of the Bill, have been disregarded. Similarly, no justification has been provided as to why industry's strongly stated position regarding the need for the timing of payments for spectrum to be closely aligned with the licence commencement date has also not been incorporated into the new framework.

4.1.3 The Associations suggest that it would be helpful, as consultation on the Bill progresses, to test how the processes established under the new legislative framework, including subordinate instruments and transitional arrangements, will work in practice. It is important that the perspective of the customers of these processes, the licence holders, is adopted in testing these processes.

4.1.4 The Associations understand that the 'Transitional and Consequential Amendments Bill' will now be released for consultation and we support this development and consider that additional visibility of transition plans may also help improve confidence of a key concern of industry, that preservation of incumbent spectrum rights will be maintained. The Associations suggest that confidence could be further improved if DoCA, in co-operation with the ACMA, were to release an updated comprehensive consultation roadmap that sets out the stages in the consultation and drafting processes as well as the planned engagement with stakeholders at each stage.[2]

4.2 Fundamental Principles must underpin reforms

4.2.1 The Associations believe that the policy principles adopted by the Spectrum Review[3] must underpin the reform process, but have not in every instance been adequately reflected in the current draft Bill:

- **Simplicity** – The Bill has effectively simplified the licensing framework in many ways; however there is still a lack of clarity and level of complexity that has been introduced in some areas where it could be avoided. For example, 3rd party authorisations where the requirement to keep a register duplicates processes and adds an unnecessary regulatory burden. Overall, the framework is not yet clear or simple, or easy to understand, as required by this principle.
- **Flexibility** - Flexibility needs to be tempered with appropriate checks and balances so that investors have the requisite certainty and the regulator's discretion is appropriately fettered.
- **Transparency** - Discretionary powers must be balanced by an obligation to consult with stakeholders. For example, we strongly suggest that Ministerial Policy Statements should be legislative instruments rather than notifiable instruments to ensure that consultation is a

[2] Attachment A, Ministerial Media Release 25 August 2015
[3] Department of Communications and the Arts, Spectrum Review, March 2015, p13.

legislative requirement and that transparency is achieved in practice. Further, transparency can be achieved by good consultation practices and while it may not be appropriate to include requirements for consultation in the legislation; industry takes the strong view that robust consultation processes must be built into the overall regulatory framework, including subordinate instruments and the ACMA's processes.

- **Certainty** – Licence holders need to have certainty and confidence in the regulatory framework. For example, Regulatory Undertakings by the regulator should not be revokable; rather, undertakings should only be able to be varied by agreement following consultation. Also, transition arrangements must ensure that there is no risk to licensees' existing property rights.
- **Efficiency** - Payment for access to spectrum must be aligned with ability to use the spectrum or the licence commencement date. Spectrum property rights are comparable to real property rights and payments for acquiring those assets and property rights should be treated similarly. This has been an issue under the current framework, and we suggest that the new framework should enable the ACMA to consult with stakeholders on when payments for spectrum access should occur as well as flexible arrangements for payment options.

4.2.2 Radiocommunications spectrum is a finite resource and its effective and efficient management is integral to Australia's economy so that the economic and social benefits of mobile broadband (MBB) and fixed wireless, including 5G terrestrial and satellite technology, can be fully realised. It is therefore imperative that we take this 'once in 25 year' opportunity to comprehensively reform the legislative and regulatory framework to enable the benefits of MBB, including 5G, as well as other uses of spectrum to be delivered across the broader economy. Such comprehensive reform of the framework must include all uses of spectrum, including broadcasting spectrum, to have an effective and lasting benefit for Australia.

4.3 Preparing for 5G

4.3.1 5G is the next generation of mobile communications networks and it is anticipated to enable a fully and seamlessly connected society and economy. It will deliver substantial improvements in the speed, latency and reliability of mobile networks in order to meet the ever increasing demand for MBB.

4.3.2 5G will be an evolution that builds on 4G/LTE mobile networks and continues the trend of convergence between fixed line and mobile services.

4.3.5 Spectrum and deployment related policy and regulatory settings are critical inputs to support the implementation of 5G and next generation wireless and satellite services. Reform of the existing legislative and regulatory framework for spectrum management is imperative to delivering the benefits of 5G and MBB. At the same time, technology is allowing more efficient sharing scenarios amongst existing and developing services. (See Attachment A for more background in relation to 5G and MBB services).

5. The Radiocommunications Bill 2017

5.1. Part 1 –Preliminary

5.1.1 In our previous submission[4], the Associations suggested the following words be adopted as the Object of the Bill:

> *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.

5.1.2 The Associations believe that the above suggested words better reflect the purpose and objective of the Bill and provide clearer guidance to future decision-makers. In the draft Bill, the Object includes reference to "long term" public interest which we maintain could prevent proper consideration of important shorter term concerns and the overall public interest.

5.1.3 The Associations support a single definition of 'Space Object' under s.16 of the Bill rather than the two definitions currently provided under the Act.

5.1.4 The purpose of the second object "(b) to establish an efficient system for the regulation of equipment" is not clear to the Associations. It does not appear to add any value over (a) except that it seeks an efficient system, and this should be the case for all aspects of the new framework. Further, an efficient system is a means to an end and not an outcome. The focus of the Objects should be on high level outcomes. Without further explanation we think this second object does not add any value and should be removed.

[4] AMTA and Communications Alliance Submission, Legislative Proposals Consultation Paper – Radiocommunications Bill 2016, 17 May 2016

5.2. Part 2 – Ministerial Policy Statements

5.2.1 The Associations are concerned about how Ministerial Policy Statements (MPS) may be used and the level of discretion conferred on the Minister to issue MPS. MPS will be relied upon by industry when making planning and significant long-term investment decisions and so a policy framework that provides certainty on spectrum availability, allocation processes and timing is required to foster and encourage continued industry investment. Specifically, we recommend that the legislation should clearly define the scope of the Minister's power to make MPS, including details of what can and cannot be included.

5.2.2 The Associations also recommend that the Bill include a requirement for mandatory consultation on an MPS prior to release. Consultation provides transparency and is an important process step to ensure industry is included in the development of Government policy. To ensure transparency, we recommend that the Bill should require the Minister to develop MPS in consultation with the ACMA and industry bodies such as AMTA and Communications Alliance.

5.3. Part 3 – ACMA Work Program

5.3.1 The Associations are pleased to see the introduction of the annual work plan into the Bill, as we believe the work program is an important mechanism to improve certainty, accountability and transparency. Industry relies on the work program in making decisions around investment and network planning and it is therefore imperative that the work program be a reliable and accessible tool.

5.3.2 We would like to see the timing for the work program aligned to the fiscal year it commences with, rather than the current practice of releasing for consultation in October, with responses coming back around December (or later) almost halfway through the year.

5.3.2 We would like to see self-reporting measures added to ensure that the ACMA is accountable for delivering on its work program. We propose that reporting on the previous year could be included in the following year's work program.

5.3.3 Finally, the ACMA should conduct a systematic engagement program with stakeholders to gauge progress against the plan throughout the year. The work plan framework also needs to include a defined and transparent process (including stakeholder engagement) for making amendments to the plan, so that the ACMA can be agile and flexible in response to changing circumstances, rather than continuing with plans which may no longer be appropriate for maximising the public benefit.

5.4. Part 4 – Radiofrequency Plans

5.4.1 Radiofrequency plans are an important planning tool in the role of the ACMA, and the Associations are pleased to see them in the new Bill.

5.4.2 We are concerned at the prospect of two or more radiofrequency plans coexisting (section 24(3)) as it presents the potential for overlap and conflict between various plans. We recommend that a mechanism is introduced to ensure that when a radiofrequency plan is developed, specific steps are taken to ensure that it does not conflict (or overlap) with an existing radiofrequency plan.

5.4.3 We are also concerned with the drafting in section 25(2) and the exemptions to be granted to the ACMA with respect to complying with a radiofrequency plan in the context of licence renewals or when issuing a licence under section 77 (subdividing). We see no reason for the ACMA to be exempted from performing its spectrum management functions in a manner that is consistent with the radiofrequency plan in this context. We note that section 25(4) gives the ACMA power to issue licences that are inconsistent with the radiofrequency plan for purposes of national interest or in an emergency.

5.4.4 The Associations note the desirability for radiofrequency plans to be harmonised with international plans, and aligned with the WRC processes and timelines. This needs to be considered in terms of transitional arrangements for radiofrequency plans.

5.5. Part 5 – Operation of radiocommunications devices

5.5.1 The Associations do not have any comments in relation to this part of the Bill dealing with the operation of radiocommunications devices.

5.6. Part 6 – Licences

5.6.1 The Associations note that the proposed new licensing framework will bring about a single licensing framework rather than the three prescribed in the current Act. The Associations support the introduction of a single licensing framework in order to enable flexibility and note that the single licence framework laid out in the new Bill needs to establish the general terms, conditions and limitations according to which licences will be granted, and not prescribe licence types for a potentially wide range of applications. To ensure the longevity of the new framework, it will need to be flexible and adaptable to changing technological determinants such as Dynamic Spectrum Access (DSA) and associated Cognitive Radio (CR) and Software Defined Radio (SDR) techniques.

5.6.2 However, we note that class licences will transition to spectrum authorisations. Of concern is the possibility of the ACMA issuing a spectrum authorisation(s) that cuts across some or all of the frequency and/or geography of a (former) spectrum licence without permission of the licensee. While we understand that it is proposed that Regulatory Undertakings will be used to prevent the ACMA from issuing spectrum authorisations that conflict with licences under the new scheme, we are yet to see how this will work in practice. Indeed, the use of regulatory undertakings may prove unnecessarily complex. For example, will this mean that all (former) apparatus licences require a regulatory undertaking, and how will this be achieved?

5.6.3 The Associations do not agree that the ACMA should be able to revoke a regulatory undertaking without full consultation with and the agreement of the licensee. To give the ACMA the discretion to revoke a regulatory undertaking undermines the core purpose of the undertaking and is inconsistent with the policy principle of certainty.

5.6.4 **Licence Issue Schemes**. The Associations acknowledge and support DoCA's goal to provide greater flexibility to the ACMA, and the introduction of Licence Issue Schemes (LIS) is an example of providing the ACMA with the ability to evolve the licensing regime with technology and the requirements of industry. We support the concept of LIS and broadly support their introduction along the lines of the Bill. We do however, have two concerns, firstly with regard to the potential proliferation of LIS and secondly with the ability for the ACMA to delegate the power to create a LIS. In the case of the former, the proliferation of LIS has the potential to increase complexity and overhead, both of which are against the principles of simplicity and efficiency. We recommend that the ACMA should be required to have regard to existing LIS, and when determining a new LIS, the ACMA should publish reasons as to why an already existing LIS would not be appropriate for the issue of contemplated licences. In the case of the latter, we believe that LIS are an important tool that may apply across a large number of licences, and that they should remain in the ACMA's control, rather than potentially being delegated to a third party to create and manage.

5.6.5 Licence issue limits. The Associations support the proposed approach under the draft Bill that allows the ACMA to set licence issue limits following consultation with the ACCC. We prefer this new approach over the current approach whereby the Minister seeks advice from the ACCC and then directs the ACMA in regard to the licence issue limit. However, we are concerned that there is no clear basis for how either the ACMA or the ACCC would set a

licence issue limit and no requirement in the draft Bill for either the ACMA or the ACCC to consult on licence issue limits. This is inconsistent with the policy principle of transparency and the Associations support consultation on the setting of licence issue limits.

5.6.6 Ministerial power to direct the ACMA to offer a licence to specified person (sections 39 and 40). This direction power when coupled with the Minister's power under section 194(2)(d) to set the spectrum access charge, needs to be used in an open and transparent manner, with appropriate public consultation on both the decision and the spectrum access charge to ensure the public interest is met.

5.6.7 Third party authorisation (sections 41 to 45). Introduction of the single licensing regime has necessitated the amalgamation of the sections in the current Act dealing with third party authorisations, namely section 68 dealing with third party authorisations under a spectrum licence, and section 114 dealing with third party authorisations under an apparatus licence. It is imperative that the third party authorisations enable flexible use of the spectrum while imposing minimal transaction costs. Unfortunately, the draft Bill increases the transaction costs relative to existing spectrum licences. The Associations are concerned that the third party authorisations will increase the burden on existing spectrum licence holders who provide third party authorisations, by inadvertently applying obligations in dealing with third party authorisations under an apparatus licence to dealing with third party authorisations under a spectrum licence. Of particular concern is section 44 in the draft Bill which requires the holder of a licence to keep a record of the person to whom they have provided an authorisation to operate a device under their licence. Mobile network operators can license tens of thousands of mobile repeaters, potentially creating significant regulatory burden in tracking the authorisations. Similarly, the requirement in section 45 of the draft Bill which requires the licence holder to notify every third party of a variation to the relevant licence. Variations to spectrum licences have occurred quite frequently in recent years, and some variations are of a highly technical nature and have no relevance whatsoever for authorised third parties.

5.6.8 Third party authorisation and delegation of management rights (Part 17). We observe that the list of items under the general licensing functions or powers at section 199 of the draft Bill does not include sections 41-45 on third party authorisations. However, we note that the ability of a licence holder to create, cancel and administer sub-licences is ostensibly no different to the functions contemplated under Part 17 of the draft Bill. The associations recommend that the Department should consider using the delegation of management rights outlined in Part 17 to confer to a licensee the ability to manage third party authorisations.

5.6.9 Licence conditions. Section 46(3) is potentially of concern to the Associations. We understand that in some circumstances, it may be necessary for two licences, or for a licence and a spectrum authorisation to overlap, especially as spectrum congestion increases and we seek to have more opportunities to introduce sharing. However, spectrum sharing will be more efficiently achieved through agreements between spectrum users rather than being mandated through regulation. The former is flexible and takes account of the interest of all parties, while the latter creates the risk of unintended consequences and might prove

cumbersome to implement. We reiterate our concern that any such overlap cannot apply to existing/former spectrum licences that will transition to the new arrangements.

5.6.10 Additionally, in section 46, the maximum permitted radio emission core conditions have been eliminated altogether in the new Bill, which is a serious concern. Access to spectrum must include the technical parameters with which that spectrum can be used and, to be consistent with a technology-neutral approach, we urge that maximum permitted radio emission values be reinstated as a licence condition under section 46 of the new Bill.

5.6.11 Regulatory Undertakings (Division 5). The Associations are concerned about how Regulatory Undertakings will work in relation to the issue, management and renewal of licences. We are concerned that the form and content of Regulatory Undertakings may erode the exclusive property rights contained within the (former) spectrum licences. If the form or content of a regulatory undertaking does not adequately address the future risk of erosion by overlay of subsequent licences that prevent the licence holder from properly using their purchased spectrum; then a person seeking spectrum will either discount the value of the spectrum on offer to reflect the risk or will abandon their proposed investment altogether. We believe that the primary legislation would be a better place to outline some of the obligations that are likely to be contained in Regulatory Undertakings.

5.6.12 We are also very concerned with the specified steps which allow the ACMA to issue a licence once a regulatory undertaking is in place. As currently drafted[5], the ACMA need only consult with the holder of a licence to which the Regulatory Undertaking is attached, or carry out an assessment as to whether issuing a new licence or spectrum authorisation would "result in unacceptable levels of interference" before issuing the licence or spectrum authorisation. While we support the need for consultation and assessment of possible interference, mere consultation and assessment are inadequate, and we require that consent be obtained from the holder of the first licence where anything inconsistent with the regulatory undertaking is proposed.

5.6.13 Varying Licences (Division 6). We observe that the power of the ACMA to vary licences has been increased compared to their powers under the current Act, which we understand to be in line with DoCA's goal to increase flexibility for the ACMA. However, the Associations are concerned that the items included at section 57(1) include the ability to vary (g) or revoke (h) Regulatory Undertakings. While we accept that a decision to vary a licence is reviewable under Part 18 of the draft Bill, having to endure a review process to reclaim rights is unacceptable, and it would be better to put restrictions into the Bill such that variation or removal of a Regulatory Undertaking is only possible with the express consent of the licensee.

5.6.14 In addition to our concerns on the increased power of the ACMA to vary or revoke Regulatory Undertakings, we are also concerned at the increased power afforded to the ACMA at section 57(1)(c). This section allows the ACMA to unilaterally vary core licence conditions, such as the

[5] Draft Bill, section 53(4)

part of the spectrum or the part of the geography in which a radiocommunications device is authorised to operate. We submit that the ability for the ACMA to unilaterally vary core licence conditions undermines the principle of certainty, and we urge that section 57(1)(c) should duplicate section 57(1)(d) by excluding from its scope for variation the conditions covered by sections 46 to 50.

5.6.15 Renewing Licences (Division 7). Consistent with the principle of certainty (section 4.2.1 of our submission), we propose that a presumption of automatic renewal of licences should be established at the primary legislation level. We acknowledge that not every type of licence would require a presumption of renewal (for example, scientific test licences); however, this will be the exception rather than the norm. We also acknowledge that there are measures for MPS to provide guidance on renewal, and for licences themselves to carry details, however, for simplicity and efficiency, given the default position requires the presumption of renewal, we recommend that the presumption of automatic renewal of licences should be established at the primary legislation level.

5.6.16 The Associations suggest that the Bill should enable the ACMA to have sufficient regulatory flexibility to appropriately manage licence renewal processes. For example, the ACMA should be given the flexibility to extend the presumption of renewal of (former) apparatus licences; and to allow flexible payment schedules based on the renewal dates.

5.7. Part 7 – Spectrum Authorisations

5.7.1 Please see our comments at section 5.6.2 in relation to spectrum authorisations.

5.8. Part 8 – Certified Operators

5.8.1 The Associations welcome the continuation of Certified Operators (previously Qualified Operators under the Current Act). We observe that the scope of devices as been expanded to include all radiocommunications devices, whereas under Part 3.3 Division 5 of the Current Act, the scope is constrained to transmitter licences. We believe that this increase in scope is unnecessary, and we recommend that this Part can be narrowed to make reference to a specified class of radiocommunications transmitting devices.

5.8.2 We support the proposed ability for the ACMA to delegate its power under section 108 to issue certificates.

5.9. Part 9 – Interference Management

5.9.1 The Associations suggest that it would be helpful to have some Guidelines regarding interference management, particularly around the proposed dispute resolution processes. We note that the ACMA is currently consulting with stakeholders regarding its interference management principles and this process needs to be aligned with the legislative reform program.

5.9.2 The Associations strongly recommend that the scope should be expanded to include receivers, as well as transmitters. We understand from the briefing sessions that DoCA considers that should a device that is primarily designed as a receiver (for example, a television mast-head amplifier) begins emitting radiocommunications signals, it is captured under the definition of a transmitter, and as such, the powers under Part 9 apply. We are satisfied with that explanation for receivers that begin emitting radiocommunications signals. In addition, we observe that a faulty radiocommunications receiver (e.g., not filtering properly) could be the subject of an interference complaint. Under section 116, the ACMA only has power to give a direction to the holder of a licence in relation to a radiocommunications transmitter for the purpose of avoiding, minimising or reducing interference to radiocommunications. The scope for all of Part 9 needs to be expanded to include radiocommunications receivers in the event that the transmitter involved in the claim is fully compliant and the receiver is faulty.

5.9.3 AMTA has previously submitted[6] the following suggested principles for consideration by the ACMA with regard to its review of interference management principles:

- Allocated spectrum should be available to licence holders free from interference by non-compliant equipment or other users.
- The ACMA is responsible for enforcement of compliance with spectrum licences and will use its available regulatory tools and powers for the purposes of enforcement.
- The ACMA has an obligation to take proactive actions to deter the acquisition and use of non-compliant devices.
- The ACMA will encourage parties to self-resolve interference issues in the first instance.
- Where interference is caused by compliant equipment, the ACMA will, with cooperation from the parties involved, seek to resolve the issue. The ACMA will apply its principles of spectrum management to such investigations so that spectrum is enabled to move to its highest value use(s).
- Where interference is caused by non-compliant equipment and cannot be resolved by the interested parties; the ACMA will use its powers to either bring non-compliant equipment into compliance or to shut down non-compliant equipment, if necessary by taking escalating enforcement measures.
- Failing all else, the ACMA will appoint a conciliator under section 202 of the Act.

[6] AMTA submission to the ACMA – Interference Management Principles – 17 Feb 2017

5.10. Part 10 – Equipment

5.10.1 The Associations support an approach that facilitates the supply of devices to the Australian market. In recognition of the wide variety of supply models and the roles of the parties in modern supply chains, flexibility of the fundamental aspects of pre-market compliance assurance is essential going forward, in a reliable but non-disruptive, cost-neutral or cost-reduced manner, taking into account the present compliance assurance processes.

5.10.2 The Associations are pleased to see the introduction provisions in the new Bill that enable equipment rules to target the supply chain for devices which are not legal for use in Australia. The focus of the offence provisions in the current Act is on the conduct of end users of devices, (e.g., a mobile repeater) when often the end user is an unwitting offender, and the real offender is the offshore suppliers of such devices. We support the provisions of the new Bill that enable the ACMA to take action directed at suppliers of radiocommunications devices that are liable to cause harmful interference, including devices that are not authorised by a licence to operate within spectrum they have lawfully acquired. In particular, sections 121(3)(g) and 124(3)(b) of the new Bill make it clear that equipment rules may impose obligations or prohibitions in respect of the supply of equipment, and section 124(4) enables the prohibition of supply (or offering to supply) under the equipment rules unless the supplier satisfies particular conditions. We suggest it would be helpful if the ACMA commences preparation of the initial equipment rules and stakeholder engagement as soon as possible so that the ACMA can make these equipment rules immediately after the new legislation comes into force.

5.10.3 The Associations are mindful that the transition to the new arrangements must be designed to be as seamless as possible when moving from the current arrangements, minimising any unnecessary impost on industry. For example, existing licences should be allowed to continue until they expire under the current arrangements before the licensee is required to transition to the new arrangements. Sufficient notice should be given to licensees of any proposed changes to licence or equipment technical conditions so that transition to the new requirements may be planned non-disruptively.

5.10.4 Existing devices should be grandfathered under the new arrangements, as has been implemented previously with the labelling changes relating to the change from the C-tick mark to the RCM. Consideration needs to be given in selecting an appropriate period before new devices will need to comply under the new arrangements. The interdependency between equipment compliance and equipment licensing requirements also needs to be taken into account.

5.10.5 With the increased flexibility being introduced under the Bill, assurance is sought that there are no major detrimental outcomes to industry, e.g. additional costs or delays to bring devices to market. This is to be considered in the context that the radiocommunications environment, from a frequency spectrum perspective, is becoming

increasingly complex, with many more devices being deployed. For example, the advent of semi-autonomous and autonomous vehicles will lead to complexities in relation to device management.

5.10.6 Existing devices that have met all the compliance requirements should not need to be reassessed or re-labelled when transitioning under the new arrangements, unless there is an overriding issue to be addressed.

5.10.7 The Associations would like to see examples or drafts of the new Equipment Rules that will be replacing the Equipment Standards under §162 of the 1992 Act, as there is little information to have a clear understanding of how the Rules will work in practice. This may also present the ACMA with a good opportunity to align compliance on aspects such as EME with international (ICNIRP) and national (ARPANSA) standards.

5.10.8 Further detail is needed on how migrating class licences to spectrum authorisations will affect industry. There are many local area and personal area wireless networks which presently rely on class licences, and increasingly the internet of things (IoT) is producing machine to machine (M2M) classes of short-range low power communications. There are also wireless power transfer systems which usually work under near-field conditions, but designs are emerging internationally that work at longer distances, and they 'communicate' on an M2M basis only to establish charging regimens. Also, it is unclear how spectrum authorisations and equipment rules interact under the new arrangements.

5.10.9 In addition to the four new 'non-linear' supply chain models listed in the *Equipment Rules* paper, the traditional 'linear' models still need to be recognised, along with other models, such as:

- the online purchasing of device components and assembling into products, where no one entity owns the completed device.
- importation for personal use by international travellers (e.g. cellular devices, Wi-Fi, Bluetooth, etc). While these are not usually 'supplied' to the market as such, they do form part of the quantum of radiocommunications devices in-country.

5.10.10 The Associations recognise that the introduction of new arrangements will provide an opportunity to improve consistency in how the obligations of agents and agency processes are specified under the difference regulatory regimes. For example, consideration needs to be given as to how the agent would handle liability issues and recalls.

5.10.11 The Associations note that there is scope for the equipment rules to allow an overseas manufacturer to authorise an Australian agent to assume compliance obligations on behalf of multiple importers of specified products, allowing for a person to operate as an 'agent-at-large' for particular equipment. While this approach may seem reasonable, the implications of such an approach are complex. While on the face of it this approach seems to make sense, what is the impact on compliance with the Electrical Equipment Safety

System (EESS) requirements, i.e. who now is the real importer or person responsible for safety compliance of telecoms equipment?

5.10.12 The Associations are aware of the consideration by the *Senate Standing Committee on Regulations and Ordinances* on the issue of making standards incorporated by reference free of charge to the user. This will have a bearing on how equipment rules are implemented. If this applies to both national and international Standards, then this is expected to also have ramifications on the viability of Standards development in Australia, particularly if this concept is extended to sectors beyond the communications sector.

5.10.13 The Associations wish to have clarified what is the Department's view on what is considered to be an international Standard. For example, formally in the standards world, international standards are those produced by ISO, IEC and ISO/IEC JTC 1, and perhaps CISPR. ITU-T and ITU-R recommendations are often also treated as international standards, although formally they are 'recommendations'. However, there are very many regional (e.g. EU's EN, ETSI) and other countries domestic standards, as well as industry consortia standards and specifications which Australian regulators often refer to informally as 'international standards'. So more clarity is needed on what is meant by 'international standard', and AS/NZS documents, where exist, should remain allowable alternatives where they cover the same or similar Scopes.

5.10.14 Further clarity is sought on the proposed new ACMA powers concerning compulsory and voluntary Equipment recalls (Division 5) and interim and permanent Bans (Division 4 of the Bill).

5.10.15 The Associations agree that consistency in supplier obligations for radiocommunications and telecommunications devices is preferred and this should be reflected in the equipment rules. How this may affect telecommunications arrangements in the future is of keen interest to the Associations.

5.11. Part 11 – Emergency Orders

5.11.1 The Associations support the Emergency Order provisions in the Bill.

5.12. Part 12 – Accreditation

5.12.1 The Associations support the Accreditation provisions in the Bill.

5.13. Part 13 – Industry Codes

5.13.1 The Associations have been longstanding advocates for industry self-regulation, and we are very encouraged to see the introduction of industry codes into the draft Bill. Industry codes have been successfully used for deployment of mobile base stations through to management of premium content and services. We propose that the ACMA take a broad view of what is possible to accomplish using industry codes including aspects of licensing through to compliance with electromagnetic energy requirements.

5.14. Part 14 – Information Gathering Powers

5.14.1 The Associations note that the ACMA already has quite broad information gathering powers in existing legislation (the *Telecommunications Act 1997* and the *ACMA Act 2005*). While further information gathering powers may be needed to assist with enforcement in areas such as interference management, any further powers need to be fit for purpose and appropriately targeted in this legislation.

5.14.2 The Associations appreciate the need for the introduction of targeted, fit for purpose, information-gathering powers in the new Bill for the purpose of monitoring compliance with the Bill and equipment rules. However, we are concerned with the broad scope of the power under subsection 170(1)(a)(ii), which currently extends to any information which is relevant to the operation of the Act or equipment rules relating to interference. This provision potentially captures a wide range of business records held by any entity operating this space, a large proportion of which would be irrelevant to the ACMA's functions under the new Bill. Our preferred position is that (in addition to the health and safety grounds in Part 14), the trigger for the information gathering powers should be where the ACMA believes on reasonable grounds that information or a document is relevant to a contravention, or suspected contravention, of the Act or of the equipment rules.

5.15. Part 15 – Enforcement

5.15.1 The Associations support the enforcement arrangements included in the Bill. We welcome the introduction of public warning notices as a cost effective and efficient mechanism to assist in preventing consumers form purchasing unauthorised mobile repeaters which are a significant cause of interference.

5.16. Part 16 – Spectrum Access Charges

5.16.1 The Associations strongly believe that access to spectrum must be aligned with ability to use the spectrum at the commencement of the licence. Spectrum property rights are comparable to real property rights and payments for acquiring those assets and property rights should be treated similarly. This has been an issue in the past, and we suggest that the ACMA should consult with stakeholders on when payments for spectrum access should occur as well as flexible arrangements for payment options.

5.16.2 From a financial perspective spectrum licence purchases and renewals involve significant investment and necessitate engagement at corporate Board level of the decision-making process to ensure corporate and governance obligations have been met. Such processes take time to prepare and engage with and necessarily involve careful longer term planning.

5.17. Part 17 – Delegation

5.17.1 The Associations are generally supportive of the ACMA having the ability to delegate certain spectrum management functions to third parties. We view that delegation of management functions to a long-term licensee will create new opportunities for sub-leasing and secondary trading markets, resulting in greater and more efficient spectrum use.

5.17.2 However, the drafting and scope of the delegation of management functions appears more orientated to creating a licensing agency (possibly with no licence holdings of their own), essentially raising the possibility of two (or more) "parallel" regulators, possibly overlapping and with unclear demarcation. Central to this concern is the proposal under the draft Bill for the ACMA to delegate power to make a legislative instrument, for example, sections 34(1), 47(2), 50(1), 99(1)-(3) and 193(1)-(3). We do not consider it appropriate for the function of making a legislative instrument to be delegated to a private entity. A second example of a power that should not be able to be delegated is the ability to create a licence issue scheme. Where an existing licensee is using delegated powers to issue a sub-licence, a Licence Issue Scheme should not be required. Where a third party is delegated management rights for a block of spectrum, for purposes of consistency and predictability, it would be more appropriate for the delegate to use one (or more) existing Licence Issue Schemes, rather than creating new ones, which by their very presence add new overhead and therefore complexity.

5.18. Part 18 – Review of Decisions

5.18.1 The Associations support the Bill's provisions in relation to review of decisions.

5.19. Part 19 – Provisions extending the concept of radiocommunications

5.19.1 The Associations support the Bill's provisions extending the concept of radiocommunications.

5.20. Part 20 – Exemptions

5.20.1 The Associations support the exemptions provisions in the Bill.

5.21. Part 21 – Miscellaneous

5.21.1 The Associations do not have any comments in relation to this section of the Bill.

6. Transition Arrangements

6.1. A Proposed Approach – Consultation Paper

6.1.1 The Associations welcome the DoCA's consultation on the transitional arrangements as contained in the "*A proposed approach to transition from the 1992 Act to the Radiocommunications Bill*" consultation paper. However, this high-level consultation paper that only broadly outlines the proposed approach; must not be a substitute for a consultation on a full draft of the Transitional and Consequential (T&C) Bill. Noting that DoCA has now advised that there will be consultation on the T& C Bill, we would like to reiterate that the Associations are strongly of the view that industry must be given the opportunity through a full and proper consultation to view and provide input to the draft T&C Bill.

6.1.2 The Associations strongly believe that the approach adopted for transition must ensure that existing licence holders are guaranteed that existing property rights and conditions associated with all types of licences will be continued under the new regime for the remaining term of the licence.

6.1.3 Transition to the new regime must not inhibit business-as-usual (BAU) activities and we therefore support the continued appropriate resourcing of the ACMA and note that the ACMA has already put in place resources to assist with the transition program. A key priority for the ACMA during the transition must be preservation of normal business activities, particularly allocation processes and we note that this is missing from the principles on page 7 of the consultation paper. While the third principle does talk about "*minimal disruption to user business activities*", we are of the view that this is not the same as maintaining normal business activities, especially activities such as allocation and re-allocation of spectrum. We suggest that the third principle should be expanded to ensure that there is no disruption to business activities, including, explicitly, allocation and re-allocation of spectrum.

6.1.4 We support the principle the fifth principle on page 7 of the consultation, ensuring that licensees are provided with adequate consultation and/or notice in advance of transitioning to the new licensing framework. We support Licensees being given a timeframe and potentially deadlines to transition, and suggest that licensees could be offered the opportunity and incentives to transition to the new scheme where possible or appropriate to encourage early transition.

6.1.5 The Associations therefore submit the following guiding principles for an approach to transition for consideration:

- The transition path must be mapped out in close consultation with all stakeholders.
- Existing property rights and licence conditions need to be continued for the remaining term of existing licences to provide certainty for licence holders.
- There should be incentive for existing licence holders to transition to the new scheme as quickly as practicable.
- International harmonisation needs to be considered in relation to any transition pathway.

6.1.6 The Australian RadioFrequency Spectrum Plan should remain in place until after the next round of WRC, rather than be revised at commencement, unless the revision is simply to continue with the existing Plan.

6.1.7 Similarly, existing band plans should not need to be revised at commencement of the Bill but should be revised in line with the ACMA's work plan.

6.1.5 The Associations support the consideration of extending licence terms. Some of our members, for example, the satellite industry, operate with a longer investment cycle, often as long as 25 years.

6.1.6 The Associations further propose that the new licensing arrangements for Satellite services should include a type of licensing similar to the current *Space (Communication with Space Objects) Class Licence*.

7. Spectrum Pricing

7.1 The Associations note that there is (and should be) a clear distinction between valuation of spectrum and price-setting mechanisms and processes. The valuation of spectrum is important in considering how spectrum should be allocated, for example, to mobile broadband or to some other use. However, setting the price for spectrum should generally be based on the principle of opportunity cost.

7.2 Valuation of spectrum can, and usually will, include indirect benefits to society or the economy and will not always reflect the spectrum buyer's opportunity cost. The Associations note the work of the Australian Communications and Media Authority (ACMA) in valuing the contribution of mobile broadband to the economy, particularly the commissioned study on the economic impacts of mobile broadband on the economy.[7]

7.3 Setting the price for spectrum should include both consideration of the value of spectrum, in terms of its social and economic benefits, as well as the opportunity cost in relation to any specific transaction. These principles can be applied as equally important factors to be considered in price-setting and/or decisions around the appropriate mechanisms for the allocation or sale of spectrum.

7.4 While price setting is a matter for regulatory guidelines, there should be full transparency, including consultation, around the processes for setting prices as well as the decision-making process involved in choosing the appropriate mechanism for allocations e.g. market-based allocations, such as auctions, administered pricing or other methods.

[7] The Economic Impacts of Mobile Broadband on the Australian Economy from 2006 to 2013 Research report prepared for the ACMA by the Centre for International Economics April 2014

7.4 For example, the Associations would support an approach to spectrum pricing for administrative allocations that applies opportunity cost pricing as a principled approach to setting spectrum access charges. We believe that such an approach aligns with the existing Spectrum Management Principles and promotes efficiency in spectrum markets. However, opportunity cost pricing does not always determine the price of spectrum allocations. For example, in the case of licences issued for scientific testing, there is often no opportunity cost since the licences are temporary in nature, and the licensees are offered no protection from interference and must not cause interference to incumbent users of the band where testing is being conducted. In these cases, the price should be based solely on the ACMA's administrative costs, and only where appropriate, a component to represent the opportunity cost of the use of the spectrum.

7.5 The Associations have provided some responses to the questions set out in the consultation paper below:

Q1. *Does industry seek any specific guidance from the ACMA on how it approaches spectrum pricing decisions? Where is clarity required in the decision making process?*

The Associations suggest that the only reason for the ACMA not to publish guidelines regarding spectrum pricing decisions would be if there were concerns around national security. Otherwise, the Associations submit that greater transparency, including consultation around spectrum pricing decisions and the collection of tax by the ACMA is warranted. We note that there is always potential for conflict between the revenue-raising objectives of taxation and efficient use incentives associated with Administered Incentive Pricing. We also request clarification in relation to the methodology and process used to set reserve prices in relation to market-based allocations, including the process in circumstances where the reserve price is not met and the ability of industry to provide input on the setting of a reserve price. And, as noted above, there needs to be transparency around the decision-making processes involved in determining the value of spectrum, setting prices and methods of allocation.

Q2. Are there times where the Government should not charge users the same amount for the same type and amount of spectrum, with bespoke pricing arrangements?

The Associations suggest that potential reasons for charging different prices in these circumstances could include differing population densities, national security issues, lack of substitutable services, geographic or social reasons. We note that there should be transparency around the determination of what is the 'same type' of spectrum. And wider social and economic benefits should be considered when assessing the value of spectrum.

Q3. *What reasons justify the Government entering bespoke pricing arrangements? How can these arrangements ensure efficient allocation of spectrum?*

The Associations suggest that pricing arrangements need to be addressed from a whole of government perspective, to include consideration of wider Government policy. Bespoke pricing arrangements may be justified for the following reasons (as outlined in the Pricing Paper):

- allowing government to consider physical limitations of spectrum as well as broader public policies and the overall public interest (as per the Object of the draft Bill) derived from spectrum; or
- creating stability for spectrum users / incentivising spectrum users that provide a public good; or
- where there is a lack of demand.

Q4. *Are there specific bands that industry would seek to have transitioned from administratively set fees to competitive market-based allocations? What is an ideal timeframe to achieve this?*

The Associations support the principle of moving spectrum to its highest value use(s). Choosing the most appropriate mechanism for doing so must take into account a variety of factors in considering the value of the spectrum and how best to set the price for any particular allocation.

Q5. *How can government ensure that reserve prices allow upwards movement while still managing competitive behaviour?*

The Associations note that reserve prices have played a significant role in spectrum auctions in recent years, and have generated significant government revenues. However, the role reserve prices have played in terms of encouraging efficient use of spectrum is less defined. The Associations support a clear statement that the priority policy objectives for setting reserve prices is to enhance efficient use of spectrum, not to raise revenue.

The Associations support more transparency and consultation to assist determining reserve prices for future auction processes.

Q6. *Under what limited scenarios will short-term installments be an appropriate approach for market-based licence payments?*

The Associations suggest that more flexible payment arrangements that allow for payment by installments would be an appropriate approach and suggest that the ACMA consult on how such arrangements could work.

Q7 Other than the parameters listed above, are there any additional parameters that should be incorporated into the formula?

The Associations suggest that the direct and indirect benefits to society should always be considered when valuing spectrum. Also there is scope for improved industry involvement in the administration of licences, e.g. agreed terms and conditions between incumbents and intending licensees.

The Associations suggest that the ACMA should clarify the criteria for how it chooses between market-based or administered allocations. We also suggest the ACMA review how it weights parameters and consider the following parameters:

- the administrative pricing formula should take into account developments in wireless technology (e.g. 5G) involving large increases in bandwidth requirements (e.g. 100 MHz instead of 20 MHz channels) in respect of the same or similar number of end users in an area;
- frequency re-use and advances in mitigation techniques should be factored into the ACMA's approach to both administrative incentive pricing and opportunity cost pricing. Price incentives to practice frequency reuse (e.g. discounts) encourage greater spectrum efficiency; and

In addition, the administrative pricing formula should be regularly updated to take into account the value and use cases of spectrum, including the overall implementation of the licensing scheme and proposed new characteristics of a licence.

Q8. Are there scenarios where opportunity cost pricing is not a valid pricing approach for pricing spectrum?

The use of opportunity cost pricing should be considered when determining the relevant price range for administered-based pricing arrangements. Similar in the way that reserve prices are set for auction allocations, opportunity cost pricing should not be set at a level that exceeds the foregone cost from leaving the spectrum resource unallocated.

In some cases, where there are external factors external factors (e.g. international treaties) that limit use of a spectrum to a particular purpose, the opportunity cost will be less evident or close to zero and so opportunity cost pricing is unlikely to deliver much utility and may unnecessarily increase costs to users without promoting efficient use of the spectrum.

Q9. How can the ACMA improve its approach to opportunity cost pricing?

The Associations suggest that substitutability should be factored into determining who an alternative bidder may be as well as the next best use of the spectrum. Opportunity cost pricing should always be considered in the context of broader considerations around the value of spectrum, including its broader social and economic value.

Q10 Are there any barriers that would limit a spectrum framework as described above? Does the revised spectrum framework sufficiently simplify the current spectrum pricing framework? Are any components above unnecessary, or are any additional components necessary?

The Associations suggest that legislation could be streamlined as there are currently several pieces of legislation, including the *Radiocommunications Taxes Collection Act 1983* that are relevant. The Associations suggest that greater clarity is required as to how the proposed taxation arrangements for spectrum will operate in practice and over time.

The Associations note that the ACMA made a partial tax reduction in 2016 following the ACMA Review of Pricing of Spectrum but the full reduction was not passed on to licensees due to uncertainty at the time. The Associations suggest that this reduction could now be passed on in full for Australia-wide and high-density area licences.

The Associations understands that this recommendation will be further consulted on with the release of a new Radiocommunications Tax Amendment Bill.

Q11 Should both costs and value be priced into the fee for spectrum? Should costs be explicitly recovered through a separate tax? What level of transparency of costs and fees would most help users?

The Associations note that the overall concern is that we have full transparency of how both costs and value of spectrum is included in any fees, charges or taxes. We note that under the current framework the ACMA's costs are recovered through charges, not a tax, as is appropriate. However, industry believes that there is scope for improving the transparency around how costs are calculated and how the various components of charges, fees and taxes are calculated. Building in such transparency to the new framework should be done in close consultation with industry stakeholders.

8. Broadcasting Spectrum

8.1 The Associations believe that comprehensive reform of the spectrum management framework must include broadcasting spectrum. In 2015, the Government announced that it would implement the recommendations of the Spectrum Review[8], including better integration of the management of public sector and broadcasting spectrum to improve the consistency and integrity of the framework. The Associations are very disappointed to see the exclusion of broadcast spectrum from the new Bill. The exclusion of broadcasters means they will continue to gain access to spectrum via licences under the *Broadcasting Services Act 1992 (Cth)* and under a separate spectrum pricing regime. The Associations see no reason for the exclusion of broadcast spectrum from the draft Bill, and request the Government stand by its 2015 commitment to implement the recommendations of the Spectrum Review.

9. Government Spectrum Holdings

9.1 The Associations support a framework that encourages spectrum to move efficiently to the highest value use. A whole of government approach should be adopted when assessing the efficient and effective management of government held spectrum assets. Such an approach should be transparent and balance the value of spectrum from both a financial and public interest perspective.

9.2 We believe that the framework should create flexibility for holders of Government spectrum to be able to share or trade spectrum. The creation of a special category for Government spectrum holders must be avoided to enable the free trading and/or sharing of Government held spectrum.

9.3 Consistent with the principle of transparency, the Associations suggest that the proposed Advisory Committee includes industry engagement on issues such as likely demand, technologies and trading. And it would further improve transparency if the Committee membership included industry stakeholders.

9.4 The review of Government Spectrum Holdings should be considered as input to the development of Australia's position for the next WRC. And this consideration should include industry consultation.

9.5 We note that having a separate register for Government spectrum holdings is not conducive to transparency and that this should be changed.

9.10 The Associations suggest that policy approaches adopted by Ofcom and the NTIA could provide guidance to DoCA. The Ofcom policy approach associated values with spectrum that was allocated to Defence, and when these values were included in budget considerations, spectrum was released for other uses.

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[8] https://www.communications.gov.au/publications/spectrum-review-report

10. Other Issues – Stamp Duty

10.1 The Associations strongly suggest that the Government makes it a priority, as part of the overall spectrum reform process, to strongly encourage the State/Territory jurisdictions to implement their commitment to abolish stamp duty on trades of spectrum licences.

10.2 The Associations have concerns about the application of stamp duty to trades of spectrum licences. While the majority of States and Territories no longer apply stamp duty to trades of spectrum licences, unfortunately several jurisdictions continue to apply this impost. Because spectrum licences which are used to provide mobile network services are particularly valuable, trades of such licences would usually exceed the highest value or consideration threshold and be subject to the highest rate of stamp duty. The applicable stamp duty would in most cases exceed over 5 per cent of the licence or trade value, whichever is higher.

10.3 The continued imposition of stamp duty is a significant disincentive to spectrum trading, especially in respect of national spectrum licences where there is doubt as to the appropriate methodology for application of stamp duty to only certain geographical portions of the licence. These disincentives run contrary to the stated intent in the Department's Information Paper to enable greater market-based activity in respect of spectrum.

10.4 The abolition of the remaining State and Territory stamp duties on trading in spectrum licences can be accomplished by Commonwealth legislation, and we strongly urge that this be done in the new Radiocommunications Act.

10.5 The Associations suggest the following drafting of new section 236 in Part 21 of the Bill (before the section titled "legislative rules").

We propose that the Bill should include following provision:

"No stamp duty or other tax is payable under a law of a State or a Territory in respect of, or in connection with, any licence, authorisation, permission, accreditation or certificate that is required under this Act in order to operate radiocommunications devices."

10.6 **Why a legislative solution?**

Australia's mobile network operators have been patiently waiting for many years for State and Territory governments to carry out their commitments to abolish stamp duty on non-real estate business assets, the category into which spectrum licences may be considered to fall. Unfortunately, several State and Territory governments have yet to abolish stamp duty, and do not look likely to do so in the foreseeable future. The advent of a new Radiocommunications Act provides a once-in-a-generation opportunity to remove spectrum trades once and for all from the stamp duty net. In addition to bringing to an end the stamp duty applicable in the remaining jurisdictions, such a provision will also ensure that if jurisdictions which have abolished stamp duty choose to reinstate it in the future in any form, such a reinstatement will not apply to spectrum trades.

10.7 **Background**

The first objective of the Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations, signed by the Commonwealth and all States and Territories in 1999, was the achievement of a new national taxation system, including the elimination of several business taxes which were impeding economic activity. The GST was designed to replace several inefficient indirect taxes — one Commonwealth tax and ten State taxes. The State taxes which were specified in the Intergovernmental Agreement were nominated by the States themselves as being undesirable on efficiency and equity grounds. Certain of the State taxes and duties were to be abolished by 1 July 2005, while the need for other State taxes and duties was to be reviewed by 1 July 2005. However, not all of the duties and taxes which were to be abolished by 1 July 2005 in accordance with the Intergovernmental Agreement were in fact abolished by that date. In 2006, the Australian Government agreed with the States and Territories on a revised schedule for the abolition of the remaining taxes and duties. Included in this schedule was a timetable for the abolition of a number of duties imposed by the States and Territories, including duty on non-real estate business assets by the 2012-13 financial year (see attached extract of Appendix E to the 2007-08 Federal Budget ("Appendix E")).

Following the agreement of the revised schedule, New South Wales, South Australia, Tasmania and the Australian Capital Territory abolished stamp duty on transactions involving non-real estate business assets. In Queensland, Western Australia and the Northern Territory however, although the abolition of duty on non-real estate business assets has been scheduled and deferred a number of times, the abolition date has now been deferred indefinitely. In particular:

Northern Territory

- In its 2005-06 budget, the Northern Territory Government originally announced that the abolition of transfer duty on non-real estate business assets would occur on 1 July 2009 (see attached 2005-06 NT Budget Paper No.1 page 5);
- On 5 May 2009, as part of its 2009-10 Budget revenue measures, the Northern Territory Government announced that the abolition would be deferred to 1 July 2012 (see attached Revenue Circular Rc-Gen-009: 2009-10 Budget Measures); and
- On 1 May 2012, as part of its 2012-13 Budget revenue measures, the Northern Territory Government announced that the abolition would be deferred indefinitely (see attached Revenue Circular Rc-Gen-012: 2012-13 Budget Measures).

Queensland

- On 7 June 2005, the Queensland Government originally announced that the abolition of transfer duty on non-real estate business assets would occur on 1 July 2011 (with a 50% reduction in the previous financial year) (see attached media release titled "Taxes slashed in state budget" dated 7 June 2005);

- The Queensland Government's Mid-Year Fiscal and Economic Review for the 2008/09 financial year included the announcement of plans to defer the abolition until 1 July 2012 (see page 1 of the attached Qld MYFER 2008 09); and
- In January 2012, the Government again announced plans to defer the abolition of the transfer duty, but did not indicate the date until when it would be deferred (see pages 2 and 26 of the attached Queensland State Budget 2011-12 Mid-Year Fiscal and Economic Review).

Western Australia

- In 2007, the Western Australian Government introduced the Duties Legislation Amendment Bill 2007 which included provisions for the abolition of duty on non-real estate business assets from 1 July 2010 (see page 1 of the attachment Duties Legislation Amendment Bill 2007 EM);
- During the 2009-10 budget review, the Western Australian Government announced that the abolition would be deferred until 1 July 2013 (see attached Circular 5 Duties Act 2008 Duties Legislation Amendment Act 2008, Duties Amendment Regulations 2010 and Revenue Laws Amendment Act 2010); and
- As part of its 2013-14 Budget, the Western Australian Government announced that the abolition would be deferred indefinitely (see page 3 of the attached 2013-14 WA budget).

11. Conclusion

11.1. Next Steps

11.1.1 The Associations note that the Department and ACMA have been working to an ambitious timetable and that the draft Bill is now likely to be tabled in Parliament in early 2018. We appreciate the efforts of Department and ACMA staff in drafting and consulting on the proposed legislation and subordinate instruments, fully recognising the complexity of the task.

11.1.2 The Associations are keen to continue to actively engage with both the Department and ACMA via a full consultation on the T&C Bill and other subordinate instruments in the second round of consultation and emphasise that close consultation with industry is most helpful to progress the reform package as efficiently as practicable.

11.1.3 We reiterate that it would be helpful if the Department could release an updated comprehensive consultation roadmap that sets out the stages in the consultation and drafting processes as well as the planned engagement with stakeholders at each stage.[9]

11.1.4 Finally, we note that the ACMA has already increased its resources in light of the expected work load associated with the transition arrangements and implementation of the new regulatory framework. The Associations fully support the need for the ACMA to be adequately resourced and look forward to continued engagement with the ACMA team in relation to the transition and implementation processes.

11.2 About this Submission

11.2.1 For any questions in relation to this submission, please contact Lisa Brown, Policy Manager, AMTA at 02 6239 6555 or lisa.brown@amta.org.au or Mike Johns, Project Manager, Communications Alliance at 02 9959 9125 or m.johns@commsalliance.com.au.

[9] Attachment A, Ministerial Media Release 25 August 2015

Attachment A – 5G and Mobile Broadband

Industry is already preparing for 5G and investment decisions are being made now. It is imperative that there is certainty around the future availability of spectrum resources as well as the timing of spectrum allocations to provide certainty for the requisite long term investment decision-making processes.

MBB continues to play a key role in stimulating Australia's economic growth and productivity. It is a driving force in connecting people and businesses, stimulating innovation and technological progress, and transforming industries in both densely populated and remote regions. Future development of mobile and fixed wireless technologies, such as 5G, the Internet of Things (IoT) and Machine to Machine (M2M) applications will re-shape the Australian economy and drive productivity improvements. A convergence of current diverse technologies will shape the future of 5G.

Recent research by Deloitte Access Economics found that mobile telecommunications creates significant benefits in terms of productivity and workforce participation. Specifically, the research showed that Australia's economy was $42.9 billion (2.6% of GDP) bigger in 2015 than it would otherwise have been because of the benefits generated by mobile technology take-up with an increase in:

- long term productivity of $34 billion or 2% of GDP); and
- workforce participation of $8.9 billion, or 0.6% of GDP).

The research also found that 65 000 full-time equivalent jobs were supported by the increased GDP attributable to workforce participation (equivalent to 1% of total employment in the Australian economy).

The global demand for MBB continues to grow and the evolution of 5G and IoT services will place even greater pressure on the capability of industry to meet growing demand without timely and sufficient spectrum allocations.

Further indication of what the path to 5G will entail is provided by Ericsson's Mobility Report (June 2017) which forecast:

- 5G subscriptions will exceed half a billion by the end of 2022;
- 5 billion LTE subscriptions by the end of 2022;
- In 2022 there will be 9 billion mobile subscriptions and mobile broadband will account for more than 90% of all subscriptions;
- Mobile video traffic is forecast to grow by around 50% annually to 2022, when video will account for around 75% of mobile data traffic;
- More than 90% of mobile data traffic will come from smartphones in 2022;

- Asia- Pacific, as the most populous regions, has the largest share of mobile data traffic and total mobile data traffic for the regions is expected to exceed 30 Exabytes in 2022;
- There will be 1.5 billion IoT devices with cellular connection by 2022; and
- In 2022, around 15% of the world's population will be covered by 5G.

A recent report by Accenture Strategy forecast that in the USA, 5G deployment will create up to 3 million jobs and raise GDP by $500(USD) billion due to an expected investment of $275(USD) billion by industry over the next seven years. This investment in deployment will include the roll-out of hundreds of thousands of small cells.

Sanjay Dhar, managing director at Accenture Strategy, said:

> "*Full realization of the economic growth and cost savings will depend on how robustly 5G networks are deployed locally, and will require different approaches in local communities from those used in the past*."

As demand for MBB continues to grow, industry is required to continually address capacity issues and develop more innovative solutions to meet demand for mobile data with limited spectrum resources. The mobile industry has been upgrading and rolling-out new networks for 4G LTE and LTE-A as well as adopting new technologies that improve efficiency. For example, multiple input, multiple output (MIMO) antennae and carrier aggregation. Likewise, the satellite industry continues innovation in a complementary way. However, there are inherent limits to efficiency gains. Limits to network efficiency gains combined with strong forecast demand for mobile broadband as the transition to 5G progresses create pressure network speed and performance, and therefore a need for additional spectrum to be allocated for MBB in a timely and efficient manner. Reform of the existing legislative and regulatory framework for spectrum management is imperative to delivering the benefits of 5G and MBB. At the same time, technology is allowing more efficient sharing scenarios amongst existing and developing services.