

5 June 2015

Mr Drew Clarke  
Secretary  
Department of Communications  
GPO Box 2154  
Canberra ACT 2601



Australian  
Mobile Telecommunications  
Association  
ABN 98 065 814 315  
First Floor  
35 Murray Crescent  
Griffith ACT 2603 Australia  
PO Box 4309  
Manuka ACT 2603 Australia  
Ph +61 2 6239 6555  
Fax +61 2 6239 6577  
Web [www.amta.org.au](http://www.amta.org.au)

Dear Mr Clarke,

**RE: Spectrum Review Report**

I am writing to provide comments on the Spectrum Review Report prepared by your Department for consideration by Government on 22 May 2015.

The Australian Mobile Telecommunications Association (AMTA) strongly supports the core elements of the Review and the specific implications as identified by the Department's paper.

This includes the intention to replace the current *Radiocommunications Act 1992* (the Act) with a new legislative and regulatory framework to support more effective and efficient spectrum allocation and management into the future.

The Report also identifies spectrum licensing as a central aspect to the all-important balance between certainty and flexibility that is critical for spectrum licence holders. **Attachment A** illustrates these trade-offs.

While we understand that detailed discussions with stakeholders will commence once Government has an agreed way forward, there are a number of comments AMTA has regarding aspects of the proposed approach.

***Licensing framework***

- The new licensing framework needs to provide both flexibility and certainty for licence holders as well as enable spectrum trading and sharing arrangements.
- There is an inherent tension between striving for this goal and enhancing the regulator's discretion to issue licences with materially different parameters.
- We consider it is important that the rights conferred by the licensing framework are broadly defined in primary legislation and not left to the discretion of the Minister of the day or the ACMA.
- In particular, we consider that there are additional and significant efficiencies to be gained by ensuring that legislation is framed against a principle of presumption of renewal for longer-term licences.
- We are also concerned that the potential for excessive customisation of licences by the regulator could undermine the dynamic efficiency of the spectrum management framework. While AMTA understands that this is not the Department's intent, we strongly recommend that it would be prudent to reflect the desired outcome in legislation.

- This outcome could also be strengthened by adding a clause to the Object of the Act that has the effect of limiting the proliferation of licences or by limiting a regulator’s discretion to pursue excessive customisation.
- While there are clear benefits to enabling flexibility and innovation in licensing, the new framework should leave no doubt that the regulator is required to ensure that parties in like circumstances are not disadvantaged by the creation of a different “bespoke” licence type.

### **Ministerial Powers**

- The Minister’s role in providing policy guidance should be clearly defined in the legislation.
- Ambiguous criteria for policy interventions and policy decisions will inhibit the effectiveness of the spectrum management framework.
- Without clear guidance on how the Minister will assess policy matters, it will be difficult for licence holders and prospective licence holders to undertake business planning and make effective investment decisions.
- AMTA remains in support of the Minister being removed from individual pricing decisions.

### **Information and Data Collection Powers**

- Information and data collection powers included in the new Act should avoid duplication with other legislation e.g. *Telecommunications Act 1992*, *Broadcasting Services Act 1992*.
- We understand that a gap analysis of the appropriateness of existing information gathering powers has yet to be undertaken.
- The ACMA’s information gathering powers should be limited to those information types that are not already capable of being gathered under existing legislation.
- AMTA would like to understand the information sets which the ACMA considers it is not possible to seek either via publicly available information or from industry under its existing powers.
- While AMTA understands that the ACMA may legitimately need to gather certain information to carry out its own technical functions, AMTA considers that commercial confidentiality of such information must be very carefully protected. Importantly, such information should **not** be shared with any other Commonwealth agency under Part 7A of the ACMA Act.

### **Other issues**

- AMTA supports the proposal to extend the maximum term of licences.
- AMTA also supports the use of commercial incentives to encourage public sector holders of spectrum with commercial value to free up that spectrum for other uses.
- AMTA notes that incentives for such change need to include the opportunity for holders to receive the full commercial benefit from any spectrum sold or shared

with other parties. In the absence of such opportunities, it is also appropriate for a regulator to apply administrative pricing signals that reflect the opportunity cost of using the spectrum.

AMTA suggests that as legislation is drafted, it is tested against case studies, scenarios and draft licence terms and conditions in consultation with stakeholders.

AMTA looks forward to continued engagement with the Department and appreciates the progressive, transparent and consultative approach that has been adopted for this important reform process.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "Althaus".

Chris Althaus  
AMTA CEO

**Attachment A:**

**Certainty, flexibility and regulatory discretion in the licensing system**

