



**Australian Mobile  
Telecommunications  
Association**



**COMMUNICATIONS  
ALLIANCE LTD**  
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**Department of Communications**

## **Spectrum Review**

**May 2014**

**Communications Alliance and AMTA**

**Submission on Terms of Reference and Issues Paper**

## Background

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

Communications Alliance is the primary telecommunications industry body in Australia. Its membership is drawn from a wide cross-section of the communications industry, including carriers, carriage and internet service providers, content providers, equipment vendors, IT companies, consultants and business groups. Its vision is to provide a unified voice for the telecommunications industry and to lead it into the next generation of converging networks, technologies and services. The prime mission of Communications Alliance is to promote the growth of the Australian communications industry and the protection of consumer interests by fostering the highest standards of business ethics and behaviour through industry self-governance. For more details about Communications Alliance, see [commsalliance.com.au](http://commsalliance.com.au).

This submission represents the views of the members of AMTA and Communications Alliance, including satellite operators and service providers.

## Introduction

AMTA and Communications Alliance (the Associations) have been strong advocates for reform of Australia's spectrum management framework and welcome the Government's decision to conduct a Review and the opportunity provided to respond to the Review's proposed Terms of Reference (ToR).

Recent research commissioned by AMTA and the Australian Communications and Media Authority (ACMA) found that the current wave of mobile technologies will result in a productivity benefit to the Australian economy of \$11.8 billion over the period to 2025<sup>1</sup> and that in 2013 mobile broadband led to an estimated increase in Australia's economic activity of \$33.8 billion.<sup>2</sup>

The research<sup>3</sup> also found that:

- the capacity of the mobile sector to enable more productivity growth means that technological developments in the sector and their diffusion throughout the economy has the potential to reverse Australia's declining productivity performance; and
- the most critical issue for the mobile sector is policy and regulation with regard to spectrum allocation and licensing.

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<sup>1</sup> [Mobile Nation](#), *the Economic and Social Impacts of Mobile Technology*, Deloitte Access Economics, Feb 2013

<sup>2</sup> [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

<sup>3</sup> [Mobile Nation](#), *the Economic and Social Impacts of Mobile Technology*, Deloitte Access Economics, Feb 2013

The Associations therefore strongly support this Review and believe that it has the potential to unlock productivity benefits and boost innovation, in-line with the Government's current agenda to cut red-tape and alleviate the regulatory burden on industry.

The Associations believe that the outcome of the Review should be a new regulatory framework that drives efficiency in spectrum use through effective processes and which also encourages innovation and promotes investment in critical and convergent technologies that rely on Australia's scarce spectrum resources.

The framework must be redesigned to:

- promote fair and open competition in the markets and lift or avoid imposing regulatory burdens and costs that can potentially stifle productivity and innovation;
- provide the flexibility necessary for industry to adapt to the rapid pace of technological change and ongoing development of business models in media and telecommunications markets; and
- be clearly understood by both administrators and industry and applied consistently so that industry has the requisite certainty to secure future investment.

Also, the Review process needs to closely engage with industry and with the ACMA who have current operational expertise in the processes under review.

The Associations welcome the Minister's commitment to conclude the Review process within a 6-9 month timeframe and support a similar discipline being applied to the implementation steps of the outcome of the Review so that the process is not open ended.

## Scope of the Review

The Associations support fundamental reform of Australia's spectrum allocation and management regulatory framework in order to provide the foundation for development of a unified regulatory framework for the management and allocation of spectrum, including broadcasting spectrum.

The Associations strongly support a common and consistent approach to the planning, allocation and management of all spectrum, including broadcasting and non-broadcasting spectrum.

We believe that a market-based approach to pricing for the use of spectrum will provide both efficiency and transparency.

Certainty for spectrum licence holders, particularly with regard to licence renewal processes, is also critical to drive continued investment.

The Associations believe that the first five proposed ToR for the Review have appropriately identified the following purposes of the Review:

- simplify the framework and reduce complexity;
- improve flexibility while managing interference;
- maximise efficiency by all spectrum users;
- allocate roles and responsibilities to participants; and
- promote consistency around compliance and enforcement mechanisms.

The final three ToR, however, are not as clear in their purpose and seem to be anticipating policy outcomes from the Review process. Proposed amendments to ToR 6, 7 and 8 are provided below.

The Associations also propose an additional ToR be included to conduct a stocktake, as the first step in the review process, of all relevant legislation, subordinate legislative and administrative instruments and policy statements.

## A case study approach

It is important that the Review explicitly adopts and captures the perspectives of spectrum licence owners and users; as customers of the regulatory processes established under the *Radiocommunications Act 1992* (the Act).

As an example, we suggest that the recent experiences associated with the digital dividend auction and spectrum licence renewal processes should be used to inform a case study analysis of the processes. Such an analysis should focus on how the processes can be made more efficient and consider how to reduce engagement costs and complexity for the customers of these processes, in these cases, the bidders and incumbent spectrum licence holders.

## A staged approach to reform

The Associations note that while the ToR support a fundamental reform process, there is scope for incremental changes to legislation and regulation to be made in co-ordination with the Government's planned red-tape repeal days.

As noted above, we suggest that the first step in the Review process, which will in turn inform consideration under ToR 1, should be to conduct a stocktake of all relevant legislation, subordinate legislative and administrative instruments and policy statements.

The Associations submit this additional ToR is necessary to determine whether the basic building blocks of the existing regulatory framework are fit for purpose. The Associations consider that it is important to check that the foundation of the framework is sound before forming conclusions on the matters in the remaining ToR.

The basic building blocks include, but are not limited, to the following:

- the Object of the Act;
- the differing licence types, licence tenures and licence renewal frameworks;
- the mechanisms for technical regulation and interference management;
- the various other types of instruments that give effect to the Act; and
- the enforcement powers, obligations and priorities of the ACMA.

The Associations suggest that the new ToR read as follows:

*“Consider the fundamental mechanisms, procedures and underlying instruments of the existing framework to assess their appropriateness and effectiveness with a view to identifying which parts of the framework require significant revision, repeal or expansion.”*

Including this additional ToR would enable the Review to focus on the basic tools used by the regulator and allow for consideration of more fundamental reforms.

There are many instruments, principles and tools that exist outside of the Act, such as the ACMA’s Principles for Spectrum Management, the Total Welfare Standard and embargoes that need to be included in the review. Consideration also needs to be given to whether to include such tools and principles that work in the legislation and to discarding those that do not.

A staged approach will enable legislation, instruments and policies that are no longer useful to be repealed in co-ordination with the Government’s planned repeal days. For example, the conciliation process contained in Part 4.3 of the Act has never been used and should be considered for repeal. It will also enable other instruments that need reform to be identified. Such reform can then be made in parallel with other longer-term legislative changes that will be required following the Review process.

As noted above, the Associations also suggest that it would be useful for the Review to define a timeline and outline a work-plan for the reform and implementation process.

## Comments on the Terms of Reference

The Associations have made comments on the specific ToR as well as suggestions regarding the wording of some of the ToR below (suggested additional words are **in bold** and suggested deletions are ~~crossed-out~~).

1. *Simplify the framework to reduce its complexity and impact on spectrum users and administrators, and eliminate unnecessary and excessive regulatory provisions.*

The Associations support the inclusion of this ToR and agree with the assessment that the framework contains undue complexity, particularly in relation to licensing, and overly prescriptive technical specifications. This ToR will provide the scope to simplify the framework and to reduce regulatory burdens.

The Associations believe that it is important for the Review process to explicitly capture the perspectives of ‘the customers of the processes’ when considering how to simplify the processes under review. We suggest that a case study approach as outlined above could be useful to inform this task of the Review process.

Similarly, as per our suggestion above for an additional ToR and a staged approach to the reform process, a stocktake of the legislation, instruments and associated policies will also be necessary and useful to identify both short-term and longer-term reforms that are needed. Consideration under the suggested additional ToR will then inform consideration of issues under ToR 1.

2. *Improve the flexibility of the framework and its ability to facilitate new and emerging services including advancements that offer greater potential for efficient spectrum use, while continuing to manage interference **and provide certainty for spectrum users.***

The Associations agree with the objective of this ToR to consider ways to make the framework more flexible in order to promote and encourage new technology and services.

However, this flexibility must be balanced against the need to protect the property rights of spectrum licence owners. In practice, this means that any potential spectrum sharing must be transparent at allocation; and existing property rights should be upheld and not undermined by the imposition of sharing post allocation.

3. *Ensure efficient allocation, ongoing use and management of spectrum, and incentivise its efficient use by all commercial, public and community spectrum users.*

The Associations support the inclusion of this ToR and its intent.

Efficient allocation, use and management of spectrum are critical in order to realise the social and economic benefits of mobile broadband. Efficient allocation and management will also promote

continued investment by the mobile industry in both spectrum resources and the development of mobile services.

The methodologies used for the pricing of spectrum must be transparent and consistently applied. Typically, this requires the use of opportunity cost pricing, which might be explicitly observed via market-based allocation mechanisms (e.g. auctions) or pursued via administrative measures (e.g. pricing for the 400 MHz band).

Government may consider that there are social benefits from allocating spectrum to public or community users. The review should consider recent examples where the degree of subsidised access to spectrum was not transparent. For example, the re-issue of spectrum licences to State-based rail agencies in the 1800 MHz band where the methodology or principles that were applied were not made transparent.

- ~~4. Consider institutional arrangements and ensure an appropriate level of Ministerial oversight of spectrum policy and management, by identifying appropriate roles for the Minister, the Australian Communications and Media Authority, the Department of Communications and others involved in spectrum management~~
- 4. Review the roles and accountabilities of the various participants in the spectrum policy and management framework (including the Minister, Department of Communications, the Australian Communications and Media Authority, and industry) so that desired outcomes are delivered in a coherent, cost effective and timely manner.**

The Associations support this ToR in the amended form noted above as clear roles and accountabilities are fundamental to effective decision-making and the delivery of certainty to spectrum users.

Efficient and clearly defined processes will drive effective decision-making. The role of industry as spectrum users should also be considered under this ToR as the relationships and engagement between each of the participants are fundamental to the efficiency of the processes.

The regulatory framework needs to identify clear roles, accountabilities and decision-making timeframes for the regulators and the department to ensure effective and efficient decisions as well as a consistent, clear approach to spectrum policy development and implementation.

Decision-making and consultation processes must be transparent, timely and clearly outlined to relevant stakeholders.

For example, consideration should be given to grouping a set of decisions together to be considered in parallel rather than in sequence. Reform of this kind would avoid recent examples, specifically the reallocation and auction of the 700 MHz band, where periods of urgency in decision-making processes were followed by periods of delay and uncertainty for both stakeholders and decision-makers.

We agree that a review of the level of Ministerial discretion included in the framework is appropriate. The Associations suggest that a key focus for the review should be to define the Minister's role in setting policy while enabling the regulator to implement spectrum policy

efficiently. Unfettered oversight provisions serve only to increase uncertainty, delay decision-making and ultimately undermine the institutions created to manage and allocate spectrum in the public interest.

5. ***Review the merits of a common approach to the planning, allocation and management of all spectrum, including broadcasting spectrum; Promote consistency across legislation and sectors, including in relation to compliance mechanisms, technical regulation and the ~~planning and licensing of spectrum~~ considering compliance, technical and licensing approaches.***

The Associations support this ToR as amended above as it will provide an opportunity to again review the benefits of creating a level playing field for all spectrum users.

The Associations strongly support a unified, consistent approach to the planning, management and allocation of all spectrum, including broadcasting spectrum, and suggest that this objective should be explicitly set out in the ToR and ultimately be used as a marker for the success of the Review's outcomes.

A unified framework will enable the relevant provisions in the *Broadcasting Services Act 1992* (BSA) to be harmonised with any changes to the Act and the spectrum management framework.

6. ***Develop an appropriate framework to consider public interest spectrum issues **and the role market-based solutions will have in meeting demand for public interest spectrum, as well as the efficient use of government-held spectrum.*****

The Associations suggest that this ToR is either:

- deleted as it can be considered a policy outcome rather than a review function; and that it be considered as part of public interest issues under the proposed ToR 3; or
- amended to include and assessment of the role that market-based solutions will have in meeting demand for public interest spectrum and to clarify that this ToR needs be considered together with ToR 3.

7. ***Develop a **holistic** ~~whole-of-government~~ approach to spectrum policy to guide Government decision-making.***

The Associations are unclear of the intent of this ToR and question whether it is necessary.

We believe that the outcome of the Review process (a revised regulatory framework that allocates clear roles and accountabilities to government agencies, departments and the regulator as envisaged under ToR 3 and ToR 4) will deliver a clearly defined and holistic spectrum policy to guide Government decision-making.

**8. Consider the merits of ~~Develop~~ a whole-of-economy approach to valuation of spectrum that includes consideration of the broader economic and social benefits.**

The Associations are unclear of the intent of this ToR.

We suggest that the application of ToR 3 will drive a 'whole of economy' approach to spectrum policy decision-making and that this ToR may be unnecessary if ToR 3 is given full and proper consideration.

However, if the intent of this ToR is to consider an approach to valuation of spectrum in terms of broad economic and social benefits, that is the valuation process that drive decisions about how spectrum should be allocated to a particular use, and does not include consideration of price-setting, then we see value in including this ToR.

The Associations note that there is clear distinction between valuation of spectrum and price-setting processes.

The valuation of spectrum is important in considerations about 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.

Valuation of spectrum can 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 recently commissioned study on the economic impacts of mobile broadband on the economy.<sup>4</sup>

We believe issues around pricing should be considered under ToR 3; and that ToR 8 could be used to consider how spectrum should be valued and allocated to various types of use, such as mobile broadband, satellite or broadcasting.

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<sup>4</sup> [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

## Additional Issues that should be considered

- Australia's role in international forums and policy regarding international harmonisation is important and should be explicitly recognised in the framework and included as part of the Review process.
- While approaches to compliance and enforcement can be considered under ToR 2, the Associations believe that the need to incorporate a workable compliance and enforcement framework needs to be more clearly articulated in this ToR. Increasingly, interference is being caused by unauthorised equipment and impacting critical communications networks. The core focus of the spectrum management framework is the definition of property rights; however, this can only be properly achieved if it is accompanied by a legislative framework that effectively enforces those property rights via proportionate measures to address unauthorised spectrum use.

## Conclusion

The Associations look forward to continued participation in the Review process.

Any questions about the above comments can be directed to Lisa Brown, Policy Manager, AMTA at 02 6239 6555 or [lisa.brown@amta.org.au](mailto:lisa.brown@amta.org.au).