

Spectrum Review 2015

AMTA Submission to Department of Communications

16 February 2015



**Australian Mobile
Telecommunications
Association**

Introduction

AMTA strongly supports the Government's commitment to a fundamental review of the regulatory framework for spectrum management and allocation; assuming that the outcome will be net benefits in the form of more timely and efficient allocations, reduced costs, and more flexibility for new technologies.

The recent workshop convened by the Department of Communications provided a valuable opportunity for stakeholder discussion and involvement in the development of ideas regarding the reform agenda.

AMTA believes the objective of the reform process should be a 'reset' of how spectrum is managed in Australia. This requires:

- a 'first principles' approach to the spectrum management framework;
- a detailed review of whether the existing framework's 'building blocks' remain fit-for-purpose; and
- careful consideration of the transition arrangements required in moving to the new framework.

Adopting this approach will ensure Australia has a fit for purpose regime that supports the pivotal role spectrum plays as a key enabler of the digital economy.

AMTA supports the Department determining the necessary steps in the Review process and setting an indicative timeframe of when these steps will occur to progress reform initiatives, and to include this as part of its report to the Minister. An indicative timetable is critical to ensuring the Department can secure and sustain the necessary expert stakeholder engagement required for the next stage of the Review. AMTA is seeking a timetable that includes key milestones as outlined at **Attachment A**.

AMTA provides the following comments as stakeholder feedback as we move into the next stage of consideration of potential reforms to the regulatory framework.

Key reform objectives

AMTA supports fundamental reform of Australia's spectrum allocation and management regulatory framework that achieves:

- a common and consistent approach to the planning, allocation and management of all spectrum, including broadcasting and non-broadcasting spectrum;
- improved certainty of spectrum access for licence holders, particularly with regard to licence renewal processes. Certainty is critical to driving continued investment by licence holders;
- careful licence design that promotes flexibility between different spectrum uses via generic licence conditions, and which is accompanied by reforms that encourage secondary trading as the primary means of reallocating spectrum wherever possible;
- more efficient and timely administrative processes which reduce costs for industry and enable it to be more agile in responding to customer demand and delivering innovative solutions;
- a transparent, principled approach to pricing for the use of spectrum that is efficient and doesn't lead to long delays in allocation; and
- a better resourced and improved compliance and enforcement regime with a more flexible enforcement tool-kit for the ACMA, particularly around the issue of unauthorised use of spectrum. The protection of spectrum property rights should be a fundamental pillar of the regulatory framework.

Establishing a new framework based on these principles has the potential to deliver both economic and social benefits by unlocking the well documented productivity benefits of mobile broadband and encouraging innovation and continued investment by industry.

Developing this new framework will require continued engagement with industry stakeholders who have a breadth of both technical and process expertise to be drawn on in considering reform options to create a fit for purpose regulatory framework.

Fundamental Reform - Options to be considered

The meeting on 4 February, 2015 between the Department of Communications, the ACMA and AMTA focused on the ACMA's views regarding the proposed single licencing framework. AMTA agrees that streamlining the licencing framework must be a priority for this Review.

The short-comings of the existing licencing framework are well understood. AMTA's members have experienced unnecessary barriers to trading spectrum due to excessive prescriptiveness and rigidity in licence design and band planning; uncertainty and inconsistency in licence pricing; and blurred boundaries of responsibility between the Australian Government and the ACMA in the allocation of

spectrum. We are pleased that these issues were recognised by both the Department and the ACMA in their assessment of the current regime.

AMTA considers reform of the licensing regime as foundational to reform of the spectrum management framework. For this reason, we believe there is merit in focusing on this area and securing expert industry input as a matter of priority.

Single Licensing Framework

Reform of the licensing framework was identified as a potential reform in Proposal 2 of the Department of Communications Discussion Paper. This proposal, to establish a single licensing framework, was discussed by the ACMA at the Spectrum Review Workshop on 28 January 2015 and at our subsequent meeting on 4 February 2015. Based on the Department's comments at the latter meeting, AMTA understands the ACMA's views on the single licensing framework may not reflect the Australian Government's position.

AMTA strongly supports streamlining the licensing framework. However, based on information in the public domain and the briefings provided to our industry, we do not believe sufficient analysis has been undertaken on:

- defining the objectives of the licensing framework;
- exploring the merits of potential licensing reform options; and
- considering the implementation and transition plan.

AMTA requests clarification on whether such analysis has already been undertaken or whether the Department intends to perform such analysis during the next stage of the Spectrum Review. Assuming the Department has not yet performed detailed analysis, and given the divergence in submissions on this reform, AMTA believes that the Department's advice in relation to Proposal 2 as part of its Ministerial Report should be to develop such an analysis in conjunction with industry.

The use of licensing as a means of managing spectrum is intended to promote coordination of uses, prevent spectrum exhaustion and manage the risk of interference. AMTA considers the primary objective of the licensing framework is to maximise the efficient use of the spectrum, while managing interference and preventing users from causing interference to their neighbours (or potential neighbours). Efficiency of use in the future should also be enabled by the licensing framework, i.e. dynamic efficiency, typically by making licensing as technology agnostic as possible. AMTA notes, however, that a poorly defined licensing framework may lead to less than efficient use of the spectrum.

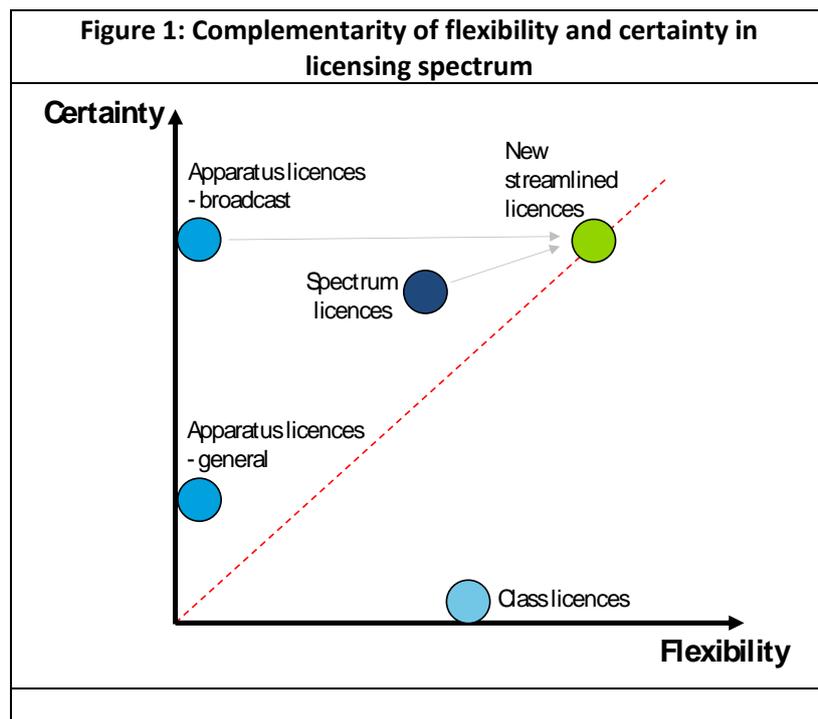
Several economic and social considerations are important in ensuring an effective licensing framework for spectrum management:

1. **Exclusivity** – private property rights are exclusive rights, with the benefits of costs of owning and using the resource flowing to the owner.
2. **Universality** – all scarce resources are owned by someone.
3. **Transferability** – ensure resources can be allocated from low yield to high yield uses.
4. **Enforceability** – ensure property rights are secure from misappropriation by others.
5. **Diversity** – preserving the availability of spectrum for a range of different uses.
6. **Competition** – preventing monopolisation of spectrum resources in contestable industries.

Conflict between these considerations can be minimised through an incentive approach. For example, if spectrum sharing is regarded as an important policy objective then the holders of exclusive rights should be enabled by the licensing structure to obtain commercial benefit from voluntarily permitting other users to share their spectrum. Other forms of incentive could include licence fee rebates.

Certainty of spectrum access is another important consideration in defining the objectives of the licensing regime. Short licence tenure and the presumption of non-renewal for spectrum licences provide examples where our existing licence regime introduces unnecessary uncertainty to licence holders. Ostensibly, such measures appear to be intended to preserve flexibility for policymakers and regulators to reallocate spectrum to higher value uses. AMTA considers, however, that a careful re-examination of the economic cost of this desire to use regulatory measures to preserve flexibility should form part of this Review. As an alternative, the Department should consider whether reforms to the licensing regime can be used to better achieve flexibility.

AMTA considers the certainty provided by the licensing regime should go hand-in-hand with its flexibility. The more flexible that licences are to be reallocated between different uses, the more licences can, and should, provide certainty of property rights to licence holders. A conceptual map of the complementarity between flexibility and certainty of licences and Australia’s range of existing licences is illustrated in **Figure 1**.

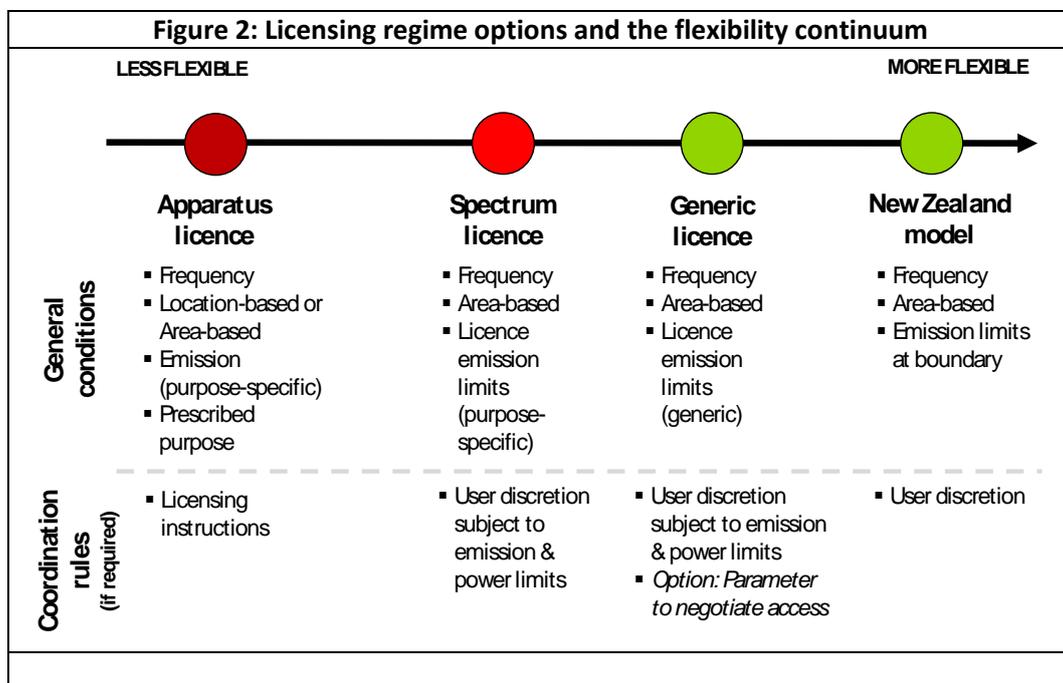


Licensing options

Once the policy objectives of the licensing regime have been established, AMTA considers that a broad assessment of different licensing regime options should be performed. AMTA has been surprised by the lack of exploration of licensing regime options in the Review thus far. AMTA has previously suggested that the new licensing regime should look more like spectrum licences and less like apparatus licences. These comments should not be interpreted as an unqualified endorsement of spectrum licences as they are currently framed. AMTA sees merit in exploring options for less prescriptive and more generic licence types (or spectrum ‘management rights’) than those currently used in Australian spectrum management. Some options that AMTA considers should be explored include:

- generic licences with commoditised parameters for emissions and power limits (AMTA is unclear if this is consistent with the ACMA’s vision for parameter licences);
- the New Zealand model of ‘Spectrum Management Rights’ which inherently supports private management of spectrum licences , and
- spectrum licences that are re-designed (and priced) in such a way as to provide the requisite incentive for holders of apparatus licences to migrate to the new evolved spectrum licence framework.

Other licensing options may provide the Australian Government with an opportunity to significantly improve the flexibility of Australia’s spectrum management framework (see **Figure 2**).



Regardless of the licensing regime adopted, AMTA supports some specific changes to the treatment of certain aspects of licensing:

- include a presumption of renewal in primary legislation with any exceptions clearly prescribed (such as conformity with international obligations etc.);
- reduce current expectation of political involvement in allocation and reallocation pricing decisions, with such powers reserved only where there is market failure, a deadlock or in an emergency;
- remove any reference to a maximum term of tenure from legislation so that this is flexible and becomes a policy decision;
- make provision for proceeds from spectrum sales to be made available to cover costs incurred by displaced incumbents in order to encourage incumbents to migrate to alternative options; and
- make provision for encumbered spectrum to be reallocated or transferred quickly without having to wait for incumbents to clear their services.

AMTA has the following concerns with the ACMA's proposals regarding the Single Licensing Framework:

- limited clarity on how the Single Licensing Framework will deliver a genuine change in its approach and return real economic and social benefits. The proposal could merely deliver a rebranding of the existing mix of class, apparatus and spectrum licences under a new licence type. AMTA is concerned by this risk of reforms perpetuating the status quo in the licensing of spectrum.
- whether the principle of technology neutrality be retained to ensure licence holders have the flexibility to sub-divide and aggregate licences via the secondary market and facilitate spectrum moving its highest value use? AMTA does not consider regulatory flexibility that reduces the technology neutrality of licences a desirable outcome.
- How unused spectrum be treated? Will the initial allocation of property rights under the streamlined licensing framework extend to parts of the radiofrequency spectrum where property rights do not currently exist? AMTA supports spectrum being allocated as early as possible after there is evidence of potential future demand for the use of the spectrum.

Under any approach, the details around implementation would need to be considered and debated by stakeholders.

For example, it is not clear how coordinated spectrum uses will be treated under a Single Licensing Framework regime. If an area-based approach is adopted for licensing then it may preclude the technically efficient use of the spectrum. AMTA's members are some of the largest users of fixed point-to-point services in Australia and are keen to understand this aspect of the proposed Single Licensing Framework in more detail.

AMTA suggests that the Review process should consider how various options should be modelled and analysed thoroughly across different use cases before a particular path to reform is chosen.

AMTA's members are keen to provide the necessary technical expertise and contribute to the analysis of the various options.

Next Steps - Developing ideas through expert working groups

AMTA suggests that in order to leverage the technical expertise of industry, External Expert Reference Committees (EERC) should be established now to develop the details of the various reform options.

AMTA suggests that establishing four EERCs with the following tasks would be useful:

1. Licence design
2. Allocation
3. Enforcement
4. Transition

Finally, AMTA believes that the task of licence design should be given priority as it will provide the foundation for the remainder of the reform agenda.

AMTA suggests that the Department's planned February Report to the Minister should set out a clear timetable for the reform work program. This timetable should identify the key milestones leading up to the drafting of legislation and the target dates for these milestones. **Attachment A** provides an example of the types of milestones that AMTA considers need to be included.

In conclusion, AMTA strongly supports the Government's commitment to a fundamental review of the regulatory framework for spectrum management and allocation; assuming that the outcome will be net benefits in the form of more timely and efficient allocations, reduced costs, and more flexibility for new technologies.

AMTA is keen to see a decision on specific reforms, along with a commitment to drafting legislation, by the end of 2015.

AMTA and its members look forward to ongoing engagement and participation in the Review process.

Attachment A

Key milestones in the reform process

AMTA supports the inclusion of 'a process' to demonstrate how reform initiatives will be progressed and over what timeframe as part of the Department's report to the Minister.

AMTA proposes the following tasks should be included in an indicative timetable:

- Ministerial consideration of reform parameters
- Invite participation in 'External Expert Reference Committees' (EERCs) to progress key reform initiatives [For e.g. single licensing framework; private band management; interference management; transition arrangements etc.]
- Allocate industry, DOC and ACMA resources necessary to progress reform initiatives
- Amend EERCs to align with Ministerial policy direction (if necessary)
- Determine what initiatives:
 - require legislative change and are either (i) non-controversial and can proceed to legislative drafting with no dependencies; or (ii) require further debate in an EERC.
 - can be progressed via 'secondary legislation' and are either (i) non-controversial and can be implemented as a priority by for e.g. the ACMA Authority or (ii) require further debate in an EERC.
- Debate reform proposals in EERCs
- Submit final legislative reform proposals for Ministerial consideration
- Complete required legislative drafting for introduction during winter 2016 sittings.