

# Policy on apparatus licence tenure

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# General statement of intent

This document outlines the ACMA's approach towards the renewal of apparatus licences.

This policy is intended to:

- > provide guidance to existing apparatus licence holders about the processes to be followed at the expiry of a licence in line with the *Radiocommunications Act 1992* (the Act)
- > clarify the ACMA's approach to decision-making when renewing apparatus licences and thereby provide greater certainty to existing apparatus licensees, and potential new licensees.

This approach has been developed to be consistent with the Act and should be read in conjunction with the Spectrum Management Principles<sup>1</sup> and the *Five-year spectrum outlook 2011–2015*<sup>2</sup> (the Outlook). The Outlook outlines expected future spectrum needs in various frequency bands.

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<sup>1</sup> [www.acma.gov.au/WEB/STANDARD/pc=PC\\_311683](http://www.acma.gov.au/WEB/STANDARD/pc=PC_311683).

<sup>2</sup> [www.acma.gov.au/WEB/STANDARD/pc=PC\\_312466](http://www.acma.gov.au/WEB/STANDARD/pc=PC_312466).

# Statement of policy

## Standard renewal practice

Except in special cases, the ACMA's standard renewal practice is to send renewal notices and instalment quotations to licensees around eight weeks prior to their expiry, and to renew all apparatus licences for which an application is made in a form approved by the ACMA and the correct fee paid no later than 60 days after the expiry of the licence.

## Special cases

In the majority of cases, the ACMA will follow the standard renewal practice and renew the licence on receipt of the application and the correct fee.

However, in special cases, the ACMA may depart from the standard renewal practice.

Special cases are those where the standard renewal is not appropriate because of the particular circumstances of the case. Special cases include:

- > where the law prevents the ACMA from renewing the licence
- > where policy, legal or other reasons require special consideration by the ACMA of the merits of the case.

Examples of a law preventing the ACMA from renewing a licence are:

- a. a licence that has been issued in the public interest despite being inconsistent with the Australian Radiofrequency Spectrum Plan or statutory band plan and has been renewed on a previous occasion (s131(1) and s104(1)(b) and (3) of the Act)
- b. a datacasting transmitter licence where the licence has been renewed on a previous occasion (s130(2B) of the Act)
- c. a non-foundation digital radio multiplex transmitter licence (s129(1) of the Act)
- d. a licence authorising operation in part of the spectrum for which the minister has issued a spectrum designation notice under s36 of the Act and is not covered by s 105(2) (s131(1) and s105 of the Act)
- e. a licence authorising operation in part of the spectrum for which the minister has issued a spectrum re-allocation declaration made under s153B of the Act (and is therefore affected by that declaration under s 153D) and the licence is due to expire after the end of the re-allocation period (s130(2A) of the Act)
- f. a licence affected by re-planning considerations such that the licence, if renewed, would be inconsistent with the Australian Radiofrequency Spectrum Plan or any relevant statutory frequency band plan, and is not covered by s104(1) of the Act (s131(1) and s104 of the Act)
- g. the licence cannot be renewed because of an order from a court or tribunal preventing its renewal.

Examples of policy, legal or other reasons requiring special consideration by the ACMA of the merits of the case are:

- a. a short term licence (usually less than a year) issued for special events
- b. a scientific licence
- c. a licence for which operators of the authorised transmitter are required to be qualified operators, and the operator no longer has a certificate of proficiency

- d. an exceptional case where the applicant's particular history of non-compliance with the Act or other relevant laws makes it appropriate that the ACMA should give special consideration to the renewal of its apparatus licence
- e. the licence is affected by re-planning considerations such that the licence, if renewed, would be inconsistent with an administrative band plan, Radiocommunications Assignment and Licensing Instructions, an embargo or other administrative arrangements.

Under s 130(5) of the Act, if the ACMA refuses to renew a licence, or renews a licence but not on the same conditions, the ACMA must give the licensee a written notice stating the fact.

Under Part 5.6 of the Act, where the ACMA has made a decision not to renew an apparatus licence or renew a licence but not on the same conditions, a licensee may apply for reconsideration of the decision, first internally by the ACMA and then by the Administrative Appeals Tribunal.

The ACMA will review this policy from time to time, particularly where there are changes to the policy or legislative framework.