

# Satellite coordination and notification regulatory environment

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# Executive summary

This document provides a summary of the Australian Communications and Media Authority's (the ACMA's) view of the regulatory environment in which it conducts satellite filing and coordination work.

Internationally, the legal instruments of the International Telecommunication Union (ITU) provide a framework for this work. While this framework contains some specific requirements that are binding on Australia, there is often scope regarding implementation. Consequently, Australia has adopted various practices to fulfil its obligations under these instruments. This includes 'passing on' obligations to satellite operators. This generates an area of 'crossover' as satellite operators are affected both by the ACMA acting in accordance with international requirements, and the obligations being 'passed on' to them in the form of domestic arrangements. In addition to the treaty level ITU Constitution, Convention and Radio Regulations, the ACMA also considers other treaty level arrangements when undertaking satellite filing and coordination work.

Domestically, while various pieces of Australian legislation provide points of reference for satellite filing and coordination work, both for the ACMA and Australian satellite operators, the performance of functions and exercise of powers by the ACMA and obligations on satellite operators are not expressly articulated in domestic law. Consequently, one of the main purposes for developing the *Australian procedures for the coordination and notification of satellite systems* (the manual) is to clarify the responsibilities of both satellite operators and the ACMA.

# International regulatory environment

Internationally, Australia is a Member State of the ITU, and bound by the ITU's legal instruments. These include (under Article 4 ITU Constitution) the treaty level Constitution, Convention, and Administrative Regulations (which include the Radio Regulations). While these instruments set out requirements concerning aspects of satellite filing and coordination work, Administrations may implement these in varying ways. For example, the Radio Regulations include the requirement to affect coordination, but there is no requirement to provide the content of coordination agreements, nor guidance on the process for achieving these. That said, protocols have developed, which are observed internationally, when achieving these outcomes.

The international legal instruments which bind Australia range from the more conceptual to the more specific. For example, the Outer Space Treaty (to which Australia is a signatory) states that outer space is not subject to national appropriation by claim of sovereignty. Importantly, Article 44 of the ITU Constitution sets out the principle of Member States endeavouring to limit the number of frequencies and the spectrum used to the minimum essential to provide in a satisfactory manner the necessary services. Article 44 goes on to state:

... radio frequencies and any associated orbits, including the geostationary-satellite orbit, are limited natural resources and that they must be used rationally, efficiently and economically, in conformity with the provisions of the Radio Regulations, so that countries may have equitable access to those orbits and frequencies taking into account the special needs of the developing countries and the geographical situation of particular countries.

The Radio Regulations (including Articles 9 and 11) are more specific, setting out timeframes for submission of information including Advance Publication Information (API), Coordination Request (CR) and Notification. They also set out what the ITU will do and the obligations of both notifying and affected Administrations (including obligations to respond and associated timelines).

# ‘Crossover’

The ITU legal instruments bind Member States, and Member States may ‘pass on’ (or reflect) their obligations in requirements imposed on satellite operators. This is an area of ‘crossover’, as the international obligations binding Australia affect satellite operators. This occurs either by the ACMA acting in compliance with Australia’s international obligations, or by requirements being passed on to satellite operators in order to ensure that Australia can meet its obligations internationally.

Information related to a satellite system submitted to the ITU by the ACMA (acting as the Australian Administration for the purposes of this work) remains the responsibility of the ACMA (in discharging its obligations for the Australian Government), on the basis that only Administrations of Member States can submit/modify/suppress information related to satellite systems. The ITU only deals with Administrations. Through submission of such information to the ITU, in practice the ACMA obtains an ‘access’ to deal with the ITU published information associated with the satellite system, and if brought into use, the radiofrequencies and orbit for the satellite system.

A satellite system in practice consists of a set of technical parameters described and submitted to the ITU. The ACMA provides for exclusive use of an access for an Australian satellite system to a satellite operator. This is a matter of practice, without which, the system would not work.

The Radio Regulations set out the international process of coordination of technical parameters for satellite systems. In practice, this involves satellite operators providing information to their filing Administration, which sends it to the ITU. For example, Article 9.3 provides:

If, upon receipt of the BR IFIC containing information published under No. 9.2B, any administration believes that interference which may be unacceptable may be caused to its existing or planned satellite networks or systems, it shall within four months of the date of publication of the BR IFIC communicate to the publishing administration its comments on the particulars of the anticipated interference to its existing or planned systems.

The ITU Rules of Procedure, which include guidance in relation to Article 9 and 12 of the Radio Regulations, include principles for coordination. The Rules of Procedure (9.6 a-d) provide that:

... requests for coordination shall be made in the order of their date of receipt ... the coordination process is a two way process ... in the application of Article 9 no administration obtains any particular priority as a result of being the first to start either the advance publication phase ... or the request for coordination procedure.

In addition, the ACMA, acting as the Australian Administration for the purpose of this work, authorises satellite operators to (among other things) engage internationally in coordination agreements in relation to the satellite system as it sees fit. This is because the satellite operator is best placed to know the technical details of their satellite network.

Under Article 11.28 of the Radio Regulations when it comes to recording of frequency assignments in the Master International Frequency Register at the ITU, notices are ‘examined in the date order of their receipt’. Article 8.1 provides:

The international rights and obligations of administrations in respect of their own and other administrations’ frequency assignments shall be derived from the recording of those assignments in the Master International Frequency Register (the Master Register) or from their conformity, where appropriate, with a plan.

Such rights shall be conditioned by the provisions of these Regulations and those of any relevant frequency allotment or assignment plan.

Article 8.3 of the Radio Regulations then provide that a frequency assignment recorded in the Master Register with a favourable finding

... shall have the right to international recognition. For such an assignment, this right means that other administrations shall take it into account when making their own assignments, in order to avoid harmful interference.



# Domestic

Australian legislation does not expressly provide for satellite filing and coordination work. Domestically, the ACMA is mindful of relevant international legal instruments, principles of international law, related aspects of domestic law, and its own policies and procedures as articulated in the manual.

Domestic coordination between Australian satellite systems is a requirement set out in the manual. As mentioned, Article 44 of the ITU Constitution requires that 'radio frequencies and any associated orbits, including the geostationary-satellite orbit, are limited natural resources and that they must be used rationally, efficiently and economically'. The ACMA considers Australian satellites systems which are technically incompatible do not fulfil this requirement, and as the filing Administration for both satellite systems, it will require the conflict to be resolved. Australia's reputation may be adversely affected if foreign Administrations need to spend time coordinating with Australian networks which are at odds with each other. In addition, should the Australian satellite systems be brought into use, in the case of a conflict it would be impossible to licence both.

Satellite filing and coordination work is considered a spectrum management function under section 9 of the *Australian Communications and Media Authority Act 2005* (ACMA Act). In this regard, paragraph 9(j) of the ACMA Act provides for the ACMA '... to do anything incidental to or conducive to the performance of' any of its functions which include under paragraphs 9(a), (b) and (h)(i): to manage the radiofrequency spectrum in accordance with the *Radiocommunications Act 1992* (Radiocommunications Act); advise and assist the radiocommunications community; and those functions conferred on the ACMA by or under the Radiocommunications Act itself .

Satellite filing and coordination work is consistent with the object of the Radiocommunications Act, which includes:

- > Maximising, by ensuring the efficient allocation and use of the spectrum, the overall public benefit derived from using the radiofrequency spectrum (paragraph 3(a)). Accordingly, the ACMA files satellite systems which it considers will be beneficial to Australia, particularly in relation to services to Australia (and future associated licensing).
- > Promoting Australia's interests concerning international agreements, treaties and conventions relating to radiocommunications or the radiofrequency spectrum (paragraph 3h)). In this respect, section 299(1) of the Radiocommunications Act states that a '... person or body exercising a power conferred under this Act ... must have regard to any agreement, treaty or convention, between Australia and another country or countries, that makes provision in relation to radio emission ...'.

There are also legacy arrangements that exist in relation to Deeds of Agreement, which fall under the 'additional functions' of the ACMA under section 11 of the ACMA Act and which are made under paragraph (c) of that section.