

# Our approach to radiocommunications licensing and allocation

Implementing the *Radiocommunications  
Legislation Amendment (Reform and  
Modernisation) Act 2020*

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# Contents

<b>Executive summary</b>	<b>1</b>
<b>Approach to decision-making</b>	<b>2</b>
<b>Licence categories</b>	<b>5</b>
Relevant legislative provisions	5
Key decisions	5
How we identify appropriate licensing arrangements	5
When spectrum licensing is appropriate	6
When apparatus licensing is appropriate	8
Area-wide licence (AWL)	10
Broadcasting transmitter licences	10
Apparatus licences of a non-specified type	11
When class licensing is appropriate	12
Consulting with you about the form of licence category	12
<b>Licence duration</b>	<b>13</b>
Relevant legislative provisions	13
Key decisions	13
Long-term licence duration (20 years)	13
Consulting with you about long-term licence duration	14
Medium-term licence duration (one to 10 years)	15
Consulting with you about medium-term licence duration	16
Short-term licence duration (up to one year)	16
Consulting with you about short-term licence duration	16
<b>Payment arrangements</b>	<b>17</b>
Relevant legislative provisions	17
Key decisions	17
Payment arrangements for apparatus licences	17
Consulting with you about payment arrangements	18

# Contents (Continued)

<b>Renewal statements</b>	<b>19</b>
Relevant legislative provisions	19
Key decisions	21
How the ACMA intends to exercise its powers	21
Power to issue non-renewable licences	21
Determining that a licence is non-renewable	22
Power to set specified circumstances for renewal decision	22
What kind of circumstances we might specify	22
The power to include renewal statements in apparatus licences	22
The power to include renewal statements in spectrum licences	23
The power to include public interest statements	24
The power to vary a renewal statement	26
Renewal application period	26
Consulting about renewal and public interest statements	28
<b>Allocation and re-allocation</b>	<b>29</b>
Relevant legislative provisions	29
Key decisions	30
How the ACMA intends to exercise its powers	30
Powers to make unencumbered spectrum available for spectrum licensing	30
Powers to directly allocate spectrum licences	30
Powers to decide that encumbered spectrum is to be re-allocated by issuing spectrum licences, apparatus licences, or both.	31
Streamlining the re-allocation process	32
Powers to set allocation limits	33
Bidder credits	34
<b>Appendix A: Licence category characteristics</b>	<b>36</b>

# Executive summary

The [Radiocommunications Legislation Amendment \(Reform and Modernisation\) Act 2020](#) (the Modernisation Act) updates the [Radiocommunications Act 1992](#) (the Act) to address priority spectrum management issues and deliver tangible benefits to spectrum users through spectrum reform.

Under the Act, both the Australian Communications and Media Authority (ACMA) and the Minister for Communications, Urban Infrastructure, Cities and the Arts (the minister) have roles and responsibilities in how the spectrum is allocated and in maximising the public benefit derived from the use of the spectrum.

The Modernisation Act re-aligns the respective spectrum management roles of the ACMA and the minister by simplifying and streamlining critical allocation and re-allocation processes. In addition, the Modernisation Act provides the ACMA increased flexibility in licensing and allocating the spectrum, which in turn ensures that spectrum management remains fit for purpose in a challenging, dynamic environment.

Key amendments to licensing and allocation arrangements introduced by the Modernisation Act include:

- > increasing the maximum licence term of spectrum and apparatus licences to 20 years
- > requiring that some licences include renewal and public interest statements, and allowing other licences to include these statements
- > streamlining the spectrum re-allocation process by enhancing the ACMA's ability to allocate spectrum licences without a prior decision from the minister
- > allowing the ACMA to set allocation limits for price-based allocations of spectrum and apparatus licences, having regard to advice from the Australian Competition and Consumer Commission (ACCC)
- > introducing bidder credits as a potential tool in spectrum allocation processes.

The amendments to the Act will take effect when the relevant provisions of the Modernisation Act commence on 17 June 2021.

In this information paper, we identify the core changes to the Act relevant to licensing and allocation arrangements, specifically around licence duration, renewal statements, allocation and re-allocation processes and our intended approach to implementation.

We also describe our broader approach to selecting spectrum, apparatus and class licensing for different use scenarios, including the matters we consider when assessing each licensing category's potential suitability. The paper also discusses how the amendments can provide increased flexibility in selecting apparatus or spectrum licensing for some use cases.

# Approach to decision-making

For the purposes of exercising our regulatory decision-making powers under the Act, our decisions are guided by the object of the Act, as amended. The object of the Act is to promote the long-term public interest derived from the use of the spectrum by providing for the management of spectrum in a manner that:

- (a) facilitates the efficient planning allocation and use of the spectrum
- (b) facilitates the use of the spectrum for:
  - (i) commercial purposes
  - (ii) defence purposes, national security purposes and other non-commercial purposes (including public safety and community purposes)
- (c) supports the communications policy objectives of the Australian Government.

While the Modernisation Act affords us greater flexibility in a number of process-based operational licensing decisions, the scope of our licensing and allocation decisions is guided by:

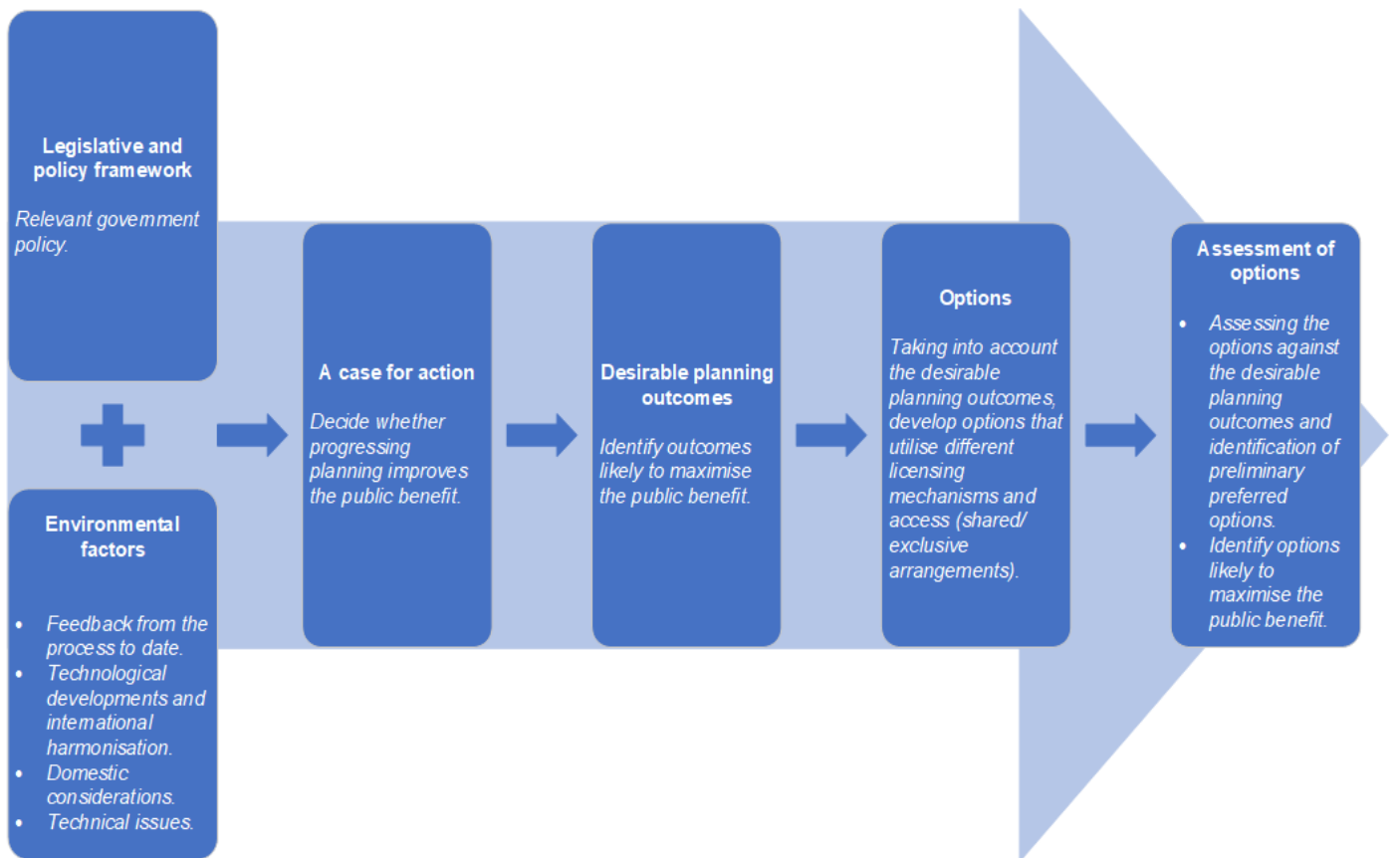
- > the relevant matters the ACMA must have regard to under the Act, which includes the object of the Act as well as specific provisions of the legislation that guide decisions on particular matters
- > consultation obligations under the [Legislation Act 2003](#) (the Legislation Act), as well as specific consultation provisions under the Act, which inform decision-making
- > transparency and accountability obligations, particularly in relation to the ACMA's [five-year spectrum outlook](#) (FYSO) annual work program, which outlines spectrum management work priorities and planned consultations
- > powers of the minister to direct the ACMA on the performance of its functions
- > provision of additional guidance through relevant ministerial policy statements (MPS) under the Act.

An MPS is a formal way of communicating the government's policy objectives. The power to make an MPS is a new mechanism that is intended to enable the minister to provide high-level policy guidance to ACMA about the government's policies for spectrum management. This mechanism complements the reduction in the minister's process-based regulatory decision-making functions, and the overall, more strategic role conferred on the minister by the amendments.

The Modernisation Act provides that we must have regard to an MPS when exercising our powers, and that we must provide a summary outline of the operation of any MPS in our annual report. Under section 14 of the [Australian Communications and Media Authority Act 2005](#) (the ACMA Act), the minister may also direct us in relation to the performance of our functions and the exercise of our powers. Other specific directions powers are contained in the Act. However, whereas compliance with a ministerial direction is mandatory, the ACMA is only required to have regard to an MPS.

We have historically taken into consideration relevant government policy as part of our general approach to planning and licensing decision-making. Noting the purpose of an MPS is to provide a formal way of communicating the government's policy objectives, and that we must have regard to an MPS, we intend to consider MPSs in a similar manner as part of our approach to planning and licensing regulatory decision-making, as described in Figure 1.

**Figure 1: Spectrum planning and licensing decisions framework**



This paper provides guidance on our intended use of the new and enhanced discretionary licensing and allocation arrangements provided by the Modernisation Act. We expect to consult on specific implementations and use of the enhanced powers provided by the Modernisation Act on a case-by-case basis, consistent with current consultation practices, at points identified in this paper.

For example, when consulting on planning arrangements for a particular band, we would expect to consult on matters such as which types of licences to make available (that is, whether to allocate the spectrum through spectrum licences, apparatus licences, class licences or a mixture of licences) or the proposed maximum licence term available within the relevant band. Other common consultation points include during allocation and re-allocation processes, as well as updates to existing class licences and licence condition determinations.

We note that where the new licensing and allocation arrangements involve the making of a legislative instrument (for example, a re-allocation declaration or applying renewal statements to a class of spectrum or apparatus licences), it is our disposition and obligation under the Legislation Act to undertake appropriate consultation on the proposal to make the instrument to inform our decision-making.<sup>1</sup>

<sup>1</sup> Section 17 of the Legislation Act provides that before a legislative instrument is made, the rule-maker must be satisfied that there has been undertaken any consultation that is: (a) considered by the rule-maker to be appropriate; and (b) reasonably practicable to undertake.

This approach will enable us to ensure that the licensing and allocation arrangements for each band are fit for purpose, and to help maximise the overall public benefit derived from the spectrum.



# Licence categories

We develop licensing arrangements to optimise and encourage the efficient allocation and use of the spectrum, maximising the overall public benefit.

The Act provides for, and the amendments made by the Modernisation Act maintain, 3 licensing categories – spectrum licences, apparatus licences and class licences. Different licensing categories and associated planning, allocation and pricing elements produce core differences that affect their suitability for different scenarios.

Changes introduced by the Modernisation Act facilitate increased flexibility in selecting the appropriate licensing arrangements to support different spectrum use cases. Relevant changes introduced by the Modernisation Act include longer licence duration and the ability of the ACMA to choose whether particular parts of the spectrum should be subject to spectrum licensing, apparatus licensing, or both.

This section sets out the considerations we may have regard to when identifying whether particular spectrum should be subject to spectrum licensing, apparatus licensing or class licensing.

A table comparing the core characteristics of each licensing category is provided at [Appendix A](#).

## Relevant legislative provisions

Section 62 of the Act enables the ACMA to issue a spectrum licence allocated in accordance with procedures determined under section 60 of the Act as amended, including via auction, tender, pre-determined or negotiated price, or direct allocation.

Section 100 of the Act enables the ACMA to issue an apparatus licence.

Subsection 98(1) of the Act enables the ACMA to, by legislative instrument, determine the types of transmitter licences and the types of receiver licences (that is, apparatus licences) that it may issue.

Subsection 98(2) of the Act as amended enables the ACMA to issue an apparatus licence of a non-specified type.

Section 132 of the Act enables the ACMA, by legislative instrument, to issue a class licence.

## Key decisions

- > **Licence issue** – we may issue spectrum, apparatus and class licences.
- > **Apparatus licence ‘types’** – we may determine types of apparatus licences.
- > **Apparatus licences of an unspecified type** – we may issue an apparatus licence not of a determined type.

## How we identify appropriate licensing arrangements

In identifying the most appropriate licensing arrangements for particular spectrum uses, we seek to balance providing predictability to users regarding their proposed or

ongoing use of the spectrum with flexibility to change how spectrum is used over time. We therefore consider that it is important that the choice of licensing arrangements is considered in the context of the contemporary technology uses and spectrum band characteristics.

When deciding whether a band or use-case should be spectrum, apparatus or class licensed, we consider several key factors including:

- > **Nature of user(s)** – type of use expected such as ubiquitous use by ‘unaware’ users (for example, wi-fi) versus ‘aware’ users/licensees.
- > **Expected use cases** – scale of expected deployment and associated investment decisions.
- > **Technical coexistence and interference management** – how technical coexistence is achieved, for example conditions on the characteristics and operation of devices, coordination of devices and services, and licence boundary conditions.
- > **Predictability and exclusivity of access** – different licensee investment timeframes (influenced by geographic coverage and technological development) that guide the level of exclusivity and type of licensing/regulatory predictability sought by licensees.
- > **Allocation** – suitability of different allocation methods, including consideration of price-based and administrative allocation, as well as whether licences should be available on an ongoing basis.
- > **Flexibility and spectral efficiency** – consideration of the appropriate level of flexibility for users and the overall spectral efficiency desired by industry and the ACMA.
- > **Government policy objectives** – whether any broader policy objectives, including those in MPSs, can be facilitated through particular frameworks, allocations, or licensing categories.

We note that in some cases, it may be appropriate to use hybrid licensing approaches, with a mixture of apparatus, class and spectrum licensing to support multiple uses by a range of different users and optimise the use of the spectrum across a band and in different geographical regions.

## When spectrum licensing is appropriate

Spectrum licences have broadly been used to authorise the use of high value spectrum over large geographic areas to support services such as wireless broadband. This stems from the Act providing spectrum licensees with a high degree of exclusivity and certainty, making the licence type suited to supporting scenarios where licensees have long-term investment requirements.

Spectrum licences provide long-term investment certainty to licensees through:

- > **Long-term licence duration** – may be issued for periods of up to 20 years, with compensation or an agreement required to resume a spectrum licence prior to expiration.<sup>2</sup>
- > **Protection from some licence variation** – we may only modify a spectrum licence’s core conditions, such as frequencies and geographic areas in which

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<sup>2</sup> Pursuant to section 89 of the Act, the ACMA may resume (that is, effectively reclaim) a spectrum licence or part of a spectrum licence under an agreement entered into with the licensee. Pursuant to section 91 of the Act, the ACMA may resume a spectrum licence, or part of a spectrum licence, by compulsory process, subject to written approval from the minister and in accordance with the resumption procedures set out in Part 1 of the Schedule to the Act.

operation of radiocommunications is authorised, and generally may only modify a spectrum licence's renewal statement, in agreement with the licensee.

- > **Limitations on subsequent licences** – we are generally restricted from issuing subsequent spectrum, apparatus or class licences that would overlap with the frequency or geography authorised by an existing spectrum licence, or where a marketing plan is in force for that part of the spectrum, unless specified circumstances and requirements are met.<sup>3</sup>
- > **Renewal statements** – spectrum licences must include renewal statements that set out whether, and under what circumstances, we would renew a spectrum licence. Renewal statements provide long-term transparency and predictability around timeframes and prospect of renewal. Some spectrum licences (for example, spectrum licence in force prior to commencement) are exempt from including a renewal statement.
- > **Technology-flexible frameworks** – spectrum licences are commonly subject to technology-flexible frameworks, enabling multiple generations of technology to be deployed under a single licence, thereby allowing licensees to repurpose spectrum and encourage the maximisation of the public benefit derived from its use.
- > **Secondary trading and leasing** – as with certain types of apparatus licences, spectrum licences permit secondary trading and authorise third parties to operate devices under the licence (which can be described as 'leasing'), which provide a mechanism by which the public benefit of the licensed spectrum can be maximised over the long term.

While some of these features of spectrum licences provide certainty and flexibility to licensees, they can also restrict our flexibility in substantively changing the use of spectrum during the licence's duration. Consequently, we must have a high degree of confidence that the use of the spectrum will deliver the maximum public benefit throughout the licence's duration (that is, in the long term). We must also have a high degree of confidence that arrangements to enable the licensee to continually maximise the benefit derived from relevant spectrum, such as technology-neutral frameworks and secondary trading, will work to do so in the longer term.

We generally initially issue spectrum licences through a price-based allocation process, although some licences have been initially issued via a conversion process,<sup>4</sup> generally limiting initial allocation to a point-in-time (as opposed to ongoing availability of licences within a band). This stems from spectrum licences generally being used to allocate high value spectrum, and because market-based allocation can enhance the likelihood that spectrum will be allocated to a licensee that will use the spectrum in a manner that maximises its public benefit. This approach to allocation has the effect of

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<sup>3</sup> Pursuant to new section 60B, the ACMA must not allocate a spectrum licence that authorises the operation of radiocommunications devices on frequencies and within areas that are already the subject of an existing spectrum licence. Pursuant to section 105 of the Act as amended, the ACMA may only issue an apparatus licence that overlaps with a spectrum licence, or where a marketing plan is in force, to specified law enforcement and investigative bodies or persons for the purposes of the operations conducted by those bodies, or if the ACMA is satisfied that the special circumstances of the particular case justify the issuing of the licence. Pursuant to section 138 of the Act as amended, the ACMA may only issue a class licence that overlaps with a spectrum licence (or where a marketing plan is in force) if the ACMA is satisfied that issuing the class licence would not result in unacceptable levels of interference to devices operated or likely to be operated under the spectrum licence, issuing the class licence would be in the public interest, and appropriate consultation with affected spectrum licensees is undertaken.

<sup>4</sup> Conversion was a process in which existing apparatus licences could be converted into a spectrum licence following designation of the spectrum under section 36 of the Act and preparation of a conversion plan. The Modernisation Act repeals the conversion provisions.

limiting the suitability of spectrum licences for many use cases and users where ongoing administrative allocation provides greater business planning flexibility.

However, the Modernisation Act empowers us to also directly allocate spectrum licences (in accordance with a marketing plan and allocation determination). While we would generally expect to use our direct allocation powers in a manner similar to the way in which conversion powers were used in the past, there may be scenarios, such as non-commercial operators and public good use-cases, where direct allocation may be preferred to a market-based allocation. This would likely occur when circumstances of the particular scenario mean that the goal of maximising the public benefit derived from the use of the spectrum can be better achieved through non-market allocation methods.

## When apparatus licensing is appropriate

Apparatus licensing has broadly been used to create over the counter licensing products for authorising radiocommunications devices used as part of specific kinds of radiocommunications services and use cases, such as land mobile, fixed, satellite and maritime. The linkage between apparatus licences and the provision of particular radiocommunications services stems in part from a restriction under the Act that meant we would only issue an apparatus licence of a type specified in a determination made under subsection 98(1) of the Act.<sup>5</sup>

The Modernisation Act has provided further apparatus licensing flexibility by permitting the issue of apparatus licences not of a specified type (that is, apparatus licences not linked to established radiocommunications services).

Apparatus licences are generally suitable for situations where moderate to high predictability is required by the licensee to support long-term investments, but the licensee also requires greater flexibility in terms of licence duration (compared to spectrum licences).

Apparatus licensing balances flexibility and predictability for licensees through:

- > **Flexible durations** – apparatus licences may be issued for up to 20 years where suitable, but can also be made available for shorter durations, reflecting licensee requirements, and current and planned uses of the band. This balances providing licensees with investment predictability matched to their business needs and with appropriate planning flexibility.
- > **Geographic flexibility** – apparatus licences may authorise site-based, area-based or mobile access to spectrum, depending on the use case. Areas are generally determined by licensee choice, coordination requirements and planning models.
- > **Allocation flexibility** – apparatus licences may be issued by administrative or price-based allocation. Generally, we have made most apparatus licences available on an ongoing basis, through first in time, administrative allocations. Price-based allocations have been used for certain high-demand licences such as low and high-power open narrowcasting licences.
- > **Renewal flexibility** – most apparatus licences are generally renewed unless an alternative use for the part of the spectrum has been identified. Most apparatus licences will not include renewal statements and current renewal practices will continue to apply. However, the ability to include renewal statements to indicate either that the licence may not be renewed, or will be renewed only if specified

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<sup>5</sup> For the purposes of subsection 98(1) of the Act, the ACMA has made the Radiocommunications (Specified Radiocommunications Receivers and Types of Transmitter Licences and Receiver Licences) Determination 2014, which specifies 17 types of transmitter and 6 types of receiver licence the ACMA may issue.

circumstances exist, will provide licensees with enhanced clarity over the potential renewal of their licence. A decision to renew an apparatus licence for a period of 10 years or longer is subject to a public interest consideration.

- > **Pricing certainty** – because apparatus licences are usually allocated via an administrative process, rather than through auctions, prospective licensees have more certainty when calculating the applicable taxes and administrative charges.
- > **Payment flexibility** – currently, most apparatus licensees may either request to pay applicable licence tax either upfront for the life of the licence, or by annual instalment, providing business planning flexibility to users. We may determine the payment arrangements for certain apparatus licences as enabled by the amendments.
- > **Planning flexibility** – apparatus licences provide us with greater planning flexibility, as the Act enables us to vary or refuse to renew apparatus licences, and to make a re-allocation declaration for a band, cancelling all the apparatus licences in the band. Apparatus licences may thus be suitable in scenarios where we expect to change the use of the band within the licence duration (compared to spectrum licences). This flexibility, however, is balanced by our broader approach to spectrum management, as well as our disposition towards undertaking public consultation processes when substantive changes are proposed, thereby providing licensees with a degree of clarity regarding their ongoing use of the spectrum.
- > **Interference protection** – apparatus licensing can provide a high level of interference protection through our policies and planning decisions, and coexistence is achievable through licence conditions and associated planning frameworks.

### **Service-specific apparatus licences**

Service-specific apparatus licences (that is, those linked to a particular radiocommunications service) are generally suitable for scenarios where licensees have defined needs or where there are other planning or policy objectives that make service restrictions appropriate.

Services and expected use cases can be estimated, enabling us to promote efficient use of the spectrum by optimising the technical planning and coordination frameworks and licence conditions associated with apparatus licence types. We do this through policies such as [radiocommunication assignment and licensing instructions](#) (RALIs) or legislative instruments such as licence conditions determinations. This can limit flexibility of use under the licence type.

We issue both assigned (that is, coordinated) and non-assigned (non-coordinated) service-specific apparatus licences. Assigned licences have an assigned frequency and our practice is to provide low to moderate exclusivity with spectrum bands shared on a coordinated basis. The band is generally shared with other services of the same type. Some parts of the spectrum may also be available to multiple services on a primary and secondary basis, as identified in the [Australian Radiofrequency Spectrum Plan 2017](#).

Non-assigned licences are shared on an uncoordinated basis, with limited or no exclusivity; the frequencies are generally shared with other users of the same service, but also potentially other services. Non-assigned licences are suitable for providing roaming use and greater areas of operation while still retaining a record of licensees where it is appropriate to do so, such as with some maritime radio users.

In selecting service-specific apparatus licensing arrangements, we require a moderate level of confidence that the use of the spectrum (specifically the identified service) will continue to maximise the overall public benefit throughout the term of the licence, as

apparatus licensing arrangements do provide some flexibility to substantively change the use of the spectrum during a licence's term (compared to spectrum licences). While licence trading can change the user, it cannot change the overall use of the spectrum, which is set through the broader licensing framework.

### **Area-wide licence (AWL)**

AWLs are a type of apparatus licence introduced in 2020 and first used in the 26 GHz and 28 GHz bands, supporting the deployment of wireless broadband and fixed satellite services. AWLs differ from other apparatus licence types in that they are service-agnostic and provide an aggregable area-based authorisation to use parts of the spectrum. They are intended to provide considerable deployment flexibility.

The AWL framework is highly flexible and is developed on a band-by-band basis where we have decided to make AWLs available. This facilitates the optimisation of the licence type's use in particular bands through different approaches to licence duration, renewal policy, pricing and technical arrangements.

AWLs have the same characteristics under the Act as other apparatus licences, but their nature may nonetheless support uses that require long-term investment, depending on the licence duration, renewal policy and technical arrangements for the particular band. However, as apparatus licences, there are few legislative impediments (compared to spectrum licences) to our ability to re-allocate the spectrum used by AWLs, to vary AWLs or to issue subsequent licences to other users. This may make AWLs suitable to scenarios where the adaptability of spectrum licences is desired, while still retaining the broader planning flexibility of apparatus licensing arrangements.

AWLs are generally suited to ongoing allocation arrangements (first in time) with possible point in time aspects, depending on the band and value of the spectrum. Due to the potential level of geographic granularity open to be licensed by an AWL in some bands (for example, singular 500 m x 500 m cells), AWLs may not necessarily be suited to market allocation in all bands, as a resulting Australia-wide auction would be inherently complex. However, this varies on a band-by-band basis and decisions related to the potential geographic size and availability of AWLs.

Similar to service-specific apparatus licensing, in selecting AWL arrangements applicable to any future allocation, we require a moderate degree of confidence that the selected arrangements will continue to maximise the overall public benefit throughout the licence's term. However, unlike service-specific apparatus licences, trading of AWLs can result in changes of both users and thus provides more utility in ensuring spectrum continues to maximise the overall public benefit.

### **Broadcasting transmitter licences**

The Modernisation Act does not materially alter the licensing and allocation arrangements that apply to broadcast transmitter licensees, which are a category of apparatus licences. Certain broadcasting licences, including those issued under section 101A (temporary community broadcasting transmitter licences) and section 102 (commercial and long-term community broadcasting transmitter licences) of the Act, as well as digital radio multiplex transmitter licences, are not affected by the Modernisation Act.

The core changes to broadcasting licences introduced by the Modernisation Act remove provisions relating to the datacasting transmitter licence regime.

Datacasting (content) licences for commercial television broadcasting licensees, however, will remain under Schedule 6 of the [Broadcasting Services Act 1992](#) (the BSA). Commercial television broadcasters providing datacasting services will be

unaffected by the changes. These transmissions remain authorised by the same section 102 transmitter licences that authorise commercial television broadcasting service transmissions.

The Modernisation Act also makes some changes affecting the licensing arrangements for licences issued under section 100 of the Act, including narrowcasting and national broadcasting service (NBS) transmitter licences.

Amendments to the Act allow us to issue NBS transmitter and narrowcasting licences for periods of up to 20 years. Narrowcasting licence terms will continue to be constrained by the period determined under section 34 of the BSA, which is generally, but not always, 5 years.<sup>6</sup>

As the intent of the Modernisation Act was not to change the arrangements for licensing of broadcasting services, we intend to continue to issue NBS licences for a duration of up to 5 years, and narrowcasting licences for the periods determined under section 34 of the BSA. This approach preserves planning flexibility to continue the process of AM-FM conversions and allows for changes of the technical specification of licences when necessary due to, for example, changes in transmitter site location or broadcasting site infrastructure affecting a number of co-sited services.

The Modernisation Act also allows us to include renewal and public interest statements in NBS transmitter licences and narrowcasting licences. Consistent with other apparatus licences, these renewal statements may either indicate that a licence must not be renewed, or can be renewed at our discretion so long as specified circumstances exist. Public interest statements may only be included in apparatus licences that include such a renewal statement.

The Modernisation Act also requires us to apply a public interest test in considering whether to renew a NBS transmitter licence or narrowcasting licence with a new licence term exceeding 10 years, regardless of whether the licence includes a public interest statement. In applying a public interest test, we would consider the matters described in the public interest test section set out later in this paper. Noting that we do not intend to offer NBS transmitter or narrowcasting licences for periods exceeding 5 years, we will generally not be required to undertake a public interest test in considering whether to renew either licence. Consistent with our intent to continue current arrangements for the licensing of broadcasting services, we do not intend to include a renewal statement in NBS transmitter licences or narrowcasting licences.

### **Apparatus licences of a non-specified type**

Subsection 98(1) of the Act provides that we may determine, via legislative instrument, the types of transmitter licences and the types of receiver licences that we may issue. The types of apparatus licences that we may issue are specified in the [Radiocommunications \(Specified Radiocommunications Receivers and Types of Transmitter and Receiver Licences\) Determination 2014](#).

Under subsection 98(2), we were previously prevented from issuing an apparatus licence of a type not specified in that determination. The Modernisation Act amends subsection 98(2), which now provides that we may issue an apparatus licence that is not of a type specified in the determination.

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<sup>6</sup> Additionally, the [Australian Communications Authority \(HPON Transmitter Licences\) Direction No. 1 of 2001](#) requires that where the ACMA decides to renew a HPON licence, it must specify a licence term that ends at the same time as the period specified under the relevant section 34 determination, or the relevant part of that determination. This direction also requires that the ACMA is not to refuse to renew the licence merely because of a policy to allocate HPONs via a price-based allocation process.

We expect to continue to rely principally on the existing apparatus licence types as these are useful in creating familiar licensing products for a wide market, along with standardised pricing arrangements. However, the power to issue an apparatus licence of a non-specified type provides flexibility to licence devices that may not otherwise neatly fit into the existing service-specific apparatus licensing frameworks.

We intend to issue apparatus licences of a non-specified type on a limited basis, such as one-off use cases that cannot be licensed under the existing service types.

While general taxation and charging arrangements are currently available for unspecified apparatus licence types, we will consider the applicable apparatus licence taxes and any administrative charges reflecting the particular circumstances of the requested spectrum use, and will consult with prospective licensees.

## **When class licensing is appropriate**

Class licences provide for shared use of the spectrum, with minimal to no licensing hurdles and no associated regulatory fees for users. In other countries this kind of licence is sometimes referred to as 'unlicensed' use or a general authorisation.

Class licensing is useful in authorising the use of spectrum by 'unaware' users (end-users who are not necessarily mindful of their use of the spectrum) and ubiquitous devices and technologies (for example, wi-fi), as the general authorisation provided means that users do not need to acquire individual licences to operate a device.

Coexistence between devices authorised under a class licence is generally based on the device characteristics and is managed in the class licence conditions. Although a device operated under a class licence is generally not expected to suffer interference, we generally have a 'no protection' policy regarding class licensing.

It is uncommon for us to clear established users from class-licensed spectrum. However, we have previously varied class licences to reflect changes in the environment or developments in technology by providing additional uses or varied operating conditions.

## **Consulting with you about the form of licence category**

We intend to continue our practice of extensive consultation to inform the design of planning, licensing and allocation arrangements that will support the deployment of new communications technologies and to meet the needs of spectrum users. Our annual work program will identify the relevant planning and licensing consultation opportunities.

In addition, we will respond to requests from prospective licensees to identify relevant licensing options that meet their spectrum requirements.



# Licence duration

Licence duration, along with renewal, is a key tool in our ability to balance providing investment and service predictability to licensees, with our ability to efficiently manage the spectrum resource through replanning and allocation and re-allocation to maximise the public benefit. Licence duration and renewal statements are key licence conditions, informed by planning arrangements and given effect through allocation and re-allocation processes. We encourage stakeholders to consider the operation of licence conditions and regulatory processes together.

As a general consideration, in making decisions on licence duration and renewal arrangements, we are seeking to balance 2 competing priorities to support changes in spectrum use and spectrum users over time, both through replanning of spectrum for new uses and enabling changes in licence holdings, with predictability of regulatory decision-making to support confidence in investment by spectrum users.

Prior to the Modernisation Act, we were able to issue apparatus and spectrum licences with maximum terms of 5 and 15 years, respectively. The Modernisation Act extends the maximum term of both apparatus and spectrum licences to 20 years.

This change provides us with increased flexibility to issue licences with longer terms, balancing the benefits that longer licence durations can provide in some cases (such as greater investment confidence) with the need to retain the flexibility in spectrum management and planning processes that is more readily provided by shorter licence durations.

We are looking to support a range of different licence terms suitable for different spectrum uses. The ability to set various licence terms provides us with capacity to tailor licensing arrangements to meet the investment security requirements of licensees and take account of current and planned use/s of spectrum. Broadly, we see use cases informing 3 default licence term arrangements to be made available:

- > short term (up to one year)
- > medium term (up to 10 years)
- > long term (20 years).

## Relevant legislative provisions

Subsection 65(3) of the Act as amended enables the ACMA to issue spectrum licences with a licence term of up to 20 years.

Subsection 103(3) of the Act as amended enables the ACMA to issue most apparatus licences with a licence term of up to 20 years.

## Key decisions

- > **Licence duration** – we may issue apparatus and spectrum licences for periods of up to 20 years.

## Long-term licence duration (20 years)

Long-term licensing provides significant investment security to licensees and the ability to amortise major investments in spectrum and infrastructure.

Circumstances where long-term licensing is appropriate include:

- > where the maximum licence term supports security for a return on investment for a licensee
- > in parts of the spectrum where there:
  - > are a smaller number of users and use cases
  - > is a high degree of international harmonisation
  - > is a very low likelihood of a need to replan the spectrum for an alternative use.

These circumstances contribute towards a higher degree of confidence that the use of the band will maximise the public benefit derived from the spectrum and will not substantively change during the term of the licence. This is further facilitated by some licensing frameworks, such as the technology-neutral frameworks of spectrum licences and secondary trading, that can enable substantive changes in the use of the spectrum during a licence's term.

Some non-commercial and commercial uses may thus also be suited to long-term licensing arrangements, especially where use of the band is specialised and highly stable, carrying a low risk of substantive replanning activities, and where there is a limited number of users within the band.

Noting the intent of the legislative reforms to offer longer licence terms to support predictable investment, our default position will be to offer spectrum licences for the full 20-year period where long-term licensing is appropriate. However, consistent with current practice, we may offer licences with truncated terms where shorter durations provide planning and policy utility through aligning expiry dates of multiple licences across a band or adjacent bands, or otherwise facilitating processes such as re-allocation or restacking.

We note that, in the Australian context, long-term apparatus licensing is a novel concept, and that for many existing apparatus licensees, such licences may not suit their business needs. However, subject to the circumstances outlined, we are open to considering the suitability of long-term licence duration for apparatus licences.

### **Consulting with you about long-term licence duration**

We expect to consult with stakeholders around whether long-term licensing will be made available in a particular band for new licences as part of consultations around spectrum planning activities that may affect the conditions of licensees within the band, or the proposed allocation of new licences within a band. Consistent with current practices, spectrum planning activities that may affect the conditions of significant numbers of licensees in a band, as well as proposed allocation processes, will be identified in the annual work program, noting the relevant planning and licensing activity.

Licence renewal will also provide an opportunity for existing licensees to request a long-term licence. For existing spectrum licences, we currently write to licensees 2 years before the licence will expire, asking if the licensee wishes to renew it. However, this will generally be extended to 5 years.

For existing apparatus licences, approximately 4 months prior to licence expiry, we send a validation notice to licensees to ensure licensee and licence details are correct. In both instances, it would be open to licensees to request a new licence with a long-term duration as part of this process. However, noting the range of considerations involved in a decision to issue a long-term apparatus licence, it is our preference that

licensees write to us requesting a long-term licence at least 6 months prior to expiration of the relevant licence.

There may be cases where the spectrum management implications of long duration licences are such that the timeline may not be achievable. For example, we might need to undertake a work program to understand the extent to which long duration licensing is suitable in the context of band planning arrangements. In these events, we will consult publicly, enabling the views of all relevant stakeholders to inform our approach.

We note that renewal of any existing licence resulting in a new licence with a licence term of 10 years or longer would be subject to a public interest test process.

## **Medium-term licence duration (one to 10 years)**

It is our view that medium-term licensing is suitable for a wide range of spectrum use cases, investment cycles and budget conditions. Medium-term licensing provides licensees with greater investment certainty, compared with current short-term arrangements for licences.

We are aware that many apparatus licensees benefit from the flexibility provided by annual licensing. The majority of apparatus licensees seek only one-year licences, even though they are currently able to obtain a licence of up to 5 years duration. Under the new arrangements, our approach will be to continue to make available annual licensing arrangements, but also to make available licences for periods of up to 10 years.

Noting these benefits, in offering medium term licences, we will need a certain level of confidence that the licensed use of the spectrum will continue to maximise the overall public benefit and value derived from the spectrum. This is because of the impact medium-term licensing can have in placing time constraints on some spectrum management activities such as band planning and re-allocation (compared to short term licensing). Additionally, practices such as spectrum hoarding, which could lead to spectrum being unused and denial of service, must be actively discouraged, especially under longer-term licensing arrangements where spectrum could become 'locked up' for longer periods.

We intend to make medium-term licensing available as a default in bands where there is:

- > a high number of users (and mixed uses), with an overall intensive level of use, indicating that the band is efficiently allocated
- > a smaller number of users and use cases, but high degree of international harmonisation and lower likelihood of spectrum moving to an alternative use
- > a new allocation of licences where licensees would be seeking an appropriate licence duration to maximise investment confidence, but where concerns about licence under-use (or hoarding) might restrict our willingness to offer long duration licences.

Additionally, we may also use medium-term licensing arrangements to facilitate planning outcomes, such as aligning common end dates for licences across a particular band.

We plan to limit medium term licensing arrangements to a period of up to, but not including 10 years, as the Modernisation Act recognises that there needs to be a formal public interest consideration for both spectrum and apparatus licences for any

renewal for 10 years or longer.<sup>7</sup> While it would be open for us to issue an initial licence for a period of 10 years or longer without considering a public interest test, we consider that licence terms for both the initial and renewed licence should generally be limited to a term of up to 10 years.

Similar to long-term licensing arrangements, we may in certain circumstances exercise discretion to manage the duration of licences in the band to ensure licences terminate at a common point in certain circumstances, in order to facilitate planning decisions, such as re-allocation.

### **Consulting with you about medium-term licence duration**

We expect to consult with stakeholders around whether medium-term licensing will be made available in a particular band as part of consultations around spectrum planning activities that may affect the conditions of licensees within the band, or the proposed allocation of new licences within a band. Consistent with current practices, spectrum planning activities that may affect significant numbers of licensees in a band, as well as proposed allocation processes, will be identified in the annual work program, noting the relevant planning and licensing activity.

Licence renewal will also provide an opportunity for existing licensees to request a medium-term licence, or for us to make an offer of a medium-term licence. For existing apparatus licences, approximately 4 months prior to licence expiry, we send a validation notice to licensees to ensure licensee and licence details are correct. It would be open to licensees to request a new licence with a medium-term duration as part of this process.

### **Short-term licence duration (up to one year)**

Consistent with established practices for licences authorising use cases that are temporary or short term in nature (for example, special events and trials), we will also continue to limit certain spectrum uses to short term licensing arrangements.

### **Consulting with you about short-term licence duration**

We intend to continue to offer short term apparatus licences on request to maintain this flexibility for licensees. Consistent with current practices, we will continue to send a validation notice 90 days before we send a renewal notice to ensure all details are correct, and then send a renewal notice at least 4 weeks prior to when the relevant licence is due to expire.

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<sup>7</sup> See new subsections 77C(5) and 130(2E) of the Act.

# Payment arrangements

As part of its radiocommunications reform package, the government also passed the [Radiocommunications \(Transmitter Licence Tax\) Amendment Act 2020](#) and the [Radiocommunications \(Receiver Licence Tax\) Amendment Act 2020](#) (together, the tax amendment acts). These amend the [Radiocommunications \(Transmitter Licence Tax\) Act 1983](#) (Transmitter Licence Tax Act) and the [Radiocommunications \(Receiver Licence Tax\) Act 1983](#) (Receiver Licence Tax Act), (together, the tax acts).

The Modernisation Act and the tax amendment acts do not change the structure of the payment arrangements relating to apparatus and spectrum licences. For spectrum licences, we can continue to determine spectrum access charges and spectrum licence taxes. For apparatus licences, we can continue to determine apparatus licence taxes. We can also determine cost recovery charges, such as for the issue, renewal, variation or transfer of a licence and frequency assignment work.<sup>8</sup>

## Relevant legislative provisions

New subsection 6(1C) of the Transmitter Licence Tax Act and new subsection 6(1B) of the Receiver Licence Tax Act will enable the ACMA to determine one or more classes of transmitter or receiver licence for the purposes of imposing tax at licence issue for the duration of the licence's term (that is, payment upfront) via a legislative instrument.

New subsection 6(1E) of the Transmitter Licence Tax Act and subsection 6(1D) of the Receiver Licence Tax Act will enable the ACMA to determine one or more classes of transmitter or receiver licence for the purposes of imposing tax on the anniversary of the day the licence came into force for the duration of the licence's term (that is, payment by annual instalment) via a legislative instrument.

Subsection 6(4) of the Transmitter Licence Tax Act and subsection 6(4) of the Receiver Licence Tax Act as amended, enable apparatus licensees to nominate whether to pay tax by instalment or upfront if the relevant transmitter or receiver licence type is not covered by such a determination.

## Key decisions

- > **Apparatus payment arrangements** – we may determine whether an apparatus licensee must pay by instalment, upfront or can elect to pay by either arrangement.

## Payment arrangements for apparatus licences

Apparatus licensees have typically been able to elect to pay apparatus licence taxes for multi-year licences either upfront or by instalments, while spectrum licensees have been required to pay their spectrum access charge upfront, and their spectrum licence tax annually.

With the alignment of the maximum duration of spectrum licences and apparatus licences, different timing for the applicable charges and taxes has the potential to

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<sup>8</sup> See the [Radiocommunications \(Charges\) Determination 2017](#), made under subsection 60(1) of the ACMA Act.

introduce inefficiencies in the spectrum management framework by distorting demand between apparatus licences and spectrum licences.

The amendments to the tax acts enable us to determine types of transmitter or receiver licences (that is, apparatus licences) for which the relevant taxes are required to be paid upfront or by instalments for multi-year apparatus licences. In the absence of such determinations being made, licensees will continue to have the option to elect to pay apparatus licence taxes upfront or by instalments.

The provisions will allow us to manage payment arrangements for apparatus licences. This can assist in indirect cost recovery initiatives and provide some parity in the administration of the pricing between apparatus and spectrum licences. The ACMA is inclined to consider applying upfront payment arrangements for longer-duration apparatus licences. It is anticipated that we will consider specifying types of transmitter or receiver licences that must be paid either upfront or by instalment as part of our broader planning decisions affecting a band – such as to facilitate a new major allocation within a band – or in implementing new cost recovery initiatives. Examples of these events include the introduction of a new licence type like AWLs and the implementation of the portfolio's charging review. As part of the process for making these determinations, we will consult with affected stakeholders.

### **Consulting with you about payment arrangements**

The making of a determination specifying types of transmitter or receiver licences for which the relevant taxes must be paid either upfront or by instalment would be subject to our normal consultation processes and identified in the annual work program.

# Renewal statements

Under the Act as amended, every spectrum licence, and apparatus licences selected by the ACMA, will include a renewal statement that sets out whether, and under what circumstances, a licence can be renewed.

Renewal statements are intended to provide greater transparency and predictability for licensees around timeframes and the prospect of renewal of their licence from the outset. Renewal statements will also help us communicate our expectations or requirements for the renewal of licences.

A renewal statement will provide certainty to the licensee that:

- > the licence cannot be renewed
- > for spectrum licences only, the licence can be renewed at the discretion of the ACMA<sup>9</sup>
- > the licence can be renewed at the discretion of the ACMA so long as specified circumstances exist.

## Relevant legislative provisions

### ***Spectrum licences***

New subsections 65A(1) and (2) of the Act provide that spectrum licences issued after the Modernisation Act commences must include a renewal statement to the effect that:

- > the licence cannot be renewed
- > the licence can be renewed at the discretion of the ACMA
- > the licence can be renewed at the discretion of the ACMA so long as specified circumstances exist.

New subsections 65A(5) and (6) of the Act allows the ACMA to make a legislative instrument to determine that a specified class of spectrum licences is taken to include a renewal statement to the effect that:

- > the licence cannot be renewed
- > the licence can be renewed at the discretion of the ACMA
- > the licence can be renewed at the discretion of the ACMA so long as specified circumstances exist.

New subsections 65A(10) and (11) of the Act provide that if a renewal statement allows a spectrum licence to be renewed, the licence must also include a statement that specifies when an application to renew the licence must be submitted. This statement is to be known as a renewal application period statement.

New subsection 65A(12) of the Act allows the ACMA to make a legislative instrument to determine that a specified renewal application period applies to every licence belonging to a specified class of spectrum licences.

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<sup>9</sup> Per the new section 103A of the Act, where a renewal statement is included in an apparatus licence that states that renewal is at the ACMA's discretion, we must specify the circumstances that must exist for renewal to be considered. If no renewal statement is included in an apparatus licence, renewal is at the ACMA's discretion.

New subsection 65A(17) of the Act provides that the ACMA may include a statement in a spectrum licence stating that it will not renew a licence unless it is satisfied that it is in the public interest to do so. This statement is known as a public interest statement.

New subsections 65A(19) and (20) of the Act allows the ACMA to make a legislative instrument to determine that a public interest statement is taken to be included in every licence belonging to a specified class of spectrum licences.

New subsection 72(3) of the Act provides that the ACMA may, with the written agreement of the spectrum licensee vary the licence by:

- > varying the renewal statement included in the licence; or
- > omitting the renewal statement and substituting it with another renewal statement; or
- > varying the renewal application period statement included in the licence
- > omitting the public interest statement included in the licence
- > omitting the renewal decision-making period statement included in the licence
- > varying the renewal decision-making period statement included in the licence.

New subsection 73(3) of the Act provides that if a spectrum licence includes a renewal statement that the licence may be renewed at the discretion of the ACMA so long as specified circumstances exist, the ACMA may, without the licensee's agreement, vary the licence by:

- > varying those circumstances, or
- > omitting the renewal statement and substituting another statement that the licence may be renewed at the discretion of the ACMA so long as specified circumstances exist.

However, new subsection 73(4) provides the ACMA may only do so if it is satisfied that exceptional circumstances exist that warrant the variation.

New subsection 77C(10) of the Act provides that the licence conditions of a renewed spectrum licence need not be the same as those of the licence it is replacing.

### ***Apparatus licences***

New subsections 103A(1) and (2) of the Act provide that apparatus licences issued after the Modernisation Act commences may include a renewal statement to the effect that:

- > the licence cannot be renewed
- > the licence may be renewed at the discretion of the ACMA so long as specified circumstances exist.

New subsection 103A(5) and (6) of the Act allows the ACMA to make a legislative instrument to determine that a specified class of apparatus licences is taken to include a renewal statement to the effect that:

- > the licence cannot be renewed
- > the licence can be renewed at the discretion of the ACMA so long as specified circumstances exist.

New subsections 103A(10) and (11) of the Act provide that if a renewal statement allows an apparatus licence to be renewed, the licence must also include a statement which specifies when an application to renew the licence must be submitted. This statement is to be known as a renewal application period statement.



New subsection 103A(12) of the Act allows the ACMA to make a legislative instrument to determine that a renewal application period is taken to be included in every licence belonging to a specified class of apparatus licences.

New subsections 103A(15) and (16) of the Act provide that the ACMA may include a statement in an apparatus licence stating that it will not renew a licence unless it is satisfied that it is in the public interest to do so. This statement is known as a public interest statement.

New subsections 103A(17) and (18) of the Act allows the ACMA to make a legislative instrument to determine that a public interest statement is taken to be included in every licence belonging to a specified class of apparatus licences.

New subsection 103A(19) of the Act provides that this section does not apply to a transmitter licence issued under section 101A or 102 of the Act or a digital multiplex transmitter licence.

New subsection 103A(20) of the Act provides that subsection 103A(5) and (17) do not apply to apparatus licences issued before the commencement of this section.

Subsections 129(1), (2) and (3) of the Act as amended allow an apparatus licensee to apply to have their licence renewed within the specified renewal application period. If there is no renewal application period specified in the licence, then the application must be made in the period beginning 6 months before the licence is due to expire and ending 60 days after the licence expires.

## Key decisions

- > **Issuing apparatus licences with renewal statements** – we may determine that an apparatus licence, or certain class of apparatus licences, cannot be renewed or can only be renewed at our discretion if specified circumstances exist.
- > **Issuing spectrum licences with renewal statements** – we may determine that a spectrum licence, or certain class of spectrum licences, cannot be renewed, can be renewed at our discretion, or can only be renewed at our discretion if specified circumstances exist.
- > **Issuing public interest statements** – we may include a public interest statement in an apparatus or spectrum licence, indicating that we will not renew the licence unless it is in the public interest to do so.
- > **Varying a renewal statement on an apparatus licence** – we may add, remove (without necessarily replacing), or vary a renewal statement during the licence term with or without the consent of the licensee.
- > **Varying a renewal statement on a spectrum licence** – unless exceptional circumstances justify the unilateral variation of a licence, we must obtain a spectrum licensee's agreement before we vary a renewal statement during the licence term.

## How the ACMA intends to exercise its powers

### Power to issue non-renewable licences

Under the Act as amended, we have the power to issue an apparatus or spectrum licence with a renewal statement to the effect that the licence cannot be renewed. We also have the power to make a legislative instrument to determine that a specified class of spectrum or apparatus licences must be issued with a renewal statement that precludes the licence from being renewed.

### **Determining that a licence is non-renewable**

Circumstances in which a licence is deemed non-renewable from the outset will generally arise when an alternative future use for the relevant spectrum has already been established by our spectrum planning process. Non-renewable licences may also be issued for a specified short-term purpose such as a special event, or for a technology trial facilitated by a scientific licence.

### **Power to set specified circumstances for renewal decision**

Under the Act as amended, we have the power to issue an apparatus or spectrum licence with a renewal statement to the effect that the licence can only be renewed at our discretion so long as specified circumstances exist. We also have the power to make a legislative instrument to determine that a specified class of spectrum or apparatus licences must be issued with a renewal statement that sets out specified circumstances that must exist before we can exercise our discretion to renew the licence.

If the specified circumstances exist at the time of renewal, renewal of the licence is at our discretion (that is, meeting the specified circumstances for renewal does not guarantee renewal). In this sense, the circumstances specified on a renewal statement will serve as qualifying conditions that must be fulfilled before we can consider whether to renew a licence.

By communicating these specific conditions from the outset, the renewal statement will offer licensees more transparency and better predictability about the long-term prospects of their spectrum assets. Our annual work program will identify our overall spectrum planning and management priorities.

### **What kind of circumstances we might specify**

Specified circumstances require an objective set of circumstances to be outlined at the time a licence is issued. If a licence includes a renewal statement setting out that renewal is at our discretion, subject to specified circumstances existing, we must be satisfied that the specified circumstances have been met before renewing the relevant licence.

The relevant circumstances are likely to be both spectrum band use and licence specific, and will be informed by relevant policy objectives, including MPSs that are applicable to the initial licence issue. Because such circumstances are of a highly specific nature, we expect that specified circumstances on a renewal statement will be rarely used.

Additionally, new section 77C of the Act sets out matters that we may have regard to as well as matters we must consider when considering whether to renew a spectrum licence. Renewal in specified circumstances will also need to be considered in the context of any public interest test assessment, which applies to licences where the renewal period contemplated is 10 years or longer.

### **The power to include renewal statements in apparatus licences**

Under new section 103A of the Act, we have the power to issue apparatus licences with a renewal statement to the effect that the licence cannot be renewed or that it can be renewed at our discretion under specified circumstances. We also have the power to make a legislative instrument to determine that a specified class of apparatus licences must be issued with a certain renewal statement. However, if an individual apparatus licence has been issued with its own bespoke renewal statement, that statement will override any other renewal statements that might have applied under a legislative instrument made for that class of apparatus licences.

New subsection 103A(1) of the Act, as well as transitional arrangements under new subsections 103A(19) and (20) of the Act, provide that we cannot issue renewal statements for:

- > apparatus licences issued prior to commencement of the relevant sections of the Modernisation Act
- > transmitter licences issued under section 101A or 102
- > digital radio multiplex transmitter licences.<sup>10</sup>

However, we are able to include renewal statements in apparatus licences that are renewed after the commencement of the relevant sections of the Modernisation Act.

### ***How we will use renewal statements for apparatus licences***

We do not anticipate including renewal statements in most apparatus licences, and our practice will remain to generally renew licences unless there are particular circumstances that makes renewal inappropriate, such as replanning activities.

We may include renewal statements in some licences indicating that the licence may not be renewed so as to facilitate spectrum planning processes, or for licences for specified short-term purposes where renewal is inappropriate.

In some rare instances, it may be appropriate to specify circumstances that must be met for renewal to be considered. We expect this to be limited to certain long-term apparatus licences. For example, we may only consider whether to renew a licence if the licensee has met a specified obligation during the licence tenure. By communicating the conditions that must be met for renewal to be considered, we can provide additional transparency around our decision-making process, and give licensees the information to assess the likelihood of a future renewal.

### **The power to include renewal statements in spectrum licences**

Under new section 65A of the Act, every spectrum licence must be issued with a renewal statement to the effect that the licence cannot be renewed, can be renewed at our discretion, or can be renewed at our discretion so long as specified circumstances exist. As with apparatus licences, we have the power to make a legislative instrument to determine that a specified class of spectrum licences are taken to include a common renewal statement. If a spectrum licence has been issued with its own individual renewal statement, that statement will override any other statement that would apply under a legislative instrument made for that class of spectrum licences.

Consistent with our established practices and our obligations under the Legislation Act, we will undertake both targeted and public consultation prior to making a legislative instrument to determine that a common renewal statement applies to a specified class of spectrum licences.

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<sup>10</sup> These arrangements also mean that we cannot apply a renewal or public interest statement through a legislative instrument (that is, a legislative instrument made under subsections 103A(5) or subsections 103A(16) of the Act as amended in relation to a specified class of spectrum licences) to which these transitional arrangements apply.

New subsections 65A(1) of the Act as amended, as well as transitional arrangements under new subsection 65A(21) of the Act, provide that spectrum licences are not required to include a renewal statement<sup>11</sup> if:

- > they are issued prior to commencement of the relevant sections of the Modernisation Act
- > they are issued in line with a marketing plan made prior to the commencement of the relevant sections of the Modernisation Act
- > they are issued as the result of an offer made under the repealed section 56 of the Act (that is, conversion of apparatus licences into a spectrum licence).

However, we are required to include renewal statements in any spectrum licence that is renewed after the commencement of the relevant sections of the Modernisation Act.

### ***How we will use renewal statements for spectrum licences***

We generally intend to adopt the default position to include renewal statements in spectrum licences that they will be renewable at our discretion. This arrangement takes into account the anticipated long tenures of spectrum licences and the prospect that technological advancements and market evolutions may influence changes in spectrum demand and efficiency, and consequently, the value of the spectrum across the licence tenure.

Discretion to renew spectrum licences grants us the flexibility to, near the end of a licence term, assess the maximum public benefit use of the spectrum to determine whether it is most beneficial to renew the licence, return the spectrum to the market or reserve the spectrum for future use (or to manage interference issues). For example, we may decide not to renew a spectrum licence in order to reconfigure or restack a band, or to test the market to ensure that use of the spectrum continues to maximise the public benefit and value derived from the spectrum.

In some rare instances, it may be appropriate to specify circumstances that must be met for renewal to be considered. For example, we may only consider renewing a licence if the licensee has met a specified obligation during the licence tenure. By communicating the conditions that must be met for renewal to be considered, we can provide additional transparency around our decision-making process, and give licensees the tools to assess the likelihood of a future renewal.

### **The power to include public interest statements**

To promote the public benefits of spectrum in line with the object of the Act<sup>12</sup>, the Modernisation Act requires us to be satisfied that it is in the public interest to renew certain licences, including:

- > if the licence term for the renewed apparatus or spectrum licence is to be 10 years or longer, or
- > if the relevant licence includes a public interest statement.<sup>13</sup>

For example, if a licensee applies for renewal of a spectrum licence that does not include a public interest statement (for example, spectrum or apparatus licences

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<sup>11</sup> These arrangements also mean that we cannot apply a renewal or public interest statement through a legislative instrument (that is, a legislative instrument made under new subsections 65A(5) or subsections 65A(19) of the Act in relation to a specified class of spectrum licences) to which these transitional arrangements apply. We also cannot apply a renewal or public interest statement to spectrum licences that were re-issued in the public interest under the repealed section 82 of the Act.

<sup>12</sup> See section 3 of the Act as amended.

<sup>13</sup> See new subsection 77C(5) of the Act in relation to spectrum licences and new subsection 130(2E) of the Act in relation to apparatus licences.

issued prior to the relevant parts of the Modernisation Act coming into effect) for a period of 10 years or longer, we will have to determine whether renewal of that licence for that period is in the public interest. Alternatively, if a licence includes a renewal statement and is to be renewed for a period of less than 10 years, we will also have to determine whether renewal of that licence is in the public interest.

The public interest test is designed to ensure that spectrum is used efficiently, by preventing it from being locked up in uses that no longer offer the highest value or the maximum public benefit. It is a tool for us to analyse the potential benefits that renewal of a licence may offer to the long-term public interest, consistent with the object of the Act.

For apparatus licences, we may only include a public interest statement for licences with a renewal statement that we may renew at our discretion as long as specified circumstances exist.<sup>14</sup>

We note that the Act provides us with broad discretion to renew licences, and that in some circumstances, even where no public interest statement applies to the licence, it may be appropriate to seek the views of parties other than the licensee to assist in determining whether renewal of a licence is appropriate and in the public interest.

For spectrum licences, we may include a public interest statement in instances where a licence has been issued with a renewal statement that the licence may be renewed either at our discretion or at our discretion when specified circumstances exist.<sup>15</sup>

It is essential that we have access to the right information to inform our decision-making. To that end, we will have the discretion to use our information gathering powers under section 77B, section 129A and new Part 5.5A of the Act to solicit relevant information from licensees about their current and planned future uses of the spectrum<sup>16</sup>, and to gather information needed as part of the licence renewal process through application forms.

### ***The matters we might consider when assessing public interest***

Where public interest tests are required (that is, licences that include public interest statements and licences to be renewed for 10 years or longer), we expect to undertake a public consultation process inviting stakeholders to make submissions on matters we should consider in evaluating whether the renewal of the relevant licences is in the public interest.

It is our intent that the public interest process would generally begin 5 years prior to licence expiry for long-term licences, and 2 years for medium-term licences.

Examples of matters we may consider when making a decision about the public interest in renewing a licence include:

- > The licence conditions of the current licence, and whether the licensee is proposing changes to the renewed licence (for example, a different location, or conducting new or additional activities).
- > Whether the incumbent licensee can demonstrate substantial investment and a history of long-term use of the relevant spectrum.

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<sup>14</sup> See new section 103A of the Act.

<sup>15</sup> See new section 65A of the Act.

<sup>16</sup> The Modernisation Act enables the ACMA to make instruments specifying such information (if any) that must accompany an application to renew an apparatus or spectrum licence (for example, see new section 77A and amended section 129 of the Act).

- > Evidence from replanning processes, that a greater public benefit will be derived from a change in use of the spectrum.
- > Whether the incumbent licensees' operations would be significantly compromised if the licence were not renewed, and potential flow on effects for relevant markets or sectors of the economy, balanced against evidence of competing demand for the spectrum from other potential users.
- > Technological developments and changes to international arrangements (for example, International Telecommunication Union decisions about frequencies for mobile broadband devices).
- > Any overarching government policy consideration such as the cultural value of the licensed service or its importance as a national security or public safety asset.

We anticipate this process would occur in the period 5 years prior to expiry, although it may occur earlier for some licences where a joint consultation process across one or more bands is appropriate. In such cases our proposed approach will be highlighted in our annual work program.

### **The power to vary a renewal statement**

The Act as amended allows for the variation of a renewal statement.<sup>17</sup> For spectrum licences, we must generally obtain the licensee's agreement before varying a renewal statement.<sup>18</sup> For apparatus licences, we may add, remove (without necessarily replacing), or vary a renewal statement included in a licence with or without the consent of the licensee.<sup>19</sup>

A decision to vary a renewal statement in an apparatus licence without the agreement of the licensee is a reviewable decision under the Act.<sup>20</sup>

### ***Circumstances under which we would vary a renewal statement***

Generally, variations to apparatus licence renewal statements would occur as part of a broader update to the planning and technical arrangements for a part of the spectrum, as set out in a RALI. Consistent with our established practices, changes to RALIs are the subject of consultation, thus providing apparatus licences greater transparency in the reasons for the change, as well as an opportunity for affected licensees to inform the consideration of any change.

## **Renewal application period**

Renewal application periods must be set for every licence with a renewal statement that indicates a licence may be renewed.

The Act as amended sets out a default renewal application period of 2 years for spectrum licences without a renewal application period statement (for example, for spectrum licences issued prior to commencement). If an apparatus licence does not have a renewal application period, the application for renewal must be made in the period beginning 6 months before expiry and ending 60 days after the licence expires.

Additionally, for spectrum licences we may also specify a period of time in which to decide whether to renew the licence, called the renewal decision-making period.<sup>21</sup> If

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<sup>17</sup> See sections 72 and 73 of the Act as amended in relation to varying renewal statements included in spectrum licences, and new sections 103B and 103C of the Act in relation to varying renewal statements included in apparatus licences.

<sup>18</sup> See subsection 73(2) of the Act as amended.

<sup>19</sup> See new subsections 103B(1) and 103C(1) of the Act.

<sup>20</sup> See new paragraph 285(ec) of the Act.

<sup>21</sup> See new section 65A of the Act.

there is no renewal decision-making period stated for a spectrum licence, the default period will be 6 months from receiving an application with the required information.<sup>22</sup> If a decision is not made within the timeframes specified in the legislation, we will be taken to have made a decision to refuse the application, which is a reviewable decision.

For apparatus licences, we must decide whether to renew a licence within 90 days of receiving a complete application. If an application is incomplete and we seek additional information from the licensee within the initial 90-day period, we must decide on renewal within 90 days of receiving the additional information.<sup>23</sup> If a decision is not made within the timeframes specified in the legislation, we will be taken to have decided to refuse the application, which is a reviewable decision.

While these periods are the default, we consider that the work program associated with consideration of licence renewal will occur well in advance of this period, particularly for long-term licences.

In the case of long-term licences, we expect that 5 years before the licence expires, we would begin public and direct consultation processes relating to renewal. Broadly, these processes include determining the matters we would consider in assessing whether renewal is in the public interest, determining the terms and conditions of the renewed licence, as well as the taxes and charges payable. There may also be instances where, due to licences expiring in immediately subsequent years, we may undertake joint consideration processes that would begin 5 years from the earliest expiry date of the licences considered. These processes would be identified in our annual work program.

For spectrum licences where there is no renewal statement included in the licence (that is, spectrum licences issued prior to commencement of the Modernisation Act), licensees are able to formally apply for renewal in accordance with section 77A of the Act as amended, 2 years from expiry. Thus, to engage licensees early and enable full consideration of relevant matters, we expect to undertake work in relation to the renewal process, prior to the renewal application period. Upon receiving an application for renewal, we would then have up to 6 months to decide whether to renew the licence, with extension possible if we request further information from licensees.

For future spectrum licences that will include renewal statements, we will consult on the proposed details of the renewal statement, which include the renewal application period and renewal decision-making period, on a case-by-case basis.

In designing renewal statements, we would take into consideration the appropriate amount of time for the overall renewal process to be completed (for example, public and direct consultation) and to facilitate options should licences not be renewed, but also balance against providing clarity on renewal well ahead of licence expiry.

For example, the renewal application period statement could specify that the period begins 5 years from expiry and run for a shorter period, while the renewal decision-making statement could specify a longer period. In this approach, licensees could apply for renewal at the beginning of the application period and we would then undertake consultation processes around considering whether renewal is in the public interest, the terms and conditions of the licence, and applicable taxes and charges, during the renewal decision-making period.

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<sup>22</sup> See subsection 286(6) of the Act as amended.

<sup>23</sup> See paragraph 286(1)(aa) of the Act as amended.

In all cases, we would expect that holders of long- and medium-term licences would apply for renewal at the beginning of the renewal application period. This would enable us to decide on renewal well ahead of expiry, providing clarity to licensees over their future arrangements.

For long-term apparatus licences, as most apparatus licences will not include renewal statements, the default renewal application period as specified in the Act will apply. However, we would still seek to begin the renewal process well ahead of expiry, conducting a similar process to the one described for spectrum licences that do not include renewal statements. We expect that we would also begin this process 5 years from expiry.

For apparatus licences up to 10 years, including shorter duration licences of up to one year and annual licences, the default renewal period will apply.

## **Consulting about renewal and public interest statements**

We expect to consult with stakeholders concerning the collective inclusion and content of renewal statements, renewal application period statements, and public interest statements at different times, depending on the relevant scenario.

For parts of the spectrum where we intend a large group of licences to have common statements, such as a statement setting out that a licence may not be renewed to facilitate a planning activity or to otherwise ensure consistent conditions across licensees, we would consider making a legislative instrument requiring specified licences to include that statement.<sup>24</sup> Consistent with our current practices and obligations, making such an instrument would require public consultation with stakeholders, and would likely occur in connection with a consultation regarding the planning arrangements for a band.

For new spectrum licence allocations, we will consult with stakeholders about the details of renewal statements when we consult on allocation instruments (that is, the marketing plan, which includes a draft spectrum licence for the relevant band). This will first occur with the 850/900 MHz spectrum licence process.

For existing spectrum licences, consultation concerning the inclusion of the statements will be undertaken as part of the renewal process.

For existing apparatus licences where inclusion of the statements is appropriate, consultation concerning renewal statements may also be undertaken at renewal.

We may also consult directly with licensees on an ad hoc basis as required.

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<sup>24</sup> New subsections 65A(5), 65A(12) and 65A(19) enable the ACMA to make an instrument that determines that each spectrum licence included in a specified class of spectrum licences is taken to have a specified renewal statement, renewal application period, and public interest statement, respectively. New subsections 103A(5), 103A(12) and 103A(17) enable the ACMA to make such an instrument with respect to apparatus licences.



# Allocation and re-allocation

Many of the new decision-making powers and other provisions in the Modernisation Act are intended to streamline allocation and re-allocation processes.

## Relevant legislative provisions

Subsection 39(1) of the Act as amended enables the ACMA to decide to make unencumbered spectrum available for spectrum licensing by preparing a marketing plan for issuing spectrum licences.

Subsection 39(2) of the Act as amended provides that the ACMA must not make a marketing plan for spectrum where an apparatus licence is in effect, unless the marketing plan provides that one or more spectrum licences is to be directly allocated to the holder of that apparatus licence.

Subsection 60(1) of the Act as amended provides that the ACMA may directly allocate spectrum.

Subsection 153B(1) of the Act as amended provides the ACMA with power to make a spectrum re-allocation declaration.

Subsection 153B(4) of the Act as amended revises the time period related to the re-allocation for spectrum licences, reducing the minimum re-allocation period from 2 years to one year.

Subsection 153B(6) of the Act as amended allows the ACMA to decide that encumbered spectrum is to be re-allocated by issuing spectrum licences, apparatus licences, or both.

Paragraphs 60(5)(a) and (b) of the Act as amended provide the ACMA with powers to impose allocation limits when allocating spectrum licences. The repeal of subsection 60(9) of the Act allows the ACMA to do this without first requiring a direction from the minister.

Subsections 106(3) and (4) of the Act as amended allow the ACMA to impose allocation limits in price-based allocations of transmitter licences. The repeal of subsection 106(8) of the Act allows the ACMA to do this without first requiring a specific ministerial direction.

New subsections 60(13A) and new subsection 102G(6) of the Act require the ACMA to consult with the ACCC before determining allocation limits when allocating spectrum licences and transmitter licences, respectively.

Subsections 60(2), 60(3) and 60(4) of the Act as amended provide that the ACMA may determine credits for prospective bidders, tenderers or licensees when allocating spectrum licences.

New paragraphs 106(2)(ba) and (bb) of the Act as amended provide that the ACMA may determine credits for prospective licensees when allocating and / or issuing certain transmitter licences.

## Key decisions

The key decisions that we will make regarding allocations and re-allocations are:

- > **Unencumbered spectrum** – we may make unencumbered spectrum available for spectrum licensing.
- > **Direct allocation** – we may directly allocate a spectrum licence.
- > **Re-allocating encumbered spectrum** – we may re-allocate parts of the spectrum through the issue of spectrum or apparatus licences (or both), or by using renewal statements and licence terms to manage changes in band use or licensees.
- > **Allocation limits** – we may determine aggregate limits on parts of the spectrum that may be used by a person (or group of persons) as a result of an allocation process.
- > **Bidder credits** – as part of determining the procedures for price-based allocations, we may determine whether credits may be used to promote the bids of certain interested parties.

## How the ACMA intends to exercise its powers

### **Powers to make unencumbered spectrum available for spectrum licensing**

Under the Act as amended, the minister will no longer be responsible for designating parts of the spectrum for spectrum licensing.<sup>25</sup> Instead, we will be able to prepare a marketing plan for any part of the spectrum where an apparatus licence is not in effect (or where an apparatus licence is in effect and the marketing plan provides for direct allocation of a spectrum licence to the apparatus licensee), and issue spectrum licences, via various allocation methods.

### ***When we will consult with you on making unencumbered spectrum available***

The annual work program will provide advance notice to interested parties on those bands that have been identified for allocation by spectrum licensing and provide information about the process and timing for the issue of spectrum licences. This process follows the extensive consultation on band planning that occurs to identify the relevant bands and frequencies proposed for spectrum licensing.

### **Powers to directly allocate spectrum licences**

Direct allocation of spectrum licences is another mechanism supporting the re-allocation of spectrum to another higher value use or to enable use in particular circumstances and may be used often to support defence or national interest policy purposes.

The Act as amended provides us the discretion to determine when direct allocation of spectrum licences may be appropriate, and we will be able to do so without first having to receive a notice from the minister designating that part of the spectrum for spectrum licences. Direct allocation (in accordance with a marketing plan) allows for a more straightforward process than currently available to allocate spectrum licences in circumstances where market mechanisms such as auctions are not considered appropriate. For example, direct allocation may be suitable where there are no competing uses or users of the spectrum, or where required to support the communications policy objectives of the Australian government or for defence or national security purposes.

We do not expect direct allocation of spectrum licences (instead of a price-based allocation process) to be a common occurrence outside of its role in replacing the

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<sup>25</sup> Prior to the Modernisation Act, only the minister could, after consultation with the ACMA, designate parts of the spectrum for spectrum licensing under section 36 of the Act.

conversion process. However, we may take the view that direct allocation of a spectrum licence is preferable to a price-based allocation, for example to facilitate spectrum access for a non-commercial operator, or for a public good use-case.

Direct allocation partially replaces the conversion process previously provided for under repealed section 38 of the Act.<sup>26</sup>

### ***Consulting with you on a decision to directly allocate spectrum licences***

Under the Act as amended, a marketing plan is required prior to the direct allocation of a spectrum licence. Consistent with our established practices we will undertake both targeted and public consultation prior to making a marketing plan.

### **Powers to decide that encumbered spectrum is to be re-allocated by issuing spectrum licences, apparatus licences, or both.**

The Modernisation Act sets out 2 paths for dealing with the re-allocation of encumbered spectrum, by using either:

- > renewal statements and licence terms to manage changing use of spectrum by licensees (these mechanisms were outlined earlier)
- > re-allocation mechanisms (discussed further here).

Under changes made by the Modernisation Act, a re-allocation declaration can provide for the re-allocation of a band for both spectrum and apparatus licences. This change introduces some valuable flexibility into our planning, licensing and allocation processes. For example, if we have reason to believe that the efficiency of the use of a band could be enhanced through a change in use, we would then have the ability to offer both wide-area spectrum licences, and highly granular apparatus licences.

This added flexibility enables us to re-allocate spectrum, and then to tailor the offering to specific market segments. Granular licences, including those recently offered in the 26 GHz and 28 GHz bands, could be used to appeal to small market players or new entrants, and wide area licences could be used to appeal to those parties seeking to deploy large scale, or nationwide, services.

A re-allocation declaration can provide for the re-allocation of the band by issuing spectrum licences, apparatus licences, or a combination of both. But a marketing plan under section 39 (in vacant spectrum, or in apparatus-licensed spectrum where the marketing plan provides for direct allocation to the incumbent) can only provide for allocation of spectrum licences. Additionally, no apparatus licences can be issued in the same spectrum as a spectrum licence or in spectrum identified for spectrum licensing in a marketing plan or re-allocation declaration, unless the exceptions in section 105 or 153P of the Act as amended apply.

### ***When we will consult with you about re-allocating spectrum***

Previously, we were responsible for recommending that the minister re-allocate spectrum, first undertaking a public consultation process on a draft recommendation. The Act also placed on us a requirement under section 153G to directly consult with potentially affected apparatus licensees, and to have regard to their comments on the

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<sup>26</sup> Pursuant to section 38 of the Act, to be repealed by the Modernisation Act, for any apparatus licences incumbent to a part of the spectrum at the time at which the minister designates that spectrum for spectrum licensing under section 36 of the Act, to be amended by the Modernisation Act, we were required to make a conversion plan that sets out the procedures and timetable for issuing spectrum licences to replace existing apparatus licences that authorised the operation of radiocommunications devices.

proposed recommendation before providing the recommendation to the minister.<sup>27</sup> The minister would then be able to decide whether to make a re-allocation declaration.

Under the Modernisation Act, we may make re-allocation declarations and we will have the power to make re-allocation declarations and re-allocate parts of the spectrum currently allocated to apparatus licences.

Prior to any re-allocation declaration process, we will undertake an assessment of whether a new spectrum use/s contributes to maximising the overall public benefit derived from use of the spectrum, as well as assessments on whether coexistence is possible. During this process, we engage stakeholders in order to obtain evidence to inform the relative costs and benefits of re-allocation.

Under the amended Act, the possibility of re-allocation of spectrum for both spectrum and apparatus licences will mean that we will need to ensure we obtain representations from all relevant stakeholder groups, to inform whether the re-allocation is likely to increase the public benefit derived from the spectrum.

### **Streamlining the re-allocation process**

The Modernisation Act further streamlines the re-allocation process by enabling us to re-allocate spectrum in shorter timeframes, where appropriate, facilitating more reactive spectrum planning and management.

The Act previously specified a minimum re-allocation period of 2 years, during which incumbent licensees were cleared from the band. The Act also required the subsequent allocation of licences to have commenced by a specified time, known as the re-allocation deadline, which could be no later than one year before the end of the re-allocation period. The Modernisation Act still requires that a re-allocation deadline be specified but reduces the minimum re-allocation period to one year and does not prescribe a timeframe for the re-allocation deadline.

While this change provides additional flexibility to hasten re-allocation processes where appropriate, we will continue to have regard to the nature of incumbency when determining the length of the re-allocation period. For example, where there are incumbent licensees with extensively deployed infrastructure, or if there are few alternatives to the spectrum in question, a short re-allocation period may not be appropriate.

A spectrum re-allocation declaration must set out:

- > the re-allocation period
- > the re-allocation deadline
- > the spectrum to be re-allocated and the areas in which it is to be re-allocated
- > whether the spectrum will be re-allocated by the issue of spectrum licences, apparatus licences, or both.

Although section 153G has been repealed, under the new arrangements it is still our disposition and obligation under the Legislation Act to undertake appropriate consultation on any proposal to make a re-allocation declaration, to inform our

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<sup>27</sup> For the purposes of the Act, an affected apparatus licensee is the licensee of an affected apparatus licence that authorises the operation of radiocommunications devices (a) at frequencies that are wholly or partly within the part or parts of the spectrum specified in the re-allocation declaration and (b) within the area or areas specified in the re-allocation declaration with respect to that part or those parts. A potentially affected apparatus licensee is an incumbent licensee who would be an affected licensee if the minister made a re-allocation declaration in the terms recommended by the ACMA.

decision-making prior to making the instrument. Given the specific impacts that re-allocation has on incumbent licensees, consistent with practices established to fulfil requirements under repealed section 153G, we expect to continue to consult directly with 'affected licensees' in the event of a re-allocation.

We also expect, where possible, to work with stakeholders whose apparatus licences will be cancelled at the end of a re-allocation period to identify alternative spectrum arrangements. Noting the increased potential duration of apparatus licences, licensees whose licences are cancelled prior to their expiration date may be entitled to a pro-rata refund of the tax paid on the licence.<sup>28</sup>

### **Powers to set allocation limits**

Under the Modernisation Act, we will be able to determine allocation limits without necessarily being directed by the minister.<sup>29</sup> However, we must consult with the ACCC and will be required to have regard to any relevant MPS before setting allocation limits. In developing allocation limits, we would consider matters such as relevant market conditions and the technical properties of the frequency bands under consideration.

We may set allocation limits on a part or the aggregate of parts of the spectrum that may be used by a person (or group of persons) as a result of an allocation process, taking into account the whole of a potential licensee's spectrum holdings across spectrum licences and/or apparatus licences.<sup>30</sup> This applies for price-based allocation of spectrum licences<sup>31</sup>, price-based allocation of apparatus licences<sup>32</sup>, and, importantly, we can now set enduring allocation limits for administrative (that is, 'over the counter') allocation of apparatus licences<sup>33</sup>. We may also have regard to aggregate spectrum holdings when deciding whether or not to issue or renew an apparatus licence outside of allocation processes under new subsection 100(4C) and subsection 130(3) of the Act as amended.

The object of the Act, which is to promote the long-term public interest derived from the use of the spectrum, enables us to consider the role of competition in downstream markets, as well as incentives for efficient investment in spectrum using services and infrastructure. We note that there is a significant alignment between the long-term interests of end users, which guides the ACCC's decision-making under the [Competition and Consumer Act 2010](#), and the object of the Act.

In our decision-making, we will be guided by the object of the Act, any relevant MPSSs and the advice of the ACCC, as well as evidence presented by interested parties in consultation processes. Noting that MPSSs, ACCC advice and contemporary evidence may be specific to the circumstances of each band planning and allocation process, we propose to establish at the start of each allocation process, a method for determining the relevant type of allocation limit that should apply to each allocation process.

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<sup>28</sup> Pursuant to regulation 4A of the Radiocommunications Taxes Collection Regulations 1985, if the amount to be refunded on cancellation of a licence for reason other than breaching licence conditions is less than \$30, the amount is not payable.

<sup>29</sup> As previously noted, under section 14 of the ACMA Act, the minister may also direct the ACMA in relation to the performance of its functions and the exercise of its powers.

<sup>30</sup> See paragraphs 60(5)(a) and (b), and new section 102G and subsection 106(3) of the Act.

<sup>31</sup> Under section 60 of the Act as amended.

<sup>32</sup> Under section 106 of the Act as amended.

<sup>33</sup> Under section 100 of the Act as amended.

We will aim to ensure a consistent application of policy intent across a range of relevant inputs like allocation limits, lot configuration and reserve prices to provide optimal allocation outcomes.

### ***When we will consult with you on allocation limits***

At the start of each allocation process, we expect to publish our approach to determining allocation limits. For example, we may publish the approach as part of the consultation on considering re-allocating spectrum for spectrum licensing.

The approach will largely detail the procedural steps that we will undertake in considering and determining the limits and type of allocation limit that could be considered. Different types of limits can be used to address different competition concerns that may be relevant to the particular allocation. For example:

- > In-band limits may be useful to prevent monopolisation in a band, particularly for greenfields spectrum where there are limited available substitutes.
- > Cross-band limits may be useful to limit aggregate holdings across a range of substitutable bands.
- > Spectrum caps may be applied to single or multiple operators to restrict the overall amount of spectrum any one operator can hold.

Given the variety and complexity of issues relevant to the specific circumstances associated with any allocation process, we do not expect to publish any general guidance on the setting of allocation limits. However, through consultation we will outline any existing allocation limits that may apply and any relevant MPS that we will need to consider in either setting or changing allocation limits for a given allocation.

Alternatively, it may be appropriate to publish the approach as part of an announcement of a potential price-based allocation process of apparatus licences. The approach will largely detail the procedural steps that we will undertake in considering and determining the limits.

The procedural steps will also outline when we expect to formally consult with the ACCC on allocation limits. Additionally, through working closely with the ACCC as a matter of course, there will be opportunities to seek views about the information the ACCC may require to assist it in responding to us about allocation limits. This might further streamline the allocation process by consolidating some of the consultation that both we and the ACCC could undertake.

For spectrum licences, consistent with established practice, we expect to set allocation limits at the same time as the procedures for allocating spectrum licences. For price-based allocations of apparatus licences, we expect to set the allocation limits when we settle other elements of the apparatus licence allocation process.

### **Bidder credits**

The Modernisation Act provides for bidder credits as an additional tool that may be used in an allocation of spectrum by auction.

In the context of spectrum licensing and as noted in the EM to the Modernisation Act, bidder credits are intended to provide bidders or specified classes of bidder (if any) in an auction process with an advantage that is consistent with the object of the Act, by deeming their bids to be increased by a specified amount. This could enable users to become more competitive in auction settings.

Bidder credits, including the relevant bidders to which the credits would apply, and the applicable amount, would be determined in a legislative instrument made under section 60 of the Act as amended (that is, an allocation process determination). This thereby provides prospective bidders with transparency in terms of the operation of the auction process, including any credits that other bidders may have been afforded.

We expect the use of bidder credits will depend on the market circumstances of an allocation process, rather than a common tool used frequently in auctions. Bidder credits may be useful in promoting bids, such as those made by users with non-commercial interests, to become more competitive. We would also establish our approach to dealing with the gaming risk of offering bidder credits. We note that under the Act, there are various options to promote the use of spectrum by different parties and we expect also to analyse those options and the use of bidder credits to consider the most appropriate approach. We, being mindful of any MPS, would explore those options as part of our consultation about the potential allocation process.

# Appendix A: Licence category characteristics

Table 1 below summarises and compares the characteristics of different licensing categories provided for under the Act as amended.

**Table 1: Comparison of characteristics of different licensing categories**

	<b>Class licence</b>	<b>Apparatus licence</b>	<b>Spectrum licence</b>
<b>What is authorised</b>	Any person, or class of person, to operate a radiocommunications device of a specified kind or for a specified purpose.	The licensee to operate a specified radiocommunications transmitter or receiver, or a specified class of radiocommunications transmitters or receivers at a specified location or area(s).	The licensee to use any radiocommunications transmitter or receiver in specified parts of the spectrum, in specified areas.
<b>Frequency</b>	Shared frequencies specified in the class licence.	Assigned: On a frequency or in a frequency range specified in the licence.  Non-assigned: Shared frequencies specified in a licence condition determination.	In a frequency range specified in licence.
<b>Geography</b>	As set out in the class licence, but in many cases Australia-wide.	Assigned: At a location or within a defined area specified in the licence.  Non-assigned: As set out in the relevant licence condition determination.	Within a defined area specified in the licence.
<b>Licence duration</b>	Standing authorisation unless class licence sunsets, is revoked or otherwise varied to change what the licence authorises.	Up to 20 years.	Up to 20 years.
<b>Conditions of use (exclusivity and technical coexistence)</b>	Shared use of the frequency.  Generally no interference protection, in accordance with ACMA policies.	Policies for coordinating devices.  Licence condition determinations and special licence conditions.  Primary or secondary use. <sup>34</sup>	Core conditions (for example, parts of the spectrum authorised) cannot be changed without licensee's consent.  Exclusive use within defined area and frequency range, however

<sup>34</sup> Primary services in a band are generally afforded interference protection from secondary services, while secondary services generally cannot claim harmful interference from a primary service.



	<b>Class licence</b>	<b>Apparatus licence</b>	<b>Spectrum licence</b>
		<p>Class licences may co-exist.</p> <p>Interference protection in accordance with ACMA policies.</p> <p>May authorise third-party device use.</p>	<p>class and apparatus licences may be authorised to co-exist under specified circumstances.</p> <p>Interference protection in accordance with ACMA policies.</p>
<b>Change of licensee</b>	Not applicable.	May be transferred in full.	May be traded in part or in full.
<b>Third-party use</b>	Not applicable.	<p>May authorise third-party users (subject to some restrictions).</p> <p>Third-party use cannot change service.</p>	May authorise third-party device use.
<b>Allocation mechanism</b>	Not applicable.	<p>Generally administrative and first in time, but price-based allocation is permitted.</p> <p>ACMA may impose limits on aggregate spectrum holdings (spectrum and apparatus licences) – for both administrative and price-based allocations.</p>	<p>Generally price-based but direct allocation is permitted.</p> <p>ACMA may impose limits on aggregate spectrum holdings (spectrum and apparatus licences).</p>
<b>Renewal</b>	Not applicable.	<p>Discretion to include renewal statement.</p> <p>Public interest test if licence is to be renewed for 10+ years.</p>	<p>Mandatory renewal statements on new licences.</p> <p>Public interest test if licence is to be renewed for 10+ years.</p>