

2.3 EXPIRING SPECTRUM LICENCES

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A large number of spectrum licences across multiple bands will expire over 2028-2032. As a consequence of reforms to the *Radiocommunications Act 1992* (the Act) that commenced in 2021, the Australian Communications and Media Authority (ACMA) is responsible for decisions on applications for renewal of spectrum licences. The ACMA has consulted on its proposed approach for expiring spectrum licences. There is no presumption of renewal for spectrum licences in the Act.

KEY ISSUES

Bands, services, licensees

- Bands covered by the Expiring Spectrum Licences (ESL) are 700 MHz, 850 MHz, 1800 MHz, 2 GHz, 2.3 GHz, 2.5 GHz, 2.5 GHz Mid Band Gap and 3.4 GHz.
- Most of the licences are used for 3G, 4G and 5G wireless broadband and mobile phone services. Licensees are Telstra, Optus, TPG, NBN and Dense Air.
- Licences held by ABC, Channel Seven, Nine Network and Network Ten are used for electronic news gathering.
- Licences held by Queensland Rail, Public Transport Authority Western Australia, Sydney Trains, and VicTrack are primarily used for rail safety communications.

Consultation on proposed process

- Under legislative amendments which commenced in 2021, there are new provisions relating to the potential renewal of expiring spectrum licences. The ACMA is now responsible for making decisions about whether to renew spectrum licences.
- The Act provides that persons holding ESLs may, 2 years prior to the expiration of their spectrum licences, apply to the ACMA for renewal of the licence:
 - once an application is made, the ACMA has 6 months to make a decision
 - once an application is made, the ACMA may give notice to request further information under section 77B of the Act. This will extend the decision making period by 6 months
 - the ACMA may (1) renew a licence, (2) refuse to renew a licence or (3) renew the licence with changed conditions (referred to as 'partial renewal').
- The maximum term for a spectrum licence is 20 years. The ACMA must not renew a spectrum licence which has a licence term of 10 or more years unless the ACMA is satisfied that it is in the public interest to do so.
- In deciding whether to renew a spectrum licence, the ACMA must have regard to all matters it considers relevant, and the effect on radiocommunications of the proposed operation of the radiocommunications devices that would be authorised under the new spectrum licence.
- Stakeholders have supported the ACMA's intention to commence work on the ESL process 5 years before the first ESLs expire to provide them with clarity around renewal and licence conditions.

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- Between May-August 2023 we consulted on a proposed 4-stage approach:
 - stage 1 – consulting on the process and matters relating to expiring spectrum licence process and licence use, the proposed process, sequencing across different spectrum bands, public interest considerations and pricing
 - stage 2– an outcomes paper responding to submissions and proposing a request for information related to current and future intended use of spectrum and spectrum bands (now - Q4 2024)
 - stage 3 – preliminary views about the appropriate licence frameworks and general licence and allocation design issues for spectrum-licensed bands (Q4 2024)
 - stage 4 – where appropriate will relate to the preparation for the renewal application period and the renewal decision-making period (2025).
- The ACMA received 17 submissions. The ACMA is currently considering the submissions.
- The ACMA will publish non-confidential submissions and a response to submissions before the end of 2023.

Proposed public interest criteria

- We are proposing 5 public interest criteria to guide our evaluation of options for the spectrum covered by ESLs:
 - facilitates efficiency
 - promotes investment and innovation
 - enhances competition
 - balances public interest benefits and impacts
 - supports relevant policy objectives.

Considering use

- Spectrum licences are optimised for a particular use case (e.g. 4G) but are, in most cases, service and technology agnostic, and there are typically no conditions on how spectrum licences are used:
 - however, many of the ESLs held by the broadcasters and rail networks limit use to their respective service.
- The ACMA does not typically monitor use of spectrum under spectrum licences.
- Several of the proposed public interest criteria raise matters where ACMA views could be informed by an examination of how a licence is being used by an incumbent.
- To facilitate consideration of spectrum use, we have proposed to request information from licensees in Q1 2024.
- We are considering stakeholder responses to our recent consultation, to inform a decision on our approach to the proposed information request.

Pricing

- In our May consultation paper, we indicated that we would undertake work to develop valuations for spectrum covered by ESLs, which could be used to derive the formula to calculate the spectrum access charge payable for each licence, should they be renewed.
- We have indicated that preliminary views on pricing will be articulated as part of stage 3 of the ESL process.

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BACKGROUND

Expiring spectrum licences

- **Attachment A** summarises the licences expiring between 2028 and 2032.

New renewal process

- Amendments to the Act made by the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020* (the reformed Act) resulted in changes to the ACMA's considerations around renewal and the expiring spectrum licence process itself.
- Renewal was previously referred to as 're-issue of spectrum licences to the same person in the public interest' within legislation. Between 2013-17, many expiring spectrum licences were re-issued to the same licensee where the expiring licence had been used to provide a class of services specified in a determination made by the then Minister for Communications. The purpose of this determination was to specify classes of services for which reissuing a spectrum licence to the same licensee was in the public interest.
- Under the new process, the ACMA is now responsible for evaluating whether a licence should be renewed, including whether renewal is in the public interest. The amendments also introduced statutory timeframes relating to renewal.
- The Minister for Communications has the opportunity to specify a policy of the Commonwealth Government that is to apply to the ACMA's approach to renewal, or direct the ACMA on certain matters relating to renewal.
- In publishing our consultation paper, we have commenced considering whether to renew a licence at least 5 years from expiry with a preferred policy outcome communicated at least 2 years from expiry. This approach was first communicated in an information paper dealing with the ACMA's approach to the reformed Act, released in 2020.
- This timing is to provide licensees early clarity around renewal and any potential changes to their licensing arrangements, and noting that the work involved in preparing for renewal or non-renewal of spectrum licences necessarily involves public and direct consultation that would be difficult to achieve in the six month decision making period.

Consultancies

- The ACMA is responsible for the pricing issues associated with the expiring spectrum licences. In 2022–23 we procured 2 consultancies to assist with that work:
 - a review of the different approaches and methodologies to valuing spectrum. This work was awarded to Plum Consulting (\$46,810). The Contract Notice is on AusTender
 - a review of the issues and events that may affect the major spectrum licensees' capacity to pay for spectrum in the relevant period. This work was awarded to Ian Martin Advisory (\$49,500). The Contract Notice is on AusTender.

ATTACHMENTS

Attachment A Summary of expiring spectrum licences

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Date 21/09/2023

Summary of expiring spectrum licences

Band	Licensees	Licences	Total licensed frequency range	Total licensed area	Previously renewed	Renewal application period commences	Expiry
850 MHz	TPG and Telstra (original band) Optus (downshift)	3 (nb: downshift licence will not be issued until 2024)	824–845 MHz / 869–890 MHz (2 x 20 MHz paired and 2 x 1 MHz paired downshift)	Australia-wide	Yes – 2013 (downshift licence was auctioned in 2021)	18 June 2026 18 June 2026 (downshift licence)	17 June 2028
1800 MHz	TPG, Telstra and Optus WA, SA, Vic, NSW and QLD rail operators	19 total 10 held by MNOs 9 held by rail operators (5 with rail safety restriction, 4 without)	1710–1785MHz / 1805–1880 MHz (2 x 75 MHz paired)	Metropolitan and regional areas	Yes: 2013-15 (regional and residual spectrum auctions in 2016 and 2017)	18 June 2026	17 June 2028
2.5 GHz	Dense Air, Telstra and Optus	6	2500–2570 MHz / 2620–2690 MHz (2 x 70 MHz paired)	Australia-wide	No – auctioned in 2013	1 October 2027	30 Sep 2029
2.5 GHz Mid Band Gap	ABC, Channel 7, Nine Network and Network 10	4	2570–2620 MHz (50 MHz unpaired)	Australia-wide	No – converted from apparatus licences in 2013	1 October 2027	30 Sep 2029
700 MHz	TPG, Telstra and Optus	4	703–748 MHz / 758–803 MHz (2 x 45 MHz paired)	Australia-wide	No – auctioned in 2013 and 2017	1 January 2028	31 Dec 2029
2.3 GHz	NBN, Telstra and Optus	12	2302–2400 MHz (98 MHz unpaired)	Metropolitan and regional areas	Yes – 2015 (residual lots)	25 July 2028	24 July 2030

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			2330–2400 MHz (70 MHz unpaired)	Canberra	auctioned in 2017)		
3.4 GHz	NBN, Telstra, Optus and TPG	13 (nb: subject to change due to 3.4 GHz auction)	3475–3700 MHz (225 MHz unpaired)	Urban excise areas	Yes – 2015 (sub 3.575 GHz)	14 Dec 2028	13 Dec 2030
			3400–3700 MHz (300 MHz unpaired)	Metropolitan and regional areas (following proposed allocation in 3.4 GHz in Q4 2023)	No – auctions in 2018 and 2023, and NBN's licences were converted from apparatus licences in 2021		
2 GHz	TPG, Telstra and Optus	6	1920–1980 MHz / 2110–2170 MHz (2 x 60 MHz paired)	Metropolitan areas and Canberra, Darwin and Hobart	Yes – 2017 (residual lots auctioned in 2017)	12 October 2030	11 October 2032
			1960–1980 MHz / 2150–2170 MHz (2 x 20 MHz paired)	Regional areas			