

## Authority submission

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**Meeting date:** 14 March 2024

**Agenda item no:** (Authority Secretariat to insert number)

**Title:** Expiring spectrum licences (ESL)—Stage 2 information gathering exercise and views on alternative licensing conditions

**Description:**

[REDACTED]

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**Cleared by:** GM: Michael Brealey

EM: Rachel Blackwood

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## Expiring spectrum licences (ESL)—Stage 2 information gathering exercise and views on alternative licensing conditions

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## DISCUSSION

### ***Stage 2—information gathering exercise***

9. The information gathering exercise is a novel exercise for both the ACMA and its stakeholders within spectrum management. Spectrum planning, licence design, and spectrum licence allocation exercises are informed by international and domestic technology and market developments; and allocation exercises may take into account prospective licensees' circumstances, and the state of the

- (b) (7)(C), (b) (7)(D)
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market (in the form of, for example, competition limits). However, the allocation of a spectrum licence through a competitive, price-based process (i.e., an auction) is typically agnostic of a licensee's historical, current or prospective use of the spectrum in general, or their use of any licence in particular.

10. The ESL process is different—for both the ACMA and incumbent and prospective licensees—insofar as it is an administrative decision-making process whereby the ACMA decides whether to renew (including partially renewing) or refuses to renew an ESL, per Division 3A of Part 3.2 of the Act. The ESL framework is designed to assist the ACMA and stakeholders navigate the renewal process, by progressively developing a policy and decision-making framework comprising (among other things) views on the suitability of renewal, partial renewal, or refusal, of ESLs in promoting the long-term public interest in regards to spectrum use.

### ***Purpose of information gathering***

11. Stage 2 is an information gathering exercise targeting incumbent and prospective alternative licensees. The exercise is intended to deepen the ACMA's understanding of how incumbent licensees are using their ESLs, and gather market intelligence—such as demand for spectrum and proposals for alternative uses and users for spectrum covered by ESLs—from prospective alternative licensees. The December paper confirmed that the information gathered will inform development of preliminary views (that is, Stage 3 of the ESL process).
12. The information requested of incumbent and prospective alternative licensees at **Attachment A** is consistent with guidance provided in the December paper on the indicative nature of the exercise, and with the views of the December Spectrum Committee in respect of the overall approach to seeking information.
13. We are seeking information from incumbents about their historical and current use of the spectrum, and seeking from both stakeholder groups information about their proposed future use, should they retain or acquire access to the spectrum.
14. As noted in the December paper, the proposal to conduct an information gathering exercise provoked a range of responses. Prospective alternative users (and other stakeholders e.g., ACCC) were supportive of the ACMA analysing how spectrum is being used by incumbents, with some conveying that the analysis could inform decisions about unused or underutilised spectrum. Incumbent licensees, particularly MNOs, expressed reservations, positing that the ACMA had not previously undertaken such analysis, and that it may be unfair to retrospectively evaluate a licensee's historic use against newly created criteria. They were wary that the task could be used to support changes to licence geographies.
15. Consideration of submissions prompted key changes to the scope of the exercise, mainly around use of public data where available, provision of guidance for stakeholders on how to engage with the public interest criteria, and clarity of how the information would be used.
16. The changes and overall strategy were discussed at Spectrum Committee in December and communicated publicly that same month, and MNO representatives from the Australian Mobile Telecommunications Association (AMTA) ESL working group conveyed in a meeting with staff that they were broadly comfortable with the revised scope. The 2012 ESL process (whereby the then Minister made decisions on the public interest) involved a similar exercise, whereby incumbents were asked to develop (non-public) submissions that

illustrated how their use of the spectrum achieved the criteria relevant for that process.<sup>5</sup>

17. The consultation paper at **Attachment A** seeks a range of technical, operational, strategic and economic evidence and analysis from incumbent and prospective alternative licensees. The requests are framed in-line with the public interest criteria. The ACMA will make decisions on applications for renewal with reference to these criteria and the broader policy and decision-making framework of which they are part. **Attachment A** reproduces the guidance provided to stakeholders in December on how they should engage with the criteria and frame their responses to Stage 2.

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***Engagement from prospective alternative licensees***

39. With respect to encouraging prospective alternative licensees, who are often more difficult, and comparatively less well resourced, to engage in consultation processes, the messaging in the paper, and our communications and promotion of the exercise, will emphasise that this process represents a singular opportunity to express demand for spectrum that may not be returned to market for up to 20 years. Emphasising the ACMA's interest in alternative demand, and its focus on promoting competition, in communications and in the **Attachment A** is intended to induce constructive engagement from incumbent and prospective alternative licensees.

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