



ABC SUBMISSION TO THE SENATE ENVIRONMENT AND COMMUNICATIONS LEGISLATION COMMITTEE INQUIRY INTO THE RADIOCOMMUNICATIONS BILLS 2020

September 2020

1. Introduction

The Australian Broadcasting Corporation (“the ABC”) welcomes the opportunity to comment on the proposed Radiocommunications Bills 2020. This submission focuses on one of the three Bills, the Radiocommunications Legislation Amendment (Reform and Modernisation) Bill 2020 (“Reform and Modernisation Bill”) and the accompanying Explanatory Memorandum (“EM”).

Spectrum is a critical and scarce public resource. It is vital for the delivery of a range of downstream broadcasting and telecommunications services. The ABC utilises spectrum to help deliver a range of critical broadcasting services to Australian and international audiences.

Updating and modernising elements of the *Radiocommunications Act 1992* (“the Act”) to ensure it remains fit-for-purpose in the modern media and technology environment makes sense. In doing so, it is important to ensure that the regulatory framework provides sufficient guidance to the ACMA on how it should take into account and balance the important “public interest” uses of spectrum, including national public broadcasting, that do not necessarily yield a direct financial return to the Commonwealth, but nonetheless deliver vital services to Australians.

This submission restricts its focus to three key elements of the Reform and Modernisation Bill: the proposed changes to the Object of the Act; what constitutes the concept of “public interest” in the allocation and use of spectrum; and the introduction of new information-gathering powers for the Australian Communications and Media Authority (“the ACMA”).

2. Object of the Act

There are conceptual and practical benefits in clarifying the overarching object of the Act and streamlining the aims that sit beneath it. It is also important that the aims reference both the commercial and non-commercial uses of spectrum.

As currently drafted, the use of spectrum by public broadcasters is not explicitly recognised as one of the vital non-commercial uses of spectrum; proposed new paragraph 3(b)(ii) currently references only “defence purposes, national security purposes and other non-commercial purposes (including public safety and community purposes)”. In the ABC’s view, the stated “other non-commercial” uses of spectrum in the legislation is not sufficiently broad.

The ABC submits that, to underline the importance of public broadcasting, the new Object section of the Act should explicitly include the term “national broadcasting purposes” as one of the non-commercial uses of spectrum, as it delivers significant benefits to the Australian

public. This is particularly important given that the Object section is a key interpretive provision of the Act and will be used as a reference point for future ACMA spectrum decisions, including application of the proposed new “public interest test” when considering the renewal of licences for periods of 10 years or more. In the alternative, at a minimum, the ABC submits that the term “public services” should be added to the stated non-commercial uses of spectrum.

In the absence of this type of amendment to the Object of the Act, there is potential for future spectrum decisions to place too little weight on public broadcasters’ use of spectrum vis-à-vis commercial uses in instances where these uses may be in direct conflict.

3. The concept of “public interest”

While the overarching objective of the Bill is to “promote the long-term public interest derived from the use of the spectrum”, and the Bill includes a new public interest test for the renewal of licences for 10 years or more, the term “public interest” is not defined and will be left to the discretion of the ACMA. The EM (p. 34) does call out some of the matters the ACMA may consider in making a decision regarding the public interest of renewing a spectrum licence, however the EM is not necessarily binding on the ACMA in determining what constitutes the public interest.

Given the importance of spectrum for non-commercial users, the Bill would be considerably strengthened by the introduction of a mechanism to provide clarity and certainty about how the ACMA will determine what constitutes the public interest.

The ABC would support the addition of a requirement that the ACMA be required to develop and publish guidance on this topic within six months of the commencement of the changes set out in the Bill. The ACMA should be required to undertake public consultation on this matter. Alternatively, in light of the way that the Bill reframes the relationship between the Minister and the ACMA in relation to matters of policy, the Corporation would support the introduction of a requirement that the Minister ensure that a Ministerial Policy Statement (MPS) on the public interest is always extant.

4. Information-gathering powers

The ABC does not object to the concept of new information-gathering powers for the ACMA, as set out in Schedule 7 of the Bill, in order to better manage issues with respect to interference or health and safety concerns.

However, as drafted, the powers appear to go well beyond these matters and would enable the ACMA to request information from spectrum holders about future or planned uses of spectrum. There is a risk that this could force the ABC to disclose commercially sensitive information. The ABC submits that these information-gathering powers should be narrowed in order to avoid this risk.