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AMTA submission

Senate Standing Committee
Environment and Communications Legislation

Radcomms Bill 2020

About AMTA

The Australian Mobile Telecommunications Association (AMTA) is the peak industry body representing Australia's mobile telecommunications industry. Its mission is to promote an environmentally, socially and economically responsible, successful and sustainable mobile telecommunications industry in Australia, with members including the mobile network operators (Optus, Telstra and TPG Telecom), network equipment suppliers (Ericsson, Nokia), handset manufacturers, service providers and suppliers to the industry. For more details about AMTA, see <http://www.amta.org.au>.

Introduction

AMTA welcomes the opportunity to provide comment to the Environment and Communications Legislation Committee regarding the Radiocommunications Legislation Amendment (Reform and Modernisation) (**the Bill**).

AMTA appreciates that the Government is committed to passing the proposed amendments in 2020 and industry strongly supports this timeline for reforming the legislation. We note that this Bill is the result of a comprehensive consultation process conducted by the Department of Communications over several years and that the proposed reforms will establish the foundations for a modern and fit-for-purpose legislative framework for spectrum management in Australia. We also recognise that this Bill is an important step in a continuing reform agenda process and that the policy framework needs to remain dynamic and flexible.

We note that the Department of Communications has considered many of the items we raised in response to their consultation on the Exposure Draft of the Bill, and that they have outlined the changes made to the Bill as a result in an Outcomes Paper¹. In this context, we limit this submission to a small number of matters that we nevertheless believe warrant the Committee's attention. We have also provided some contextual background information on the mobile industry in Australia in the second part of this submission.

¹ 2020 Radiocommunications Reform – [consultation outcomes paper](#), Aug 2020

Suggested improvements to the Bill

Renewal of spectrum licences

Spectrum licences typically involve significant investment and such investment, in turn, requires long term certainty. A clearly defined pathway for renewal of spectrum licences as well as the associated processes and timelines is therefore critical to enable the continued multi-billion dollar investment in Australia's mobile networks.

AMTA therefore strongly supports the inclusion of a clear renewal pathway for spectrum licences in the Bill via renewal statements.

We note that the rights of renewal as well as the processes and timing of these key decisions will have a material impact on the value of a spectrum licence. Additionally, it is important that any variations of these renewal terms, such as towards the latter years of tenure, remain subject to agreement with licence holders.

Specifically, we consider that spectrum licence holders need to have greater certainty around the ACMA's decision-making process around renewals, including the timeline for this process. We suggest that this could be achieved by having a renewal process that does not start any later than 5 years prior to licence expiry and that the terms of renewal should be finalised 3 years prior to expiry (providing a maximum of 2 years for the renewal decision-making process). After the decision, payment should be possible any time before the expiry date.

AMTA wishes to draw the Committee's attention to the following aspects in relation to the procedures associated with spectrum licence renewal:

- **Longer default renewal application period for spectrum licenses is required:** We propose the default renewal application period **should be 5 years**, rather than 2 years. The Bill states that the default renewal application period for spectrum licences is 2 years (s77A(3) of the Bill). This would apply to all existing spectrum licences as they do not have a "renewal decision-making period statement". It usually takes at least 2 years for a licensee to exit a band and this process could take as long as 5 years, for example, if it is the sole remaining band occupied by a mobile generation (i.e. 3G). As currently drafted in s286(6)(a) of the Bill, licensees may receive the ACMA's decision regarding renewal only 1.5 years before the licence's expiry, given the ACMA has a default period of 6 months to decide from the time of receiving an application for renewal. The time permitted to licensees to give effect to the ACMA decision may be even less if the ACMA requests further information from the renewal applicant under s77B of the Bill – in that case the ACMA may take up to another 6 months from receipt of the further information (see s286(6)(b) of the Bill). A possible scenario is that on the last day before the initial 6 months' deadline the ACMA issues a further information request which the applicant, using best efforts, takes 2 weeks to respond to - in which case the decision can be deferred into the final year of the licence term. As currently drafted, the Bill does not

allow a reasonable timeframe for licensees to exit spectrum that is not being renewed without causing potentially significant disruption to the services received by customers.

- **Specified Circumstances test that applies to renewal of certain spectrum licences needs clarification:** We would like greater clarity on what a “specified circumstance” may constitute, and how it will differ from criteria that forms part of the “public interest test”. We are very concerned to understand this, as anything that can potentially vary a licence after it has been issued introduces an element of uncertainty to the licence holder and has the potential to undermine the rights acquired. While the version of the Bill before the Senate provides more clarity than the Exposure Draft, no guidance has been provided in the Bill or Explanatory Memorandum (EM) as to what a “specified circumstance” may constitute; or how it will differ from criteria that forms part of the “public interest test”. We submit that, ideally, the Bill or EM should clarify that “specified circumstances” are only those circumstances capable of being determined against objective criteria. We are also concerned about potential overlap and confusion between the “specified circumstances” and the “public interest” test which will be applied to licence renewals of more than 10 years under new s77C(5). A defined scope for “specified circumstances” would give spectrum licensees greater certainty as to whether their licence is likely to be renewed. We also note that while section 73 has been tightened to only allow variation of the specified circumstances without agreement of the spectrum licence holder and where the ACMA is satisfied that exceptional circumstances exist, this does not placate our concerns that the specified circumstances for renewal may be varied or that the renewal statement can be replaced overall. AMTA therefore calls for removal of the power to allow variation of the renewal statement without the agreement of the spectrum licensee. The ability to do so, even in limited circumstances, has the potential to chill investment in mobile networks which would, in turn, have a negative impact on mobile coverage.
- **Consultation is needed on any decision affecting licence renewal:** AMTA proposes that the ACMA should be required to consult with spectrum licensees on any decision affecting licence renewal. AMTA proposed in its submission to the Department’s consultation on the Exposure Draft of the Bill that there should be a requirement hardwired into the legislation that the ACMA should consult the incumbent licensee in the following circumstances:
 - a. when determining whether to renew a licence,
 - b. when varying a renewal statement, and
 - c. when it is proposing to impose new conditions on a renewed licence.

Our proposal was not included in the Bill and we believe that there is insufficient comfort provided in the EM. Industry remains concerned that the ability for the ACMA to unilaterally vary aspects of a licence related to licence renewal have the potential to undermine the significant investment by mobile network operators.

For example, section 65A of the draft Bill requires the ACMA to include a renewal statement in new spectrum licences. In this section, however, there is no requirement for the ACMA to consult with prospective licensees on the content of the renewal statement, which under option 65A(1)(c) may require specified circumstances to exist at the time of renewal. AMTA proposes that the Bill should include a requirement for the ACMA to consult on the proposed renewal statement, and for reasons to be provided as to why a particular renewal statement (65A(1)(a)-(c)) is being proposed.

- **Deemed refusal of licence renewal application needs to be reversed:** Industry proposes that if the ACMA fails to make a decision on spectrum licence renewal within the decision-making period, then the ACMA should be deemed to have *accepted* the renewal application. We note, however, that subsection 286(4) of the Bill says that the ACMA is deemed to have *refused* the renewal application if no decision has been communicated to the applicant. AMTA believes that the default needs to be reversed so that it is an acceptance, rather than rejection of a renewal application. Subsection 286(5) also says that where a deemed refusal under subsection 286(4) has occurred, the ACMA must provide the applicant with an explanation as to why the decision was not made within the timeframe. This is clearly unsatisfactory, as an explanation of inaction, would not meet reasonable requirements for due process, fairness and sound decision-making.
- **Presumption of renewal should be the default:** AMTA is strongly of the view there should be a general presumption that spectrum licences will be renewed, with perhaps some limited exceptions, such as, where it is not in the public interest; where there is a need to harmonise with international spectrum bands; or where there has been a confirmed lack of use of the spectrum. Almost all licences are renewed under the current regime so it would seem reasonable to make this the default in the new regime and make non-renewal the exception.

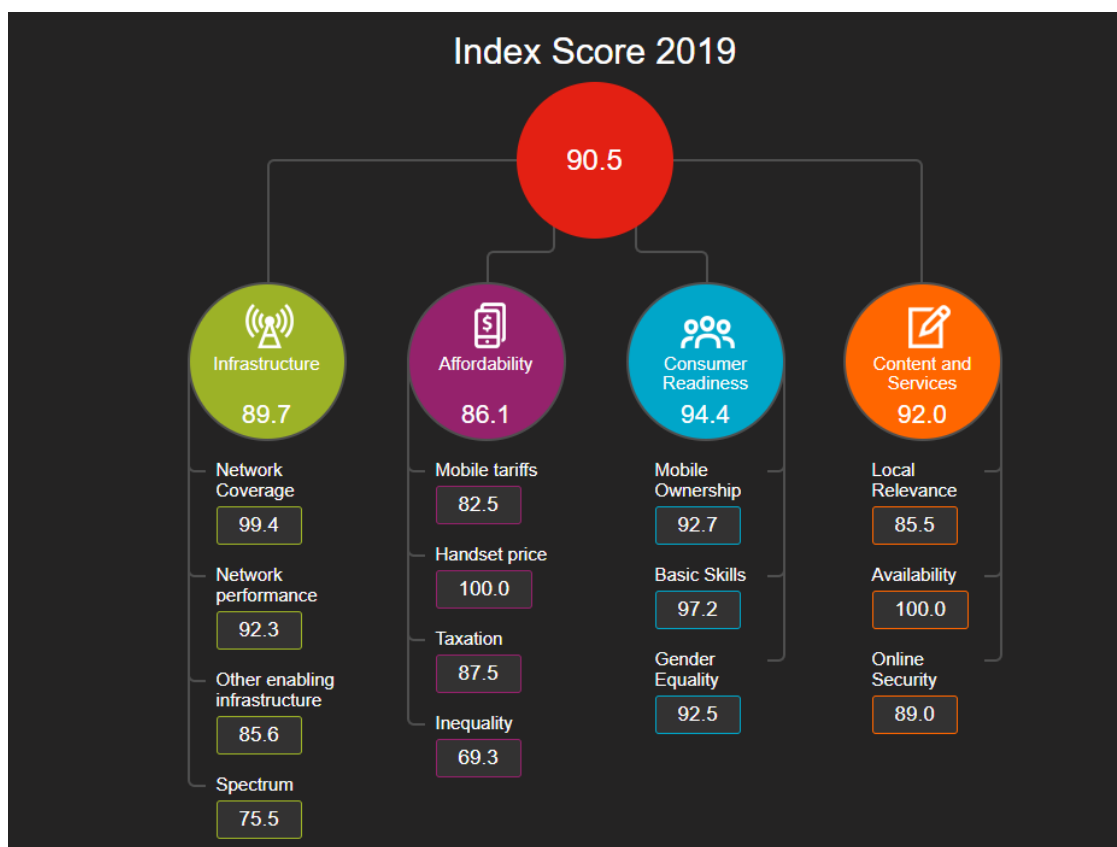
Apparatus licences

Apparatus licences do not require the same level of investment as spectrum licences. AMTA welcomes the Bill retaining many of the distinctions between apparatus and spectrum licences. Commensurate with our comments on spectrum licences in the previous section, we wish to draw the Committee's attention to the following aspects in relation to the renewal procedures for apparatus licences:

- **Longer default renewal application period for apparatus licenses:** Industry proposes the default renewal application period for apparatus licences of greater than 10 years duration **should be 2 years**, rather than 6 months as per section 129(3) of the Bill.
- **Consultation is needed on any decision affecting licence renewal:** AMTA proposes the ACMA should be required to consult with apparatus licensees on any decision affecting apparatus licence renewal. As per the point on this topic above for spectrum licences, industry observes that section 103A of the draft Bill requires the ACMA to include a renewal statement on new apparatus licences. Again, there is no requirement for the ACMA to consult with prospective licensees on the content of the renewal statement, which under option 103A(1)(b) may require specified circumstances to exist at the time of renewal. Industry proposes the Bill should include a requirement for the ACMA to consult on the proposed renewal statement, and for reasons to be provided as to why a particular renewal statement (103A(1)(a)-(b)) is being proposed.
- **Deemed refusal of licence renewal application should be reversed:** AMTA proposes that if the ACMA fails to make a decision on an apparatus licence renewal within the decision-making period, then the ACMA should be deemed to have *accepted* the renewal application. Further to our comments above on deemed refusal for spectrum licences, we observe that sections 286(3) through 286(8) only apply to *spectrum* licence renewal; *not* to apparatus licence renewal. Industry is not satisfied with this drafting, especially if the Bill retains the deemed refusal of renewal, as it does not even require the ACMA to provide an explanation for inaction on apparatus licence renewal applications.

Background - Australia's Mobile Industry

Australia has a mature and highly competitive mobile market. In 2019, for the 6th consecutive year, Australia has topped the GSMA's Mobile Connectivity Index with a score of 90.5. The GSMA Index compares and scores countries on infrastructure, affordability, consumer readiness and content and services.



Australia's mobile network operators continue to invest in the deployment of 4G, and increasingly 5G, networks and we note that the pace of deployment has not slowed due to COVID-19.³

This includes their significant long-term investment in the purchase spectrum licences. This investment is not only significant for the billions of dollars it contributes to Government revenue but, more importantly, for its economic and social impact as an enabling technology.

The *Mobile Nation 2019 – The 5G Future*⁴ report by Deloitte Access Economics found that the mobile industry continues to make a significant contribution to Australia's economy. Deloitte

² [GSMA Mobile Connectivity Index Report 2020](#)

³ ChannelNews, [Telstra 5G rollout undeterred by coronavirus](#), 26 May 2020

⁴ Deloitte Access Economics, [Mobile Nation 2019- The 5G Future](#), commissioned by AMTA 2019.

Access Economics estimates that the mobile industry contributed **\$22.9 billion of value added to GDP in 2017-18**. This figure includes \$8.2 billion contributed directly from mobile industry activities as well as \$14.7 billion supported through indirect activity in related sectors and across the economy. The mobile industry also supported approximately 116,100 full time equivalent employees. For every full-time employee in the mobile industry there are 3.7 full time roles supported in other sectors.

Beyond the value added to GDP and the employment contribution of mobile telecommunications, mobile technologies, including 5G, continue to drive productivity throughout the Australian economy. While productivity has generally declined over the last decade, mobile technologies have boosted both labour and capital productivity. Deloitte Access Economics estimates that the productivity impact of mobile will be equivalent to \$2 500 for every Australian by 2023. This amounts to a total of \$65 billion of additional GDP by 2023, or 3.1% increase in GDP which is more than the 2.8% contribution of the agricultural sector in 2018.

As the world starts to recover from the impacts of COVID-19, we expect that 5G will continue to drive economic growth and play a key role in Australia's recovery as it enables service providers to offer cost-effective technology to meet consumer demand for data and new advanced 5G services.⁵

In fact, a recent survey of 2500 global executives (including 200 based in Australia) by Accenture⁶ found that 80% of executives expected that 5G would bring tremendous value to their business in various ways. The survey found that while 34% are yet to adopt 5G; 28% have piloted it; 26% are using it in some areas and 10% have implemented it across their organisation. The main benefits around 5G were understood to be productivity gains with 75% of those surveyed seeing the potential for 5G to boost productivity; as well as create new revenue streams and modernise business models.

Accenture concluded that 5G is likely to be an integral part of the drive towards digitalisation and that the current pandemic and its associated circumstances will only accelerate this process:

"It's clear that Australian businesses recognise the huge potential of 5G, with many ready to take advantage of the opportunity to connect all their assets into an intelligent enterprise, creating new business potential."⁷

And:

"A growing share of businesses are now working from home, which puts strong connectivity at the core of efficiency in operations. As businesses adapt their models to meet virtual working

⁵ Ericsson and Arthur D. Little, [5G for business: a 2030 market compass](#), Oct 2019, page 3

⁶ Accenture, 5G technology will benefit Australian businesses and society, 21 June 2020, [Consultancy.com.au](#)

⁷ Accenture, 5G technology will benefit Australian businesses and society, 21 June 2020, [Consultancy.com.au](#)

conditions, many are realising that remote working actually has concrete value for their business, indicating that these might end up being long term arrangements in some cases.”⁸

Mobile technology delivers more than just economic benefit to the country. As Deloitte Access Economics observes,

“Mobile technologies are embedded in everyday life. Today, 89 percent of Australians own a smartphone, and the average Australian spends three hours every day using their smartphone - working, playing, connecting with family and friends.”⁹

Mobile technology and services have become indispensable to the way we communicate with family and friends, entertain ourselves, keep safe and manage our responsibilities. Importantly, the role mobile solutions play in these aspects of our lives is not lessening due to the impact of COVID-19; on the contrary, the ability of mobile to enable critical social benefits across sectors of the economy including health, education, transport and agriculture is only increased.

A parliamentary committee inquiry into the deployment of 5G networks found that the technology will be transformative and safe for Australia.¹⁰ David Gillespie, MP, Committee Chair, stated in parliament:

“The fourth industrial revolution needs architecture to connect the internet of things, the machine-to-machine learning, robotics, virtual telecommunications, videoconferencing with ultra-low latency and accuracy, smart cities, smart telecommunications and smart cars that are driverless—all these things will be enabled. It will have huge applications in Defence, in universities, in smart campuses and in schools, all because of the ultra-low latency and the huge amounts of data that get delivered so much quicker. It's an evolution from 3G to 4G to 5G and, as a result, a lot of information has become available in the internet, which has cast aspersions on its safety. We have heard lots of information, from lots of reputable government and international bodies asserting that the technology is incredibly safe.”¹¹

AMTA believes that 5G is the innovation platform that will grow the mobile industry’s capacity as a key contributor to Australia’s economic recovery. 5G networks will transform the way Australians live and work by delivering unprecedented digital connectivity across the community and economy.

5G has the potential to transform industries and sectors including agriculture, transport and logistics, manufacturing, health, education and emergency services. It will change the way both Government and enterprise deliver goods and services as we transition to smarter cities where everything that can be connected is connected.

⁸ Accenture, 5G technology will benefit Australian businesses and society, 21 June 2020, Consultancy.com.au

⁹ Deloitte Access Economics, Mobile Nation: the 5G Future, 2019.

¹⁰ The Next Gen Future Report, March 2020

¹¹ David Gillespie MP, speech to House of Representatives, 12 May 2020

Recent research also points to the potential of 5G for consumers ¹² with a key finding that data usage for one in five users could reach more than 160GB per month on a 5G device by 2025. Other key findings were:

- Australian consumers expect 5G to provide relief from urban network congestion in the near term - *especially in Australia's bigger cities, where nearly half (47%) smartphone users report facing network issues in crowded areas* - and to create new home broadband choices.
- Current 4G usage patterns are not indicative of future usage behaviours. Video consumption is set to rise significantly with 5G. Australian consumers expect to not only stream video in higher resolutions but also use immersive video intensive media such as Augmented reality (AR) and Virtual reality (VR), resulting in an additional two hours of video content being watched weekly on mobile devices by users in the 5G future when they are out and about, including half an hour wearing AR glasses or VR headsets.
- Consumers are willing to pay a premium on 5G, for the smartphone use case, Australian users are stating that they are willing to pay 20 percent more for fifth-generation services, and early adopters as much as 42 percent more.¹³

AMTA further notes that 4G was optimised for smartphones whereas 5G is designed to open up new use cases across many new types of devices. 5G will not simply deliver more capacity for growth of existing usage, but broaden the applications of usage across both industrial and consumer use cases.

¹² Ericsson 5G Consumer Potential report, 2019

¹³ Ericsson 5G Consumer Potential report, 2019

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