



**Submission by
Free TV Australia**

Department of Communications and the
Arts

*Legislative Proposals Consultation Paper –
Radiocommunications Bill 2016*

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EXECUTIVE SUMMARY

- Free TV understands the Government's desire to create a spectrum management and licensing regime that is fit for purpose in an environment where technology is evolving rapidly.
- However, the 'single licensing framework' one-size-fits-all approach has significant risks attached for the broadcasting industry.
- Global best practice for broadcast spectrum regulation and pricing is based upon ensuring that spectrum settings support and underpin broadcast policy objectives. It would therefore be useful to re-state the Government's broadcast policy objectives as they apply to the broadcast eco-system and to commercial broadcasters, before determining the approach to spectrum regulation and management that will support these objectives.

Risks of the Approach

- The changes set out in the Consultation Paper are presented as technical tidy-ups that will streamline processes and regulatory structures. This may well be the case for many users of spectrum who currently hold Spectrum Licences, such as the telecommunications companies, but for broadcasters the approach represents a radical departure from the status quo, including:
 - the removal of designated Broadcasting Services Bands, which currently ensure that broadcast spectrum is managed and planned in accordance with broadcast policy objectives;
 - the removal of all linkages between broadcast licences issued under the *Broadcasting Services Act 1992* and access to spectrum under the *Radiocommunications Act 1992*.
- The proposed changes therefore represent a fundamental shift in the way that the industry is regulated, and affect the key infrastructure input to broadcasters' businesses. However, there is no evidence that due consideration has been given to the implications for broadcasting policy. In particular, the current process does not take into account the wider regulatory framework for broadcasting or the public interest objectives of terrestrial free-to-air broadcasting policy that should drive broadcast spectrum management.

Broadcasting Policy Principles

- A strong commercial free-to-air broadcasting industry delivers important public policy outcomes for all Australians and underpins the existence of the Australian production sector. A strong local production eco-system sustains Australian storytelling and local voices and is critical to maintaining and developing our national identity. Importantly, the vast majority of Australians rely exclusively on commercial free-to-air television for the delivery of news, information and current affairs. The broadcasting regulatory regime (encompassing spectrum management) has been carefully designed to achieve these important public policy objectives. The move to a single licensing framework as proposed puts these public policy outcomes at risk.

- In this context, the industry and Government must develop a set of policy principles that can then be used as a litmus test for broadcast spectrum management and licensing. These principles should include the following:
 - Terrestrial FTA platform to remain an important part of the FTA broadcasting eco-system for many years to come - especially in regional Australia;
 - Co-ordinated spectrum planning with no increases in interference;
 - Certainty for broadcasters in terms of licence tenure and renewal;
 - Broadcasters to have control over their spectrum and its future use;
 - Preserve and strengthen the Australian production eco-system;
 - No adverse accounting impacts for any corporate entities or shareholders from any changes.

Potential Implications for Broadcasting

- The key reasons why the proposed approach to developing a single licensing framework is unsuitable for broadcasters are:
 - Firstly, it creates a long-term threat to many of the Government's own public policy objectives by recasting many broadcast policy decisions as spectrum licensing decisions. This risks turning the broadcasting policy framework on its head by effectively allowing the tail (in the form of spectrum policy) to wag the dog (broadcasting policy);
 - Secondly, it creates the potential for a significant diminution of the rights of broadcast licensees in areas such as certainty of access, licence renewal rights, the accounting treatment of licences and others. This is contrary to the Minister's guiding fundamental principle for the transition that there should be no diminution of existing rights as a result of moving to a single licensing framework;
 - Thirdly, it creates an extended period of uncertainty that would be unacceptable to broadcast licensees and their shareholders and could destabilise the industry during a time of structural change. This is because many critical regulatory settings will need to be translated into spectrum licence conditions and these will only be determined at some point in the next five years. In addition, by providing for most details of critical terms of spectrum access to be contained in licence terms rather than legislation or regulations, it follows that:
 - it is impossible for broadcasters to reach a view on the impact of this process on their businesses or have confidence that this process will deliver on its stated goal that there will be no diminution of rights; and
 - in the long run, there is less certainty regarding access to spectrum, because unlike legislation, licence terms are subject to change without public policy debate. The proposed framework is therefore emphasising flexibility at the expense of certainty, which will erode business confidence and investment in the sector.
 - Finally, the Framework makes it easier for telecommunications players to lobby for and achieve the 'release' of broadcasting spectrum for the delivery of mobile services without the need for approval by the Parliament or a considered and constructive policy debate around the

public policy rationale for maintaining a strong free to air broadcasting sector.

There are also inherent tensions between the provision of “flexibility” in the new regime and broadcasters’ need for certainty of access to spectrum and the need for broadcast spectrum to be managed and planned as a whole to ensure interference free services.

Government should move to address the risks with this approach and the potential implications for broadcast policy and develop a suitable framework and common principles before moving forward to an exposure draft.

Free TV welcomes the consultative approach that the Department has taken and would welcome the opportunity to work through these issues in collaboration.

Introduction

Free TV Australia (Free TV) represents Australia's commercial free-to-air television broadcasters.

The industry welcomes the opportunity to respond to the Department's 'Legislative Proposals Consultation Paper' (Consultation Paper).

The value of commercial free-to-air television to the Australian public is as high as ever. In recent years, a number of broadcasters have rapidly evolved into multi-platform media players, delivering services across a range of platforms and devices. In addition, use of the DTT platform remains strong; on any given day, free-to-air television is watched on a TV by more than 13 million Australians, at no cost to the public, across a broad range of genres.¹

In order to continue to provide these fundamental services, it is critical that there is no reduction to the existing certainty of access to broadcasting spectrum, both during the transitional phase and in the new single licensing framework.

Free TV understands the importance of ensuring that the spectrum management and licensing framework is fit for purpose and as flexible as possible in circumstances where technologies are continuously evolving. At the same time however, broadcasters are concerned that, consistent with global best practice for broadcast spectrum regulation, this is not done at the expense of broadcasting policy objectives.

Free TV is pleased that the Government has indicated that this will not be the case. In his speech at RadComms 2016 the Minister stated that, "the Government is committed to ensuring that broadcast licence holders will continue to have certainty of access to spectrum to deliver their broadcasting services".² Similarly, the Department's Spectrum Review Report indicated that the legislative reforms would "ensure that the rights of existing licence holders are not diminished in the transition to the new framework".³

Free TV strongly agrees with the Government that this is essential. However, it is unclear from the detail of the proposals as developed so far, how this certainty will be provided. The removal of the BSBs in and of itself is suggestive of an approach that will ultimately diminish the safeguards presently in place for broadcasting spectrum. In order for Free TV to be in a position to support any proposed new framework, it is critical to first have clarity in relation to this detail.

This submission sets out the potential implications which would flow to the commercial free-to-air broadcasting industry from the proposed framework, as well as the consequential public policy implications, and calls for the resolution of these issues before proceeding with the development of a single licensing framework which applies to broadcasters.

¹ OzTAM, 5 cap cities, RegionalTAM, 6 regional markets, 1 Jan to 31 Dec 2015, all people, 2am-2am, metro and regional average daily reach figures are combined to form a national estimate.

² Senator the Hon Mitch Fifield, Speech to Radiocommunications Conference 2016, 10 March 2016.

³ Department of Communications, Spectrum Review, Final Report, March 2015, 6.

Relationship between spectrum and broadcasting policy

Free TV is concerned that the proposed single licensing framework presents significant risks to the Government's own broadcasting policy objectives.

The changes set out in the Consultation Paper are presented as technical tidy-ups that will streamline processes and regulatory structures. This may well be the case for many users of spectrum who currently hold spectrum licences (Spectrum Licences) under part 3.2 of the *Radiocommunications Act 1992* (RadComms Act), such as telecommunications companies, but for broadcasters the policy represents a radical departure from the status quo.

The proposed framework creates a long-term threat to many of the Government's own public policy objectives by recasting many broadcasting policy decisions as spectrum licensing decisions. This risks turning the broadcasting policy framework on its head by effectively allowing the tail (in the form of spectrum policy) to wag the dog (broadcasting policy).

We outline below the current broadcasting policy framework, our concerns in relation to the risks to that framework, and how these may be addressed.

1. The broadcasting policy framework

The inherent public interest value of free-to-air television is recognised by the regulatory framework that applies to spectrum allocated for broadcasting.

Historically, spectrum used by the broadcasters has been treated separately from the general spectrum framework. Section 31 of the RadComms Act allows the Minister to designate spectrum to be used primarily for broadcasting - the Broadcasting Services Bands or "BSBs". Once designated, the spectrum in the BSBs is referred to the ACMA for planning.

Unlike other spectrum, the substantive provisions in relation to how the BSBs should be planned are in Part 3 of the *Broadcasting Services Act 1992* (BSA). Part 3 of the BSA outlines the preparation of frequency allotment plans and licence area plans (LAPs and TLAPs) for the BSBs. The detailed requirements of these plans are included in the BSA. The practical implications of this are that planning of BSBs requires additional and more complex considerations than planning of non-BSB spectrum - for both technical and public policy reasons. In planning spectrum referred under Part 3 of the BSA, the ACMA is required to promote the objects of the BSA. Part 3 of the BSA also requires the ACMA to undertake wide public consultation in preparing frequency allotment plans and licence area plans, and in determining planning priorities between different areas and different parts of the broadcasting services bands.

The separation of broadcasting spectrum from other spectrum recognises the public policy outcomes attached to broadcasting spectrum. The Australian Government licenses free-to-air broadcasters to deliver free content to all Australian households. This policy decision has been made in light of Government's broader public policy objectives, and recognises the value of a thriving Australian production ecosystem.

Government has enhanced this through a range of specific policies designed to maximise the public impact of this use of spectrum:

- it mandates that most of this content is Australian content;

- it requires local news be created and delivered; and
- it has legislated for sporting events of national significance to be broadcast by these networks.

This is achieved through the integrated relationship between the RadComms Act and the BSA both enacted in 1992, which links the regulation of spectrum with the regulation of the content that is transmitted via that spectrum. As a result, broadcasting licences or BSB licences under the BSA (“Broadcasting Licences”) have a range of conditions and obligations attached to them, including minimum Australian content quotas, local content requirements and payment of annual licence fees.⁴ In addition, unlike other spectrum, which is regulated solely by the RadComms Act, the BSBs are regulated by both the BSA and the RadComms Act. In this way, broadcasting spectrum is uniquely regulated by a longstanding relationship between the BSA and the RadComms Act which ensures that BSB spectrum is used in a way that maximises its overall public benefit.

In other words, broadcasting policy objectives have been determined, and spectrum policy has then acted as an enabler of these objectives.

The result of this interlinked and complex relationship between the BSA and the RadComms Act is that spectrum planning and licensing of the BSBs is directly linked to service quality, including content quality, which the community expects from free-to-air television. By contrast, non-BSB spectrum is not regulated in this way; the RadComms Act does not impose obligations on non-BSB spectrum licensees in relation to the content that is transmitted via non-BSB spectrum.

In developing any new spectrum management framework, the value of free-to-air broadcasting, and the unique relationship between Broadcasters’ use of spectrum and the BSA which has been created to reflect this value, must continue to be recognised.

Public expectations of television content and its role in Australian society are high,⁵ and it is the content that consumers receive via the spectrum allocated to commercial free-to-air broadcasters, not just the spectrum itself, that has value. Any new spectrum management framework should not devalue the use of spectrum for broadcasting.

2. Public interest value of free-to-air broadcasting which underlies regulatory framework

The broadcasting policy objectives contained in the BSA reflect the importance of commercial free-to-air broadcasting to Australian society.

Commercial free-to-air television is highly valued by the Australian public, and a major contributor of value to the Australian economy and positive driver of economic welfare. Free-to-air television is the only platform that delivers high-quality Australian

⁴ Broadcasting Services Act 1992, Part 9; Australian Content Standard; Television Licence Fees Act 1962. NB Broadcasters are also subject to other requirements contained in the BSA and the Commercial Television Industry Code of Practice concerning the content of programming delivered to children, restrictions on the types of programs that can be shown at certain times of the day, a requirement to deliver a minimum amount of closed captioning, limits on amounts and types of advertising and others.

⁵ Screen Australia, Online and on demand: Trends in Australian online video use, 2.

programmes, including news, current affairs, sports and culture to all Australians for free.⁶

Free TV dominates other content delivery platforms in the home with 99% household penetration - the majority of homes have two or more TVs. Just 29% of Australian households have pay TV and the majority of their evening viewing (53.3%) is actually of free-to-air television.⁷

Despite the rising penetration of smart phones, tablets, laptops and PCs in Australian homes, the very latest figures reveal that 84.5% of Australian's screen viewing time is spent watching TV on a TV set. Even younger Australians (teens and young adults) spend more time watching their TV sets than they do watching content on any other screen.⁸

In 2013/14 commercial free-to-air broadcasters invested a record \$1.54 billion in Australian content and in the same year Australian content represented 79% of commercial free-to-air networks' total content spend. Over the last five years, Free TV broadcasters have invested \$6.62 billion in Australian content. Free TV networks are the major underwriters of the Australian production sector, employing over 15,000 people both directly and indirectly.⁹

A report by Venture Consulting, *The Value of Free TV*, released in May 2015 found that the commercial free-to-air television industry:

- generates \$3.2bn per annum of economic surplus;
- pumps \$2.8bn per annum of economic investment back into the Australian economy;
- contributes \$6 out of every \$10 spent on Australian content;
- directly employs 7,232 people across technical, operational, financial and management roles; and
- pays significant taxes in Australia.¹⁰

Exhibit 2 of the report shows the direct investment that the industry makes in the Australian economy:¹¹

⁶ For example, see Screen Australia, *Online and on demand: Trends in Australian online video use*, 2.

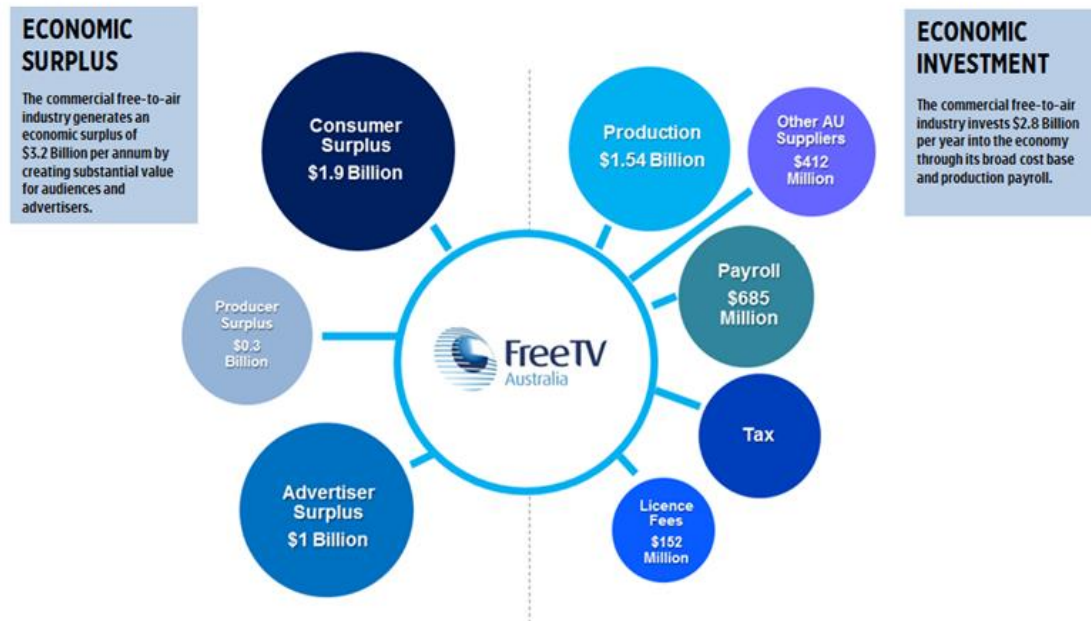
⁷ OzTAM national universe estimate Q1 2016 (figure as at end December 2015); share of free-to-air television of those people who have pay TV sourced OzTAM national universe estimate, 1 Jan to 31 Dec 2015, all people, 6pm to midnight.

⁸ Australian Multi-Screen Report Q4 2015 (Nielsen, OzTAM, RegionalTAM).

⁹ Australian content expenditure figures are compiled by Free TV. ACMA "Commercial TV licensees met Australian content quotas in 2013", July 2014.

¹⁰ Venture Consulting, *The Value of Free TV, the contribution of commercial free-to-air television to the Australian economy*, May 2015.

¹¹ *Ibid*, at 4.



Broadcasters continue to over-deliver on their Australian content quotas, each averaging well above the 55% quota on their main channels as well as significantly above the required total hours on their multi-channels.¹² Australian free-to-air TV programs are the most watched shows on television. In 2015, every one of the top 50 programs on Free TV was Australian.¹³

A recent survey report by Screen Australia reaffirmed the critical contribution of the Australian broadcast television industry in bringing local content to Australian audiences, noting that:

“The survey results reaffirm the role of the broadcast television industry in bringing local content (including Australian films) to Australian audiences both as programmed television and the broadcasters’ own catch-up services.

....

Australian broadcasters and their programming decisions will...remain very important for access to Australian content for the foreseeable future.”¹⁴

Findings internationally reaffirm the central role of the free-to-air television platform to culture and society. For example, a report to the European Commission prepared by Pascal Lamy, Chair of the High Level Group on the future use of the UHF band, noted that:

¹² ACMA, Compliance with Australian Content Standard and Children’s Television Standards between January 2015 and December 2015, 22 April 2016.

¹³ Source: OzTAM, 5 cap cities, RegionalTAM, 6 regional markets, 1 Jan to 31 Dec 2015, all people, 2am-2am, metro and regional figures are combined to form national average audience estimates, total people, all day, Free TV channels, consolidated data.

¹⁴ For example, see Screen Australia, *Online and on demand: Trends in Australian online video use*, 2.

“The European audio-visual model has provided citizens with a broad range of quality programming free at the point of access (so-called free-to-air) and fulfils major public policy objectives such as cultural diversity and media pluralism. This is particularly important for the most vulnerable in society and must be maintained.”¹⁵

Similarly, a recent UK report, *The Value of Digital Terrestrial Television in an era of increasing demand for spectrum*, found that “DTT’s case for spectrum can be made purely on the consumer and producer surpluses it creates from the use of spectrum”.¹⁶

In summary, it is critical that any spectrum licensing framework continues to recognise the value of commercial free-to-air broadcasting, as currently recognised in the BSA.

3. Potential risks to broadcasting policy

The approach to developing a new spectrum management framework, as set out in the Consultation Paper, suggests that the new framework will create a fundamental shift in the way that the broadcasting industry is currently regulated, in the process giving rise to serious risks for broadcasters.

Firstly, broadcasters are very concerned that the Consultation Paper proposes to

‘remove the current legislative requirement for the Minister to designate spectrum specifically for broadcasting services and instead rely on the general planning powers provided for in the Bill’.¹⁷

Free TV understands the intention may be that Ministerial Policy Statements would continue to specify that some spectrum be primarily for broadcasting use the provision in the Act which requires the Minister to designate spectrum for broadcasting is not only critical to certainty around the designation of the BSBs, but is also fundamentally linked to their planning by the ACMA under the BSA, and the public policy objectives in relation to the use of that spectrum under the BSA (set out in detail in sections 5 and 6 below).

Secondly, representatives from the Department have indicated that the current process is intended to amend the spectrum management framework in the RadComms Act only, rather than make any fundamental changes to the broadcasting policy framework in the BSA.¹⁸

However, due to the high level of integration between the two, broadcasters are concerned that it does not appear to be possible to achieve the kinds of changes to the spectrum management framework described in the Consultation Paper without making fundamental changes to the BSA that will in turn impact on broadcasting policy in the absence of any thorough consideration of the merit of those impacts.

For example, broadcasters’ existing apparatus licences are tied to commercial television broadcasting licences. Section 102 of the RadComms Act provides that the ACMA must issue a transmitter licence to anyone who has been issued a BSB licence (such as a commercial television broadcasting licence). Commercial television

¹⁵ Lamy, P. Results of the Work of the High Level Group on the future use of the UHF band, Report to the European Commission, 2015, 3.

¹⁶ Kenny, R. et al, *The value of digital terrestrial television in an era of increasing demand for spectrum*, January 2014, 71.

¹⁷ CP, 18.

¹⁸ Consultations with Free TV on 11 April and 23 May 2016.

broadcasting licences are issued under part 4 of the BSA. As such, the apparatus licence is automatically provided, and “stapled” to the broadcasting licence and the two licences work together to enable delivery of the broadcasting service.

Moving towards a single licensing framework which potentially provides for independent spectrum management criteria for the renewal of the new spectrum licences will separate the broadcasting licence from the associated spectrum licence, leaving the possibility for broadcasters to hold a broadcasting licence without the requisite spectrum holding to deliver their broadcasting service. This is patently unacceptable for the broadcasting industry.

Under the existing regulatory framework, commercial television licences must be renewed every 5 years (s45, BSA), and apparatus licences can be valid for any period not exceeding 5 years (s103(3) RadComms Act). In practice, the apparatus licences, being tied to commercial television broadcasting licences, are renewed in perpetuity. Commercial television licences are only not renewed in exceptional circumstances (ss47 and 41(2)), and by extension, apparatus licences are also presumptively renewed.

This presumption of renewal is critical to broadcasters who depend on their spectrum allocation to deliver their service. Spectrum is fundamental to broadcasters and will remain so for the foreseeable future; any reforms that jeopardise broadcasters’ continued access to spectrum put at risk the continued delivery of FTA services in an already fracturing market.

The proposed framework therefore fails to recognise that the spectrum licensees in question (commercial free to air broadcasters) sit at the heart of a broader public policy framework. As a result, the proposed changes risk turning the broadcasting policy framework on its head by effectively translating many broadcasting policy decisions into spectrum licensing decisions.

4. The need for a set of clear broadcasting policy principles

For these reasons, there is a risk of negative unintended consequences from the move to a single licensing framework as proposed, including the weakening of the Australian production eco-system and the diminution of broadcasters’ rights.

The industry does not object in principle to the objective of providing greater control and flexibility over spectrum use - technology is fast-moving, and the industry needs to be able to innovate and to develop the free-to-air platform over time. However, any such changes need to reflect the issues raised in this paper.

Free TV understands that the Consultation proposes that the new Radcomms Bill will address spectrum-related matters and the BSA will focus on broadcasting policy matters. For reasons developed above, neither can be developed in isolation from each other. The intrinsic links between spectrum management, and in particular broadcasting spectrum management, and policy settings in the BSA, mean that an approach that fails to take into account the significant public policy considerations attached to broadcasting spectrum will lead to impractical outcomes.

The industry and Government need to develop a set of policy principles that can be used as a litmus test for broadcast spectrum management and licensing. Specifically, a new regime should:

- enable terrestrial FTA to remain an important part of the FTA broadcasting eco-system for many years to come - especially in regional Australia

- enable the FTA terrestrial platform to be developed as a platform - rather than piecemeal licensee by licensee
- provide certainty for broadcasters in terms of licence tenure and renewal
- not lead to any diminution of rights or impose any extra costs on the industry
- take account of the co-ordinated way in which broadcast spectrum is planned and ensure there are no increases in interference
- not threaten the vital role that the FTA industry plays in the local production eco-system
- give the commercial broadcasters more control over future transmission technology decisions
- not adversely impact on the accounting of corporate entities or shareholders
- not make it easier for telecommunications service providers to encroach on the broadcast spectrum bands

Potential for significant diminution of licensees' rights

The current process, and the significant uncertainty associated with it, could lead to a diminution of broadcasters' rights in a number of ways. We outline the key areas of concern to broadcasters below.

5. Certainty of access

Certainty of access essential for Future Digital Television Pathway

Spectrum is and will continue to be critical for terrestrial television broadcasters as the delivery platform for free-to-view services to the public. The spectrum allocation for broadcasters, designated at an international level in the Radio Regulations (a UN Treaty), through the International Telecommunications Union (ITU) and implemented nationally through the Australian Radiofrequency Spectrum Plan, recognises this.¹⁹

Currently, broadcasters have licences in the VHF and UHF bands, otherwise known as the broadcasting services bands (BSBs), for their core activities. In addition to the BSBs, broadcasters also use frequency bands which are auxiliary to broadcasting to support the services provided by their use of the BSBs.

Broadcasters are facing increasing commercial pressure to use their spectrum more efficiently. On the one hand, broadcasters are under significant pressure to compete with emerging platforms, and to keep up to date with rapid changes in technology and consumer demand for quality content, pictures and sound, which requires more bandwidth. On the other hand, they are constrained by a limited spectrum allocation.

The clearing of the 700 MHz band has left broadcasters with no clear pathway to adopting the new technologies critical for competing and continuing to underwrite expensive Australian content. In order for broadcasters to continue to provide high quality and competitive free-to-air services to all Australians, broadcasters will need the spectrum framework to enable them to identify and implement the most appropriate

¹⁹ Radio Regulations of the International Telecommunication Union (ITU Radio Regulations), WRC-15. NB As a member of the ITU, Australia complies with the Radio Regulations, including allotted allocations of bands and interference management requirements and any changes to the existing spectrum management framework will need to ensure that the BSBs are made available, interference free, for broadcasting.

technology pathway that ensures efficient use of allocated spectrum while continuing to provide a competitive service that consumers demand.

Free TV has identified the key aspects of such a technology pathway in its submission to the Department's Digital Television Review.²⁰ As indicated in that submission, this pathway requires the following key elements:

- Certainty of long term access to 7MHz allocations for each broadcaster to enable a pathway to adopting new technologies;²¹
- 6th channel for simulcast and testing to ensure that disruption to consumers' viewing is minimal;²²
- Maximum flexibility for use of spectrum in terms of deciding what their offerings will be;²³ and
- Ensuring certainty and stability (including lack of interference), particularly during periods of migration to new technologies.²⁴

These elements necessarily rely on a spectrum management framework that is capable of facilitating them.

Free TV is concerned that any new spectrum management framework gives the same level of certainty of access to the BSBs that the existing framework provides, so that broadcasters may be able to adopt the pathway identified to transition to new DTV technologies.

Certainty of access provided by existing framework

Currently broadcasters have certainty of access to spectrum, which is provided by the existing licensing framework.

Unlike other spectrum users, broadcasters' use of spectrum is authorised primarily under the BSA rather than the RadComms Act.

Broadcasting Licences are issued under Part 4 of the BSA, which authorises the provision of HDTV and SDTV services (s 41C) for a period of 5 years (s45). They are issued on the basis of planning undertaken by the ACMA under the BSA (in accordance with the specific objectives and powers under the BSA generally and in Part 3 of the BSA), and must be renewed by the ACMA unless the licensee is no longer suitable (ss 47, 41(2)).²⁵

Uniquely, if a BSB licence is issued under the BSA, under s 102 of the RadComms Act, the ACMA **must** issue a transmitter licence to the relevant Broadcasting Licence holder, which authorises operation of one or more transmitters to transmit the broadcasting service. In other words, the issuing of the transmitter licence is a

²⁰ Free TV submission, Digital Television Review, April 2015.

²¹ Ibid, 11.

²² Ibid.

²³ Ibid.

²⁴ Op. Cit., 12.

²⁵ A Licensee is no longer suitable only if the ACMA is satisfied that allowing a particular company to continue to provide a commercial broadcasting services under a licence would lead to a significant risk of an offence against the BSA or the regulations being committed; or a breach of a civil penalty provision or conditions of the licence occurring. (BSA ss47, 41(2))

technicality, once spectrum has been planned and broadcasting licences issued in accordance with the functions, powers and objectives of the BSA.

Certainty of licence duration and renewal rights

Currently the duration of the apparatus licence (5 years under s 103(3) of the RadComms Act), is linked to the Broadcasting Licence (also 5 years under s 45 of the BSA), and the duration of both licences is fundamentally linked to the spectrum renewal rights.

As indicated above, the legislation doesn't provide the ACMA with discretion not to renew a transmitter licence if a Broadcasting Licence has been renewed. This is a legislative requirement.

The continuation of the Broadcasting Licence is essentially automatic as it only requires a consideration of whether special circumstances under s 41(2) of the BSA exist, and the RadComms licence automatically follows the Broadcasting Licence. Under the proposed single licensing framework we understand it is intended that no rights of renewal would be specified in legislation, but would instead be set out in individual licence conditions. Those licence conditions have not been disclosed as part of this Consultation. However the proposed removal of the legislative entitlement to spectrum for the duration of the Broadcasting licence appears to be a significant diminution of current renewal rights. In addition, Free TV understands it is also proposed that the new framework will provide for the ACMA to have the power to compulsorily resume any licences subject to the Minister's approval.

A legislative right of resumption does not currently apply to broadcast spectrum and Free TV opposes the introduction of resumption rights in respect of spectrum licences granted to broadcasters.

Continued certainty of access under any new framework

Free TV is concerned that there should be no diminution of existing certainty of access to spectrum for broadcasters through this process. Spectrum is a fundamental input to FTA businesses. Security of access to spectrum is vital to facilitate investment and business decisions for FTA businesses. Without guaranteed access to existing spectrum allocations, broadcasters may not have sufficient confidence to make the long-term investment and business planning decisions required to support the platform.

No diminution of existing certainty of access for broadcasters means:

- No amendments to the renewal rights under the Broadcasting Licence; and
- Continuation of the existing renewal rights in the RadComms Act (as they relate to broadcasting) in legislation.
- Continued entitlement to broadcast spectrum so long as a broadcasting services licence is held.
- No legislative rights of resumption extended to spectrum licences granted to broadcasting licensees.

Free TV notes that ensuring these provisions remain in legislation is critical to ensuring no diminution in the current level of certainty provided by the framework. Unlike legislation, licence terms are subject to change without public policy debate.

Free TV seeks further clarification in relation to the interaction between the new licence and the Broadcasting Licence, what each will be authorising, and how the proposed

single licence will be crafted to ensure that there is no impact on broadcasting policy issues.

6. Certainty of interference-free access

Quality access to spectrum for broadcasters necessarily means access which is free of interference. Broadcasters require a high degree of certainty regarding interference protection to ensure the continued availability and quality of free-to-air digital television services. The importance of interference-free access is recognised by international law and contained as a specific obligation in the Radio Regulations.²⁶

This obligation has been translated to the current RadComms Act. While non-broadcasting uses can be assigned to the BSBs and other frequency bands used for broadcasting related services, interference protection is currently very carefully managed. The RadComms Act provides that Radiocommunications services other than broadcasting services cannot be issued in the BSBs unless there is either:

- a determination under s 34 of the BSA, or
- a determination under s 31 of the RadComms Act.²⁷

Furthermore, a s 31(2) determination must not be inconsistent with the Australian Radiofrequency Spectrum Plan and must promote the objectives of the BSA.²⁸

The inclusion of these provisions in the RadComms Act means that interference protection is currently very carefully managed. This is critical for broadcasters because the tolerable level of interference to digital television broadcasting from other services in the BSBs is very low (even lower than it was to analogue services). Whereas previously viewers would suffer a 'snowy' or 'noisy' picture from interference, interference with a digital signal is more likely to result in a digital viewer suddenly receiving no service at all (the 'cliff-effect').

Such low levels of tolerance for interference in the planning for digital television services mean that changes in existing spectrum planning arrangements have the potential to impact on broadcasting use of spectrum and should first be thoroughly assessed in relation to the impact of the proposed changes on the availability and quality of free-to-air services to the public.

Continued certainty of interference free access

Free TV is concerned that these legislative requirements to effectively ensure that interference is managed remain in any new framework, consistent with Australia's obligations under the Radio Regulations. This protection from interference is a critical aspect of certainty of access for broadcasters.

Free TV is concerned that the proposed removal of s 31 (which provides for the Minister to designate the BSBs) will have implications on part 3 of the BSA, and the manner in which spectrum for broadcasting is planned and managed. In planning spectrum referred under Part 3 of the BSA, the ACMA is required to promote the objects of the BSA, including the economic and efficient use of the radiofrequency

²⁶ Recommendation ITU-R BT.1368; Radio Regulations, Article 5.

²⁷ RadComms Act, ss 31(3)-(4).

²⁸ RadComms Act, ss 31(3)-(4).

spectrum, having regard to factors such as the social and economic characteristics within the licence area (amongst other things).²⁹

Any new framework should provide the same level of certainty of interference free access to the BSBs as is provided for under the existing framework. In Free TV's view, this requires the legislative provision for the Minister to designate spectrum specifically for broadcasting in s 31 of the RadComms Act remain so that the framework as a whole continues to ensure both certainty of access to the BSBs, and certainty in relation to management of interference in those bands.

Free TV is also concerned that the existing planning arrangements and public processes associated with developing TLAPs continue, and that these documents continue to be available separately, so that industry can refer to them when required.

7. Impact on pricing of spectrum for broadcasting purposes

Broadcasters are currently paying up to 3.375% for the use of spectrum under the *Television Licence Fees Act 1964* and related regulations.³⁰ They are also each paying fees for their RadComms Act licences on top of this. While broadcasters understand there will be a separate review of spectrum pricing, Free TV's view is that in order for broadcasters to continue to be able to invest in local content and to support the domestic production industry, commercial television licence fees should be abolished and broadcasters should pay an overall amount to government which is in line with international best practice, and which recognises the important public policy objectives of free-to-air broadcasting.

8. Impact of fixed term licence

A further issue that may arise from the Government's proposed move to a single licensing framework is the potential for significant adverse financial impacts on the companies operating commercial broadcasting licences.

Currently, broadcasting licences and the spectrum licences that attach to them are treated for financial reporting purposes as being perpetual. This is because the renewal provisions contained in sections 46 and 47 of the BSA require the ACMA to renew the broadcasting licence every five years except in special circumstances and linked requirement under section 102 of the RadComms Act that requires transmitter licences to be granted to commercial television broadcasting licensees. Consequently such assets are not required to be amortised.

The proposed change from a perpetual spectrum licence to a fixed licence may significantly impact the financial results of television broadcasting corporations, particularly those that are publicly listed. Such a change would require companies to initially perform an impairment analysis on the current carrying balance of their licences to determine if the amount is recoverable over the fixed period. If the recoverable amount calculated is lower than the carrying amount then a write-down would be required.

After any impairment, the carrying balance would be required to be amortised over the fixed period of the licence and could have the following impact:

²⁹ BSA, s 23. Part 3 of the BSA also requires the ACMA to undertake wide public consultation in preparing frequency allotment plans and licence area plans, and in determining planning priorities between different areas and different parts of the broadcasting services bands.

³⁰ *Television Licence Fees Act 1964*, s 6. NB the *Television Licence Fees Amendment (Licence Fee Rebate) Regulation 2016* brings this down to 3.375% for the accounting period ending in 2016.

- The amortisation expense would reduce net profit and ultimately reduce the dividend amount company can pay to its shareholders.
- The reduced profit would mean lower tax expense and tax instalment which means lower franking credit available for the payment of dividends
- The amortisation would reduce the balance of the asset which will decrease the net assets of the company
- The company will still be required to perform an impairment analysis on an annual basis.

Similarly, any on-going upfront payments made would be required to be capitalised on the balance sheet and amortised over the period of the licence which would have a similar impact on the financial statements of each company.

If it were also proposed to move to payment of licence fees as an upfront lump sum rather than annualised payments, these would clearly require funding arrangements. The FTA revenue market is currently declining which limits the ability to raise funds for such payments. The impact on each licensee would depend on additional matters such as gearing and asset position.

Some of these issues could be addressed through the renewal terms attached to the licences. However it is impossible for broadcasters to properly assess these impacts in the absence of clear information as to the licence conditions attaching to any new licence framework.

In summary, Free TV is unclear how the proposed government process of making fundamental changes to the administrative framework before considering the implications on the BSA and underlying broadcasting policy issues, is practically feasible, or how it will ensure that broadcasters' existing rights under the current framework will not be diminished.

As a result, it is critical that the Government addresses these issues before developing any draft legislation which applies the single licensing framework to broadcasters.

Unacceptable level of uncertainty created by the process

The lack of clarity in relation to the issues identified above highlights the unacceptable level of uncertainty that the proposed framework would bring for broadcasters.

Free TV notes that this uncertainty arises directly from the fact that the proposed new framework would be a significant departure from the existing framework that applies to broadcasters. This is not the case for other stakeholders who are currently licensed spectrum holders under part 3.2 of the RadComms Act. These stakeholders will not be subject to the same level of uncertainty as broadcasters, due to the fact that, as indicated by the Government,³¹ the new single licence will operate similarly to their existing spectrum licences.

Many critical regulatory settings will need to be translated into spectrum licence conditions and these will only be determined at some point in the next five years. This will create an extended period of considerable uncertainty, which would be unacceptable to broadcast licensees and their shareholders and could destabilise the industry.

³¹ Consultation with Free TV on 11 April 2016.

Broadcasters require a stable regulatory environment in relation to radiofrequency spectrum. This means that during any transitional phase as well as under any proposed new spectrum framework, broadcasters require:

- Certainty of interference-free access in relation to current 7MHz spectrum holdings
- Certainty that the existing tenure and renewal rights will continue
- Certainty of pricing and continuation of the existing accounting treatment of the licences
- Clarity around the future regime for spectrum planning so that spectrum bands are guaranteed for the duration of the relevant licence

It is currently unclear how the proposed new spectrum management framework will provide certainty in relation to these critical issues. As such, it is extremely difficult for broadcasters to support the proposals when there is insufficient information to understand their implications at this point in time.

Proposed changes increase the risk of ‘spectrum encroachment’ by telecommunications service providers

The proposed framework makes it far easier for telecommunications players to achieve the ‘release’ of broadcasting spectrum for the delivery of mobile services without the need for a policy debate (or the approval of Parliament if key elements are removed from legislation) around the public policy rationale for maintaining a strong free-to-air broadcasting sector.

Clearly this an objective mobile operators have been lobbying for. Free TV notes that AMTA’s submission to Government in relation to red-tape reduction stated that:

“AMTA believes the review of the Act should consider:

- *Establishing a common approach to the planning, allocation and management of broadcasting and non-broadcasting spectrum that provides for market-based allocation and the extension of secondary trading i.e. a platform-neutral approach.*
- *Development of a spectrum policy roadmap to outline a clear policy approach to making spectrum available for IMT in a timely manner, under a clear and simplified regulatory framework, at reasonable price that will not deter investment.”*

It would be a major unintended consequence of the proposals if they enabled further encroachment on the certainty for broadcasters ‘by the back door’ without the rigorous public debate that such a change requires.

This concern should be addressed in the design of the process by continuing to enshrine key protections in legislation as they are now.

Continued access to content via the free-to-air platform is a significant benefit to society which cannot be replicated by other content delivered platforms. It should be noted that telecommunications spectrum is not free at the point of access to the consumer; access to services delivered via telecommunications spectrum costs the consumer. By contrast, free-to-air television services are free to the consumer at the point of access. In other words, the consumer, if forced to access television-like content

via a telco, would then have to pay at the point of access. This is a significant public policy issue.

Approach in other jurisdictions

Determining spectrum management policy prior to determining key broadcasting policy issues is not only counterintuitive but also inconsistent with the approach taken in other jurisdictions.

For example, in the UK, Ofcom reviewed the approach to pricing of terrestrial broadcast spectrum through its 2013 Consultation entitled 'Spectrum pricing for terrestrial broadcasting'. This considered whether pricing should move to an Administrative Incentive Pricing (AIP) model, with spectrum costs based on an opportunity cost assessment.

As part of this process, broadcasting policy issues - including the critical question of whether there would be scope for broadcasters to respond efficiently to the AIP model – were agreed before second-order questions of how to develop the framework to support those policy objectives were answered.

While broadcasting spectrum pricing methodology varies across jurisdictions, there is a common recognition that broadcasting spectrum provides a range of important public goods that are not replicated by other spectrum licence holders. Broadcasting spectrum has been valued differently in recognition of these public goods. Appendix A shows how licence acquisition processes and fees differ across different jurisdictions.

Comments on the proposals

Given the concerns raised above, it is extremely difficult for broadcasters to support the proposals without certainty around how these issues could be addressed.

In addition to the key issues outlined above we make the following specific comments:

Objects of Act

Free TV notes the proposed object of the Bill is to promote the long-term public interest derived from the use of radiofrequency spectrum by:

- Facilitating efficient, flexible and innovative allocation and use of spectrum; and
- Providing arrangements for the provision of spectrum for public or community purposes.

Free TV notes that the second dot point is particularly important for the recognition of non-market based values, which must continue to be a key consideration in the management of spectrum. Purely market-based approaches to spectrum management have the potential to overlook the full range of non-market based values derived from spectrum use. The importance of non-market based values should be referenced not only in the Objects of the Act but also detailed in the accompanying explanatory memorandum.

Ministerial direction powers, policy guidance and accountability

Free TV notes the proposal for the Bill to set out clear accountability arrangements and a clear distinction between the responsibilities of the Minister to set policy and the ACMA to implement policy.

Free TV supports further consultation processes in relation to the details of any Ministerial policy statements on the performance and function of the ACMA's spectrum management functions and powers.

Annual spectrum work plan

Free TV notes the proposal to require the ACMA to prepare and publish an annual spectrum work plan and acknowledges that while the ACMA currently issues an annual five-year spectrum outlook (FYSO), there is no requirement to do so.

The current FYSO is a valuable resource. It includes analysis of spectrum demand and strategic directions for a 5-year period, and an annual outline of work tasks and priorities, and provides important technical details for spectrum users. It would be regrettable if this was lost.

Radiofrequency planning

Free TV notes that proposal to consolidate the current separate planning powers for spectrum plans, radiofrequency band plans and broadcasting licence area plans into a single, discretionary, legislated power.

Free TV has outlined its concerns in relation to planning of the BSBs above. Free TV seeks clarification in relation to the impacts of these proposals on part 3 of the BSA. Any amendments to the spectrum management framework must continue to ensure that current spectrum bands are guaranteed for licence duration and renewal periods.

In relation to the removal of the requirement to develop conversion plans, Free TV seeks clarification in relation to how the new approach will cater for re-allocation and conversion of a frequency band from one service to another. Currently, conversion plans take into account not only the re-assignment of use of a specific frequency band from one service to another but also the compatibility between services in adjacent bands. This process is best practice, as set out in the Radio Regulations, and should continue.

Rights to trade

The Consultation Paper provides that "it is proposed that broadcasters will be able to share, trade or lease all or part of their spectrum with or to other broadcasters or for non-broadcasting uses"

While Free TV is not opposed to additional flexibility in principle, it is completely unclear what the extent of this flexibility would be and what benefits this additional flexibility provides. We would seek more information on this which is a perfect example of spectrum policy appearing to drive broadcasting policy rather than the other way around.

In practice, there are a number of legal and policy issues which would require further consideration. For example, what would be the implications of a spectrum transfer or lease in the context of::

- Section 37A of the BSA, which limits the number of commercial television BSB broadcasting licences in a particular licence area to 3;
- The various ownership and control limitations in the BSA, such as s 53 which prohibit any person from being in control of:
 - more than one commercial television broadcasting licence in the same licence area; or
 - any commercial television broadcasting licences whose combined licence area populations exceed 75% of the population of Australia;³²

These matters are more appropriately dealt with in the context of a discussion and considered process around the future of broadcasting policy, rather than falling out of a process to simplify spectrum licensing.

While the Consultation Paper appears to also envisage spectrum being transferred or leased for non-broadcasting purposes, it is difficult to see how that could occur in practice, given the relatively small parcels of spectrum held by individual licensees, and the potential interference impacts on other broadcasters.

Licensing - renewal rights

The renewal process in relation to apparatus licences for broadcasters is unique and outlined in detail at above. As indicated, broadcasters are concerned that there should be no diminution of existing access rights and that the current renewal process for apparatus licences which are tied to Broadcasting Licences should continue, and should continue to be set out in legislation as it is now.

Interference management

Free TV has set out its key concerns in relation to interference management above. The spectrum management framework must ensure that any radiocommunications licences issued in the BSBs are not inconsistent with either the Australian Radiofrequency Spectrum Plan or the objectives of the BSA. The ACMA must remain appropriately resourced to ensure that this occurs and that disputes in relation to interference can be effectively resolved.

Transitional arrangements

Free TV is concerned that there is no detailed information available in relation to what is proposed for the transitional arrangements.

As indicated above, any transitional phase should provide for:

- Interference-free access in relation to current 7MHz spectrum holdings
- Continuation of the existing tenure and renewal rights
- Certainty of pricing and continuation of the existing accounting treatment of the licences
- Continuation of existing spectrum planning arrangements

Free TV seeks clarification in relation to the proposed transitional arrangements and the expected length of time that the transition is to take.

³² Free TV notes that this may no longer be an issue if the Broadcasting Legislation Amendment (Media Reform Bill) 2016 is passed.

Equipment regulation

Equipment regulation and compliance has a specific link to the authorisation and application of standards and specifications of equipment authorised in a specific frequency band. In this regard the current technical frameworks provide a link between standards and specifications of authorised equipment and devices to frequency planning and licensing. Free TV seeks clarification in relation to how this link between equipment use to spectrum planning and licensing will be carried over to the new framework so that the ACMA can continue to regulate authorised equipment and devices.

Compliance and enforcement

Free TV considers that a graduated approach to equipment compliance and enforcement should be maintained with key elements being a stepped approach with remedial directions to equipment owners as a first step.

Spectrum authorisations (class licences)

Free TV is concerned about the proliferation of devices for sale on the internet which may have a frequency assignment for an overseas jurisdiction and not be applicable in the same band in Australia. Free TV seeks clarification in relation to how devices such as wireless microphones be authorised under the new licensing framework.

Information provision

Under the existing framework, details of licensees in a specific frequency range are available in the ACMA's existing Register of Licences. This permits interference affected licensees to identify potential sources of interference. Free TV is of the view that this is a valuable resource within the radiocommunications technical framework and seeks clarification in relation to how this information will be provided under the new framework.

Next Steps

Free TV thanks the Department for the opportunity to respond to the Department's Consultation Paper.

Free TV's view is that the Government should move to address the risks and the potential implications for broadcast policy outlined in this submission, and develop a suitable framework and common principles with respect to broadcasting policy, prior to moving forward with an exposure draft.

As a starting point, Free TV's view is that the new framework must ensure:

- Retention of the existing legislative provisions allowing the Minister to designate the BSBs and refer them to the ACMA for planning;
- Retention of the legislative requirements to ensure that any radiocommunications licences issued in the BSBs are not inconsistent with either the Australian Radiofrequency Spectrum Plan or the objectives of the BSA;
- That there are no amendments to the existing renewal rights of the licences, including the renewal rights of the Broadcasting Licence (under the BSA);

- Continuation of the existing requirement to issue apparatus licences to Broadcasting Licence holders;
- That there are no legislative rights of resumption in relation to single licences granted to broadcasting licensees.

The key provisions which give rise to these rights and obligations under the existing framework are outlined in Appendix 2.








It should be noted that a more detailed discussion will need to be had, and a more comprehensive assessment of broadcasters' concerns and requirements will need to be undertaken, once further details of the framework are available.

We would welcome the opportunity to work through these issues in collaboration.

APPENDIX 1

Licences acquisition process and type of fees - Summary

Internationally, the typical approach to pricing broadcasting spectrum is based on recovering the cost of administering that spectrum, with a clear recognition across markets that broadcast spectrum should not be priced in the same way as mobile spectrum

Country	Broadcast spectrum pricing methodology	Overview of licensing approach	Administration of broadcast spectrum fees	...vs. mobile spectrum licensing approach
 Canada	Administrative only – fees to cover the cost of administering spectrum are contained in the Part II of the broadcasting fees	A broadcasting licence from CRTC and a broadcasting certificate from Industry Canada are required	The spectrum fee is collected by CRTC as part of its Part II fee process. Unclear if CRTC makes any payment to Industry Canada	Mobile spectrum is issued on a first-come, first-served basis (if under-demand) or an auction basis (if over-demand)
 UK	Currently, spectrum pricing is based on a recovery of the costs incurred by Ofcom to administer the spectrum	The spectrum and broadcasting licence is an integrated licence	Spectrum fees are collected by Ofcom in the form of an annual administrative fee	Mobile spectrum is typically awarded by auction
 New Zealand	Current licences are priced on a fixed low-price administrative basis that took account of the transition to digital terrestrial	Broadcasters have a spectrum licence only with no specific broadcasting licence	One-off spectrum fee administered by the Radio Spectrum Management division of the Ministry of Business	Mobile spectrum is awarded through tenders and auctions
 Ireland	Fees for broadcast spectrum are administrative only	Spectrum is issued to broadcasters by the BAI, having secured spectrum allocations from Comreg, the spectrum management body	All fees are collected by the BAI, which then pays a spectrum fee on to ComReg	Mobile spectrum is allocated by auction
 Singapore	Spectrum fees are negligible and administrative in nature: <ul style="list-style-type: none"> • Licence fees • Application and processing fees • Frequency management fees 	Two licences are needed, with a broadcast licence issued by the MDA and then a 'Broadcast Station' licence issued by the IDA to permit the utilisation of spectrum	Spectrum fees are collected by the IDA	Mobile spectrum is awarded by auctions and assignment
 USA	No spectrum-specific licence – fees are administrative in nature based on the running costs of the FCC	The spectrum and broadcasting licence is integrated and awarded by the FCC	Fees are collected by the FCC	Mobile spectrum is awarded through auction
 Australia	Spectrum specific fees are currently negligible, and are apparatus licences fees based on transmitter instances	The ACMA awards a BSB licence and apparatus licences	Apparatus licence fees are collected by the ACMA	Mobile spectrum is typically awarded by auction

APPENDIX 2

Key provisions in existing framework that must be retained in legislation

The below table provides a non-exhaustive list of key provisions that commercial free-to-air television broadcasters have identified as critical under the existing framework and which should continue under any new framework.

Radcomms Act Provision	Rights and obligations	Related BSA Provisions
S 31 (1)	<p>Enables the Minister to:</p> <ul style="list-style-type: none"> designate spectrum as being primarily for broadcasting purposes refer that spectrum to the ACMA for planning 	Part 3 of the BSA (ss 23-34) provides for the planning of the Broadcasting Services Bands
S 31(2)-(3)	<p>Provides that if a s 31(1) designation is in force, the ACMA may make written determinations that licences can be issued in specified circumstances in those parts of the spectrum, only if such determinations:</p> <ul style="list-style-type: none"> Promote the objects, and have regard to the matters, described in s 23 of the BSA; and Promote the object of the RadComms Act to the extent it is not inconsistent with promoting the objects of the BSA. 	<p>Section 3(a) – (n) sets out the objects of the BSA</p> <p>S 23 (a) – (g) of the BSA sets out the planning criteria that the ACMA must take into account in promoting the objects of the BSA, including the economic and efficient use of the radiofrequency spectrum.</p>
S 31 (4)	Provides that s 31(2) determinations must not be inconsistent with the spectrum plan	Ss 3, 23 of the BSA (as above)

<p>S 100(2)</p>	<p>Provides that the ACMA must not issue an apparatus licence authorising operation of a radiocommunications transmitter within a part of the spectrum designated under subsection 31(1) unless:</p> <ul style="list-style-type: none"> • The issue of the licence is in accordance with a decision of the ACMA under subsection 34(1) or (3) of the BSA; or • The issue of the licence is in accordance with a determination under subsection 31(2) of the RadComms Act 	<p>S 34(1) of the BSA provides that the ACMA may determine that part or parts of the BSBs are available for allocation for a period specified by the ACMA, if that spectrum has not yet been allocated.</p> <p>S 34(3) provides that the ACMA may determine that part or parts of the BSBs are available for allocation for the purposes of datacasting services.</p>
<p>S 102 (1)</p>	<p>Provides that if a broadcasting services bands licence is allocated to a person under Part 4 or 6 of the BSA, the ACMA must issue to the person a transmitter licence that authorises operation of one or more specified radiocommunications transmitters for transmitting the broadcasting service or services concerned in accordance with the related licence</p>	<p>S 47 of the BSA effectively provides that the ACMA must renew a commercial television broadcasting licence unless it decides that granting the licence would lead to a significant risk of one of the following (under s 41(2) of the BSA):</p> <ul style="list-style-type: none"> • An offence against this Act or the regulations being committed; • A breach of a civil penalty provision occurring; or • A breach of the conditions of the licence occurring
<p>S 103 (4A)</p>	<p>Provides that a transmitter licence issued under subsection 102(1) continues in force while the related licence referred to in that subsection remains in force.</p>	<p>The related licence is the licence issued under Part 4 of the BSA which provides for the allocation of commercial television broadcasting licences</p>