Principles for spectrum management
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The principles are intended to guide ACMA’s management of the radiofrequency spectrum within its existing legislative responsibilities and government policy settings. The key theme of the principles is that maximising the overall public benefit from use of the radiofrequency spectrum requires balanced application of both regulatory and market mechanisms.

The principles have been adopted by ACMA but will not (and cannot) override the law, such as the Radiocommunications Act 1992 (the Act) and other relevant legislation. ACMA’s decision-making processes are conducted in accordance with statutory requirements and, in particular, are guided by the object of the Act. The principles therefore provide additional guidance to stakeholders about the approach that ACMA will take to decision-making.

ACMA decision-making is also subject to other law such as ministerial direction. For example, section 14 of the Australian Communications and Media Authority Act 2005 provides that the Minister for Broadband, Communications and the Digital Economy may give written directions to ACMA in relation to the performance of its functions and the exercise of its powers. ACMA must perform its functions and exercise its powers in accordance with such a direction.

ACMA will take account of the principles of good regulatory process outlined in Rethinking Regulation: Report of the Taskforce on Reducing the Regulatory Burden on Business (Regulation Taskforce 2006). In accordance with those principles, ACMA recognises that effective consultation with affected parties at all stages of the regulatory cycle is an integral element of the spectrum management process.

ACMA will use a total welfare standard as its overarching framework for assessing the costs and benefits of different regulatory and market mechanisms for specific spectrum management issues, where appropriate. ACMA recognises that the assessment of costs and benefits using a total welfare standard approach will often need to take into account both quantitative and qualitative factors.

ACMA’s spectrum management principles are consistent with the principles of good regulatory process. They provide directions that will generally result in welfare being maximised and, together with use of a total welfare standard, articulate ACMA’s proposed standard approach to spectrum regulation. ACMA’s decision making framework, including the principles and total welfare standard, is set out schematically in Figure 1.

In summary, the principles are as follows:

1. allocate spectrum to the highest value use or uses

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1 The Report can be accessed from: www.regulationtaskforce.gov.au/
2. enable and encourage spectrum to move to its highest value use or uses
3. use the least cost and least restrictive approach to achieving policy objectives
4. to the extent possible, promote both certainty and flexibility
5. balance the cost of interference and the benefits of greater spectrum utilisation.

More information about each of the principles is provided below.

1. ALLOCATE SPECTRUM TO THE HIGHEST VALUE USE OR USES
The first paragraph of the object of the Act is to maximise the overall public benefit derived from using the radiofrequency spectrum, by ensuring the efficient allocation and use of the spectrum (s.3(a)).

Public benefit will be maximised where spectrum is allocated to the highest value use or uses, i.e. the use or uses that maximise the value derived from the spectrum by licensees, consumers and the wider community.

The second paragraph of the object of the Act explicitly requires that adequate provision of spectrum be made for use in the defence or national security of Australia, law enforcement or emergency services, and for use by public or community services (s.3(b)). In assessing the highest value use or uses of the spectrum, ACMA will also consider this paragraph of the object of the Act, the community benefits derived from these services and any other relevant matters.

2. ENABLE AND ENCOURAGE SPECTRUM TO MOVE TO ITS HIGHEST VALUE USE OR USES
ACMA will seek to set conditions of use that will allow and encourage spectrum licensees to move spectrum to its highest value use or uses with a minimum of regulatory intervention.

The highest value use of spectrum will change over time as technology develops, consumer and social preferences evolve, and as the circumstances of licensees change. Allowing spectrum to move to the highest value use as quickly and easily as possible following its initial allocation will maximise the overall public benefit derived from the spectrum. This requires a regulatory system that has the flexibility to enable licensees to adapt spectrum access and usage to both market requirements and technological advances.

A change in use may be facilitated through trading or third-party authorisation, or by the same licensee employing their spectrum for a different use.

Allowing spectrum to move to the highest value use quickly and easily will ensure that associated benefits are realised quickly, without the delay and costs of regulatory intervention.

3. USE THE LEAST COST AND LEAST RESTRICTIVE APPROACH TO ACHIEVING POLICY OBJECTIVES
Planning, licensing, allocation and compliance measures should aim to minimise the total cost of achieving the objectives of spectrum management, including the cost to government, licensees and the community. Under good regulatory practice, all benefits and costs of regulations, including compliance costs, are rigorously assessed. The least cost and least restrictive approach will reduce regulatory burdens and allow greater freedom for spectrum licensees to optimise their use of the spectrum.
ACMA will operate as efficiently as possible to minimise the total cost of spectrum management.

Equally importantly, minimising the total cost of spectrum management will require a focus on regulatory effectiveness, taking into account developments in technology and conditions in affected markets. Only regulations that generate the greatest net benefit for the community, taking into account all the impacts, will be adopted.

4. TO THE EXTENT POSSIBLE, PROMOTE BOTH CERTAINTY AND FLEXIBILITY

ACMA will promote both certainty and flexibility. If there is any conflict between these two objectives, ACMA will seek an outcome that provides the greatest net benefit for industry, consumers and the wider community.

Licensees need stable and predictable regulatory arrangements and sufficient certainty about tenure to be confident about investing in equipment and services. This maximises the public benefit from spectrum use by reducing the risk of market failures arising from uncertainty and risk aversion. This need for certainty may at times conflict with the necessity for ACMA to change regulatory arrangements to facilitate innovation and allow access to new or expanded uses for spectrum.

Licences also need to be flexible to allow licensees or third party users to change their use of the spectrum or to facilitate the trade of spectrum to another licensee for a different use. This need for flexibility may at times conflict with the desire of other licensees for certainty, particular in relation to interference management.

These are examples of the types of issues that ACMA may encounter as it seeks to accommodate both certainty and flexibility in its management of the spectrum.

5. BALANCE THE COST OF INTERFERENCE AND THE BENEFITS OF GREATER SPECTRUM UTILISATION

ACMA will balance the cost of interference and the benefits of greater spectrum utilisation to ensure the most efficient result that maximises total welfare.

Where spectrum utilisation can be increased by amending regulatory rules, and is accompanied by levels of interference that are not harmful, ACMA will consider relaxing measures for frequency coordination and interference mitigation.

The point at which the cost of interference outweighs the benefits of greater spectrum utilisation will differ for various applications. There is no radiofrequency environment with a complete absence of potentially interfering signals. The point at which interference becomes harmful depends on the service type, application and user.