



Australian Government
Defence

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REVIEW OF THE AUSTRALIAN SATELLITE FILING PROCEDURES

References

- A. Review of Australian satellite filing procedures – Consultation paper
- B. Australian satellite filing procedures – Draft for consultation

1. Defence appreciates the opportunity to provide a response to the Review of Australian satellite filing procedures – consultation paper provided in Reference A. Defence understands that the filing procedures were last updated in 2011, and are in need of review in order to better support Australian satellite operators. Defence agrees that it is timely to review the filing procedures, taking account of international arrangements, the ACMA's approach to satellite filing, the relationship between satellite filing and licensing, large NGSO satellite systems and emerging issues in satellite coordination identified by the ITU.

2. As an Australian Government satellite operator, Defence has significant experience in managing satellite filings and has a good understanding of the ongoing obligations of satellite operators. Defence is a satellite operator who has experience in submitting new satellite filings as well as coordinating existing satellite filings with new satellite filings of Australian or foreign satellite operators. Defence would like to see the updated filing procedures facilitate confidence for satellite operators and a process that is easy for new entrants.

3. Australian Government has acknowledged the importance to Defence of space by recognising space as an operational and warfighting domain, alongside the existing domains of maritime, land, air and cyber. It is vital for Australia to retain a capability edge in space and ensure Australia's freedom to access space capabilities and protect Australia's national interests. Government is investing billions in coming decades to improve Defence's resilience and provide assured access to space, enable situational awareness, deliver real-time communications, positioning, navigation and timing information. It is important that the satellite filing procedures do not hinder Defence and other Australian satellite operators in coordinating satellite networks, bringing into use satellites and licensing of earth stations.

4. Defence has no significant concerns on the changes proposed to the satellite filing procedures (Reference B) to improve the clarity and readability of the procedures and to make the procedures more reflective of the current regulatory environment and industry practices. Some comments are provided on policy and regulatory matters raised in the consultation paper for possible future changes to ACMA's approach to satellite filing and to the licensing of space-based communication systems. Defence has specific views on the

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process that an applicant must follow for coordination with existing Australian satellite systems (refer to section 3.4 of the Annex).

5. The Defence comments against relevant sections of the consultation paper (Reference A) are shown in the Annex. Specific comments on the draft satellite filing procedures (Reference B) are in the Miscellaneous section of the Annex.

6. My point of contact is

[REDACTED]

Yours sincerely

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Annex: Comments on the ACMA consultation paper – Review of Australian satellite filing procedures

Section	Comments
2 Revisions to application and assessment process	See below specific comments on Section 2 of the consultation paper.
2.1 When is an application required	<p>Defence agrees with the revised requirements for when an application is required, that is for a new ITU satellite filing, modification to an existing ITU satellite filing, transfer use of an existing ITU satellite filing, and change in ownership of a satellite operator with access to an ITU satellite filing.</p> <p>In a situation where an owner of a filing wishes to cease an Australian filing, there should be an opportunity, if in the best interests of Australia, for the ACMA to transfer the filing to another Australian satellite operator.</p>
2.2 Short-duration missions	Defence supports an expedited approvals process for new satellite operators in the new category of “short duration mission” for satellite systems that have rapid development and deployment timelines. It is in Australia’s interests that these filings be submitted through Australia, rather than an Australian satellite operator submitting the filing through another Administration because of perceived regulatory burdens.
2.3 Filing conditions	Defence supports the inclusion of the commonly included conditions in the satellite filing procedures.
3 Revisions to assessment criteria	See below specific comments on Section 3 of the consultation paper.
3.1 Australian jurisdiction	<p>Defence supports the additional requirement on applicants that are subsidiaries of a foreign company or controlled by a foreign entity, to provide information showing how the satellite operator functions independently from the foreign entity and how confidential Australian satellite information about other Australian satellite operators is restricted to the applicant.</p> <p>This requirement is important because the ACMA approach to satellite filing requires operators of existing Australian-filed satellite systems to consider coordination issues before a new Australian filing is approved by the ACMA and submitted to the ITU. However, Defence questions whether a letter from the applicant stating compliance on restricting confidential Australian satellite information is sufficient. Further, as explained in Section 3.4 (Coordination with Australian satellite systems) below, Defence believes there is no need for operators of existing Australian-filed satellite systems to consider coordination of new Australian filings before satellite systems are filed with the ITU. In this case there would be no need for this additional requirement.</p> <p>Defence supports the inclusion of text to clarify that universities established under state, territory or federal legislation meet the Australian jurisdiction requirements.</p>
3.2 Operational Control	<p>Defence agrees that this additional provision is necessary for inclusion in the assessment requirements for new satellite filings.</p> <p>Defence has often provided filing support for coalition satellite programs, where Defence receives or delivers satellite services within or from</p>

	<p>Australia. In such cases the requirement for satellite operators to maintain “operational control” from within Australia may not be met by Defence, although Defence is able to meet the additional provision requirement (cessation of emissions) directly through the coalition satellite program.</p> <p>Defence believes that the wording of this section may mislead new entrants when considering filing support for hosted payload or leased satellite systems.</p> <p>Revised wording that identifies the operator as having the ability to instruct the spacecraft to cease harmful emissions may be more appropriate, as this may align better to ACMA’s intended end-state (that operators can maintain system compliance to the Radio Regulations).</p>
3.3 Australian benefit	<p>Defence supports replacing ‘substantive’ with ‘substantial’ in regards Australian benefit derived from the use of the radiofrequency spectrum.</p> <p>Defence supports the specific requirement that Australia must be included in the service area of the applicant’s satellite system. However, Defence notes that some operators may wish to submit modifications to existing filings, or add filings to complement existing filings, which exclusively add service areas outside Australia. The ACMA should ensure that there is sufficient flexibility to consider situations where satellite operators wish to submit filings outside these procedures.</p> <p>Defence supports the clarification on ACMA’s assessment against the criterion of applicants with existing satellite filings. Past performance in compliance with the filing procedures and the Australian benefit provided by existing filings are important considerations.</p>
3.4 Coordination with Australian satellite systems	<p>Defence supports the amended criterion that requires domestic satellite coordination only be <i>initiated</i> when an application is submitted to the ACMA. In fact, we were of the view that this was the process currently being followed by the ACMA. Defence believes it is reasonable that at the time of the application submission only acknowledgement from both operators that development of an agreement has commenced, with the intention to complete the agreement before the launch of the space station or as otherwise agreed between the satellite operators, is necessary. Defence agrees that this criterion should help new satellite operators who may not have the resources to undertake early coordination.</p> <p>While Defence (as an incumbent operator) welcomes most mechanisms to protect existing satellite operations from interference by new entrants, Defence believes that the procedures described in section 3.6 of the Australian satellite filing procedures (draft for consultation) could be significantly revised to reduce regulatory burden on new operators, and ensure that the satellite filing procedures maintain a healthy and competitive regulatory environment.</p> <p>Fundamentally, Defence has several issues with the intra-operator coordination assessment process (i.e. “pre-coordination”). Defence’s greatest concerns are:</p> <ul style="list-style-type: none"> • The need to demonstrate no interference risk well before a coordination agreement is finalised (refer to first dot point of the 4th para of section 3.6.1 of the Australian satellite filing procedures (draft for consultation)) • The timeliness of receipt by the ITU • The management of confidential information on future satellite plans

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	<ul style="list-style-type: none">• The risk of anti-competitive business practices by incumbent operators• Associated workload for incumbent operators <p>Defence believes that the process described in section 3.6.1 of the Australian satellite filing procedures (draft for consultation), in particular the need to demonstrate no interference risk before a coordination agreement is finalised, can be burdensome for both new operators and existing systems. We also note that this process has perverse incentives, whereby existing (competing) operators (particularly in the commercial sector) are incentivised to ‘stall’ new filing consultations, either because they represent work-load that does not benefit their business, or, less often, because the delays in filing will reduce the filing utility for the competitor network.</p> <p>In addition to this risk, competing operators are exposed to commercial-in-confidence information from other operators, before the filing is in-receipt (i.e. public). While ACMA has attempted to limit the exposure of this information by limiting Australian filings to wholly (or substantially) Australian operators, we note there is nothing preventing Australian operators counter-filing through other Administrations.</p> <p>Pre-coordination discussions are also burdensome to current operators. As none of the other filing assessments have been completed (e.g. financial, ARSP conformity). Defence has found that a significant number of pre-coordination requests have included components that are inconsistent with planning arrangements, or – more concerning for Defence – bands that may be very difficult to coordinate (e.g. AUS100 bands). ACMA's filing processes can perform a significant portion of the ‘heavy lifting’ to enable coordination focusses on only implementable, e.g. ARSP compliant, satellite systems.</p> <p>Defence suggests that the ACMA consider the option of submitting filings to the ITU without pre-coordination, provided the applicant provides ACMA with their own assessment of which domestic operators may be affected, the application meets ACMA requirements and the applicant and current operators commit to develop coordination agreements in the future. In lieu of pre-coordination incumbent operators can be consulted for initial assessment of feasibility. ACMA should provide a timeframe for which a response should be returned and if the assessment is not considered feasible then reasons need to be provided.</p> <p>To ensure adequate progress is made to coordinate domestically, ACMA should require that initial coordination discussions have commenced within a nominal timeframe (e.g. 12 months) from the date of receipt, or be subject to the procedures described in section 4.9 of the Australian satellite filing procedures (draft for consultation).</p> <p>Ultimately, Defence notes that coordination is already a requirement of bringing-into-use, and, more often than not, licensing of services in Australia mitigates the risks associated with removal of the pre-coordination process.</p>
3.5 Requirements for ‘planned band’ applications	No comment.
3.6 Requirement for amateur satellite bands	No comment.

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4 Revisions to ongoing management of satellite systems	See below specific comments on Section 4 of the consultation paper.
4.1 ITU satellite coordination process	Defence agrees that it is a valid coordination strategy to not initiate objections to new filings in frequency bands that are not subject to coordination procedures under Section II of Article 9 of the ITU Radio Regulations (ITU RR). In this case the operator accepts the risk of interference from a newly published foreign satellite system and will not cause interference to those systems. Accordingly, Defence supports the proposal that providing written comments on satellite filings in bands not subject to coordination procedures under ITU RR Section II of Article 9 be optional.
4.2 Information on IFIC cost recovery charges	No comment.
4.3 Management of satellite systems through milestones	Defence supports the schedule of milestones for ensuring ITU obligations are met being published separately as a guide for satellite operators on best practice for bringing a satellite system into use rather than a mandatory requirement.
5 Change in ownership	<p>As noted in Section 2.1 (When is an application required) above, Defence agrees with the revised requirements for a change in ownership of a satellite operator with access to an ITU satellite filing.</p> <p>Defence agrees that the new owner needs to apply to the ACMA for re-assessment of whether it is in Australia's interest to support the change in right of access to the filing.</p>
6 Drivers of future change	See below specific comments on Section 6 of the consultation paper.
6.1 International arrangements	<p>Defence notes that in Australia licensing and filing are two separate processes and that the ACMA agreeing to file does not in any way imply that the ACMA will issue radiocommunications licences providing authorisation for the satellite systems.</p> <p>The consultation paper states that, "Depending on the specifics of an application, a matter that might be relevant is the impact on existing Australian satellite filings." Further, the paper states, "For foreign satellite operators (operators with satellite systems filed through other administrations) that have an associated radiocommunications licence in Australia, the ACMA's normal approach is to rely on the ITU satellite coordination process to manage interference. The difficulties Defence sees with this process is that an Australian satellite operator must get agreement with other Australian satellite operators before the ACMA will consider licensing requests, but foreign satellite operators don't need to get similar agreements for licensing. All that a foreign satellite operator needs for licensing is a letter of assurance that ITU coordination is progressing.</p> <p>Once a licence is issued to a foreign satellite operator it effectively has priority over newer licences, even if the filing has not been coordinated with the Australian satellite operator. Perhaps the ACMA should require that foreign systems complete coordination with Australian filings – regardless of the Australian filing licensing status before licensing?</p>

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6.2 ACMA approach to satellite filing	Defence encourages the ACMA to review the licensing arrangements for satellite systems.
6.3 Relationship between filing and licensing	Defence agrees that satellite filings and licensing are closely related. The satellite filing procedures maintain ACMA's role in domestic licensing of foreign-filed satellite systems, relying on the ITU satellite coordination process to manage interference. Defence believes that if a foreign-filed satellite operator submits licence applications to the ACMA, then the impact of the domestic licensing on Australian satellite filings should be considered. It may be in Australia's best interests for the ACMA to intervene in the domestic regulatory licensing process of foreign-filed satellite networks to ensure adequate earth station locations are available for Australian satellite operators.
6.4 Large NGSO satellite networks	Defence believes the impact of large non-geostationary orbit (NGSO) satellite systems and emerging satellite coordination matters has relevance to both the radiocommunications licensing and satellite filing procedures. Large NGSO systems will likely result in a contested spectrum environment placing pressure on established spectrum frameworks. Defence notes that this issue is being monitored by the ITU Radio Regulations Board. The satellite filing procedures will need to address this matter in the future.
6.5 Critical infrastructure	Defence support the ACMA approach of monitoring the developments in this regard. When satellite communication is considered critical infrastructure, inevitably the key enabler, spectrum access, shall be treated accordingly.
6.6 ITU cost recovery	Defence is of the firm view that the ACMA should take advantage of the ITU offer to national administrations of one filing per calendar year free of charge for filings of Australian Government satellite operators. Defence appreciates that financial viability of an applicant is part of the assessment process, but believes this criterion is not relevant to Australian Government operators who are supported by government. Taking advantage of the free filings would benefit government and ultimately the tax payer and which is routine practice by almost all other space faring nations as per https://www.itu.int/net/ITU-R/space/costrec/free_ent.asp .
6.7 ITU Radio Regulations Board (RRB)	Defence notes that the ITU Radio Regulations Board draft report to WRC-23 has recommendations that may have relevance to licensing and satellite filing procedures. Depending on how the recommendations are treated at WRC-23 the satellite filing procedures may need to be updated in the future.
Miscellaneous comments	<p>Section 4 Procedures for approved applicants – Australian satellite filing procedures (draft for consultation) (Reference B)</p> <p>4.2 Harmful Interference</p> <p>Defence agrees that section 4.2 of the Australian satellite filing procedures (draft for consultation) is necessary in the filing procedures. However, Defence notes that it may not be in a position to comply with the requirements of this section, due to operational or national security reasons.</p> <p>Accordingly, Defence believes that it may be appropriate to identify (via footnote) that Government operators may not be compelled to resolve interference, where it relates to networks under which Article 48 has been invoked, however, Government operators should attempt to resolve interference to the greatest extent possible.</p>

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	<p>Defence also note that there is potential for Australian operators to receive interference from other domestic or foreign operators. We believe that it would be appropriate for the ACMA to provide clear guidance on who they expect to resolve such cases, and what supporting evidence may be required by operators in order to provide interference reports to other administrations or the BR or RRB (if necessary).</p> <p>4.6 Notification for recording in the MIFR (4.6.3 Initial Notification Data and 4.6.5 Application of 11.32A and 11.33)</p> <p>Defence supports Sections 4.6 of the Australian satellite filing procedures (draft for consultation) in the satellite filing procedures, however, Defence believes that the current structure of the section does not align with the notification processes, and may not be conducive to best practice for operators. Specifically, Defence believes this section should be re-drafted to include:</p> <ul style="list-style-type: none">• Clear advice on the timeframes required by the ACMA to process submission data.• Information requirements to accompany submissions• An indicative timeline on the submission of notification data to the BR. <p>4.6.4 Suspension of Services</p> <p>Defence supports inclusion of provisions relating to the suspension of satellite networks. However, Defence believes that the proposed procedures do not induce a sufficient duty onto operators to ensure that filings (which are a sovereign asset, filed on behalf of the administration) retain utility for the administration.</p> <p>Section 5 Change of access to an ITU satellite filing – Australian satellite filing procedures (draft for consultation) (Reference B)</p> <p>5.3 Filing relinquishment</p> <p>Defence proposes that when a operator suspends a filing (under 4.6.4 of the Australian satellite filing procedures – draft for consultation) it must provide the ACMA with information on whether it has real plans to bring-back-into-use the filing. If there are no plans, the ACMA should consider enabling the transfer of the filing to another (suitable) operator, or held by the ACMA on behalf of the Australian community until its natural expiry date.</p>
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