Expiring spectrum licences

Finalised framework and response to submissions

December 2023

Canberra

Red Building
Benjamin Offices
Chan Street
Belconnen ACT

PO Box 78
Belconnen ACT 2616

T +61 2 6219 5555
F +61 2 6219 5353

Melbourne

Level 32
Melbourne Central Tower
360 Elizabeth Street
Melbourne VIC

PO Box 13112
Law Courts
Melbourne VIC 8010

T +61 3 9963 6800
F +61 3 9963 6899

Sydney

Level 5
The Bay Centre
65 Pirrama Road
Pyrmont NSW

PO Box Q500
Queen Victoria Building
NSW 1230

T +61 2 9334 7700 or 1800 226 667
F +61 2 9334 7799

Copyright notice



<https://creativecommons.org/licenses/by/4.0/>

With the exception of coats of arms, logos, emblems, images, other third-party material or devices protected by a trademark, this content is made available under the terms of the Creative Commons Attribution 4.0 International (CC BY 4.0) licence.

We request attribution as © Commonwealth of Australia (Australian Communications and Media Authority) 2023.

All other rights are reserved.

The Australian Communications and Media Authority has undertaken reasonable enquiries to identify material owned by third parties and secure permission for its reproduction. Permission may need to be obtained from third parties to re-use their material.

Written enquiries may be sent to:

Manager, Editorial Services
PO Box 13112
Law Courts
Melbourne VIC 8010
Email: info@acma.gov.au

[Executive summary 1](#_Toc153795056)

[Background 3](#_Toc153795057)

[Spectrum licences 3](#_Toc153795058)

[Expiration of spectrum licences 3](#_Toc153795059)

[ESL process 6](#_Toc153795060)

[Design objectives 6](#_Toc153795061)

[Finalised ESL process 7](#_Toc153795062)

[Stage 2: information gathering, examining use, views on frequency bands, alternative licensing conditions, stakeholder feedback on issues around resilience and temporary disaster responses (Q1 2024) 8](#_Toc153795063)

[Stage 3: preliminary views (Q4 2024) 14](#_Toc153795064)

[Stage 4: preferred views, renewal application and decision-making (commencing 2025) 14](#_Toc153795065)

[Next steps 16](#_Toc153795066)

[Public interest: a policy and decision-making framework 17](#_Toc153795067)

[A policy and decision-making framework underpinned by public interest criteria 17](#_Toc153795068)

[Public interest criteria 19](#_Toc153795069)

[Appendix A: Parts of the spectrum and geographic areas covered by ESLs and renewal timeframes 29](#_Toc153795070)

[Appendix B: Response to submissions 31](#_Toc153795071)

[ESL process 32](#_Toc153795072)

[ESL outcomes 32](#_Toc153795073)

[Public interest criteria 34](#_Toc153795074)

[Pricing 36](#_Toc153795075)

[Examining use and information gathering 37](#_Toc153795076)

[Alternative demand 38](#_Toc153795077)

[Band-specific issues 40](#_Toc153795078)

Executive summary

In our [*Five-year spectrum outlook 2023–28*](https://www.acma.gov.au/five-year-spectrum-outlook)(FYSO 2023–28), we identified progressing activities relating to spectrum licences expiring between 2028 and 2032 – in this paper referred to as expiring spectrum licences (ESLs) – as a key priority. Between June 2028 and October 2032, many spectrum licences will expire. These ESLs cover a range of bands,[[1]](#footnote-2) and are used to deliver wireless broadband, rail safety communications and certain electronic news gathering for broadcasting services.

The ESLs, sometimes used in conjunction with other radiocommunications licences, are communication enablers of our economic, digital, and social lives. The spectrum to which they grant access is a scarce resource, and whether an ESL should be renewed is an important issue for licensees, prospective alternative users of the spectrum, the ACMA, for the broader communications sector and portfolio, and for all Australians who are end-users of the services provided through use of the relevant spectrum.

In some cases, licences have been previously renewed for 15 years. Those licences were renewed under a process governed by the *Radiocommunications Act 1992* (the Act) as in force at that time, broadly involving a public interest consideration administered by the then minister, with the ACMA implementing decisions to renew, and complying with, the minster’s directions regarding pricing. As a consequence of changes made to the Act,[[2]](#footnote-3) which commenced in 2021, the ACMA is now primarily responsible for making decisions on applications for renewal of ESLs, including whether to renew, and the term, conditions and pricing for renewed licences.

In responses to the draft FYSO 2023-28 consultation, stakeholders expressed strong support for our prioritisation of ESL work. In starting work 5 years before the expiration of the first tranche of ESLs, our aim is to have the process in place before the 2-year period during which incumbents are eligible to apply for renewal – June 2026, for the 850 MHz and 1800 MHz band ESLs.

Over May to August 2023, we [consulted on our proposed approach to ESLs](https://www.acma.gov.au/consultations/2023-05/proposed-approach-expiring-spectrum-licences) (the stage 1 consultation). In addition to outlining the legislative provisions applicable to the previous and current ESL processes, we sought views on a proposed 4-stage ESL process, a public interest criteria framework, and high-level pricing issues. Views were also sought on issues relating to how we might consider a licensee’s use of spectrum in the ESL context, and more broadly when we are considering renewal of apparatus licences.

According to the proposed process, stage 2 – commencing in Q1 2024 – involves releasing a response to submissions, confirming the ESL process, and an information gathering exercise. One view expressed by stakeholders in response to the stage 1 consultation was that bringing forward parts of the process could provide stakeholders with earlier confidence about the ESL process and its outcomes, to support their business and other strategic planning.

This paper confirms the ESL process and the role of our public interest framework and presents our response to submissions. To support our stakeholders, and to bring a sharper focus to certain elements of the process, we have brought forward parts of stage 2. We also clarify the objectives and nature of the stage 2 information gathering exercise, and describe how we will provide stakeholders with additional clarity and confidence about our consideration of the uses for the spectrum covered by ESLs.[[3]](#footnote-4)

Release of this paper coincides with the Minister for Communications writing to the ACMA regarding ESLs. In the letter, published on our website, the minister expresses support for the approach we are taking to ESL and identifies which of the priorities in the [December 2022 Statement of Expectations](https://www.infrastructure.gov.au/sites/default/files/documents/acma-statement-of-expectations-2022.pdf) (SoE) are relevant to our public interest criteria. The minister also signals an intent to consult on a Ministerial Policy Statement (MPS)[[4]](#footnote-5) to seek views on specifying the policy priorities set out the letter. The minister also asks that the ACMA explore and advise on the merits of alternative licensing conditions, and that we seek feedback from stakeholders on any issues around resilience and temporary disaster responses that arise in an ESL context.

In this paper, we identify how we intend to integrate the relevant priorities specified in the SoE, and those proposed to be specified in the MPS, into our policy and decision-making framework. Noting broad support from stakeholders for our proposed public interest criteria, and the minister’s support for them, we affirm and expand on the criteria, and provide guidance for stakeholders on how to use the criteria when engaging with us over the ESL process. We also outline how we intend to address the minister’s request that we consider alternative licensing conditions, and seek feedback from stakeholders on issues relating to resilience and temporary disaster responses, as part of the ESL process.

# Background

## Spectrum licences

A spectrum licence authorises a person to operate a range of radiocommunications devices within the frequency ranges and geographic areas specified in the licence, subject to the licence conditions. Many spectrum licences relate to large geographic areas (including some Australia-wide licences) and large bandwidths of high-demand spectrum.

Before 2021, spectrum licences could be issued for up to 15 years, but may now be issued for up to 20 years. We have typically allocated spectrum licences via auction processes, although many current spectrum licences were most recently re‑issued between 2013 and 2017 as part of the previous ESL process.[[5]](#footnote-6)

Spectrum licences are tradable, in part or in full, enabling both disaggregation and aggregation of spectrum spaces. The framework is intended to facilitate market-based opportunities, such as trading and third-party authorisations, that can maximise efficiency and the value derived from the spectrum.

Spectrum licences are subject to technology-flexible frameworks, which may be optimised for a particular technology or use. They have enabled multiple generations of technology to be deployed under a single licence, and allowed licensees to repurpose the spectrum for other uses. This means licensees can operate any type of radiocommunications device for any purpose, provided they comply with the technical framework for that band (and any other applicable regulations).

The Act specifies the contents of spectrum licences, including the relevant conditions and statements that must be or may be included in a licence. We often have discretion in designing the specific terms of those conditions and statements.

Further [information about spectrum licences and our approaches to allocations and licensing](https://www.acma.gov.au/publications/2021-03/rules/our-approach-radcomms-licensing-and-allocation) can be found on our website.

## Expiration of spectrum licences

Licensees may apply to the ACMA for their spectrum licence to be renewed. The Act provides for renewal applications to be made in a manner and form approved by the ACMA, and accompanied by specified information and documents.

Spectrum licences issued before and after the 2021 reforms to the Act are subject to different processes. For the ESLs that are the subject of this paper, licensees may only apply for renewal 2 years before expiry, and up until the day the licence is due to expire.[[6]](#footnote-7) Renewal timeframes are set out in Appendix A.

Upon receiving an application for renewal, we have 6 months to decide whether to renew the licence and, if the licence is to be renewed, the term of the licence, and the statements and conditions to be included in the licence.[[7]](#footnote-8)

The [Explanatory Memorandum](https://www.legislation.gov.au/Details/C2020B00106/Explanatory%20Memorandum/Text) related to the 2021 reforms notes that the ACMA has discretion to consider a wide range of matters, including the long-term public interest, the potential impact on competition and downstream markets, and the planned future use of the spectrum. We must take into account all matters we consider relevant to the decision, including any effect on radiocommunications that devices operated under the renewed licence would have.[[8]](#footnote-9) If we intend to renew a licence for 10 years or longer, we must also be satisfied that it is in the public interest to do so.[[9]](#footnote-10)

### Outcomes for ESLs

If we receive a renewal application for a particular licence, section 77C of the Act can provide for 3 possible outcomes.

For renewal and partial renewal, spectrum access charges will be payable by the licensee.

#### Renewal

Each ESL has ‘spectrum access conditions’ – that is, core conditions specified at paragraphs 66(1)(a) and (c) of the Act, which set out the licensed frequency bands and geographic areas. The licensee can only operate radiocommunications devices within these bands and areas.

‘Renewal’ refers to renewal of an ESL without varying the spectrum access conditions. If the ACMA renews an ESL, the new licence authorises the use of the same parts of the spectrum and in the same geographic areas as the ESL. Other conditions contained in the renewed licence may be different.

Renewal of one ESL in a band does not necessarily mean that all ESLs within the band, or held by the same licensee, will be renewed: licences held by other incumbents in that same band, or by that licensee, may be partially renewed or refused.

#### Partial renewal

We use this term to describe an outcome whereby an ESL is renewed with substantive changes to the spectrum access conditions – that is, the frequency bands and geographic area included in the licence.[[10]](#footnote-11) As a consequence of changes to spectrum access conditions, some or all of the residual spectrum previously included in the ESL may become available for replanning for other uses or allocated for other uses or users.

#### Refusal

We may refuse to renew an ESL.[[11]](#footnote-12) Consequently, there are a range of potential pathways for how the spectrum previously covered by the ESL could be dealt with, including being allocated for new spectrum licences, or replanned or re-allocated under apparatus or class-licensing frameworks.

# ESL process

We have designed an ESL process, and an accompanying policy and decision-making framework, that will facilitate making renewal applications by incumbent licensees, and our consideration of those applications.

The process encompasses:

consultation and finalisation of the overall process design (stage 1 in 2023)

development of preliminary views on the bands covered by the ESLs (stages 2 and 3 over 2024)

release of preferred views (2025), and then a sustained period commencing June 2026 and nominally concluding in October 2032 during which renewal applications are made and considered, and decisions are made (stage 4).

At December 2023, there were 69 ESLs, including the 850 MHz downshift licence and spectrum licences in the 3.4 GHz band that were recently allocated, and which have expiration dates that align with the expiration dates in the 3.4 GHz ESLs. Appendix A sets out the parts of the spectrum and geographic areas covered by ESLs and renewal timeframes on a band-by-band basis.

In the following chapters, we describe the finalised ESL process and the policy and decision-making framework (based on public interest criteria) and clarify the objectives and substance of stage 2, which commences in Q1 2024. We identify where the process has been modified in response to submissions to our stage 1 consultation. A more detailed summary and response to submissions is at Appendix B.

## Design objectives

In designing and implementing the ESL process, we will:

provide clarity and certainty of process (in terms of sequencing of outputs and outcomes)

deliver a policy and decision-making framework underpinned by public interest criteria that is developed transparently and iteratively, and which, over time, provides progressively higher levels of confidence for all stakeholders (and not just incumbents)

administer the process provided for by the Act; that is, to consider each application for renewal on its merits, informed by the policy and decision-making framework as appropriate.

Many stakeholders conveyed strong views about the benefits of early certainty of outcomes for ESLs. Some stakeholders submitted that the ESL process should provide them with certainty of licence renewal and, in some cases, that the process should provide for a presumption of renewal.

Under the Act, there is no presumption of renewal or any particular outcome for ESLs.[[12]](#footnote-13) We want to clarify that before the renewal application period for each ESL, we cannot provide any stakeholder – be they an incumbent licensee, prospective licensee, or another interested party – with certainty of an outcome for one or more ESLs. A decision by the ACMA on whether to renew or refuse to renew an ESL can only be made in response to an application, and an application can only be made 2 years before the licence expires.

Noting the framework provided for by the Act, we describe the ESL process as providing confidence for stakeholders, in relation to the ACMA’s views and outcomes. Our process enables views to be developed in a policy context that assists incumbents in applying for renewal, prospective licensees and other interested stakeholders in making representations, and the ACMA as decision maker.

Where we can provide certainty, particularly in relation to the process itself, and the timing of outputs and outcomes, we will do so as early as practicable.

## Finalised ESL process

Many stakeholders offered views about the sequencing and outputs for the ESL process, and the outcomes that could be delivered. We respond to those views below, but, overall, there was strong support for the 4-stage process, and for our proposed holistic, iterative and consultative approach.

Noting views expressed in submissions about the benefits of earlier certainty, we have made 2 changes to the early parts of the ESL process.

Stage 2 of the initially proposed ESL process involved publication, in Q1 2024, of a response to submissions, and confirmation of the overall ESL process and the framework based on the proposed public interest criteria. We also proposed to undertake an exercise intended to gather a range of information from incumbent licensees and other stakeholders.

To narrow the focus of stage 2, we have brought forward the stage 2 outputs, as described in this paper.

In this paper, we affirm the public interest criteria and provide stakeholders with greater detail on each criterion. Noting that our decision-making is based on the public interest, we provide additional guidance for stakeholders on how they should use the criteria to frame their engagement with us.

We also confirm the scope of stage 2. This means that stakeholders can plan how they intended to respond to stage 2 ahead of our requests for information.

Stage 2 will now include a modified information gathering exercise. It will be accompanied by views about the uses for the bands covered by ESLs, and also set out our considered view of the alternative licensing conditions identified by the minister in her letter. We will invite submissions on our views on both of these matters. As requested by the minister, we will also seek feedback from stakeholders on any issues around resilience and temporary disaster responses that arise in the ESL context. To support stakeholders in preparing for stage 2, this paper provides more information about that stage, and how it will inform stages 3 and 4.

Looking ahead, we will bring forward parts of the process if feasible, and communicate earlier views to provide greater levels of confidence, if appropriate.

We are not proposing substantive changes to the scope of stages 3 or 4.

ESL process

## Stage 2: information gathering, examining use, views on frequency bands, alternative licensing conditions, stakeholder feedback on issues around resilience and temporary disaster responses (Q1 2024)

Stage 2 will consist of 3 components: an information-gathering exercise, views on uses for frequency bands, and views on alternative licensing conditions.

### Information gathering exercise

In our stage 1 consultation, we noted that a framework for examining use could assist us to manage the spectrum consistent with the object of that Act, and that use of spectrum covered by ESLs would be a relevant consideration for the ESL process. We also indicated that we were considering requesting information about incumbent licensees’ use of the spectrum covered by ESLs. We indicated that information would likely to be requested and provided on a voluntary basis, potentially including:

service coverage mapping

current and planned use of spectrum utilisation, including both spectral and geographic considerations

investment in use of the spectrum, as well as planned investment and deployments

how the spectrum is used for different uses and use cases

details of subscribers and end-users.

In relation to the role that examination of use could play in the ESL process, there was strong support for an information gathering exercise from a range of stakeholders, including incumbent licensees, prospective licensees, and other interested parties. The main themes that emerged from submissions were the need for greater clarity on how an information gathering exercise would inform ESL outcomes, how requests for information could be framed to reflect different business models and deployment scenarios, and the potential for the exercise to be resource-intensive for incumbents, particularly if incumbents were asked to provide information (such as coverage maps) that they provide separately to the Australian Competition and Consumer Commission (ACCC).

We have considered submissions and further considered the role of the information-gathering exercise.

We confirm that information gathering will be principally directed towards informing our development of preliminary and, subsequently, preferred, views about the future arrangements for the spectrum covered by ESLs.

#### Information we will, and will not, seek to gather

In considering submissions, and finalising the ESL process, we have refined the scope of the information-gathering exercise.

We will seek to gather information relating to how incumbents currently use, and plan to use, the relevant spectrum. This includes plans to use the spectrum, should licences be renewed.

We will seek to gather information and evidence from prospective and alternative users of the spectrum, in order to understand their proposed use of spectrum covered by ESLs.

We intend to examine information about how incumbents are using their spectrum in certain geographic areas. We agree with stakeholders that, for ESLs authorising electronic news gathering and rail communications, coverage maps may not be as practical or useful as coverage maps for wireless broadband services. For other ESLs that facilitate wireless broadband, we note that submitters identified that information relating to coverage and spectrum utilisation is prepared for other purposes, such as the Audit of telecommunications infrastructure assets record keeping rules (ACCC Record Keeping Rules). Information provided to the ACCC (most of which is subsequently made publicly available) would be appropriate to use to develop preliminary views, and this would lessen the burden on incumbents. If information is provided by an incumbent to the ACCC, but is not typically published, we will work with the incumbent and the ACCC on an agreed approach to access relevant information.

Submissions also provided comments about the utility of coverage maps to assess spectrum utilisation, noting that coverage maps alone may not reflect other dimensions of spectrum utilisation, such as reserving spectrum for future capacity and interference management. We note these concerns and clarify that coverage maps are useful as a proxy for examining use, and that a mixture of other information is necessary to inform views on how the spectrum is being used.

In our consultation paper, we also proposed that we could consider use across all spectrum licences, including those outside of the ESL process, to gain a more complete picture of how the spectrum is being used, but also the potential impacts of any changes to current spectrum licensing arrangements. It is likely that 850/900 MHz licences commencing 1 July 2024, and other licences in the 3.4 GHz band not yet in force, will be relevant to our preliminary views, and we will frame our questions and requests for information accordingly. We note that, with these licences in particular, we would focus on future considerations of how the licences are likely to be used, rather than how they have been used. Incumbents will be asked to consider whether information about additional spectrum licences (for example, those in 26 GHz and 3.7 GHz) or services authorised by apparatus licences is relevant in their responses.

We received several submissions identifying complexities in providing detailed plans about the future use of the spectrum, particularly beyond the term of ESLs. This was because planning based on a range of economic, environmental and political factors becomes more difficult to accurately forecast into the future, including any uncertainty around ESL outcomes. We recognise that information provided about future planning may be limited to broad strategic intentions. We need to be satisfied that the spectrum available for renewal will be used efficiently, so we consider it relevant to seek information about intended future use of that spectrum.

#### Indicative nature of questions

We anticipate 2 separate sets of questions to be put to stakeholders; one relevant to incumbent licensees, and one to prospective licensees or alternative users of the spectrum. These will include a mix of broad and specific questions about how the spectrum is and/or may be used to support the public interest.

We will release a paper posing questions to incumbents and prospective users of the spectrum covered by ESLs. The paper will also provide additional clarifying material and how we intend to use the information collected.

Incumbent licensees can expect questions, and requests for information, relating to:

how each licensed band (which will include ESLs and may include other licences) is used, and in which areas, and how this may change if the relevant licences are renewed

how they have invested in the use of the spectrum, and how they plan to invest in the use of the spectrum in the future (noting that such information may be limited to broad strategic intentions)

how their use of the spectrum serves the public interest, and would continue to serve the public interest in the future, with reference to the public interest criteria

current issues affecting relevant bands that may act as a barrier to maximising the public benefit derived from the use of the relevant spectrum, and initial views on potential solutions.

Prospective or alternative users of the relevant spectrum can expect questions, and requests for information, relating to:

bands and geographic areas to which they are interested in obtaining access

how they propose to use the spectrum if a licence is issued

how their use or use case would maximise the public benefit derived from the spectrum, with reference to the public interest criteria

whether they have sought access to the spectrum through other means (such as participating in allocation exercises, third party authorisations or trading) and whether these attempts were successful, partially successful or unsuccessful.

#### Preference for non-commercial-in-confidence information

There are statutory mechanisms available that would require persons to provide us with specified information and documents. Information provided to us on that basis would not normally be disclosed in public without the consent of those involved.

For the information gathering exercise, we will request information on a voluntary basis. The requested information is intended to be part of a transparent and iterative process, and information to which we may refer publicly assists us making transparent decisions, which benefits stakeholders.

We will ask that commercial-in-confidence information is kept to a necessary minimum, but noting that some kinds of information requested, such as information about future investment or plans to use the spectrum, may be commercially sensitive.

#### How we will use the information

The information we collect as part of stage 2 will inform the development of preliminary views at stage 3. We anticipate that a preliminary view will convey our dispositions on:

optimal spectrum uses for each band over the mid- to long-term

optimal licensing arrangements for that band; that is, the licence type or types that facilitate those uses, or other policy objectives, and any significant conditions to be contained in a licence (for example, a condition that affects the uses to which spectrum may be put under the licence)

spectrum value and potential payment terms, if licences in the band are renewed

whether renewal, partial renewal or re-allocation of licences in each band, or re-allocation of the spectrum covered by ESLs in each band, serves the long-term public interest.

We will consult on these preliminary views, consider submissions and, in stage 4, release our response to submissions and our preferred views, which will round out the policy and decision-making framework for our consideration of individual renewal applications.

#### Requests for further information

The information-gathering exercise will be framed in terms of bands covered by ESLs. It may be necessary for us to request specific information about particular ESLs over the course of the ESL process before the renewal application windows, and in relation to making a decision on an application for renewal, where more granular information may be required.

For information requested before the 2-year application period, we may use our information-gathering powers at section 284S of the Act, or make further voluntary requests for information. The power under section 284S broadly provides that we may give a written notice to a person, requiring them to provide us with, among other things, information or documents about the operation, or proposed operation, of radiocommunications devices used under spectrum licences, or to be used under a licence that may be issued in the future, including by way of renewal.[[13]](#footnote-14)

For information required to make decisions on applications, section 77A provides us with the ability to require applicants to provide specified information and/or documents in relation to a renewal application. In particular, we may make a legislative instrument under 77A(4) that specifies the information and documents that must be provided when making an application. We will consult with stakeholders on that instrument to test the scope of the request, and to ensure that applicants have time to prepare the specific information or documents.

Section 77B also allows us to give to an applicant a written notice requiring them to provide further information in connection with their application, which may be required after an application has been made to the ACMA. We must make a decision on renewal within 6 months of receiving the requested additional information.

### Views about spectrum use by band

Having considered stakeholder submissions, we have decided to use stage 2 to provide additional context and confidence to stakeholders about our views on the uses for each of the bands covered by ESLs.

As part of stage 2, we will now also release, and seek submissions on, views on where the international and domestic spectrum management and technology environment supports sustained and widespread uses of the spectrum covered by ESLs. Such conditions are typically conducive to facilitating uses that are likely to promote the public interest.

In this context, we intend to consider the main uses supported by the relevant bands domestically and internationally, taking into account the recent history of a band, current spectrum use, and forward-looking domestic and international trends and considerations.

Uses of the spectrum that are supported by the broader spectrum management and technology environment, and that are likely to promote the public interest, could have some or all of the following characteristics:

consistently used for a particular type of use over a long period of time (even as the technology used to facilitate that use has evolved)

widespread domestic uptake of that use

high levels of international technical, market, and equipment harmonisation (for example, international spectrum allocations, widely accepted technical standards, and established equipment ecosystems)

not currently being explored, or is not a candidate for exploration, over the mid-to-long term, at an international level for alternative uses.

If there are prominent domestic or international alternative uses for the bands covered by ESLs, we will use this exercise to identify those uses.

While we will use this exercise to identify uses of the spectrum, we are unlikely to offer detailed views at this stage on whether one or more use case is conducive to facilitating the public interest, and we will not offer views on corresponding licensing arrangements (that is, geographic boundaries, licence term or licence types).

We are of the view that, where possible, the ESL process should not be a ‘greenfields’ or ‘from the ground up’ exercise in spectrum planning. If there is evidence of strong support for use for a band, and that support is conducive to promoting the long term public interest, the time and resources of the ACMA and stakeholders can be better used to explore other matters relevant to the public interest, such as an incumbent’s current and prospective utilisation of the spectrum, alternative use cases and users, or the pros and cons of re-allocating the spectrum.

In releasing these views, we intend to provide stakeholders with a level of confidence regarding our views on band use, and an opportunity for stakeholders to challenge those views with evidence.

### Consideration of alternative licensing conditions identified by the minister

Several submissions expressed support for the inclusion of use-it-or-lose-it (UIOLI) or use-it-or-share-it (UIOSI) conditions in renewed ESLs, and for inclusion of coverage targets (which we will refer to as rollout obligations) in renewed ESLs.

The minister has asked that we develop a considered view on the use of these alternative licensing conditions in the Australian context including, but not limited to roll-out obligations and their effectiveness in achieving broader coverage, and UIOLI and UIOSI provisions and their effectiveness in achieving more efficient spectrum use.

UIOLI conditions refer to conditions included in licences that require licensees to meet a minimum level of ‘use’ of the spectrum. Use could mean a variety of things, such as providing a specific service under a licence (to the exclusion of, or in tandem with, other services). A rollout condition requiring the licensee to meet a specific level of geographic or population coverage is another example of a UIOLI condition. The broad intention is that, if a licensee fails to meet the condition, they would 'lose’ access to a relevant portion of the spectrum covering a geographic area, or to the licence itself (either during, or at the end of, the licence term).

UIOSI conditions generally refer to requiring licensees to meet a minimum level of use of the spectrum, or otherwise be required to share the spectrum with other users. Sharing could involve other users using some or all the frequencies included in a spectrum licence, likely within a certain geography or geographies.

As part of stage 2, we will consider the broad policy intent of these conditions, the types of outcomes they are intended to achieve, and how they might be implemented under the Act. We will do so with reference to the outcomes indicated by the minister – namely, broader coverage and efficient spectrum use.

The minister does not intend that exploration of such licensing conditions be limited to UIOLI, UIOSI and rollout obligations, and we will explore other conditions as relevant.

We note the minister’s clarification that these conditions would not be implemented or proposed without them being subject to our normal processes.

We will invite stakeholders to respond to our views on these alternative licensing conditions and we will advise the minister accordingly.

### Stakeholder feedback on issues around resilience and temporary disaster responses

In her letter, the minister sought advice from the ACMA about resilience and temporary disaster responses that arise in the context of spectrum licences and their renewal.

Resilience of telecommunications infrastructure to natural disasters, and the availability of communications services during emergencies, were raised in the House of Representatives Standing Committee on Communications and the Arts’ 2023 report Connecting the country: Mission critical - Inquiry into co-investment in multi-carrier regional mobile infrastructure. In 2022, the ACCC was directed by the then Minister for Communications to conduct an inquiry into matters relating to regional mobile infrastructure, including the feasibility of providing roaming during national disasters and other emergencies.

The ACCC identified that ‘temporary roaming’ in emergencies is technically feasible, and the Committee recommended that government establish a working group involving relevant stakeholders to develop protocols for temporary roaming arrangements in declared disasters and emergencies. We also note the government’s [Mobile Network Hardening Program](https://www.infrastructure.gov.au/media-communications-arts/phone/mobile-network-hardening-program), further rounds of which are expected in 2024.

As part of stage 2, we will ask stakeholders to provide us with any views or feedback on where issues around resilience and temporary disaster responses may be relevant to the ESL process to inform our advice to the minister. We encourage stakeholders to identify why the ESL process may be the appropriate process to address these issues, noting the other processes or pathways identified by the House of Representatives Standing Committee or the ACCC. As we note below in the ‘Alternative demand’ part of our response to submissions, there are policy outcomes that are likely best considered from a whole-of-network perspective, rather than as a condition specified in one or more ESL (and ESLs may not represent the totality of an incumbent’s spectrum holdings).

## Stage 3: preliminary views (Q4 2024)

In stage 3, we will provide and consult on a preliminary view about the proposed future arrangements for spectrum subject to ESLs. It is our role to consider potential options for the ESLs and underlying spectrum, consistent with our responsibilities and objectives under the Act and the ACMA Act. Therefore, in considering whether a licence should be renewed, and the relevant terms, conditions and pricing of any renewed licences, we will evaluate and identify the appropriate arrangements for the spectrum more broadly.

In developing these preliminary views, we will consider information provided by incumbent licensees and other stakeholders in stage 2 and other sources.

We will examine:

use, use cases and users for the spectrum – whether the existing arrangements continue to best facilitate the long-term public interest or relevant objectives, or whether alternative or complementary arrangements may facilitate the long-term public interest

licensing arrangements – identifying appropriate licence arrangements (that is, spectrum, apparatus or class licensing or a mixture) to support the identified spectrum use, uses cases and users, or any other relevant objectives

licence conditions and technical framework – identifying appropriate licence conditions and technical frameworks to facilitate efficient use and co-existence with users in neighbouring bands, and to support relevant objectives, including the public interest

spectrum value and pricing – identifying the value of the spectrum and payment terms, if licences are renewed

allocation options – whether renewal or re-allocation facilitates the long-term public interest, or whether, as a result of any changes to frameworks, a new allocation is required and an indication of the likely form of that allocation.

### Preliminary views will not relate to specific licences

A preliminary view will focus on the arrangements in one or more spectrum bands; it will not apply to specific licences or specific licensees. A preliminary view is not a decision, or an indication of a decision to be made in response to a renewal application.

Consistent with our established practices, we intend to consult on these preliminary views and consider submissions to that process. This will enable us to form preferred views that would be communicated in stage 4.

## Stage 4: preferred views, renewal application and decision-making (commencing 2025)

During 2025, we will release a response to submissions received for the preliminary views consultation in stage 3. This will outline our preferred views and policy on planning, licensing and pricing relating to the relevant spectrum. These views are intended to inform stakeholders of the matters the ACMA will consider relevant in making a decision. In making a decision, however, the ACMA will have regard to its preferred view and an application for renewal.

Following this, we will:

consider if any changes are required to the established policy

prepare draft sample licences and draft spectrum access charge determinations so that the general terms of renewal may be known (if the licence is renewed)

prepare draft allocation instruments (to facilitate potential re-allocation)

finalise any changes to the technical framework for the relevant band

publish application forms and specify information and documents that must accompany a renewal application.

This will facilitate a licensee being able to apply for the renewal of their licence from the first day of the relevant renewal application period, and identify the terms and conditions of any potential renewal. Upon receiving an application, we would then consider whether to renew that licence, taking into consideration the application, our preferred views, and any relevant objectives.

It may be necessary for the ACMA to prepare for all potential outcomes well in advance to expeditiously facilitate decisions being made and given effect. That is, we may need to prepare for both renewal and re-allocation of spectrum licences before a renewal application is received.

In circumstances where we identify that partial or full re-allocation of spectrum within a band is a preferred outcome, incumbent licensees would still be able to apply to have their licences renewed, and we would then consider that application on its merits. Even in circumstances where we indicate that renewal may be beneficial, an application would still need to be considered on its own merits.

### Preferred views will be point-in-time views

It is possible that the currency of these views will diminish over time, particularly in relation to bands covered by ESLs expiring in the later tranches, such as ESLs in the 2 GHz band, which are due to expire in October 2032. To ensure that we give all licensees the same levels of confidence, we will update, and consult on, preferred views as necessary.

### Materials to assist incumbents applying for renewal

In stage 4, we will provide incumbents with the necessary materials to apply for renewal of their ESLs. This will include application forms provided for by paragraph 77A(4)(b) of the Act. If an application must be accompanied by information and documents pursuant to paragraphs 77A(4)(c) and (d), that information and those documents will be specified in a legislative instrument[[14]](#footnote-15) that we will have consulted on before making.

We do not intend to issue guidelines relating to the public interest criteria. Guidelines of various types have important roles in the radiocommunications regulatory framework.[[15]](#footnote-16) For allocating licences, we typically use a range of instruments, including guidelines, where we have expressly decided to make spectrum available by issuing apparatus or spectrum licences. These allocation exercises – especially for spectrum licences – are often price-based, where the ACMA has formed the view that the most efficient allocation of the spectrum resource is likely to be achieved by the market. In such circumstances, the Act provides for making and establishing a variety of tools (procedures, marketing plans, applicant information packs and auction guides) to assist prospective licensees to participate in a competitive allocation process.

Although procedures used to allocate spectrum may be relevant to the issue of further spectrum licences otherwise than by way of renewal,[[16]](#footnote-17) the process provided for by the Act for ESLs is different from the processes for allocation exercises. We consider that the material to be made available to incumbents as contemplated by section 77A of the Act – and by the policy and decision-making framework – is sufficient to facilitate incumbents applying for renewal.

#### Transitional arrangements for non-renewed or partially renewed ESLs

Many stakeholder views about the structure and timing of the ESL process noted that early certainty on outcomes would support investment planning and other strategic decisions. Some stakeholders indicated that potential outcomes that might result in them having less spectrum, or having to participate in an allocation exercise in order to be reallocated licences, could prompt significant transition exercises that would ideally be progressed before decisions are made by the ACMA on ESLs.

We acknowledge the important role that access to spectrum plays for stakeholders, and that stakeholders make forward-looking business and strategic decisions based on spectrum holdings. If an ESL is partially renewed or not renewed, access to spectrum no longer covered by that ESL would not necessarily cease at the expiration of the ESL.[[17]](#footnote-18) A licensee whose ESL is partially renewed, or whose application for renewal is refused, may need time and resources to migrate their service to alternative spectrum, or adjust their operations. In those circumstances, we may consider implementing transitional licensing and other arrangements to facilitate those activities.

## Next steps

We will commence stage 2 in Q1 2024.

We welcome discussions with stakeholders and invite stakeholders to communicate with us via ESL@acma.gov.au, noting our preference for substantive engagements to conducted in a public and transparent process.

# Public interest: a policy and decision-making framework

The concept of the public interest is a key element of the ESL process. Promotion of the long-term public interest is an object of the Act, the public interest underpinned decision-making in the previous ESL process, and it remains a relevant statutory consideration for ESLs renewed for 10 or more years.[[18]](#footnote-19)

We propose that the ESL process be underpinned by 5 public interest criteria that, together, create a policy and decision-making framework.[[19]](#footnote-20) The criteria are:

facilitates efficiency

promotes investment and innovation

enhances competition

balances public benefits and impacts

supports relevant policy objectives and priorities.

Figure 2: Public interest criteria

Here, we clarify how the concept of the public interest will inform the ESL process, and affirm the criteria.

## A policy and decision-making framework **underpinned by public interest criteria**

In managing the radiofrequency spectrum in accordance with the Act, we are guided by the object of the Act, which is to promote the long-term public interest derived from use of the spectrum to facilitate and support a range of purposes and objectives. This broadly means that spectrum planning, regulation and decision-making are designed and delivered with the public interest in mind.

Paragraph 77C(7)(a) of the Act provides that, in deciding whether to renew a spectrum licence, the ACMA must have regard to all matters that it considers relevant. A policy and decision-making framework underpinned by public interest criteria is a way of articulating matters that we will generally consider as being relevant.[[20]](#footnote-21)

In addition to providing transparency for stakeholders, we consider that the framework in general, and the public interest criteria in particular, provide guidance for stakeholders on how to frame their engagement with us.

One theme arising in submissions to our stage 1 consultation was that some stakeholders interpreted the public interest criteria as being used to establish a ‘test’ that an incumbent applying for renewal would either ‘pass’ or ‘fail’. Some stakeholders submitted that the criteria should be objectively measurable, or framed around metrics, and that guidelines could assist incumbents in preparing applications.

We do not consider it practical to apply measurements to the public interest criteria. The criteria are intended to capture key elements of the public interest considerations. Current and prospective uses and users of the spectrum will engage more prominently with some of the criteria than with others.

To illustrate this point in our consultation paper, we noted that it may be the case that different criteria are more relevant to different geographic areas (metropolitan, regional and remote) and, where an ESL covers spectrum across those geographies, the criteria could interact differently with different parts of the same licence.

To illustrate further: alternative uses or users of the spectrum are likely to address the criteria in different ways, and it is possible that weighted criteria could automatically prohibit or privilege considerations of the overall public interest. For example, ESLs used for rail safety or electronic news gathering would require different considerations of the public interest than for ESLs that facilitate wireless broadband spectrum uses. In some cases, it may not be reasonable to require that a particular use or user of the spectrum be measured against one of the criteria in a pre-defined and quantifiable way. The benefits of some outcomes (such as improving health or social cohesion, or accessing online government and essential services) resulting from access to spectrum may not be as objectively quantifiable as other outcomes.[[21]](#footnote-22) Similarly, it may be unreasonable to evaluate some uses or users that principally facilitate consumer and commercial services against their ability to deliver specific types of public benefit.

We also note that certain types of guidance provided by the minister[[22]](#footnote-23) – and how that guidance is constructed or expressed – could amplify or lessen the importance of one or more of the public interest criteria in our considerations.

Instead of pre-determined weightings for the public interest criteria, we will explain how responses to the information-gathering exercise, and other relevant inputs (such as our research and analysis, market intelligence and environmental scanning) were evaluated to form our preliminary views for stage 3. We will then seek views from stakeholders through a public consultation process.

## Public interest criteria

Below, we affirm the public interest criteria. We also provide some additional explanation and context for the criteria to guide stakeholders on how they may frame their responses to the information gathering exercise at stage 2, and in how we will approach the development of preliminary views at stage 3.

In December 2023, the minister wrote to the ACMA, and identified which policy priorities specified in the SoE were relevant to the fifth public interest criterion, ‘supports relevant policy objectives and priorities.’ The minister also identified additional policy priorities that, subject to a consultation process undertaken by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts, would be specified in an MPS issued in 2024 (the proposed MPS). The minister has asked for advice on alternative licensing conditions and issues identified by stakeholders around resilience and temporary disaster responses. Accordingly, we are not proposing to directly incorporate these matters into the public interest criteria. We will consider and seek views on these matters as part of stage 2 of the ESL process, and advise the minister of the outcomes of that work.

In addition to responding to stakeholder submissions that sought further elaboration of the public interest criteria in general, we set out below how we will integrate these policy priorities into the framework.

As there is some overlap between some of the policy priorities and our public interest criteria, we have, where appropriate, incorporated those priorities into our criteria.

In addition to the minister’s letter and the priorities proposed for inclusion in the proposed MPS, we make reference, where relevant, to the object of the Act, the SoE and our corresponding 2023 [Statement of Intent](https://www.acma.gov.au/sites/default/files/2023-03/ACMA-Statement-of-Intent.pdf) (the SoI). We have regard, as necessary, to the [2022 Ministerial Policy Statement (MPS) for the 3.4 – 4.0 GHz spectrum band](https://www.legislation.gov.au/Details/F2022N00015) (the 3.4 GHz MPS), although we note that the minister’s letter signals an intention to repeal this instrument.[[23]](#footnote-24)

We note that the minister has conveyed that the criteria provide a sound framework for evaluating options and making decisions to promote the long-term public interest, and we consider that the policy priorities that the minister proposes to specify in an MPS can be integrated into our criteria.

However, the policy priorities to be specified in the proposed MPS may change after consultation, and we will amend the criteria as relevant when the MPS is finalised. If the government’s policy priorities change over the course of the ESL process, we will amend the criteria accordingly.

Importantly, the minister has indicated an intention to settle the proposed MPS by the end of April 2024, meaning that stakeholders will be able to respond to our stage 2 process with reference to a finalised MPS.

We will update the criteria, and the broader policy and decision-making framework, as necessary, to reflect any other new developments over the course of the ESL process.

### Criterion 1: facilitates efficiency

This criterion is closely tied to the object of the Act, part of which is to promote the long-term public interest derived from the use of the spectrum in a manner that facilitates the efficient planning, allocation and use of the spectrum.

The minister has also identified a policy priority specified in the SoE as relevant to ESL, which is promoting the long-term public interest derived from spectrum, including the benefits of technological developments that improve spectrum utilisation and efficiency. Promoting, among other things, adoption of new and emerging technologies (which, in our view, are typically more efficient at using the spectrum resource) is also a priority in the SoE that the minister identified as being relevant to ESLs. The minister has also proposed specifying opportunities for new entrants and use cases, including for low earth orbit satellites (LEOsats), in the proposed MPS, and there may be new entrants and use cases that could use spectrum covered by ESLs in ways that are efficient, and generate economic value and social benefits.

As indicated in our stage 1 consultation, we will frame our consideration of efficiency around the concepts of productive, allocative and dynamic efficiency.[[24]](#footnote-25)

We also note, with closer reference to spectrum in particular, that efficient use of the spectrum involves maximising the value of outputs produced from the available spectrum, including those that are ‘public outputs’ provided by non-commercial operators.[[25]](#footnote-26)

Together, these concepts will allow stakeholders and the ACMA to consider technical elements of spectrum use and management, the societal benefit, and an overall long-term view on whether changes in technologies, users and uses are optimising use of the spectrum.

We consider providing a service within a geographic area covered by an ESL should be considered as a matter of efficiency. Unlike other natural resources, spectrum is a non-depletable, infinitely renewable resource, and so there is an in-principle argument that unused spectrum forgoes potential value generated in the economy.[[26]](#footnote-27) There may be instances where unused or under-utilised spectrum is efficient or in the public interest (for example, the licensee may have future plans for that spectrum, or its limited use could be an interference-management strategy). However, we are interested in patterns of long-term unused or under-utilised spectrum – either by the licensee or considering the absence of any trades or third-party authorisations, as spectrum may not be being put to its most economically efficient and productive use.

We note that much of the sub-1 GHz spectrum subject to Australia-wide licensing arrangements covered by ESLs has been refarmed for multiple generations of technology to support Australian business and consumers. This would be a positive indication of efficient use of the spectrum: the essential physical properties of the spectrum are fixed, and its productive capacity greatly depends on the type of technology used.[[27]](#footnote-28)

However, we also note that this spectrum is almost entirely allocated, and the ESL process could shape how that spectrum is used over the next 20 years. The Act provides for licensees to subdivide and trade their spectrum licences, and this arrangement can facilitate allocatively and dynamically efficient outcomes. If there is alternative demand for allocated, but underutilised, spectrum, we will consider if the current arrangements are allocatively and dynamically efficient.

We encourage incumbents to illustrate how their use of the spectrum has delivered against these concepts of efficiency, with reference to the object of the Act and the relevant priorities in the SoE.

Prospective licensees should be able to illustrate how their alternative use of the spectrum could generate economic value or social benefits in ways that incumbents have not, or may be unlikely to.

### Criterion 2: promotes investment and innovation

As we noted in our stage 1 consultation, investment and innovation are related to, and can encourage, efficient use of the spectrum.

Spectrum licences are typically optimised to support major technology milestones, such as the next generation of wireless broadband, but are also designed to be technology flexible, meaning that licensees have fewer regulatory barriers to adapt their business strategies to invest and innovate for the long-term, and quickly respond to new developments. They also provide licensees with considerable flexibility to deploy and operate equipment as necessary, subject to the technical framework, throughout the licensed spectrum space, enabling licensees to change and adapt their use over time without acquiring new licences.

Promoting investment, innovation and the adoption of new and emerging technologies, while continuing to safeguard the interests of consumers and small businesses, is a priority contained in the SoE that the minister identified as being relevant to ESLs. The minister has also indicated that capacity for sustained investment and innovation may be a policy priority specified in the proposed MPS. Supporting the deployment of new and innovative technology, including 5G in the 3.4 – 4 GHz band, is also a policy objective of the 3.4 GHz MPS.

Advanced radiofrequency communications, including 5G and 6G, are considered to be [critical technologies](https://www.industry.gov.au/publications/critical-technologies-statement) that can impact Australia’s national interest, including economic prosperity, national security and social cohesion. Encouraging uptake of these technologies across the economy, and encouraging local and international investment, would likely be conducive to the public interest.

Technological and digital transformation is one of the 5 major domestic and global forces that the [*Intergenerational report 2023*](https://apo.org.au/sites/default/files/resource-files/2023-08/apo-nid324024.pdf) considers will continue to shape Australia’s future path of economic growth and the composition of the economy. The public mobile network service market, for example, was worth $12.4 billion in 2021, and is expected to grow to $14.7 billion over the next five years.[[28]](#footnote-29)

In our stage 1 consultation, we noted increasing demand for mobile data has implications for Australian networks, requiring increased capacity, and investment and innovation in how spectrum is used.

Our consideration of innovation is not confined to new technology. New or proposed business or deployment models (for example, passive and other sharing models), investment strategies, partnerships, and novel use of established technologies, are also examples of innovation.

For example, we note in our [private wireless networks market study](https://www.acma.gov.au/publications/2023-09/report/market-study-private-wireless-networks-using-4g-or-5g) that private 4G and 5G networks typically rely on the same technology as public wireless broadband networks; the main difference is access to spectrum and control over network performance. According to some industry analysts and experts, private wireless networks will induce a fourth industrial revolution of highly automated and efficient production. Governments are monitoring progress of the deployment of private networks and funding trials that include deploying private networks to encourage innovation.[[29]](#footnote-30) The Australian private wireless network market was valued at $130 million in 2021. It is predicted that the market will grow nearly 30% annually over the next 5 years to be worth $695 million by 2027.[[30]](#footnote-31) However, the rate of deployment will depend on both business demand for automation and – relevantly for ESL considerations – access to spectrum.

Mid-band spectrum is often highly desirable for private wireless networks, due to equipment availability and the types of localised business cases. However, we have received feedback that low, or certain mid-band (1800–2100 MHz and parts of 3.4– 4.0 GHz) spectrum is preferrable in many cases, and that much of this spectrum is covered by ESLs. Some governments around the world have reserved spectrum for private industrial applications.[[31]](#footnote-32) And there is a strong, positive correlation between private wireless network deployment and governments making spectrum available for industrial purposes or private wireless networks.[[32]](#footnote-33) In Australia, we have made apparatus- and class-licensing arrangements available in several bands that could be used to support private networks and industrial applications. We recently allocated area-wide licences (AWLs) in 3.4–4.0 GHz in remote areas. We are also [currently developing](https://www.acma.gov.au/consultations/2023-06/allocation-area-wide-apparatus-licences-38-ghz-band) AWL arrangements in the 3.8 GHz band for metropolitan and regional areas that could also be used to support private networks, with the intention to begin allocation in 2024.

In engaging with us, we encourage incumbent stakeholders to illustrate how their historical, current and future investment strategies have facilitated innovation that has served the public interest.

We encourage prospective licensees to demonstrate how alternative uses or users of the spectrum could facilitate new opportunities for investment and innovation.

### Criterion 3: enhances competition

In approaching competition considerations, we note the SoE regarding our planning and allocation of spectrum to support innovation and competition in regional, rural and remote areas. Competition is an objective that the minister is proposing to specify in the proposed MPS, and promoting competitive markets, and supporting a range of use cases and users in the 3.4 – 4 GHz band, is also an objective of the 3.4 GHz MPS. Supporting government policies related to regional, rural and remote Australia including by having regard to relevant ministerial policy statements to support, among other things, competition, in these areas, is a priority in the SoE that the minister has identified as being relevant to ESLs. The minister will seek views on the inclusion of opportunities for new entrants and use cases, including for LEOsats, in the proposed MPS.

Spectrum holdings directly influence an operator’s network capacity and service quality, and the potential for entry into new geographic markets, making them a significant determinant in an operator’s competitive ability. The management and allocation of scarce spectrum resources can have a significant impact on the nature of competition in downstream markets that rely on spectrum.

The *Intergenerational Report 2023* notes that 'a dynamic and competitive economy can amplify the benefits of new technologies. Competitive pressures accelerate the flow of good ideas and resources between firms and foster continued innovation, adoption, and improvement.’ Reduced competition – and its flow-on effects of market concentration and reduced economic dynamism – have contributed to Australia’s slowed productivity growth.[[33]](#footnote-34)

Competitive markets, and how spectrum holdings underpin those markets, can enhance productivity and the overall public benefit by putting pressure on licensees to seek innovation and efficiencies to introduce new or rival services. A lack of access to spectrum can lessen or eliminate the threat of competition, removing incentives for incumbents to be competitive, such as where a lack of spectrum acts as a barrier to new entrants offering competing services in downstream markets (for example, mobile, enterprise and fixed wireless markets). Flexible and tradable licences are recognised as means to facilitate innovation and competition, after an initial allocation (typically via auction).[[34]](#footnote-35)

Imbalances in spectrum holdings and unused or underutilised spectrum can also reduce competitive pressures.[[35]](#footnote-36)

A relevant consideration of the public interest is circumstances where spectrum holdings across ESLs are not creating or incentivising a competitive environment, or where there is entrenched end-user demand that the market is not addressing.

Not all holders of spectrum covered by the ESLs necessarily operate in a competitive market, but we encourage stakeholders to reference how their use or proposed use of the spectrum has or could facilitate a healthy and competitive market, directly and indirectly.

All incumbent licensees are also encouraged to identify where and how unused spectrum within their holdings may serve to promote competition in the long-term.

Prospective licensees are encouraged to identify specific alternative spectrum uses and users that could be facilitated by, for example, re-allocation of spectrum flowing from decisions not to renew, or to partially renew, an ESL, or from other arrangements (such as sharing), and to identify the specific markets or market segments that they would be addressing.

### Criterion 4: balances public benefits and impacts

Spectrum is used to enable a broad range of economic activities, as well as outcomes such as social connectivity, public safety and security, and enabling critical services.

Including this criterion within the public interest framework reflects the Explanatory Memorandum associated with the Modernisation Act, which notes – in relation to the inclusion of a renewal statement in a spectrum licence that allows the ACMA to renew the licence unless the ACMA is satisfied that it is in the public interest to do so – that:

… some of the matters ACMA may consider in making a decision regarding the public interest of renewing a spectrum licence include: if the licence is used to supply essential public services and there is the potential that a change in licensees may put at risk delivery of services to a significant number of people, whether the incumbent can demonstrate substantial investment and past long-term use of the licensed spectrum, and considerations of the highest value use of the spectrum.

This criterion aligns with the objective in the SoE of promoting investment, innovation and the adoption of new and emerging technologies, while continuing to safeguard the interests of consumers and small businesses, which the minister has identified as being relevant to ESLs. The minister is also proposing to specify the policy priority of supporting continuity of service to consumers, particularly where no alternative service is available, in the proposed MPS.

Including this criterion, and aligning it with the relevant policy priorities, is intended to ensure that the ACMA considers the net benefits and costs associated with different options for future uses and users of the spectrum, and to expressly acknowledge that there may be trade-offs for licensees and the overall public interest associated with decisions on ESLs and on future use of the spectrum.

This criterion also provides us with an avenue to consider that the public interest considerations for certain spectrum uses may differ. Not all ESL incumbents operate commercial services, and some operations might not be as sensitive to competitive pressures as others. However, their services may contribute to the overall public benefit by, for example, facilitating social cohesion, an informed society, or mobility of goods and people. In cases where the service does not operate in a market with substitutable products or services, loss of that service could have an adverse effect on the public interest.

Commercial services also deliver more than economic outcomes: wireless broadband services facilitate social connections and broader societal benefits.[[36]](#footnote-37) For ESL incumbents that provide services in a competitive market, this criterion acknowledges that those outcomes depend on access to spectrum, and the impact on consumers arising from loss of that spectrum could be significant, either on a short- or long-term basis. This criterion can take account of consumer welfare and choice, and inform assessments of options that provide for service continuity.

We encourage incumbents and prospective licensees to frame responses to this criterion with reference to direct and indirect consumer and social benefits, and to identify the pros and cons associated with inputs that are substitutes for specific bands or access to spectrum overall.

### Criterion 5: supports relevant policy objectives and priorities

Supporting government policies related to regional, rural and remote Australia, including by having regard to relevant ministerial policy statements in the planning and allocation of spectrum to support innovation and competition in these areas, is an objective in the SoE that the minister has identified as relevant for ESLs. The minister is also proposing to specify connectivity and investment in regional areas as a policy priority in the proposed MPS. The minister’s proposed policy priority of supporting service continuity for consumers, particularly where no alternative service is available, may also be a relevant consideration in certain regional areas where end-users have no or few choices of service provider.

For the 3.4–4 GHz band, supporting digital connectivity and investment in regional Australia is a policy objective specified in the 3.4 GHz MPS. In our SoI, we indicate that we will address government policies and priorities by supporting opportunities for better telecommunications services in regional and remote Australia through our spectrum and licensing allocation processes, and supporting innovations to improve service delivery – including by the rapidly emerging satellite sector.

We consider that these policy priorities related to regional Australia are relevant to the broader public interest consideration, but should also be considered under this separate criterion.

#### Regional, rural, and remote connectivity, investment and competition

Recent inquiries and reports have highlighted that regional, rural and remote connectivity is a complex, multi-dimensional issue. The ACCC’s 2023 [*Regional mobile infrastructure inquiry – Final report*](https://www.accc.gov.au/inquiries-and-consultations/regional-mobile-infrastructure-inquiry-2022-23/final-report) (the RMII) identifies a wide range of interconnected issues relating to regional coverage, as well as policy paths to address them. Issues identified include those relating to non-radiocommunications regulation, infrastructure and land access costs, incentives and practicalities of co-location and sharing models for active and passive infrastructure, broader competition issues and inefficiencies, and lack of commercial returns associated with building mobile infrastructure in regional and remote areas.[[37]](#footnote-38)

The November 2023 report arising from the House of Representatives Standing Committee on Communications and Arts’ inquiry into co-investment in multi-carrier regional mobile infrastructure made a range of recommendations relating to management and regulation of telecommunications infrastructure to improve coverage and competition for end-users in regional, remote and First Nations Australian communities. The report discusses the feasibility of multi-carrier models, such as active sharing and neutral hosting alongside the application of new technologies. The committee also considered weak commercial incentives for network operators to expand their networks in a mature market. Recommendations 1 and 2 of the report would be relevant to the ACMA’s spectrum management functions and, in her letter, the minister draws attention to the Committee’s views about access to low-band spectrum in regional, remote and First Nations Australian communities.[[38]](#footnote-39)

We note that having regard to this policy priority could realise outcomes for First Nations Australians.[[39]](#footnote-40) Regional, rural, and remote connectivity and Closing the Gap for First Nations peoples are not in all cases synonymous, but there are very strong links between the two. Approximately 2.8 million, or 11%, of Australians experience digital exclusion – an experience that is more pronounced in regional and remote areas. While the number of 5G sites in regional and remote areas has increased of late,[[40]](#footnote-41) the experience of communications services in regional areas, including that of First Nations peoples, can involve poor coverage, congestion, and limited choice, compared to cities and more populous areas of Australia.[[41]](#footnote-42)Digital inclusion[[42]](#footnote-43) decreases with remoteness for both First Nations and non-First Nations peoples; but 62.9% of First Nations people live outside of capital cities, and the gap in their digital inclusion is greater for First Nations peoples in remote and very remote areas.[[43]](#footnote-44)

Spectrum, along with communications technologies, is an enabler of digital inclusion. Considering how incumbent or alternative uses for and users of the spectrum can facilitate opportunities for regional, rural and remote connectivity is a way that we, as the spectrum manager, can contribute to these objectives.[[44]](#footnote-45)

Some stakeholders have expressed views that there is spectrum contained in ESLs that is being unused or underutilised that could be used to provide better connectivity in the regions. In the absence of an active secondary market, long-term Australia-wide licensing arrangements would preclude alternative users from addressing these public interest issues.[[45]](#footnote-46) Low-band spectrum, which can provide coverage in regional and remote areas, is considered particularly desirable by a range of different interests, and we are aware of calls to make unused parts of this spectrum covered by ESLs available for mobile and/or public safety services in these areas.

With respect to First Nations Australians’ digital inclusion – largely in regional and remote areas – the [2023 First Nations Digital Inclusion Advisory Group Initial Report](https://www.digitalinclusion.gov.au/publications) encourages further examination of competition issues and new technologies. It notes the potential benefits that could be realised by rolling out mesh wi-fi and LEOsats.

Noting that supporting competition in regional areas is an objective of the SOE relevant to ESLs, we will consider whether existing arrangements are facilitating competitive outcomes. We and other stakeholders have noted that spectrum availability and access is not necessarily a barrier to terrestrial mobile network expansion in regional, rural, and remote areas, nor to digital inclusion for First Nations Australians. The spectrum management framework, and spectrum licences, are designed to facilitate trading and sharing in the secondary market, which is intended to facilitate movement of spectrum to the most economically efficient and productive ends. Whether that secondary market is realising those outcomes may be a relevant consideration for the public interest. We have also noted[[46]](#footnote-47) that sharing models and other incentives could be conducive to increasing spectrum utilisation in areas that lack connectivity.

Recent technology trends might also be relevant to our consideration of how ESLs and the spectrum overall can contribute to this policy priority. We are aware of increasing interest in provision of satellite direct-to-mobile services, and that some stakeholders consider that such services could be used to provide regional, rural and remote connectivity. These services are in their early stages of development, and different models have different licensing and regulatory requirements. One of the emerging models, International Mobile Telephony (IMT) satellite direct-to-mobile, is being proposed for use in parts of the spectrum allocated to mobile network operators under spectrum licences, including ESLs. Wireless broadband stakeholders have recently announced their plans to offer services using LEOsats.[[47]](#footnote-48)

In our FYSO 2023-28, we have signalled that, given the broad coverage provided by satellite services, and the requirements of the new interference management profile associated with providing satellite services in these bands, operation of IMT satellite direct-to-mobile in Australia would likely only be practical under an Australia-wide spectrum licence, including ESLs in 700 MHz, 850 MHz, and 2.5 GHz.[[48]](#footnote-49) The extent to which IMT satellite direct-to-mobile, as well as mobile-satellite service direct-to-mobile, could address long-standing issues relating to regional, rural and remote coverage, may be a relevant factor in our consideration of long-term arrangements for the spectrum that best serve the public interest.

We invite incumbents to present us with information and evidence relating to how their use of the spectrum covered by ESLs has, or could, assist in achieving this policy priority.

Prospective users putting forward alternative use cases are encouraged to frame submissions engagement with specific information about how their proposed use of the spectrum could overcome the complex existing barriers to addressing these issues noted in the resources mentioned above.

# Appendix A: Parts of the spectrum and geographic areas covered by ESLs and renewal timeframes

Further details about ESLs can be found in the [Register of Radiocommunications Licences](https://web.acma.gov.au/rrl/browse_licences.cat_listing) (RRL).

Spectrum subject to ESLs due to expire 2028 to 2032

|  |  |  |  |
| --- | --- | --- | --- |
| Band | Frequency range | Geographic area\* | Expiry date |
| 700 MHz | 703–748 MHz / 758–803 MHz(2 x 45 MHz paired) | Australia-wide | 31 December 2029 |
| 850 MHz | 824–845 MHz / 869–890 MHz(2 x 20 MHz paired and 2 x 1 MHz paired downshift) | Australia-wide | 17 June 2028 |
| 1800 MHz | 1710–1785 MHz / 1805–1880 MHz(2 x 75 MHz paired) | Metropolitan and regional areas | 17 June 2028 |
| 2 GHz | 1920–1980 MHz / 2110–2170 MHz(2 x 60 MHz paired) | Metropolitan areas including Canberra, Darwin and Hobart | 11 October 2032 |
| 1960–1980 MHz / 2150–2170 MHz(2 x 20 MHz paired) | Regional areas |
| 2.3 GHz | 2302–2400 MHz (98 MHz unpaired) | Metropolitan and regional areas | 24 July 2030 |
| 2330–2400 MHz(70 MHz unpaired) | Canberra |
| 2.5 GHz | 2500–2570 MHz / 2620–2690 MHz(2 x 70 MHz paired) | Australia-wide | 30 September 2029 |
| 2.5 GHz mid-band gap | 2570–2620 MHz(50 MHz unpaired) | Australia-wide | 30 September 2029 |
| 3.4 GHz | 3475–3700 MHz(225 MHz unpaired) | Urban excise areas | 13 December 2030 |
| 3400–3700 MHz\*\*(300 MHz unpaired) | Metropolitan and regional areas  |

\* Geographical descriptions vary between bands, that is, the areas described as metropolitan and regional may not be consistent between different bands. Specific geographic areas subject to spectrum licensing can be identified through the RRL.

\*\* In parts of regional NSW, SA and Vic, between 5 and 15 MHz is unallocated in the 3.4 GHz band.

Renewal application dates for ESLs

|  |  |  |
| --- | --- | --- |
| Band | Earliest date renewal application can be made | Licence expiry |
| 850 MHz (including downshift licence) | 18 June 2026 | 17 June 2028 |
| 1800 MHz | 18 June 2026 | 17 June 2028 |
| 2.5 GHz | 1 October 2027 | 30 September 2029 |
| 2.5 GHz mid-band gap | 1 October 2027 | 30 September 2029 |
| 700 MHz | 1 January 2028  | 31 December 2029 |
| 2.3 GHz | 25 July 2028 | 24 July 2030 |
| 3.4 GHz (including new 3.4 GHz licences) | 14 December 2028 | 13 December 2030 |
| 2 GHz | 12 October 2030 | 11 October 2032 |

# Appendix B: Response to submissions

We received 17 submissions from a range of stakeholders, including incumbent licensees, prospective alternative users of the spectrum, and other interested stakeholders. Submissions were received from:

Australian Communications Consumer Action Network

Australian Competition and Consumer Commission

Australian Mobile Telecommunications Association

Australasian Railway Association

Australian Radio Communications Industry Association

Communications Alliance Satellite Services Working Group

FreeTV

NBN Co

NSW Telco Authority

Optus

Pivotel

Queensland Department of Transport and Main Roads

Telstra

TPG Telecom

Victorian Department of Government Services (Confidential)

2 individual members of the public.

Submissions that were not provided on a commercial-in-confidence basis can be found on our website.

In this paper, we identified how our consideration of submissions informed changes to, and confirmation of, the process. Some additional commentary offered in submissions, and our response, follows.

Overall, stakeholders were very engaged on the proposed ESL process. There was broad support for the 4-stage process proposed by the ACMA, and for a public-interest assessment of options for the spectrum covered by ESLs, and for considering applications for renewal.

Views expressed in submissions largely fell across 7 main themes:

ESL process

ESL outcomes

public interest criteria

pricing

examining use and information gathering

alternative demand

and band-specific issues.

## ESL process

Our stage 1 consultation set out a proposed 4-stage ESL process, including outputs, future consultations, project milestones, and high-level timeframes.

### What stakeholders told us

Submitters broadly supported the proposed 4-stage process and its progression from holistic considerations to narrower preliminary and preferred views on the spectrum covered by ESLs. Many stakeholders noted that the work to be conducted between now and 2025 was significant for both the ACMA and stakeholders, and some suggested that the scope of work in some of the steps could be narrowed.

There were strong views about the timeframes for release of views from the ACMA – particularly views that provided certainty – about outcomes for ESLs and related pricing.

Some stakeholders suggested amendments to the ESL process, mainly to bring certain outputs forward, and to significantly increase the number of both formal consultations and less formal interactions between stakeholders and the ACMA. Others suggested additional consultation for stage 2. There were also views about the optimal timing of interventions from the minister, and suggestions about how the ACMA could use the deemed application provisions at subsection 77A(10) of the Act to initiate the renewal process and provide additional confidence about the ACMA’s disposition.

### Our response

We have considered the alternative processes offered by stakeholders, which were, in part, informed by interpretations of how the public interest criteria would function and how much certainty the ACMA would be able to provide for incumbents before an application for renewal is submitted.

We note that the sequencing of additional or earlier outputs as proposed by some stakeholders, and increases to the number of formal and informal interactions, would likely be very resource intensive for the ACMA and stakeholders alike. We do not consider that there will be sufficient time between those outputs and interactions for us to develop new, substantive positions, or for those positions to be informed by consultation, which would limit the practical utility of those changes.

We will consider whether the deemed application process could provide additional confidence for incumbents. However, we note that the deemed application process does not remove any requirements to consider a renewal application on its merits, or provide an alternative to the 2-year application period, or change the 6-month period during which the ACMA must arrive at a decision, as required under the Act.

Many stakeholders wanted to meet with the ACMA individually, or in fora with similar stakeholders. We welcome discussions with stakeholders and invite stakeholders to communicate with us via ESL@acma.gov.au. However, we have a strong preference for substantive communications to be conducted transparently, and written responses to consultation processes are designed to facilitate that transparency. Similarly, while we will accept in-confidence submissions to our public consultation processes, we encourage stakeholders to provide public submissions as much as possible, which we will publish in the interests of openness.

## ESL outcomes

In our stage 1 consultation, we set out a process that allows us and incumbents to navigate the new legislative provisions applicable to ESLs. We framed the ESL process, and outcomes it could achieve, in broad terms, with reference to proposed public interest criteria (which are, in turn, informed by the object of the Act).

We also noted that there could be a wide range of outcomes arising from the 3 options available for ESLs (renewal, partial renewal, refusal) and, potentially, some specific outcomes arising from guidance or direction from the minister.

We identified a key feature of the ESL process: that while the process is designed to progressively develop a public interest context – which will now be referred to as a policy and decision-making framework – decisions on individual ESLs need ultimately to be made on the merits of a renewal application.

### What stakeholders told us

Overall, stakeholders expressed strong, although very different, views about the outcomes that the ESL process should deliver.

Wireless broadband operators drew attention to what they described as a mature mobile market and growing consumer demand for data, and submitted that ongoing provision of wireless broadband services within a reasonably stable market was in the public interest. Some stakeholders noted that high barriers to entry meant that new entrants to the mobile network operator (MNO) market were unlikely, and other stakeholders noted that they were not aware of any prospective new entrants to the national MNO market. Wireless broadband operators conveyed there was not a strong rationale for refusing to renew ESLs, and subsequently re-allocating the spectrum, or transitioning the relevant spectrum to a different licensing framework. Wireless broadband stakeholders encouraged the ACMA to form views that supported full renewal, and submitted that outcomes associated with partial renewal should be initiated by incumbents, with any residual spectrum put back to market (that is, re-allocated).

Stakeholders who operate rail services, and bodies who support or advocate for those operators, submitted that the optimal ESL outcome would see full renewal of incumbent licences, on the basis that the ongoing provision of communications for rail services, and the economic and social benefits the rail industry generates, mean that ongoing access to the spectrum serves the public interest.

One stakeholder indicated that the broadcasting licensees it represents are interested in the potential to align licensing arrangements with their existing apparatus licensing arrangements in other bands. This would reduce costs and allow for annual renewals. This was the only submission that did not expressly convey that renewal was the optimal outcome for their licences, although we note that this suggested outcome would not necessarily facilitate alternative uses or users for the spectrum.

While most submissions acknowledged that the outcomes of ESL decisions would have enduring and significant implications for the communications sector, one submission emphasised that the ESL process provided a unique opportunity to evaluate current spectrum holdings, and potentially influence positive changes in the mobile market, segments of which have been in place since 2013.

A mix of incumbents and prospective licensees submitted that the ESL process should deliver an outcome where spectrum is set aside for alternative uses, users or use cases that deliver against public policy outcomes, such as Public Safety Mobile Broadband (PSMB), local area wireless broadband , and regional coverage, including via satellite services. Such outcomes would require non-renewal or partial renewal of one or more ESLs.

### Our response

The principal outcome we are seeking to achieve at this stage is the design and implementation of the ESL process. A key element of that is the progressive and consultative delivery of the policy and decision-making framework.

The process we are implementing will allow us to provide, at stages 3 and 4, preliminary and preferred views on whether renewal, partial renewal or re-allocation of licences in each band, or re-allocation of the spectrum covered by ESLs in each band, serves the long-term public interest.

Guidance or express directions from the minister may bring about a circumstance where we give effect to a specific outcome for particular licences.

We encourage all stakeholders to engage with the stage 2 information-gathering exercise, and to frame their submissions to stage 2 with reference to the public interest criteria.

In terms of spectrum for a national PSMB capability, we note that the development of a PSMB capability is subject to separate government considerations. The independent [2022 PSMB strategic review](https://nema.gov.au/sites/default/files/inline-files/Public%20Safety%20Mobile%20Broadband%20%28PSMB%29%20Review%20-%20Final%20Report.pdf) made findings and recommendations about paths forward for PSMB capability. In our spectrum management work, we will take into account relevant outcomes from the PSMB Taskforce that was [established](https://minister.infrastructure.gov.au/rowland/media-release/taskforce-drive-high-tech-communications-first-responders) in September 2023. We note that there is an existing reservation of 2 x 5 MHz of spectrum for PSMB in the 850 MHz band. Noting these separate government mechanisms for furthering PSMB outcomes, we are not contemplating specific inclusion of PSMB outcomes in the ESL policy and decision-making framework. However, our framework in general, and criterion 4 in particular, have been designed to allow us and stakeholders to engage with public safety and similar public-interest considerations, and the ways in which spectrum can support them.

## Public interest criteria

The public interest criteria will underpin the broader policy and decision-making framework in which we will develop preliminary and preferred views and consider applications for renewal (and, where relevant, licence terms of 10 or more years).

Further summaries of submissions and remarks are provided below.

### What stakeholders told us

Stakeholders were, on the whole, supportive of the proposed public interest criteria.

Some stakeholders observed that some of the proposed criteria overlapped, and offered views on how certain criteria could be merged or adjusted. One stakeholder took the view that criteria 1 to 3 were mutually reinforcing, but noted that enhancing competition would ultimately lead to improvement of efficiency, as well as investment and innovation.

Some submissions conveyed that there should be additional criteria. One stakeholder submitted that ‘Appropriate rate of return to the community’ should be a criterion, as this featured in the previous ESL process, and was used to inform decisions about pricing. Another stakeholder submitted that ‘public safety’ should be a criterion, and should also be the primary criterion used to evaluate the public interest. Another stakeholder supported inclusion of an additional criterion, ‘non-monetary benefits,’ and other stakeholders submitted that the criteria should be expanded to include relevant policy priorities, some of which were outside the communications portfolio.

Rail users expressed concerns about their ability to meet certain criteria, particularly around investment and efficiency, and that some criteria were better suited to evaluating wireless broadband incumbents. They proposed a new criterion, whereby the ACMA should consider whether a particular use case had previously been determined (that is, in the previous ESL process) to be in the public interest, and whether that rationale was still applicable. By contrast, another stakeholder expressed the view that criterion 4, ‘balances public benefits and impacts’ favours ‘special circumstances’ uses of the spectrum, such as rail safety and television outside broadcasting.

Another stakeholder considered that the criteria would form a sound basis for assessments of ESLs against the public interest, but also submitted that there were additional key priorities that should be considered – namely, industry sustainability, service continuity, and effective risk management.

Many submissions expressed the view that, without elaboration, the criteria were broad, and there was a need for greater clarity on how the criteria would be practically implemented and applied to evaluate use of spectrum and renewal applications.

MNO stakeholders in particular requested that the criteria be clearly defined, objective, transparent and weighted, and that guidelines should be developed to enable them to identify how the ACMA would test an incumbent licensees’ ability to meet the criteria.

One stakeholder took the view that the criteria – as well as our proposal to examine use – could be interpreted as a way of evaluating licensees against requirements that were not contemplated on licence issue, such as service coverage.

Stakeholders expressed particular interest in criterion 5, and asked that we identify relevant government policies. Another submitter stated that the ACMA should base its decisions on the object of the Act, and not the SoE. Submissions from other stakeholders were supportive of criteria that included the policy objectives identified in the SoE, such as regional connectivity and Closing the Gap. There was also support for incorporation of other government policy objectives within and outside the communications portfolio that the ACMA should consider.

### Our response

In this paper, we affirm and expand on the criteria, and clarify how they are intended to operate – not as a test, but as an overall policy and decision-making framework.

In response to stakeholder views, we have offered additional commentary and reference points for the criteria. On balance, we consider that certain spectrum uses and use cases will interact with one or more criterion in a unique way, and that this will influence how that use or use case fulfils, to a greater or lesser extent, another criterion. We do not consider this to be a weakness of in the criteria; rather, it will mean that the overall framework will have some flexibility in how options for the spectrum, and for individual licences, are considered and weighed.

We consider the additional criteria put forward by stakeholders are sufficiently provided for in the existing criteria. For example, the benefits of non-commercial services (including public safety), industry sustainability, service continuity, and effective risk management are provided for by the fourth criterion, which would also allow us to consider policy objectives within and outside the communications portfolio as relevant.

Creating new criteria as suggested by stakeholders could unduly orient the framework in favour of certain outcomes. Similarly, according particular weightings to the criteria would likely make the criteria under- or over-inclusive, limiting their utility in assessing the overall public interest.

In terms of the view that application of the criteria, and our examination of use, could assess licences against requirements or outcomes that were not envisaged when licences were allocated, we clarify that, while spectrum licences are not typically issued with any kind of obligation attached, they are allocated consistent with our broader spectrum management framework and our administration of the spectrum in accordance with the object of the Act. These 2 systems work in tandem to promote the long-term public interest.[[49]](#footnote-50)

## Pricing

In our stage 1 consultation, we noted that there is a range of ways to determine the price and value of spectrum, and that we will undertake valuations of the spectrum covered by ESLs. These valuations could be used to derive the formula used to calculate the spectrum access charge applicable to a licence that is renewed. We signalled that preliminary views put forward for consultation as part of stage 3 would include a proposed valuation and payment terms. We noted that there is a range of relevant considerations for valuations, not all of which may be relevant for each band or licence, including domestic and international allocation or auction results, auction avoidance[[50]](#footnote-51) and public interest pricing, and the inclusion of any particular conditions in a licence.

There would be further pricing considerations for spectrum covered by ESLs that are not renewed or partially renewed.

### What stakeholders told us

Overall, stakeholders viewed pricing as a critical element of the ESL process, and conveyed that pricing would play a role in supporting the current and future operation of their businesses and services. Given the maximum spectrum licence term of 20 years, some stakeholders noted that renewal of licences would support evolution to the next generations of current technology.

Views on pricing were diverse. Some submitters acknowledged that arriving at a valuation for a given band was difficult, and that different models and approaches had their own strengths, weaknesses and sensitivities. Most incumbents and prospective licensees offered a view as to whether a particular pricing approach or outcome was appropriate for their circumstances. In some cases, this was because the use to which they put the spectrum was a public good, and the user was not expected to operate on commercial terms, or was limited in its operation by the conditions of a licence. MNO stakeholders cited overall declining levels of industry profitability, making conservative pricing approaches an appropriate way to support the industry.

Many stakeholders identified that there were arguments available to support cost-recovery and public-interest pricing approaches, or prices that were based on discounts on a fair market value. There was broad consensus that higher prices could harm overall investment, and that knowing prices early was a way that the ACMA could provide investment certainty and promote service continuity. There was also a view that the risks associated with higher prices are greater than those associated with lower prices.

There was broad agreement that the approach to valuation should be transparent and consultative, with some submitters citing separate and early consultation on pricing should start as part of stage 2.

Submitters did not widely comment on payment terms, although one advocated for instalment payments.

### Our response

We consider that setting appropriate prices is a key element of the ESL process to encourage efficient use of the spectrum. In the broader spectrum-management framework, prices are one of the tools that we use to allocate spectrum in a way that incentivises efficient use of the spectrum resource in a manner that promotes that long-term public interest.

We note that different valuation approaches, such as benchmarking, econometrics and costs and enterprise valuations, each have their advantages and disadvantages, particularly with for data requirements and variability depending on input assumptions. At this stage, we do not have a preference for any particular valuation methodology, although, as a starting point, we would not normally consider that cost recovery-based pricing promotes efficient use of the spectrum.

As some stakeholders expressly acknowledged, pricing work is both important and complex. While we recognise that views, and timing of views, on prices can support investor confidence and strategic planning, those views need to be robustly informed. One of the inputs into our pricing work will be the information gathered during stage 2, where we will ask for information about and evidence of historical and expected investment. We also note that discussions about pricing and approaches for some spectrum covered by ESLs would not be appropriate while our mid-band allocation processes are underway. To that end, we do not propose to release views on pricing earlier than stage 3 (Q4 2024).

While there was little feedback about payment terms, we acknowledge that stakeholders are likely to express views at a later stage in the ESL process. While the ACMA has favoured upfront payments for spectrum licences, we will consider the benefits of alternatives.

## Examining use and information gathering

Our stage 1 consultation paper sought views on how we might approach examining use for ESLs. In previous iterations of our FYSO, we also considered that examining use may be a relevant consideration for apparatus-licensed use cases.

### What stakeholders told us

There was strong support from some stakeholders for the ACMA to implement examinations of use to support decisions about re-allocation of spectrum, particularly if that spectrum is unused, and that this approach would be compatible with public interest criteria relating to efficiency, competition and innovation. Other stakeholders conveyed that a framework for examining use would represent a new addition to the radiocommunications regulatory framework (especially for spectrum licences), could be very onerous, and would require further consultation.

In response to the proposal to request coverage maps relating to incumbent licences, wireless broadband stakeholders noted that they are subject to a separate requirement as part of the ACCC’s infrastructure record-keeping requirements, and that it may be onerous to provide information that is already in the [public domain](https://data.gov.au/dataset/ds-dga-4b472a18-d0fa-409c-994a-ab17162bcb90/details). They submitted that generating granular or bespoke data could be resource intensive, and may not offer better insights than considering current licence boundaries.

Other stakeholders supported the ACMA setting standardised assumptions in propagation modelling to allow for service comparison, as existing data sets have been generated on different assumptions and did not, in all cases, provide for direct comparisons.

Outside of coverage issues, wireless broadband incumbents and other stakeholders commented on other potential information to be gathered, such as investment information. It was noted that historical information would be available, but future and planned investment details would be more difficult to ascertain, noting that planned investment is responsive to a range of rapidly changing inputs, such as government initiatives and changing demand. Incumbents also noted that planned investment information was commercially sensitive.

One stakeholder conveyed support for gathering information about licence trades to better understand the secondary market.

Wireless broadband stakeholders indicated that information gathered should be limited to the minimum necessary to determine the public interest, and there was a common concern from incumbents about how information gathered could be used to inform decisions about outcomes for ESLs, such as changes to spectrum licence boundaries or planned uses for the spectrum. Conversely, other stakeholders submitted that an examination of use should inform decisions about making unused spectrum available after set timeframes, or if certain outcomes (such as coverage) were not being met.

Rail and broadcasting stakeholders conveyed concerns that they would not necessarily be able to demonstrate use of spectrum under their licences in the same way as wireless broadband licensees, as their respective uses rely on different networks and deployments. Broadcasters also noted that electronic newsgathering is often sporadic, because it responds to developments and events across Australia, while rail stakeholders indicated that their use of the spectrum is generally confined to rail corridors.

### Our response

Historically, a framework for examining use has not been a core feature of the radiocommunications regulatory framework. Our approach to designing and allocating spectrum licences has also not historically contemplated use – while spectrum licences are designed to be optimised for particular technologies or uses (with the exception of a small number of spectrum licences issued for rail communications and broadcasting services), spectrum licences are generally technology agnostic, meaning that licensees may use them as they wish. Additionally, spectrum licences have not historically placed obligations on licensees to, for example, achieve certain levels of geographical or population coverage, or to achieve quality of service targets.

We have clarified how we intend to examine spectrum use in the context of stage 2 of the ESL process. Our approach will strike a balance that will allow us to gather information and evidence to inform a preliminary view about the long-term use of the spectrum (taking into account representations and data from both incumbents and prospective alternative users) without being onerous on stakeholders.

## Alternative demand

Alternative demand – that is, alternative uses, use cases and users for the spectrum covered by ESLs – was not directly addressed in our stage 1 consultation. However, it will be relevant to stage 2, and a consideration when we develop preliminary views at stage 3.

### What stakeholders told us

Prospective licensees and relevant representative bodies expressed views on alternative uses of the spectrum covered by the ESLs. Many submissions framed the ESL process as an opportunity to reconfigure licensing arrangements, or repurpose the relevant spectrum. Some submitters raised some of the licensing conditions that were subsequently included in the minister’s letter. They described outcomes that could, in their view, increase competition by making ESL spectrum available to alternative uses and under different licensing frameworks.

LEOsats and local area wireless broadband were put forward as having the ability to improve coverage for regional and remote areas.

One stakeholder made a number of suggestions for alternative arrangements to facilitate regional connectivity and other outcomes, including introducing area-wide licences into sub-1 GHz spectrum in regional areas to support local area wireless broadband, reserving spectrum for neutral hosting, and reserving spectrum for dynamic spectrum access applications. That submission contended that LEOsat connectivity as a service is yet to be proven, and that access to sub-1 GHz for new entrants should be a key consideration.

Several submissions suggested that provision of roaming capability should be included in spectrum licences, as a general requirement to increase coverage and competition in regional areas, as a public safety measure for emergencies, or in relation to public safety agencies (rather than the public).

Some submissions conveyed support for UIOLI or UIOSI conditions to be included in renewed or new spectrum licences, as a way of ensuring that spectrum is utilised, and competition outcomes are realised, particularly in regional areas. Some submissions suggested that ESLs should include coverage targets (or, as we describe them in this paper, rollout obligations) in regional areas, in some cases with specified timeframes or higher prices used to compel or encourage meeting those targets. Views were also put that low-band spectrum should be repurposed for PSMB (see ‘ESL outcomes’ above).

Wireless broadband stakeholders generally cautioned against outcomes that could lead to spectrum covered by their licences being repurposed for alternative use cases or alternative users. They argued that any alternative uses or users should satisfy – with compelling evidence – the public interest criteria to at least the same degree as existing uses and users, and that the benefits associated with alternatives would also need to be weighed against incumbent investments. Illustrating the point, one submitter argued that re-allocating spectrum for private networks would not be in the public interest, citing sources that contend that such allocation approaches offer no strong advantages to operator-supplied private networks and can create significant costs, ultimately resulting in inefficient use of the spectrum. They made generally similar observations regarding repurposing ESL spectrum for new users and PSMB.

Several submissions encouraged the ACMA publish a notice under section 78 of the Act to invite and identify stakeholders with propositions for alternative uses or users for the spectrum.

### Our response

We note that, while the government has several levers at its disposal to carry out communications policy, the ESL process represents a relatively rare window in which a broad range of spectrum bands could be considered as potential inputs into supporting policy objectives.

As outlined above, as part of stage 2, we will develop a considered view on licensing arrangements identified by the minister in her letter, and by stakeholders, including UIOLI and UIOSI conditions, and rollout obligations. We will consider the broad policy intent of these conditions, the types of outcomes they are intended to achieve, and how they might be implemented under the Act. We will invite stakeholders to respond to our views on these licensing conditions.

In terms of roaming, we would not normally consider the Act in general, or licence conditions in individual spectrum licences, to be the appropriate mechanisms to achieve roaming outcomes – nor would we necessarily consider the Act to be a barrier to achieving them. For example, the ACCC’s RMII identified ‘temporary roaming’ in emergencies is notionally possible, but that elements of the regulatory framework – which does not include the Act – need to be considered.

For incumbents providing wireless broadband services, roaming capability is likely best considered from a whole-of-network perspective, rather than as a condition specified across a licensee’s spectrum holdings (and we note that the ESL process is necessarily limited by the specific licences subject to expiration between 2028 and 2032).

Importantly, there are complex pricing and competition issues raised by roaming capability. The ACCC has the power to make declarations about roaming, and it has previously decided not to declare – and thereby require implementation of – domestic roaming, on the basis that it would likely not lead to lower prices or better coverage or quality of services for regional Australians.

We will seek feedback from stakeholders on issues around resilience and temporary disaster responses, and their relevance for the ESL process, as part of stage 2.

We acknowledge consumer demand and technology has evolved over the course of the life of the ESLs and, in some cases, of ESLs that have been previously renewed. Stakeholders with proposals for alternative use cases or users, as well as incumbent users, are encouraged to engage with the ESL process to provide views about how use of the relevant spectrum can be optimised in the long term to serve the public interest. Noting that the Act does not provide for a presumption of renewal, and that the ESL process offers an opportunity to evaluate how the spectrum is used, and could be used, the proposed ESL process has been developed to consider the ways in which both incumbents and alternatives serve the public interest.

We will identify and assess alternate demand for the spectrum covered by ESLs in a range of ways, including via market and technology environmental scanning and studies, examining international developments in spectrum allocations, and through our stage 2 information gathering exercise.

## Band-specific issues

In our stage 1 consultation, we noted that there may be existing band-specific issues relevant to a consideration of the long-term public interest, if those issues constrain efficiency, investment and innovation or competition. Examples of such issues may include:

fragmentation within a band

lack of regional connectivity

lack of available spectrum for alternative uses and users.

### What stakeholders told us

A wireless broadband stakeholder noted that the 700 MHz band is heavily utilised, and is key to supporting 5G and 6G, and wireless broadband into the future. There was interest from a range of other stakeholders in this and other sub-1GHz spectrum and how it could be used by a range of alternative users, or to provide local area wireless broadband services.

One stakeholder argued that spectrum in 850 MHz reserved (but not allocated) for PSMB, is currently underutilised and could be repurposed to support regional connectivity.

Rail stakeholders drew attention to government actions (consistent with the Council of Australian Governments’ 2011 [Intergovernmental Agreement on Rail Safety Regulation and Investigation Reform](https://federation.gov.au/sites/default/files/about/agreements/Rail_IGA-19August2011.pdf)) to promote nationally consistent allocation of spectrum to the rail authorities for both freight and consumer travel in the 1800 MHz band. These stakeholders drew attention to international harmonisation and equipment standardisation considerations that may limit adoption of spectrally efficient approaches.

One wireless broadband incumbent noted that the 1800 MHz and 2100 MHz bands were close functional substitutes, and also noted ongoing interference issues in the 2.3 GHz band.

A stakeholder representing broadcasting incumbents suggested that the use of the 2.5 GHz mid-band gap is a special case, with a range of technology considerations relevant to the future of broadcasting services, and that there was a lack of adequate substitute spectrum.

A wireless broadband stakeholder noted that regional licences in the 3.6 GHz band are still subject to a reallocation period that ends in 2025, which has delayed efficient utilisation.

### Our response

We will take into account band-specific issues as we develop preliminary views, and we encourage stakeholders to draw our attention to any band-specific issues in their stage 2 responses. We do not consider that the ESL process is an appropriate vehicle to address relatively minor issues in a band. Band-specific issues may form part of the policy and decision-making framework, but it is likely that they would need to have significant bearing on the overall public interest. Our regular technical framework reviews, and FYSO work program, may be more appropriate mechanisms for band-specific issues that do not have a significant bearing on the public interest.

1. Bands covered are 700 MHz, 850 MHz 1800 MHz, 2 GHz, 2.3 GHz, 2.5 GHz, 2.5 GHz mid-band gap, and 3.4 GHz. In this paper, ‘850 MHz’ refers to the licences held by TPG Telecom and Telstra across 825 MHz to 890 MHz, as well as the 2 x 1 MHz ‘downshift’ spectrum licence allocated to Optus commencing 1 July 2024. [↑](#footnote-ref-2)
2. By the [*Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020*](https://www.legislation.gov.au/Details/C2020A00151) (the Modernisation Act). [↑](#footnote-ref-3)
3. Throughout this paper, we distinguish between broad categories of ‘uses’ of the spectrum and narrower ‘use-cases’ to which licensees may wish to apply the spectrum. For example, a use like wireless broadband may include wide area and local area use cases. [↑](#footnote-ref-4)
4. An MPS is made under section 28B of the Act. In performing its spectrum management functions, and exercising its spectrum management duties, the ACMA must have regard to any relevant MPS. [↑](#footnote-ref-5)
5. Some ESLs were also issued by converting existing apparatus licences, under a process removed from the Act in 2021 [↑](#footnote-ref-6)
6. See subsection 77A(3) of the Act. There are, however, a number of spectrum licences issued after the 2021 reforms that are within the scope of the ESL work (the 850 MHz downshift licence and 3.4 GHz spectrum licences) and the holders of these licences may apply for the renewal of those licences during the period specified in the licence, as per subsection 77A(2). See our [stage 1 consultation paper](https://www.acma.gov.au/consultations/2023-05/proposed-approach-expiring-spectrum-licences) for further background. [↑](#footnote-ref-7)
7. See subsection 286(6) of the Act. If we request additional information under section 77B of the Act from the applicant to assist us in making a decision, we have 6 months to make a decision after receiving that further information, as per paragraph 286(6)(b). [↑](#footnote-ref-8)
8. See subsection 77C(7) of the Act. [↑](#footnote-ref-9)
9. See subsection 77C(5) of the Act. The Act also outlines some matters we may consider, such as outstanding tax liabilities or spectrum access charges, whether the applicant has contravened any licence conditions or whether the applicant has had a licence cancelled in the previous 2 years (such as for contravening licence conditions, but not because of re-allocation under Part 3.6 of the Act). [↑](#footnote-ref-10)
10. See subsection 77C(10) of the Act. [↑](#footnote-ref-11)
11. See section 77D of the Act. [↑](#footnote-ref-12)
12. The Explanatory Memorandum to the [Radiocommunications Legislation Amendment (Reform and Modernisation) Bill 2020](https://www.legislation.gov.au/Details/C2020B00106/Amends) notes that ‘there is no presumption that a further [apparatus or spectrum] licence will be issued’ once the licence expires. [↑](#footnote-ref-13)
13. See paragraphs 284S(1)(d) and (e) of the Act. [↑](#footnote-ref-14)
14. Made under either or both of subsections 77A(6) and (7). [↑](#footnote-ref-15)
15. For example, radiocommunications advisory guidelines made under section 262 of the Act are used to help manage interference to and from spectrum-licensed receivers and transmitters. [↑](#footnote-ref-16)
16. Pursuant to Division 4 of Part 3.2 of the Act. [↑](#footnote-ref-17)
17. A decision to renew or partially renew an ESL does not result in a new licence immediately coming into force. Subsection 77C(9) provides that a new spectrum licence comes into force, or is taken to have come into force, immediately after the expiration of the licence that it replaces. [↑](#footnote-ref-18)
18. Subsection 77C(5) provides that the ACMA must not renew a spectrum licence with a duration of 10 or more years unless the ACMA is satisfied that it is in the public interest to do so. [↑](#footnote-ref-19)
19. The stage 1 consultation sometimes used the term ‘assessment framework’ to describe this construction. [↑](#footnote-ref-20)
20. The Act further provides that, without limiting the requirement that we must have regard to all matters that we consider relevant, we must have regard to the effect on radiocommunications of the proposed operation of the radiocommunications devices that would be authorised under the new spectrum licence; and that we may have regard to other matters relating broadly relating to or arising from breaches of the Act or licence conditions. [↑](#footnote-ref-21)
21. The 2023 [Measuring What Matters](https://treasury.gov.au/policy-topics/measuring-what-matters) framework, for example, identifies metrics beyond traditional economic indicators as being important to informing public debate and policy, and identifies a range of recreational and social activities can be realised by wireless connectivity. With respect to spectrum, ‘It is difficult to quantify services providing social benefits such as broadcasting offering education, training, news, recreation, better information dissemination, preservation [of] diversity, improved access to public services, greater social inclusion; emergency services providing a link to the police, accident and rescue services, including disaster control facilities; academic research and preservation of wildlife; personal services: home health care/nursing, home security for the elderly; meteorology and radio astronomy.’ Haim Mazar, *Radio Spectrum Management: Policies, Regulations and Techniques*, John Wiley & Sons, 2016, p. 130. [↑](#footnote-ref-22)
22. Such as an MPS, or directions made by the minister under section 14 of the [*Australian Communications and Media Authority Act 2005*](https://www.legislation.gov.au/Details/C2023C00343) or subsection 294(2) of the Act. [↑](#footnote-ref-23)
23. We also note that there is a linkage between SoE and the object of the Act: The Commonwealth’s communications policy is expressed in the SoE, and the object of the Act refers to facilitating use of spectrum in a manner that supports Commonwealth policy objectives. [↑](#footnote-ref-24)
24. These 3 concepts are considered to constitute Pareto or economic efficiency, whereby resources are allocated in a way that does not better one consumer or firm to the detriment of another. See Martin Cave, Chris Doyle and William Webb, *Essentials of Modern Spectrum Management*, Cambridge University Press, 2007, p. 88 and p. 169. [↑](#footnote-ref-25)
25. See Mazar, *Radio Spectrum Management*, p. 128. [↑](#footnote-ref-26)
26. Mazar, *Radio Spectrum Management*, p. 133. Similarly, the design of licences should be guided by economic efficiency, whereby a licence is considered an input and that, as an input, it should be used in a way that does not restrict the economy’s potential – see Cave, Doyle and Webb, *Modern Spectrum* Management, p. 124. [↑](#footnote-ref-27)
27. See Martin Cave and William Webb, *Spectrum Management: Using the Airwaves for Maximum Social and Economic Benefit*, Cambridge University Press, 2015, p. 42. [↑](#footnote-ref-28)
28. GlobalData, *Australian Mobile Operator KPI Forecast for Australia* [database], March 2023, accessed March 28, 2023. Forecast excludes device sales. [↑](#footnote-ref-29)
29. See our [Market study: private wireless networks using 4G and 5G](https://www.acma.gov.au/publications/2023-09/report/market-study-private-wireless-networks-using-4g-or-5g). [↑](#footnote-ref-30)
30. Mordor Intelligence, *Australian Private wireless network Landscape (2022-2027)*. [↑](#footnote-ref-31)
31. For example, the United States has reserved spectrum available at 3.5–3.7 GHz, Germany at 3.7–3.8 GHz and Japan at 1.9 GHz and between 4.6 GHz and 4.9 GHz. [↑](#footnote-ref-32)
32. GSA, Private Mobile Networks: May 2023 Member Report, GSA, 2023. p.10, accessed 14 June 2023. As part of our broader spectrum allocation activities, we support private network use cases through licensing arrangements for local area wireless broadband. Recently, the ACMA introduced area-wide licences in response to changes in technology and requests from spectrum users for additional flexibility within the apparatus licensing system - see [Area-wide licensing: ACMA approach to introducing area-wide licences](https://www.acma.gov.au/sites/default/files/2020-09/ACMA%20approach%20to%20introducing%20area-wide%20licences.pdf). We also note allocation exercises in 3.4–4 GHz for 2023 and 2024. [↑](#footnote-ref-33)
33. See [A more dynamic and competitive economy](https://ministers.treasury.gov.au/ministers/jim-chalmers-2022/media-releases/more-dynamic-and-competitive-economy) [↑](#footnote-ref-34)
34. Cave, Doyle and Webb, *Modern Spectrum Management*, p. 85. [↑](#footnote-ref-35)
35. Additionally, the economic efficiency gains intended to be realised by tradable and technology-flexible licences, and low transaction costs imposed by regulation, can go unrealised where the behaviour of market players is not competitive – see Cave, Doyle and Webb, *Modern Spectrum Management*, p. 39. [↑](#footnote-ref-36)
36. See [Venture Insights State of the Australian Telecommunications Industry](https://www.ventureinsights.com.au/product/report-state-of-the-australian-telecommunications-industry/). [↑](#footnote-ref-37)
37. Recommendations arising from the [2021 Regional Telecommunications Review](https://www.rtirc.gov.au/) do not specifically focus on spectrum management, but do recommend, among other things, new or continued funding for new mobile coverage and shared network access models (including neutral hosting models). Telstra has noted that ‘Because of the challenging economics, there are likely to be few new economically viable sites in regional and remote areas, without support from government co-funding’; and that ‘Difficult terrain and low population density means there will always be large parts of Australia’s land mass that will not get terrestrial based mobile coverage, even with co-funding initiatives.’ See Telstra’s [submission](https://www.aph.gov.au/Parliamentary_Business/Committees/House/Communications/Mobileco-investment/Submissions) to the Inquiry into Co-Investment in Multi-carrier Regional Mobile Infrastructure (the Inquiry into Co-Investment). The ACCC noted similar stakeholder views in its RMII. Similarly, the [Australian Broadband Advisory Council has commented](https://www.infrastructure.gov.au/department/media/publications/agri-tech-expert-working-group-report) that ‘It is not reasonable to expect that the national carrier business models, even with the stepped up “push-pull” approaches from government, will solve what is essentially a local problem;’ and that ‘’While carrier fixed and mobile broadband networks can “do everything”, they are over-engineered for many agri-tech applications, and still won’t necessary resolve’ coverage problems. The Council cites a range of technologies and approaches that are being deployed, and notes that access to fibre backhaul and access to spectrum – including potential allocation and licensing [options for the 6 GHz](https://www.acma.gov.au/consultations/2021-10/radio-local-area-networks-rlans-6-ghz-band-consultation-372021) band being considered by the ACMA – are critical inputs into developing a robust and multi-tiered market for services in these regions. [↑](#footnote-ref-38)
38. See the House of Representatives Standing Committee on Communications and the Arts’ 2023 report [Connecting the country: Mission critical Inquiry into co-investment in multi-carrier regional mobile infrastructure.](https://www.aph.gov.au/Parliamentary_Business/Committees/House/Communications/Mobileco-investment/Report) [↑](#footnote-ref-39)
39. In the SoI, we also indicate that we will have regard to and contribute, where we are able, to broader policy priorities, including First Nations Australians and Closing the Gap targets. [↑](#footnote-ref-40)
40. See the ACCC’s [*Mobile Infrastructure Report 2022*](https://www.accc.gov.au/by-industry/telecommunications-and-internet/mobile-services-regulation/mobile-infrastructure-report/mobile-infrastructure-report-2022). [↑](#footnote-ref-41)
41. See the ACCC’s 2023 [Regional mobile infrastructure inquiry – Final report](https://www.accc.gov.au/inquiries-and-consultations/regional-mobile-infrastructure-inquiry-2022-23/final-report), p.1 and p. 5. [↑](#footnote-ref-42)
42. In this context, we understand digital inclusion, and the digital gap (that is, the ‘difference in levels of digital inclusion between First Nations people and other Australians’) as considering the availability and affordability of communications options, as well as a range of social factors. This understanding is consistent with the [*Mapping the Digital Gap 2023 Outcomes Report*](https://www.admscentre.org.au/mapping-the-digital-gap/). [↑](#footnote-ref-43)
43. [*2023 First Nations Digital Inclusion Advisory Group Initial Report*](https://www.digitalinclusion.gov.au/publications), p. 8 and pp. 11-12. These findings are echoed in the Mapping the Digital Gap 2023 Outcomes Report. [↑](#footnote-ref-44)
44. Outcome 17 of the [National Partnership Agreement on Closing the Gap](https://www.coalitionofpeaks.org.au/national-agreement-on-closing-the-gap#:~:text=Aboriginal%20and%20Torres%20Strait%20Islander%20people%20from%20across%20the%20country,Torres%20Strait%20Islander%20peoples'%20priorities.) is ‘Aboriginal and Torres Strait Islander people have access to information and services enabling participation in informed decision-making regarding their own lives.’ The [target](https://www.closingthegap.gov.au/sites/default/files/2022-09/ctg-national-agreement_apr-21-comm-infra-targets-updated-24-august-2022_0.pdf) associated with Outcome 17 is ‘By 2026, Aboriginal and Torres Strait Islander people have equal levels of digital inclusion.’ We note that the timeframes for ESLs are not necessarily conducive to achieving that target, and we propose to have regard to the outcome. [↑](#footnote-ref-45)
45. The ACCC finding was that ‘To the extent that regional-focused operators can develop alternative means of providing mobile coverage in regional Australia, there may be benefit in providing those operators with access to [currently allocated, and particularly low-band] spectrum, particularly where the spectrum may be not currently used.’ The ACCC also noted that, while it had ‘not been provided with more detailed information on the proposed alternative use-cases, the ACCC understands that some international jurisdictions have a “use it or lose it” licence obligation on spectrum licences. “Use it or lose it” provisions could potentially promote more efficient use of spectrum including by incentivising licensees to share spectrum that they do not use. However, “use it or lose it” obligations may lead to inefficiencies where there are, for example, legitimate reasons for a company to delay rolling out services.’ [↑](#footnote-ref-46)
46. See our [submission](https://www.aph.gov.au/Parliamentary_Business/Committees/House/Communications/Mobileco-investment/Submissions) to the Inquiry into Co-Investment. The Department of Infrastructure, Transport, Regional Development, Communications and the Arts, in its submission to the Inquiry into Co-Investment similarly observed that ‘There is no clear evidence that spectrum access is a barrier to expanding coverage in regional and remote areas for the major mobile carriers. All the major mobile carriers own national spectrum licences for low band and have holdings of medium and high band spectrum.’ The ACCC’s RMII report notes that it ‘consider[s] that Telstra, Optus and TPG Telecom all currently have sufficient spectrum to supply mobile network services in rural, regional, remote and peri-urban areas,’ p. 80. [↑](#footnote-ref-47)
47. See the government’s 2023 [*Better delivery of universal services discussion paper*](https://www.infrastructure.gov.au/sites/default/files/documents/better-delivery-of-universal-services-discussion-paper.pdf). [↑](#footnote-ref-48)
48. See our FYSO 2023–28 for more on this topic. [↑](#footnote-ref-49)
49. See our stage 1 consultation paper and FYSO 2023–28 for additional context. [↑](#footnote-ref-50)
50. That is, where the spectrum access charge has taken into account the value to the licensee of renewing spectrum licences and avoiding the uncertainty and the potential costs of gaining access to the spectrum via an auction. [↑](#footnote-ref-51)