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From: Chris Nelson <[REDACTED]>
Sent: Thursday, 1 April 2021 7:25 AM
To: techreg
Subject: Radiocommunications equipment rules - consultation 07/2021

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The Manager

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Chris Nelson,
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Re: Response to the proposed changes to Amateur licensing arrangements, Non-assigned amateur stations February 2021. The ACMA invited comments on the issues set out in the discussion paper "Proposed Changes to Amateur Licensing arrangements"

Herewith are what I consider relevant to the Amateur Radio Service, along with my observations regarding the proposed changes as well those recently introduced.

1. Amateur Radio Service.

The ACMA refers the Amateur Radio Service as a "Hobby" in this paper. I believe that it is not a hobby it's a SERVICE, this is in line with other ITU nations. The Amateur Radio Service is a national asset being undervalued by the ACMA, this is most acutely felt as an experience of those submitting complaints of interference to the ACMA, are met with a standard response dismissing the complaint "Low priority no investigation will take place". With the present undertaking to further divest of any responsibilities of the ACMA under the act the proposed deregulation, shows a general dismissive attitude of the ACMA towards the Amateur Radio Service. The ITU treaty rules and regulations (2016) signed by the Australian Government refers to Amateur Radio as a Service.

The Amateur Radio Service has been in place for a very long time, has remained relatively static in its intended legislative protective structure, with only minor changes to bands and frequencies having taken place mostly as a result of ITU resolutions. A further reason for this is this service and Amateur Radio Operators cater to and underpin many and varied activities of national and global emergency and civil defence where common carrier communications services have failed or lack the ability to meet the demands of the crisis.

2. The ACMA's Failure to canvass a true sample of licensed Amateur radio Operators opinion:

The ACMA failed in the recent changes to obtain the true feeling of its clients, instead relied on the services of two minority representatives that don't statistically represent the at large views of the Amateur fraternity.

The WIA with approx. 3000 financial members is reasonably representative of the fraternity's views with only approx. 20% membership of the total license holders in Australia, along with the RASA organisation having a smaller representation, so the ACMA should give weight to the advice considers advice from these organizations based on their relative membership to determine the response from users of the Amateur Radio Service.

Should the ACMA should have conducted polls / canvassing using an independent organisation to confirm that the two representative bodies views that were/are common amongst the Amateur community?

Reviewing the process and results of that decision indicates that the result MAY not be the desire of the Amateur Radio Service in General.

As such the process results are questionable, when you compare the RASA poll result was the complete opposite of the WIA poll. The ACMA chose the result that conformed to the ACMA agenda and not to the majority of clients, that being the abolition of the descriptive elements of the call sign. With the original long standing call sign system, there was no need for special call signs or even special state specific numbering to be used in contests, the station identifier was all inclusive of the information required.

3. C Tick (RCM / EMC):

The ACMA failure of past administrations regarding the "C Tick".

The lack of past and present enforcement and investigation, presently plagues every user of the radio spectrum, by the amount of EMI suffered and in some cases a total denial of use of a particular parts of the spectrum.

The ACMA regards "C Tick" complaints as low priority refusing to investigate and instead advises clients to address the matter with the importer/manufacture, taking no responsibility or blame for the breach of the act and the non-compliance of those devices that the original legislation was to protect the public from. The ACMA divesting from the enforcement of the act in response to deregulation is to blame for this outcome.

4. Conclusion of my response to the paper preamble:

The appointment of the AMC under a deed of understanding to administer exams and call signs, has resulted in a significantly higher cost burden to be placed upon Amateur Radio Service users, that under the deed held with the WIA, the money paid was at least returned to fund other activities in the interest of Amateur Radio. It's perplexing to the fraternity the action taken by the ACMA in awarding to the AMC, a private enterprise body, the task to administer call signs and license exams, a function that was working well under the stewardship of the WIA in conformance to the Australian Qualifications Framework.

The WIA was fulfilling its education role, along with self-governance, yet these terms are now used by the ACMA when it aligns with the policy agenda of the ACMA, a definite double standard having taken away self-governance from the Amateur Radio Service in the first place.

The cost recovery argument that justifies the AMC increase in charges is just a present fog that will change its nature under further deregulation. One has to wonder, is the agenda of the ACMA, to provide the AMC with further commercial interest in the administration of the Amateur Radio service?

5. Comments on the executive summary:

In the Executive summary, the ACMA chooses to use language and references that the average person will not understand. Instead the ACMA should have used language consistent with the government policy that plain language be utilised when communicating with the public and creating and or amending legislation.

In not doing so the ACMA is excluding from proper consultation those people that have just as much right to offer an opinion with a clear understanding. It's disappointing that the ACMA engages in this kind of practices, the lack of transparency in the processes undertaken by ACMA are questionable, requiring the policy division not to engage in practices that are designed to deceive.

6. Re: Issues for Comments:

Here again the ACMA engages in language that purposely does not provide the full context of the implications that the different options offer. Deregulation is not an issue for, or in the best interests of, the Amateur Radio Service, but only to the ACMA and or large organisations as it wishes to divest its responsibility and accountability and make it easier to take away the privileges this service enjoys.

In doing this the ACMA seems intent on establishing a frame work that is not necessarily in the best interest of the Amateur Radio Service.

The ACMA is bound by the regulation of the ITU hence the statement under Issues for Comment is made:

(sic) *"6 Any comments, including alternative proposals, relating to the ACMA's current policy on reciprocal arrangements for recognition of overseas qualified amateurs."*
This is governed by the ITU articles."

I am glad to see that in this case the ACMA is willing to abide by the ITU conditions. From my experiences in dealing with the ACMA, it seems that compliance to ITU mandates has become highly selective, This is indicated by the ACMA providing an excuse rather than a logical argument when excluding certain conditions to Amateur Radio Operators.

7. licensing of radio communication devices

The ACMA quotes section 46 and 47 with some interpretive licence.

Quote from the 1992 Radio Communication act 2021 amended.

(sic) *"3.1.46 & 47 unlicensed operation of radio communications devices*

46 Unlicensed operation of radio communications devices

(1) *Subject to section 49, a person must not operate a radio communications device otherwise than as authorised by:*

- (a) *a spectrum licence; or*
- (b) *an apparatus licence; or*
- (c) *a class licence.*

Penalty:

(a) *if the radio communications device is a radio communications transmitter:*

(i) *if the offender is an individual—imprisonment for 2 years; or*

(ii) *Otherwise—1,500 penalty units; or*

(b) *if the radio communications device is not a radio communications transmitter—20 penalty units.*

(2) *Subsection (1) does not apply if the person has a reasonable excuse.*

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the Criminal Code).

47 Unlawful possession of radio communications devices

(1) *Subject to section 49, a person must not have a radio communications device in his or her possession for the purpose of operating the device otherwise than as authorised by:*

(a) *a spectrum licence; or*

(b) *an apparatus licence; or*

(c) *a class licence.”*

The ACMA interpretation of the legislation are incorrect and misleading. If this was to be tested in a court of law, I believe that, the ACMA would find it hard to justify their interpretations within the wording or spirit of the legislation. Possession is not intent or operation.

A business selling communication equipment could have several transceivers in stock, with the ACMA interpretation that retailer would be in breach of the legislation requiring special dispensation to be obtained. Then we have the case of a licence holder that for any kind of reason lets the licence expire, under the ACMA interpretation that person would be in breach of the legislation by retaining his equipment.

This is plain nonsense on the part of the policy division with the stated interpretations. If the intent is to be as interpreted as the ACMA does presently, then appropriate changes to the wording to article 46 & 47 are required. Possession has nothing to do with intent.

The ACMA is using these two clauses as the excuse towards a class licence. I also note that the ACMA has failed to advise the recent changes to the Radio Communication act, more reason for the ACMA to quote the relevant sections of the act providing more details insuring that the correct position is understood by those evaluating the proposed changes.

8. The amateur service

(sic) “The amateur service is a long-standing use of the radio frequency spectrum, with a range of bands available for qualified amateur operators. It is designed primarily to facilitate hobby radio communications and technical experimentation. When required, amateur radio operators also provide a substitute form of communication in civil emergencies. Anyone can listen to transmissions made on the amateur bands using a receiver”

Once again the ACMA policy branch does not understand the extent of the activities that the service undertakes as this statement shows “*It is designed primarily to facilitate hobby radio*” is a very indicative statement of the misunderstanding that exists within the division of the ACMA, in fact I wonder if it’s so purposely designed to undervalue the service to politicians in justification of a class licence. Most of the secondary service allocations the Amateur Radio Service enjoys the privilege in using, the primary service users are predominantly military, so interception of signals on amateur radio allocations can and does include interception of military communications. As such protections not enforced actually are supposed to include the signing of Operators to the Secrecy of Communications Act.

The Amateur Radio Service has many roles, to some it’s a communication tool with social implications to some is an experimental platform that can as it has done in the past having provided technological innovations, and to some is

a vehicle to provide a service to the community. In times of global conflict it is a ready reserve of skilled Radio Operators quickly drafted into military service.

It's absolutely wrong for the ACMA to label the service as a HOBBY.

9. International Telecommunications Union (ITU) Radio Regulations (ITU RR)

The ACMA references to Articles 19, 25, expecting the person submitting a response to be acquainted with the ITU articles, fails to provide a link, abandoning the reader to research completely using his own means to understand the empowerment to the ACMA that such articles provides. Once more the ACMA sets a scenario that can only be deemed as a lack in the duty of care.

The ACMA is here to serve ALL Australians without favour, not just business or political whim of the day, it must carry out its duties and all activities with all due diligence, any deviation is a dereliction of duty by those concerned. It appears that the ACMA selectively abides by the ITU articles, taking advantage of the afforded flexibility of the treaty.

The lack of response in the mitigation of interference to the Amateur Radio Service stands as indefensible example of how the ACMA abides to the (ITU) charter.

10. Further changes to licencing.

I don't support changes to the current licencing provisions that dilute protection of the privileges and negate the responsibilities of the ACMA in the protection of the radio communications spectrum and specifically that are clearly already demonstrable as adversely impacting on the Amateur Radio Service. I totally reject the class licence model. It will worsen the current legislative protections afforded to Amateur Radio Service to do with interference, (Not that the ACMA does anything about that) Along with the consultation process afforded under the current legislation and ITU articles.

A class licence gives the ACMA total power under ministerial directive to change any condition without providing reason, an unacceptable condition.

The other options offer no advantages to the Amateur radio service, in fact further confuse the situation.

The ACMA should change its method of addressing interference especially in those areas that have been neglected for so long, these are impacting operators with the result in a total denial of access to the service because of their geographic location.

The proper addressing of complaints, its offensive to go through the process of lodgement to then be greeted with a response stating "*your complaint has low priority, will not be acted upon*". As a body of people who currently operate on a "fee for Service" we are expecting a service for the fees we pay.

The duties of the ACMA are to serve with no favour. All parts of the legislation are there to protect those benefits afforded to the public, favouring some over others, making sweetheart deals with commercial entities is not the way to serve, in fact a dereliction of duties.

This is my opinion.

My choice is for the current system to be retained, as it offers total protection and recourse under the Radio Communications act of 1992.

Kind Regards

Chris Nelson

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