



## PFA SUBMISSION: SPECTRUM REVIEW TERMS OF REFERENCE

JUNE 2014

### INTRODUCTION

The Police Federation of Australia (PFA), representing the nation's 57,000 police officers, makes this submission on the Federal Government's Spectrum Review Terms of Reference because of our continuing concern that the Minister for Communications and the ACMA are failing to implement the statutory obligation under the *Radiocommunications Act 1992* to provide adequate spectrum for law enforcement and emergency services.

Without broadband spectrum it is not possible for Australia's public safety agencies to have inter-operable, dedicated mobile broadband communications for their day-to-day and life-saving disaster and emergency operations.

The Terms of Reference (TOR) explain that the purpose is to "undertake micro-economic reform to 'unchain' the full potential of spectrum as a valuable public resource" but the risk is that in doing so important public policy safeguards built into the legislation will be weakened or eliminated. Specifically, the guarantee in the Act that spectrum needed for essential public service functions – defence, national security, law enforcement and emergency services – should not be subject to review in the spectrum review process.

Terms of Reference 1 to 8 appear to mask the real intention of the Spectrum Review.

The ***Spectrum Review Issues Paper***, May 2014, which accompanies the Terms of Reference, makes it clear that those obligations under the current Act are a target of the Spectrum Review and the PFA is alarmed at this development.

Consequently, the national Executive of the Police Federation of Australia, at its meeting on 4 June 2014, passed the following resolution:

"The Executive of Police Federation of Australia condemns the Federal Government's Terms of Reference for the review of spectrum. The ***Spectrum Review Issues Paper*** (May 2014) reveals that:

- The obligation under the ***Radiocommunications Act 1992*** to provide adequate spectrum for Australian defence, national security, law enforcement and emergency services is at risk of being deleted;

- Levelling the playing field on charges for spectrum would mean public safety agencies pay the same as profit-making commercial telecommunications companies; and
- Deleting the power of the Governor-General to declare an emergency would take away an important reserve power concerning radio transmissions.

In July 2013 the Parliamentary Joint Committee on Law Enforcement, in a bi-partisan report<sup>1</sup>, unanimously recommended 20 MHz of spectrum for public safety in Australia.

The PFA Executive calls on the Minister for Communications, Malcolm Turnbull to make 20 MHz of radio spectrum in the 800 MHz band available for police and emergency services so they have mobile broadband communications which will transform policing, ambulance, SES and fire services.

The PFA Executive also resolved to seek legal advice on steps it can take to ensure that the Government meets its legal obligations under the Act.”

Terms of Reference 1, 3, 4, 5, 6, 7 and 8, according to the ***Spectrum Review Issues Paper***, all touch on the central matter of concern to the PFA, Australia’s Police Commissioners in each State and Territory, and other public safety agencies, namely adequate spectrum for their essential public safety services to the community.

Your ***Spectrum Review Issues Paper*** asks whether there are matters which should not be considered in the course of the Review. We submit that *Radiocommunications Act 1992* object 3(b) relating to adequate provision of spectrum for defence, national security, law enforcement and emergency services should **not** be considered by the Review.

### **THE HISTORY AND RATIONALE OF OBJECT 3(b)**

When the Keating Government first introduced a market-based system for Australia spectrum management in 1992, it included in the Radiocommunications Act a provision in Section 3(b) “to avoid any disadvantage to public and community services arising from the implementation of market-based reforms<sup>2</sup>”.

In 2003 the Howard Government amended and strengthened Section 3(b) to “expressly provide that making adequate spectrum available for defence, national security, law enforcement and emergency services is an object of the Radcom Act”<sup>3</sup>. “The purpose is to address concerns of defence, national security, law enforcement and emergency services agencies regarding adequate and assured future access to appropriate segments of the radiofrequency spectrum..... (This) will strengthen the existing provisions by providing an

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<sup>1</sup> *Spectrum for public safety mobile broadband*, July 2013.

<sup>2</sup> *Objects of the Radiocommunications Act 1992*, Sept 2012 DBCDE.

<sup>3</sup> *Ibid*, section 2.

express acknowledgement of the importance of adequate access to radiofrequency spectrum by these agencies”<sup>4</sup>.

## THE CURRENT SITUATION

The assurance in the Act of adequate spectrum for law enforcement and emergency services is more important now than it has ever been. This is because of the insatiable demand for broadband spectrum by Australia’s major telecommunications companies and the effect this is having on other sectors and users.

This is clearly demonstrated by the fact that following the auction of Digital Dividend spectrum (in the 700 MHz band), 30 MHz of that spectrum remained unsold. None of the major telecommunications companies bid for that spectrum, they remained opposed to 20 MHz being set aside for law enforcement and emergency services as recommended unanimously by two recent Parliamentary inquiries:

- The Senate Environment and Communications References Committee report, ***The capacity of communications networks and emergency warning systems to deal with emergencies and natural disasters***, November 2011; and
- The Parliamentary Joint Committee on Law Enforcement report, ***Spectrum for public safety mobile broadband***. July 2013.

Furthermore, the major telecommunications companies also opposed law enforcement and emergency services having 20 MHz of spectrum in the 800 MHz band, although 10 MHz in that band was proposed by the ACMA in 2013, with the possibility of 20 MHz left open by the ACMA.

Instead, the telecommunications industry wants Australia’s police services and emergency services to have to source their broadband communications capability from the telecommunications companies (probably Telstra since it is the company with the greatest LTE footprint in terms of population and geography) and pay them for that capability in perpetuity. This would put police and emergency services in a position of having a monopoly supplier in a position to dictate to them the price, quality, security and terms of a capability essential to their public safety functions in the 21<sup>st</sup> century. The only way to avoid this is for public safety to have dedicated spectrum. The telecommunications companies seem to be advocating, contrary to the Act, that law enforcement and emergency services should have zero broadband spectrum.

Such a stance is clearly not in the public interest. Everything established by the two Parliamentary Committees listed above supports this view.

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<sup>4</sup> Communications Legislation Amendment Bill (No. 1) 2002, Explanatory Memorandum, Senator the Hon. Richard Alston.

## **SPECTRUM ACCESS CHARGES**

The *Spectrum Review Issues Paper* canvasses the use of opportunity cost pricing and proposes to re-examine concessional charging arrangements for various users. Elsewhere it suggests treating users and sectors consistently and applying market-based principles to public interest services.

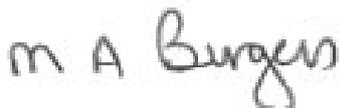
The current Act provides for differential access charges for spectrum for good reason – in recognition that spectrum is a public resource and that different categories of users have vastly different capacities to pay for spectrum. Those differentials range from profit-making telecommunications companies like Telstra, Optus and Vodafone, to taxpayer funded non-profit organisations like police and emergency services. Spectrum is no less vital to the latter than it is to the former and yet public safety agencies will never be able to compete with telecommunications companies financially for spectrum. We believe that the provisions of the Act relating to differential charges should remain.

## **AN ENFORCEMENT MECHANISM**

One change to the Act which would be advantageous to public safety agencies would be the introduction of a means to enforce the provision of the Act concerning adequate spectrum for public safety agencies. It appears that at present the only means of enforcing Section 3(b) of the Act is by way of a prerogative writ of mandamus in the High Court against the Minister and/or the ACMA. It would be far preferable if an effective and speedy means of enforcement was available and one such option may be an appeal, or recourse, to the Telecommunications Industry Ombudsman. We suggest that the Spectrum Review examine that and other effective options.

## **CONCLUSION**

The PFA submits that the object of the *Radiocommunications Act 1992* relating to provision of adequate spectrum for defence, national security, law enforcement and emergency services is more important today than ever and should not be a subject of the Spectrum Review. Concessional pricing arrangements for public safety agencies are vital and should not be jeopardised by the Review. To “unchain” and deregulate spectrum management in a way which weakens those important safeguards would not be in the public interest.



Mark Burgess  
Chief Executive Officer  
Police Federation of Australia  
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