

Spectrum licence renewal case study in Australia

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Content

1.	Introduction	1
1.1	Stage 1.....	1
1.2	Stage 2.....	2
1.3	Stage 3.....	2
1.4	Stage 4.....	3
1.5	Coleago's work for Optus.....	3

Exhibits

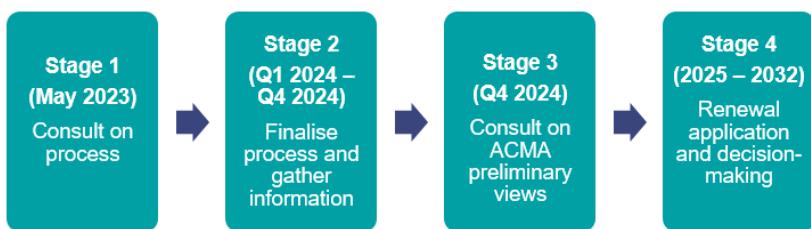
Exhibit 1:	Stages of the consultation process.....	1
Exhibit 2:	Coleago's approach to regulatory consultations.....	4

1. Introduction

The Australian Communications and Media Authority's (ACMA) approach to dealing with expiring spectrum licences (ESLs) provides a case study in good practice. Spectrum licences in the 700 MHz, 850 MHz, 1800 MHz, 2 GHz, 2.3 GHz, 2.5 GHz, and 3.4 GHz bands are due to expire between 2028 and 2032. The ACMA commenced the expiring spectrum licences consultation process in May 2023 - five years before the first licence expiry date and nine years before the last. This approach ensures that sufficient time is available for extensive stakeholder consultation. The consultation included licences with expiry dates up to nine years in the future in order to address ESLs in a holistic manner. Not only is this more efficient from the regulator's viewpoint, but it also provides greater certainty regarding the conditions and processes for the entire spectrum portfolio.

The consultation comprises four stages and began with a consultation on the overall process. The legal framework allows for spectrum licence renewal rather than expiry and re-auction, and this is the most fundamental decision to be made. If a country's legislation does not allow for renewal, but it is determined that renewal would serve the public interest, new legislation would be necessary to permit it. This process takes time, possibly up to two years, so in such cases, a consultation lead time of at least three years should be planned.

Exhibit 1: Stages of the consultation process



Source: The ACMA

1.1 Stage 1

The consultation was framed by public interest criteria, which set the scene for the questions asked by the ACMA and the submissions provided by stakeholders. The ACMA offered detailed explanations of its current approach and views, and invited responses to six questions:

Question 1: What are your views on the proposed public interest criteria? Are there any other criteria that should be considered?

Question 2: What are your views on the proposed four-stage approach to undertaking the ESL process?

Question 3: Are there any band-specific issues that should be considered as part of this ESL process?

Question 4: Are there any other matters that should be considered in connection with the ESL process?

Question 5: What are your views on the proposed approaches to valuing spectrum and payment arrangements?

Question 6: What are your views on the proposed approach to examining use under existing spectrum licences?

1.2 Stage 2

Stage 2 of the expiring spectrum licences consultation was launched in March 2024 and focused on information gathering, including views on the uses of frequency bands and alternative licence conditions. The ACMA sought information from incumbent spectrum licensees and prospective alternative licensees regarding their current and potential future uses of the spectrum, and how these uses promote, or may promote, the long-term public interest.

In addition to requesting information, the ACMA also sought stakeholder feedback on the following:

- Approaches to examining use under existing spectrum licences.
- Issues related to resilience and temporary disaster responses that arise in the context of spectrum licences and the ESL process.
- The ACMA's views on the uses of the frequency bands that are conducive to promoting the long-term public interest, along with any additional evidence or analysis related to these views.
- The effectiveness of rollout obligations in achieving improved coverage, as well as use-it-or-lose-it (UIOLI) and use-it-or-share-it (UIOSI) conditions to promote more efficient spectrum use, including any evidence or analysis to support these views and input on the practical implications of applying such conditions.

The consultation opened in March 2024, and in June 2024, stakeholder submissions were published, and the reply-to-comment period was opened. This two-stage process, which allows for reply comments, is useful because it enables stakeholders to critically review the comments of others and either support or refute the views expressed. In July 2024, the reply-to-comment submissions were published. All comments and replies were made available on the ACMA's website.

1.3 Stage 3

The starting point for stage 3 was the ACMA's publication of its preliminary views, including spectrum pricing. The preliminary views were informed stakeholder inputs from the previous stages. In stage 3, the ACMA sought feedback on these preliminary views.

The most important aspects were:

- To renew spectrum licences rather than re-auction them.
- To propose a price range based on benchmarks.

ACMA's preliminary views were set out in several highly detailed documents, each including a discussion, an explanation of the rationale for the view, and the view itself. The documents published by the ACMA comprised a main paper, preliminary view papers for each topic, and supporting papers.

ACMA published four detailed preliminary view papers:

Preliminary View Paper 1: Incumbent Use-Cases and the Public Interest discusses the ACMA's preliminary views on whether incumbent use-cases for ESL spectrum currently, or are likely to, promote the long-term public interest.

Preliminary View Paper 2: Options for ESL Frequency Bands and the Public Interest discusses the ACMA's preliminary views on how different options (that is, renewal, partial renewal, or non-renewal for each ESL frequency band) may affect the public interest.

Preliminary View Paper 3: Licence Duration and Licence Statements discusses the ACMA's preliminary views on licence duration and renewal statements for any spectrum licences that may be renewed as part of the ESL process.

Preliminary View Paper 4: Pricing for ESLs discusses the ACMA's preliminary views on pricing for each ESL frequency band, primarily expressed as 'dollars per MHz per pop'.

Further details are provided in three supporting papers:

Supporting Paper 1: Overview of Expiring Spectrum Licences, Incumbent Holdings, Use, and the Secondary Market provides an overview of the ESLs, incumbent spectrum-licensed holdings, the allocation history of each ESL frequency band, and secondary market activities (for example, spectrum licence trading and third-party authorisations) to provide context on how current arrangements have developed over time.

Supporting Paper 2: Competing and Complementary Demand for ESL Spectrum provides an analysis of competing and complementary demand for spectrum covered by ESLs and outlines the use-cases proposed by prospective alternative licensees, as well as how these relate to the public interest.

Supporting Paper 3: Trends and Developments in Spectrum Management, Policy and Technology, and Markets provides an overview of relevant trends and developments that have either informed ACMA's preliminary views or may do so in the future.

The ACMA also provided four Excel files containing spectrum price benchmarking data, thereby ensuring maximum transparency regarding the recommendations on the proposed spectrum pricing ranges.

1.4 Stage 4

The original timing for Stage 4, which includes the preferred views and ACMA responses to stakeholder submissions from Stage 3, was scheduled for Q3 2025. However, the ACMA wrote:

"Initial feedback from stakeholders on our preliminary views indicates that submissions to the consultation are likely to raise a range of complex considerations, particularly regarding spectrum prices and proposed transitions of critical services to new licensing frameworks. Stakeholders have also indicated a strong desire to understand how a secondary licensing framework might work in practice before the commencement of the renewal application period for the first tranche of ESLs in the 850 MHz and 1800 MHz bands. Taking these matters, and the inclusion of a reply-to-comment period, into account, we have decided to defer Stage 4 of the ESL process to Q4 2025."

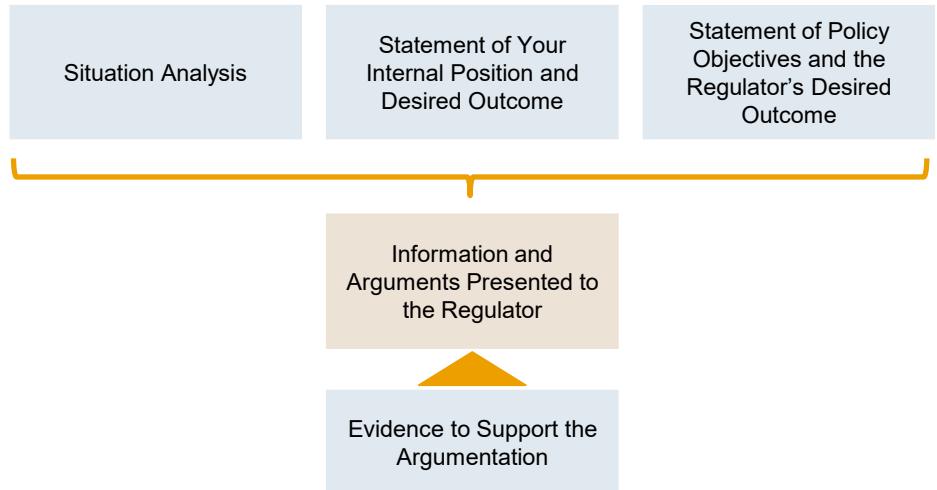
1.5 Coleago's work for Optus

It is a matter of public record that Coleago Consulting supported Optus. Optus wisely engaged Coleago well ahead of Stage 1 of the ESL process. Initially, Coleago helped Optus develop its internal stance on submissions, providing evidence and data to support Optus' preferred outcomes.

Secondly, Coleago provided input to Optus' responses to consultation questions. Thirdly, Coleago authored several papers that were filed alongside Optus' submissions. Some of Coleago's arguments were highly influential, with extracts reported in the Australian telecommunications press. Our papers can be found on the ACMA's website.

Successful advocacy is based on reconciling the optimal outcome for Optus with the optimal outcome from the regulator's perspective. As a starting point, it is essential to understand the current situation. Any arguments submitted to the regulator must be evidence-based, drawing on precedents from other markets in similar situations as well as theoretical reasoning. At best, a submission to a consultation is perceived as valuable to the regulator's staff because it provides insight and evidence that will help them effectively manage expiring spectrum licences.

Exhibit 2: Coleago's approach to regulatory consultations



Source: Coleago

A core element of Coleago's work was the valuation of all expiring spectrum licences. Valuing spectrum is important regardless of whether the licences will expire and be re-auctioned or, as in the Australian case, the regulator will set a fee to renew the licences. These spectrum licence renewal fees are substantial, and corporate governance requires that a business case exists for renewing all licences.

Simply renewing all spectrum and paying the fees set by the regulator may not be the optimal option. With 3G, channel bandwidth was limited to 5 MHz, increasing to 20 MHz with 4G. In the 5G era, with channel bandwidths of up to 100 MHz and operators holding as much as 100 MHz in the 3500 MHz band (n77/n78), renewing a mid-band licence of only 2 x 10 MHz may, in fact, not create significant value. An in-depth valuation process provides valuable insights regarding spectrum strategy for 5G Advanced and 6G, including opportunities for band rationalisation, spectrum trading objectives, and spectrum pooling.

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