

Review of Interference Management Principles

Consultation paper

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Contents

Introduction	1
Background	2
Issue/s for comment	4
The 2004 Principles	5
What are they?	5
Principles for referral of disputes to a conciliator	6
Cost recovery principle	6
How has the ACMA used the 2004 Principles?	7
The need for change	8
The changing nature of regulation	8
The changing nature of interference	9
The changing nature of the ACMA's role	10
Updating the 2004 Principles	13
The Proposed Principles	14
Implementation of the Proposed Principles	14
Predictability	14
User involvement	16
Cooperation	16
Non-regulatory strategies	16
Cost recovery	17
Invitation to comment	18
Making a submission	18

Introduction

The Australian Communications and Media Authority (the ACMA) is the government agency responsible for regulating broadcasting, radiocommunications and telecommunications in Australia.

The ACMA manages the radiofrequency spectrum in accordance with the *Radiocommunications Act 1992* (the Act). The Act provides a range of powers to the ACMA that include the planning and licensing of spectrum; device labelling; the accreditation of third parties to undertake certain spectrum management functions; and compliance and enforcement, including interference management. In this regard, the Act also establishes a number of offence provisions.

To ensure the effectiveness of its management of the radiofrequency spectrum and the integrity of radiocommunications licensing arrangements, the ACMA has both proactive and reactive compliance programs. The [Priority Compliance Area \(PCA\) program](#) takes a strategic approach to addressing identified high-risk compliance issues. PCAs focus on systemic causes and risks of harmful interference, high risks to spectrum utility and risks to public safety or the public interest. PCAs are reviewed annually to ensure the ACMA is effectively and efficiently using its compliance resources to best minimise risks to spectrum users and radiocommunications licensees.

The ACMA also responds to complaints of interference to radiocommunications services and other alleged breaches of regulatory requirements. To ensure that compliance resources are used effectively and efficiently in response to complaints of interference, the ACMA proposes to adopt new Interference Management Principles. Once finalised, the Interference Management Principles will support the development of policies and processes about the management and effective resolution of interference issues, including the role and responsibilities of the ACMA.

The ACMA welcomes comments about any of the issues raised in this consultation paper or any other matters relevant to the proposed Interference Management Principles.

Background

The ACMA investigates complaints of interference to radiocommunications services in accordance with:

- > its [Compliance and enforcement policy](#)
- > a set of Interference Management Principles that were developed by the former Australian Communications Authority (ACA) in consultation with industry representatives (the 2004 Principles).

The *Compliance and enforcement policy* sets out the ACMA's policies and procedures for all its compliance and enforcement responsibilities. The *Compliance and enforcement policy* recognises that parties will often be motivated to achieve compliance voluntarily once they become aware of their non-compliance. Where a regulatory breach has occurred, the ACMA will take regulatory action commensurate with the seriousness of the breach and the level of harm. The ACMA will generally use the minimum power or intervention necessary to achieve the desired result, which, in many cases, is voluntary compliance with the relevant obligation.

The 2004 Principles guide ACMA compliance activities in response to complaints of interference—how the ACMA receives, assesses and responds to complaints about interference to radiocommunications services, including reception of radio and television services.

The 2004 Principles were developed through the Radiocommunications Consultative Council (RCC) in 2004. The RCC was an advisory committee established under section 51 of the *Australian Communications Authority Act 1997*. The RCC provided a formal mechanism for consulting with industry that the ACA used to consult on a wide range of spectrum management issues.

The 2004 Principles were established to promote the object of the Act, including:

- > providing a responsive and flexible approach to meeting the needs of users of the spectrum
- > encouraging the use of efficient radiocommunications technologies so that a wide range of services of an adequate quality can be provided
- > maximising, by ensuring the efficient allocation and use of the spectrum, the overall public benefit derived from using the radiofrequency spectrum.

Technology and regulatory practice has changed significantly since 2004. For example, mobile broadband services and Wi-Fi access points are increasingly ubiquitous, operate across more frequency bands and make a more significant contribution to the economy, as well as having a larger social impact. Australia also completed its transition to digital television in 2013 and digital radio services are now available in the five largest capital cities.

Over the same period, the ACMA has transformed the delivery of its field services through a national service delivery model that focuses on the more effective delivery of interference diagnosis services. From a highly geographically dispersed regional presence, ACMA field officers now provide services across Australia from bases in Brisbane, Melbourne and Sydney. This consolidation is supported by the standardisation of technical equipment, including a common vehicle fleet, fly-away kits, a national monitoring network and the forward deployment of signal monitoring in cities where the ACMA does not have staff permanently stationed.

Issue/s for comment

The ACMA is seeking responses to the following questions:

1. *Do you consider that the Proposed Principles would operate effectively, and encourage the more timely resolution of interference cases now and under the future communications environment?*
2. *Do the Proposed Principles create any barriers to resolving cases of interference using the most appropriate approach; that is, cooperative, private rights of action or enforcement action?*
3. *Are there principles other than these that the ACMA should use to guide its interference management decisions?*
4. *Are there any other matters the ACMA should consider when revising the 2004 Principles?*

The 2004 Principles

What are they?

The 2004 Principles are a key element of the framework the ACMA uses to manage and respond to complaints of interference to radiocommunications services.

Principle 1—Acceptance of complaints for investigation

Before accepting interference complaints for investigation, the ACMA assesses each on its merits, based on information provided by the complainant. Factors considered when deciding whether to accept a complaint for further investigation include whether:

- > the complaint is trivial
- > the extent or consequences justify investigation
- > interference-like symptoms coincide with a radiofrequency emission not within the control of the complainant
- > the complainant has made reasonable attempts to resolve the problem directly with the controller (if known) of the source of the radiofrequency emission;
- > the affected service is operating within the parameters of the relevant spectrum management framework
- > readily available measures have been taken to increase the immunity of the service to the effects of the interference
- > resolution of the problem is likely to be practical
- > the expenditure of the ACMA's resources would be reasonable.

Principle 2—Cooperation between parties to an interference problem is required

Cooperation between the parties to an interference problem, and with the ACMA, is essential to its timely and efficient resolution. To foster cooperation, the ACMA's primary regulatory focus is on encouraging compliance to resolve interference problems.

Principle 3—Setting priorities for complaint investigation

When setting priorities for interference complaint investigation, the ACMA will have regard to the level, extent and consequences of the interference disruption, efficient use of interference investigation resources and the order of receipt of complaints.

Principle 4—Keeping complainants informed

During interference investigations, the ACMA will keep complainants informed about the progress and resolution of their complaint, subject to legitimate privacy considerations.

Principle 5—Interference caused by non-compliance

Where interference is found to be caused by non-compliance of either the affected receiver or the source of the radiofrequency energy with mandatory spectrum management requirements, the ACMA will encourage the relevant party to take action to achieve compliance, if necessary by taking escalating enforcement measures in relation to sources of interference, in accordance with its compliance policy.

Principle 6—Interference: no-fault situations

Where interference is caused despite compliance of both the affected device and radiofrequency source with their relevant spectrum management frameworks, the ACMA will seek the cooperation of the parties involved to determine the least costly, reasonable option for resolving the interference problem, considering the interests of all parties concerned. Matters the ACMA will consider in recommending a solution include:

- > the degree and effects of the service disruption
- > the availability, suitability and cost of alternative service options
- > the cost, practicality and effectiveness of further increasing the immunity of the affected service to interference
- > the cost, practicality and effectiveness of increasing the physical separation between the affected device and the source of the radiofrequency energy
- > the cost and practicality of one party changing frequency
- > the effect on the source of the radiofrequency energy of a reduction in radiated power, bandwidth or the range of frequencies available for use
- > occasionally, which service is 'first-in-time'.

Principle 7—Options when no-fault interference is caused and cooperation is refused

Where interference is caused despite compliance of both the affected device and radiofrequency source with their relevant spectrum management frameworks, but one or more parties to the interference problem refuse(s) to cooperate, the ACMA will consider the following options:

- > terminating the investigation, if the complainant is non-cooperative
- > varying licence conditions applicable to the source transmitter
- > invoking offence provisions against recklessly causing interference that is substantial or likely to prejudice safe operation of vessels, aircraft or space objects
- > referring the complaint to a conciliator appointed under section 202 of the Act.

Principles for referral of disputes to a conciliator**Principle 8—Matters considered in deciding whether to refer a complaint to a conciliator**

Matters the ACMA considers when deciding if it will refer an interference dispute to a conciliator, appointed under section 202 of the Act, include whether the:

- > party suffering the interference disruption, usually the complainant, has agreed to a referral
- > complainant has made reasonable efforts to negotiate a solution but a breakdown in communication between the parties to the interference dispute has occurred
- > ACMA has assessed that the potential for conciliation to resolve the dispute justifies the costs associated with the process.

Cost recovery principle**Principle 9—Criterion for levying cost-recovery charges**

The criterion the ACMA uses for deciding when to apply cost-recovery charges for interference investigation is whether the requested services exceed those necessary for the ACMA to fulfil its radiofrequency management obligations, as outlined in principles 1 to 8.

How has the ACMA used the 2004 Principles?

The ACMA has used the 2004 Principles to inform the operational processes by which complaints are received, acknowledged, assessed and finalised. This allows it to effectively deploy its valuable but limited field resources.

The ACMA has 18 technically qualified field staff based in Brisbane, Melbourne and Sydney servicing all of Australia, together with a contracted service provider located in Perth. Approximately 90 per cent of interference tasks reported to the ACMA and resolved with the assistance of field staff are within 200 kilometres of Sydney, Melbourne and Brisbane (these are considered high spectrum demand areas), or Perth and Adelaide (medium spectrum demand areas). The remaining 10 per cent of interference tasks are in other capital cities, regional and remote areas.

After a complaint is received, a field officer will assess the information and respond in accordance with the 2004 Principles. For complaints about interference to safety-of-life communications systems, the first response will be made within three business hours, with resolution expected within 10 working days. For other complaints, resolution is expected within 45 days. In the 2015–16 financial year, the time to resolve interference complaints was on average 24 days.

In a small number of cases, escalated enforcement action is required to resolve an interference matter. Escalated enforcement action may involve the exercise of statutory powers by field officers (who are appointed as Inspectors under the Act); the commencement of an investigation by the ACMA; the issue of advice, warning or infringement notices; or the preparation of a brief of evidence for consideration by the Commonwealth Director of Public Prosecutions.

However, in most cases, ACMA field officers are able to facilitate voluntary compliance by parties involved in a complaint of interference. They do so by diagnosing the cause of interference through their knowledge of radiocommunications and the use of specialised radiocommunications equipment. In most cases, interference diagnosis by a field officer and the cooperation of all parties leads to resolution of the complaint of interference.

In contrast, a somewhat different approach has developed for broadcasting interference complaints. Where complaints of interference relate to the reception of terrestrial broadcasting services, the ACMA requires the complainant to ensure their reception issues are not the result of inadequate, poorly maintained or faulty domestic reception systems—the most common cause of TV reception difficulties. In most cases, this requires households experiencing reception issues to engage a TV antenna technician to provide the details. This reflects the fact that most TV viewers lack the technical know-how to diagnose and rectify problems with their receiver installations (such as external antennas and cabling).

The ACMA will be interested to explore the potential for a similar type of threshold requirement to be applied to other types of interference complaints once the Proposed Principles are finalised and the [review of the Australian Government's Competitive Neutrality Policy](#) is completed.

The need for change

The changing nature of regulation

The ACMA has been examining its approach to regulation across its broad regulatory remit for some time; in particular, how it regulates in the public interest and for the public benefit. The Office of Best Practice Regulation identifies that risk to the public interest may arise where there is evidence of:

- > market failure (such as a lack of or misleading information, presence of externalities or public goods, or use of excessive market power)
- > regulatory failure (such as a government-imposed restriction on competition that is not in the public interest)
- > unacceptable hazard or risk (such as human health and safety hazards, person or entity bearing risk ill-equipped to do so, or threat of damage to the physical environment)
- > social goals/equity issues (such as individuals or groups being unable to access available market information, goods or services).¹

The ACMA has considered when it is appropriate and in the public interest to shift from direct (command and control) regulation to co-regulatory solutions, and from co-regulation to a greater reliance on industry involvement. As a result, it has adopted a harms- or risk-based approach to regulation across a number of the regulatory regimes it administers, including how it exercises its direction to investigate matters of non-compliance.

For example, it was a requirement of the *Broadcasting Services Act 1992* that the ACMA investigate complaints about non-compliance with broadcasting codes of practice by a broadcaster. While complaints had to be made to the broadcast in the first instance, the complaint could also be made to the ACMA if the broadcaster did not respond to the initial complaint within 60 days or the person making the complaint received a response but considered it to be inadequate.

The Broadcasting Services Act was amended in October 2014 to give the ACMA discretion as to whether or not to investigate such complaints. After considering a complaint, the ACMA may now take any of the following actions to deal with the complaint:

- > respond to the complainant that the complaint does not, on the face of it, establish a breach by the licensee and, in the circumstances, no further investigation is warranted
- > find that the complaint is frivolous, vexatious or not made in good faith
- > conduct an investigation as part of a community broadcasting licence renewal inquiry
- > conduct an investigation.

The ACMA may also investigate a potential breach of broadcasting codes of practice on its own motion.

¹ Australian Government, *Best Practice Regulation Handbook*, Canberra, 2007.

These new arrangements enable the ACMA to ensure that the allocation and use of its resources is effective and in the overall public interest.

The changing nature of interference

Interference can result from the use of improperly configured equipment, including insufficient separation between transmitters and receivers; faulty transmission or reception systems; spurious or unintended emissions from non-radiocommunications devices; and, in a small number of cases, the intentional operation of transmitters to cause interference. Interference may also be a function of the number of devices being operated in a frequency band, particularly when it is planned for use on a non-assigned or class-licensed basis.

The effects of interference on users can range from nuisance value to economic loss, public safety issues and risks to Australia's international interests. Inadequately managed interference may result in an inability to support the increasing diversity of spectrum-dependent services. It is not, however, possible or even desirable to completely eliminate the risk of interference and, through its regulatory arrangements and approach, the ACMA seeks to balance the cost of interference and the benefits of greater spectrum utilisation.

The ACMA's experience with apparatus-, spectrum- and class-licensed services is that most interference occurs from low-powered, class-licensed devices to mobile broadband services, or between apparatus-licensed devices. In the latter case, this is often due to faulty equipment, poor site engineering, breaches of licence conditions or unlicensed operation.

In the case of low-powered devices interfering with mobile broadband services, the most significant causes of interference are devices that:

- > operate in accordance with spectrum arrangements in other jurisdictions (principally North America) that are different to Australian spectrum management arrangements²
- > are obtained from suppliers outside the Australian jurisdiction through online supply channels and do not comply with Australian frequency planning and licensing arrangements (for example, cellular mobile repeaters)
- > although designed for operation in Australia, generate unwanted emissions under certain fault conditions (for example, television mast head amplifiers).

Class-licensed devices such as those authorised by the [Radiocommunications \(Low Interference Potential Devices\) Class Licence 2015](#) are not directly frequency-coordinated by the ACMA. Users may deploy them quite close to apparatus- and spectrum-licensed devices, such as mobile phone base stations, without understanding the interference risk. As proximity to other radiocommunications equipment and particularly proximity to receivers increases, so does the risk of interference.

² For example, mobile broadband services in the 900 MHz band are often affected by devices designed for use in the United States under FCC Part 15 arrangements that allow the unlicensed operation of devices from 902–928 MHz. Australian class-licensed arrangements are limited to the 915–928 MHz frequency range. Devices that are configured for US arrangements are not authorised to operate in the 902–915 MHz frequency range in Australia, may also be non-standard devices and can cause significant interference to licensed services.

However, users of non-compliant devices are generally not aware their devices are not operating on the frequencies authorised by the applicable class licence or in accordance with other conditions specified in the class licence.

Additionally, they may not know if interference has been caused or understand that compliance with ACMA-mandated standards and frequency ranges is required.

Contributing factors to the changing nature of interference include:

- > Technology and network developments, including an increasingly complex radiofrequency environment requiring seamless connectivity for both fixed and mobile devices, and more intensive use of new mobile broadband technologies.
- > Changes in the communications landscape, such as the increasingly ubiquitous provision of mobile broadband services and Wi-Fi access points, which have seen increased numbers of complaints that meet the threshold for ACMA interference diagnostic and investigation services.
- > The rapid increase in demand for applications that rely on low-powered, class-licensed transmitters. Examples of new and emerging technologies that use such transmitters include smart grid metering systems, the internet of things and intelligent transport systems.

Table 1 shows how the quantum of complaints about interference to licensed radiocommunications services reported to the ACMA has changed over the last six (financial) years and, in particular, how complaints from mobile network operators have continued to be the most common.

Table 1: Complaints of interference to licensed radiocommunications services, including mobile networks

Financial year	2011–12	2012–13	2013–14	2014–15	2015–16	2016–17
Total reports	497	518	431	847	621	486
Reports from mobile networks	272	322	276	655	480	376
% Mobile networks	55%	62%	64%	77%	78%	77%
% Other licensees	45%	38%	36%	23%	22%	23%

While all interference complaints received are carefully considered, the ACMA is not able to respond to all cases. A prioritisation threshold is applied before complaints are accepted that is based on the level or risk of harm and seriousness of the interference complaint being considered.

The changing nature of the ACMA’s role

The process for managing interference from the initial event through to resolution can broadly be categorised into the following four stages:

- > interference occurs and is observed or detected, but is unable to be resolved by the affected party
- > a complaint is made to the ACMA, the complaint is assessed and, if accepted, prioritised for diagnosis by the ACMA

- > in the minority of cases where diagnosis does not lead to resolution of the complaint, the ACMA may consider escalated compliance action such as an investigation
- > depending on the nature, cause and effect of the interference, there are occasions where the ACMA will consider escalated enforcement action even if diagnosis has already resulted in resolution of the complaint.

While some of these steps, such as escalated enforcement action, can only be undertaken by the ACMA, conceptually the initial stages may be undertaken by radiocommunications licensees or suitably skilled and equipped third parties.

The ACMA expects that demand for its interference diagnosis services is likely to continue to grow. Under current arrangements, it is possible that demand for interference diagnosis services could become greater than the ACMA's ability to supply those services to an acceptable quality or in an acceptable timeframe. Demand for ACMA interference diagnosis services could be managed by further rationing services through established case prioritisation processes, charging for interference diagnosis services or a combination of the two.

To the extent that it is consistent with the Act, the ACMA is proposing to clarify and refine its interference diagnosis role within the interference management framework in accordance with Recommendation 1(e) of the Spectrum Review:

- > allowing licensees to resolve interference and disputes, including:
 - > encouraging licensees to access alternative dispute resolution
 - > requiring the ACMA to develop and publish guidelines on its dispute management processes
 - > expanding rights of licensees to undertake civil proceedings.³

If adopted, this type of approach would see a transition from the ACMA being the major provider of interference diagnosis services to an interference management framework that increasingly enables and facilitates the provision of interference diagnosis services by third parties. There would be additional incentives for parties to an interference event to independently resolve the issue when the level of harm and seriousness did not warrant regulatory intervention.

Potential benefits could include:

- > Improved ability of licensees to resolve interference problems within their own timeframes and priority.
- > Improved industry understanding of interference events should enable the deployment of radiocommunications systems that are less susceptible to interference.
- > Third-party provision of interference diagnosis and resolution services may emerge as a new market opportunity.
- > The ACMA will remain the final arbiter on interference matters.

³ The [Spectrum Review Report](#) was published in March 2015. The Hon. Malcolm Turnbull MP, then Minister for Communications, [announced in August 2015](#) that the government agreed to implement the recommendations of the Spectrum Review.

If reforms of this nature were adopted, they would not affect the ACMA's compliance and enforcement role. The development of a competitive market for the provision of interference diagnosis services should result in earlier resolution of many interference issues. This would allow the ACMA to better focus its resources on activities such as its proactive compliance program and escalated enforcement action. It would also better facilitate ACMA responses to complaints of interference when it is in the public interest to do so (such as deliberate interference to emergency services communications).

Updating the 2004 Principles

The ACMA and industry have an opportunity to ensure the interference diagnosis and resolution services provided by the ACMA are properly focused to achieve the best outcome for licensees and all parties affected by interference, including those who may inadvertently cause interference.

To assist stakeholders with the consultation process, the ACMA has developed new principles (the Proposed Principles) that are intended to replace the 2004 Principles. The Proposed Principles are intended to maximise the opportunities for cooperative approaches to resolving interference matters in the first instance.

Unlike the 2004 Principles, the Proposed Principles do not specify operational or procedural matters. The Proposed Principles would enable the continued transformation of interference management in Australia and support greater user involvement in spectrum management. Increased user involvement will allow the ACMA to dedicate more resources to resolving those interference issues that most affect the public interest, and to undertake increased compliance and enforcement activity in cases of serious non-compliance.

The Proposed Principles seek to:

- > identify the role and responsibilities of the ACMA, licensees and other stakeholders when interference occurs
- > clearly articulate the ACMA's compliance and enforcement role in interference management
- > promote transparency and predictability in the ACMA's decision-making about responding to complaints of interference
- > support more effective allocation of ACMA resources to compliance and enforcement activities that are consistent with its statutory responsibilities
- > continue to address the public interest in providing effective remedies to interference in a climate of constrained government resources while preserving the rights of licensees
- > support the development of alternatives to the ACMA's interference diagnosis service by promoting greater user involvement in identifying, resolving and mitigating the risk of interference
- > encourage greater industry involvement in interference diagnosis through initial diagnosis and attempts to resolve the interference cooperatively before involving the ACMA
- > promote alternative resolution strategies before seeking recourse to the regulator
- > foster the competitive provision of interference diagnosis services by industry participants.

Achieving these outcomes would be consistent with the key theme of the Spectrum Management Principles—to maximise the overall public benefit from use of the radiofrequency spectrum by balancing both regulatory and market mechanisms.

The Proposed Principles

The Proposed Principles will provide the overarching strategic direction for the interference framework, supported by the object of the Act and the recommendations of the Spectrum Review.

The Proposed Principles for interference management are as follows:

- > **Predictability**
Assess all complaints received according to publicly available criteria and supporting operational procedures.
- > **User involvement**
Encourage licensees to become more involved in managing the spectrum and radiocommunications devices under their control.
- > **Co-operation**
To the extent possible, encourage the affected parties to work independently to resolve the interference issue.
- > **Non-regulatory strategies**
Foster alternative strategies for interference dispute resolution.
- > **Cost recovery**
Apply a cost-recovery charge for interference diagnosis services in the following circumstances:
 - > services are provided under contract
 - > it is established that the source of interference was under the control of the complainant
 - > alternative providers of interference diagnosis services were available to the complainant
 - > the licensee has the capacity to diagnose interference but has chosen to ask the ACMA to provide interference diagnosis services.

Implementation of the Proposed Principles

Once the Proposed Principles are finalised, the ACMA anticipates its operational practices and processes would be reviewed to ensure alignment with the new principles. How the Proposed Principles could operate to guide ACMA decision-making for interference management is set out in more detail below.

Predictability

The Proposed Principles will provide predictability and transparency about when the ACMA would provide interference diagnostic services. The ACMA would continue to assess all complaints based on the level of risk and whether there is evidence to indicate if a regulatory breach has occurred. The factors used to determine the level of risk would include the level of harm and seriousness of the interference event.

The themes the ACMA is likely to explore more fully as it revises operational procedures and processes once the Proposed Principles are finalised include whether:

- > there is an unacceptable level of risk if the interference is not investigated
- > it is reasonable to expect the complainant to have investigated the interference
- > there are readily available measures that should reasonably have been taken to increase the service's immunity to the effects of interference

- > the investigation would involve a reasonable expenditure of ACMA resources
- > there is likely to be a practical solution available
- > it is in the public interest for the ACMA to investigate the matter and the extent of that public interest
- > it is related to a priority compliance area for the ACMA
- > there is or may be criminality involved.

The ACMA would also be guided by the [Principles for spectrum management](#), which recognise:

there is no radiofrequency environment with the complete absence of a potentially interfering signal. The point at which interference becomes harmful depends on the service type, application and user.

The complaint would either be accepted or rejected and the complainant informed about the decision. If a complaint is accepted, the ACMA would prioritise the matter based on the seriousness, risk level and/or whether a regulatory breach has occurred. Safety-of-life matters and complaints received from public safety organisations would continue to be given the highest priority.

The ACMA would respond in accordance with the priority assigned to the complaint. That response could include interference diagnostic services and escalated compliance investigations.

The ACMA would also consider whether there are systemic issues that require regulatory intervention including compliance with the ACMA's compliance labelling and device regulation regime.

Where serious or deliberate non-compliance is identified, the ACMA would take escalated compliance action in accordance with its [Compliance and enforcement policy](#).

Example 1:

The ACMA receives a complaint from a law enforcement agency advising of interference to its network that disrupts operational communications. As the public benefit derived from this network area is very high, the service is licensed to a public safety organisation and the interference is significantly affecting communications, the ACMA prioritises the matter above all others. ACMA field officers respond immediately and find that an individual is intentionally causing the interference. A fully resourced investigation is commenced. This investigation may result in the ACMA submitting a brief to the Commonwealth Director of Public Prosecutions and a criminal prosecution may be pursued.

Example 2:

The ACMA receives a complaint of interference to a crane at a construction site where the crane's antenna is not orientated downwards towards the ground (a condition of the licence), but installed pointing towards the city, with a licensed service a short distance away causing the interference. Rather than immediately accepting that it should conduct diagnostic investigations itself, the ACMA may choose to impose pre-conditions for the prioritisation of the complaint that require the complainant to have their service company undertake basic performance checks.

User involvement

The Proposed Principles seek to encourage an industry-led solution to interference when ACMA intervention is not in the overall public interest. They also seek to foster an external market for interference diagnosis services. The ACMA anticipates that, as this market develops, licensees and other stakeholders would be able to better manage interference.

The Accredited Person (AP) scheme provides a historical precedent for greater third-party involvement in other aspects of spectrum regulation. The assignment of frequencies is necessary for the issue of most apparatus licences but, in practice, most frequency assignments are performed by APs rather than the ACMA. Where the ACMA does undertake frequency assignments, the applicant is directly charged for the service on a cost-recovery basis in accordance with government policy about competitive neutrality.

Establishing similar arrangements for the provision of interference diagnosis services implies that the ACMA would, in general, charge on a cost-recovery basis for such services. However, cost-recovery charges may not apply if the complainant provided specified information or evidence. The provision of this information could also be a relevant factor in deciding the priority the ACMA affords to investigate a complaint.

Adopting such an approach would give industry an incentive to identify and resolve interference issues before approaching the ACMA. This would allow ACMA resources to be focused on more serious matters requiring high levels of technical expertise and specialist equipment or compliance and enforcement action. In turn, this should improve response times for high-risk issues, such as interference affecting public safety or other matters where compliance and enforcement action is appropriate.

Diagnosis of interference to the reception of broadcast television and radio services is not expected to be affected. Viewers lodging reports of interference to domestic broadcast reception systems are already subject to complaint thresholds. These include a requirement that the complainant engage a reputable television technician or antenna installer to have their system operation verified for correct operation, to ensure that there is adequate signal for good reception, the system is optimised for the intended service and there is evidence of an external interference. In practice, antenna installers regularly report cases of interference to the ACMA on behalf of their clients. They are also active themselves in reporting problems affecting broadcast reception more broadly to the ACMA when they arise.

Cooperation

Experience has shown that cooperation between the affected parties to a case of interference is key to a swift resolution of the matter. Where possible and appropriate, the affected parties would be encouraged to work cooperatively to resolve the interference issue before seeking ACMA intervention. The ACMA may seek evidence that cooperative approaches have been attempted and exhausted when the level of harm and seriousness does not warrant a priority ACMA response under its triaging processes.

Non-regulatory strategies

If cooperative approaches between affected parties are not successful, the ACMA may encourage the parties to participate in alternative strategies for resolving the interference issue. These may include informal negotiations and more formal methods, such as conciliation and mediation.

Cost recovery

The ACMA has not routinely charged for interference diagnostic services. The 2004 Principles are used to triage and prioritise interference complaints within the available resources (that is, in the absence of price signals, the provision of services is rationed).

The *Radiocommunications (Charges) Determination 2017* provides that the ACMA may recover costs for interference diagnostic and resolution services where it is contracted for certain events, such as the Gold Coast 2018 Commonwealth Games. It also provides that the ACMA may cost recover in circumstances where the source of the interference is wholly or mainly under the control of the person making the complaint or the person making the complaint has the capacity to remedy the interference.

The ACMA believes it would also be appropriate to consider whether there is a case to cost-recover for interference diagnosis services more broadly. If the Proposed Principles are adopted, including the broader proposed cost-recovery principle, the ACMA would consult about any new processes or practices before they were implemented.

However, the ACMA anticipates that if broader cost-recovery practices were to be implemented, on engagement the ACMA would advise the complainant whether the ACMA would seek to recover costs or the circumstances under which it would later seek to recover costs for interference diagnosis services before providing any services.

The circumstances in which cost-recovery charges may apply could include cases where:

- > the source of the interference is wholly or mainly under the control of the person making the complaint about the interference (the complainant)
- > an alternative interference diagnosis service was available
- > the complainant has the necessary skills or expertise to diagnose the source of the interference itself.

Invitation to comment

Making a submission

The ACMA invites comments on the issues set out in this discussion paper or any other issues relevant to the proposed Interference Management Principles:

> **Online submissions**—submissions can be made via the comment function or by uploading a document. The online consultation page provides details.

> **Submissions by post**—can be sent to:

The Manager
Compliance and Field Operations Section
Australian Communications and Media Authority
PO Box 13112, Law Courts
Melbourne VIC 8010

The closing date for submissions is COB, Friday 22 September 2017.

Electronic submissions in Microsoft Word or Rich Text Format are preferred.

Enquiries

> Consultation enquiries can be emailed to Compliance.operations@acma.gov.au.

> Media enquiries can be directed to Emma Rossi on 02 9334 7719 or by email to media@acma.gov.au.

Effective consultation

The ACMA is working to enhance the effectiveness of its stakeholder consultation processes, which are an important source of evidence for its regulatory development activities. To assist stakeholders in formulating submissions to its formal, written consultation processes, it has developed [Effective consultation—a guide to making a submission](#). This guide provides information about the ACMA's formal written public consultation processes and practical guidance on how to make a submission.

Publication of submissions

In general, the ACMA publishes all submissions it receives, including any personal information in the submissions (such as names and contact details of submitters). The ACMA prefers to receive submissions that are not claimed to be confidential. However, the ACMA accepts that a submitter may sometimes wish to provide information in confidence. In these circumstances, submitters are asked to identify the material (including any personal information) over which confidentiality is claimed and provide a written explanation for the claim.

The ACMA will consider each confidentiality claim on a case-by-case basis. If the ACMA accepts a claim, it will not publish the confidential information unless authorised or required by law to do so.

Release of submissions where authorised or required by law

Any submissions provided to the ACMA may be released under the [Freedom of Information Act 1982](#) (unless an exemption applies) or shared with various other government agencies and certain other parties under Part 7A of the [Australian Communications and Media Authority Act 2005](#). The ACMA may also be required to release submissions for other reasons including for the purpose of parliamentary processes or where otherwise required by law (for example, under a court subpoena). While the ACMA seeks to consult submitters of confidential information before that

information is provided to another party, the ACMA cannot guarantee that confidential information will not be released through these or other legal means.

Privacy

The [Privacy Act 1988](#) imposes obligations on the ACMA in relation to the collection, security, quality, access, use and disclosure of personal information. These obligations are detailed in the [Australian Privacy Principles](#).

The ACMA may only collect personal information if it is reasonably necessary for, or directly related to, one or more of its functions or activities.

The purposes for which personal information is being collected (such as the names and contact details of submitters) are to:

- > contribute to the transparency of the consultation process by clarifying, where appropriate, whose views are represented by a submission
- > enable the ACMA to contact submitters where follow-up is required or to notify them of related matters (except where submitters indicate they do not wish to be notified of such matters).

The ACMA will not use the personal information collected for any other purpose, unless the submitter has provided their consent or the ACMA is otherwise permitted to do so under the Privacy Act.

Submissions in response to this paper are voluntary. As mentioned above, the ACMA generally publishes all submissions it receives, including any personal information in the submissions. If a submitter has made a confidentiality claim over personal information that the ACMA has accepted, the submission will be published without that information. The ACMA will not release the personal information unless authorised or required by law to do so.

If a submitter wishes to make a submission anonymously or use a pseudonym, they are asked to contact the ACMA to see whether it is practicable to do so in light of the subject matter of the consultation. If it is practicable, the ACMA will notify the submitter of any procedures that need to be followed and whether there are any other consequences of making a submission in that way.

Further information on the Privacy Act and the ACMA's privacy policy is available at www.acma.gov.au/privacypolicy. The privacy policy contains details about how an individual may access personal information about them that is held by the ACMA, and seek the correction of such information. It also explains how an individual may complain about a breach of the Privacy Act and how the ACMA will deal with such a complaint.