

The Chair  
**CABINET ECONOMIC DEVELOPMENT COMMITTEE**

**RADIOCOMMUNICATIONS REGULATIONS 2001: FEES AMENDMENT 2007**

**PROPOSAL**

- 1 That Cabinet agrees to an amendment of the Radiocommunications Regulations 2001 (the Radiocommunications Regulations) to:
  - introduce a revised schedule of radio and spectrum licensing fees payable under Schedule 6 of the regulations that will directly adjust fees recovered for the provision of licensing services to equate to the unit cost of providing those services;
  - introduce a 10% licence fee reduction for licensees who arrange their own radio interference investigation;
  - remove statutory provision for arranging services and payment of fees for engineering certification to the Chief Executive for the Ministry of Economic Development, where the Chief Executive is asked to provide these services.

**EXECUTIVE SUMMARY**

- 2 The Ministry of Economic Development (MED) is responsible for the management of the radio spectrum and administration of the Radiocommunications Act 1989 (the Radiocommunications Act). The underlying objective of the Radiocommunications Act is to maximise the value of the radio spectrum to New Zealand society.
- 3 Radio and spectrum licences are issued under the Radiocommunications Regulations. The costs associated with radio spectrum planning, interference investigation, licensing and compliance are appropriated by Parliament under Vote Communications, and funded by way of annual administration fees levied on licensees under the Radiocommunications Regulations.
- 4 The proposals in this paper are part of a phased adjustment to annual fees: commenced in 2005 with planned revisions in 2007 and 2009, with the aim of eliminating identified cross-subsidies between licence fee categories, and managing the reduction of an accumulated surplus balance in the Memorandum Account.

- 5 The 2007 review of fees commenced in 2006 and included a comprehensive study of the radio spectrum management (RSM) cost allocations. A document summarising the review and outlining the proposals in this paper was released for industry consultation in February 2007.
- 6 The review document noted there is still some cross-subsidisation between and within categories of licenses. Additionally past over recovery of projected costs in excess of actual costs to the Crown has led to a surplus balance in the Memorandum Account. This has a projected closing balance of \$4.97 million as at 30 June 2007, a reduction from \$11.024 million at 30 June 2004.
- 7 It is proposed to amend Schedule 6 to the Radiocommunications Regulations to make adjustments that will further align the level of licensing fees to the cost of the MED providing the associated licensing services.
- 8 Three options have been identified for the adjustment of fees to recover costs in order to achieve the ultimate aim of a 'user pays' service with no cross-subsidisation between or within licence categories. These are:
  - Option A: direct adjustment of fees based on unit costs (known as 'pure' cost recovery);
  - Option B: variable adjustment across fee categories; and
  - Option C: even adjustment across fee categories (half way between the current fee arrangements and Option A).
- 9 After careful consideration of submissions to the proposals contained in the study document, the MED has identified Option A as the preferred option. This will provide for greater efficiency and equity in immediately eliminating most cross-subsidisation between and within categories of licenses. It will create greater certainty for industry with regard to the level of future fees. The proposed option is projected to have the least impact of the options considered on fees when the current surplus in the Memorandum Account is dissipated.
- 10 In addition to the changes to fees for the recovery of costs incurred for radio and spectrum licensing fees, the proposal includes:
  - a 10% licence fee discount for licensees who arrange their own radio interference investigation to introduce consumer choice in radio interference diagnosis; and
  - remove statutory provision for arranging services and payment of engineering certification fees to the Chief Executive of MED, noting that these services will be undertaken by the Chief Executive.
- 11 It is proposed that there is no change to the current fee of \$50 for the licensing of amateur beacons, repeaters and fixed-link installations pending a review of amateur licensing arrangements prior to the next planned review of radio and spectrum licence fees in 2009.

**BACKGROUND**

- 12 The radio spectrum is an important resource managed by the Crown, with many varied uses and users. These include commercial, public safety, national security, aeronautical and maritime communications and navigation, broadcasting and public good services.
- 13 Management of the radio spectrum and administration of the Radiocommunications Act and its subordinate regulations is the responsibility of the MED. The underlying objective of the Radiocommunications Act is to maximise the value of the spectrum to New Zealand society.
- 14 The administration of the Radiocommunications Act is undertaken by two groups within the MED. These are:
- the Radio Spectrum Policy and Planning group (RSPP), which is responsible for policy advice to Government, and spectrum planning; and
  - the Radio Spectrum Management Group (RSM), which is responsible for licensing, radio interference investigation, and compliance activities.
- 15 Section 135 of the Radiocommunications Act provides for regulations to be made prescribing matters in which fees are payable under the Act, and the level of those fees. Regulation 38 provides for the payment of annual administration fees by radio and spectrum licensees to the Chief Executive of MED.
- 16 The costs incurred by MED associated with spectrum planning, interference investigation, licensing and compliance are appropriated by Parliament under Vote Communications, and funded by way of annual administration fees levied on licensees. This includes radio and spectrum licences granted under both Crown and private management rights. These annual fees are somewhat analogous to rates levied on property owners by local government authorities.
- 17 The fees levied under the Radiocommunications Regulations are regularly reviewed in accordance with an undertaking given in CAB Min (03) 18/5 of 26 May 2003.
- 18 Revised fees were introduced in 2003 and 2005 in an effort to achieve the following objectives:
- fairly allocate costs in relation to administering the Act and regulations;
  - minimise cross-subsidies within, and between, licence fee categories;
  - remove fee differentials that cannot be substantiated on the basis of cost recovery;
  - seek to continuously improve efficiency in the administration of the Act; and
  - reduce the surplus balance arising from actual revenue from radio licensing exceeding projected revenue (held in the Memorandum Account).

- 19 The 2004 cost allocation study led to new fees in 2005 that commenced the phased fee adjustment, reduced the number of fee categories, introduced a 10% fee reduction for on-line payments by direct debit or credit card, and established separate engineering certification fees where such work was undertaken by the MED. It also continued the policy of reducing the surplus in the Memorandum Account by under-recovering approximately \$2.00 million per annum of costs to the Crown.

#### **THE PROBLEM**

- 20 The 2005 fee adjustment made progress in reducing the level of cross-subsidisation and rationalising fee categories. However, further adjustment is required to complete this task. In particular there is still:
- cross subsidisation occurring within and between licence fee categories resulting in certain licensees bearing the costs of services provided to other licensees;
  - subsidisation of MED's costs for work associated with Crown owned Management Rights, by radio and spectrum licensees; and
  - subsidisation of MED's costs for work associated with General User Licences (e.g. for garage door openers, cordless phones, Wi-Fi and Bluetooth) by radio and spectrum licensees.
- 21 Actual licence fee revenue in the years prior to 2004/05 exceeded projected licence fee revenue and resulted in a surplus balance in the Memorandum Account. This is an historical legacy as arrangements put in place since 2003 have resulted in a reduction in this surplus balance from \$11.024 million in 2003/04 to \$4.97 million for 2006/07.

#### **REVIEW OF FEES AND INDUSTRY CONSULTATION**

- 22 The current (2007) review of fees commenced in 2006 and included an updated and comprehensive cost allocation study. The *RSM Cost Allocation Study*<sup>1</sup> detailing the cost study and outlining the proposed changes was released for industry discussion on 2 February 2007, inviting comments by 9 March 2007. The document was distributed through MED *Business Updates* to over MED RSM 9,000 customers most of whom are licensees.
- 23 The Cost Allocation Study proposed:
- to continue the process of eliminating cross-subsidies between licence fee categories and considered three cost allocation models to achieve this;
  - to introduce customer choice in radio interference investigation through the provision of a 10% reduction in the licence fee for licensees who arrange their own radio interference investigation;

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<sup>1</sup> Ministry of Economic Development, February 2007.

- to make changes to the contestable engineering certification fees; and
  - a continuation of the reduction in fees for online payments.
- 24 The three fee amendment options considered in the licence fee cost allocation model presented in the industry consultation document were:
- Option A: direct adjustment of fees to unit costs ('pure' cost recovery);
  - Option B: a reduced, but variable, adjustment of cross-subsidies (based on price sensitivity of services) across fee categories; and
  - Option C: a reduced even ('straight line') adjustment of cross-subsidies across fee categories (mid-point between the current fee and unit cost).
- 25 A total of 19 submissions were received in response to the publication of the 2007 *RSM Cost Allocation Study*. These were from radio amateurs, television and sound broadcasting service providers, providers of land mobile and fixed services and a radio engineer providing engineering certification services.

## **ANALYSIS OF SUBMISSIONS**

### **Preferred Cost Allocation Model**

- 26 A preference for Option A was indicated in nine submissions and Option B in six submissions. Only one submission indicated a preference for Option C. The remaining three submissions indicated no preference.

### **Current Cost Model**

- 27 There was comment that there were anomalies in the current costing model, and that allocation of costs was not transparent. This proposal will provide this clarity in that licence fees will align with the unit costs of the Crown in providing these services.
- 28 Comment was made that although a principle underpinning the last two cost allocation studies (in 2003 and 2005) was the elimination of cross-subsidisation, this remains. Option A provides an immediate solution to eliminate most cross-subsidisation between licence fee categories.
- 29 There was comment that the impact of digital services requires a new approach to cost allocation. The MED intends to commission a business review as part of the 2009 review of fees and this will consider both the impact of digital technology and the depletion of the surplus balance of the Memorandum Account on Crown costs.

### **Crown Costs**

- 30 Comment was made in submissions that the costs associated with the administration of Crown Management Rights should be recovered from the spectrum related to those management rights, either from auction revenue, or from a levy imposed on those licences from those who benefit from this regime.

- 31 The Crown receives revenue from the auction and renewal of spectrum management rights. The costs associated with arranging the auction and renewal of spectrum are recovered from the Crown under the appropriation for the Management and Enforcement of the Radiocommunications Act relating to costs associated with the sale of radio spectrum. The costs incurred by the Crown for the ongoing administration of management rights retained by the Crown are currently funded through licence fees. *[part of paragraph removed]*.

### **Surplus Balance of the Memorandum Account**

- 32 There was comment that the surplus balance in the Memorandum Account should be returned to licensees in proportion to each licensee's contribution, not simply pro-rata across all licensees. In addition there was comment that Option A would result in the slowest reduction in the balance of the Memorandum Account.
- 33 The surplus on the Memorandum Account has been reduced from \$11.02 million at 30 June 2004 to a forecast \$4.97 million at 30 June 2007, and is projected to stand at \$2.74 on 30 June 2009.
- 34 Returning the Memorandum Account surplus to licenses in proportion to each licensee's contribution over a period of time was considered by MED during the review of radio and spectrum licence fees in 2003. MED concluded then that it would be administratively complex and costly to implement. The Memorandum Account no longer contains funds that would support such a distribution. Comments in submissions also favour the continuation of gradual dissipation of the Memorandum Account and avoidance of sharp changes in the level of fees that would result from a sudden dissipation.
- 35 Of the options considered, Option A would provide for the smoothest transition to full cost-recovery on depletion of the Memorandum Account.

### **Fee Reduction for Radio Frequency Interference Investigation**

- 36 There was support for the proposal to introduce a 10% fee reduction for licensees who undertake their own radio frequency interference investigation (RFI) although there was also concern that service levels be maintained with the growth of alternative services. Comment was made that there was currently no incentive for licensees to explore provision of external RFI services. The proposed 10% fee reduction will encourage provision of external RFI services.

### **Changes to Engineering Certification Fees**

- 37 There was comment in submissions that fees should be high enough to encourage private sector engineers to compete with those provided by MED, although only limited comment on the value of fees proposed. Satisfaction was expressed with the service provided by MED and there was concern that the current high service standards provided by MED continue with the growth of alternative private sector provision of these services.

### **Continuation of Fee Reduction for On-Line Payment**

- 38 There was comment that there should be recognition of the costs saved to the Crown by those licensees who manage their own engineering and licence applications. It is proposed to continue to provide a 10% reduction in licence fees for on-line payments made by credit card or direct debit to reflect the reduced costs associated with these forms of payment.

### **General User Licences**

- 39 There was comment in the submissions that as the General User Licence regime was for the public good the costs of the regime should be borne by all New Zealanders rather than by licence fee payers alone.
- 40 General User Licences permit the use of specified spectrum with no requirement for individual licensing of fee payments. Typical uses are wireless LAN (Wi-Fi) systems, garage and car door openers, cordless telephones, Citizens Band radio, amateur radio operators, and radio frequency identification devices. The costs of MED administering General User Licences are not currently Crown funded and are spread across the annual fees of other radio and spectrum licences. [part of paragraph removed].

### **Amateur Radio Licence Fees**

- 41 Individual radio amateurs are licensed under a General User Licence. Prior to 2003 individual radio amateurs were licensed and paid an annual fee. Currently only beacons and repeaters are individually licensed and charged fees because of the need to coordinate them with other licensed services. The current fee value of this is approximately \$17,000.
- 42 Comment was made in submissions from the New Zealand Association of Radio Transmitters (NZART), and individual radio amateurs that there should be no licence fee charged for amateur repeaters or beacons and these fees should be funded either by the Government as a public good or cross subsidised by other licence fee payers. This was because of the General User Licence requirement that amateur stations are prepared for disaster relief.
- 43 The concept of 'zero fees for a public good' has been previously argued. For example life saving clubs have argued for their repeater fees to be waived on the grounds that they are providing an important public service. This argument was not accepted.
- 44 While preparation for disaster relief can be considered a public good, radio amateurs are not primarily engaged in a public good activity but a recreational activity that benefits private individuals. However, a significant increase in the fees for amateur beacons, repeaters and fixed-links has the potential to degrade the amateur installation network.
- 45 If a fee waiver for radio amateurs were to be considered desirable, broader public policy issues concerning the provision of services that are a private good, but with some public good benefit, need to be addressed. As cross-subsidisation

from other license fee payers is an objective that the Fees Review is seeking to eliminate, additional Crown funding to support the services provided would be required. The Radiocommunications Regulations would also require amendment as they currently only provide for fee waivers where an individual's quality of life is likely to be affected by the fee.

- 46 Officials from MED have recently met with representatives of NZART to discuss issues raised in their submission.
- 47 After consideration, it is proposed there be no change to the current fee of \$50 for the licensing of amateur beacons, repeaters and fixed-link installations, pending a further review of amateur licensing arrangements prior to the next planned review of radio and spectrum licence fees in 2009.
- 48 The further review of amateur licensing arrangements will include the consideration of providing choice for radio amateurs, through the introduction of a GUL for amateur beacons, repeaters and fixed-links, for which no fee would be payable. Any amateurs requiring the services associated with the existing licence, where protection afforded by the GUL was not adequate, could be issued with individual licenses for a fee.

### **Contestable engineering fees**

- 49 At its meeting of 14 March 2005 Cabinet confirmed the decision of Cabinet Economic Development Committee at its meeting of 9 March 2005 [EDC Min (04) 5/4] noting that the [introduction of] an engineering fee, intended to provide appropriate incentives for the private sector to undertake engineering certification work which was made a contestable activity on 1 October 2004. The proportion of engineering certification services provided by the private sector has subsequently grown rapidly and is currently around 80%.
- 50 The level of proposed engineering fees has been based on an estimation of market rates and a concern not to undercut market rates, and thus undermine the objective agreed by Cabinet to provide incentives to encourage private sector services.
- 51 It is recommended that the Radiocommunications Regulations are amended to remove statutory provision for the payment of engineering fees to the Chief Executive where the Chief Executive is asked to arrange the relevant services. This is to avoid the possibility that such fees could be interpreted as a tax. Engineering services provided by the MED would instead be offered voluntarily by the Chief Executive and would be able to be set at the rate appropriate to achieve the policy objective of encouraging private provision.
- 52 The proposed engineering fees have been subject to consultation and for the purposes of this paper included in the table in Appendix A.

## Summary

- 53 It is proposed to amend Schedule 6 to the Radiocommunications Regulations to provide for a revised allocation of costs associated with the management of radio and spectrum licensing consistent with the public policy objectives of:
- improving efficiency in the administration of the Act;
  - fully recovering the costs associated with administering the Act;
  - fairly allocating costs in relation to work undertaken; and
  - minimising cross-subsidisation within and between licence categories.
- 54 The amendment to the Regulations will directly adjust fees for categories of licensee to align with the unit costs of providing licensing services for those categories of licensee.
- 55 The proposal will also provide for:
- a 10% reduction in licence fees for licensees who arrange their own radio interference investigation; and
  - removal of statutory provision for the payment of engineering certification fees to the Chief Executive where the Chief Executive is asked to provide these services.

## IMPACT

- 56 The proposal will result in significant changes for some categories of licenses. Appendix A provides details of current and proposed fees by licence category.
- 57 Appendix B provides a comparison of current and proposed total annual fees payable by key business clients. This indicates that the proposal will result in an overall shift in the allocation of costs for services provided by the Crown from broadcast services to other services reflecting:
- the elimination of the current subsidisation of other users by broadcasters; and
  - improvements in technology that have reduced the cost to the Crown of providing licensing services for broadcasters.
- 58 Despite this shift, licence fees for TVNZ will increase *[amount removed]* and for TVWorks from *[amount removed]*. This is because both of these TV broadcasters operate transmitters (in VHF Band 1) that are subject to greater interference than transmitters in other bands.

## GOVERNMENT AGENCY CONSULTATION

- 59 The Treasury, The Ministry for Culture and Heritage and Te Puni Kokiri (who both have policy roles in the allocation of broadcast frequencies), have been

consulted in the preparation of this paper. The Department of Prime Minister and Cabinet and Parliamentary Counsel Office received a draft copy of this paper for information. The proposals are consistent with Treasury guidelines for setting charges in the public sector and are supported by Treasury. The proposed fees also comply with the Regulations Review Committee principles laid down in Standing Order 382(2).

### **FISCAL IMPLICATIONS**

- 60 The fee changes proposed in this paper have no impact on the operating balance as the activities are funded by revenue 'other', and supported by a Memorandum Account for this output expense to manage the fee strategy for these activities.
- 61 The impact of the proposed fee changes to Vote Communications Departmental Output Expense: Management and Administration of the Radiocommunications Act 1989 is indicated in Table 1 in Appendix C to this paper.
- 62 The projected closing balance of the Memorandum Account as at 30 June 2007 is \$4.97 million. The proposed amendments will continue to significantly reduce the surplus balance of the Memorandum Account annually over the two years that they will be in effect until the next proposed fees review on 1 July 2009. The balance of the Memorandum Account as at 30 June 2009 is projected to be \$2.74 million, as reflected in Table 2 in Appendix C to this paper.
- 63 Reflecting the progressive reduction in the Memorandum Account balance over the period 2007-09 and based on the proposed fees, capital injections of \$1.5 million in 2007/08 and \$1.0 million in 2008/09 will be sought by MED to meet the operating deficits incurred in the Output Expense and charged against the Memorandum Account.<sup>2</sup> This is reflected in Table 3 in Appendix C to this paper.
- 64 A graph indicating expenditure, revenue and the balance of the Memorandum Account is attached as Appendix D.

### **HUMAN RIGHTS IMPLICATIONS**

- 65 The proposals in this paper do not raise issues in terms of the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993.
- 66 Should the quality of life of a natural person be seriously affected, Regulation 44(a) provides that fees may be waived, in part or in whole, on a case by case basis.

### **LEGISLATIVE IMPLICATIONS**

- 67 Implementation of the proposal will require amendment of the Radiocommunications Regulations 2001 to provide a 10% licence fee reduction for licensees who arrange their own radio interference, removal of statutory provision for contestable engineering certification services where arranged by

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<sup>2</sup> Because surpluses are not held in the Memorandum Account from year to year but transferred to Treasury.

the Ministry of Economic Development, and replacement of the fees schedule (Schedule 6). It is proposed that the amendments take effect, subject to the 28 day rule, within six months of Cabinet consideration of this proposal.

#### **REGULATORY IMPACT ANALYSIS**

- 68 The MED confirms that the principles of the *Code of Good Regulatory Practice*, and the regulatory impact analysis requirements, including consultation and Regulatory Impact Statement (RIS) requirements have been complied with.
- 69 A RIS has been prepared and is attached to this paper. The MED considers the RIS adequate.
- 70 The final RIS was circulated together with this paper for departmental comment.

#### **PUBLICITY**

- 71 Should the proposal be agreed, the MED will post notices on its web site, and provide information on fee changes and relevant documentation be publicised to licensees, stake holder organisations and other clients by mail and through the MED Radio Spectrum Management website.

#### **RECOMMENDATIONS**

- 72 It is recommended that the Committee:
- 1 **Note** that the costs associated with radio spectrum planning, interference investigation, licensing and compliance are appropriated by Parliament under Vote Communications, and funded by way of annual administration fees levied under the Radiocommunications Regulations 2001;
  - 2 **Note** that the current fee allocation arrangements do not result in an equitable and efficient recovery of the costs, of the Crown providing radio and spectrum licensing services;
  - 3 **Note** that proposals in this paper are part of a phased adjustment to annual fees commenced in 2005 with planned revisions in 2007 and 2009, to eliminate identified cross-subsidies between licence fee categories;
  - 4 **Note** that a document summarising the 2007 review of fees and outlining the proposals in this paper was released for public consultation in February 2007 and that 19 submissions were received;
  - 5 **Note** that the preferred option for adjustment of fees for radio and spectrum licensing is the immediate elimination of most cross-subsidisation between and within fee categories by directly adjusting fees to unit costs (known as 'pure cost recovery') and that this option, with two others, was consulted upon;
  - 6 **Note** that the following provisions were also consulted upon:

- 6.1 The encouragement of consumer choice in radio interference investigation by providing a 10% licence fee reduction for licensees who arrange their own radio frequency interference investigation
- 6.2 Revised contestable engineering fees which continue to provide clients with the choice of using the Radio Spectrum Management Group of the Ministry of Economic Development for engineering certification or engage an external party to undertake these services;
- 7 **Note** that the Memorandum Account is maintained for the departmental output expense of management and enforcement of the Radiocommunications Act 1989 in Vote Communications and has a forecast surplus balance at 30 June 2007 of \$4.97million, compared with \$11.02 million as at 30 June 2004;
- 8 **Note** that the proposed amendments will continue to significantly reduce the surplus balance of the Memorandum Account over the two years that they will be in effect until the next proposed fees review on 1 July 2009;
- 9 [section removed]
- 10 [section removed]
- 11 **Note** that the Cabinet previously confirmed a Cabinet Economic Development Committee decision that the contestable engineering certification fee was intended to provide appropriate incentives for the private sector to undertake engineering certification work [EDC Min (04) 5/4];
- 12 **Note** that in order to provide incentives for private sector provision of engineering certification services, 'pure cost recovery' is not applied for these services where provided by the Ministry of Economic Development, and that such fees are based on market rates and a concern not undercut them;
- 13 **Agree** that there will be no change to the current fee of \$50 for the licensing of amateur beacons, repeaters and fixed-link installations pending a further review of amateur licensing arrangements prior to the next planned review of radio and spectrum licence fees in 2009;
- 14 **Note** the proposed further review of amateur licensing arrangements will include consideration of providing choice for radio amateurs by the introduction of a GUL for amateur beacons, repeaters and fixed-links for which no fee would be payable, and that any amateurs requiring the services associated with the existing licence, where protection afforded by the GUL was not adequate, could be issued with individual licenses for a fee;
- 15 **Agree** to the removal of statutory provision for contestable engineering certification services where provided by the Ministry of Economic

Development, noting the Chief Executive of the Ministry of Economic Development will set the level of payment for these services in future;

- 16 **Agree** that the Radiocommunications Regulations 2001 be amended to introduce new annual radio and spectrum licence fees, as specified in Appendix A, to take effect within six months of agreement of this recommendation;
- 17 **Agree** that the Minister of Communications be authorised to make necessary minor amendments to the proposed Radiocommunications Regulations 2001 Schedule of Fees attached at Appendix A, before Executive Council consideration of the proposal;
- 18 **Invite** the Minister of Communications to instruct the Chief Parliamentary Counsel to draft amendments to the Radiocommunications Regulations 2001 in accordance with recommendations 5 and 6; and
- 19 **Invite** the Minister of Communications to announce the decisions as outlined above, and to authorise the release of this paper with attached Regulatory Impact Statement, and associated committee minute for publication.

Hon David Cunliffe  
**Minister of Communications**

Date: \_\_\_\_/\_\_\_\_/2007

## **Regulatory Impact Statement**

### **EXECUTIVE SUMMARY**

The radio spectrum is an important resource managed by the Crown, with many varied uses and users. The costs of managing the resource are funded through fees for services provided by the Crown, including licensing and engineering certification. These fees are regularly reviewed, the current review being commenced in 2006 and subject to public consultation in January and February 2007.

The current cost allocation model does not result in optimum efficiency and equity in the administration of fees levied on licensees. The proposal is for adjustment of fees to align with the unit costs of providing services for each category of licensee, and for revised fees for contestable engineering services provided by the Ministry of Economic Development, and for a 10% licence fee reduction for licensees who arrange their own radio interference investigation. The proposal would be implemented by amendment of the Radiocommunications Regulations 2001.

### **ADEQUACY STATEMENT**

The MED has reviewed this Regulatory Impact Statement and considers it adequate.

### **STATUS QUO AND PROBLEM**

The status quo is to continue to collect the current fees as specified in Appendix 1 and provide no fee reduction for licensees who arrange their own radio interference investigation.

The current cost allocation model does not result in the efficient and equitable recovery of costs of providing radio spectrum services. This is resulting in cross-subsidisation between and within categories of licensee. Costs of General User Licences are not distributed across beneficiaries.

### **OBJECTIVES**

The public policy objectives are to:

- improve efficiency in the administration of the Radiocommunications Act 1989 (Radiocommunications Act);
- fairly allocate costs of administering the Radiocommunications Act in relation to the work undertaken by the Crown;
- fully recover the costs to the Crown associated with administering the Radiocommunications Act;
- minimise cross-subsidies within, and between, licence fee categories; and
- reduce the surplus balance arising from actual revenue from radio licensing exceeding projected revenue, absorbed in the Memorandum Account (\$4.97 million as at 30 June 2007).

## ALTERNATIVE OPTIONS

There are no non-regulatory options. Two regulatory change options alternative to the preferred option for radio and spectrum licensing have been considered and consulted on. These are as follows.

### **Option B: a reduced, but variable, adjustment of cross-subsidies (based on price sensitivity of services provided) across licence categories.**

This option does not provide an immediate solution to the problem of cross-subsidisation. It is estimated to reduce the surplus balance arising from actual revenue exceeding projected revenue by \$1.6 million per year. Variable adjustment does not provide certainty for licensees regarding future licence fees. It is the preferred option in 6 of 19 submissions received to the public consultation on the proposal.

### **Option C: a reduced even ('straight-line') adjustment of cross-subsidies across fee categories**

This option can be considered as a mid-point solution between the current fee arrangements (the status quo) and adjustment of fees to unit costs (Option A) discussed below. It would not end cross-subsidisation immediately. It is estimated to reduce the surplus balance arising from actual revenue exceeding projected revenue by \$1.9 million per year. Option C is the preferred option in only 1 of the 19 submissions received to the public consultation on the proposal.

## PREFERRED OPTION

### **Option A: adjustment of fees to unit costs ('pure' cost recovery)**

Option A would:

- provide an immediate solution to the problem of licence cross-subsidisation;
- provide for transparency in the allocation and recovery of costs incurred by the Crown because fees would correspond to the costs of providing services for each category of licensee;
- provide some certainty for licensees with regard to future license fee costs; and
- result in an estimated reduction in the surplus balance arising from actual revenue exceeding projected revenue by \$1.5 million in 2007/08 and \$1.0 million in 2008/09.

Option A is the preferred option indicated in 9 of the 19 submissions to the public consultation and the preferred option of New Zealand Police, TVNZ, Telstra Clear and the Radio Broadcasters Association.

Option A is the preferred option because it would meet the public policy objectives identified in the shortest timeframe.

In addition to direct adjustment of radio and spectrum licence fees to the unit costs of providing those services, the proposal includes a 10% licence fee reduction for licensees who undertaken their own radio interference investigation.

After consideration it is proposed to remove statutory provision for contestable engineering fees from the Radiocommunications Regulations 2001, because such fees are not based on the cost of providing these services but a concern not to undercut market rates and thereby discourage private sector provision. The proposed engineering certification fees are included in Appendix A for information but will be removed from Schedule 6 of the Radiocommunications Regulations.

The proposal will result in changes to the level of fees for various categories of radio and spectrum licensees. These are indicated in Appendix A. There will be an overall shift in the allocation of costs for services provided by the Crown from broadcast services to other services reflecting:

- the elimination of the current subsidisation of other users by broadcasters; and
- improvements in technology that have reduced the cost to the Crown of providing licensing services for broadcasters.

The proposal has legislative development costs for the Crown. These would be accommodated within the existing baseline. The proposal is not anticipated as having any significant costs to society.

The proposal would not impact on other regulation.

#### **IMPLEMENTATION AND REVIEW**

The proposal would be implemented by amendment of Schedule 6 of the Radiocommunications Regulations.

Fees levied under the Radiocommunications are regularly reviewed and the outcomes of reviews subject to public consultation. The next review will be undertaken in 2009.

#### **CONSULTATION**

The MED's Radio Spectrum Management Group (RSM) reviewed the licence fees charged under the Radiocommunications Act in 2006. The *RSM Cost Allocation Study* was released for public discussion on 2 February 2007 by MED *Business Updates* to over 9,000 RSM customers. Comments were invited by 9 March 2007.

A range of comments were made on the *RSM Cost Allocation Study*.<sup>3</sup> Key comments relating to the proposal, and comment are outlined below.

#### **Preferred Cost Allocation Model**

A preference for Option A was indicated in nine submissions and Option B in six submissions. Only one submission indicated a preference for Option C. The remaining three submissions indicated no preference.

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<sup>3</sup> The *Radiocommunications Regulations 2001 Review of Fees 2007 Analysis of Public Submissions* contains a full analysis and response to comments made.

### **Current Cost Model**

There was comment that there were anomalies in the current costing model, and that allocation of costs was not transparent. The proposal will provide this clarity in that licence fees will align with the unit costs of Crown in providing these services.

Comment was made that although a principle underpinning the last two cost allocation studies (in 2003 and 2005) was the elimination of cross-subsidisation, this remains. Option A provides an immediate solution to eliminate most cross-subsidisation.

There was comment that the impact of digital services requires a new approach to cost allocation. The MED intends to commission a business review as part of the 2009 review of fees and this will consider both the impact of digital technology and the depletion of the Memorandum Account on Crown costs.

### **Crown Costs**

Comment was made in submissions that the costs associated with the administration of Crown Management Rights should be recovered from the spectrum either from auction revenue, or from a levy imposed on those licences from those who benefit from this regime. It is intended that the appropriate allocation of costs associated with the administration of Crown Management Rights will be subject of further consideration and any fee changes proposed for implementation in 2009.

A number of submissions queried the management and planning costs to the Crown of administering the radio spectrum. There has been an overall reduction of 23% over the last five years in radio spectrum management costs.

### **Surplus Balance of the Memorandum Account**

There was comment that the surplus balance in the Memorandum Account should be returned to licensees in proportion to each licensee's contribution, not simply pro-rata across all licensees. In addition there was comment that Option A would result in the slowest reduction in the balance of the Memorandum Account.

The surplus on the Memorandum Account has been reduced from \$11.02 million at 30 June 2004 to a forecast \$4.97 million on 30 June 2007, and is projected to stand at \$2.74 on 30 June 2009.

Returning the Memorandum Account surplus to licenses in proportion to each licensee's contribution over a period of time was considered by MED during the review of radio and spectrum licence fees in 2003. MED concluded then that it would be administratively complex and costly to implement. The Memorandum Account no longer contains funds that would support such a distribution. Comments in submissions also favour the continuation of gradual dissipation of the Memorandum Account and avoidance of sharp changes in the level of fees that would result from a sudden dissipation.

### **Fee Reduction for Radio Frequency Interference Investigation**

There was support for the proposal to introduce a 10% fee reduction for licensees who undertake their own radio frequency interference investigation (RFI) although there was also concern that service levels be maintained with the growth of alternative services. Comment was made that there was currently no incentive for licensees to explore

provision of external RFI services. The proposed 10% fee reduction will encourage provision of external RFI services.

### **Changes to Engineering Certification Fees**

There was support for the proposal to provide clients with choice when it came to engineering certification. However there was also satisfaction expressed about the service provided by MED and some concern that high service standards may not continue with the growth of alternative private sector provision of these services.

### **Continuation of Fee Reduction for On-Line Payment**

There was comment that there should be recognition of the costs saved to the Crown by those licensees who manage their own engineering and licence applications. It is proposed to continue to provide a 10% reduction in licence fees for on-line payments made by credit card or direct debit to reflect the reduced costs associated with these forms of payment.

### **Amateur Radio Licence Fees**

73 Individual radio amateurs are licensed under a General User Licence. Prior to 2003 individual radio amateurs were licensed and paid an annual fee. Currently only beacons and repeaters are individually licensed and charged fees because of the need to coordinate them with other licensed services. The current fee value of this is approximately \$17,000.

Comment was made in submissions from radio amateurs that there should be no licence fee charged for amateur repeaters or beacons and these fees should be funded either by the Government as a public good or cross subsidised by other licence fee payers. There was comment that the fees for amateur repeater and beacon licences should be paid by the Crown because of the General User Licence requirement that amateur stations are prepared for disaster relief.

The concept of 'zero fees for a public good' has been argued previously. For example life saving clubs have argued for their repeater fees to be waived on the grounds that they are providing an important public service. This argument was not accepted.

While preparation for disaster relief can be considered a public good, amateur radio enthusiasts are largely engaged in a recreational activity that benefits private individuals. After careful consideration, the MED considers that it would not be appropriate for this one category of licence to be granted a fee waiver. Cross-subsidisation from other license fee payers is an objective that the Fees Review is seeking to eliminate.

After consideration, it is proposed there be no change to the current fee of \$50 for the licensing of amateur beacons, repeaters and fixed-link installations, pending a further review of amateur licensing arrangements prior to the next planned review of radio and spectrum licence fees in 2009.

The further review of amateur licensing arrangements will include the consideration of providing choice for radio amateurs through the introduction of a GUL for amateur beacons, repeaters and fixed-links, for which no fee would be payable. Any amateurs requiring the services associated with the existing licence, where protection afforded by the GUL was not adequate, could be issued with individual licenses for a fee.

**Consultation with other government agencies**

The following agencies were consulted on the development of this Regulatory Impact Statement: The Treasury, Ministry for Culture and Heritage (MCH), and Te Puni Kokiri. Comment was provided by the Treasury and the MCH.

The Treasury supported the proposal. MCH noted that fees would increase for TVNZ and TVWorks. Licence fees for TVNZ and TV Works will increase. This is because both broadcasters operate transmitters (in VHF Band 1) that are subject to greater interference than transmitters in other bands.

## Current and Proposed Fees

		Current Annual Fee \$	Proposed Annual Fee \$
<b>THIRD PARTY FUNDING</b>			
<b>LAND MOBILE SERVICES</b>			
(Radio Licences only)			
<b>Repeaters (Two-frequency)</b>			
LR1	Multiple repeaters on a common channel throughout New Zealand with bandwidth 12.5 kHz or less	1,300	500
LR2	Multiple repeaters on a common channel throughout New Zealand with bandwidth more than 12.5 kHz	2,500	600
LR3	Single repeater 7 dBW (5 watts) e.i.r.p. or less	150	300
LR4	Single repeater more than 7 dBW (5 watts) e.i.r.p.	250	300
<b>Simplex (Single frequency)</b>			
LS1	Multiple transmitters on a common frequency throughout New Zealand with bandwidth 12.5 kHz or less	800	250
LS2	Multiple transmitters on a common frequency throughout New Zealand with bandwidth more than 12.5 kHz but less than or equal to 25 kHz	1,500	300
LS3	Multiple transmitters on a common frequency throughout New Zealand with bandwidth more than 25 kHz	2,000	300
LS4	Other transmitters (per licence)	100	250
<b>Paging</b>			
LP1	Multiple transmitters on a common frequency throughout New Zealand	2,500	200
LP2	Transmitters 7 dBW (5 watts) e.i.r.p. or less	100	250
LP3	Transmitters more than 7 dBW (5 watts) e.i.r.p. but less than or equal to 14 dBW (25 watts) e.i.r.p.	200	450
LP4	Transmitters more than 14 dBW (25 watts) e.i.r.p.	400	200
<b>FIXED SERVICES</b>			
(Radio Licences only – per transmitter)			
FP1	Point-to-point - Frequency less than 1 GHz	75	200
FP2	Point-to-point - Frequency more than 1 GHz	200	200
FM1	Point-to-Multipoint and Multipoint-to-Point (Note 3)	100	200
<b>BROADCASTING SERVICES</b>			
(Radio Spectrum Licences)			
<b>Sound Broadcasting below 30 MHz (MF/HF)</b>			
BA1	Transmitters less than 30 dBW e.i.r.p.	200	450
BA2	Transmitters 30 dBW e.i.r.p. or more but less than 36 dBW e.i.r.p.	900	1,200
BA3	Transmitters 36 dBW e.i.r.p. or more but less than 40 dBW e.i.r.p.	1,800	1,500
BA4	Transmitters 40 dBW e.i.r.p. or more	3,500	1,000
<b>Sound Broadcasting above 30 MHz (VHF/UHF)</b>			
BF1	Transmitters less than 10 dBW e.i.r.p.	200	450
BF2	Transmitters 10 dBW e.i.r.p. or more but less than 20 dBW e.i.r.p.	300	550
BF3	Transmitters 20 dBW e.i.r.p. or more but less than 30 dBW e.i.r.p.	500	400
BF4	Transmitters 30 dBW e.i.r.p. or more but less than 40 dBW e.i.r.p.	1,700	400
BF5	Transmitters 40 dBW e.i.r.p. or more	3,000	400

		<b>Current Annual Fee \$</b>	<b>Proposed Annual Fee \$</b>
	<b>Television Broadcasting below 300 MHz (VHF)</b>		
BV1	Transmitters less than 10 dBW e.i.r.p.	100	300
BV2	Transmitters 10 dBW e.i.r.p. or more but less than 30 dBW e.i.r.p.	900	500
BV3	Transmitters 30 dBW e.i.r.p. or more but less than 50 dBW e.i.r.p.	3,300	5,000
BV4	Transmitters 50 dBW e.i.r.p. or more	18,000	22,000
	<b>Television Broadcasting above 300 MHz (UHF)</b>		
BU1	Transmitters less than 10 dBW e.i.r.p.	100	500
BU2	Transmitters 10 dBW e.i.r.p. or more but less than 30 dBW e.i.r.p.	150	400
BU3	Transmitters 30 dBW e.i.r.p. or more but less than 40 dBW e.i.r.p.	250	350
BU4	Transmitters 40 dBW e.i.r.p. or more but less than 50 dBW e.i.r.p.	500	450
BU5	Transmitters 50 dBW e.i.r.p. or more	1,500	500
	<b>OTHER SERVICES</b> (Radio and Spectrum Licences)		
	<b>Maritime and Aeronautical (Radio Licences only)</b>		
OM1	Ship, aircraft or mobile	100	350
OM2	Land (including Maritime Coast stations)	100	300
OM3	Repeater (two-frequency)	200	300
	<b>Amateur (Radio and Spectrum Licences)</b>		
OA1	Beacon, Repeater or Fixed Link	50	50
	<b>Radiodetermination (Radio Licences only)</b>		
OR1	Radiodetermination (including radiolocation and radionavigation)	200	250
	<b>Satellite (Radio Licences only)</b>		
OS1	Fixed-satellite service (per transponder accessed)	200	300
OS2	Other satellite services (non-shared with Fixed Services)	150	300
OS3	Other satellite services (shared with Fixed Services)	1,200	300
	<b>Telemetry and Telecommand (Radio Licences only)</b>		
OT1	Telemetry and Telecommand (including space telecommand)	50	250
	<b>Reception Protection (Radio Licences only)</b>		
OP1	Co-channel reception protection from terrestrial transmissions	1,400	200
	<b>Miscellaneous Services (Radio and Spectrum Licences)</b>		
OZ1	Transmitters less than 20 dBW (100 watts) e.i.r.p.	100	300
OZ2	Transmitters 20 dBW (100 watts) e.i.r.p. or more but less than 30 dBW (1000 watts) e.i.r.p.	200	300
OZ3	Transmitters 30 dBW (1000 watts) e.i.r.p. or more	300	300
ZFC	General User Licences	-	-

## Engineering unit costs and fees

		<b>Engineering Certification</b>	
		<b>Current Fee</b>	<b>Proposed Fee</b>
<b>THIRD PARTY FUNDING</b>			
<b>LAND MOBILE SERVICES</b>			
(Radio Licences only)			
<b>Repeaters (Two-frequency)</b>			
LR1	Multiple repeaters on a common channel throughout New Zealand with bandwidth 12.5 kHz or less	400	600
LR2	Multiple repeaters on a common channel throughout New Zealand with bandwidth more than 12.5 kHz	400	600
LR3	Single repeater 7 dBW (5 watts) e.i.r.p. or less	400	600
LR4	Single repeater more than 7 dBW (5 watts) e.i.r.p.	400	600
<b>Simplex (Single frequency)</b>			
LS1	Multiple transmitters on a common frequency throughout New Zealand with bandwidth 12.5 kHz or less	400	400
LS2	Multiple transmitters on a common frequency throughout New Zealand with bandwidth more than 12.5 kHz but less than or equal to 25 kHz	400	400
LS3	Multiple transmitters on a common frequency throughout New Zealand with bandwidth more than 25 kHz	400	400
LS4	Other transmitters (per licence)	400	400
<b>Paging</b>			
LP1	Multiple transmitters on a common frequency throughout New Zealand	400	400
LP2	Transmitters 7 dBW (5 watts) e.i.r.p. or less	400	400
LP3	Transmitters more than 7 dBW (5 watts) e.i.r.p. but less than or equal to 14 dBW (25 watts) e.i.r.p.	400	400
LP4	Transmitters more than 14 dBW (25 watts) e.i.r.p.	400	400
<b>FIXED SERVICES</b>			
(Radio Licences only – per transmitter)			
FP1	Point-to-point - Frequency less than 1 GHz	400	500
FP2	Point-to-point - Frequency more than 1 GHz	400	500
FM1	Point-to-Multipoint and Multipoint-to-Point	400	800
<b>BROADCASTING SERVICES</b>			
(Radio Spectrum Licences)			
<b>Sound Broadcasting below 30 MHz (MF/HF)</b>			
BA1	Transmitters less than 30 dBW e.i.r.p.	850	1,000
BA2	Transmitters 30 dBW e.i.r.p. or more but less than 36 dBW e.i.r.p.	850	1,000
BA3	Transmitters 36 dBW e.i.r.p. or more but less than 40 dBW e.i.r.p.	850	1,000
BA4	Transmitters 40 dBW e.i.r.p. or more	850	1,000
<b>Sound Broadcasting above 30 MHz (VHF/UHF)</b>			
BF1	Transmitters less than 10 dBW e.i.r.p.	1,100	1,000
BF2	Transmitters 10 dBW e.i.r.p. or more but less than 20 dBW e.i.r.p.	1,100	1,000
BF3	Transmitters 20 dBW e.i.r.p. or more but less than 30 dBW e.i.r.p.	1,100	1,000
BF4	Transmitters 30 dBW e.i.r.p. or more but less than 40 dBW e.i.r.p.	1,100	1,000
BF5	Transmitters 40 dBW e.i.r.p. or more	1,100	1,000

		<b>Engineering Certification</b>	
		<b>Current Fee</b>	<b>Proposed Fee</b>
<b>Television Broadcasting below 300 MHz (VHF)</b>			
BV1	Transmitters less than 10 dBW e.i.r.p.	2,000	1,000
BV2	Transmitters 10 dBW e.i.r.p. or more but less than 30 dBW e.i.r.p.	2,000	1,000
BV3	Transmitters 30 dBW e.i.r.p. or more but less than 50 dBW e.i.r.p.	2,000	1,000
BV4	Transmitters 50 dBW e.i.r.p. or more	2,000	1,000
<b>Television Broadcasting above 300 MHz (UHF)</b>			
BU1	Transmitters less than 10 dBW e.i.r.p.	900	1,000
BU2	Transmitters 10 dBW e.i.r.p. or more but less than 30 dBW e.i.r.p.	900	1,000
BU3	Transmitters 30 dBW e.i.r.p. or more but less than 40 dBW e.i.r.p.	900	1,000
BU4	Transmitters 40 dBW e.i.r.p. or more but less than 50 dBW e.i.r.p.	900	1,000
BU5	Transmitters 50 dBW e.i.r.p. or more	900	1,000
<b>OTHER SERVICES</b> (Radio and Spectrum Licences)			
<b>Maritime and Aeronautical (Radio Licences only)</b>			
OM1	Ship, aircraft or mobile	0	0
OM2	Land (including Maritime Coast stations)	350	400
OM3	Repeater (two-frequency)	400	400
<b>Amateur (Radio and Spectrum Licences)</b>			
OA1	Beacon, Repeater or Fixed Link	300	400
<b>Radiodetermination (Radio Licences only)</b>			
OR1	Radiodetermination (including radiolocation and radionavigation)	400	1,000
<b>Satellite (Radio Licences only)</b>			
OS1	Fixed-satellite service (per transponder accessed)	550	600
OS2	Other satellite services (non-shared with Fixed Services)	550	300
OS3	Other satellite services (shared with Fixed Services)	550	600
<b>Telemetry and Telecommand (Radio Licences only)</b>			
OT1	Telemetry and Telecommand (including space telecommand)	200	300
<b>Reception Protection (Radio Licences only)</b>			
OP1	Co-channel reception protection from terrestrial transmissions	550	600
<b>Miscellaneous Services (Radio and Spectrum Licences)</b>			
OZ1	Transmitters less than 20 dBW (100 watts) e.i.r.p.	200	600
OZ2	Transmitters 20 dBW (100 watts) e.i.r.p. or more but less than 30 dBW (1000 watts) e.i.r.p.	200	600
OZ3	Transmitters 30 dBW (1000 watts) e.i.r.p. or more	200	600
ZFC	General User Licences	-	-

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## FINANCIAL IMPLICATIONS OF THE PROPOSED FEES CHANGES

**Table 1: impact of the proposal to forecast revenue\***

<b>Vote Communications</b>	<b>2006/07 \$m</b>	<b>2007/08 \$m</b>	<b>2008/09 \$m</b>
Departmental Output Expense: Management and Administration of the Radiocommunications Act 1989			
Revenue total:	7.3	8.0	8.5
Increase/(decrease)		0.7	0.5

74 \* Based on the assumption that the proposed fees schedule becomes effective 1 November 2007.

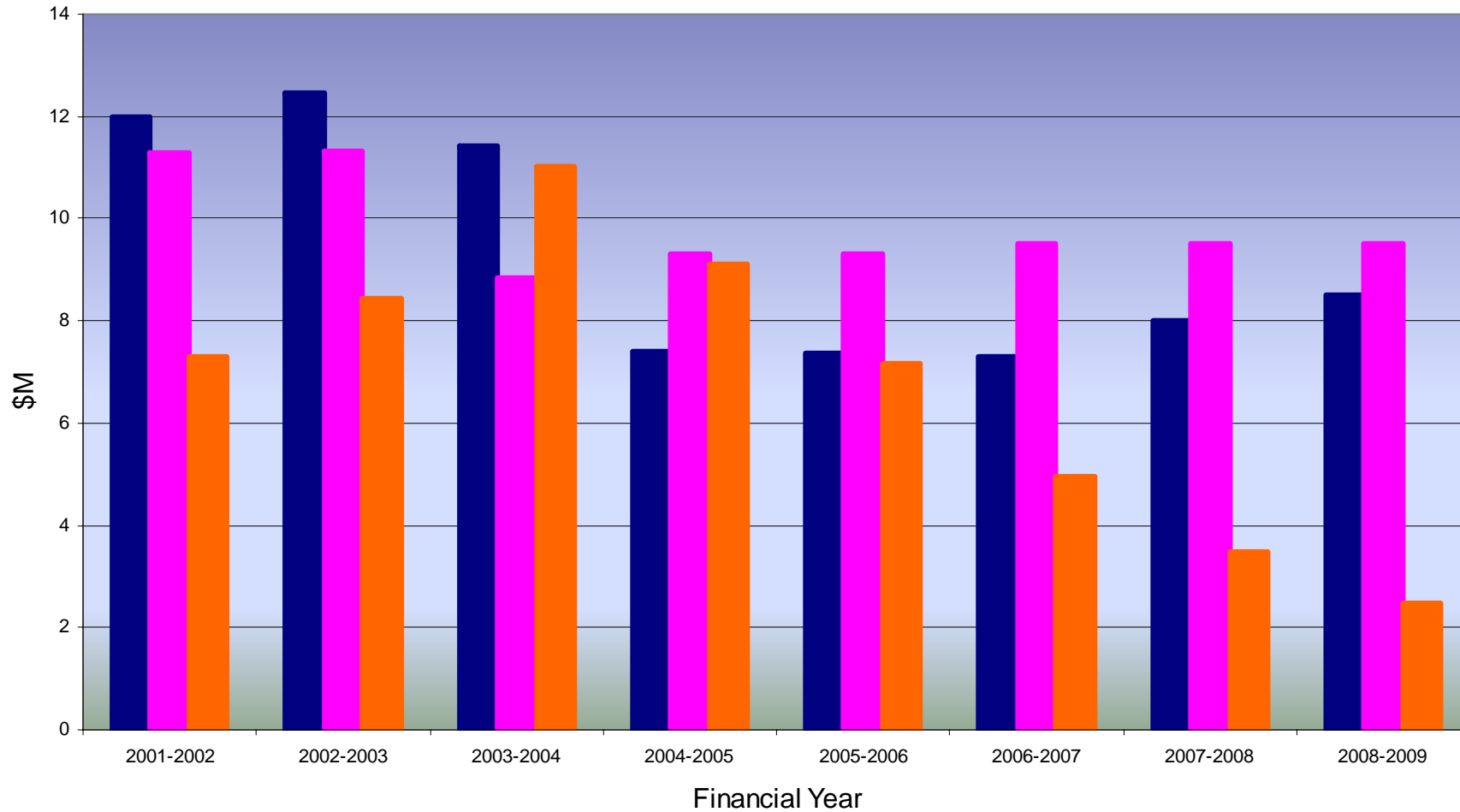
**Table 2: impact of the proposal on the balance of the Memorandum Account**

<b>Vote Communications</b>	<b>2006/07 \$m</b>	<b>2007/08 \$m</b>	<b>2008/09 \$m</b>
Opening balance - surplus	7.2	5.0	3.5
Forecast annual change	(2.2)	(1.5)	(1.0)
Closing balance – surplus	5.0	3.5	2.5

75 Table 3: impact of Memorandum Account deficit

<b>Vote Economic, Industry and Regional Development</b>	<b>Forecast</b>	<b>2007/08 \$m</b>	<b>2008/09 \$m</b>
Capital injection		1.5	1.0

REVENUE, EXPENDITURE AND THE BALANCE OF THE MEMORANDUM ACCOUNT 2001/02 TO 2006/7 AND PROJECTED TO 2008/09



■ Revenue ■ Expenditure ■ Memorandum Account Balance