

## 2. The issues

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#### 2.1 Investment

15. The lack of legislative provisions for the exercise of power to revoke radio licences, or for transition paths where a management right is registered, causes apparent uncertainty over tenure. Lack of security of tenure may limit investment in wireless infrastructure.

16. Effective infrastructure is crucial to New Zealand's productive capacity and economic growth prospects. Lack of investment can have major economic and social effects (for example, lower productivity from low broadband penetration).

17. Allocative efficiency refers to the allocation of resources in a way that maximises the net benefit attained through their use. Encouraging investment under the radio licence regime would contribute to allocative efficiency by increasing the net benefit from the use of spectrum.

18. It is noted that investment was made in infrastructure prior to the introduction of the Act in 1989 and that investment has continued to be made over time. It is difficult, if not impossible, to accurately quantify the direct or indirect economic effects of the lack of security of tenure for radio licences.

19. While experience suggests that the Ministry recognises existing investment when considering revocation of radio licences and usually provides for transition periods or negotiates with individual rightholders, licensees have no guarantee that it will continue to do so. Moreover, not all licensees may feel that the provisions have been adequate.

#### 2.2 Security of Tenure

20. One of the main benefits of the radio licence regime is flexibility and low barriers to entry. Whereas allocation of spectrum under the management rights regime typically involves commercial allocation of long-term rights by auction, the radio licence regime typically involves allocation of licences on-demand at administrative cost.

21. Providing greater security of tenure for radio licences might be counterproductive to the flexibility and availability of radio licences. For example, security of tenure might encourage hoarding of licences for anti-competitive purposes or in the hope of getting a pay-off for relinquishing them. While revocation power is little used, the potential threat of revocation limits hold-out by licensees and encourages acquiescence with Crown plans.

22. It might also follow that improvements to security of tenure should not be made in isolation of wider reform to the radio licence regime. Potentially linked reforms include:

1. encouraging efficient use through competitive allocation and/or resource rentals for radio licences;
2. introducing tradability of licences; and
3. introducing use-it-or-lose-it provisions for licences.

23. There is also the possibility that any reform of the radio licence regime may have unintended consequences. For example, different compliance requirements may increase the costs associated with licences.

24. An alternative to reform of the radio licence regime is to move all spectrum to the management right regime by converting all radio licences to spectrum licences under Crown-owned management rights, as was done with the broadcasting bands. This change might improve coherence by managing all the radio spectrum under one regime, and uses the regime better suited to providing security of tenure. The Manager's policies could still provide for allocation on-demand and at administrative cost.

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Q1. Should radio licences have greater security of tenure? Why?

Q2. What is more important to your business: rapid access to radio spectrum to implement new services, or security of tenure for investment?

Q3. Could changes to security of tenure be made in isolation from other reforms of radio licences? Might there be unintended consequences?

Q4. Should all (or most) radio spectrum be moved to the management rights regime? Why?