

TRR clarifies the new Prescribed Radio Apparatus Licence Fees introduced in 2015

The Office of the Telecommunications and Radiocommunications Regulator (TRR) wishes to clarify a few concerns and incorrect statements that have been made recently in the Newspapers in respect of the new Radio Apparatus Licence Fees it has introduced in 2015.

TRR wishes to address them and provide a factual basis to their introduction.

The facts are that:

- The primary legislation for the establishment of Radio Apparatus Licence Fees is the Telecommunications and Radiocommunications Regulation Act No. 30 of 2009 (the TRR Act 2009) and the Radio Apparatus Licence and Spectrum Licence (Fees) Regulation Order No. 153 of 2012.
- There were *two* consultation processes; one in 2013 and another in 2014.
- The consultation process that TRR conducted in 2014 was, like the 2013 consultation process and all TRR consultations, made in an open, fully transparent and public manner and involved all stakeholders. It included Public Notices in Newspapers, emails, TRR website notices and news information, and radio announcements, as well as reminder notices through some of those channels that the consultation period was open for feedback and again when it was closing. All stakeholders had the opportunity to make comments on the proposed new fees in both consultation processes.
- Any comment or view expressed that TRR doesn't listen to the views of citizens (a comment made by a complainant recently to a Newspaper), is misleading and incorrect. TRR has listened, does listen, and will continue to listen to the views of *all* respondents, including a sector of the aviation industry that is currently voicing its opposition to the imposition of the new fees. In particular, as a result of the 2013 consultation process on the proposed radio apparatus licence fee changes, TRR specifically noted the adverse comments received from a sector of the aviation industry and, in response, decided to lower the proposed new fees by 50%, and proceeded to undertake a second consultation in 2014. *It is important to note that no stakeholder provided any comments on the new proposed fees in the 2014 consultation process, that TRR has not set radio apparatus fees in the past and that is why the consultation process took place.*
- Any reference to a percentage increase as a means of complaint is irrelevant because it is the first time that TRR has set the fees. The fees that were in existence prior to the new fees being set for 2015 were around 30 years old and, as such, were outdated as they did not reflect inflation, the true cost of managing the radio spectrum, changing market dynamics or the administrative costs involved. TRR does not have records of how the old fees were calculated but it is highly likely that they were not based the parameters that the 2015 fees are.
- The radiofrequency spectrum is a *national resource* and must be managed carefully, responsibly and in the best interests of this country.
- The TRR Act 2009 mandates TRR to manage radiofrequency spectrum that *all* radiocommunications devices, including radio apparatus, are relied upon to transmit signals or communicate from one point to another. Spectrum is a vital, natural resource which has value on it and TRR is responsible for ensuring that there is no interference with any use of

such radio spectrum so that *all* industries and users can use spectrum and their radiocommunications equipment effectively and safely.

- Managing the radiofrequency spectrum requires resources in terms of equipment, human resources, and international and regional obligations and fees.
- TRR's view, as identified clearly in both consultation papers, is that the costs associated with managing the spectrum should properly be recovered from those who benefit from the use of the spectrum; and that is the users of that spectrum. It would not be fair, reasonable or ethical to require the costs of managing the spectrum to be borne by the community as a whole.
- In recognition of the impact that moving to full cost recovery could have on business, TRR stopped well short of imposing the *actual* level of fees on users that would be necessary for full cost recovery at this time.
- TRR's decisions are evidenced-based and it recognises that the decisions it makes will not please all parties, but it does so in the best interests of all concerned and in consideration of all relevant markets, evidence it has, and all stakeholder views; not the views of one sector alone, or a small discontented group of a sector.
- TRR had a face-to face meeting with some aviation operators/representatives that had expressed concern together with the Civil Aviation Authority on 17th December 2014, and we put our rationale forward and fully explained our views and decisions at that meeting.
- TRR's views, the Decision and the Background to the Decision, are available at our website: www.trr.vu and can be provided to any party upon request. They were made available to all key stakeholders we have consulted with, and anyone who expressed an interest in the outcome.
- The second consultation paper clearly outlined the principles behind the new revised fees proposed to be prescribed fees, and clearly identified that they were based on a cost recovery basis and the value of the spectrum bands used. The proposed new fees and the existing fees were published side by side and, as a result, the proposed increase was clearly evident; negating a view that TRR had not wished to clearly identify any increase it proposed. TRR also asked specific questions to key stakeholders, among other things, whether or not they were in agreement with the new proposed prescribed fees, the principles used and calculation adopted or otherwise. TRR did not receive any feedback or submission from any stakeholder on the questions it asked or the proposed new fee schedule.
- The fees were developed following consideration of fees in other relevant and related countries, particularly Small Island Development States. This was outlined in the second consultation paper, and it should be noted that the fees in Vanuatu are lower than those now in force in some of those countries compared with Vanuatu. Comparisons to New Zealand, Australia, the UK and the USA are not relevant or appropriate because of the topography, geography, value of the spectrum, population, tax base and income in those countries - as compared to Vanuatu.
- TRR provided a Regulatory Impact Statement with both of its consultation papers which fully outlined all relevant impacts.
- TRR proceeded to make its decision for the adoption and implementation of the new fees on the basis of no comments being received on the second, 2014, consultation as an indicator of acceptance and agreement with the reduced fees schedule as against those proposed in the 2013 consultation paper. This has been vindicated through no other sectors, or licensees

having complained to date and that other aviation operators have already paid their fees – including the fee for one of three licences from one complainant aviation licensee. TRR also wishes to point out that some sectors have to pay higher fees than aviation operators and that they have largely already paid their fees and have not expressed any opposition to them.

- Licensees have been given notice that fees were due for change since early 2013 and have, effectively, been given a grace period of one year, because the new fees that are now in place for 2015 were delayed by one year because TRR chose to consult again.
- TRR is concerned that, given not all aviation or marine operators have paid their fees nor renewed their licences, there are now some licensees that may, potentially, be in breach of the Civil Aviation Act and related regulations, the Shipping Act and any other relevant laws of Vanuatu, as a result of the breach of the TRR Act 2009 and related regulations, and the legal consequences that may arise.
- While recognising that nobody likes paying fees, TRR considers that the fee rises are justified and appropriate because:
 - Prior to the introduction of the 2015 fees, radio apparatus fee levels had not increased for many (over 30) years, and did not reflect inflation and, particularly, the value of the spectrum, the costs of spectrum management and the administration costs that should be applied;
 - Spectrum users have had considerable notice (since early 2013) of the fact that their fees were likely to rise. The views of responders to the 2013 consultation have been carefully considered by TRR and adjustments have been made, representing in some cases considerably smaller increases than those proposed in 2013;
 - The proposed fees are now much more closely tied to the amount of spectrum used, and the economic value of the bands concerned; and
 - TRR followed all due processes and provided the opportunity for all concerned licensees to assist TRR in its review of the fees since 2013.
- The new prescribed fees for Radio Apparatus Licences are now effective by law and are enforceable.

TRR wishes to express its concern for and desire to ensure all of the appropriate laws governing Vanuatu, TRR, Maritime and the Civil Aviation, are complied with and that transport safety, particularly passenger safety, is not compromised in any way.