

EXPLANATORY STATEMENT

Radiocommunications Act 1992

Issued by the Authority of the Australian Communications Authority

*Radiocommunications Licence Conditions (Fixed Licence) Amendment
Determination 2005 (No. 1)*

Legislative provisions

Paragraph 107(1)(f) of the *Radiocommunications Act 1992* (the Act) provides for the ACA to determine, by written instrument, the conditions applicable (if any) to particular types of apparatus licences.

Subsection 107(4) provides that a determination made under paragraph 107(1)(f) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Purpose of amendment

This amendment to the *Radiocommunications Licence Conditions (Fixed Licence) Determination No. 1 of 1997* (the Fixed LCD) adds a new Part to impose rollout obligations on licensees operating fixed point to multipoint stations in the 1900-1920 and 2010-2025 MHz bands.

The purpose of the rollout obligations is to encourage the deployment of broadband wireless access (BWA) services in those areas of Australia where there are few or no BWA services. The rollout obligations require the holder of an apparatus licence authorising a fixed (point to multipoint station) in the above bands to meet two rollout goals:

- **Rollout goal 1** Within 12 months of the issue of a licence, a licensee should have either acquired or ordered a transmitter and arranged the site access and local government approval to install the transmitter on the specified site. If this is achieved, in addition to satisfactory compliance with all other licence conditions, the ACA will consider renewing the licence for a further 12 months.
- **Rollout goal 2** Within 24 months of the issue of the licence, the licensee must have commenced a lawful BWA service.

Background

The operation of radiocommunications equipment authorised by an apparatus licence is subject to:

- conditions specified in the Act, including an obligation to comply with the Act,
- a condition that any radiocommunications device operated under the licence must comply with all the standards applicable to it,
- conditions specified in the *Radiocommunications Licence Conditions (Apparatus Licence) Determination 2003* and any other determinations made by the ACA under paragraph 107(1)(f) of the Act,

- conditions specified in the licence, and
- any further conditions imposed by the ACA under section 111 of the Act.

Under paragraph 107(1)(f) of the Act, the ACA may determine, by written instrument, conditions relating to a particular type of apparatus licence. These instruments are known as Licence Conditions Determinations (LCDs). LCDs contain the generic conditions particular to various radiocommunications licence types and licensing options, including details of any common frequencies or frequency bands, permitted power levels, type of communications permitted, persons with whom the licensee is permitted to communicate, callsign usage and any other relevant transmission parameters.

The *Radiocommunications Licence Conditions (Apparatus Licence) Determination 2003* and the *Radiocommunications Licence Conditions (Fixed Licence) Determination No. 1 of 1997* specify the conditions applicable to the licences referred to in this explanatory statement.

Any other conditions of operation, which apply to an individual licence but are not included in an LCD, are printed on the apparatus licence under the heading ‘Special Conditions’.

Discussion of issues

In April 2004, the ACA released a consultation paper on the proposed allocation of spectrum in the 2 GHz band suitable for BWA and other services. Based on a favourable response, the ACA released a further discussion paper in July 2004. The proposed initiatives in this second discussion paper included:

- (a) auctioning spectrum licences in the 2010-2025 MHz band in metropolitan and regional areas in wide area licences*,
- (b) developing arrangements for the issue of “over-the-counter” apparatus licences in the 1900-1920 and 2010-2025 MHz bands in geographical areas that have not been declared for spectrum licensing, and
- (c) the use of a licence condition that encourages the rollout of BWA services in the 1900-1920 and 2010-2025 MHz bands where an apparatus licence has been issued.

Most respondents supported the concept of releasing spectrum for BWA. However, responses showed that small and regional operators preferred apparatus licences covering small areas in regional areas, while most larger telecommunications carriers sought spectrum licences covering wide areas. Most respondents also strongly supported the ACA’s proposal to impose rollout obligations.

To meet the needs of these stakeholders while minimising the impact on incumbent licensees, the ACA has pursued spectrum licensing in the 2010-2025 MHz band in metropolitan and regional areas. The ACA has also developed measures to encourage the implementation of BWA apparatus licensing in the 1900-1920 and 2010-2025 MHz bands. These measures are the development of a Frequency Band Plan and, through the amendment determination, rollout obligations.

* The ACA had already allocated spectrum licences in the 1900-1920 MHz band in capital cities.

The rollout requirement

The aim of the rollout obligations is to ensure that the licensee is making satisfactory progress towards providing a BWA service. While the rollout obligations allow a two-year period for the establishment and commencement of a BWA service, there is nothing to stop a licensee progressing much faster than this. For monitoring the meeting of the rollout goals, the ACA may specify, as the period for which a licence remains in force, a period less than the maximum period permissible under subsection 103 (3) of the Act. Once a licensee has satisfied each of the rollout goals, and if it has met all other licence conditions, it could seek a renewal of up to five years. There will be no further reporting requirements attached to the licence beyond this point.

A schedule attached to the amendment identifies the evidence required in a statutory declaration of meeting rollout goals to be provided in relation to each claim. The ACA intends to review this evidence primarily at the time of licence renewal and to consider any failure to meet rollout goals when making its decision on whether to renew the licence.

The amendment affords the ACA the discretion to allow additional time to comply with the rollout goals if, after taking into account all relevant matters, the ACA is satisfied that it is appropriate to do so. It is anticipated that the ACA would only do so where the failure to meet the timeframe is through no fault of the licensee. The length of the extension would be at the discretion of the ACA and the ACA may seek submissions from relevant parties as to the length of the extension.

In the event that the ACA refuses to re-issue a licence, the licence will become available for allocation or re-allocation by the ACA once the time permitted to apply for reconsideration of the ACA's decision or the time to apply for external review has expired. Licensees whose licences have expired due to a failure to comply with the rollout obligations will not be prevented from reapplying for a new licence including one at the same site on the same frequency. However, an earlier failure to meet the rollout obligations is a matter that the ACA could take into account (pursuant to paragraph 100(4)(a) of the Act) in considering whether to issue a subsequent further licence.

The Radiocommunications Licence Conditions (Fixed Licence) Amendment Determination 2005 (No. 1) commences on the day after registration.

Consultation

In addition to the April 2004 and July 2004 discussion papers, the ACA released a discussion paper for comment on 14 November 2004 titled *Deployment of broadband wireless access services in the 2 GHz band: proposed rollout obligations*. Comments were due by 13 December 2004 and the ACA received eleven submissions in response. Most respondents were in favour of imposing a rollout obligation on apparatus licences for BWA services. All comments were taken into account in developing the rollout obligations.

The Office of Regulation Review (ORR) has cleared a Regulation Impact Statement for the amendment to the Fixed LCD (ORR ID: 3919). ORR has advised that the RIS meets the Australian Government's regulatory best practice requirements and contains

an adequate level of analysis. A copy of the RIS is attached as recommended in the Legislative Instruments Handbook.

Detailed description of the Amendment Determination

Notes on the amendment are set out in Attachment 1.

ATTACHMENT 1

Notes on the instrument

Section 1 Name of Determination

Section 1 provides for the citation of the Determination.

Section 2 Commencement

Section 2 states the day on which the Determination has effect as the day after Registration.

Section 3 Amendment of the *Radiocommunications Licence Conditions (Fixed Licence) Determination No. 1 of 1997*

Section 3 provides that Schedule 1 amends the *Radiocommunications Licence Conditions (Fixed Licence) Determination No. 1 of 1997* (the Determination) and that the amendment is also varied to include the actual date of commencement in section 11M.

Schedule 1 Amendments

Item 1 paragraph 2(1)(b)

Item 1 excludes these licences from the requirements of Part 3 (it is not technically possible for Parts 3A, 3B or 3C to apply to them).

Item 2 After paragraph 2(1)(ba)

Item 2 adds a new paragraph 2(1)(bb). This paragraph confirms that the scope of the Determination will include fixed (point to multipoint station) licences in the 1900-1920 and 2010-2025 MHz frequency bands.

Item 3 Part 3 Heading

Item 3 changes the heading to Part 3 to exclude fixed (point to multipoint station) licences in the 1900-1920 and 2010-2025 MHz frequency bands from the requirements of Part 3.

Item 4 Section 6

Item 4 amends section 6 to exclude fixed (point to multipoint station) licences in the 1900-1920 and 2010-2025 MHz frequency bands from the requirements of Part 3.

Item 5 After Part 3C

Item 5 inserts a new Part 3D. Part 3D in turn imposes the new rollout obligations to all fixed (point to multipoint station) licences in the 1900-1920 and 2010-2025 MHz frequency bands as follows:

- 11M Conditions
This new section imposes the conditions contained in the new Part 3D on all fixed (point to multipoint station) licences in the 1900-1920 and 2010-2025 MHz frequency bands issued or reissued after the commencement of

the amendments. The conditions are imposed pursuant to paragraph 107(1)(f) of the Determination.

- **11N Definitions for Part 3D**
This section sets out a number of definitions for the purposes of the new Part only.
- **11O Rollout goals to be met by licensee**
This section sets the timeframes for the licensee as 12 months for rollout goal 1 and 24 months for rollout goal 2. The timeframe commences when a licence is first issued under section 100 of the Act and continues when a licence is renewed under section 130 of the Act. These timeframes are not affected by the compliance or non-compliance with the rollout obligations. The same conditions are imposed on licences irrespective of whether the licence has been renewed.
- **11P Rollout Goals**
This section sets out the specific rollout goal elements to be met by the licensee.
- **11Q Evidence of meeting the rollout goals**
This section sets out the evidence that must be submitted to the ACA to show that a rollout goal has been met. The section also sets out the time limits on the provision of such evidence.

Item 6 After Schedule 2B

Item 6 provides a new schedule to Section 11Q, identifying the nature of information or documents as evidence of meeting the two rollout goals, to be provided in relation to each claim made in a statutory declaration.