

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Radiocommunications (Low Interference Potential Devices) Class Licence Variation 2011 (No. 1)

Radiocommunications Act 1992

Purpose

The *Radiocommunications (Low Interference Potential Devices) Class Licence Variation 2011 (No. 1)* (the Variation) varies the *Radiocommunications (Low Interference Potential Devices) Class Licence 2000* (the Class Licence).

Legislative Provisions

The Variation is made under section 134 of the *Radiocommunications Act 1992* (the Act) which provides that the Australian Communications and Media Authority (ACMA) may vary a class licence by:

- including one or more further conditions; or
- revoking or varying any of the conditions of the licence.

A class licence variation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (the LIA).

Background

The ACMA made the *Radiocommunications (Mid-West Radio Quiet Zone) Frequency Band Plan 2011* in order to create a radio quiet zone (RQZ) in the Mid-West region of Western Australia. The RQZ is intended to minimise harmful interference to radioastronomy services.

The Variation is intended to support the RQZ by placing restrictions on the use of transmitters in the RQZ where that use will cause interference with radioastronomy services.

Operation

The Variation amends the Class Licence to insert a further condition on the use of low interference potential devices (such as garage door openers, home detention monitoring equipment, point-of-sale networks and personal alarms) by restricting their use within the inner zone of the RQZ, which is the area within a 70 kilometre radius of the Murchison Radioastronomy Observatory (MRO). The new condition requires that a person must not operate a transmitter to which the class licence applies in a specified range of transmission frequencies so as to cause interference with radioastronomy observations.

Consultation

Section 17 of the LIA requires the ACMA to be satisfied that any consultation it considers to be appropriate and that is reasonably practicable to undertake has been undertaken before making a legislative instrument. Section 136 of the Act also requires that a Gazette notice explaining the variation be published and a period of one month be provided for public comment.

On 8 October 2010 the ACMA commenced a public consultation process to explore a proposal to strengthen existing measures to protect the Mid West RQZ around the MRO. The ACMA made a media release and published a page on its website describing the issues for comment, the process for contributing to the consultation and providing a copy of a discussion paper.¹

¹ ACMA (2010) *Mid West Radio Quiet Zone – Discussion paper on proposed regulatory measures*, October 2010, available at: http://www.acma.gov.au/WEB/STANDARD/pc=PC_312298

The discussion paper proposed that the ACMA introduce a legislative basis for the existing administrative arrangements around the Mid West RQZ in order to provide greater certainty for all parties. This would include action to:

- > introduce a Mid West RQZ frequency band plan that would, among other things, replace Embargo 41 and largely duplicate its provisions
- > extend the lower boundary of the protected frequency range from 100 MHz to 70 MHz to enable the requirements of the SKA bid to be met
- > make consequential amendments to the Australian Radiofrequency Spectrum Plan to enable the introduction of the band plan
- > leave the existing RALI MS32 in place
- > further highlight the protection mechanisms by cross-referencing them in relevant spectrum, class and apparatus licence conditions.

Two *Gazette* notices were published on 12 October 2010. *Gazette* notice No. S171 set out the ACMA's intention to make a new frequency band plan, as per its proposal in the discussion paper. *Gazette* notice No. S172, in compliance with the consultation requirements for class licence variations under section 136 of the Act, provided a notice that the ACMA proposed to vary several instruments, including the Class Licence and seeking public comments about the proposals.

Submissions to the consultation were initially due on 17 November 2010, but at the request of stakeholders the deadline was extended to 17 December 2010. Twenty responses were received, 19 from the stakeholders listed below and one confidential submission. They are available on the ACMA website.

Government

- > Department of Defence
- > Department of Innovation, Industry, Science and Research (DIISR)
- > Government of Western Australia

Miners and infrastructure developers

- > Crosslands Resources
- > Jabiru Metals Ltd
- > Sinosteel Midwest Corporation
- > Talisman Mining Ltd
- > Australasian Railway Association
- > Oakajee Port and Rail

Telecommunications carriers

- > Optus
- > Telstra

Satellite service providers

- > AeroMobile
- > Global VSAT Forum
- > Inmarsat
- > Intelsat
- > Iridium
- > Pivotal

Astronomers

- > International Centre for Radioastronomy Research (ICRAR)
- > CSIRO

Submissions indicated a diverse group of stakeholders with polarised and complex concerns regarding the ACMA proposal. Stakeholders, while generally supportive of the SKA, raised a number of concerns regarding the potential impacts of the proposed measures, which were addressed in the revised approach.

In particular, some key themes emerged from the responses as follows:

- > **certainty**—a desire for greater technical and regulatory certainty, particularly around the role of the MRO;
- > **access to spectrum**—ensuring that arrangements did not unnecessarily restrict access to spectrum by other users in the region, particularly major mining and infrastructure projects;

- > **SKA bid**—ensuring that the technical and radio quiet requirements for the SKA project are met.

In addition, stakeholders raised a number of specific issues including the perceived potential for the impact of the proposed class licence conditions on other services to be more significant than intended.

Following its consideration of the diverse comments of stakeholders on its discussion paper, and further, targeted consultation on proposed revisions to the package of measures, the ACMA has implemented revised arrangements to enhance regulatory protections for radio quiet in the Mid West RQZ. In particular, a more targeted approach to licence conditions was taken. A more limited range of licence amendments were made, including the Variation, which was adjusted to apply to a limited ranged of frequencies in a specified geographic zone.

Regulatory Impact

The Office of Best Practice and Regulation (OBPR) has considered the matter and formed the opinion that no regulatory impact analysis is required for the Variation. The OBPR reference number is ID 12615.

Variation Details

Further details of the Variation are provided in the Attachment.

NOTES ON SECTIONS

Section 1 Name of Variation

Section 1 provides the name of the Variation.

Section 2 Commencement

Section 2 provides that the Variation commences on the day after it is registered or the day on which it is published in the *Gazette*, whichever is later.

Section 3 Variation of *Radiocommunications (Low Interference Potential Devices) Class Licence 2000*

Section 3 provides that Schedule 1 of the Variation amends the *Radiocommunications (Low Interference Potential Devices) Class Licence 2000*.

Schedule 1 Variations

Item 1

Item 1 provides for a new condition at paragraph 4(1)(c) on the authorisation provided by the Class Licence to operate low interference potential device transmitters. A transmitter must not be used on a frequency between 70 MHz and 25.25 GHz, within 70 kilometres of the MRO, if that use will cause interference with the operation of radioastronomy observations.

Item 1 also inserts a note that indicates that the central location of the MRO from which the 70 kilometre radius should be measured is 26.704167 South, 116.658889 East (GDA94).