

## EXPLANATORY STATEMENT

### Prepared by the Australian Communications and Media Authority

#### *Radiocommunications Licence Conditions (Amateur Licence) Amendment Determination 2012 (No. 1)*

#### *Radiocommunications Act 1992*

### **Purpose**

The purpose of the *Radiocommunications Licence Conditions (Amateur Licence) Amendment Determination 2012 (No. 1)* (the Amendment Determination) is to amend the *Radiocommunications Licence Conditions (Amateur Licence) Determination No. 1 of 1997* (the LCD) by removing the permission granted to qualified persons to operate amateur stations in the 420 to 430 MHz frequency band and by permitting operation in the 472 to 479 kHz frequency band.

### **Legislative Provisions**

Paragraph 107(1)(f) of the *Radiocommunications Act 1992* (the Act) provides that an apparatus licence is subject to conditions which the ACMA may determine by written instrument, in relation to that particular type of apparatus licence.

The ACMA has determined such conditions under the LCD. The Amendment Determination is made under paragraph 107(1)(f) of the Act.

### **Background**

The LCD contains the conditions applicable to the Amateur licence type. These conditions include the type of communications permitted, with whom the operator is permitted to communicate, call sign usage and relevant transmission parameters. This instrument also prescribes the frequencies on which domestic amateurs may operate. Currently the LCD provides for amateur use in the 420-430 MHz range and does not provide for use in the 472 to 479 kHz range.

The Amendment Determination is being made to remove amateurs' use in the 420 to 430 MHz range to allow for greater harmonisation in the 400 MHz band, following the ACMA's review of the band.

The reason for removing permission to operate amateur stations in the 420 to 430 MHz frequency band and including a permission to operate amateur stations in the 472 kHz to 479 kHz frequency band is to achieve consistency with:

- the requirements in the ACMA's Radiocommunications Assignment Licensing Instruction MS22 (RALI MS22); and
- the *Australian Radiofrequency Spectrum Plan 2013* (the **ARSP**).

RALI MS22 is an ACMA policy document that codifies planning arrangements for radiocommunication services in the two bands 403 to 430 MHz and 450 to 520 MHz (known collectively as the 400 MHz band). RALI MS22 advises the service allocations in the two

bands, specifies the segment frequency limits applicable to these allocations, and the channelling arrangements within these segments.

The ACMA also proposes to include in the ARSP requirements that will remove amateur service access to the 420 to 430 MHz frequency range and will specify amateurs as a secondary service in the 472 to 479 kHz range. Section 12 of the ARSP, inter alia, provides that a secondary service must not cause harmful interference to a primary service using the frequency band and that it cannot claim protection from harmful interference caused by a primary service using the frequency band.

The LCD as varied will be consistent with the ARSP as it will permit use of the 472 to 479 kHz band and because the LCD provides that an amateur station must not be operated if its operation causes harmful interference to radiocommunications.<sup>1</sup>

An additional reason for permitting the operation of amateur stations in the frequency range 472 to 479 kHz is that it will align Australia's regulation with the agreed outcomes of the World Radiocommunication Conference 2012 (WRC-12). Australia implements outcomes of the WRC-12 in a treaty that is ratified by the Australian Government. The LCD is being amended to reflect these agreed outcomes.

### **Consultation**

The ACMA consulted directly with Wireless Institute of Australia (WIA) and wrote to amateur licence holders prior to public release of the proposed amendments. From 10 October 2012 to 9 November 2012, the ACMA consulted publicly on the proposed amendments and released a consultation paper. The ACMA received 4 submissions and took comments received into account in finalising the Amendment Determination.

### **Regulatory Impact**

The Office of Best Practice Regulation (**OBPR**) was consulted in relation to the ACMA's intention to amend the LCD. OBPR advised that no Regulation Impact Statement was required. The OBPR reference number is ID 14230.

### **Detailed description of the Amendment Determination**

Details of the Amendment Determination are set out in **Attachment A**.

### **Statement of Compatibility with Human Rights**

A statement of compatibility with human rights for the purpose of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out in **Attachment B**.

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<sup>1</sup> Section 7 of the LCD and subsection 10(1) of the Class Licence prohibit the operation of an amateur station if that operation would cause harmful interference to radiocommunications.

## Notes on Sections

### Section 1 Name of Determination

Section 1 provides that the name of the Amendment Determination is the *Radiocommunications Licence Conditions (Amateur Licence) Amendment Determination 2012 (No.1)*.

### Section 2 Commencement

This section provides that the Amendment commences on 1 January 2013.

### Section 3 Amendment of Radiocommunications Licence Conditions (Amateur Licence) Determination (No. 1) of 1997

This section provides that Section 1 amends the *Radiocommunications Licence Conditions (Amateur Licence) Determination No. 1 of 1997*.

## Schedule 1 - Amendments

### Item [1] – Subsection 3(1) – Definition of *Exmouth Non Directional Beacon Area*

This item inserts a definition of *Exmouth Non Directional Beacon Area*. The Exmouth Non Directional Beacon is an aeronautical navigation aid that is located at latitude 21° 26' 7" south, longitude 114° 3' 57" east off the coast near Exmouth, Western Australia. The Exmouth Non Directional Beacon Area is stated to mean the geographic area with a 1000km radius around the Exmouth Non Directional Beacon that is within Australia. "Australia" is defined in the Act. The Exmouth Non Directional Beacon Area is referred to in the new Part 2 of Schedule 2 (inserted by item [7]) as an area of operation to which an excluded frequency range applies in relation to the operation of amateur stations.

### Items [2], [3] and [4] – Subsection 3(1) - Definitions of *Melbourne Area, Perth Area and Sydney Area*

These items omit the definitions of *Melbourne Area, Perth Area and Sydney Area* as they are no longer required following substitution of Part 2 of Schedule 2 as a result of item 6 of Schedule 1 to the Amendment Determination.

### Item [5] – Subsection 3(1) – Definition of *Timor Non Directional Beacon Area*

This item inserts a definition of *Timor Non Directional Beacon Area*. The Timor Non Directional Beacon is an aeronautical navigation aid that is located at latitude 10° 37' 21" south, longitude 126° 2' 0" east in the Timor Sea. The Timor Non Directional Beacon Area is stated to mean the geographic area with a 2000km radius around the Timor Non Directional Beacon that is within Australia. "Australia" is defined in the Act. The Timor Non Directional Beacon Area is referred to in the new Part 2 of Schedule 2 (inserted by item [7]) as an area of operation to which an excluded frequency range applies in relation to the operation of amateur stations.

### Item [6] – After section 15C

This item inserts a new section 15D which limits a licensee operating amateur advanced station in the frequency band 472 kHz to 479 kHz to a radiated power of not more than 5

Watts pX EIRP. This item gives effect to the International Telecommunication Union Table of Allocations footnote 80A.

### **Item [7] - Schedule 2**

This item substitutes Schedule 2. The updated Schedule 2 includes five amendments. Part 1 of Schedule 2 is amended by:

- inserting 472 to 479 kHz as a new frequency range for use licensees operating amateur advanced stations; and
- substituting 430 to 450 MHz as a frequency range available for use by licensees operating amateur advanced stations. This has the effect of removing the permission for licensees operating amateur advanced stations to operate in the 420 MHz – 430 MHz frequency range.

Part 2 of Schedule 2 is amended by:

- omitting the excluded frequency ranges which fall within the 420 MHz – 430 MHz frequency range as a result of that range having been removed from Part 1 to Schedule 2;
- inserting two new areas of operation to which an excluded frequency range applies: the Timor Non Directional Beacon Area and the Exmouth Non Directional Beacon Area; and
- inserting Note 5 that provides that the operation of an amateur advanced station in the band 472 kHz–479 kHz is subject to the limitation mentioned in section 15D.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### ***Radiocommunications Licence Conditions (Amateur Licence) Amendment Determination 2012 (No. 1)***

The *Radiocommunications Licence Conditions (Amateur Licence) Amendment Determination 2012 (No. 1)* (the Amendment Determination) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

Paragraph 107 (1)(f) of the Act provides that an apparatus licence is subject to conditions which the ACMA may determine by written instrument, in relations to that particular type of apparatus licence. The ACMA has determined such conditions under the *Radiocommunications Licence Conditions (Amateur Licence) Determination No. 1 of 1997* (the LCD). The LCD contains the conditions of licence applicable to the Amateur licence type.

The Amendment Determination will:

- remove permission to operate devices in the 420 to 430 MHz frequency range to achieve consistency with the requirements in the ACMA's Radiocommunications Assignment Licensing Instruction MS22, and with a planned update to the Australian Radiofrequency Spectrum Plan; and
- authorise access for amateurs to use the 472 to 479 kHz frequency range to achieve consistency with the agreed outcomes of the World Radiocommunication Conference 2012.

#### **Human rights implications**

The Amendment Determination does not engage any of the applicable rights or freedoms.

#### **Conclusion**

The Amendment Determination is compatible with human rights as it does not raise any human rights issues.

**Australian Communications and Media Authority**