

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Radiocommunications Licence Conditions (PTS Licence) Determination 2013

Radiocommunications Act 1992

Purpose

On 19 December 2013, the Australian Communications and Media Authority (**ACMA**) made the *Radiocommunications Licence Conditions (PTS Licence) Determination 2013* (the **Determination**).

The Determination revokes and replaces the *Radiocommunications Licence Conditions (PTS Licence) Determination 1997* (the **1997 Instrument**) without making any significant changes to the regulatory arrangements created by the 1997 Instrument.

The ACMA has made the Determination because the 1997 Instrument was due to “sunset” (i.e. be automatically repealed) on 1 October 2015, in accordance with Part 6 of the *Legislative Instruments Act 2003* (the **LIA**). Following review, and consultation as described below, the ACMA formed the view that the 1997 Instrument was operating effectively and efficiently, and continued to form a necessary and useful part of the legislative framework. Accordingly, the ACMA has remade the 1997 Instrument by making the Determination, without any significant changes, so that its on-going effect is preserved.

Legislative Provisions

The Determination is made by the Australian Communications and Media Authority (**ACMA**) under paragraph 107(1)(f) of the *Radiocommunications Act 1992* (the **Act**). Paragraph 107(1)(f) provides that the ACMA may determine, by written instrument, conditions relating to a particular type of apparatus licence. The Determination determines conditions for the PTS licence type.

The Determination is a legislative instrument and may be subject to disallowance in accordance with section 42 of the LIA.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make a legislative instrument, the power shall be construed to include a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument.

Background

A PTS (Public Telecommunications Service) licence is a type of apparatus licence primarily used to authorise base stations that provide public mobile telecommunications services. It also authorises stations that are operated to provide a carriage service to mobile devices where the service may not meet all the requirements of a public mobile telecommunications service.

PTS licences are subject to conditions set out in the Determination and the *Radiocommunications Licence Conditions (Apparatus Licence) Determination 2003*.

In 2012, the ACMA facilitated the deployment of low powered devices, such as femtocells and smart repeaters, in non-spectrum licensed areas in the 1800 MHz and 2 GHz bands by:

- amending the definition of ‘PTS Licence’ in the *Radiocommunications Interpretation Determination 2000* to enable a PTS licence to authorise technologies that may not fit within the definition of a public mobile telecommunications service (as described in the *Telecommunications Act 1997*); and

- introducing special licence conditions that removed the record keeping and location notification requirements otherwise applicable to low powered devices operated under a PTS licence.

The 1997 Instrument has been revoked, and the Determination has been made, by the ACMA in order to apply these regulatory arrangements to non-spectrum licensed areas in the 800 MHz and 900 MHz bands, in addition to the 1800 MHz and 2 GHz bands. This is discussed further below.

Operation

The Determination provides for two types of PTS licences:

- PTS (PMTS B) licences, which authorise land stations in specified parts of the 800 MHz, 1800 MHz and 2 GHz bands; and
- PTS (PMTS C) licences, which authorise stations in aircraft.

The licence conditions specified in the Determination include:

- the type of communications permitted under a PTS licence type;
- with whom the operator is permitted to communicate;
- relevant equipment specifications; and
- record keeping and location identification requirements.

The Determination includes provisions that remove the requirement on PTS licensees to retain records and provide location details of low powered devices, such as femtocells and smart repeaters, that are being operated in non-spectrum licensed areas in the 800 MHz, 900 MHz, 1800 MHz and 2 GHz frequency bands.

The Determination also updates the requirements for compliance with the *Civil Aviation Safety Regulations 1998* relating to the approval of modifications of aircraft.

Consultation

Subsection 17(1) of the LIA requires that, before the ACMA makes a legislative instrument, it must be satisfied that any consultation that the ACMA considers is appropriate and reasonably practicable to undertake has been undertaken.

In this case, the ACMA consulted publicly between 30 October 2013 and 29 November 2013 by means of a consultation paper published on its website. That paper explained the sunseting process and the ACMA's preliminary view that the existing arrangements should be saved from automatic repeal and remade without any significant changes. Interested parties were invited to comment. The ACMA received two submissions in response to the consultation paper and took them into account when making the Determination.

Detailed Description of the Determination

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

Statement of Compatibility with Human Rights

As required under the *Human Rights (Parliamentary Scrutiny) Act 2011*, a Statement of Compatibility with Human Rights has been prepared by the ACMA and is at **Attachment B**.

Regulation Impact Statement

Under the Guidance Note *Sunsetting Legislation* published by the Office of Best Practice Regulation (OBPR) in March 2013, streamlined administrative processes apply to sunseting legislative instruments. As the ACMA has determined that the 1997 Instrument was fit for purpose, and should be remade without any significant changes, and has certified those matters to OBPR, no Regulation

Impact Statement (RIS) is required in relation to the making of the Determination. (OBPR reference number ID 2013/16074).

Attachment A

DETAILS OF THE *RADIOCOMMUNICATIONS LICENCE CONDITIONS (PTS LICENCE) DETERMINATION 2013*

Section 1 – Name of Determination

Section 1 provides that the Determination is the *Radiocommunications Licence Conditions (PTS Licence) Determination 2013*.

Section 1A – Commencement

Section 1A provides that the Determination commences on the day after it is registered on the Federal Register of Legislative Instruments.

Section 1B – Revocation of previous Determination

Section 1B provides that the 1997 Instrument is revoked.

Section 2 - Scope

Section 2 sets out the types of PTS licences to which the conditions in the Determination apply. This section also explains that if a condition in a PTS licence is inconsistent with a condition in the Determination, the condition specified in the licence applies.

Section 3 – Interpretation

Section 3 defines various terms which are used in the Determination.

Section 4 – Conditions

Section 4 provides that every PTS licence is subject to the conditions set out in Part 2 of the Determination relating to the operation of a station under the licence.

Section 5 – Record keeping

Subsection 5(1) provides that PTS licensees must keep a record of the location, frequency and technical parameters of each station being operated under the licence.

Subsection 5(2) requires a PTS licensee to provide a copy of the record to the ACMA as soon as practicable after it is requested by the ACMA.

Subsection 5(3) provides that subsections 5(1) and 5(2) do not apply in relation to a station operated under a PTS licence where the station meets the specifications listed in paragraphs 5(3)(a), (b) and (c).

Section 5A – Stations exempt from subsections 5 (1) and 5 (2)

Section 5A provides that a station specified in subsection 5(3) must be operated in a manner that does not cause harmful interference to licensed radiocommunications devices, and on the basis that the licensee cannot claim protection from harmful interference from other licensed radiocommunications devices.

Section 6 – Conditions

Section 6 provides that every PTS (PMTS B) licence for a PMTS Class B service is subject to the conditions set out in Part 3 of the Determination relating to the operation of a land station under the licence.

Section 7 – Location of land stations

Subsection 7(1) provides that PTS (PMTS B) licensees must not operate a land station unless the location of the station is specified in the licence or the licensee notifies the ACMA of the location before operating the station.

Subsection 7(2) provides that subsection 7(1) does not apply in relation to a land station being operated under a PTS (PMTS B) licence where the station meets the specifications listed in paragraphs 7(2)(a), (b), (c) and (d).

Section 7A – Land stations exempt from subsection 7 (1)

Section 7A provides that a land station specified in subsection 7(2) must be operated in a manner that does not cause harmful interference to licensed radiocommunications devices, and on the basis that the licensee cannot claim protection from harmful interference from other licensed radiocommunications devices.

Section 8 – Repeater stations

Section 8 provides that, if a PTS (PMTS B) licensee operates a repeater station under the licence, the licensee must not operate the station if it causes harmful interference to a service provided by another station, and must operate the station to transmit using only the receive or transmit frequencies that are authorised by the licence.

Section 9 – Conditions

Section 9 provides that every PTS (PMTS C) licence for a PMTS Class C service is subject to the conditions set out in Part 4 of the Determination relating to the operation of a station under the licence.

Section 10 – On-ground operation

Section 10 sets out the conditions that apply to a station operated under a PTS (PMTS C) licence while the aircraft is grounded for testing and maintenance purposes.

Section 11 – Compliance with *Civil Aviation Safety Regulations 1998*

Section 11 sets out the conditions that apply to any radiocommunications device in an aircraft that uses a station operated under a PTS (PMTS C) licence.

Attachment B

Statement of Compatibility with Human Rights

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

Radiocommunications Licence Conditions (PTS Licence) Determination 2013

The legislative instrument 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

The *Radiocommunications Licence Conditions (PTS Licence) Determination 2013* revokes and replaces the *Radiocommunications Licence Conditions (PTS Licence) Determination 1997* without making any significant changes to the regulatory arrangements created by that instrument.

The *Radiocommunications Licence Conditions (PTS Licence) Determination 2013* sets out the conditions that apply to PTS licences.

Human Rights Implications

The legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

The legislative instrument is compatible with human rights as it does not raise any human rights issues.