

# EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

*Radiocommunications (Cellular Mobile Telecommunications Devices) Class Licence  
2014  
Radiocommunications Act 1992*

## Purpose

The Australian Communications and Media Authority (the ACMA) has made the *Radiocommunications (Cellular Mobile Telecommunications Devices) Class Licence 2014* (the Class Licence).

The Class Licence revokes and replaces the *Radiocommunications (Cellular Mobile Telecommunications Devices) Class Licence 2002* (the 2002 Class Licence) without making any significant changes to the regulatory arrangements created by the 2002 Class Licence.

The ACMA has made the Class Licence because the 2002 Class Licence was due to 'sunset' (i.e. be automatically repealed) on 1 April 2015, by operation of Part 6 of the *Legislative Instruments Act 2003* (LIA).

Following review, and consultation as described below, the ACMA formed the view that the 2002 Class Licence was operating effectively and efficiently, and continued to form a necessary and useful part of the legislative framework. To preserve the effect of the 2002 Class Licence, the ACMA has therefore revoked the 2002 Class Licence before its sunset date and remade it with minor changes as the Class Licence.

## Legislative Provisions

Under subsection 132(1) of the *Radiocommunications Act 1992* (the Act), the ACMA may issue class licences by notice published in the *Gazette*. Section 133 of the Act allows the ACMA to include in a class licence such conditions as it thinks fit. Subsection 33(3) of the *Acts Interpretation Act 1901* provides that the power to make an instrument includes the power to vary or revoke the instrument.

## Background

It is generally a requirement of the Act that the operation of all radiocommunications devices within Australia be authorised by a radiocommunications licence.

A class licence is one type of licence available to authorise the operation of radiocommunications devices. It is an effective and efficient means of spectrum management for services where a limited set of common frequencies is employed, and equipment is operated under a common set of conditions. A class licence sets out the conditions under which any person is permitted to operate any device to which the class licence is applicable; it is not issued to an individual user, and does not involve the payment of licence fees.

## Operation

The Class Licence authorises the operation of radiocommunications devices that communicate with a station authorised under a PTS (Public Telecommunications Service) apparatus licence. A PTS licence is a type of apparatus licence primarily used to authorise base stations that provide public mobile telecommunications services. The devices authorised under the Class Licence include cellular mobile telephone handsets and non-mobile data devices commonly located in soft drink vending machines and automatic teller machines.

In order to manage the potential for interference to other devices that share the same spectrum, the Class Licence sets out the conditions under which the relevant class-licensed devices must operate. The conditions include:

- a requirement that devices operating under the Class Licence only operate on the licensed frequencies assigned to the base stations that they communicate with;
- a requirement that devices to which the Class Licence applies must not cause interference to a radiocommunications service;
- compliance with all applicable radiocommunications standards made under section 162 of the Act;
- compliance with applicable technical specifications listed in Schedule 1 of the Class Licence; and
- where applicable, compliance with the labelling requirements of an instrument made under subsection 407(1) of the *Telecommunications Act 1997*.

## 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. Before revoking a class licence, the ACMA must cause to be published a notice on its website and in one or more forms that are readily accessible to the public; the notice must state that the ACMA proposes to revoke the licence, set out the licence, and invite interested persons to make representations about the proposed revocation of the notice (section 136 of the Act).

The ACMA published a consultation paper and draft instruments on its website between 12 December 2013 and 5 February 2014. The consultation paper explained the sunseting process and the ACMA's preliminary view that the existing arrangements under the 2002 Class Licence should be saved from automatic repeal and remade without any significant changes. Interested parties were invited to comment.

As required by section 136 of the Act, the ACMA also published a notice in the *Gazette* on 16 December 2013 advising that it proposed to revoke the 2002 Class Licence and remake it in substantially the same form.

The ACMA received 1 submission in response to the consultation paper and *Gazette* notice, which it took into account when making the Class Licence.

## Regulatory Impact

Under the Guidance Note *Sunseting 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 2002 Class Licence 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 Class Licence. (OBPR reference ID 2013/16211).

## Detailed Description of the Instrument

Details of the Class Licence are set out in **Attachment A**.

## Documents Incorporated in the Instrument by Reference

The Class Licence incorporates by reference the following documents as in force from time to time or otherwise refers to them:

- > *Radiocommunications Act 1992*
- > *Telecommunications Act 1997*
- > *Radiocommunications Regulations 1993*
- > *Radiocommunications (Interpretation) Determination 2000*
- > *Civil Aviation Regulations 1988*

- > Instruments made under subsection 407(1) of the *Telecommunications Act 1997*
- > *Radiocommunications (Electromagnetic Radiation — Human Exposure) Standard 1999*
- > *Radiocommunications (Electromagnetic Radiation — Human Exposure) Standard 2001*
- > *Radiocommunications (Electromagnetic Radiation — Human Exposure) Standard 2003*
- > *Radiocommunications (Electromagnetic Radiation — Human Exposure) Standard 2014.*
- > Digital Cellular Mobile Telecommunications System — GSM Mobile Station — number TS 018
- > Digital Cellular Mobile Telecommunications System — GSM Mobile Station — number TS 018-1994
- > Digital Cellular Mobile Telecommunications System — GSM Mobile Station — number TS 018-1995
- > Digital Cellular Mobile Telecommunications System — GSM Mobile Station — number TS 018-1997 with date of effect 9 April 1997
  - > Digital Cellular Mobile Telecommunications System — GSM Mobile Station — number ACA TS 018-1997 with date of effect 8 December 1997
- > Telecommunications Technical Standard (Requirements for connection to an air interface of a Telecommunications Network — Part 3: GSM Customer Equipment — AS/ACIF S042.3:2005) 2005
- > Telecommunications Technical Standard (Requirements for connection to an air interface of a telecommunications network — Part 1: General AS/ACIF S042.1:1999) 2006
- > Telecommunications Technical Standard (Requirements for connection to an air interface of a Telecommunications Network — Part 1: General — AS/ACIF S042.1:2006) 2006

Acts and legislative instruments mentioned above can be found on the Australian Government's ComLaw website (<http://www.comlaw.gov.au/>).

Copies of the technical standards mentioned above can be obtained from the SAI Global Limited website (<http://www.saiglobal.com>).

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

As required by subsection 9(1) of 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**.

## **DETAILS OF THE *RADIOCOMMUNICATIONS (CELLULAR MOBILE TELECOMMUNICATIONS DEVICES) CLASS LICENCE 2014***

### **Part 1     Introductory**

#### **Section 1   Name of Class Licence**

Section 1 provides that the Class Licence is the *Radiocommunications (Cellular Mobile Telecommunications Devices) Class Licence 2014*.

#### **Section 2 - Commencement**

Section 2 states that the Class Licence will commence on the later of the day after it is registered and the day on which it is published in the *Gazette*. The notes to the section advise that all legislative instruments are registered on the Federal Register of Legislative Instruments (FRLI) and that both publication and registration must occur in order for the Class Licence to commence.

#### **Section 3 – Definitions**

Section 3 defines terms used in the Class Licence. The note to the section explains that expressions not defined in the Class Licence are defined in the Act, the *Radiocommunications Regulations 1993* and the *Radiocommunications (Interpretation) Determination 2000*.

#### **Section 4 – Revocation**

Section 4 provides that the *Radiocommunications (Cellular Mobile Telecommunications Devices) Class Licence 2002* is revoked.

### **Part 2     Application of Class Licence**

#### **Section 5 – Radiocommunications devices affected**

Section 5 provides that the Class Licence applies to

- stations that are not in an airborne aircraft and that communicate with a station authorised under a PTS licence, and
- stations that are in an airborne aircraft and that are operated only to communicate with a station that is onboard that aircraft and authorised under a PTS licence.

'PTS licence' is defined in the *Radiocommunications (Interpretation) Determination 2000*.

Note 1 to section 5 notes that stations on board airborne aircraft can only be operated at or over the minimum height above ground level specified in the conditions of the relevant PTS licence.

Note 2 to section 5 clarifies that under the *Civil Aviation Regulations 1988* the operator or pilot in command of an Australian aircraft may give instructions relating to the operation of devices otherwise authorised by the Class Licence, including prohibiting or limiting their use.

#### **Section 6 – Authorised frequencies**

Section 6 provides that a radiocommunications device operating under the Class Licence must only operate on the licensed frequencies assigned to the PTS licensed base station that it communicates with. Specifically, the device can only transmit on the licensed receive frequency of the PTS licensed base station, and receive on the licensed transmit frequency of the PTS licensed base station.

### **Section 7 – Conditions—interference with other communications**

Section 7 provides that the operation of a radiocommunications device operating under the Class Licence must not cause interference to a radiocommunications service.

Note 1 to section 7 advises that a penalty is applicable under section 197 of the Act for knowingly or recklessly causing substantial interference, disruption or disturbance to radiocommunications.

Note 2 to section 7 states that devices operating under the Class Licence will not be protected from interference caused by other radiocommunications services.

### **Section 8 – Conditions—technical specifications applying before commencement of Radiocommunications (Cellular Mobile Telecommunications Devices) Class Licence Variation 2009 (No. 1)**

Section 8 applies to radiocommunications devices operating under the Class Licence which have a device compliance day before 11 February 2009. It provides that such devices must comply with each of the technical specifications listed in Schedule 1 of the Class Licence that applies to the device and that was published most recently before the device compliance day of the device (ie, the day the device was manufactured, imported or modified, whichever is appropriate).

The note to section 8 advises that in cases where two or more technical specifications listed in Schedule 1 of the Class Licence were published on the same day, the device may be required to comply with each of those specifications.

### **Section 8A – Conditions applying after commencement of Radiocommunications (Cellular Mobile Telecommunications Devices) Class Licence Variation 2009 (No. 1)**

Section 8A applies to radiocommunications devices operating under the Class Licence which have a device compliance day on or after 11 February 2009. It provides that such devices must comply with applicable requirements of an instrument made under subsection 407(1) of the *Telecommunications Act 1997*. It also provides that the supplier of the device must have complied with the applicable requirements of such an instrument.

The note to section 8A advises that the device or its packaging must be labelled by the supplier in accordance with the subsection 407(1) instrument in order for it to comply with the requirements of this section of the Class Licence.

### **Section 9 – Conditions—standards**

Section 9 provides in relation to radiocommunications devices operating under the Class Licence that:

- devices with a device compliance day between 15 December 1999 and 31 December 2001 inclusive must comply with the *Radiocommunications (Electromagnetic Radiation—Human Exposure) Standard 1999*;
- devices with a device compliance day between 1 January 2002 and 28 February 2003 inclusive must comply with the *Radiocommunications (Electromagnetic Radiation—Human Exposure) Standard 2001*; and
- a device with a device compliance day on or after 1 March 2003 must comply with any standard applicable to it as in force on the device compliance day.

'Device compliance day' is defined in the Class Licence (it is the day the device was manufactured, imported or modified, whichever is appropriate).

Note 1 to section 9 clarifies that a device does not need to comply with a new or amended standard if the *Radiocommunications (Electromagnetic Radiation—Human Exposure) Standard*

1999 or *Radiocommunications (Electromagnetic Radiation—Human Exposure) Standard 2001* are amended or replaced by another standard following the device compliance day.

Note 2 to section 9 clarifies that a ‘standard’ is a standard made under section 162 of the Act.

Note 3 to section 9 advises that the *Radiocommunications (Electromagnetic Radiation—Human Exposure) Standard 1999* was revoked by the *Radiocommunications (Electromagnetic Radiation—Human Exposure) Standard 2001*.

Note 4 to section 9 advises that the *Radiocommunications (Electromagnetic Radiation—Human Exposure) Standard 2001* was revoked by the *Radiocommunications (Electromagnetic Radiation—Human Exposure) Standard 2003*.

Note 5 to section 9 advises that the *Radiocommunications (Electromagnetic Radiation—Human Exposure) Standard 2003* was revoked by the *Radiocommunications (Electromagnetic Radiation—Human Exposure) Standard 2014*.

## **Schedule to the Class Licence**

### **Schedule 1 – Technical specifications**

Schedule 1 specifies the technical specifications, as applicable, that radiocommunications devices operating under the Class Licence are required to comply with under section 8 of the Class Licence.

**ATTACHMENT B****Statement of Compatibility with Human Rights**

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

**Radiocommunications (Cellular Mobile Telecommunications Devices) Class Licence 2014**

This 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 (Cellular Mobile Telecommunications Devices) Class Licence 2014* (the Class Licence) revokes and replaces the *Radiocommunications (Cellular Mobile Telecommunications Devices) Class Licence 2002* (2002 Class Licence) without making any significant changes to the regulatory arrangements created by the 2002 Class Licence.

The Class Licence authorises the operation of radiocommunications devices that communicate with a station authorised under a Public Telecommunication Service (PTS) apparatus licence. These include devices such as cellular mobile telephone handsets and non-mobile data devices commonly located in soft drink vending machines and automatic teller machines.

The Class Licence sets out the common set of conditions that radiocommunications devices operating under the Class Licence must comply with.

**Human Rights Implications**

The Class Licence does not engage any of the applicable rights or freedoms.

**Conclusion**

The Class Licence is compatible with human rights as it does not raise any human rights issues.

**Australian Communications and Media Authority**