

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Radiocommunications Licence Conditions (Apparatus Licence) Determination 2015

Radiocommunications Act 1992

Purpose

The Australian Communications and Media Authority (the ACMA) has made the *Radiocommunications Licence Conditions (Apparatus Licence) Determination 2015* (the Determination).

The Determination revokes and replaces the *Radiocommunications Licence Conditions (Apparatus Licence) Determination 2003* (the 2003 Determination) without making any significant changes to the regulatory arrangements created by the 2003 Determination.

The ACMA has made the Determination because the 2003 Determination was due to 'sunset' (i.e. be automatically repealed) on 1 April 2015, by operation of Part 6 of the *Legislative Instruments Act 2003* (the LIA).

Following review, and consultation as described below, the ACMA formed the view that the 2003 Determination was operating effectively and efficiently, and continued to form a necessary and useful part of the legislative framework. To preserve the effect of the 2003 Determination, the ACMA has revoked the 2003 Determination before its sunset date and remade it with minor changes as the Determination.

Legislative Provisions

Paragraph 107(1)(f) of the *Radiocommunications Act 1992* (the Act) provides that the ACMA may, by legislative instrument, determine conditions applicable to particular types of apparatus licences.

A determination made under paragraph 107(1)(f) is a legislative instrument and may be subject to disallowance in accordance with section 42 of the LIA.

Section 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

Under paragraph 107(1)(f) of the Act, the ACMA may determine conditions relating to a particular type of apparatus licence. The Determination contains conditions that apply to all transmitter licences issued under subsection 100(1) or subsection 100B(1) of the Act. The conditions in the Determination may also be incorporated by reference through a licence condition imposed on other types of licences, for instance spectrum licences.

Operation

The conditions imposed by the Determination relate to permitted communications and the exposure of the general public to electromagnetic radiation or energy (EME) from radiocommunications transmitters.

Permitted communications

The Determination provides that a licensee may only operate a transmitter to communicate with a station or receiver if that communication is permitted by the licensee's licence. The only exceptions are if:

- the licensee is transmitting a message relating to an emergency situation; or
- the licensee has been authorised by the ACMA or an inspector to operate the transmitter in relation to an interference investigation.

EME Exposure

To address community concerns about possible health effects resulting from exposure to EME, the Determination requires that a licensee:

- ensure that members of the general public are not exposed, in excess of recognised exposure limits, to EME produced by a transmitter operated by the licensee;
- for a defined set of transmitters (that meet level 2 criteria), assess compliance with the exposure limits, keep certain records relating to the assessment and produce this documentation to the ACMA upon request; and
- for other transmitters (that meet level 1 criteria), provide evidence of compliance to the ACMA on request.

Exposure limits are drawn from the *Radiation Protection Standard for Maximum Exposure Levels to Radiofrequency Fields—3 kHz to 300 GHz* published by the Australian Radiation Protection and Nuclear Safety Agency (the ARPANSA Standard).

A member of the general public is anybody who is not a RF worker. The term RF worker is defined in the Determination as a person who may be exposed to RF fields under controlled conditions, in the course of and intrinsic to the nature of their work.

Consultation

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

The ACMA published a consultation paper and draft instrument on its website between 4 July 2014 and 18 August 2014. The consultation paper explained the sunseting process and the ACMA's preliminary view that the existing arrangements under the 2003 Determination should be saved from automatic repeal and remade without any significant changes. Interested parties were invited to comment.

The ACMA received three submissions in response to the consultation paper, which it took into account when making the Determination.

Regulatory Impact

The Office of Best Practice Regulation (OBPR) applies streamlined administrative processes to sunseting legislative instruments. As the ACMA has determined that the 2003 Determination 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 ID 17089).

Detailed Description of the Determination

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

Documents incorporated in this Determination by reference

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

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

The ARPANSA Standard can be found on the Australian Radiation Protection and Nuclear Safety Agency's website (<http://www.arpanasa.gov.au>).

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**.

ATTACHMENT A

DETAILS OF THE *RADIOCOMMUNICATIONS LICENCE CONDITIONS (APPARATUS LICENCE) DETERMINATION 2015*

Part 1 Preliminary

Section 1 Name of Determination

Section 1 provides that the Determination is the *Radiocommunications Licence Conditions (Apparatus Licence) Determination 2015*.

Section 2 Commencement

Section 2 provides that the Determination commences on the day after it is registered on the Federal Register of Legislative Instruments (FRLI).

Section 3 Scope

Subsection 3(1) provides that the Determination sets out conditions to which all transmitter licences issued under sections 100 or 100B of the Act are subject.

Subsection 3(2) provides that, if a condition in the Determination is inconsistent with a condition specified in a licence, the condition in the licence applies.

Section 4 Interpretation

Subsection 4(1) defines terms used in the Determination.

Subsection 4(2) provides that a reference in the Determination to an instrument made under the Act, or a document or publication made by Standards Australia or the ACMA, includes a reference to the instrument, publication or document as in force or existing from time to time.

Subsection 4(3) provides that where a term defined in the ARPANSA Standard is used but not defined in the Determination, the term has the meaning given in the ARPANSA standard.

Section 5 Revocation

Section 5 revokes the *Radiocommunications Licence Conditions (Apparatus Licence) Determination 2003*.

Part 2 Operation of transmitters – general conditions

Section 6 Conditions

Subsection 6(1) provides that all transmitter licences issued under sections 100 or 100B of the Act are subject to the conditions in Parts 2 and 3 of the Determination.

Subsection 6(2) has the effect that transmitters authorised under space licences or mobile stations that comply with the *Radiocommunications (Electromagnetic Radiation – Human Exposure) Standard 2014* are exempt from the requirements set out in Part 3 of the Determination.

Section 7 Permitted communications

Section 7 provides that a licensee must operate a transmitter only to communicate with stations or receivers in accordance with the terms of the licence, unless in an emergency situation or if the licensee is authorised to communicate with other stations or receivers in relation to the investigation of interference.

Part 3 Operation of transmitters – electromagnetic radiation requirements

Section 8 Power flux density and field strengths

Subsection 8(1) provides that the RF field produced by a transmitter operated under a licence must not exceed the reference levels for general public exposure at places accessible to members of the general public.

Subsections 8(2) and 8(3) set out criteria for the assessment of a transmitter that operates on a frequency of more than 10 MHz or simultaneously transmits on multiple frequencies.

Section 9 Level 1 criteria

Subsections 9(1) and 9(2) specify the characteristics of transmitters that must comply with section 8, but for which licensees are not required to demonstrate compliance unless requested by the ACMA under subsection 9(3).

The characteristics are:

- (a) the average total power supplied by the transmitter to all antennas fed by the transmitter is not more than 100 watts and each antenna fed by the transmitter is installed so that it is inaccessible to a member of the general public; or
- (b) the bottom of the lowest antenna fed by the transmitter is at least 10 meters from ground level and the average total equivalent isotropically radiated power of all antennas fed by the transmitter is not more than 3200 watts in any direction; or
- (c) the transmitter is a point-to-point link operating at more than 1 GHz; or
- (d) the transmitter is a mobile station for which the average total power supplied by the station to all antennas fed by the station is not more than 100 watts.

Any information requested by the ACMA under subsection 9(3) must be provided within 20 days of the request, unless the licensee provides written evidence that it is unable to comply within that timeframe, in accordance with subsections 9(4) and 9(5).

Subsections 9(6) and 9(7) provide that the ACMA must take the written advice into consideration before instituting regulatory action against the licensee. If the ACMA elects not to take regulatory action against the licensee, the ACMA must advise the licensee of this as soon as practicable.

Section 10 Level 2 criteria

Subsections 10(1) and 10(2) provide that, for the operation of a transmitter that does not meet the criteria set out in section 9, a licensee must be able to show that it complies with section 8 by measuring RF fields in accordance with the current standard AS/NZS 2772.2, and keeping records in accordance with section 15.

Subsection 10(3) provides that if a licensee spatially averages measurements taken for subsection 10(2), the licensee must do so in accordance with section 2.7 of the ARPANSA Standard.

Subsection 10(4) provides for the use of existing assessments made in accordance with the former standard AS 2772.2 in certain circumstances.

Section 10A Compliance with Determination after amendment of Standard

Section 10A applies in the event that the current standard AS/NZS 2772.2 is amended, and provides for transitional arrangements in relation to measurements and calculations of RF fields.

Section 11 Changes to an installed transmitter

Section 11 provides that if a transmitter to which section 9 applies is changed so that it no longer meets the criteria of section 9, it must be reassessed in accordance with section 10. The section provides non-exhaustive guidance as to what constitutes a change to a transmitter.

Section 12 Multi-transmitter sites

Section 12 provides that where a licensee operates a transmitter on a site that has more than one transmitter, and keeps documentation to show that the transmitters on the site, as a whole, comply with section 8, then the licensee may use that documentation to comply with subsection 9(3) and paragraph 15(1)(e).

Section 13 Exception to ARPANSA Standard – compliance documentation before 1 March 2003

Subsections 13(1) and 13(2) provide that where the operation of a transmitter was assessed before the commencement of the 2003 Determination, against the general public exposure limits of AS/NZS 2772.1, in accordance with AS 2772.2, and the licensee provides the necessary documentation to the ACMA upon request, the licensee will be taken to have complied with subsection 9(3).

The section also provides that where such documentation is kept, the licensee is deemed to have complied with paragraph 15(1)(e).

Part 4 Records

Section 14 Application of this Part

Section 14 provides that Part 4 of the Determination applies to those transmitters to which section 10 applies.

Section 15 Records

Subsections 15(1) and 15(2) set out the particular records a licensee must keep in relation to a transmitter to which Part 4 applies, including a declaration of conformity.

Subsection 15(3) provides that the licensee must amend the declaration of conformity in accordance with any changes to the information included in it.

Subsections 15(4) and 15(5) specify that the records must be kept for at least twelve months after the licence has expired, and where the records must be kept available for inspection.

Section 16 Provision of information to an authorised officer

Subsection 16(1) provides that the licensee must give information about the licensee's compliance with the Determination to an ACMA officer within 20 days of such a request.

However, where the licensee provides written evidence that it is unable to comply within that timeframe, the licensee can propose an alternative date to meet the request in accordance with subsections 16(2) and 16(3).

Subsections 16(4) and 16(5) provide that the ACMA must take the written advice into consideration before instituting regulatory action against the licensee. If the ACMA elects not to take regulatory action against the licensee, the ACMA must advise the licensee of this as soon as practicable.

Section 17 Dispute over reliability of evaluation provided in compliance documentation

Subsection 17(1) provides that if a licensee and the ACMA do not agree about whether a transmitter complies with section 8, the ACMA may request the licensee to have the transmitter

assessed by a body accredited by the National Association of Testing Authorities (NATA) and to obtain and provide a report on compliance.

Subsections 17(2) and 17(3) provide that the licensee must comply with such a request within 30 days and pay all costs associated with providing the information to the ACMA.

Section 18 Agents

Subsection 18(1) provides that a licensee may use an agent to ensure that a transmitter complies with the Determination, and to keep the required documentation.

Subsection 18(2) provides that, if a licensee uses an agent, both the licensee and the agent must keep a copy of the agency agreement for the same period that records must be kept under the Determination.

Statement of Compatibility with Human Rights

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

**Radiocommunications Licence Conditions (Apparatus Licence) Determination
2015**

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 Licence Conditions (Apparatus Licence) Determination 2015* (the Determination) revokes and replaces the *Radiocommunications Licence Conditions (Apparatus Licence) Determination 2003* without making any significant changes to the regulatory arrangements created by that instrument.

The Determination contains conditions that apply to all transmitter licences issued under section 100 or section 100B of the Act. The conditions imposed by the Determination relate to permitted communications and the exposure of the general public to EME from radiocommunications transmitters.

Human Rights Implications

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

Conclusion

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