

EXPLANATORY STATEMENT

Prepared by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications Licence Conditions (Maritime Ship Licence) Determination 2015

Purpose

The Australian Communications and Media Authority (**the ACMA**) makes the *Radiocommunications Licence Conditions (Maritime Ship Licence) Determination 2015 (the Maritime Ship Licence Determination)* under paragraph 107(1)(f) of the *Radiocommunications Act 1992 (the Act)*. The Maritime Ship Licence Determination revokes and replaces the *Radiocommunications Licence Conditions (Maritime Ship Licence) Determination 2002 (the 2002 Maritime Ship Licence Determination)* with modifications to update and to replace outdated provisions.

Under Part 6 of the *Legislative Instruments Act 2003 (LIA)*, most legislative instruments 'sunset' (that is, they are automatically repealed) on the 1 April or 1 October that first occurs 10 years after they are registered on the Federal Register of Legislative Instruments. This is an automatic process applying to most legislative instruments regardless of their particular content.

The 2002 Maritime Ship Licence Determination is due to sunset on 1 April 2015 and is being remade in a new instrument prior to the sunset date without any significant changes, so that its ongoing effect is preserved.

Legislative provisions

Paragraph 107(1)(f) of the Act allows the ACMA to determine licence conditions for the operation of apparatus licences. The Maritime Ship Licence Determination is made under paragraph 107(1)(f) of the Act and sets out the conditions to which a maritime ship licence (as defined in the Determination) is subject.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make a legislative instrument (such as paragraph 107(1)(d) of the Act), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary the instrument.

The Maritime Ship Licence Determination is a disallowable legislative instrument for the purposes of the LIA.

Background

The Maritime Ship Licence Determination, in conjunction with other maritime instruments (listed below) is intended to ensure that maritime ship stations and coast stations use the appropriate maritime frequencies, transmitter output power and protocols to minimise the potential for interference to maritime radio operation. These frequencies, powers and protocols are set internationally and used by all commercial shipping and recreational boaters around the world. Instruments like the Maritime Ship Licence Determination are put in place with the objective of harmonising marine radio use in Australia.

If these instruments were not in effect, Australia would be in breach of its international obligations for harmonisation of all marine radio use. Lack of harmonisation would have the potential to cause serious damage to the Australian marine radio framework and to place vessels in serious danger. Australia operates as part of the international marine radio community, with all international ships visiting using the same channels as Australian vessels. If existing arrangements were not available, businesses and individual boaters could find the marine radio network becoming overloaded and congested due to misuse. Significant costs could accrue if alternative communication methods were needed to be employed. Therefore, it is appropriate to remake the Maritime Ship Licence Determination.

Summary of Changes

The main differences between the 2002 Maritime Ship Licence Determination and the new Maritime Ship Licence Determination include:

- Updating of references to standards and technical documents with which licensees are required to comply. Many of the standards/documents specified in the previous determination were outdated and/or not readily accessible. Under the new Determination, licensees are required to ensure that the operation of a maritime ship station or a transmitter or receiver forming part of the maritime ship station complies with all applicable standards specified in Part 1 of Schedule 1 of the Determination that applies to the device, and with any document specified in Part 2 of Schedule 1 that applies to the device.
- Inclusion of grandfathering provisions for maritime ship stations manufactured in or imported into Australia before the commencement of the Maritime Ship Licence Determination. If such stations comply with the 2002 Maritime Ship Licence Determination, they are taken to comply with the new Determination.
- Updating of names of marine radio certificates of proficiency following changes made at recent World Radio Conferences. For example, Marine Radio Operator's Certificate of Proficiency and Marine Radio Operator's VHF Certificate of Proficiency are being updated to Long Range and Short Range Certificates of Proficiency respectively.
- Updating of references from 'ACA' to 'the ACMA'.
- Removal of outdated provisions that no longer have effect—for example deletion of all references to the 'Ship Station Class A' licence as this class of station is now covered by the *Radiocommunications (Maritime Ship Station – 27 MHz and VHF) Class Licence 2001*.
- Updating of frequencies, transmission powers and protocols to reflect current international practice with regard to frequencies, powers and protocols used in maritime communications.

Documents incorporated by reference

The following documents are incorporated:

- *IEC 61993-2, Edition 2, Maritime navigation and radiocommunication equipment and systems – Automatic identification systems – Part 2: Class A shipborne equipment of the automatic identification system (AIS) – Operational and performance requirements, methods of test and required test results*, published by the International Electrotechnical Commission and accessible at <http://www.iec.ch>;
- *IEC 62287.1, Edition 2, Maritime navigation and radiocommunication equipment and systems—Class B shipborne equipment of the automatic identification system (AIS) Part 1: Carrier-sense time division multiple access (CSTDMA) techniques*, published by the International Electrotechnical Commission and accessible at <http://www.iec.ch>;
- *IEC 62287.2, Edition 1, Maritime navigation and radiocommunication equipment and systems - Class B shipborne equipment of the automatic identification system (AIS) - Part 2: Self-organising time division multiple access (SOTDMA) techniques*, published by the International Electrotechnical Commission, and accessible at <http://www.iec.ch>;
- International Telecommunications Union (ITU) Radio Regulations published by the ITU and accessible at www.itu.int;
- *Radiocommunications (MF and HF Radiotelephone Equipment - International Maritime Mobile Service) Standard 2014*;
- *Radiocommunications (VHF Radiotelephone Equipment – Maritime Mobile Service) Standard 2014*;

- *Radiocommunications (Devices Used in the Inshore Boating Radio Services Band) Standard 2008*; and
- *The Manual for use by the Maritime Mobile and Maritime Mobile-Satellite Services* published by the ITU and accessible at www.itu.int.

Regulation Impact Statement

The Office of Best Practice Regulation (**OBPR**) has advised that the ACMA can self-assess the performance of the Maritime Ship Licence Determination and follow an alternate self-certification process to remake it without significant change. The OBPR reference number is: RIS ID 17346.

Public consultation

The ACMA conducted public consultation on the proposed changes to the 2002 Maritime Ship Licence Determination by releasing a draft Maritime Ship Licence Determination and a consultation paper outlining the changes for comment. The consultation paper and draft instrument were made available on the ACMA website from 18 December 2014 to 5 February 2015. One submission was received from the Australian Maritime Safety Authority (AMSA). The ACMA considered the submission and minor amendments were made to the draft instrument as a result of it. The amendments mainly consisted of updates to radiofrequencies authorised for use.

In addition, the ACMA has consulted throughout with AMSA to ensure that the Maritime Ship Licence Determination reflects current international practice with regard to frequencies, transmission powers and protocols used in maritime communications.

Notes on Sections

The provisions of the Determination, and how they operate, are described in **Attachment A**.

Statement of Compatibility with Human Rights

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

ATTACHMENT A

NOTES ON SECTIONS

Part 1 — Preliminary

Section 1.1 Name of Determination

Section 1.1 provides that the name of the determination is the *Radiocommunications Licence Conditions (Maritime Ship Licence) Determination 2015* (the Determination).

Section 1.2 Commencement

Section 1.2 provides that the Determination commences on the day after it is registered on the Federal Register of Legislative Instruments.

Section 1.2A Revocation

Section 1.2A revokes the *Radiocommunications Licence Conditions (Maritime Ship Licence) Determination 2002*.

Section 1.3 Definitions

Subsection 1.3(1) provides definitions for terms used in the Determination and notes that terms used in the Determination which are defined in the *Radiocommunications Interpretation*

Determination 2015 (the Interpretation Determination) have the same meaning as in the Interpretation Determination.

Subsection 1.3(2) provides that unless the contrary intention appears, terms used in the Determination which are defined in the ITU Radio Regulations have the same meaning as in those regulations.

Section 1.4 Structure of Determination

Section 1.4 sets out the structure of the Determination and describes the purpose of Parts 2, 3, 4 and 5 of the Determination.

Part 2 — Conditions that apply to the operation of stations

Section 2.1 Application of Part 2

Section 2.1 provides that the conditions in Part 2 apply to all maritime ship stations to which the Determination applies.

Section 2.2 Technical requirements

Section 2.2 provides that licensees must not operate a maritime ship station listed in section 2.1, or transmitters or receivers forming part of a station, unless the licensee complies with section 2.2 which requires such devices to comply with specified standards made by the ACMA under section 162 of the Act, and specified documents applicable to the device. The applicable standards and documents are listed in Schedule 1.

Section 2.3 Location of station

Section 2.3 provides that a maritime ship station must not be operated on land.

Section 2.4 Qualified operator

Section 2.4 provides that a person who operates a station listed in section 2.1 under a licence, (other than a ship station operating on 27 MHz maritime channels) must be, or must be under the supervision of, a qualified operator, the holder of specified certificates of proficiency or a person holding qualifications recognised by AMSA as equivalent qualifications for the station.

Section 2.5 Operation outside Australia

Section 2.5 provides the conditions applicable to the operation of maritime ship stations, under a licence, outside the Australian territorial sea.

Section 2.6 Identification of stations

Section 2.6 provides the identification conditions applicable to the operation of a maritime ship station.

Section 2.7 Maritime ship stations and Automatic Identification System (AIS) frequencies

Section 2.7 provides the frequencies to be used for maritime ship stations utilising AIS.

Part 3 — Additional conditions for the operation of ship stations Class B non assigned

Section 3.1 Application of Part 3

Section 3.1 provides for the application of the conditions in Part 3 to the operation of all ship stations Class B non assigned.

Section 3.2 Permitted communications

Section 3.2 provides that a licensee must only operate a ship station Class B non assigned for the operations or activities specified in the section.

Section 3.3 Distress, urgency, safety or calling — MF and HF communications

Section 3.3 provides the operating conditions, under a licence, of a ship station Class B non assigned on MF or HF maritime frequency band for distress, urgency, safety or calling

operations or activities. The frequencies, transmitter output power and other conditions are specified in Part 1 of Schedule 2.

Section 3.4 Distress, urgency, safety or calling — VHF and UHF communications

Section 3.4 provides the operating conditions, under a licence, of a ship station Class B non assigned on VHF or UHF maritime frequency band for distress, urgency, safety or calling operations or activities. The frequencies, transmitter output power and other conditions are specified in Part 2 of Schedule 2.

Section 3.5 Public correspondence by radiotelephony

Section 3.5 provides the conditions applicable to the operation of a ship station Class B non assigned for public correspondence by radiotelephony. The frequencies, transmitter output power and other conditions are specified in Part 3 of Schedule 2.

Section 3.6 Public correspondence by radiotelegraphy using TOR or NBDP

Section 3.6 provides the conditions applicable to the operation of a ship station Class B non assigned, for public correspondence by radiotelegraphy using telex-on-radio (TOR) or narrow-band direct-printing (NBDP). The frequencies, transmitter output power and other conditions are specified in Part 4 of Schedule 2.

Section 3.7 Commercial operations

Section 3.7 provides the conditions applicable to the operation of a ship station Class B non assigned for the purposes of commercial operations. The frequencies, transmitter output power and other conditions are specified in Part 5 of Schedule 2.

Section 3.8 Non-commercial operations

Section 3.8 provides the conditions applicable to the operation of a ship station Class B non assigned for non-commercial operations. The frequencies, transmitter output power and other conditions are specified in Part 6 of Schedule 2.

Section 3.9 Port operations

Section 3.9 provides the conditions applicable to the operation of a ship station Class B non assigned for port operations. The frequencies, transmitter output power and other conditions are specified in Part 7 of Schedule 2.

Section 3.10 Professional fishing operations

Section 3.10 provides the conditions applicable to the operation of a ship station Class B non assigned for professional fishing operations. The frequencies, transmitter output power and other conditions are specified in Part 8 of Schedule 2.

Section 3.11 Radiodetermination communications

Section 3.11 provides the conditions applicable to the operation of a ship station Class B non assigned for radiodetermination communications. The frequencies, transmitter output power and other conditions are specified in Part 9 of Schedule 2.

Section 3.12 On-board communications

Section 3.12 provides the conditions applicable to the operation of a ship station Class B non assigned for on-board communications. The frequencies, transmitter output power and other conditions are specified in Part 10 of Schedule 2.

Section 3.13 Automatic Identification System (AIS) — ship station Class B non assigned

Section 3.13 provides conditions applicable to the operation of a ship station Class B non assigned for AIS purposes. The frequencies, transmitter output power and other conditions are specified in Part 11 of Schedule 2.

Part 4 Additional conditions for the operation of ship stations Class C assigned

Section 4.1 Application of Part 4

Section 4.1 provides for the application of conditions in Part 4 to the operation of all ship stations Class C assigned.

Section 4.2 Maintaining watch

Section 4.2 provides that if a licensee operates a ship station Class C assigned on a type of ship mentioned in column 2 of Schedule 3, the licensee must operate the station to maintain a listening watch in accordance with the requirements in Schedule 3.

Section 4.3 Response to distress, urgency or safety messages and record keeping

Section 4.3 provides the conditions for the operation of a ship station Class C assigned, in response to distress, urgency or safety messages received from another station. Section 4.3 also imposes record keeping requirements on licensees who operate stations that receive such messages.

Part 5 Additional conditions for operation of ship stations Class C non assigned

Section 5.1 Application of Part 5

Section 5.1 provides for the application of the conditions in Part 5 to the operation of all ship stations Class C non assigned.

Section 5.2 Permitted communications

Section 5.2 provides that a licensee must only operate a ship station Class C non assigned for the operations or activities specified in the section.

Section 5.3 Commercial operations by radiotelegraphy using Morse

Section 5.3 provides the conditions, applicable to the operation, under a licence, of a ship station Class C non assigned for commercial operations by radiotelegraphy using Morse. The frequencies, transmitter output power and other conditions are specified in Part 1 of Schedule 4.

Section 5.4 Non-commercial operations

Section 5.4 provides the conditions applicable to the operation of a ship station Class C non assigned for non-commercial operations. The frequencies, transmitter output power and other conditions are specified in Part 2 of Schedule 4.

Section 5.5 Distress, urgency, safety or calling — MF and HF communications

Section 5.5 provides the operating conditions, under a licence, of a ship station Class C non assigned on MF or HF maritime frequency band for distress, urgency, safety or calling. The frequencies, transmitter output power and other conditions are specified in Part 1 of Schedule 2.

Section 5.6 Distress, urgency, safety or calling — VHF and UHF communications

Section 5.6 provides the operating conditions, under a licence, of a ship station Class C non assigned on VHF or UHF maritime frequency band for distress, urgency, safety or calling. The frequencies, transmitter output power and other conditions are specified in Part 2 of Schedule 2.

Section 5.7 Public correspondence by radiotelephony

Section 5.7 provides the conditions, applicable to the operation of a ship station Class C non assigned, for public correspondence by radiotelephony. The frequencies, transmitter output power and other conditions are specified in Part 3 of Schedule 2.

Section 5.8 Public correspondence by radiotelegraphy using TOR or NBDP

Section 5.8 provides the conditions applicable to the operation of a ship station Class C non assigned, for public correspondence by radiotelegraphy using telex-on-radio (TOR) or narrow-band direct-printing (NBDP). The frequencies, transmitter output power and other conditions are specified in Part 4 of Schedule 2.

Section 5.9 Port operations

Section 5.9 provides the conditions applicable to the operation of a ship station Class C non assigned for port operations. The frequencies, transmitter output power and other conditions are specified in Part 7 of Schedule 2.

Section 5.10 Professional fishing operations

Section 5.10 provides the conditions applicable to the operation of a ship station Class C non assigned for professional fishing operations. The frequencies, transmitter output power and other conditions are specified in Part 8 of Schedule 2.

Section 5.11 Radiodetermination communications

Section 5.11 provides the conditions applicable to the operation of a ship station Class C non assigned for radiodetermination communications. The frequencies, transmitter output power and other conditions are specified in Part 9 of Schedule 2.

Section 5.12 On-board communications

Section 5.12 provides the conditions applicable to the operation of a ship station Class C non assigned for on-board communications. The frequencies, transmitter output power and other conditions are specified in Part 10 of Schedule 2.

Section 5.12A Automatic Identification System (AIS) — ship station Class C non assigned

Section 5.12A provides the conditions applicable to the operation of a ship station Class C non assigned for AIS purposes. The frequencies, transmitter output power and other conditions are specified in Part 11 of Schedule 2.

Section 5.13 Maintaining watch

Section 5.13 provides that if a licensee operates a ship station Class C non assigned on a type of ship mentioned in column 2 of Schedule 3, the licensee must operate the station to maintain a listening watch in accordance with the requirements in Schedule 3.

Section 5.14 Response to distress, urgency or safety messages and record keeping

Section 5.14 provides the conditions for the operation of a ship station Class C non assigned, in response to distress, urgency or safety messages received from another station. Section 5.14 also imposes record keeping requirements on licensees who operate stations that receive such messages.

Part 6 Transitional and savings - maritime ship station manufactured or imported before commencement day

Section 6.1 Definitions

Section 6.1 provides definitions for terms used in Part 6 of the Determination.

Section 6.2 Effect despite revocation

Section 6.2 provides that Part 6 has effect despite revocation of the *Radiocommunications Licence Conditions (Maritime Ship Licence) Determination 2002* (the former determination).

Section 6.3 Application

Section 6.3 limits the application of Part 6 to maritime ship stations manufactured in, or imported into, Australia before the day on which the Determination commenced.

Section 6.4 Deemed compliance with section 2.2

Section 6.4 provides for deemed compliance with section 2.2 of the Determination for maritime ship stations to which Part 6 applies. If the licensee of a maritime ship station is in compliance with section 2.2 of the former determination as in force immediately before the day on which the Determination commenced, the licensee is taken to comply with section 2.2 of the Determination. (Section 2.2 requires compliance with specified standards and documents.)

Schedule 1 Specified Standards and documents

Part 1 Standards

Part 1 specifies the standards made under section 162 of the Act applicable to the operation of maritime ship stations for the purposes of section 2.2. The standards are registered legislative instruments.

Part 2 Documents

Part 2 specifies the documents applicable to the operation of maritime ship stations for the purposes of section 2.2.

Schedule 2 Operating requirements for maritime ship stations Class B non assigned and Class C non assigned

Part 1 MF and HF communications for distress, urgency, safety or calling

Part 1 provides the carrier frequency, the maximum transmitter output power, the stations with which the licensee may communicate, the operational facility, the purpose and any limitations for ship stations operating on MF and HF frequencies for distress, urgency, safety or calling purposes.

Part 2 VHF and UHF communications for distress, urgency, safety or calling

Part 2 provides the carrier frequency, the maximum transmitter output power, the stations with which the licensee may communicate, the operational facility, the purpose and any limitations for ship stations operating on VHF and UHF frequencies for distress, urgency, safety and calling purposes.

Part 3 Public correspondence by radiotelephony

Part 3 provides the carrier frequency, the maximum transmitter output power, the stations with which the licensee may communicate, the operational facility and any limitations for ship stations operating for the purpose of public correspondence by radiotelephony.

Part 4 Public correspondence by radiotelegraphy for NBDP or TOR facilities

Part 4 provides the carrier frequency and maximum transmitter output power for ship stations operating for the purpose of public correspondence by radiotelegraphy using NBDP and TOR facilities.

Part 5 Commercial operations

Part 5 provides the carrier frequency, maximum transmitter output power, the stations with which the licensee may communicate, the purpose and limitations for the operation of ship stations for commercial operations.

Part 6 Non-commercial operations

Part 6 provides the carrier frequency, maximum transmitter output power, the stations with which the licensee may communicate, the purpose and limitations for the operation of ship stations for non-commercial operations.

Part 7 Port operations

Part 7 provides the carrier frequency, maximum transmitter output power, the stations with which the licensee may communicate, and the purpose, for the operation of ship stations for port operations.

Part 8 Professional fishing operations

Part 8 provides the carrier frequency, maximum transmitter output power, the stations with which the licensee may communicate, and the purpose for the operation of ship stations for professional fishing operations.

Part 9 Radiodetermination communications

Part 9 provides the frequency band, maximum transmitter output power and the purpose for the operation of ship stations for radiodetermination communications.

Part 10 On-board communications

Part 10 provides the carrier frequency, maximum transmitter output power, and the purpose for the operation of ship stations for on-board communications.

Part 11 Automatic Identification System

Part 11 provides the carrier frequency, maximum transmitter output power and the purpose for the operation of ship stations for Automatic Identification Systems.

Schedule 3 Ship station Class C stations: requirements for maintaining watch

Schedule 3 provides the ship type, type of watch to be maintained and requirements for ship station Class C stations.

Schedule 4 Ship station Class C non assigned: operating requirements

Part 1 Commercial operations by radiotelegraphy using Morse

Part 1 provides the carrier frequency, the maximum transmitter output power, the stations with which the licensee may communicate, the purpose and any limitations for the operation of ship station Class C non assigned for commercial operations by radiotelegraphy using Morse.

Part 2 Non-commercial operations

Part 2 provides the carrier frequency, the maximum transmitter output power, the stations with which the licensee may communicate and the purpose for the operation of ship station Class C non assigned for radiotelephony for non-commercial operations.

Statement of Compatibility with Human Rights

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

Radiocommunications Licence Conditions (Maritime Ship 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 (Maritime Ship Licence) Determination 2015 (the Determination)* revokes and replaces the *Radiocommunications Licence Conditions (Maritime Ship Licence) Determination 2002* and preserves the substance of the regulatory arrangements created by that instrument.

The Determination sets out the conditions to which maritime ship stations are subject so as to ensure that all maritime ships use the appropriate maritime frequencies, transmitter output power and protocols to minimise the potential for interference to maritime radio operation.

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.