

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Radiocommunications Licence Conditions (Aeronautical Licence) Determination 2015

Purpose

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

The Determination revokes and replaces the *Radiocommunications Licence Conditions (Aeronautical Licence) Determination No. 1 of 1997* (the 1997 Determination) without making any significant changes to the regulatory arrangements created by the 1997 Determination.

The ACMA has made the Determination because the 1997 Determination was due to 'sunset' (i.e. be automatically repealed) on 1 October 2015, by operation of Part 6 of the *Legislative Instruments Act 2003* (the LIA).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 1997 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 1997 Determination, the ACMA has therefore revoked the 1997 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.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, the power to make an instrument includes the power to revoke or repeal the instrument.

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.

Background

The Determination sets out conditions to which every aeronautical licence is subject.

An aeronautical licence is an apparatus licence issued for a station that is not fixed to an aircraft and that is operated on aeronautical frequencies for purposes relating to the operation of an aircraft or airport or aerodrome operations, such as stations operated for air traffic control services or aerodrome radio information services. In relation to an aircraft, it includes a mobile station operated on board the aircraft or on the ground in communication with the aircraft.

Operation

The conditions applied by the Determination that apply to all aeronautical licences include the type of communications permitted, station identification, operator qualifications, permitted frequencies and a requirement to comply with relevant standards and other technical documentation. The conditions are applied to ensure that users are able to communicate effectively with a minimum of radiocommunications interference.

Consultation

Subsection 17(1) of the LIA requires that, before a rule-maker 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 14 March 2014 and 28 April 2014. The consultation paper explained the sunseting process and the ACMA's preliminary view that the existing arrangements under the 1997 Determination should be saved from automatic repeal and remade without any significant changes. Interested parties were invited to comment.

The ACMA received no submissions in response to the consultation on its proposal to make the Determination.

Regulatory Impact

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 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 16586).

Detailed Description of the Instrument

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/>).

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 (AERONAUTICAL LICENCE) DETERMINATION 2015*

Section 1 – Name of Determination

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

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

Section 1B provides that the *Radiocommunications Licence Conditions (Aeronautical Licence) Determination No. 1 of 1997* is revoked.

Section 2 – Scope

Section 2 provides that every aeronautical licence is subject to the conditions in Part 2 of the Determination. Every aeronautical licence (aeronautical assigned system station) is also subject to the conditions in Part 3 of the Determination. However if a condition in the Determination is inconsistent with a condition specified in the licence, the condition specified in the licence applies.

Section 3 – Interpretation

Section 3 defines terms used in the Determination.

“UNICOM” is defined to mean “Universal Communications” which is a communications service provided to enhance the value of information normally available about a non-controlled aerodrome. A definition of the term can be found in Airservices Australia’s Aeronautical Information Package (<http://www.airservicesaustralia.com/aip/current/aip/general.pdf>).

Section 4 – Conditions

Section 4 provides that the conditions in Part 2 of the Determination relating to the operation of aeronautical stations under a licence by a licensee are applicable to every aeronautical licence.

Section 5 – Technical performance of an aeronautical station

Section 5 provides that an aeronautical station must comply with the requirements of any applicable standard (that is, one that applies to the particular station) as in force when the station was manufactured or imported into Australia, or when the station was modified in any material respect. A standard is defined in the Act as a standard made under section 162.

Section 5 also specifies that this condition does not apply to aeronautical stations operated by Airservices Australia or the Civil Aviation Safety Authority.

Section 6 – Communications between aeronautical stations

Section 6 provides that an aeronautical station must be operated to allow communications between aeronautical stations only in relation to specified matters. The section also specifies that this condition does not apply to aeronautical stations operated by Airservices Australia or

the Civil Aviation Safety Authority, or to any licensee that operates an aeronautical station providing UNICOM or Certified Air/Ground Radio services. A Certified Air/Ground Radio Service is an aerodrome-based radio information service, which may operate at non-controlled aerodromes. A definition of the term can be found in Airservices Australia's Aeronautical Information Package (<http://www.airservicesaustralia.com/aip/current/aip/general.pdf>).

Section 7 – Communications between aeronautical station and aircraft station

Section 7 provides that an aeronautical station must be operated to allow communications between the station and an aircraft station only in relation to specified matters. The section also specifies that this condition does not apply to aeronautical stations operated by Airservices Australia or the Civil Aviation Safety Authority, or to any licensee that operates an aeronautical station providing UNICOM or Certified Air/Ground Radio services.

Section 7A – Operator qualifications

Section 7A sets out the qualifications a person must have to operate an aeronautical station.

Section 8 – Station identification

Section 8 provides that a licensee must operate an aeronautical station using an allocated call sign or another form of identification that clearly identifies the station.

Section 10A – Conditions

Section 10A provides that every aeronautical licence (aeronautical assigned system station) is subject to the additional condition in section 10B relating to the operation of any aeronautical assigned system station under the licence by the licensee.

Section 10B – Frequencies that may be used

Section 10B specifies that a licensee must not operate an aeronautical assigned system station unless they are operating the station on the frequencies specified in the licence, or the frequencies mentioned in this section for the purposes of search and rescue only.

Statement of Compatibility with Human Rights

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

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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 (Aeronautical Licence) Determination 2015* (the Determination) revokes and replaces the *Radiocommunications Licence Conditions (Aeronautical Licence) Determination No. 1 of 1997* (the 1997 Determination) without making any significant changes to the regulatory arrangements created by the 1997 Determination.

The Determination sets out certain conditions to which every aeronautical licence issued under the *Radiocommunications Act 1992* is subject.

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.