

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Radiocommunications Licence Conditions (Amateur Licence) Determination 2015

Radiocommunications Act 1992

Purpose

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

The Determination revokes and replaces the *Radiocommunications Licence Conditions (Amateur Licence) Determination No. 1 of 1997* (the 1997 Determination) with some amendments, including changes that limit amateur licensees' access to the frequency ranges 3400-3425 MHz and 3492.5-3542.5 MHz (the relevant frequency ranges). These amendments provide the same interference protection to future PMTS Class B apparatus licences in the relevant frequency ranges as is provided to PMTS Class B licences in other parts of the spectrum. The Determination also incorporates some minor and machinery changes, such as changes to modernise the drafting style.

The ACMA has made the Determination because the 1997 Determination was due to 'sunset' (i.e. be automatically repealed) on 1 October 2015, by operation of Part 6 of the *Legislative Instruments Act 2003* (the LIA).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 some minor changes and other amendments to limit access to the relevant frequency ranges, as the Determination.

Legislative Provisions

Under paragraph 107(1)(f) of the *Radiocommunications Act 1992* (the Act), the ACMA may determine, by legislative instrument, conditions relating to a particular type of apparatus licence.

Subsection 33(3) of the *Acts Interpretation Act 1901* relevantly provides that, where an Act confers a power to make a legislative instrument, 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 any such instrument. The Determination revokes the 1997 Determination.

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

Background

The Determination applies common conditions to be observed by licensees authorised to operate an amateur station under an apparatus licence. As mentioned, the 1997 Determination was due to sunset on 1 October 2015. The ACMA has made the Determination to maintain the regulatory arrangements in relation to the operation of amateur stations under apparatus licences.

In parallel, but separately from the sunset process, the Minister for Communications gave the ACMA the *Australian Communications and Media Authority (3.5 GHz frequency band) Direction 2014*

(3.5 GHz Direction). The 3.5 GHz Direction required the ACMA to have completed all steps necessary to enable apparatus licences of a type which would be appropriate for use for the national broadband network (NBN) in the relevant frequency ranges to be issued by 30 April 2015. The ACMA has decided that PMTS Class B licences are the appropriate licence type to be used.

In order to manage the risk of interference from the use of amateur stations to future PMTS Class B licences in the relevant frequency ranges, the ACMA considered it desirable that amateur licensees be precluded from using the relevant frequency ranges in certain geographic areas. This will ensure that future PMTS Class B apparatus licences in the relevant frequency ranges, whether issued for use for the NBN or otherwise, will operate on the same interference protection basis as current users of the licence type in other parts of the spectrum. Consequently, the Determination limits the access of amateur licensees to the relevant frequency ranges.

Operation

The Determination sets the licence conditions on the amateur licence type of transmitter licences. Some licence conditions are specific to particular subsets of the amateur licence type.

Incorporation by reference

This Determination refers to Acts and other legislative instruments as in force from time to time (as permitted by section 314A of the Act). Those Acts and legislative instruments are:

- the Act;
- the *Australian Radiofrequency Spectrum Plan 2013*;
- the *Radiocommunications (Interpretation) Determination 2015*;
- the *Telecommunications Act 1997*.

These Acts and legislative instruments are available on the ComLaw website at <http://www.comlaw.gov.au>.

The Determination also refers to or incorporates the following documents, as in existence from time to time (as permitted by section 314A of the Act):

- the Australian Geodetic Datum (AGD66);
- the Australian Spectrum Map Grid 2012 (ASMG).

AGD66 was gazetted in the *Gazette* on 6 October 1966; more information about it is available from the Geoscience Australia website at <http://www.ga.gov.au>. The ASMG is available from <http://www.acma.gov.au>.

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.

The ACMA published a consultation paper and draft instrument on its website between 13 March 2015 and 24 April 2015. The consultation paper explained:

- the sunseting process;

- the ACMA's preliminary view that the majority of existing arrangements under the 1997 Determination should be saved from automatic repeal and be remade without significant amendment; and
- the steps that the ACMA decided to take to mitigate the risk of interference to future PMTS Class B licences in the relevant frequency ranges.

Interested parties were invited to comment.

The ACMA received two submissions in response to the consultation paper, which it took into account when making the Determination. The ACMA made a minor amendment to the draft instrument to remove the reference to the former non-directional beacon at Exmouth WA in relation to the 472-479 kHz frequency range. This reduced the number of zones in which operation by amateurs is excluded.

Regulatory Impact

The Office of Best Practice Regulation (OBPR) applies streamlined administrative processes to sunseting legislative instruments. In respect of the sunseting aspects of the instrument, the ACMA has determined that the 1997 Determination was fit for purpose, should be remade and has certified those matters to the OBPR. In respect of the amendments that will provide interference protection for the future issue of PMTS Class B licences in the relevant frequency ranges, the ACMA prepared a preliminary assessment. Based on this preliminary assessment the OBPR determined that the proposed regulatory change in the submission is minor and machinery in nature and that no further regulatory impact analysis was required for the making of the Determination (OBPR reference ID 18210).

Detailed Description of the Instrument

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

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 LICENCE CONDITIONS (AMATEUR LICENCE) DETERMINATION 2015

PART 1- Preliminary

Section 1 Name of Determination

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

Section 1A Commencement

Section 1A provides that the Determination commences on the day after it is registered.

Section 1B – Revocation

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

Section 2 – Scope

Section 2 provides that amateur licences are subject to conditions in set out in the Parts of the Determination. Different Parts apply different conditions to different subsets of amateur licences.

This section also explains that if a condition specified in the licence is inconsistent with the Determination, the condition specified in the licence applies (with the exception of the condition in subsection 8(1A) of the Determination).

Section 3 – Interpretation

Section 3 defines the terms used in the Determination. New terms that are defined include those related to the ASMG, which is a method for describing areas in Australia. The ASMG is available from the ACMA's website. The ASMG has been used to identify the areas in which PMTS class B licences require interference protection.

The definition of the Exmouth non-directional beacon (NDB) has been removed, as it is no longer required. Airservices Australia advised the ACMA that the Exmouth NDB has been decommissioned, and therefore no longer requires interference protection.

Subsection 3(1A) provides a definition of the word 'operate' for the purposes of the Determination. Some minor uses of an amateur station, including some uses by a person under instruction of a qualified operator or qualified person, are effectively removed from the scope of the conditions in the Determination by this definition.

Part 2 – Conditions for every amateur licence

Section 4 – Conditions

Section 4 provides that all amateur licences are subject to the conditions in Part 2 of the Determination.

Section 5 – Communication by an amateur station

Section 5 provides that a licensee must not solicit a message that is to be transmitted on behalf of another person unless the message relates to a disaster. A licensee must also not transmit a message on behalf of a person for reward.

Section 6 – Use of an amateur station

This section provides the circumstances under which a licensee must not use an amateur station. Broadly speaking, an amateur station must only be used for certain, limited purposes, related to intercommunication and training in radiocommunications. ‘Intercommunication’ is the two-way communication between amateur stations (see the *Radiocommunications (Interpretation) Determination 2015*). An amateur station must also not be used for, or for the purpose of, financial gain, or to transmit advertisements or entertainment.

Section 7 – Interference

Section 7 provides that an amateur station must not be operated if it causes harmful interference to radiocommunication.

Section 7A – Spurious emission limits for an amateur station

Section 7A clarifies that a licensee must not operate an amateur station if the emission of the station includes spurious emissions that are not attenuated below the power of the wanted emission supplied to the antenna transmission. Different limits for spurious emissions apply for frequencies equal to or greater than 30 MHz, and frequencies less than 30 MHz.

Section 8 – Operation of an amateur station

This section requires the use of call signs for an amateur station (other than an amateur beacon or amateur repeater station) during, before and after certain transmissions, and sets out requirements in relation to other matters such as content intelligibility, encoding, interference and re-transmission of signals.

Section 8A – Transmission on authorised frequency bands

This section describes the circumstances under which a licensee must not operate an amateur station when transmitting to a second amateur station for the purpose of transmitting, through the second amateur station, to a third amateur station. In each case the licensee must be authorised to transmit on the interim frequencies used to transmit to the third amateur station.

Section 9 – Control of equipment at an amateur station

This section provides that an amateur station must be operated at all times by a qualified operator or at a site with a qualified person in attendance, subject to some exceptions. Where an amateur station is operated unattended (eg, where its operation is automated), there must be mechanisms in place that allow cessation of transmission in certain situations.

Section 10 – Portable operation of an amateur station

This section provides the periods during which a licensee can operate an amateur station at a location that is not the location mentioned in the licence for the station.

Part 2A – Conditions for amateur licence (amateur standard station), amateur licence (amateur advanced station) and amateur licence (amateur repeater station)

Section 11 – Conditions

This section imposes the conditions in sections 11A and 11B on the kinds of amateur licences mentioned in those sections.

Section 11A – Restrictions on connection to a public telecommunications network

This section imposes a condition limiting the circumstances in which licensees of certain kinds of amateur licences can connect the station to a public telecommunications network.

Section 11B – Restrictions on connection from a public telecommunications network

This section imposes a condition requiring a licensee whose amateur standard station or amateur advance station has connected to a public telecommunications network, and who can, using that network, communicate with another person, to notify the other person that their conversations may be heard by other persons.

Part 3 – Conditions for amateur licence (amateur advanced station)

Section 12 – Conditions

Section 12 imposes the conditions in Part 3 on amateur licences that authorise the use of amateur advanced stations.

Section 13 – Permitted frequency bands

Section 13 provides that a licensee may only operate on certain frequencies specified in Part 1 of Schedule 2, and must not operate on particular frequencies specified in Part 2 of Schedule 2 if operating within the Timor Non-Directional Beacon Area (as defined).

Section 14 – Emissions from an amateur advanced station

Section 14 provides that a licensee may only operate on a frequency permitted under section 13 if the station is operated using a specified emission mode for that frequency, and only if the transmissions remain entirely within the specified frequency band.

Section 15 – Operating an amateur advanced station in the frequency band 50 MHz to 52 MHz

Section 15 limits the operation of an amateur advanced station in the frequency band 50 MHz to 52 MHz, preventing the station from causing interference to services that are specified to be primary services for those frequencies in the *Australian Radiofrequency Spectrum Plan 2013*.

Section 15AA – Operating an amateur advanced station in the frequency bands 3.400 GHz to 3.425 GHz or 3.4925 GHz to 3.5425 GHz.

Section 15AA provides that if a licensee uses an amateur advanced station in the relevant frequency ranges, the licensee must not operate the station in an ASMG block specified in Schedule 4A if a PMTS Class B licence authorises the use of a transmitter in that block. Unless and until a PMTS Class B licence is issued, authorising the use of a transmitter in the relevant frequency ranges in one of those ASMG blocks, the licensee can continue to transmit on those frequencies in those ASMG blocks. Licensees should check the ACMA's website and the Register of Radiocommunications Licences to check whether a PMTS Class B licence has been issued for the relevant frequency ranges in an ASMG block before transmitting on those frequencies in that ASMG block.

Section 15A – Operating an amateur advanced station in the frequency bands 3.425 GHz to 3.4425 GHz or 3.475 GHz to 3.4925 GHz

Section 15A prohibits the use of an amateur advanced station in the specified frequency bands within an area designated in Schedule 5 to the Determination.

Section 15B – Operating an amateur advanced station in the frequency bands 3.4425 GHz to 3.475 GHz or 3.5425 GHz to 3.575 GHz

Section 15B prohibits the use of an amateur advanced station in the specified frequency bands within an area designated in Schedule 6 to the Determination.

Section 15C – Operating an amateur advanced station in the frequency band 135.7 kHz to 137.8 kHz

Section 15C prohibits the use of an amateur advanced station in the specified frequency band with an antenna above a radiated power of more than 1 watt pX EIRP.

Section 15D – Operating an amateur advanced station in the frequency band 472 kHz to 479 kHz

Section 15D prohibits the use of an amateur advanced station in the specified frequency band with an antenna above a radiated power of more than 5 watts pX EIRP.

Section 16 – Transmitter output power

Section 16 requires amateur advanced stations that are operated with specified emission modes to be operated using a transmitter output power no greater than 400 watts pX. With any other emission mode, the transmitter output power must be no more than 120 watts pY.

Part 5 – Conditions for amateur licence (amateur standard station)

Section 22 – Conditions

Section 22 imposes the conditions in Part 5 on amateur licences that authorise the use of amateur standard stations.

Section 23 – Permitted frequency bands

Section 23 limits the operation of amateur standard stations to the frequencies mentioned in Schedule 3 to the Determination.

Section 24 – Emissions from an amateur standard station

Section 24 provides that a licensee may only operate on a frequency permitted under section 23 if the station is operated using a specified emission mode for that frequency, and only if the transmissions remain entirely within the specified frequency band.

Section 25 – Transmitter output power

Section 25 requires amateur standard stations that are operated with specified emission modes to be operated using a transmitter output power no greater than 100 watts pX. With any other emission mode, the transmitter output power must be no more than 30 watts pY.

Part 6 – Conditions for amateur licence (amateur foundation station)

Section 26 – Conditions

Section 26 imposes the conditions in Part 6 on amateur licences that authorise the use of amateur foundation stations.

Section 27 – Permitted frequency bands

Section 27 limits the operation of amateur foundation stations to the frequencies mentioned in Schedule 3A to the Determination.

Section 27A – Restrictions on operation of an amateur foundation station

Section 27A provides that a licensee must not authorise another person to operate an amateur foundation station unless the other person is a qualified operator or a qualified person. The licensee must not operate the station using automatic mode or computer controlled mode, or if the station is directly connected to a public telecommunications network.

Section 28 – Transmitting equipment restrictions

Section 28 provides that a licence must not use an amateur foundation station that has not been commercially manufactured (for example, the licensee may not create the station).

Section 29 – Emissions from an amateur foundation station

Section 29 provides that a licensee may only operate on a frequency permitted under section 27 if the station is operated using a specified emission mode for that frequency, and only if the transmissions

remain entirely within the specified frequency band. For one particular emission mode, the information to be transmitted must be sent by the use of a manually operated morse key.

Section 30 – Transmitter output power

Section 30 requires amateur foundation stations to be operated using a transmitter output power no greater than 10 watts pX.

Part 8 – Conditions for amateur licence (amateur beacon station)

Section 35 – Conditions

Section 35 imposes the conditions in Part 8 on amateur licences that authorise the use of amateur beacon stations.

Section 36 – Operating an amateur beacon station in the frequency band 50 MHz to 52 MHz

Section 36 limits the operation of an amateur beacon station in the frequency band 50 MHz to 52 MHz, preventing the station from causing interference to services that are specified to be primary services for those frequencies in the *Australian Radiofrequency Spectrum Plan 2013*.

Section 37 – Call sign

Section 37 requires a licensee operating an amateur beacon station to use the station's call sign at least once in every 10 minutes of operation.

Part 9 – Conditions for amateur licence (amateur repeater station)

Section 38 – Conditions

Section 38 imposes the conditions in Part 9 on amateur licences that authorise the use of amateur repeater stations.

Section 39 – Operation of an amateur repeater station

Section 39 requires amateur repeater stations only to operate for the purpose of passing messages on from one station to another. Transmissions are not to originate from amateur repeater stations.

Section 40 – Repeater links

Section 40 requires amateur repeater stations that transmit to other amateur repeater stations only to operate for the purpose of passing messages on from one station to another. Transmissions are not to originate from amateur repeater stations.

Section 41 – Transmission on authorised frequency bands

Section 41 deals with the case where which a licensee operates an amateur repeater station when transmitting the message from an amateur station (the originating station) for the purpose of transmitting to a third amateur station. In such a case the licensee of the originating station must be authorised to transmit on the same frequency as the licensee of the amateur repeater station, otherwise the operation is prohibited.

Section 42 – Access control system

Section 42 requires a licensee to secure amateur repeater stations in some situations, by adopting an access control system for the station, which has the effect of preventing transmissions from the amateur repeater station except where specified signals are received from another station.

Section 43 – Operating an amateur repeater station in the frequency band 50 MHz to 52 MHz

Section 43 limits the operation of an amateur repeater station in the frequency band 50 MHz to 52 MHz, preventing the station from causing interference to services that are specified to be primary services for those frequencies in the *Australian Radiofrequency Spectrum Plan 2013*.

Section 44 – Call sign

Section 44 requires a licensee operating an amateur repeater station to use the station's call sign at least once in every 10 minutes of operation.

Schedule 1- Emission modes

This schedule describes the permitted emission modes.

An emission mode for a transmission consists of four elements – the necessary bandwidth of the transmission, the modulation of the main carrier of the transmission, the nature of the signals modulating the main carrier of the transmission, and the kind of information that may be transmitted.

Schedule 2 – Permitted frequencies and emission modes (amateur advanced station)

This schedule describes the permitted frequencies, emission modes and excluded frequency ranges for licences authorising the use of these stations (see sections 13 and 14).

Schedule 3 – Permitted frequencies and emission modes (amateur standard station)

This schedule describes the permitted frequencies and emission modes for licences authorising the use of these stations (see sections 23 and 24).

Schedule 3A – Permitted frequencies and emission modes (amateur foundation station).

This schedule describes the permitted frequencies and emission modes for licences authorising the use of these stations (see sections 27 and 29).

Schedule 4 – Access control systems (amateur repeater station)

This schedule describes the allowable 'continuous tone codes squelch system' and 'dual tone multi frequency levels' for use as part of an access control system. An access control system is required in some circumstances for amateur repeater stations (see section 42).

Schedule 4A – 3.4 GHz bands – HCIS identifiers for section 15AA

This new schedule provides the details of the ASMG blocks in which licensees must not use amateur advanced stations in the relevant frequency ranges, if a PMTS Class B licence authorises the use of a transmitter in that block in those frequency ranges.

Schedule 5 – 3.4 GHz bands – designated areas for section 15A

This schedule provides the detail of the designated geographic areas, by reference to AGD66, in which licensees must not use amateur advanced stations in the 3.425 GHz to 3.4425 GHz and 3.475 GHz to 3.4925 GHz frequency ranges.

Schedule 6 – 3.4 GHz bands – designated areas for section 15B

This schedule provides the detail of the designated geographic areas, by reference to AGD66, in which licensees must not use amateur advanced stations in the 3.4425 GHz to 3.475 GHz and 3.5425 GHz to 3.575 GHz frequency ranges.

Statement of Compatibility with Human Rights

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

Radiocommunications Licence Conditions (Amateur 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 Condition (Amateur Licence Licence) Determination 2015* (the Instrument) is made under paragraph 107(1)(f) of the *Radiocommunications Act 1992*. It imposes conditions on apparatus licences of the amateur licence type, including as to the permitted frequencies or frequency bands and permitted power levels. Further details about the Instrument appear in the Explanatory Statement for the Instrument.

Human rights implications

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

Conclusion

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

Australian Communications and Media Authority