

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications (Maritime Ship Station – 27 MHz and VHF) Class Licence 2015

Purpose

The purpose of the *Radiocommunications (Maritime Ship Station – 27 MHz and VHF) Class Licence 2015* (the 2015 Class Licence) is to authorise the use of maritime ship stations on specified frequencies on-board Australian ships.

The Australian Communications and Media Authority (the ACMA) has made the 2015 Class Licence under section 132 of the *Radiocommunications Act 1992* (the Act). The 2015 Class Licence revokes and replaces the *Radiocommunications (Maritime Ship Station – 27MHz and VHF) Class Licence 2001* (the 2001 Class Licence) with modifications to update outdated provisions.

Under Part 6 of the *Legislative Instruments Act 2003* (the LIA), most legislative instruments ‘sunset’ (that is, they are automatically repealed) on the 1 April or 1 October that first occurs 10 years after they are registered on the Federal Register of Legislative Instruments (FRLI).

The 2001 Class Licence is due to sunset on 1 October 2015 and is being remade as the 2015 Class Licence prior to the sunset date. The 2015 Class Licence:

- ensures that the ongoing effect of the 2001 Class Licence is preserved so that anyone can operate maritime radiocommunications equipment, provided the device and its operations meet the conditions of the licence;
- updates the 2001 Class Licence (such as in relation to the terminology used in the instrument);
- adds new options for the qualifications that may be obtained by the operators of VHF marine radios.

Legislative provisions

Section 132 of the Act allows the ACMA to issue a class licence by publishing a notice in the *Gazette*.¹ The 2015 Class Licence is made under section 132 of the Act and has the effect that persons may operate specified maritime radiocommunications equipment, provided that the device and its operation meet the conditions of the licence.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make a legislative instrument (such as section 132 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.

Background

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 is not issued to an individual user, and does not involve the payment of licence fees. A class licence is issued by the ACMA as a legislative instrument registered on FRLI and by notice in the *Gazette*.

¹ The registration of a legislative instrument on FRLI will satisfy any existing requirement in the instrument’s enabling legislation in force before 1 January 2005 to publish the instrument in the *Gazette* (see subsection 56(1) of the LIA). However, if the enabling legislation is enacted or amended at any time on or after 1 January 2005 and requires publication of the instrument in the *Gazette*, that requirement is in addition to the requirement to register the instrument (see subsection 56(2) of the LIA). Subsection 132(1) of the Act was amended on 1 July 2005, and so the requirement to publish the instrument in the *Gazette* is in addition to the requirement to register the instrument.

One of the conditions of the 2001 Class Licence required that a VHF marine radio either be operated by a person who was qualified to operate the equipment or by a person who was under the supervision of a person qualified to operate the equipment.²

All operators of VHF marine radios under the 2001 Class Licence were required to obtain either the Restricted Radio Operator Certificate of Proficiency, the Marine Radio Operator Certificate of Proficiency (MROCP) or the Marine Radio Operator VHF Certificate of Proficiency (MROVCP), irrespective of whether they were communicating in the Australian territorial sea or in international waters.³

Marine safety stakeholders and recreational boaters had long standing concerns about the efficiency and effectiveness of those arrangements, especially in relation to the complexity, accessibility and cost burden of the existing certificates of proficiency for recreational boaters

The ACMA conducted a review of VHF marine radio operator qualifications for recreational boaters, which concluded in 2012 (the Marine Radio Review).

The concept of a new “fit for purpose” qualification for VHF marine radio operators communicating within the Australian territorial sea arose out of the two rounds of public consultation conducted as part of the Marine Radio Review. Key advocates for this outcome included the Australian Maritime Safety Authority (AMSA), State marine authorities and volunteer marine rescue organisations.

Accordingly, the ACMA has developed and implemented the VHF marine radio Australian Waters Qualification (AWQ), which will be administered by the Transport and Logistics Industry Skills Council (TLISC) as part of its Maritime Training Package (MTP). On 27 February 2015 the Department of Industry formally approved the inclusion of the AWQ in the MTP.

The AWQ will be the minimum mandatory qualification for those marine radio operators using VHF radios within the Australian territorial sea and in inland waterways under the authority of the 2015 Class Licence. Whilst the TLISC will administer the AWQ, AMSA and the State marine authorities have provided input into the syllabus content and will assist promotion of the new qualification.

Marine radio operators using marine VHF radios beyond the limits of the Australian territorial sea and inland waterways under the authority of the 2015 Class Licence must hold, or be under the supervision of a person who holds, one of the following:

- a Global Maritime Distress Safety System certificate issued by AMSA under the Navigation Act 2012;
- a MROCP;
- a MROVCP;
- a Short Range Operator Certificate of Proficiency;
- a Long Range Operator Certificate of Proficiency; or
- a Restricted Radiotelephone Operator Certificate of Proficiency.

Operation

The 2015 Class Licence will continue to authorise any person to operate a maritime ship station on-board an Australian ship using 27 MHz frequencies and VHF maritime frequencies subject to conditions.

The authorisation given by the 2015 Class Licence to operate a maritime ship station is dependent on:

- each device included in the station meeting applicable technical specifications, equipment compliance requirements or standards;
- the station not being operated on land;
- the station being operated on VHF maritime frequencies in the VHF band only by persons who have specified qualifications to operate the equipment or by persons who are under the supervision of a person qualified to operate the equipment;

² Section 7 of the 2001 Class Licence.

³ Ibid.

- the station being operated beyond the Australian territorial sea in accordance with the International Telecommunication Union Radio Regulations and, if the station is being operated in the territorial sea of another country, in accordance with the requirements of that other country;
- the person operating the station using a form of identification at the start of each transmission; and
- the station being used for the following specified purposes in accordance with the applicable requirements stipulated in Schedule 2:
 - distress, urgency, safety or calling;
 - public correspondence;
 - commercial operations;
 - non-commercial operations;
 - port operations;
 - professional fishing operations;
 - radiodetermination communications;
 - on-board communications; and
 - Automatic Identification System (AIS) communications.

Documents incorporated by reference

The following documents are incorporated by reference or are otherwise referred to in the 2015 Class Licence:

Acts

- the Navigation Act 2012;
- the Radiocommunications Act 1992;
- the Seas and Submerged Lands Act 1973; and
- the Shipping Registration Act 1981.

Legislative instruments

- the Radiocommunications (Devices Used in the Inshore Boating Radio Services Band) Standard 2008;
- the Radiocommunications (Interpretation) Determination 2015; and
- the Radiocommunications (VHF Radiotelephone Equipment – Maritime Mobile Service) Standard 2014.

Other documents

- *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 (IEC), as in force from time to time;
- *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 IEC, as in force from time to time;
- *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 IEC, as in force from time to time;
- the International Telecommunication Union Radio Regulations, as in force from time to time; and
- the version current from time to time of the *Manual for Use by the Maritime Mobile and Maritime Mobile-Satellite Services* published by the International Telecommunication Union.

Consultation

Section 17 of the LIA requires the ACMA to be satisfied that any consultation it considers to be appropriate and reasonably practicable to undertake has been undertaken before making a legislative instrument. Subsection 136(2) of the Act also requires that a notice in relation to a proposed revocation of a class licence be published on the ACMA website and in one or more other forms readily accessible to the public and that a period of at least one month be provided for public comment.

Notice of the proposed revocation of the 2001 Class Licence and issue of the 2015 Class Licence was published in the *Gazette* and on the ACMA website on 1 April 2015. The comment period closed on 8 May 2015. Comments were received from AMSA and another person. Both were supportive of the 2015 Class Licence being made.

Regulation Impact Statement

A preliminary regulatory impact analysis assessment was undertaken, and based on this preliminary assessment the Office of Best Practice Regulation (OBPR) has determined that the proposed regulatory change is minor or machinery in nature and has therefore confirmed that no further regulatory impact analysis is required. This Determination is available on the OBPR website at <http://ris.finance.gov.au/>. The OBPR reference number is 11672.

Notes on Sections

The provisions of the 2015 Class Licence, and how they operate, are described in Attachment A.

Statement of Compatibility with Human Rights

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires the rule maker in relation to a legislative instrument to which section 42 (disallowance) of the LIA applies, to cause a statement of compatibility to be prepared in respect of that legislative instrument.

That statement is at Attachment B.

NOTES ON SECTIONS

Part 1 — Preliminary

Section 1 Name of Class licence

Section 1 provides for the citation of the 2015 Class Licence as the Radiocommunications (Maritime Ship Station – 27 MHz and VHF) Class Licence 2015.

Section 2 Commencement

Section 2 provides that the 2015 Class Licence commences on the later of the day after it is registered on the Federal Register of Legislative Instruments (FRLI) and the day on which it is published in the *Gazette*.

Section 3 Revocation

Section 3 states that the Radiocommunications (Maritime Ship Station – 27 MHz and VHF) Class Licence 2001 is revoked.

Section 4 Definitions

Subsection 4(1) defines terms and expressions used in the 2015 Class Licence. The definitions are broadly similar to those used in the 2001 Class Licence. Key differences of note are discussed below:

A new definition of *Australian territorial sea* has been introduced to help distinguish between the new *Australian Waters Qualification* and the other qualifications referred to.

The *Australian Waters Qualification* is defined and is the minimum mandatory qualification for those marine radio operators using VHF radios within the Australian territorial sea and in inland waterways under the authorisation of the 2015 Class Licence.

The definitions of *distress* and *frequency band* have been updated from 2001 Class Licence.

The definitions of inland waterways and inshore boating radio service have been amended to refer to the new definition of Australian territorial sea.

The term *maritime ship station* is defined in the *Radiocommunications (Interpretation) Determination 2015*. This term is important as the 2015 Class Licence authorises the operation of maritime ship stations in specified circumstances and subject to specified conditions.

The definition of *safety* has been updated from the 2001 Class Licence.

The definition of *ship* has been simplified to improve its clarity.

The definition of *urgency* has been updated.

A new definition of *vessel* has been inserted so that it provides greater clarity and aligns with the definition of *ship*.

The note to subsection 4(1) refers the reader to the Act and the *Radiocommunications (Interpretation) Determination 2015* for the meaning of terms used in the 2015 Class Licence such as *Automatic Identification System (AIS)* and *spectrum plan*.

Subsection 4(2) confirms that unless the contrary intention appears, a reference to another legislative instrument is a reference to that other legislative instrument as in force from time to time.

Part 2 — Class Licence

Section 5 Class licence

Section 5 provides that the operation of maritime ship stations on-board on an Australian ship using 27 MHz and VHF maritime frequencies is authorised subject to the conditions set out in the 2015 Class Licence. Due to the definition of *Australian ship*, maritime ship stations using those frequencies on-

board ships that are regulated Australian vessels under the *Navigation Act 2012* are not covered by the 2015 Class Licence.⁴

Part 3 — Conditions

Part 3 sets out all the conditions that an operator must comply with in order to be an authorised operator of a 27 MHz or VHF marine radio.

Section 6 Compliance with equipment specifications and standards

Section 6 provides that a device operating under the 2015 Class Licence must comply with certain stipulated equipment specifications or standards.

Section 7 Location of Station

Section 7 requires that maritime ship stations must not be operated on land

Section 8 Operator Qualifications

Section 8 provides that persons operating a maritime ship station on VHF maritime frequencies in the VHF band must hold a prescribed qualification or operate the station under the supervision of a person holding the necessary qualification.

Subsection 8(2) has been amended to specify the qualifications that must be held to permit operations on certain maritime frequencies either within or beyond the Australian territorial sea. These qualifications are aligned with the marine radio operator qualification requirements of the International Telecommunication Union Radio Regulations and are as follows:

- a Global Maritime Distress Safety System Certificate;
- a Marine Radio Operator Certificate of Proficiency;
- a Marine Radio Operator VHF Certificate of Proficiency;
- a Short Range Operator Certificate of Proficiency;
- a Long Range Operator Certificate of Proficiency;
- a Restricted Radiotelephone Operator Certificate of Proficiency; or
- qualifications recognised by the ACMA as being equivalent to any of the qualifications mentioned above.

A new subsection 8(3) has been inserted to include the new Australian Waters Qualification or an equivalent qualification recognised by the ACMA for operations on maritime frequencies only in the Australian territorial sea or inland waterways. Holders of the Australian Waters Qualification (or equivalent) will not be able to operate on maritime frequencies beyond the Australian territorial sea but will, however, still be able to voluntarily obtain the qualifications outlined in subsection 8(2) in order to operate maritime ship stations in those waters.

Note 2 has been inserted to make it clear that the Australian Waters Qualification outlined in paragraph 8(3)(a) is not a certificate of proficiency and a holder of the qualification does not fall within the definition of qualified operator for the purposes of Division 5, Part 3.3 of Chapter 3 of the Act.

Section 9 Operation outside Australia

Section 9 stipulates the conditions for the operation of a maritime ship station beyond the Australian territorial sea.

Section 10 Identification of Station

Section 10 provides that all transmissions from a maritime ship station must be identified as set out in the section.

Section 11 Distress, urgency, safety or calling

Section 11 provides for the operation of a maritime ship station for distress, urgency, safety or calling on frequencies and in accordance with limitations set out in Part 2.2 of Schedule 2.

⁴ Regulated Australian vessels within the meaning of section 15 of the *Navigations Act 2012* are excluded from the definition of "Australian ship".

Section 12 Public correspondence

Section 12 provides for the operation of a maritime ship station for public correspondence on frequencies and in accordance with limitations set out in Part 2.3 of Schedule 2.

Section 13 Commercial operations

Section 13 provides for the operation of a maritime ship station for commercial operations on frequencies and in accordance with limitations set out in Part 2.4 of Schedule 2.

Section 14 Non-commercial operations

Section 14 provides for the operation of a maritime ship station for non-commercial operations on frequencies and in accordance with limitations set out in Part 2.5 of Schedule 2.

Section 15 Port operations

Section 15 provides for the operation of a maritime ship station for port operations on frequencies and in accordance with limitations set out in Part 2.6 of Schedule 2.

Section 16 Professional fishing operations

Section 16 provides for the operation of a maritime ship station for professional fishing operations on frequencies and in accordance with limitations set out in Part 2.7 of Schedule 2.

Section 17 Radiodetermination communications

Section 17 provides for the operation of a maritime ship station for radiodetermination (radar) on frequencies and in accordance with limitations set out in Part 2.8 of Schedule 2.

Section 18 On-board communications

Section 18 provides for the operation of a maritime ship station for on-board communications on frequencies and in accordance with limitations set out in Part 2.9 of Schedule 2.

Section 19 Maritime ship stations and AIS frequencies

Section 19 provides the frequencies that have been reserved solely for AIS operation.

Schedule 1 – Equipment specifications and standards

Schedule 1 lists equipment specifications and standards that, depending on when a device was manufactured or imported into Australia, must be complied with.

Schedule 2 – Permissible Operations

Schedule 2 details, in respect of the operation of a maritime ship station, the frequencies that may be used, maximum transmitter power that may be used, the stations a person may communicate with and the purposes for which communications are permitted.

Statement of Compatibility with Human Rights

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

Radiocommunications (Maritime Ship Station – 27 MHz and VHF) Class Licence 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 (Maritime Ship Station – 27 MHz and VHF) Class Licence 2015* (the Class Licence) authorises the use of maritime ship stations on-board Australian ships on specified frequencies and prescribes transmitter output powers and protocols to minimise the potential for interference to maritime radio operation, and otherwise, subject to certain conditions and operating requirements. Amongst those conditions are conditions that maritime ship stations must either be operated by a person who has specified qualifications to operate the equipment or under the supervision of a person so qualified.

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.

The Australian Communications and Media Authority