

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Radiocommunications (Limitation of Authorisation of Third Party Users and Transfer of Apparatus Licences) Determination 2015

Purpose

The Australian Communications and Media Authority (the ACMA) has made the *Radiocommunications (Limitation of Authorisation of Third Party Users and Transfer of Apparatus Licences) Determination 2015* (the Determination) in accordance with sections 115 and 131AC of the *Radiocommunications Act 1992*, and in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the AIA).

The Determination revokes and replaces, in a single instrument, both the *Radiocommunications (Limitation of Authorisation of Third Party Users) Determination 2000* (Third Party Users Determination) and the *Radiocommunications (Transfer of Apparatus Licences) Determination 2000* (Transfer of Apparatus Licences Determination) without making any significant changes to the regulatory arrangements created by the Third Party Users Determination and Transfer of Apparatus Licences Determination.

The ACMA has made the Determination because both the Third Party Users Determination and Transfer of Apparatus Licences Determination were due to 'sunset' (i.e. be automatically repealed) on 1 October 2015, by operation of Part 6 of the *Legislative Instruments Act 2003* (the LIA). The ACMA considers that efficiencies will be realised by consolidating the Third Party Users Determination and Transfer of Apparatus Licences Determination into a single instrument, as the Determinations were similar in purpose and structure.

Following review and consultation as described below, the ACMA formed the view that the Third Party Users Determination and Transfer of Apparatus Licences Determination were operating effectively and efficiently, and the provisions in each continued to form a necessary and useful part of the legislative framework.

Legislative Provisions

Section 114 of the *Radiocommunications Act 1992* (the Act) provides that the licensee of an apparatus licence may, by written instrument, authorise other persons to operate radiocommunications devices under the licence.

Section 115 of the Act provides that the ACMA may, by legislative instrument, determine categories of apparatus licences in respect of which licensees must not authorise other persons to operate radiocommunications devices, classes of persons who must not be so authorised, and specified circumstances in which persons must not be so authorised.

Section 131AB of the Act provides that, when a licensee makes an application for a transfer of an apparatus licence under section 131AA, the ACMA may transfer the licence into the name of the transferee.

Section 131AC of the Act provides that the ACMA may, by legislative instrument, determine that particular types of apparatus licences are not transferable under Division 8 of Part 3.3 of the Act, and that in specified circumstances an apparatus licence is not transferable.

A determination made under section 115 or section 131AC of the Act is a legislative instrument and may be subject to disallowance in accordance with section 42 of the LIA.

Subsection 33(3) of the AIA 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 Third Party Users Determination and the Transfer of Apparatus Licences Determination.

Background

The Determination limits the circumstances in which a person may be:

- (a) authorised to operate a radiocommunications device under an apparatus licence; and
- (b) the transferee of an apparatus licence.

Generally speaking, the circumstances are those in which:

- (a) were the person to apply to the ACMA for the issue of an apparatus licence, the person would not be issued the apparatus licence; or
- (b) the licensee has the benefit of a discount or exemption in relation to apparatus licence tax, and the person does not also have that benefit.

The Determination remakes provisions in the Third Party Users Determination and the Transfer of Apparatus Licences Determination which have the effect that a licensee that is either exempt from the payment of licence fees or is eligible for a concession on licence fees cannot authorise a person to operate a radiocommunications device under the licence, or transfer the licence to a person, unless that authorised person or transferee has at least the same level of tax exemption or tax concession available to them.

The Determination remakes provisions in the Third Party Users Determination and the Transfer of Apparatus Licences Determination that apply to apparatus licences that authorise the operation of a device to provide an international broadcasting service. A licensee of such a licence cannot authorise a person to operate a radiocommunications device under the apparatus licence, or transfer the apparatus licence to a person, if there is no international broadcasting licence (IBL) in force under the *Broadcasting Services Act 1992* (BSA) in relation to the proposed international service.

The Determination remakes provisions in the Third Party Users Determination and the Transfer of Apparatus Licences Determination that ensure that the Australian Broadcasting Corporation (ABC) and the Special Broadcasting Service Corporation (SBS) do not authorise another person to operate a radiocommunications device under, or transfer, a licence that authorises the operation of a device to provide a broadcasting service outside Australia in certain circumstances. Those circumstances are where the other person intends to operate a radiocommunications device to provide:

- an international broadcasting service; or
- a broadcasting service within Australia.

The Determination remakes provisions in the Third Party Users Determination and the Transfer of Apparatus Licences Determination that apply where the licence authorises the licensee to operate a radiocommunications device that is used in the provision of an exempt broadcasting service, as defined in subsection 18A(3) of the BSA. The licensee of such a licence must not authorise another person to operate a radiocommunications device under the licence, or transfer the licence to another person, if the other person intends to use the device for a purpose other than the provision of an exempt broadcasting service.

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 Determination on its website between 24 October 2014 and 7 December 2014. The consultation paper explained the sunseting

process and the ACMA's preliminary view that the existing arrangements under the Third Party Users Determination and the Transfer of Apparatus Licences Determination should be saved from automatic repeal and remade as a single instrument without any significant changes. Interested parties were invited to comment.

The ACMA did not receive any submissions in response to the consultation.

Regulatory Impact

The Office of Best Practice Regulation (OBPR) applies streamlined administrative processes to sunsetting legislative instruments. As the ACMA has determined that the Third Party Users Determination and the Transfer of Apparatus Licences Determination were 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 17324).

Detailed Description of the Instrument

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

Documents incorporated in the Instrument by Reference

The 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 Broadcasting Corporation Act 1983*;
- the BSA;
- the *Radiocommunications Taxes Collection Regulations 1985*;
- the *Radiocommunications (Transmitter Licence Tax) Determination 2015*;
- the *Special Broadcasting Service Act 1991*.

Acts and legislative instruments referenced in the Determination can be found on the 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 (LIMITATION OF AUTHORISATION OF THIRD PARTY USERS AND TRANSFER OF APPARATUS LICENCES) DETERMINATION 2015*

Section 1 Name of Determination

Section 1 provides that the Determination is the *Radiocommunications (Limitation of Authorisation of Third Party Users and Transfer of Apparatus Licences) 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.

Section 3 Revocation

Section 3 provides that the *Radiocommunications (Limitation of Authorisation of Third Party Users) Determination 2000* and the *Radiocommunications (Transfer of Apparatus Licences) Determination 2000* are revoked.

Section 4 Definitions

Section 4 defines terms used in the Determination.

'Eligible person' has the definition given by the *Radiocommunications (Transmitter Licence Tax) Determination 2015* (the Transmitter Licence Tax Determination), which is:

- (a) a person who proposes to operate a narrowcasting service station solely to provide open narrowcasting television services for community and educational non-profit purposes under the relevant class licence issued by the ACMA; or
- (b) the Royal Flying Doctor Service of Australia.

An 'eligible person' is given a concession from tax under the Transmitter Licence Tax Determination.

'Exempt broadcasting service' has the meaning given by subsection 18A(3) of the BSA. An exempt broadcasting service is not an international broadcasting service for the purposes of the BSA, and so does not require an international broadcasting licence under that Act.

An 'exempt person' means a person who is exempt from the payment of apparatus licence tax under regulation 5 of the *Radiocommunications Taxes Collection Regulations 1985*.

Section 5 Circumstances in which persons must not be authorised to operate radiocommunications devices (paragraph 115 (c) of the Act)

Section 5 prohibits a licensee of an apparatus licence from authorising a person to operate a radiocommunications device in specified circumstances.

Subsection 5(1) provides that a licensee of an apparatus licence, who is an exempt person, must not authorise another person to operate under that licence if that other person is not similarly an exempt person.

Subsection 5(2) provides that a licensee of an apparatus licence, who is an eligible person, must not authorise another person to operate under that licence if that other person is not an eligible person or an exempt person.

Subsection 5(3) provides that the licensee of an apparatus licence that authorises the transmission of an international broadcasting service must not authorise another person to operate under that licence if there is no IBL in force authorising that service.

Subsection 5(4) provides that the ABC or the SBS, as licensee of an apparatus licence authorising the provision of a broadcasting service to locations outside Australia, must not authorise another person to operate a device under that licence if that person intends to provide an international broadcasting service or a broadcasting service within Australia using the device.

Subsection 5(5) provides that the licensee of an apparatus licence that authorises the operation of a radiocommunications device for the provision of an exempt broadcasting service must not authorise another person to operate under that licence if that person intends to use the device for a purpose other than the provision of an exempt broadcasting service.

**Section 6 Circumstances in which apparatus licences are not transferable
(paragraph 131AC(b) of the Act)**

Section 6 specifies the circumstances in which an apparatus licence is not transferrable.

Subsection 6(1) provides that an apparatus licence that is held by an exempt person is not transferrable to another person if the other person is not also an exempt person.

Subsection 6(2) provides that an apparatus licence that is held by an eligible person is not transferrable to another person if the other person is not an eligible person or an exempt person.

Subsection 6(3) provides that an apparatus licence that authorises the operation of a device for the provision of an international broadcasting service is not transferrable to another person if there is no IBL in force authorising the provision of that service.

Subsection 6(4) provides that an apparatus licence held by the ABC or the SBS that authorises the provision of a broadcasting service to locations outside Australia is not transferrable to another person if the other person intends to provide an international broadcasting service or a broadcasting service within Australia.

Subsection 6(5) provides that an apparatus licence that authorises the operation of a radiocommunications device for the provision of an exempt broadcasting service is not transferrable to another person if the other person intends to use the device for a purpose other than the provision of an exempt broadcasting service.

Statement of Compatibility with Human Rights

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

Radiocommunications (Limitation of Authorisation of Third Party Users and Transfer of Apparatus Licences) 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 (Limitation of Authorisation of Third Party Users and Transfer of Apparatus Licences) Determination 2015* (the Determination) revokes and replaces, in a single instrument, both the *Radiocommunications (Limitation of Authorisation of Third Party Users) Determination 2000* (Third Party Users Determination) and the *Radiocommunications (Transfer of Apparatus Licences) Determination 2000* (Transfer of Apparatus Licences Determination) without making any significant changes to the regulatory arrangements created by the Third Party Users Determination or the Transfer of Apparatus Licences Determination.

The Determination sets out the circumstances in which a licensee may not authorise another person to operate radiocommunications devices under certain apparatus licences, as well as circumstances in which certain apparatus licences are not transferrable.

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.

Australian Communications and Media Authority