

## EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

### *Radiocommunications Licence Conditions (Fixed Receive Licence) Determination 2015*

#### **Purpose**

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

The Determination revokes and replaces the *Radiocommunications Licence Conditions (Fixed Receive Licence) Determination 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The ACMA has made the Determination because the 1997 Determination was due to 'sunset' (i.e. be automatically repealed) on 1 October 2015, by operation of Part 6 of the *Legislative Instruments Act 2003* (the LIA).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.

#### **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.

A determination made under paragraph 107(1)(f) of the Act is a legislative instrument and may be subject to disallowance in accordance with section 42 of the LIA.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative character, 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.

#### **Background**

Under paragraph 107(1)(f) of the Act, the ACMA may determine conditions relating to a particular type of apparatus licence. A fixed receive licence is a type of receiver licence specified by the ACMA in a determination made under section 98 of the Act, being the *Radiocommunications (Specified Radiocommunications Receivers and Types of Transmitter Licences and Receiver Licences) Determination 2014*. The Determination contains conditions of operation that apply to fixed receive licences.

#### **Operation**

The fixed receive licence type is defined as a licence issued for one or more fixed stations:

- (a) that are used only for receiving messages; and
- (b) that are not capable of transmitting messages of any kind; and
- (c) for which the ACMA, or a person accredited under section 263 of the Act, undertakes co-ordination procedures for the purpose of minimising interference to reception.

## 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 (about the 1997 Determination, and two other instruments) and a draft of the Determination on its website between 9 July 2014 and 22 August 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 two submissions in response to the consultation paper, one of which was relevant to the Determination and which it took into account when making the Determination. The submissions are available on the [ACMA website](#).

## Regulatory Impact

The Office of Best Practice Regulation (OBPR) applies streamlined administrative processes 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. The OBPR reference number is 16968.

## 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;
- standards made under section 162 of the Act, specifically including the *Radiocommunications (Analogue Speech (Angle Modulated) Equipment) Standard 2014*.

The 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 LICENCE CONDITIONS (FIXED RECEIVE LICENCE) DETERMINATION 2015***

#### **Section 1 Name of Determination**

Section 1 provides that the Determination is the *Radiocommunications Licence Conditions (Fixed Receive 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 revokes the 1997 Determination.

#### **Section 2 Scope**

Section 2 provides that fixed receive licences are subject to the condition in the Determination.

Section 2 also specifies that, if the condition in the Determination is inconsistent with a condition specified in the licence, the condition specified in the fixed receive licence applies.

#### **Section 3 Interpretation**

Section 3 defines terms used in the Determination.

Section 3 also provides that, unless otherwise specified, the range of numbers that identifies a frequency band includes the higher, but not the lower, number.

#### **Section 4 Condition**

Section 4 provides that every fixed receive licence is subject to the condition set out in the Determination.

#### **Section 5 Technical performance of antenna**

Section 5 specifies that, if a fixed receive station includes analogue speech (angle modulated) equipment (namely, equipment to which the *Radiocommunications (Analogue Speech (Angle Modulated) Equipment) Standard 2014* applies) that is operated in the frequency bands 29.7 MHz to 30 MHz, or 30 MHz to 520 MHz, on a frequency channel with a bandwidth of 12.5 kHz, 20 kHz or 25 kHz, the equipment must comply with an applicable standard made under section 162 of the Act.

## **ATTACHMENT B**

### **Statement of Compatibility with Human Rights**

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

#### **Radiocommunications Licence Conditions (Fixed Receive 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 (Fixed Receive Licence) Determination 2015* (the Determination) revokes and replaces the *Radiocommunications Licence Conditions (Fixed Receive Licence) Determination 1997* without making any significant changes to the regulatory arrangements created by that instrument.

The Determination is made under paragraph 107(1)(f) of the *Radiocommunications Act 1992*. The Determination sets out a condition that applies to fixed receive licences (a type of apparatus licence determined under section 98 of the *Radiocommunications Act 1992*).

#### **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.