

## EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

### *Radiocommunications Licence Conditions (Outpost Licence) Determination 2015*

#### **Purpose**

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

The Determination revokes and replaces the *Radiocommunications Licence Conditions (Outpost 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The ACMA has made the Determination because the 1997 Determination was due to 'sunset' (i.e. be automatically repealed) on 1 October 2015, by operation of Part 6 of the *Legislative Instruments Act 2003* (the LIA).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) 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. An outpost licence is a type of transmitter 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 sets out conditions to which each outpost licence is subject.

An outpost licence authorises a station that operates in the medium frequency (300 kHz to 3 MHz) or high frequency (3 MHz to 30 MHz) bands, and that is principally established:

- (a) to provide radiocommunications in a remote locality at which a connection to a telecommunications network operated by a carrier or carriage service provider is not provided; or
- (b) if a connection to a telecommunications network operated by a carrier or carriage service provider is provided at the remote locality where the station is situated, to provide radiocommunications in the locality for the purposes of an emergency that involves:
  - (i) prejudice to the security or defence of Australia;

- (ii) a serious threat to the environment;
- (iii) risk of injury to, or death of, a person; or
- (iv) risk of damage to, or substantial loss of, property.

## Operation

The outpost licence type is divided into two classes:

- (a) the 'outpost assigned station' class authorises the operation of the 'control' stations used to provide emergency medical aid services and certain public correspondence, such as those operated by the Royal Flying Doctor Service;
- (b) the 'outpost non assigned station' class authorises stations to communicate with the 'control' stations and other outpost stations in certain circumstances.

All outpost licences are subject to the conditions in Part 2 of the Determination. These conditions relate to the use of a station to connect to a telecommunications network operated by a carrier or a carriage service provider, transmitter output power, and the use of call signs.

Outpost licences that authorise the operation of outpost non assigned stations are also subject to the conditions in Part 3 of the Determination. These conditions relate to the stations' compliance with standards made under section 162 of the Act, the use of particular frequencies, causing harmful interference to radiocommunications, and the purpose of communications using the stations.

## 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 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 was taken into account when making the Determination. The submissions are available from the ACMA's [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 16938.

## 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.

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 (OUTPOST LICENCE) DETERMINATION 2015***

#### **PART 1        PRELIMINARY**

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

Section 1 provides that the Determination is the *Radiocommunications Licence Conditions (Outpost Licence) 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 revokes the 1997 Determination.

##### **Section 4        Scope**

Subsection 4(1) provides that all outpost licences are subject to the conditions in Part 2 of the Determination. Outpost licences (outpost non assigned stations) are also subject to the conditions in Part 3 of the Determination.

Subsection 4(2) specifies that if a condition in the Determination is inconsistent with a condition specified in the licence, the condition specified in the licence applies.

##### **Section 5        Definitions**

Section 5 defines terms used in the Determination.

#### **PART 2        CONDITIONS FOR EVERY OUTPOST LICENCE**

##### **Section 6        Conditions**

Section 6 specifies that every outpost licence is subject to the conditions in Part 2 of the Determination.

##### **Section 7        Conditions of operation**

Subsection 7(1) specifies as a condition that a licensee must accept and transmit all telecommunications directed to an outpost station from the public for transmission, other than those telecommunications directed to the station using a telecommunications network operated by a carrier or carriage service provider, and those telecommunications that would require use of a telecommunications network operated by a carrier or carriage service provider.

Subsections 7(2) and (3) specify that a licensee must operate an outpost station to transmit and receive all telecommunications from the public on equal terms and without favour or prejudice, except while the station is required for communications in an emergency.

##### **Section 8        Transmitter output power**

Section 8 restricts the transmitter output power, at which a licensee can operate a station, to a power that is sufficient to achieve efficient communications.

Subsection 11(2) imposes a further restriction on the level of power used to operate an outpost non assigned station (see below).

### **Section 9 Call signs**

Section 9 specifies a requirement for call sign use by the licensee at the start and end of each transmission or series of transmissions.

## **PART 3 CONDITIONS FOR OUTPOST LICENCE (OUTPOST NON ASSIGNED STATION)**

### **Section 10 Conditions**

Section 10 specifies that every outpost licence for an outpost non assigned station is subject to the conditions specified in Part 3 of the Determination, in addition to the conditions in Part 2 of the Determination.

### **Section 11 Technical performance of an outpost non assigned station**

Subsection 11(1) specifies, for an outpost non assigned station, a requirement for compliance with an applicable standard made under section 162 of the Act, as in force at the time when the station was manufactured, imported, altered or modified.

Subsection 11(2) specifies the maximum transmitter output power at which the station can be operated.

### **Section 12 Operation of station**

Section 12 provides that a licensee must only operate an outpost non assigned station in accordance with sections 13 and 14 of the Determination.

### **Section 13 Permitted frequencies and purposes – any locality**

Section 13 provides that an outpost non assigned station may be operated at any locality on a frequency specified in any part of Schedule 1 to transmit or receive messages of emergency or distress if no other satisfactory means of communication is available.

### **Section 14 Permitted frequencies and purposes – telecommunications network only available through outpost non assigned station**

Subsection 14(1) provides that the conditions in section 14 apply to the operation of an outpost non assigned station at a remote locality (specified in Schedule 1), if a connection to a telecommunications network that is operated by a carrier or carriage service provider is only available through the station, or if a connection to a telecommunications network that is operated by a carrier or carriage service provider is available through the station and also by other means, but the only working connection is through the station because each other means of connection to the telecommunications network is unavailable or out of service.

Subsection 14(2) provides that an outpost non assigned station may be operated at a locality, on a frequency specified in column 4 of Schedule 1, to communicate with an outpost assigned station to obtain or provide medical aid or advice, to transmit or receive public correspondence or to transmit telecommunications that require the use of a telecommunications network operated by a carrier or carriage service provider.

Subsection 14(3) provides that an outpost non assigned station may also be operated at a remote locality, on a frequency specified in column 3 or 4 of Schedule 1, for the purposes of communicating with an outpost station where there is no connection to a telecommunications network operated by a carrier or carriage service provider, for participation in community interest sessions or for the transmission or reception of messages in relation to distress or emergency situations.

Subsection 14(4) applies, for subsection 14(2) and paragraphs 14(3)(a) and 14(3)(b), additional conditions that require a licensee to, as far as practicable, to operate the outpost non assigned station on the lowest frequency for each item in Schedule 1.

Subsection 14(5) applies additional conditions for paragraphs 14(3)(a) and 14(3)(b). It requires that, for communication with an outpost station under those paragraphs, a licensee of an outpost non assigned station must ensure the station operates on a frequency only at a time when each outpost assigned station that satisfies the conditions of the subsection is open only for the transmission or reception of messages in relation to distress or emergency situations. The outpost assigned station must be one that is at a locality mentioned in column 2 of an item in Schedule 1, must be permitted to operate on the frequency, under an outpost licence other than an outpost licence (outpost non assigned station), and must be one with which the outpost non assigned station of the licensee can communicate at that time using that frequency.

Subsection 14(6) specifies that an outpost non assigned station must cease operating if its operation causes harmful interference to a service provided by another station.

### **Schedule 1 – Outpost non assigned stations – Royal Flying Doctor Service frequencies**

Schedule 1 specifies the frequencies that can be used by outpost non assigned stations for communication with the Royal Flying Doctor Service assigned stations in specific localities. The Schedule has effect for the purposes of section 13 and subsections 14(2), 14(3), 14(4) and 14(5).

## **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 (Outpost 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 (Outpost Licence) Determination 2015* (the Determination) revokes and replaces the *Radiocommunications Licence Conditions (Outpost 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 the conditions that apply to outpost 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.