

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Radiocommunications (Communication with Space Object) Class Licence 2015

Radiocommunications Act 1992

Purpose

The Australian Communications and Media Authority (the ACMA) has made the *Radiocommunications (Communication with Space Object) Class Licence 2015* (the class licence) to revoke and replace the *Radiocommunications (Communication with Space Object) Class Licence 1998* (the 1998 class licence) without making any significant changes to the regulatory arrangements created by the 1998 class licence.

The ACMA has made the class licence because the 1998 class licence was due to be automatically repealed on 1 October 2015, by operation of Part 6 of the *Legislative Instruments Act 2003* (the LIA).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 1998 class licence was operating efficiently and effectively, and continued to form a necessary and useful part of the legislative framework. To preserve the effect of the 1998 class licence, the ACMA therefore revoked the 1998 class licence before its sunset date and remade it with minor changes as the class licence. The main change made is to excise radionavigation-satellite service frequencies from the class licence. The reception of these radionavigation-satellite service frequencies is authorised by a new class licence, the *Radiocommunications (Radionavigation-Satellite Service) Class Licence 2015*.

Legislative Provisions

Subsection 132(1) of the *Radiocommunications Act 1992* (the Act) authorises the ACMA, by notice published in the Gazette, to issue class licences.¹

A class licence made under subsection 132(1) of the Act is a legislative instrument (subsection 139 of the Act) and may be subject to disallowance in accordance with section 42 of the LIA.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make a legislative instrument, the power shall be construed to include 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.

Background

It is a general requirement of the Act that the operation of all radiocommunications devices within Australia be authorised by a radiocommunications licence.

A class licence is one type of licence available to authorise the operation of a radiocommunications device. 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

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.

under a common set of conditions. A class licence sets out the conditions under which any person is permitted to operate any device to which the class licence is applicable. It is not issued to an individual user and does not involve the payment of licence fees.

Operation

In making the class licence, the ACMA's objective is to regulate the reception or transmission of emissions from or to space objects, to the extent necessary for efficient radiocommunications in Australia.

The class licence authorises any person to operate a station for the purpose of communication with a space object that is authorised by a space licence or space receive licence, provided they comply with the conditions set out in sections 6, 7 and 8. Those conditions include:

- the station must operate only in the relevant frequency ranges listed in the class licence;
- the station must comply with any applicable standards;
- the station must not interfere with the operation of a radiocommunications receiver; and
- if the station is a maritime ship station in the Global Maritime Distress and Safety System (GMDSS), the station must be operated by a qualified operator and must comply with relevant resolutions of the International Maritime Organisation (IMO).

Consultation

Before revoking the 1998 class licence, the ACMA was required by subsection 136(2) of the Act to publish a written notice that invites interested persons to make representations about the proposed revocation by a specified date that is at least one month after the date of publication. Under subsection 136(2A) the written notice must be published on the ACMA's website and in another form readily available to the public.

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.

Between 21 April 2015 and 29 June 2015, the ACMA conducted a formal public consultation process in relation to the class licence. A consultation paper was made available on the ACMA website, and a written notice was published on the website and in the *Gazette* under the requirements of subsection 136(2) about the proposal to revoke the 1998 class licence. The consultation paper explained the sunseting process and the ACMA's preliminary view that the class licence should be remade with the radionavigation-satellite service frequencies carved out into a separate class licence. Interested parties were notified of the release of the consultation paper and invited to comment.

The ACMA received 12 written submissions in response to the consultation paper. The submissions were generally supportive of the proposals in the consultation paper, and any matters raised were taken into account in making the class licence.

Regulatory impact

The Office of Best Practice Regulation (OBPR) has considered the matter and formed the opinion that the ACMA's proposal to remake the 1998 class licence without substantial changes beyond excising the radionavigation-satellite service will have minor regulatory impacts. Accordingly, OBPR advised that a Regulation Impact Statement was not required. The OBPR reference number is 18253.

Detailed description of the class licence

Details of the specific provisions of the class licence are set out in **Attachment A**.

Documents incorporated in the class licence by reference

The class licence refers to the following Acts and legislative instruments as in force from time to time (as permitted by section 314A of the Act):

- *Australian Radiofrequency Spectrum Plan 2013*
- *Radiocommunications Act 1992*
- *Radiocommunications (Interpretation) Determination 2015*
- *Marine Orders made under the Navigation Act 2012*
- *Navigation Act 2012*

The Acts and legislative instrument mentioned above can be found on the Australian Government's ComLaw website (<http://www.comlaw.gov.au>).

The class licence also refers to or incorporates the following documents, as existing from time to time (as permitted by section 314A of the Act):

- Global Maritime Distress and Safety System (GMDSS) contained in Chapter IV of SOLAS (the International Convention for the Safety of Life at Sea) (available at the United Nations website at <https://treaties.un.org/>)
- Maritime Design and Installation Guidelines published by Inmarsat and available at www.inmarsat.com.
- Resolutions adopted by the IMO, available at <http://www.imo.org>.

Statement of Compatibility with Human Rights

As required under 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

Detailed description of the *Radiocommunications (Communication with Space Object) Class Licence 2015*

Section 1 – Name of class licence

Section 1 provides that the class licence is the *Radiocommunications (Communication with Space Object) Class Licence 2015*.

Section 2 – Commencement

Section 2 provides that the class licence commences on the later of the day after it is registered on the Federal Register of Legislative Instruments and the day that on which it is published in the Gazette. Both of these events must occur in order for the class licence to commence. Publication in the Gazette is a requirement under subsection 132(1) of the Act.

Section 3 – Revocation

Section 3 provides that the *Radiocommunications (Communication with Space Object) Class Licence 1998* is revoked.

Section 4 – Interpretation

Section 4 defines the terms used in the class licence. The note at the end of this section notes that expressions not defined in the Class Licence may be defined in the Act and in the *Radiocommunications (Interpretation) Determination 2015*.

Section 5 – Class licence

Section 5 authorises any person to operate a station to which the class licence applies for the purpose of communications with or through a station on a space object which is authorised by a space licence or space receive licence. This operation is subject to the conditions set out in sections 6, 7 and 8.

Section 5 also provides that the class licence does not apply to stations located on a space object or to stations that are authorised by an apparatus licence to operate for a substantially similar purpose as is authorised by the class licence.

Section 6 – Authorised frequencies

Section 6 lists the frequencies authorised for transmission or reception by a station operating under the class licence.

Section 7 – Standards and Resolutions

Subsection 7(1) provides that a station operated under the class licence must comply with any standard applicable as in force on the day the station was manufactured, imported, or altered or modified.

Subsection 7(2) also provides that a person must not operate a maritime ship station in the GMDSS unless the station complies with the Resolutions of the IMO relating to such ship stations. The note to this subsection explains that the IMO Resolutions that are applicable to maritime ship stations operating in the GMDSS are set out in the Maritime Design and Installation Guidelines.

Section 8 – Interference with other stations

Section 8 provides that the operation of a station under the class licence must not interfere with the operation of a radiocommunications receiver.

Subsection 8(2) also contains additional conditions that apply if a station is operated in the frequency range 1610 to 1626.5 MHz within 20 kilometres of a radio astronomy observatory mentioned in footnote AUS87 of the *Australian Radiofrequency Spectrum Plan 2013*. In such circumstances the operator of the station must seek advice from the operator of the radio astronomy observatory about when it may operate the station and operate the station consistently with that advice.

Subsection 8(3) also explains that the class licence does not authorise operation of a station in the frequency range of 1660 to 1660.5 MHz where the station is within 500 kilometres of a radio astronomy observatory mentioned in footnote AUS87 of the *Australian Radiofrequency Spectrum Plan 2013* or where the station is an airborne aircraft.

ATTACHMENT B

Statement of Compatibility with Human Rights

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

Radiocommunications (Communication with Space Object) 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 (Communication with Space Object) Class Licence 2015* revokes and replaces the *Radiocommunications (Communication with Space Object) Class Licence 1998* without making any significant changes to the regulatory arrangements created by that instrument.

The *Radiocommunications (Communication with Space Object) Class Licence 2015* lists the frequencies authorised for the reception or transmission of emission from or to space objects and the conditions applicable to the authorisation granted by the class licence.

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.