**EXPLANATORY STATEMENT**

Issued by the Australian Communications and Media Authority

*Radiocommunications Licence Conditions (Broadcasting Licence) Determination 2015*

**Purpose**

The Australian Communications and Media Authority (the ACMA) has made the *Radiocommunications Licence Conditions (Broadcasting Licence) Determination 2015* (the Determination) in accordance with paragraph 107(1)(f) of the *Radiocommunications Act 1992* (the Act) and subsection 33(3) of the *Acts Interpretation Act 1901* (AIA).

The Determination revokes and replaces the *Radiocommunications Licence Conditions (Broadcasting Licence)* *Determination No.1 of 1998* (the 1998 Determination) without making any significant changes to the regulatory arrangements created by the 1998 Determination.

The ACMA has made the Determination because the 1998 Determination was due to ‘sunset’ (i.e. be automatically repealed) on 1 October 2015, by operation of Part 6 of the *Legislative Instruments Act 2003* (the LIA).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 1998 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 Act allows the ACMA to determine, by legislative instrument, conditions applicable to particular types of apparatus licence issued for broadcasting services under section 100 of the Act. ‘Broadcasting licences’ are a type of transmitter licence, determined in the *Radiocommunications (Specified Radiocommunications Receivers and Types of Transmitter Licences and Receiver Licences) Determination 2014*.

Subsection 107(3) of the Act provides that section 107 does not apply to transmitter licences issued under sections 101A or 102, and does not apply to datacasting transmitter licences and digital radio multiplex transmitter licences. This limits the application of the Determination to broadcasting licences that authorise the operation of a transmitter for the provision of:

* + national broadcasting services;
	+ open or subscription narrowcasting services; and
	+ broadcasting services provided outside the broadcasting services bands (BSBs).

An instrument made under paragraph 107(1)(f) of the Act is a legislative instrument for the purposes 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 1998 Determination.

The Determination may be subject to disallowance in accordance with section 42 of the LIA.

**Background**

The Determination imposes licence conditions on apparatus licences that authorise the operation of certain broadcasting stations:

* + broadcasting service stations, which are those stations used for the provision of national broadcasting services;
	+ narrowcasting service stations, which are those stations used for the provision of open or subscription narrowcasting services in the BSBs; and
	+ narrowband area service (NAS) stations, which are those stations used for the provision of services to at least four narrowband area receivers outside the BSBs (in the frequency range 1606.5 kHz to 1705 kHz).

Some licence conditions apply to all licences which are subject to the Determination, and some apply only to one of the classes of licence mentioned above.

In December 2000, the then Minister for Communications, Information Technology and the Arts made the [Australian Communications Authority (LPON Transmitter Licences) Direction No.2 of 2000](http://www.comlaw.gov.au/Details/F2006B00135) (LPON Direction). The LPON Direction required the Australian Communications Authority (ACA) to make any apparatus licence for a low power open narrowcasting (LPON) service subject to conditions that require a LPON licensee:

* + to commence to provide a service within the six months from the issue of the licence; and
	+ to continue to provide the service with reasonable regularity; and
	+ to maintain particular records of the service provided.

These licence conditions are set out in section 4.11 of the Determination. The LPON Direction was continued in force by the *Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005*.

**Operation**

The Determination imposes licence conditions on the broadcasting licence type of transmitter licence, where the licence was issued under section 100 of the Act. Some licence conditions are specific to particular subsets of the broadcasting licence type of transmitter licence.

The licence conditions generally relate to matters such as the commencement of broadcasting services, interference mitigation, and technical specifications.

**Consultation**

Subsection 17(1) of the LIA requires that, before the ACMA makes a legislative instrument, it must be satisfied that any consultation that it considers appropriate and reasonably practicable to undertake has been undertaken.

The ACMA published a consultation paper and draft instrument on its website between 24 July 2015 and 21 August 2015. The consultation paper explained the sunsetting process and the ACMA’s preliminary view that the existing arrangements under the 1998 Determination should be saved from automatic repeal and remade without any significant changes. Interested parties were invited to comment.

The ACMA received one submission from the Australian Narrowcasting Radio Association which supported the proposal to remake the Determination.

**Regulatory Impact**

Under the Guidance Note *Sunsetting Legislation* published by the Office of Best Practice Regulation (OBPR) in March 2013, streamlined administrative processes apply to sunsetting legislative instruments.

As the ACMA has determined that the 1998 Determination was fit for purpose and should be remade without any significant changes, and has certified those matters to OBPR, no Regulation Impact Statement is required in relation to the making of the Determination (OBPR reference number ID 19155).

**Detailed Description of the Determination**

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

**Incorporation by Reference**

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

* + *Acts Interpretation Act 1901*
	+ *Broadcasting Services Act 1992*
	+ *Broadcasting Services (Technical Planning) Guidelines 2007*
	+ *Corporations Act 2001*
	+ *Radiocommunications Act 1992*
	+ *Radiocommunications (Interpretation) Determination 2015*

Acts and legislative instruments are available on the ComLaw website (<http://www.comlaw.gov.au/>).

The Determination also refers to, or incorporates the following documents (as permitted by section 314A of the Act):

* + the 2001 Census, conducted by the Australian Bureau of Statistics (ABS)
	+ the Register of Radiocommunications Licences, as established and kept by the ACMA in accordance with section 143 of the Act from time to time

The results of the 2001 Census are available from the ABS website at <http://www.abs.gov.au>. The Register of Radiocommunications Licences is available from <http://www.acma.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 RADIOCOMMUNICATONS LICENCE CONDITIONS (BROADCASTING LICENCE) DETERMINATION 2015**

**Part 1 - Preliminary**

**Section 1.1 Name of determination**

Section 1 provides that the Determination is the *Radiocommunications Licence Conditions (Broadcasting Licence) Determination* *2015*.

**Section 1.2 Commencement**

Section 1.2 provides that the Determination commences on the day after it is registered on the Federal Register of Legislative Instruments.

**Section 1.2A Revocation**

Section 1.2A revokes the *Radiocommunications Licence Conditions (Broadcasting Licence) Determination No.1 of 1998*.

**Section 1.3 Scope**

Section 1.3 provides that:

* every broadcasting licence is subject to the licence conditions set out in Part 2 of the Determination;
* every broadcasting licence (broadcasting service) is also subject to the licence condition set out in Part 3 of the Determination;
* every broadcasting licence (narrowcasting service) is also subject to the licence conditions set out in Part 4 of the Determination;
* every broadcasting licence (narrowband area service) is also subject to the licence conditions set out in Part 5 of the Determination.

Because of subsection 107(3) of the Act, the Determination only applies to broadcasting licences that are not issued under sections 101A or 102, and which are not datacasting transmitter licences or digital radio multiplex transmitter licences.

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

**Section 1.4 Interpretation**

Subsection 1.4(1) defines terms used in the Determination.

The definition of *broadcast service station* in the Determination is different to that in the *Radiocommunications (Interpretation) Determination 2015*. The definition in the Determination is limited to stations operated for providing national broadcasting services.

Subsection (2) sets out the manner in which a frequency band is described in the Determination.

**Part 2 – Conditions for every licence**

**Section 2.1 Conditions**

Section 2.1 provides that Part 2 applies common licence conditions to every licence which is subject to the Determination.

**Section 2.2 Licensee to advertise before commencing service**

Section 2.2 sets out start-up requirements for broadcasting licensees commencing new services. The section requires licensees to make statements and information available to the public, as set out in paragraphs 2.2 (a) to (e), at least 7 days before commencing transmission. The publication of these statements and this information could include placing a notice to that effect on the licensee’s website or an industry website. The purpose of these requirements is to inform members of the public that the service is commencing and how they may contact the licensee if they experience any interference issues.

**Section 2.3 Harmful interference**

Section 2.3 provides that a licensee operating a station in the BSBs must not cause harmful interference to broadcasting services within the licence or coverage area for those services. It also provides that a licensee operating a station outside the BSBs must not cause harmful interference to another service that is already being provided.

**Section 2.4 Emission standard – AM sound broadcasting service**

Section 2.4 has the effect that a licensee operating a broadcasting station in the AM band (526.5 to 1606.5 kHz) must comply with the *Emission Standard for the Australia Amplitude Modulation Sound Broadcasting Service* (the AM standard) contained in Appendix 1 to the *Broadcasting Services* (*Technical Planning) Guidelines 2007* (TPGs). The purpose of the AM standard is to define parameters to be used for sound broadcasting in the AM band.

**Section 2.5 Emission standard – FM sound broadcasting service**

Section 2.5 has the effect that a licensee operating a broadcasting station in the FM band (87.5 to 108 MHz) must comply with the *Emission Standard for the Australia Frequency Modulation Sound Broadcasting Service* (the FM standard)contained in Appendix 2 to the TPGs.The purpose of the FM standard is to define parameters to be used for sound broadcasting in the FM band.

**Section 2.5A Emission standard – digital television broadcasting service**

Section 2.5A has the effect that a licensee operating a broadcasting station on a frequency in the TV bands to transmit a television broadcasting service in digital mode must comply with the *Transmission Standard for the Australian Digital Terrestrial Television Service* contained in Appendix 4 to the TPGs.

**Part 3 – Condition for broadcasting licence (broadcast service)**

**Section 3.1 Condition**

Subsection 3.1(1) provides that every broadcasting licence (broadcast service) is subject to the condition in Part 3 relating to the operation of any broadcasting service stations under the licence. These licences authorise the use of a broadcast service station for the purposes of providing a national broadcasting service.

Subsection (2) provides that the condition imposed by Part 3 on these licences is in addition to the conditions in Part 2.

**Section 3.2 National broadcasting services**

Section 3.2 provides that a station must only operate to provide a national broadcasting service, or for engineering test transmissions.

**Part 4 – Conditions for broadcasting licence (narrowcasting service)**

**Section 4.1 Conditions**

Subsection (1) provides that every broadcasting licence (narrowcasting service) is subject to the conditions in Part 4 relating to the operation of any narrowcasting service stations under the licence. These licences authorise the use of a narrowcasting service station for the provision of open or subscription narrowcasting services in the BSBs.

Subsection (2) provides that the conditions imposed by Part 4 on these licences are in addition to the conditions in Part 2. Subsection (3) provides that sections 4.3, 4.4, 4.5 and 4.6 do not apply to a narrowcasting service station that is operated to provide a low power open narrowcasting (LPON) service (an open narrowcasting service that is provided using a transmitter that must not be operated above a specified power, as defined in section 1.4 of the Determination).

**Section 4.3 Operating requirements – open narrowcasting services**

Section 4.3 provides that the licensee, when operating a narrowcasting service station, must:

* only provide an open narrowcasting service;
* commence providing a service by the later of the day 6 months after the issue of the licence, or the time specified in a written notice by the ACMA;
* comply with the start-up procedure set out in Part 1 of the TPGs. Part 1 requires licensees to inform affected persons, in the relevant licence or coverage area, about the commencement of test transmissions. The requirement to follow this procedure is additional to the requirement in section 2.2 of the Determination.

**Section 4.4 Operating requirements – open narrowcasting services in the AM band**

Subsection (1) provides that section 4.4 applies to licensees who operate a station on a frequency in the AM band to provide an open narrowcasting radio service. This provision only applies to ‘high power’ open narrowcasting services because of the operation of subsection 4.1(3). Subsection (2) provides that:

* if the open narrowcasting service has been planned in a licence area plan under section 26 of the *Broadcasting Services Act 1992*, the licensee must operate the station in compliance with the cymomotive force limits mentioned in the technical specifications for the service as included in that licence area plan;
* the licensee must operate the station in a manner that limits interference caused by the propagation of sky waves to other broadcasting services in the AM band;
* the licensee must comply with guidelines 21 to 26 in Part 3 of the TPGs. These guidelines relate to minimum levels of service and maximum field strengths for stations.

**Section 4.5 Operating requirements – open narrowcasting services in the FM band**

Subsection (1) provides that section 4.5 applies to licensees who operate a station on a frequency in the FM band to provide an open narrowcasting radio service. This provision only applies to ‘high power’ open narrowcasting services because of the operation of subsection 4.1(3).

Subsection (2) provides that the licensee must comply with guidelines 34, 36 to 42 and 44 to 47 of the TPGs. These guidelines relate to minimum levels of service, power levels and maximum field strengths for stations.

**Section 4.6 Operating requirements – open narrowcasting services in the TV bands**

Subsection (1) provides that section 4.6 applies to licensees who operate a station on a frequency in the TV bands (174 MHz to 230 MHz, and 520 MHz to 694 MHz) to provide an open narrowcasting television service. This provision only applies to ‘high power’ open narrowcasting services because of the operation of subsection 4.1(3).

Subsection (2) provides that section 4.6 does not apply to a licence that authorises the operation of a station that is subject to a licence condition that the licensee must only provide an open narrowcasting service for community and educational purposes on a not-for-profit basis. There are two licences of this nature, one in each of Perth and Adelaide.

Subsection (3) provides that the licensee must comply with guidelines 81 to 89B of the TPGs. These guidelines relate to power levels, minimum levels of service and maximum field strengths for stations.

**Section 4.8 Low power open narrowcasting services**

Subsection 4.8(1) provides that a licensee who operates a narrowcasting service station to provide an LPON service is subject to the following conditions:

* the licensee must only operate the station to provide a LPON;
* the maximum transmitter power of the station must not exceed 1 watt in a residential area; and
* the maximum transmitter power of the station must not exceed 10 watts in a non-residential area.

The terms *residential area* and *non-residential area* are defined in section 1.4 of the Determination.

**Section 4.9 Low power open narrowcasting services – field strength in a residential area**

Section 4.9 imposes a condition that a narrowcasting service station operated to provide an LPON service must not exceed a maximum field strength specified for the operation of the station in residential areas.

**Section 4.10 Low power open narrowcasting services – field strength in a non-residential area**

Section 4.10 imposes a condition that a narrowcasting service station operated to provide an LPON service must not exceed a maximum field strength specified for the operation of the station in non-residential areas.

**Section 4.11 Certain low power open narrowcasting services – other conditions**

The licence conditions set out in section 4.11 for LPON services are in accordance with the requirements of the Minister’s LPON Direction.

Subsection (1) provides that the conditions set out in section 4.11 apply to licences that authorise the operation of a narrowcasting services station used to provide an LPON service, operating within the frequency range 87.5 to 88.0 MHz (inclusive). The licensee must:

* commence the service within 6 months beginning on the day the licence is issued (unless the licence was issued through a renewal under section 130 of the Act) unless there is a reasonable excuse for not commencing the service;
* once the LPON service has commenced, provide the service with reasonable regularity for the duration of the licence; and
* maintain records of the commencement of service, hours of operation and service provision.

Subsection (2) provides that the ACMA may extend the 6 month period for commencement of an LPON service if, in its opinion, there is a valid reason for delay in the licensee complying with the requirement. Subsection (3) sets out following circumstances which do not constitute a valid reason for delay:

* the licence was obtained within the 6 month period mentioned in subsection (1) pursuant to a transfer from a relative or associate of the licensee;
* financial reasons;
* the licence is subject to an arrangement contingent on the disposal of another licence held by the licensee.

Subsection 8(3) of the LPON Direction provides that this list of reasons is not exhaustive and that there may be other reasons that do not constitute valid reasons for delay.

Subsection (4) defines the terms *associate*, *related body corporate*, *relative* and *spouse* for the purpose of section 4.11.

**Part 5 – Conditions for broadcasting licence (narrowband area service)**

**Section 5.1 Conditions**

Subsection (1) provides that every broadcasting licence (narrowband area service) is subject to the conditions in Part 5 relating to the operation of any NAS station under the licence. These licences authorise the use of a narrowband area service station for the provision of a service to at least four narrowband area receivers, outside the broadcasting services bands. Subsection (2) provides that the conditions imposed by Part 5 on these licences are in addition to the conditions in Part 2.

**Section 5.2 Narrowband area services operating in the frequency band 1606.5 kHz to 1705 kHz**

Section 5.2 provides that a licensee who operates a NAS station in the frequency band 1606.5 kHz to 1705 kHz (MF NAS frequency band) must not cause harmful interference to the reception of broadcasting transmissions in the adjacent AM band (526.5 to 1606.5 kHz).

**Section 5.3 Narrowband area services operating in the frequency band 1606.5 kHz to 1705 kHz – commercial broadcasting service**

This section contains the conditions that were imposed by the 1998 Determination as a result of the first MF NAS Direction.

Subsection (1) provides that, subject to section 5.4, a licensee that operates a NAS station on a frequency within the MF NAS frequency band must not operate the station to provide a commercial broadcasting service unless:

* the licence that authorised the station was issued under section 100 of the Act before 6 November 2002, or issued as a result of the renewal of such a licence under section 130 of the Act;
* the relevant commercial radio broadcasting licence, allocated under section 40 of the BSA, was allocated before 6 November 2002;
* the commercial broadcasting service commenced before 29 August 2004; and
* the station is located within 10km of its location on 6 November 2002 (the old location) or at another location that is more than 10km from the old location and specified in a licence issued by the ACMA in accordance with subsection (2A).

Subsection (2) provides that the licensee must provide evidence as required by the ACMA that the commercial broadcasting service commenced before 29 August 2004.

Subsection (2A) provides that the ACMA may specify a new location in a licence if the ACMA is satisfied that:

* transmissions from the new location would provide a service that would reach substantially the same audience that the service was intended to reach from the old location; and
* transmissions from the new location would not cause significant interference with existing radiocommunications services.

Subsection (3) sets out definitions for the terms *commercial licence* and *location* used in section 5.3.

**Section 5.4 Narrowband area services operating in the frequency band 1606.5 kHz to 1705 kHz – commercial broadcasting service under subsequent licence**

This section contains the conditions that were imposed by the 1998 Determination as a result of the second MF NAS Direction.

Subsection (1) provides that section 5.4 applies to a licensee if all of the following circumstances exist:

* the licensee holds a broadcasting licence (narrowband area service) that was issued by the ACMA under section 100 of the Act, or as a result of the renewal of such a licence under section 130 of the Act;
* the licensee operated a NAS station on a frequency in the MF NAS frequency band to provide a commercial broadcasting service in accordance with section 5.3 of the Determination (or with section 5.3 of the 1998 Determination (the former section));
* the licence which was used to provide a service in accordance with either section 5.3 or the former section (the former licence) expired, and the licensee did not apply for renewal of the former licence.

Subsection (2) provides that the licensee may operate the station, under a new licence issued to the licensee, to provide a commercial broadcasting service if the following conditions are met:

* the operation of the NAS station is only authorised to operate on:
	+ the same frequency in the MF NAS frequency band as the former licence; or
	+ a new frequency in the MF NAS band specified in the licence by the ACMA;
* the related commercial licence that authorises the commercial broadcasting service was allocated before 6 November 2002;
* the licensee provides any evidence required by the ACMA relating to whether the circumstances set out in subsection 5.4 (1) apply;
* the station is located within 10km of its location on 6 November 2002 (the old location) or at another location specified by the ACMA. The ACMA may specify another location if it is satisfied that:
	+ transmissions from the new location would provide a service that would reach substantially the same audience that the service was intended to reach from the old location; and
	+ transmissions from the new location would not cause significant interference with existing radiocommunications services;
* if the licensee intends to operate a NAS station to provide a commercial broadcasting service, the licensee must give notice in writing of that intention to the ACMA at least 14 days before operating the NAS station for that purpose.

Subsection (3) sets out definitions of the terms *commercial licence* and *location* for the purpose of section 5.4.

**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 (Broadcasting 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 (Broadcasting Licence) Determination 2015* (the Determination) revokes and replaces the *Radiocommunications Licence Conditions (Broadcasting Licence) Determination No. 1 of 1998* without making any significant changes to the regulatory arrangements created by that instrument.

The Determination is intended to set licence conditions on apparatus licences, issued under section 100 of the Act, that authorise the operation of certain broadcasting stations. The Determination applies to national broadcasting services, to open and subscription narrowcasting services provided in the broadcasting services bands (BSBs), and to certain services provided outside the BSBs. Conditions relate to such matters as interference mitigation, technical specifications of transmitters, procedures to be followed when commencing services, and conditions about the provision of certain services outside of the BSBs.

**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.