

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications (Emergency Locating Devices) Class Licence 2016

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Emergency Locating Devices) Class Licence 2016 (the instrument)* under subsection 132(1) of the *Radiocommunications Act (the Act)* and subsection 33(3) of the *Acts Interpretation Act 1901 (the AIA)*.

Subsection 132(1) of the Act provides that the ACMA may, by legislative instrument, issue Class Licences.

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.

Purpose and operation of the instrument

The instrument authorises the operation of a range of emergency locating devices that are categorised as satellite distress beacons, EPIRB-AIS or locating aids.

The instrument revokes and replaces the *Radiocommunications (Emergency Locating Devices) Class Licence 2006 (the 2006 Class Licence)* without making any significant changes to the regulatory arrangements created by the 2006 Class Licence.

The ACMA has made the instrument because the 2006 Class Licence was due to 'sunset' (i.e. be automatically repealed) on 1 October 2016, in accordance with Part 4 of Chapter 3 of the *Legislation Act 2003 (the LA)*. Following review, and consultation as described below, the ACMA formed the view that the 2006 Class Licence was operating effectively and efficiently, and continued to form a necessary and useful part of the legislative framework. Accordingly, the ACMA has remade the 2006 Class Licence by making the instrument, without any significant changes, so that its ongoing effect is preserved.

A person is authorised by the instrument to operate a Maritime Survivor Locating System (MSLS), AIS-SART¹, EPIRB-AIS², Radar-SART³ or satellite distress beacon for the purpose of search and rescue operations in the frequencies listed in sections 7, 8 and 9 of the instrument. However, a device must only be operated to activate an emergency signal in response to a distress situation. The device must comply with applicable standards made under section 162 of the Act that were in force on the day that the device was manufactured, imported or materially altered or modified.

A provision-by-provision description of the instrument is set out in **Attachment A**.

The instrument is a legislative instrument for the purposes of the LA.

¹ An AIS-SART is an Automatic Identification System (AIS) that is used for search and rescue purposes, and which complies with International Standard IEC 61097-14 *Global maritime distress and safety system (GMDSS) - Part 14: AIS search and rescue transmitter (AIS-SART) – Operational and performance requirements, methods of testing and required test results*, if published.

² An EPIRB-AIS is a 406 MHz distress alerting device that contains an additional AIS transmitter using AIS-SART technology where the AIS component is used as an aid in locating the EPIRB-AIS.

³ A Radar-SART is a transponder that transmits a radar locating signal on the 9 GHz band.

Documents incorporated by reference

The following Acts, legislative instruments and other instruments are incorporated by reference or otherwise mentioned in the instrument:

- the *Radiocommunications Act 1992*;
- the *Acts Interpretation Act 1901*;
- the *Legislation Act 2003*;
- the *Radiocommunications (Interpretation) Determination 2015*;
- the *Radiocommunications (Aircraft and Aeronautical Mobile Stations) Class Licence 2016*;
- AS/NZS 4280.1:2003, *406 MHz satellite distress beacons Part 1: Marine emergency position-indicating radio beacons (EPIRB) (IEC 61097-2:2002, MOD)*;
- AS/NZS 4280.2:2003, *406 MHz satellite distress beacons Part 2: Personal locator beacons (PLBs)*;
- AS/NZS 4869.1:2006 (R2015) *Maritime Survivor Locating Systems (MSLS) – Operating on 121.5 MHz*;
- AS/NZS 4869.2:2010 *Stand alone maritime survivor locating systems (MSLS) – Operating on frequencies other than 121.5 MHz*;
- AS/NZS 4869.3:2015 *Maritime survivor locating systems (MSLS) – Maritime survivor locating devices (MSLD) – Operating on frequencies of 156.575 MHz and/or 161.975 MHz/162.025 MHz (RTCM 11901.1:2012, MOD)*;
- AS/NZS 4869.4:2015 *Maritime survivor locating systems (MSLS) – Maritime low power personal locating devices employing Automatic Identification System*; and
- the *Radio Regulations Articles*, published by the International Telecommunication Union.

The Commonwealth Acts and the legislative instruments referenced in the Determination can be found on the Australian Government's Federal Register of Legislation website at <http://www.legislation.gov.au>.

References to Acts and legislative instruments are to the Act or legislative instrument as in force from time to time in accordance with section 10 of the AIA, subsection 13(1) of the LA and section 314A of the Act. Acts and legislative instruments are accessible at the Federal Register of Legislation (www.legislation.gov.au).

AS/NZS refers to Australian Standards and New Zealand Standards, published by Standards Australia International, as in force from time to time. The standards listed above can be obtained from SAI Global's website (<http://infostore.saiglobal.com/store/>) or can otherwise be made available for public viewing on request in an ACMA office, subject to licensing conditions.

The *Radio Regulations Articles*, published by the International Telecommunication Union (ITU), can be found on the ITU's website at www.itu.int.

Consultation

Before making the instrument, the ACMA was satisfied that consultation was undertaken to the extent appropriate and reasonably practicable in accordance with section 17 of the LA.

From 4 May to 10 July 2016 the ACMA conducted public consultation on the making of the instrument. The ACMA published a draft version of the instrument and a consultation paper on its website, and alerted maritime and emergency services bodies of the consultation. The Australian Maritime Safety Authority (AMSA) was consulted directly on various issues related to the instrument.

Regulatory impact assessment

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

As the ACMA has determined that the 2006 Class Licence 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 instrument (OBPR reference number ID 20742).

Statement of compatibility with human rights

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires the rule-maker in relation to a legislative instrument to which section 42 (disallowance) of the LA applies to cause a statement of compatibility to be prepared in respect of that legislative instrument.

The statement of compatibility set out below has been prepared to meet that requirement.

Overview of the instrument

The ACMA has made the *Radiocommunications (Emergency Locating Devices) Class Licence 2016* to establish regulatory arrangements for the use of emergency locating devices.

A person is authorised by the instrument to operate a maritime survivor locating system (MSLS), transponder using Automatic Identification System (AIS-SART) or radar (Radar-SART), 406 MHz distress alerting device using AIS (EPIRB-AIS) or satellite distress beacon for the purpose of search and rescue operations on the frequencies listed in the instrument. However, the device must only be operated to activate an emergency signal in response to a distress situation. The device must comply with applicable standards made under section 162 of the Act that were in force on the day that the device was manufactured, imported or materially altered or modified.

Human rights implications

The ACMA has assessed whether the instrument is compatible with human rights, being the rights and freedoms recognised or declared by the international instruments listed in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* as they apply to Australia.

Having considered the likely impact of the instrument and the nature of the applicable rights and freedoms, the ACMA has formed the view that the instrument does not engage any of those rights or freedoms.

Conclusion

The instrument is compatible with human rights as it does not raise any human rights issues.

Notes to the *Radiocommunications (Emergency Locating Devices) Class Licence 2016*

Section 1 Name of Class Licence

Section 1 provides for the citation of the instrument as the *Radiocommunications (Emergency Locating Devices) Class Licence 2016*.

Section 2 Commencement

The instrument commences on the day after it is registered.

Section 3 Revocation

Section 3 revokes the 2006 Class Licence.

Section 4 Purpose of Class Licence

Section 4 provides that the purpose of the instrument is to authorise the emergency locating devices known as satellite distress beacons, EPIRB-AIS and locating aids.

Section 5 Definitions and Interpretation

Section 5 defines various terms that are used in the instrument, including MSLS, satellite distress beacon, AIS-SART, EPIRB-AIS and Radar-SART. The instrument also defines terms by reference to the *Radiocommunications (Interpretation) Determination 2015*, which is accessible at www.legislation.gov.au.

Section 6 Application of Class Licence

Subsection 6(1) authorises a person to operate radiocommunications devices of a kind mentioned in subsection 2 for the purpose of search and rescue operations.

Subsection 6(2) provides that the instrument applies to satellite distress beacons (other than EPIRBs on aircraft that are authorised under the *Radiocommunications (Aircraft and Aeronautical Mobile Stations) Class Licence 2016*), EPIRB-AIS, MSLS, AIS-SART and Radar-SART.

Subsection 6(3) limits the application of the instrument to radiocommunications devices that are not authorised by apparatus licences which authorise devices for search and rescue operations.

Section 7 Class Licence — satellite distress beacon

Subsection 7(1) authorises a person to operate a satellite distress beacon if the person meets either or both of the requirements mentioned in subsections 7(2) and 7(3).

Subsection 7(2) applies if the person operates a satellite distress beacon for the purpose of transmitting to the COSPA-SARSAT System in the frequency range of 406 – 406.1 MHz.

Subsection 7(3) applies if the person operates a satellite distress beacon on the frequency of 121.5 MHz or 243 MHz for the purpose of transmitting a homing signal.

Section 8 Class Licence — EPIRB-AIS

Subsection 8(1) authorises a person to operate an EPIRB-AIS if the person meets one or all of the requirements mentioned in subsections 8(2), 8(3) or 8(4).

Subsection 8(2) requires that the person operates the EPIRB-AIS for the purpose of transmitting to the COSPAS-SARSAT system in the frequency range of 406 – 406.1 MHz.

Subsection 8(3) requires that the person operates an EPIRB-AIS for the purpose of transmitting a homing signal on the frequency of 121.5 MHz or 243 MHz.

Subsection 8(4) requires that the person operates the EPIRB-AIS on the frequencies 161.975 MHz or 162.025 MHz.

Section 9 Class Licence — locating aid

Subsection 9(1) authorises the operation of a MSLS on the frequencies 121.5 MHz, 156.525 MHz, 156.8 MHz, 161.975 MHz or 162.025 MHz.

Subsection 9(2) authorises the operation of an AIS-SART on the frequencies 161.975 MHz or 162.025 MHz.

Subsection 9(3) authorises the use of a Radar-SART on a frequency within the range 9200-9500 MHz.

Section 10 Condition — distress situation

Subsection 10(1) limits the operation of a satellite distress beacon, EPIRB-AIS, MSLS, AIS-SART or Radar-SART to the activation of an emergency signal in response to a distress situation.

Subsection 10(2) defines a distress situation as one in which there is risk of imminent or grave danger of injury to, or death of, a person; and the person requires immediate assistance.

Section 11 Condition — standards

Section 11 provides that a device operated under the instrument must comply with applicable standards made under section 162 of the Act that were in force on the day that the device was manufactured, imported or materially altered or modified.