

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications Licence Conditions (Apparatus Licence) Amendment Determination 2019 (No. 1)

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications Licence Conditions (Apparatus Licence) Amendment Determination 2019 (No. 1)* (**the instrument**) under paragraph 107(1)(f) of the *Radiocommunications Act 1992* (**the Act**) and subsection 33(3) of the *Acts Interpretation Act 1901* (**the AIA**).

Paragraph 107(1)(f) of the Act provides that the ACMA may, by legislative instrument, determine conditions applicable to particular types of apparatus 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 ACMA has made the *Radiocommunications Licence Conditions (Apparatus Licence) Determination 2015* (**the Determination**) to apply to all transmitter licences issued under section 100 of the Act. The conditions in the Determination may also be incorporated by reference through a licence condition imposed on other licences (such as spectrum licences). The conditions imposed by Part 3 of the Determination relate to permitted communications and the exposure of the general public to electromagnetic energy (**EME**) from equipment incorporating radiocommunications transmitters.

The intent of the ACMA's EME regulatory arrangements is that all equipment incorporating radiocommunications transmitters must either comply with the requirements included in the *Radiocommunications (Electromagnetic Radiation – Human Exposure) Standard 2014* (**the ACMA Standard**) or the Determination.

Paragraph 6(2)(b) of the Determination states that Part 3 of the Determination does not apply to the operation of a mobile station that complies with the ACMA Standard. While the intent is that mobile stations that are required to comply with the ACMA Standard should be exempt from the Determination, the current wording of paragraph 6(2)(b) might be misunderstood also to exempt mobile stations that are outside the scope of the ACMA Standard from having to comply with the Determination.

The ACMA is amending paragraph 6(2)(b) of the Determination to include text that makes it clearer that Part 3 of the Determination applies to mobile stations that are outside the scope of the ACMA Standard.

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

The instrument is a legislative instrument for the purposes of the *Legislation Act 2003* (**the LA**).

Documents incorporated by reference

The instrument inserts into the Determination a reference to the ACMA Standard, as in force from time to time, as permitted by section 314A of the Act. The ACMA Standard is a legislative instrument

and may be obtained free of charge from the Federal Register of Legislation (<http://www.legislation.gov.au>).

Consultation

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

The ACMA conducted a public consultation process in relation to the proposal to make the instrument during the period 14 August 2019 to 13 September 2019. A draft instrument with explanatory information was made available on the ACMA website. Interested parties were notified of the release of the draft instrument and invited to comment.

The ACMA received six submissions in response to the consultation. All submissions expressed support for the proposed amendments.

Regulatory impact assessment

A preliminary assessment of the proposal to make the instrument was conducted by the Office of Best Practice Regulation (**OBPR**), based on information provided by the ACMA, for the purposes of determining whether a Regulation Impact Statement (**RIS**) would be required. OBPR advised that a RIS would not be required because the proposed regulatory change in this instrument had only a minor and machinery regulatory impact on businesses, community organisations or individuals (OBPR reference number 25198).

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 instrument amends the *Radiocommunications Licence Conditions (Apparatus Licence) Determination 2015 (the Determination)* made under paragraph 107(1)(f) of the *Radiocommunications Act 1992*. The conditions imposed by Part 3 of the Determination relate to permitted communications and the exposure of the general public to electromagnetic energy (**EME**) from equipment incorporating radiocommunications transmitters.

The intent of the ACMA's EME regulatory arrangements is that all equipment, incorporating radiocommunications transmitters, must either comply with the requirements included in the *Radiocommunications (Electromagnetic Radiation – Human Exposure) Standard 2014 (the ACMA Standard)* or the Determination.

Paragraph 6(2)(b) of the Determination states that Part 3 of the Determination does not apply to the operation of a mobile station that complies with the ACMA Standard. This instrument amends paragraph 6(2)(b) to make it clearer that mobile stations that are not covered by the ACMA Standard are required to comply with Part 3 of the Determination.

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 Licence Conditions (Apparatus Licence) Amendment Determination 2019 (No. 1)*

Section 1 Name

Section 1 provides that the instrument is the *Radiocommunications Licence Conditions (Apparatus Licence) Amendment Determination 2019 (No. 1)* (**the instrument**).

Section 2 Commencement

This section provides for the instrument to commence at the start of the day after it is registered on the Federal Register of Legislation.

The Federal Register of Legislation may be accessed free of charge at www.legislation.gov.au.

Section 3 Authority

This section identifies the provision of the Act that authorises the making of the instrument, namely paragraph 107(1)(f) of the *Radiocommunications Act 1992*.

Section 4 Amendments

This section provides that Schedule 1 amends the *Radiocommunications Licence Conditions (Apparatus Licence) Determination 2015 (the Determination)*, as set out in the applicable items in the Schedule.

Schedule 1 – Amendments

Item 1 Paragraph 6(2)(b)

This item omits the reference to the *Radiocommunications (Electromagnetic Radiation – Human Exposure) Standard 2014 (the ACMA Standard)* and substitutes it with the term ***compliant mobile station***.

Item 2 After paragraph 6(2)(b)

This item inserts a definition of ***compliant mobile station*** to mean a mobile station to which the ACMA Standard applies and that complies with the ACMA Standard. Accordingly, the conditions in Part 3 of the Determination apply to mobile stations that are outside the scope of the ACMA Standard, or are within the scope of the ACMA Standard but do not comply with the ACMA Standard.