

# EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Radiocommunications Act 1992*

## ***Radiocommunications Licence Conditions (Area-Wide Licence) Determination 2020***

### **Authority**

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications Licence Conditions (Area-Wide Licence) Determination 2020* (**the Determination**) under paragraph 107(1)(f) of the *Radiocommunications Act 1992* (**the Act**).

Paragraph 107(1)(f) of the Act provides that an apparatus licence is subject to such conditions (if any) as the ACMA may, by legislative instrument, determine in relation to that particular type of licence.

### **Purpose**

The purpose of the Determination is to determine a condition that applies to the Area-Wide Licence (**AWL**) transmitter licence type.

The ACMA has developed two new apparatus licence types, known as the area-wide and area-wide receive licence types.

These new licence types authorise the operation of one or more radiocommunications devices within a defined geographic area at a frequency or frequencies specified in the licence, subject to the conditions included in the issued licence. The licence types will be scalable, enabling their use for authorising radiocommunications devices in different-sized geographic areas and bandwidths. Unlike existing apparatus licence types—which typically align with specific uses and purposes—the area-wide licence (**AWL**) types, for both radiocommunications transmitters and radiocommunications receivers, will be capable of authorising a variety of services, uses, applications and technologies.

Under section 7 of the Determination, licensees are required to provide information relating to the location and maximum total radiated power for each area-wide station operating under the licence to the ACMA and any other person upon written request.

Exemptions apply where the information being sought is about an area-wide station that is a mobile station, or information that is already included in the Register of Radiocommunications Licences (**the Register**).

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

### **Reference to other documents**

The note to section 7 of the Determination refers to the *Radiocommunications (Register of Radiocommunications Licences) Determination 2017* (**the RRL Determination**) as in force from time to time (as permitted by section 314A of the Act). That instrument is accessible free of charge on the Federal Register of Legislation ([www.legislation.gov.au](http://www.legislation.gov.au)).

Section 143 of the Act requires the ACMA to establish and keep the Register. Section 10 of the RRL Determination provides that the Register relating to apparatus licences must contain the details set out in that section about each apparatus licence and the devices operated under the licence.

## Consultation

Subsection 17(1) of the LA requires that before a rule-maker makes a legislative instrument, it must be satisfied that any consultation it considers appropriate and reasonably practicable has been undertaken. Before making the Determination, the ACMA was satisfied that consultation was undertaken to the extent appropriate and reasonably practicable.

On 9 June 2019, the ACMA published the *Proposed Area-Wide Apparatus Licence* consultation paper (**the consultation paper**) and a draft Determination, as well as a draft *Radiocommunications Legislation (2019 Measures No.1) Instrument 2019 (Measures Instrument)* on its website. The consultation paper invited comments on the proposed AWL types and the Determination that would facilitate them.

The ACMA received submissions from 19 submitters. Submitters included members of industry, industry peak bodies, and government agencies.

The consultation paper stated that where the ACMA proposes to use AWLs in a particular band, it expects to consult on additional regulatory changes and administrative documents. These would include draft variations to the Determination to give effect to band-specific schedules. The consultation paper noted that the schedules will likely contain conditions that are specific to AWLs issued in a particular band (for example, technical conditions that vary with the frequency band in which the licence is located). The consultation paper outlined the scope of that type of consultation, including technical arrangements and pricing. The ACMA also proposes to publish an implementation paper setting out its approach to introducing AWLs in a specific band (**Area-wide licensing: ACMA approach to introducing Area Wide Licences**).

Some submitters raised concerns about interference management and resolution. One concern related to the request for information condition in section 7 of the Determination and the process for requesting and maintaining the information about area-wide stations. One submitter queried why mobile stations are exempted. Another suggested that the amount of information that can be requested is not adequate and of the information that can be requested it is not clear what the requisite level of detail is. One submitter acknowledged that while the information provision will ‘aid in the management and resolution of interference issues’, it ‘is unlikely to provide the same degree of legal certainty that the ACMA’s register provides’, and there is a risk that if licensees ask information of each other this will slow down resolution processes.

The ACMA formed the view that the information provision arrangements in the draft Determination are adequate. The information provision provides another means for managing and resolving interference issues in addition to the technical analysis that will be done each time AWLs are rolled out in a band.<sup>1</sup> Regarding the exemption of mobile stations from the information provision, it is not practical to provide location details for radiocommunications devices that are portable. In terms of interference, mobile devices are also generally low-risk devices.

Another concern related to the proposed amendments to RRL Determination in the Measures Instrument, which would amend the Register so that licensees are only required to include details about devices authorised under an AWL if a condition applies to the licence that requires the device(s)

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<sup>1</sup> The existing *Radiocommunications Licence Conditions (Apparatus Licence) Determination 2015* will also apply to AWLs. That instrument imposes conditions dealing with matters such as electromagnetic radiation requirements and record-keeping rules.

to be registered. The key reason for reducing device registration requirements is because AWLs will authorise access within a defined frequency range and geographic area, and will include conditions at the frequency and area boundaries to manage interference, so there is a reduced requirement for full device registration in comparison to other site-based apparatus licence types.

If, when considering the implementation of AWLs in a particular band, the ACMA identifies that it would be desirable for information about area-wide stations to be widely available without the need to directly approach a licensee, the ACMA may consider whether to vary the Determination such that the relevant band-specific schedule requires the registration of relevant radiocommunications transmitters.

The ACMA considered all relevant issues raised by the submissions when making the Determination.

### **Regulatory impact**

The ACMA consulted with the Office of Best Practice Regulation (the OBPR) on the requirement for a Regulation Impact Statement (RIS). The OBPR advised that the proposed Determination and Measures Instrument do not appear to have a more than minor regulatory impact on business, community organisations or individuals and a RIS is not required.

The reference number for the OBPR's assessment is 25196.

### **Detailed description of the Determination**

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

### **Statement of compatibility with human rights**

The ACMA has assessed whether the Determination 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 Determination and the nature of the applicable rights and freedoms, the ACMA has formed the view that the Determination does not engage any of those rights or freedoms.

### **Conclusion**

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

## **Attachment A**

### **Notes to the *Radiocommunications Licence Conditions (Area-Wide Licence) Determination 2020***

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

This section provides for the Determination to be cited as the *Radiocommunications Licence Conditions (Area-Wide Licence) Determination 2020*.

#### **Section 2 Commencement**

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

#### **Section 3 Authority**

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

#### **Section 4 Scope**

Section 4 provides that area-wide licences are subject to the condition set out in section 7 of the Determination.

This section also explains that if a condition specified in the licence is inconsistent with the Determination, the condition specified in the licence applies.

#### **Section 5 Interpretation**

Section 5 defines the terms used in the Determination.

#### **Section 6 Condition**

Section 6 imposes the condition in section 7 on area-wide licences that authorise the use of area-wide stations.

#### **Section 7 Location of area-wide stations**

This section imposes a condition on every area-wide licence that licensees are required to provide information about the location of their area-wide stations and their maximum total radiated power to the ACMA or other persons who make a written request for such information. A licensee is not obliged to provide information about an area-wide station that is a mobile station (as defined in the *Radiocommunications (Interpretation) Determination 2015*) or where the information is publicly available on the Register of Radiocommunications Licences maintained by the ACMA (in accordance with the *Radiocommunications (Register of Radiocommunications Licences) Determination 2017*).