

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications Licence Conditions (Amateur Licence) Omnibus Amendment Instrument 2020 (No. 1)

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications Licence Conditions (Amateur Licence) Omnibus Amendment Instrument 2020 (No. 1)* (**the Amendment Instrument**) under paragraph 107(1)(f) and subsection 132(1) 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 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 apparatus licence.

Subsection 132(1) of the Act provides that the ACMA may, by legislative instrument, issue class licences. A class licence authorises any person to operate a radiocommunications device of a specified kind or for a specified purpose.

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 purpose of the Amendment Instrument is to amend or vary the following instruments:

- *Radiocommunications Licence Conditions (Amateur Licence) Determination 2015* (**the Amateur LCD**), which applies common licence conditions to be observed by licensees authorised to operate an amateur station under an apparatus licence;
- *Radiocommunications (Overseas Amateurs Visiting Australia) Class Licence 2015* (**the Overseas Class Licence**), which authorises visiting overseas qualified persons to operate amateur stations and applies common conditions to the operation of these stations.

It is a general requirement of the Act that the operation of all radiocommunications devices within Australia be authorised by a licence. Apparatus licences and class licences are two types of licence available to authorise the operation of radiocommunications devices. Apparatus licences are issued to licensees, and are subject to statutory conditions, conditions imposed by legislative instruments made under paragraph 107(1)(f), and conditions included in the licence. Amateur licences are a type of apparatus licence and are subject to the conditions imposed by the Amateur LCD. Class licences are an effective and efficient means of spectrum management for services where a limited set of common frequencies are employed, and equipment is operated under a common set of conditions. A class licence is not issued to a particular user and does not involve the payment of charges or taxes. The Overseas Class Licence authorises the operation in Australia of radiocommunications devices by amateur users visiting from outside Australia for a period of up to 90 continuous days from entry into Australia.

The Amateur LCD and Overseas Class Licence permit amateur licensees with advanced qualifications, and their overseas equivalents, to operate in parts of the 3.400-3.575 GHz band, subject

to geographic limitations specified in both instruments. The changes made by the Amendment Instrument were identified as preliminary steps to facilitate the ACMA's preferred planning option for optimisation of the 3.400–3.575 GHz band. Specifically, the changes will:

- enable use of the 3.4925–3.510 GHz band by amateur licensees with advanced qualifications and overseas equivalents in some regional areas;
- prohibit use by amateur licensees with advanced qualifications and overseas equivalents of the following frequencies and areas:
 - the 3.400–3.425 GHz frequency range in specified metropolitan areas, regional areas and major regional centres;
 - the 3.425–3.4425 GHz frequency range in specified regional areas;
 - the 3.4925–3.510 GHz frequency range in specified metropolitan areas;
 - the 3.510–3.5425 GHz frequency range in specified areas.

Amateur licensees with advanced qualifications may continue to use the 3.400–3.575 GHz band outside areas under consideration for spectrum licensing. If the relevant spectrum is ultimately not designated for spectrum licensing under section 36 of the Act, the ACMA will consider further amendments to the Amateur LCD and the Overseas Class Licence that may allow amateur use of the relevant spectrum.

The Amendment Instrument also replaces tables in the relevant schedules of both instruments that designate areas for operating an amateur station, and where such operation is prohibited in the 3.300–3.600 GHz band. The new tables use the Hierarchical Cell Identification Scheme (**HCIS**), which simplifies how geographic areas are described by removing the need to reference complex coordinate sets to describe geographic areas as was previously used. This approach is consistent with other ACMA instruments.

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

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

Documents incorporated by reference

The Amendment Instrument inserts references to the HCIS into the Amateur LCD and the Overseas Class Licence. The HCIS is contained in the *Australian Spectrum Map Grid 2012*. As specified in the definition of **ASMG** in section 3 of each of the Amateur LCD and the Overseas Class Licence, the *Australian Spectrum Map Grid 2012* is incorporated as existing from time to time, as permitted by section 314A of the Act. The *Australian Spectrum Map Grid 2012* is available, free of charge, from the ACMA's website (www.acma.gov.au).

Consultation

Before the Amendment 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.

Section 136 of the Act requires that a notice setting out particular details of the variation of the Overseas Class Licence be published on the ACMA's website, and in one or more other forms that are readily accessible by the public. The notice must allow for a period of at least one month to be provided for public comment. Paragraph 136(1A)(b) of the Act also requires consultation with spectrum licensees if their licences would be affected by the variation of the Overseas Class Licence.

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On 29 January 2020, the ACMA published a written notice under section 136 of the Act about the proposed variation to the Overseas Class Licence on its website and in the Government Notices Gazette.

On 29 January 2020, the ACMA also published a consultation paper and draft of the Amendment Instrument on its website. The consultation paper invited comments on the proposed changes to the Amateur LCD and Overseas Class Licence reflected in the draft Amendment Instrument. The proposed changes would have the effect of removing amateur operators' access to relevant parts of the spectrum in the 3.400–3.575 GHz band, in certain areas, to facilitate the ACMA's preferred planning option for the band.

The ACMA amended the consultation documents on 20 February 2020 to reflect that enabling use by advanced amateur licensees and overseas equivalents in the 3.4925–3.510 GHz band did not include the regional areas of Bendigo, Ballarat and Toowoomba, which had been included in error. A new written notice made under section 136 of the Act was published on the ACMA website and in the Government Notices Gazette. The deadline of the consultation was also extended to 20 March 2020.

The ACMA received two submissions, from Optus and Inmarsat. One submission was supportive of the proposed changes to amateur access in the 3.500–3.575 GHz band as a means of facilitating further planning changes to the band. The other submission did not comment on its support of the proposed changes but did note the importance of ensuring ongoing protection of fixed-satellite service links operating in the Earth Station Protection Zones from amateur stations.

The ACMA considered all relevant issues raised when making the Amendment Instrument. The matters raised in the submissions did not result in any changes to the Amendment Instrument being made.

Regulatory impact assessment

The ACMA consulted with the Office of Best Practice Regulation (**the OBPR**) on the requirement of a Regulation Impact Statement (**RIS**) for the overall defragmentation and optimisation of the 3.400–3.575 GHz band. The OBPR advised that the defragmentation process would give rise to a regulatory change with medium or significant impact. The reference number for the OBPR's assessment for the proposed changes to enable the optimisation of arrangements in the 3.400–3.575 GHz band is OBPR ID 25773.

The ACMA subsequently conducted an independent review that involved a process and analysis equivalent to a RIS, which has been submitted to the OBPR.

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 with human rights to be prepared in respect of that legislative instrument.

The statement of compatibility set out in **Attachment B** has been prepared to meet that requirement.

Notes to the *Radiocommunications Licence (Amateur Licence) Omnibus Amendment Instrument 2020 (No.1)*

Section 1 Name

This section provides for the Amendment Instrument to be cited as the *Radiocommunications Licence (Amateur Licence) Omnibus Amendment Instrument 2020 (No.1)*.

Section 2 Commencement

This section provides for the Amendment Instrument to commence at the start of the day after the day 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 provisions of the Act that authorise the making of the Amendment Instrument, namely paragraph 107(1)(f) and subsection 132(1).

Section 4 Amendments – *Radiocommunications Licence Conditions (Amateur Licence) Determination 2015* [F2015L01113]

This section identifies that the *Radiocommunications Licence Conditions (Amateur Licence) Determination 2015*, specified in Schedule 1, is amended as set out in the items in that Schedule.

Section 5 Amendments – *Radiocommunications (Overseas Amateurs Visiting Australia) Class Licence 2015* [F2015L01114]

This section identifies that the *Radiocommunications (Overseas Amateurs Visiting Australia) Class Licence 2015*, specified in Schedule 2, is amended as set out in the items in that Schedule.

Schedule 1 – Amendments

***Radiocommunications Licence Conditions (Amateur Licence) Determination 2015* [F2015L01113]**

Item 1

Item 1 amends subsection 3(1) of the Amateur LCD to repeal definitions of the following terms: **3.6 GHz band**, **Adelaide and Eastern Metropolitan Australia designated areas**, **ASMG block** (including the note), **ASMG cell** (including the note), **Perth designated area**, and **Regional Australia designated area**. This change has the effect of repealing definitions that are no longer used within the Amateur LCD.

Item 2

This item inserts a note after section 13 of the Amateur LCD that relates to the geographic areas and frequencies that amateur advanced stations must not be operated in. The note advises that, despite the authorisation granted by section 13 and Schedule 2 to operate an amateur advanced station, section 15A restricts amateur advanced stations from being operated in the frequencies and areas set out in Schedule 5.

Items 3 and 4

Sections 15AA, 15A 15B and 15E of the Amateur LCD have been repealed by these items, and replaced with a new section 15A. The new section sets out the restrictions on the frequencies and the corresponding areas in which a licensee may operate an amateur advanced station.

Section 15AA had restricted operation of an amateur advanced station in the frequency bands 3.400–3.425 GHz or 3.4925–2.5425 GHz in an ASMG block specified in Schedule 4A to the Amateur LCD if a Public Mobile Telecommunications Service Class B licence authorised the use of a transmitter in that block. Section 15A had restricted operation of an amateur advanced station in the frequency bands 3.425–3.4425 GHz or 3.475–3.4925 GHz in the geographic areas described in Schedule 5. Section 15B had restricted operation of an amateur advanced station in the frequency bands 3.4425–3.475 GHz or 3.5425–3.575 GHz in the geographic areas described in Schedule 6. Section 15E had restricted operation of an amateur advanced station in the 3.6 GHz band within the areas specified in Schedule 7.

The new section 15A consolidates the above restrictions into one condition and restricts licensees from operating an amateur advanced station on a frequency mentioned in column 1 of Schedule 5 in the corresponding area described by HCIS markers in column 2 of Schedule 5.

Item 5

The table in Part 1 of Schedule 2 to the Amateur LCD describes the permitted frequencies for the operation of an amateur advanced station using specified emission modes. The table has been updated with changes that simplify the range of permitted frequencies between 3.300–3.600 GHz listed in the table to 3.300–3.400 GHz and 3.400–3.600 GHz.

Items 6, 7, 8 and 9

These items repeal notes 2, 3, 4 and 7 after Part 1 of Schedule 2 to the Amateur LCD, which advised that operation of an amateur advanced station in specified frequencies between 3.400–3.600 GHz was subject to limitations mentioned in sections 15AA, 15A, 15B and 15E, respectively. These sections have been repealed.

A new note 2 has been inserted after Part 1 of Schedule 2, which advises that operation of an amateur advanced station in the band 3.400–3.600 GHz is subject to the limitation mentioned in the new section 15A.

Item 10

This item repeals Schedules 4A, 5, 6 and 7 to the Amateur LCD, which identified, for the purposes of sections 15AA, 15A, 15B, and 15E of the Amateur LCD, the geographic areas where operation of an amateur advanced stations on the corresponding frequencies was prohibited. The item also inserts a new Schedule 5 which describes the geographic areas and corresponding frequency bands where operation of an amateur advanced station is prohibited for the purposes of the new section 15A. The new Schedule 5 incorporates previously prohibited areas into a single schedule, but also prohibits operation of an amateur advanced station in parts of the 3.400–3.575 GHz bands in certain areas. The areas are described by reference to HCIS identifiers.

Schedule 2 – Amendments

Radiocommunications (Overseas Amateurs Visiting Australia) Class Licence 2015 (F2015L01114)

Schedule 2 to the Amendment Instrument amends the Overseas Class Licence in a way similar to the way that Schedule 1 amends the Amateur LCD, so that overseas qualified amateurs are subject to the same operating restrictions and conditions as amateur licensees.

Item 1

Item 1 amends subsection 3(1) of the Overseas Class Licence to repeal definitions of the following terms: **3.6 GHz band**, **Adelaide and Eastern Metropolitan Australia designated areas**, **ASMG block** (including the note), **ASMG cell** (including the note), **Perth designated area**, and **Regional Australia designated area**. This change has the effect of repealing definitions that are no longer used in the Overseas Class Licence.

Item 2

This item inserts a note after section 20 of the Overseas Class Licence, which relates to the geographic areas and frequencies that amateur stations must not be operated in. The note advises that despite the authorisation granted by section 20 and Table 1A to operate an amateur station, section 23 restricts amateur advanced stations from being operated in frequencies and areas set out in Schedule 2.

Item 3

Table 1A at section 20 of the Overseas Class Licence describes the permitted frequencies for the operation of an amateur station using specified emission modes. The table has been updated with changes that simplify how the range of permitted frequencies between 3.300–3.600 GHz are listed.

Item 4

The note to Table 1A at section 20 of the Overseas Class Licence has been repealed and replaced with a new note. The note advises that operation of an amateur station in the band 3.400–3.600 GHz is subject to the limitation mentioned in section 23 and that operation is prohibited in relevant geographic areas set out in Schedule 2.

Items 5 and 6

These items repeal sections 22A, 23, 24 and 24AA of the Overseas Class Licence. A new section 22A has been inserted which prohibits an amateur station from being operated on a frequency in a frequency band mentioned in column 1 of Schedule 2 in an area described by the HCIS identifiers in column 2 of Schedule 2 for the corresponding item in the table.

Item 7

A note has been inserted after section 39 of the Overseas Class Licence to clarify that, despite the frequencies amateur stations are permitted to operate on under section 39 and Table 4A, the operation of an amateur station is not authorised in the frequency bands and areas set out in Schedule 2.

Item 8

This item omits the frequency ranges listed in item 2 of Table 4A at section 39 of the Overseas Class Licence that fall between 3.300–3.600 GHz. It inserts the frequency ranges 3.300–3.400 GHz and 3.400–3.600 GHz into item 2 of Table 4A to simplify how the permitted bands are presented.

Item 9

This item repeals the note to Table 4A at section 39 of the Overseas Class Licence, which advised that under section 42 of the Overseas Class Licence, operation of an amateur station in the 3.6 GHz band was subject to limitations. A new note has been inserted to advise that the operation of an amateur station is not authorised in the frequency bands and areas set out in Schedule 2.

Item 10

This item omits sections 40A, 41, 42 and 42A of the Overseas Class Licence, which restricted operation of an amateur station in specified parts of the 3.400–3.600 GHz bands and corresponding geographic areas as designated in the appropriate Schedule.

It also inserts a new section 41, which has the effect of restricting an amateur station from being operated in parts of the 3.400–3.600 GHz bands in the corresponding geographic area described by HCIS identifiers in Schedule 2 to the Overseas Class Licence.

Item 11

This item repeals Schedule 1A to the Overseas Class Licence which, for the purposes of sections 22A and 40A of the Overseas Class Licence, described the geographic areas in which operation of an amateur station was prohibited.

Item 12

This item repeals Schedule 2 to the Overseas Class Licence which, for the purposes of sections 23 and 41 of the Overseas Class Licence, described the designated geographic areas where operation of an amateur station was prohibited in parts of the 3.4 GHz band. It also inserts a new Schedule 2 which, for the purposes of sections 23 and 41, lists frequency bands in column 1 and describes corresponding geographic areas in column 2, where operation of an amateur station is prohibited. The areas are described by reference to HCIS identifiers.

Item 13

This item repeals Schedule 3 to the Overseas Class Licence which, for the purposes of sections 24 and 42 of the Overseas Class Licence, described the designated geographic areas where operation of an amateur station was prohibited in the 3.4425–3.475 GHz and 3.5425–3.575 GHz bands.

Item 14

This item repeals Schedule 6 to the Overseas Class licence which, for the purposes of sections 24AA and 42A of the Overseas Class Licence, described the designated geographic areas, and applicable dates, where operation of an amateur station was prohibited in the 3.6 GHz band.

Statement of compatibility with human rights

Prepared by the Australian Communications and Media Authority under subsection 9(1) of the
Human Rights (Parliamentary Scrutiny) Act 2011

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Overview of the instrument

The purpose of the *Radiocommunications Licence (Amateur Licence) Omnibus Amendment Instrument 2020 (No. 1)* (the **Amendment Instrument**) is to amend the following instruments:

- *Radiocommunications Licence Conditions (Amateur Licence) Determination 2015* (the **Amateur LCD**), which applies common licence conditions to be observed by licensees authorised to operate an amateur station under an apparatus licence;
- *Radiocommunications (Overseas Amateurs Visiting Australia) Class Licence 2015* (the **Overseas Class Licence**), which authorises visiting overseas qualified persons to operate amateur stations and applies common conditions to the operation of these stations.

The effects of the changes made by the Amendment Instrument are to:

- allow amateur licensees with advanced level qualifications to use 3.4925 GHz – 3.510 GHz in some regional areas;
- prohibit amateur licensees with advanced level qualifications from using the following frequency ranges:
 - 3.400–3.425 GHz in specified metropolitan areas, regional areas and major regional centres
 - 3.425–3.4425 GHz in specified regional areas;
 - 3.4925–3.510 GHz in specified metropolitan areas;
 - 3.510–3.5425 GHz in specified areas;
- update the Overseas Class Licence conditions relating to the operation of amateur stations so that they are consistent with the amended Amateur LCD;
- simplify and make consistent the way the Amateur LCD and Overseas Class Licence describe geographic areas.

The changes to amateur licence conditions made by the Amendment Instrument are consistent with Australia's obligations under the International Telecommunication Union Radio Regulations. The changes will simplify the amateur licensing regime, remove some frequency ranges from amateur use, and clarify how restrictions on operation of an amateur station are described.

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 engages the right to freedom of expression. Amateur radio licensing allows individuals to exercise the right to freedom of expression through the operation of amateur radio stations. The Amendment Instrument maintains the ability of amateur licensees to exercise this right, albeit by the use of an amended set of authorised frequencies,

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while at the same time balancing the need to regulate access to spectrum for these purposes to ensure that other spectrum users' rights are respected and optimised.

Conclusion

The instrument is compatible with human rights because it promotes the right to freedom of expression by maintaining the ability of amateur licensees to exercise their right to freedom of expression through the operation of amateur stations on authorised parts of the radiofrequency spectrum.