

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications Licence Conditions (Fixed Licence) Amendment Determination 2020 (No.1)

Radiocommunications Act 1992

The Australian Communications and Media Authority (ACMA) has made the *Radiocommunications Licence Conditions (Fixed Licence) Amendment Determination 2020 (No.1)* (the **Amendment Instrument**) under paragraph 107(1)(f) of the *Radiocommunications Act 1992* (the **Act**) and in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the **AIA**).

Paragraph 107(1)(f) of the Act provides that the ACMA may determine, by written instrument, conditions that apply in relation to a particular type of apparatus licence.

Subsection 33(3) of the AIA provides that where an Act confers a power to make a legislative instrument, the power shall be construed to include 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 Amendment Instrument is a legislative instrument for the purposes of the *Legislation Act 2003* (the **LA**).

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

Purpose and operation of the instrument

The purpose of the Amendment Instrument is to amend the *Radiocommunications Licence Conditions (Fixed Licence) Determination 2015* (the **LCD**).

The ACMA concluded a review of the 803-960 MHz band in 2015 with the release of the decision paper ‘The ACMA’s long-term strategy for the 803–960 MHz band’ (available here: <https://www.acma.gov.au/publications/2015-12/report/acmas-long-term-strategy-803-960-mhz-band-decision-paper>). The 803-960 MHz band review outcomes require changes to the frequency ranges allocated to different services types, including the allocations for point-to-multipoint and some point-to-point services. The Amendment Instrument updates the frequency ranges in Schedules 1 and 2 to the LCD to align with new frequency arrangements by:

- a. amending the lower edge of the frequency range of Item 3 of Schedule 1 from 820 MHz to 804 MHz; and
- b. Adding a new frequency range for point-to-multipoint remote stations (i.e. 805.5-806 MHz) to Item 1 of Schedule 2.

Background

Paragraph 107(1)(f) of the Act empowers the ACMA to determine, by written instrument, conditions that will apply to particular types of apparatus licences.

Schedule 1 of the LCD provides the minimum antenna requirements for point-to-point services operating in specific frequency ranges (including the point-to-point frequency allocations in the 803-960 MHz band), to apply where an antenna is not specified on the licence.

Schedule 2 of the LCD details the transmitter power levels for a remote station operated under a point-to-multipoint licence. Item 1 of this schedule allows remote stations which operate within defined frequency ranges (including the point-to-multipoint frequency allocation in the 803-960 MHz band) to operate with a transmitter power of up to 5 watts.

The frequency ranges in Schedules 1 and 2 to the LCD only partly align with the new frequency arrangements. That is, the new frequency ranges for point-to-multipoint and some point-to-point services are not included in Schedule 1 or 2 to the LCD.

The following updates will align the LCD with the new configuration of the 803-960 MHz band. The updates are intended to ensure that the established arrangements for point-to-point and point-to-multipoint services are expanded so as to encompass the new frequency allocations.

A typographic error with the item numbers listed in Schedule 2 to the LCD is also corrected in the Amendment Instrument.

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.

From 5 May to 8 June 2018, the ACMA publicly consulted on a draft of the Amendment Instrument as well as updates to six Radiocommunication Assignment and Licensing Instructions (RALIs) as part of the implementation of the decisions stemming from the review of the 803-960 MHz band (further information concerning that consultation process is available here: <https://www.acma.gov.au/consultations/2020-05/803-960-mhz-band-implementation-arrangements-support-milestone-3-consultation-122020>).

Three submissions were received during the public consultation period. No submissions opposed the proposed changes to the LCD.

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 a RIS would not be needed for decisions around the reconfiguration of the 803-960 MHz band. The Amendment Instrument is a machinery change that implements those decisions. The reference number for the OBPR's assessment is OBPR ID 19557.

Documents incorporated by reference

There are no documents incorporated by reference as a result of the Amendment Instrument.

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 below has been prepared to meet that requirement.

Overview of the Amendment Instrument

Paragraph 107(1)(f) of the Act provides that the ACMA may determine, by written instrument, conditions that apply in relation to a particular type of apparatus licence.

The purpose of the Amendment Instrument is to amend the *Radiocommunications Licence Conditions (Fixed Licence) Determination 2015* (the **LCD**). Those amendments expand frequency allocations for certain point-to-point and point-to-multipoint services, so as to align with new arrangements for the 803-960 MHz band.

Human Rights Implications

The ACMA has assessed whether the Amendment 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 Amendment Instrument does not engage any of those rights or freedoms.

Conclusion

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

ATTACHMENT A

Detailed description of the Amendment Instrument

Section 1 Name

This section provides for the instrument to be cited as the *Radiocommunications Licence Conditions (Fixed Licence) Amendment Determination 2020 (No.1)*.

Section 2 Commencement

This section provides that the instrument commences on 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 statutory provision 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 varies the *Radiocommunications Licence Conditions (Fixed Licence) Determination 2015*.

Schedule 1 – Amendments

Item 1 – Schedule 1 (cell at table item 3, column 2)

This item is varied to expand the applicable frequency range from 820-960 MHz to 804-960 MHz.

Item 2 – Schedule 2 (table item 1, column 2)

This item is varied to include the 805.5-806 MHz band.

Item 3 – Schedule 2 (table item 3)

This item is renumbered as item 2 to fix a typographical error.