

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunication Act 1992

Radiocommunications Licence Conditions (Area-Wide Licence) Amendment Determination 2020 (No.1)

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications Licence Conditions (Area-Wide Licence) Amendment Determination 2020 (No.1)* (**the 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 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.

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

In January 2020, the ACMA determined a new type of transmitter licence – the area-wide licence – under subsection 98(1) of the Act. At the same time, it made the *Radiocommunications Licence Conditions (Area-Wide Licence) Determination 2020* (**the Determination**). The Determination imposed a condition for the provision, upon request, of information by licensees regarding radiocommunications devices authorised under an area-wide licence (**AWL**).

At that time, the ACMA also amended the *Radiocommunications (Register of Radiocommunications Licences) Determination 2017* (**RRL Determination**) to exempt AWL licensees from certain device registration requirements, unless a licence condition requires otherwise.

The ACMA is preparing to issue AWLs in the 26 GHz (24.7–27.5 GHz) and 28 GHz (27.5–30 GHz) bands. The purpose of the instrument is to include conditions in the Determination which apply to radiocommunications devices which are authorised to operate in the 26 GHz and 28 GHz bands under an AWL.

The instrument imposes a range of technical conditions that will apply to AWLs in the 26 GHz and 28 GHz bands. These conditions are largely relevant to interference management, including conditions that will enable radiocommunications transmitters operating under an AWL to coexist with other radiocommunications devices, and conditions imposing other responsibilities and requirements for managing interference. The instrument also imposes conditions that effectively require some radiocommunications transmitters operated under AWLs to be subject to the requirements of the RRL Determination.

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

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

Documents incorporated by reference

The instrument incorporates the following legislative instruments by reference:

- the *Australian Radiofrequency Spectrum Plan 2017*, as in force from time to time;
- the *Radiocommunications (Body Scanning – Aviation Security) Class Licence 2018*, as in force from time to time;
- the *Radiocommunications (Spectrum Re-allocation – 26 GHz Band) Declaration 2019*, as in force on the day it commenced;
- the RRL Determination, as in force from time to time.

Each of these legislative instruments is available, free of charge, from the Federal Register of Legislation: www.legislation.gov.au.

The instrument also incorporates the following documents by reference:

- the Australian Spectrum Map Grid 2012, which is used to identify geographic areas. The Australian Spectrum Map Grid 2012 is available, free of charge, from the ACMA’s website: www.acma.gov.au. The Australian Spectrum Map Grid 2012 is incorporated as existing from time to time, as permitted by subsection 314A(2) of the Act;
- the ITU Radio Regulations which are available, free of charge, from the website of the International Telecommunication Union: www.itu.int. The ITU Radio Regulations are incorporated as existing from time to time, as permitted by subsection 314A(2) of the Act;
- ITU-R resolution 242 Terrestrial component of international mobile telecommunications in the frequency band 24.25-27.5 GHz (**ITU-R Resolution 242 (WRC-19)**), which is available, free of charge, from the website of the International Telecommunication Union: www.itu.int. ITU-R Resolution 242 (WRC-19) is incorporated as existing on the date it was first published, as permitted by subsection 314A(2) of the Act;
- Radiocommunications Assignment and Licensing Instruction MS 46 (**RALI MS 46**), which is available, free of charge, from the ACMA’s website: www.acma.gov.au. RALI MS 46 is incorporated as existing from time to time, as permitted by subsection 314A(2) of the Act.

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.

On 19 August 2020, the ACMA published the “Apparatus Licences in the 26 GHz and 28 GHz bands consultation paper” (**the consultation paper**), a draft Applicant Information Pack, a draft of the instrument, a draft of RALI MS 46, and a draft of an updated Radiocommunications Assignment and Licensing Instruction for coordination between earth station transmitters in the fixed-satellite service (FSS) and other services in the 25.5–30 GHz band. The ACMA sought comment on the allocation approach, pricing structure and technical framework of AWLs in the two bands, including a proposal to authorise the operation of FSS earth stations under AWLs. The ACMA received 16 submissions. Submitters included members of industry, peak bodies and government agencies.

The majority of submitters expressed general support for the proposed technical framework, although a range of amendments were proposed, mostly to provide additional protection to incumbent services or to increase deployment flexibility for new wireless broadband services. The ACMA considered this feedback and made a number of changes to the instrument in response.

The consultation paper was a key part of the process of implementing previous planning decisions for the deployment of fifth-generation wireless broadband services in the 26 GHz and 28 GHz bands, and FSS services in the 27–29.5 GHz frequency range. These decisions were the culmination of a lengthy period of consultation, technical studies and engagement domestically and internationally, and are encapsulated in the 26 GHz band planning decisions and preliminary views paper and the 28 GHz band planning decisions and preliminary views paper, which were released in April 2019 and September 2019, respectively.

For the technical framework for AWLs in the 26 GHz and 28 GHz bands (and spectrum licences in the 26 GHz band), the ACMA also convened a Technical Liaison Group (**TLG**) in November 2019. The TLG consisted of industry stakeholders, including prospective applicants for AWLs, operators of incumbent services, industry bodies and equipment vendors. The outcomes of the 26 and 28 GHz TLG are available on the ACMA’s website. The licence conditions imposed by the instrument have been informed by TLG deliberations.

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 is minor or machinery in nature (OBPR reference number 43143).

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 instrument

An AWL is a type of transmitter licence determined by the ACMA under section 98 of the Act. The ACMA is preparing to issue AWLs in the 26 GHz and 28 GHz bands. The purpose of the instrument is to include conditions in the Determination which apply to radiocommunications devices which are authorised to operate in the 26 GHz and 28 GHz bands under an AWL.

The instrument imposes a range of technical conditions that will apply to AWLs in the 26 GHz and 28 GHz bands. These conditions are largely relevant to interference management, including conditions that will enable radiocommunications transmitters operating under an AWL to coexist with other radiocommunications devices, and conditions imposing other responsibilities and requirements for managing interference. The instrument also imposes conditions that effectively require some radiocommunications transmitters operated under AWLs to be subject to the requirements of the RRL 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 (Area-Wide Licence) Amendment Determination 2020 (No.1)*

Section 1 Name

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

Section 2 Commencement

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

Section 4 Amendments

Section 4 provides that the instrument specified in Schedule 1 is amended as set out in the items in that Schedule.

Schedule 1

This Schedule amends the Determination.

Item 1

Subsection 4(1) of the Determination has been amended to provide that the Determination contains some conditions which apply to all AWLs, and some conditions which only apply of particular classes of AWLs.

Items 2 and 4

These items amend section 5 of the Determination to insert a number of new definitions.

Item 3

This item amends section 5 of the Determination to replace the existing definition of *licensee*. The new definition deals with both apparatus licences and spectrum licences.

Item 5

This item amends note 2 to section 5 to list more expressions used in the Determination that have the meaning given by the *Radiocommunications (Interpretation) Determination 2015*.

Item 6

This item inserts new section 5A, which provides that in the Determination, unless the contrary intention appears:

- a reference to any other legislative instrument is a reference to that other legislative instrument as in force from time to time; and
- a reference to any other kind of instrument is a reference to that other instrument as in force from time to time or existing from time to time.

This item also inserts new section 5B, which provides that the range of numbers that identify a frequency range includes the higher, but not the lower, number.

Item 7

This item replaces section 6, which now provides that every AWL continues to be subject to the condition in section 7 of the Determination, and that every AWL which authorises the operation of radiocommunications devices in the frequency range 24.7 GHz to 30 GHz bands is now subject to the conditions in new Schedule 1 to the Determination.

Item 8

This item adds new Schedules 1 to 3 to the Determination. New Schedules 2 and 3 define particular areas, by reference to hierarchical cell scheme identifiers used in the cell grouping hierarchy scheme that is set out in the Australian Spectrum Map Grid 2012, as in existence from time to time. The Australian Spectrum Map Grid 2012 is available, free of charge, from the ACMA's website.

New Schedule 1 imposes the following conditions, which apply to AWLs that authorise the operation of radiocommunications devices in the frequency range 24.7 GHz to 30 GHz.

Clause 1

Clause 1 of new Schedule 1 imposes a licence condition setting the maximum total radiated power limit permitted for radiocommunications transmitters, other than earth stations. Limits are specified in a 200 MHz bandwidth; logarithmic scaling can be used to find the appropriate level in alternative bandwidths.

Clause 2

Clause 2 of new Schedule 1 imposes a licence condition prohibiting the operation of radiocommunications transmitters in the frequency range 27.5–30 GHz while the transmitter is in motion.

Clause 3

Clause 3 of new Schedule 1 imposes a licence condition prohibiting the operation of radiocommunications transmitters other than earth stations in the frequency range 29.5–30 GHz.

Clause 4

Clause 4 of new Schedule 1 imposes a licence condition prohibiting the operation of a radiocommunications transmitter, other than a “low risk transmitter”, unless certain details of the transmitter have been included in the Register. This licence condition is a condition of the kind referred to in subsections 10(4A), (5A), (6A) and (7A) of the RRL Determination.

Clause 4 also defines a **low risk transmitter** to be a transmitter which:

- operates with a total radiated power of less than or equal to 23 dBm per occupied bandwidth; or
- is an “indoor transmitter”; or
- is a fixed transmitter which is not a base station and operates with a total radiated power of:
 - greater than 23 dBm per occupied bandwidth; and
 - less than or equal to 35 dBm per occupied bandwidth.

The term **indoor transmitter** is defined in section 5 of the Determination to mean a radiocommunications transmitter that is in an enclosed space and that has, at every point that is 2 metres from the outside surface of the enclosed space, a certain power flux density.

A base station generally:

- communicates with equipment operated by an end user of a radiocommunications service, or with other base stations;
- is capable of acting as a repeater to extend the coverage of a service or to link other base stations together;
- is located higher above ground level than the stations it communicates with;
- provides control and signalling information to other stations.

Clause 5

Clause 5 of new Schedule 1 imposes a licence condition prohibiting the operation of radiocommunications transmitters in a manner which is inconsistent with certain specified requirements contained in RALI MS 46, as in existence from time to time. RALI MS 46 is available, free of charge, from the ACMA’s website. The specified requirements relate to matters such as coordination with already registered radiocommunications receivers and other radiocommunications devices, power flux density limits, and interference with spectrum licences in the 26 GHz band or with two specified earth receive stations and earth exploration satellite services in the frequency range 23.6–24 GHz.

Clause 6

Clause 6 of new Schedule 1 imposes a licence condition that sets out a process for managing interference between two or more licensees (whether AWL licensees or spectrum licences in the 26 GHz band), if there is a certain level of interference and the licensees cannot agree to a resolution between themselves.

Broadly, in the absence of agreement between the licensees on how to manage interference, the licensees of any AWLs will be required to synchronise operation of their devices with the other affected devices in accordance with certain technical specifications. A licensee will be required to synchronise operation of its transmitters if no agreement with the other licensees is reached within 14 days of the first report of interference, or such longer time as the licensees agree.

The ACMA is preparing to allocate spectrum licences in the 26 GHz band, and has consulted on including an equivalent provision in those spectrum licences.

Clause 7

Clause 7 of new Schedule 1 imposes a licence condition in relation to interference management procedures for radiocommunications devices that are co-sited (that is, located within 200 metres of each other).

Clause 8

Clause 8 of new Schedule 1 imposes a licence condition that the licensee of an AWL is responsible for managing interference between radiocommunications devices operated under the AWL, and between radiocommunications devices operated under the AWL and under any other licence held by the licensee, or operated by the licensee under a class licence.

Clause 9

Clause 9 of new Schedule 1 imposes a licence condition that requires the licensee of an AWL to ensure that operation of a low risk transmitter does not cause harmful interference to other radiocommunications devices operating under a spectrum licence or apparatus licence held by any other person.

Clause 10

Clause 10 of new Schedule 1 imposes:

- a licence condition requiring radiocommunications devices (other than earth stations) to be operated in accordance with specified parts of ITU-R Resolution 242 (WRC-19), as in existence on the day it was published. That resolution is available, free of charge, from the ITU website.
- a series of conditions prohibiting the operation of some classes of radiocommunications transmitters operating with a total radiated power level that exceeds a defined limit, unless the operation of the radiocommunications transmitter complies with specified additional requirements. The additional requirements relate to radiated maximum true mean power limits above the horizontal plane and antenna pointing restrictions. The radiated power limits are specified in a 200 MHz bandwidth; logarithmic scaling can be used to find the appropriate level in alternative bandwidths. Different requirements apply depending on the frequency range that the radiocommunications transmitter is operating in, and if it is located inside an “inner-footprint area”, inside an “outer-footprint area” or located outside both those areas. Inner-footprint areas and outer-footprint areas are described in new Schedules 2 and 3, respectively.

Clause 11

Clause 11 of new Schedule 1 imposes a licence condition prohibiting the operation of a radiocommunications transmitter in the frequency range 25.5–27 GHz if it is located within certain described areas of Western Australia, the Australian Capital Territory and New South Wales.

It also imposes a condition that requires that certain radiocommunications transmitters not be operated unless they are coordinated with existing earth receive stations in the manner set out in RALI MS 46, as in existence from time to time. RALI MS 46 is available, free of charge, from the ACMA’s website.

Clause 12

Clause 12 of new Schedule 1 imposes a licence condition that a radiocommunications transmitter operated under an AWL must not cause harmful interference to a radiocommunications device operated under the *Radiocommunications (Body Scanning – Aviation Security) Class Licence 2018*. That class licence is available, free of charge, from the Federal Register of Legislation.

Clause 13

Clause 13 imposes a condition preventing the operation of an earth station at any location in the frequency range 25.25–27 GHz, except where operated for a standard frequency and time signal satellite service.

Clause 14

Clause 14 of new Schedule 1 imposes a licence condition requiring the licensee of an AWL to keep particular records of high-powered radiocommunications transmitters that are not base stations, and which provide those records on request of the ACMA or an inspector.

Clause 15

Clause 15 of new Schedule 1 imposes a series of conditions prohibiting the operation of radiocommunications transmitters that are operated in a way that causes unwanted emissions to exceed specified limits. Section 5 defines ***unwanted emissions*** for an AWL to be those emissions that occur outside the frequency range within which the AWL authorises operation of radiocommunications transmissions. Different requirements apply depending on the frequency range that the radiocommunications transmitter is operating in, the location of the transmitter, and when the transmitter was first operated.