

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications Licence Conditions (Area-Wide Licence) Amendment Determination 2020 (No.2)

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications Licence Conditions (Area-Wide Licence) Amendment Determination 2020 (No.2)* (**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, as made, imposed a condition for the provision, upon request, of information by licensees regarding radiocommunications devices authorised under an area-wide licence (**AWL**).

In October 2020, the ACMA made the *Radiocommunications Licence Conditions (Area-Wide Licence) Amendment Determination 2020 (No. 1)* (**the October Amendment**). The October Amendment amended the Determination to include further conditions which apply to radiocommunications devices which are authorised to operate in the frequency range 24.7 GHz to 30 GHz under an AWL.

In particular, clause 6 of Schedule 1 to the Determination was inserted to include a condition (**the synchronisation requirement**) requiring licensees to synchronise the operation of certain devices, authorised under an AWL, with other devices to manage interference, unless another way to manage the interference is mutually agreed. The synchronisation requirement is triggered when *substantial interference* is received. The instrument amends the Determination by changing the trigger for the synchronisation requirement, from ‘substantial interference’ occurring to when interference exceeds the compatibility requirement set out in Schedule 2 to the newly made *Radiocommunications Advisory Guidelines (Managing Interference to Spectrum Licenced Receivers – 26 GHz Band) 2020* (**the Guidelines**). This change is intended to ensure that the application of the synchronisation requirement is consistent between devices operated under an AWL and under a spectrum licence in the frequency range 25.1 GHz to 27.5 GHz (**26 GHz band**). The ACMA proposes to conduct an allocation process for spectrum licences in the 26 GHz band in the first half of 2021.

The instrument also corrects an error in Table 14 of Schedule 1 to the Determination. The change will make the Determination consistent with unwanted emission limits contained in Resolution 750 (REV.WRC-19) of the International Telecommunication Union’s Radio Regulations.

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

As permitted by section 314A of the Act, the instrument incorporates the Guidelines, or any instrument that replaces the Guidelines, as in force from time to time. The Guidelines are available, free of charge, from the Federal Register of Legislation: 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.

On 19 August 2020, the ACMA published the “Apparatus Licences in the 26 GHz and 28 GHz bands consultation paper” along with a number of other instruments, including drafts of the October Amendment and the Guidelines. Further information on the consultation undertaken for the October Amendment is available in its explanatory statement.

The draft of the October Amendment contained a reference to the Guidelines; however the ACMA did not include a reference to the Guidelines in the October Amendment, as it had not yet made the Guidelines at that time.

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 frequency range 24.7 GHz–30 GHz. The purpose of the instrument is to vary the synchronisation requirement included in the licence conditions applicable to AWLs, by referring to the recently made the *Radiocommunications Advisory Guidelines (Managing Interference to Spectrum Licenced Receivers – 26 GHz Band) 2020*. This will make the synchronisation requirement for the operation of devices authorised under AWLs consistent with those for spectrum licences in the 26 GHz band.

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.2)*

Section 1 Name

This section provides for the instrument to be cited as the *Radiocommunications Licence Conditions (Area-Wide Licence) Amendment Determination 2020 (No.2)*.

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

This item repeals the definition of *substantial interference* from section 5 of the Determination, as a consequence of the change made by item 2.

Item 2

This item repeals paragraph 6(1)(b) of the Determination and replaces it with a reference to the Guidelines. For the purposes of the synchronisation condition in clause 6 of Schedule 1 to the Determination, the requirements of the condition will arise where there is interference that exceeds the compatibility requirement set out in Schedule 2 to the Guidelines.

Item 3

This item inserts a new note that the Guidelines are available, free of charge, from the Federal Register of Legislation at <http://www.legislation.gov.au>.

Item 4

This item corrects an error in the total radiated power limit for transmitters operating in the frequency range greater or equal to 24.7 GHz and less than 27.5 GHz, in Table 14 in Schedule 1 to the Determination. The change makes the Determination consistent with unwanted emission limits contained in Resolution 750 (REV.WRC-19) of the International Telecommunication Union's Radio Regulations.