EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications (Low Interference Potential Devices) Class Licence Variation 2022 (No. 1)

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Low Interference Potential Devices) Class Licence Variation 2022 (No. 1)* (**the instrument**) under section 132 of the *Radiocommunications Act 1992* (the **Act**) and subsection 33(3) of the *Acts Interpretation Act 1901* (**the AIA**).

Section 132 of the Act allows the ACMA, by legislative instrument, to issue class licences to authorise 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, grant or issue an instrument of a legislative character, 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.

Section 134 of the Act provides that, to avoid doubt, the power to vary a class licence in accordance with subsection 33(3) of the AIA includes the power to vary the class licence by including one or more further conditions or revoking any conditions of the class licence.

Purpose and operation of the instrument

Generally

It is a general requirement of the Act that the operation of all radiocommunications devices within Australia be authorised by a radiocommunications licence. A class licence is one type of licence available to authorise the operation of radiocommunications devices. It is 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 an individual user and does not involve the payment of licence fees.

Operation of a radiocommunications device is not authorised by a class licence if it is not in accordance with the conditions of the licence (subsection 132(3) of the Act). It is an offence, and subject to a civil penalty, to operate a radiocommunications device otherwise than as authorised by a spectrum licence, apparatus licence or class licence (section 46 of the Act). The Act prescribes the following maximum penalties for the offence:

- if the radiocommunications device is a radiocommunications transmitter, and the offender is an individual – imprisonment for 2 years;
- if the radiocommunications device is a radiocommunications transmitter, and the offender is not an individual – 1,500 penalty units (which is $333,000 based on the current penalty unit amount of $222);
- if the radiocommunications device is not a radiocommunications transmitter – 20 penalty units ($4,440).

The Act prescribes the following maximum civil penalties:

- if the radiocommunications device is a radiocommunications transmitter – 300 penalty units ($66,600);
- if the radiocommunications device is not a radiocommunications transmitter – 20 penalty units ($4,440).

It is an offence, and subject to a civil penalty, to possess a radiocommunications device for the purpose of operating the device otherwise than as authorised by a spectrum licence, apparatus licence or class licence (section 47 of the Act). The Act prescribes the same penalties for this offence and civil penalty contravention as for the offence and civil penalty contravention in section 46.

Low interference potential devices

The *Radiocommunications (Low Interference Potential Devices) Class Licence 2015* (**the LIPD Class Licence**) authorises the operation of a wide range of low interference radiocommunications transmitters in various segments of the radiofrequency spectrum. The LIPD Class Licence sets out the conditions under which these transmitters may be operated. These transmitters do not require individual frequency coordination because of their low interference potential characteristics. Examples of transmitters covered by the LIPD Class Licence include Wi-Fi equipment, radio-frequency identification transmitters, personal alarms, and ground and wall penetrating radar devices.

The instrument varies the LIPD Class Licence to:

- insert a new frequency band (5925–6425 MHz) for the operation of Radio Local Area Network transmitters, at low power levels;
- correct errors regarding carrier frequencies in item 25 of the table in Schedule 1.

Section 137 provides that the ACMA must not issue a class licence that is inconsistent with the spectrum plan or any relevant frequency band plans.

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**). The LIPD Class Licence is subject to the sunsetting provisions of the LA.

Consultation

Before making the instrument, 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 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) also requires consultation with spectrum licensees if their licences would be affected by the instrument.

On 18 October 2021, the ACMA published a notice on its website, which was also published in the Government Gazette on 15 October 2021, inviting public comment on the draft instrument until 3 December 2021.

There were 25 submissions in response to the invitation for public comment. All submissions and an outcomes paper are on the ACMA's website. Some submissions were directed towards issues raised by the ACMA about potential future changes to the LIPD Class Licence, beyond those contained in the draft instrument. Some submissions suggested changes to the LIPD Class Licence to authorise the operation of additional radiocommunications devices, beyond those contained in the draft instrument. The ACMA has not acted on those suggestions at this time. Some submissions suggested that the maximum power level for Radio Local Area Network transmitters should be higher; however, the ACMA considered that the proposed power levels were appropriate and allowed a wide range of

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devices to be used. No changes have been made to the draft instrument that was published for comment.

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 43803.

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

The instrument varies the LIPD Class Licence to:

- insert a new frequency band (5925–6425 MHz) for the operation of Radio Local Area Network transmitters, at low power levels;
- correct errors regarding carrier frequencies in item 25 of the table in Schedule 1.

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.

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Attachment A

Notes to the *Radiocommunications (Low Interference Potential Devices) Class Licence Variation 2022 (No. 1)*

Section 1 Name

This section provides for the instrument to be cited as the *Radiocommunications (Low Interference Potential Devices) Class Licence Variation 2022 (No.1)*.

Section 2 Commencement

This section provides that the instrument commences at the start of the day after the day it is registered on the Federal Register of Legislation.

Section 3 Authority

This section identifies the provision that authorises the making of the instrument, namely section 132 of the Act.

Section 4 Variations

This section provides that the legislative instrument specified in Schedule 1, the LIPD Class Licence, is varied as set out in that Schedule.

Schedule 1 Variations

Item 1 Schedule 1 (table item 25, paragraphs (b) and (c))

The table in Schedule 1 lists the kinds of radiocommunications transmitters that are authorised under the LIPD Class Licence, and the conditions of their operation. This item corrects an error in the list of carrier frequencies for auditory assistance transmitters. The carrier frequency previously listed in paragraph (c) is moved to be in subparagraph (b)(v).

Item 2 Schedule 1 (after table item 63)

New table items 63AA and 63AB are inserted to authorise the use of Radio Local Area Network (**RLAN**) transmitters to operate in the 5925–6425 MHz band.

If operated in accordance with table item 63AA, such devices must only be operated indoors, must not exceed a maximum equivalent isotropic radiated power (**EIRP**) (250 mW), must not exceed the specified power spectral density limit (12.5 mW EIRP per MHz), and must use a contention-based protocol to facilitate sharing of the spectrum with other RLAN devices operating in the same frequency range. Such a protocol prevents a device from transmitting at a time when another device is detected transmitting on the same frequency.

If operated in accordance with table item 63AB, such devices may be operated outdoors or indoors, and must use a contention-based protocol, but have a lower maximum EIRP (25 mW) and a lower maximum power spectral density limit (1.25 mW EIRP per MHz).

Items 63AA and 63BB are primarily intended to support the use of ‘Wi-Fi 6e’. They are also likely to be utilised by some cellular mobile systems, such as through the use of the 5G New Radio Unlicenced standard.

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