

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications (Outpost Stations) Class Licence 2022

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Outpost Stations) Class Licence 2022* (**the instrument**) under section 132 of the *Radiocommunications Act 1992* (**the Act**).

Under section 132, the ACMA may, by legislative instrument, issue class licences which authorise any person to operate a radiocommunication device of a specified kind, or for a specified purpose, or of a specified kind for a specified purpose. In accordance with section 133 of the Act, the ACMA may include in a class licence such conditions as it thinks fit.

Under section 137 of the Act, the ACMA must not issue a class licence that is inconsistent with the *Australian Radiofrequency Spectrum Plan 2021* (**spectrum plan**) or a frequency band plan. The instrument is consistent with the spectrum plan, and no frequency band plans apply in relation to the spectrum covered by the instrument.

Under section 138 of the Act, the ACMA must not issue a class licence that authorises the operation of radiocommunications devices at frequencies that are within a part of the spectrum covered by a spectrum licence or a marketing plan, without following a particular process. Section 138 does not apply to the parts of the spectrum specified in the instrument.

Purpose and operation of the instrument

Outpost stations are radiocommunications devices used for certain public communications in remote locations where connection to a telecommunications network is not provided or not available.

Outpost stations are intended primarily for the purpose of contacting the Royal Flying Doctor Service of Australia (**the RFDS**) for emergency medical aid. The RFDS provides emergency aeromedical evacuations throughout rural and remote Australia for people who are seriously ill or injured and require urgent medical attention. It also provides primary health care services to people who live or work in rural and remote parts of Australia.

The purpose of the instrument is to authorise the operation of outpost stations to communicate with:

- ‘control’ stations, which are outpost stations operated by the RFDS for emergency medical aid; and
- other outpost stations to provide certain public communications services.

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 a 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 (\$4,400).

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 (\$4,400).

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.

ACMA's review of outpost regulatory arrangements

To date, all outpost stations have been authorised under apparatus licences issued under the Act. The ACMA conducted a review of the outpost licensing framework to assess whether it reflects the best licensing arrangements and efficiently and effectively manages spectrum, consistent with the ACMA's statutory role as the spectrum regulator. The review identified alternative options to simplify the current arrangements, provide users with greater operational flexibility and minimise costs faced by licensees and the ACMA.

The ACMA made the instrument following the review. The review found that the transition from an apparatus to a class licence arrangement will deliver a better regulatory outcome at a lower cost for most outpost station operators and the ACMA. Outpost stations operated by the RFDS will continue to be authorised under apparatus licences; however, the operation of all other outpost stations will be authorised by the instrument.

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 instrument is subject to the sunset provisions of the LA.

Documents incorporated by reference

Section 314A of the Act provides that an instrument under the Act may make provision in relation to a matter by applying, adopting or incorporating (with or without modifications) matters contained in any Act or any other instrument or writing as in force or existing at a particular time or from time to time.

The instrument incorporates by reference the Radiation Protection Standard for Limiting Exposure to Radiofrequency Fields – 100 kHz to 300 GHz (2021), published by the Australian Radiation Protection and Nuclear Safety Agency (**the ARPANSA standard**), and any document published as a replacement to the ARPANSA standard, as existing from time to time. The ARPANSA standard is available, free of charge, from the ARPANSA website at www.arpansa.gov.au.

The following Acts are referred to in the instrument, but are not incorporated by reference:

- the Act;
- the *Acts Interpretation Act 1901*;
- the *Australian Communications and Media Authority Act 2005*;
- the *Legislation Act 2003*.

Commonwealth Acts and legislative instruments are available, free of charge, from the Federal Register of Legislation website at www.legislation.gov.au.

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.

Between 3 February and 2 April 2021, the ACMA consulted on a review of outpost licensing arrangements. The review's objective was to identify the best licensing mechanism that would reduce regulatory burden and minimise costs for licensees, while preserving the current operational utility for licensees.

The ACMA consulted on the following three licensing options for non-assigned outpost stations:

- Option A: keep the existing apparatus licensing arrangements and conditions.
- Option B: simplify the existing licensing arrangements and licence conditions by amending the licence condition determination that imposes conditions on the apparatus licences authorising the operation of outpost stations.
- Option C: transition most outpost stations to class licensing arrangements, while retaining apparatus licences for limited outpost stations ('control' stations currently operated by the RFDS).

In the consultation paper, the ACMA stated its preference to transition to class licensing arrangements and released a draft instrument as part of the consultation.

The ACMA received one submission from an individual outpost station user in response to the consultation paper, which suggested that the use of call signs for outpost stations should be made mandatory under the instrument. The ACMA considered that it is not necessary to make call signs mandatory, so long as some form of identification is used when outpost stations are operated under the instrument, and did not make any changes as a result of the submission.

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 and has therefore verified that no further regulatory impact analysis is required – OBPR reference number 43295.

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 (Outpost Stations) Class Licence 2022*

Section 1 Name

This section provides for the instrument to be cited as the *Radiocommunications (Outpost Stations) Class Licence 2022*.

Section 2 Commencement

This section provides for the instrument to commence at the start of 31 May 2022.

Section 3 Authority

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

Section 4 Interpretation

This section defines a number of key terms used throughout the instrument, including identifying those entities that comprise the RFDS, according to its last annual report (available from www.flyingdoctor.org.au).

A number of other expressions used in the instrument are defined in the Act or in an instrument made under subsection 64(1) of the *Australian Communications and Media Authority Act 2005*.

Section 5 References to other instruments

This section provides that in the instrument, 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 or writing is a reference to that other instrument or writing as in force, or existing, from time to time.

Section 6 Class licence

This section authorises a person to operate an outpost station, subject to the conditions in sections 7 to 13 of the instrument.

Section 7 Condition – identification

This section provides that a person must not operate an outpost station to transmit a signal unless the person transmits a form of identification that clearly identifies the station or the person. The form of identification must be transmitted at the beginning of each transmission, or a series of transmissions, and at the end of each transmission, or a series of transmissions.

Section 8 Condition – maximum power

This section sets a maximum transmitter power limit an outpost station can operate, namely, 100 watts pX.

Section 9 Condition – public exposure limits

This section imposes a limit on the amount of electromagnetic energy that an outpost station, or a group of outpost stations, can emit. A person must not operate a station, or a group of stations, in a

place accessible by the public if the EME emitted is more than the general public exposure limits specified in the ARPANSA standard.

Section 10 Condition – compliance with equipment rules

This section requires that an outpost station must be operated in accordance with the requirements of any standard prescribed for the station by equipment rules as in force on the day that the station was manufactured in Australia, imported or materially altered or modified. Equipment rules are legislative instruments made by the ACMA under section 156 of the Act.

Section 11 Condition – harmful interference

This section provides that a person must not operate an outpost station if its operation causes harmful interference to radiocommunications.

Section 12 Condition – otherwise unable to connect to telecommunications network

This section requires that a person must only operate an outpost station if the person is otherwise unable to connect to a telecommunications network. Examples of situations where a person may be unable to connect to a telecommunications network are:

- where there is no telecommunications network in an area; or
- if the telecommunications network operating in an area is unavailable or inoperable for any reason; or
- a person is unable to connect to the telecommunications network operating in an area through a carriage service provider for any reason.

Section 13 Condition – permitted frequencies, locations and purposes of operation

Subsection 13(1) provides that a person must operate an outpost station in accordance with subsections (2), (3) or (4).

Subsection 13(2) applies to the operation of an outpost station to transmit and receive messages in distress or emergency situations. This subsection permits operation of the station:

- at any location, except for a location specified in column 1 of an item of Table 1 in Schedule 1, on a frequency specified in either column 2 or column 3 of any item in Table 1 in Schedule 1; or
- at a location specified in column 1 of an item of Table 1 in Schedule 1, on a frequency specified in either column 2 or column 3 for that item.

Subsection 13(3) permits the operation of an outpost station to communicate with an RFDS outpost station operating at a location specified in column 1 of an item in Table 1 of Schedule 1. A person may operate the outpost station if:

- the station is at the same location as the RFDS outpost station; and
- the station operates on a frequency specified in column 3 of that item; and
- the communication is for one or more of the following purposes:
 - obtaining or providing medical aid or advice;
 - transmitting or receiving public correspondence;
 - transmitting telecommunications that require the use of a telecommunications network operated by a carrier or a carriage service provider.

Subsection 13(4) permits the operation of an outpost station to communicate with another outpost station for the purpose of communicating matters of interest or significance to the local community. A

person may operate the outpost station at a location specified in column 1 of an item in Table 1 in Schedule 1, on a frequency specified in either column 2 or 3 for that location. Examples of matters that would be of interest or significance to the local community are weather reports, road reports and safety checks.

Schedule 1 Permitted frequencies and locations of operation

Schedule 1 specifies the permitted frequencies that outpost stations can be operated on to communicate with RFDS outpost stations and other outpost stations for specific locations, in accordance with section 13 of the instrument.

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*

Radiocommunications (Outpost Stations) Class Licence 2022

Overview of the instrument

The ACMA has made the *Radiocommunications (Outpost Stations) Class Licence 2022 (the instrument)* under section 132 of the *Radiocommunications Act 1992 (the Act)*. The instrument authorises the operation of outpost stations to communicate with:

- ‘control’ stations, which are outpost stations operated by the Royal Flying Doctor Service of Australia (**the RFDS**), for emergency medical aid; and
- other outpost stations to provide certain public communications services.

Outpost stations operate in the medium frequency (MF, 300 to 3000 kHz) and high frequency (HF, 3 to 30 MHz) parts of the radiofrequency spectrum. An outpost station provides communications using a radio in remote locations where a connection to a telecommunications network operated by a carrier or carriage service provider is not provided or is not available.

The RFDS provides emergency aeromedical evacuations throughout rural and remote Australia for people who are seriously ill or injured and require urgent medical attention. It also provides primary health care services to people who live or work in rural and remote parts of Australia.

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 promotes the right to freedom of expression and the right to health.

Article 19 of the International Covenant on Civil and Political Rights provides:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - a. For respect of the rights or reputations of others;
 - b. For the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 12 of the International Covenant on Economic, Social and Cultural Rights provides:

1. Everyone shall have the right to enjoy the highest attainable standard of physical and mental health.
2. The steps taken to achieve full realisation of this right shall include those necessary for:
 - a. The provision for the reduction of stillbirth rate and infant mortality and for the healthy development of children;
 - b. The improvement of all aspects of environmental and industrial hygiene;
 - c. The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
 - d. The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

The instrument promotes the right to freedom of expression by facilitating communication between outpost stations at locations where there is no connection to a telecommunications network, to participate in community interest sessions, or to transmit and receive messages in distress or emergency situations. The instrument also promotes the right to health by allowing people to contact the RFDS for emergency medical aid in remote locations in Australia. The instrument promotes these rights, 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 and the right to health by maintaining the ability of outpost licensees to promote these rights through the operation of outpost stations on authorised parts of the radiofrequency spectrum.