

# EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Radiocommunications Act 1992*

***Radiocommunications (Low Interference Potential Devices) Class Licence Variation 2023 (No. 1)***

## **Authority**

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Low Interference Potential Devices) Class Licence Variation 2023 (No. 1)* (**the instrument**) under subsection 132(1) of the *Radiocommunications Act 1992* (**the Act**) and subsection 33(3) of the *Acts Interpretation Act 1901* (**the AIA**).

Subsection 132(1) of the Act provides that the ACMA may, by legislative instrument, issue class licences.

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**

### *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). Subject to some exceptions in 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, the monetary value of which is reflected at the time of making of the instrument (\$275 per penalty unit):

- 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 (\$412,500);
- if the radiocommunications device is not a radiocommunications transmitter – 20 penalty units (\$5,500).

The Act also includes a civil penalty provision for operation of a radiocommunications device other than as authorised by a licence. The Act prescribes the following maximum civil penalties:

- if the radiocommunications device is a radiocommunications transmitter – 300 penalty units (\$82,500);
- if the radiocommunications device is not a radiocommunications transmitter – 20 penalty units (\$5,500).

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 maximum 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.

#### *Significant events*

Before the commencement of the instrument, the LIPD Class Licence defined the term ‘significant event’ as an event at a specified location or locations approved by the Chair of the ACMA and notified on the ACMA website at [www.acma.gov.au](http://www.acma.gov.au).

The LIPD Class Licence imposes a condition on the operation of a radiocommunications transmitter to the effect that the transmitter must comply with particular instruments specified for the transmitter in the LIPD Class Licence (section 5). This condition does not apply in relation to a transmitter imported into Australia solely for use in connection with a significant event in certain circumstances.

The instrument has amended the LIPD Class Licence to replace the definition of ‘significant event’ with a new definition that covers an event declared by the ACMA under subsection 54A(2) of the *Radiocommunications Equipment (General) Rules 2021 (the General Equipment Rules)*. Subsection 54A(2) of the General Equipment Rules provides that the ACMA may make a notifiable instrument that declares a specified event to be a significant event, and specifies the period and location of the significant event. Subsection 54A(5) of the General Equipment Rules also provides that the ACMA must publish on the ACMA website certain details of a significant event that has been declared. In the ACMA’s experience, events that are significant events for the purposes of the General Equipment Rules have also been significant events for the purposes of the LIPD Class Licence. Previous significant events have included the Formula One Australian Grand Prix and the Australian MotoGP events.

The new definition of ‘significant event’ also covers an event if that event was a significant event, within the meaning of the LIPD Class Licence as in force immediately before the commencement of the instrument, and the whole or a part of the event occurs after that commencement. Such an event continues to be a significant event within the meaning of the LIPD Class Licence.

The instrument also makes some consequential changes. Some of those changes are to reflect the fact that the General Equipment Rules now include exemptions for:

- a transmitter that operates in accordance with a permit; and
- a transmitter that is imported solely for use in connection with a significant event in certain circumstances.

Other changes are to reflect the fact that the C-Tick mark could only be used as a compliance mark in the period before 1 March 2016.

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 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) matter contained in any Act or any other instrument or writing as in force or existing at a particular time or as in force or existing from time to time.

The instrument amends the LIPD Class Licence to incorporate or otherwise refer to subsection 54A(2) of the General Equipment Rules as in force from time to time. The instrument also amends the LIPD Class Licence to incorporate or otherwise refer to the definition of ‘significant event’ in subsection 3A(1) of the LIPD Class Licence as in force immediately before the commencement of the instrument. The General Equipment Rules and the LIPD Class Licence are available, free of charge, from the Federal Register of Legislation at [www.legislation.gov.au](http://www.legislation.gov.au).

The instrument also amends the LIPD Class Licence to incorporate or otherwise refer to international instruments for a transmitter specified in Schedule 2 to the Class Licence as in force or existing from time to time. Further details about those instruments, including the full titles and how copies may be obtained, are included in Schedule 2 to the LIPD Class Licence. Copies are either available online or may be viewed at an office of the ACMA, free of charge, on request and subject to licensing conditions.

### **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.

Section 136 of the Act requires that a notice setting out particular details of the variation be published on the ACMA 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) of the Act also requires consultation with spectrum licensees if their licences would be affected by the instrument.

A public consultation process was conducted during the period 10 November 2022 to 15 December 2022 in relation to the proposed variation of the LIPD Class Licence and other proposed changes to radiocommunications equipment regulation. A draft of the instrument and a consultation paper containing explanatory information were made available on the ACMA website during that period. A notice setting out the ACMA’s intent to vary the LIPD Class Licence was published in the Government Gazette on 10 November 2022, and also on the ACMA website. Interested parties were notified of the consultation and invited to comment. On 10 November 2022, the ACMA notified spectrum licensees of the proposed variation of the LIPD Class Licence and invited them to make representations by 15 December 2022.

The ACMA received 11 submissions to the broader consultation, and these were considered before making the instrument. Three of the submissions provided no comment on the proposal to vary the

definition of a ‘significant event’, and four submissions commented in support of the proposal but did not elaborate further.

One submission supported the proposal and suggested establishing a means for stakeholders to subscribe to specific updates via the ACMA website to receive an email when new notifiable instruments declaring significant events are made. The ACMA will consider implementing this suggestion.

The remaining three submissions supported the proposal to make the instrument and recommended the ACMA continue its current practice of publishing details of forthcoming significant events on the ACMA website, in addition to publishing the notifiable instruments declaring those events. The ACMA accepted this recommendation and has included provisions in the General Equipment Rules requiring the ACMA to publish such details on the ACMA website.

### **Regulatory impact assessment**

A preliminary assessment of the proposal to make the instrument was conducted by the Office of Impact Analysis (OIA), formerly 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. OIA advised a RIS would not be required for the instrument as it considered the proposal to be unlikely to have a more than minor regulatory impact (OIA reference OBPR22-03412).

### **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 replace the definition of ‘significant event’ with a new definition that covers an event declared by the ACMA under subsection 54A(2) of the General Equipment Rules. Subsection 54A(2) of the General Equipment Rules provides that the ACMA may make a notifiable instrument that declares a specified event to be a significant event, and specifies the period and location of the significant event. The General Equipment Rules also provide that the ACMA must publish on the ACMA website certain details of a significant event that has been declared. In the ACMA’s experience, events that are significant events for the purposes of the General Equipment Rules have also been significant events for the purposes of the LIPD Class Licence. Previous significant events have included the Formula One Australian Grand Prix and the Australian MotoGP events.

The new definition of ‘significant event’ also covers an event if that event was a significant event, within the meaning of the LIPD Class Licence as in force immediately before the commencement of the instrument, and the whole or a part of the event occurs after that commencement. Such an event continues to be a significant event within the meaning of the LIPD Class Licence.

Radiocommunications transmitters imported into Australia for the purposes of a significant event in certain circumstances do not have to comply with some requirements set out in the LIPD Class Licence.

The instrument also makes some consequential changes.

***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 (Low Interference Potential Devices)  
Class Licence Variation 2023 (No. 1)***

**Section 1      Name**

This section provides for the instrument to be cited as the *Radiocommunications (Low Interference Potential Devices) Class Licence Variation 2023 (No. 1)*.

**Section 2      Commencement**

This section provides for the instrument to commence on 2 March 2023.

The instrument is registered on the Federal Register of Legislation. The Federal Register of Legislation may be accessed, free of charge, at [www.legislation.gov.au](http://www.legislation.gov.au).

**Section 3      Authority**

This section identifies the provision of the Act that authorises the making of the instrument, namely subsection 132(1) of the Act.

**Section 4      Schedule**

This section provides that the instrument that is specified in Schedule 1 to the instrument is varied as set out in the applicable items in that Schedule.

## Schedule 1–Variations

### *Radiocommunications (Low Interference Potential Devices) Class Licence 2015*

#### **Item 1            Subsection 3A(1) (definition of *significant event*)**

Item 1 repeals the definition of a ‘significant event’ and replaces it with a new definition that covers an event declared by the ACMA under subsection 54A(2) of the General Equipment Rules. Subsection 54A(2) of the General Equipment Rules provides that the ACMA may make a notifiable instrument that declares a specified event to be a significant event and specifies the period and location of the significant event. The General Equipment Rules also provide that the ACMA must publish on the ACMA website certain details of a significant event that has been declared.

The new definition of ‘significant event’ also covers an event if that event was a ‘significant event’, within the meaning of the LIPD Class Licence as in force immediately before the commencement of the instrument, and the whole or a part of the event occurs after that commencement. Such an event continues to be a significant event within the meaning of the LIPD Class Licence.

#### **Item 2            Subsections 5(1), (2) and (3)**

Item 2 repeals and substitutes subsections 5(1), (2) and (3) (not including the notes to subsection 5(3)) of the LIPD Class Licence.

The LIPD Class Licence authorises a radiocommunications transmitter included in a class of transmitters specified in Schedule 1 to the Class Licence to operate on frequencies specified for the class in the Schedule. Before the commencement of the instrument, subsection 5(1) generally imposed a condition on the operation of such a transmitter to comply with each ‘applicable instrument’ for the transmitter. In particular:

- the transmitter had to comply with any equipment rules that applied to the transmitter (including the General Equipment Rules); and
- if Schedule 2 specified an international instrument in relation to a class of transmitters and the transmitter was included in that class, the transmitter had to comply with the requirements of that instrument.

Subsection 5(2) provided that subsection 5(1) did not apply if the transmitter was operated in accordance with a permit or the transmitter was imported solely for use in connection with a significant event in certain circumstances.

Subsection 5(3) defined the term ‘applicable instrument’, in relation to a transmitter, for the purposes of subsection 5(1).

New subsections 5(1), (2) and (3) provide for largely the same state of affairs. However, the subsections have been redrafted to reflect the fact that the General Equipment Rules now include exemptions for:

- a transmitter that is operated in accordance with a permit; and
- a transmitter that is imported solely for use in connection with a significant event in certain circumstances.

Accordingly, the exemption in subsection 5(2) now only needs to apply in relation to international instruments specified in Schedule 2, rather than the General Equipment Rules.

There is a note added to subsection 5(1) to state that the equipment rules may provide for an exemption to a prohibition or an obligation, or may allow for a permit to perform an act that would otherwise contravene a prohibition or an obligation.

**Item 3            Subsection 5(3) (note 3)**

Item 3 varies note 3 in subsection 5(3) by omitting “or C-Tick compliance mark” and substituting “(or the C-Tick mark before 1 March 2016)”. This variation has been made to reflect the fact that the C-Tick mark could only be used as a compliance mark in the period before 1 March 2016. In 2013, the C-Tick was replaced by a new compliance mark, the RCM. A three-year transition period ended in February 2016 and since then suppliers of equipment are not able to use the C-Tick mark for labelling equipment.

**Item 4            Schedule 2 (note to Schedule heading)**

Item 4 varies the note to the Schedule heading by omitting “paragraph 5(3)(b)” and substituting “subsection 5(3)”. This is a consequential change relating to the variation made by item 2.