

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications (Low Interference Potential Devices) Class Licence Variation 2023 (No. 2)

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Low Interference Potential Devices) Class Licence Variation 2023 (No. 2)* (**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, 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.

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 the operation 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 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 the operation of a radiocommunications device otherwise 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 WiFi equipment, radio-frequency identification transmitters, personal alarms, and ground and wall penetrating radar devices.

Changes to the LIPD Class Licence

The instrument varies the LIPD Class Licence to:

- include additional authorisation for the operation of radio local area network transmitters in the 5150 MHz to 5250 MHz frequency band, with a higher power limit than existing authorisations and without a restriction that the transmitter only be operated indoors;
- include ‘out of band’ emission limits for radio local area network transmitters authorised to operate in the 5925 MHz to 6425 MHz frequency band;
- include a definition of **indoors** and remove consequentially redundant provisions.

Paragraph 136(1A)(a) of the Act provides that, if the variation of a class licence would affect the spectrum allocated, to be allocated or to be re-allocated by issuing spectrum licences, before varying the class licence the ACMA must be satisfied that:

- the variation of the class licence would not result in unacceptable levels of interference to the operation of radiocommunications devices operated, or likely to be operated, under spectrum licences; and
- the variation of the class licence would be in the public interest.

The instrument does not affect the spectrum allocated, to be allocated or to be re-allocated by issuing spectrum licences.

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

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

The instrument does not incorporate any documents by reference.

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 instrument 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. No spectrum licences are affected by the instrument.

On 21 October 2022, the ACMA published a notice on its website and in the Government Gazette, inviting public comment on a draft of the instrument by 5 December 2022.

Twenty-six submissions were received in response to the notice. One submission was made in confidence. All twenty-five public submissions, and a response to the submissions, are published on the ACMA's website.

As a result of these submissions, the ACMA decided not to include the following proposed variations in the draft instrument:

- the authorisation of earth station receivers in the 915 MHz to 928 MHz and 2400 MHz to 2483.5 MHz frequency bands;
- the authorisation of frequency hopping transmitters in the 5925 MHz to 6425 MHz frequency band.

These proposed variations may be the subject of further consideration by the ACMA, including in the light of overseas developments, and may be included in a future variation of the LIPD Class Licence.

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 that a RIS would not be required for the instrument as it considered the proposal to be unlikely to have more than a minor regulatory impact (OIA reference number OBPR22-02783).

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:

- include additional authorisation for the operation of radio local area network transmitters in the 5150 MHz to 5250 MHz frequency band, with a higher power limit than was previously authorised and without a restriction that the transmitter only be operated indoors;
- include 'out of band' emission limits for radio local area network transmitters authorised to operate in the 5925 MHz to 6425 MHz frequency band;

- include a definition of ***indoors*** and remove consequentially redundant provisions.

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. 2)*

Section 1 Name

This section provides for the instrument to be cited as the *Radiocommunications (Low Interference Potential Devices) Class Licence Variation 2023 (No.2)*.

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 to the instrument is varied as set out in that Schedule.

Schedule 1–Variations

Radiocommunications (Low Interference Potential Devices) Class Licence 2015

Item 1 Subsection 3A(1)

Item 1 inserts a definition for *indoors*. The operation of some radiocommunications transmitters is only authorised by the LIPD Class Licence if the transmitters are used ‘indoors’. Something is ‘indoors’ if it is enclosed by permanent walls, roof and floors at a fixed location. For example, something inside a car is not ‘indoors’, as it is not fixed to a particular location.

Item 2 Schedule 1 (after table item 61)

New table item 61A is inserted in Schedule 1 to the LIPD Class Licence to authorise the use of radio local area network transmitters in the 5150 MHz to 520 MHz frequency band, subject to different conditions to the authorisation of these transmitters by existing table item 61.

These transmitters may operate at a maximum effective isotropic radiated power (EIRP) of 1 watt. Additionally, the maximum EIRP must not exceed 125 milliwatts above an elevation angle of 30 degrees. This limitation acts to manage potential interference into satellite receivers, as transmitters authorised under this item are not required to operate indoors (as is the case in table item 61).

Item 3 Schedule 1 (table item 63AA, column 4, after paragraph (c))

Item 3 adds an additional condition on the operation of radio local area network transmitters in the 5925 MHz to 6425 MHz frequency band that are used indoors, which is authorised by table item 63AA. The new condition requires that any emissions these transmitters produce below 5925 MHz must be no greater than -27 dBm EIRP.

Item 4 Schedule 1 (table item 63AB, column 4, after paragraph (b))

Item 4 adds an additional condition on the operation of radio local area network transmitters in the 5925 MHz to 6425 MHz frequency band that may be used indoors and outdoors, which is authorised

by table item 63AB. The new condition requires that any emissions these transmitters produce below 5925 MHz must be no greater than -37 dBm EIRP.

Items 5 and 6

Items 5 and 6 remove the provisions that effectively define ‘indoors’ specifically for table items 63A and 63B in Schedule 1 to the LIPD Class Licence. These provisions are no longer required due to the inclusion of the definition of *indoors* in the LIPD Class Licence (see item 1).