

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications Licence Conditions (Area-Wide Licence) Amendment Determination 2023 (No. 1)

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications Licence Conditions (Area-Wide Licence) Amendment Determination 2023 (No. 1)* (**the instrument**) under subsection 110A(2) of the *Radiocommunications Act 1992* (**the Act**) and subsection 33(3) of the *Acts Interpretation Act 1901* (**the AIA**).

Subsection 110A(2) of the Act provides that the ACMA may determine, by legislative instrument, that each apparatus licence in a specified class of apparatus licences is taken to include one or more specified conditions.

Subsection 33(3) of the AIA provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws) 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 imposed a condition for the provision, upon request, of information by licensees regarding radiocommunications devices authorised under an area-wide licence (**AWL**).

At that time, the ACMA also amended the *Radiocommunications (Register of Radiocommunications Licences) Determination 2017* (**RRL Determination**) to exempt AWL licensees from certain device registration requirements, unless a licence condition requires otherwise.

The Determination was amended in November 2020 to impose a range of technical conditions to apply to AWLs in the 24.7 GHz to 30 GHz frequency range.

The ACMA is now preparing to issue AWLs in parts of the 3400 MHz to 4000 MHz frequency range. The instrument amends the Determination to impose a range of technical conditions that apply to AWLs in the 3400 MHz to 4000 MHz frequency range. These conditions largely relate to interference management, including conditions that enable radiocommunications transmitters operating under an AWL to coexist with other radiocommunications devices, and conditions imposing other responsibilities and requirements for managing interference. The instrument also imposes conditions that effectively require some radiocommunications transmitters operated under AWLs to be subject to the requirements of the RRL Determination.

Operation of a radiocommunications device is not authorised by an apparatus licence if it is not in accordance with the conditions of the licence (subsection 97(4) of the Act). It is an offence, and subject to a civil penalty, to operate radiocommunications devices 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 \$412,500 based on the current penalty unit amount of \$275);
- if the radiocommunications device is not a radiocommunications transmitter – 20 penalty units (\$5,500).

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 penalties for this offence and civil penalty contravention as for the offence and civil penalty contravention in section 46.

In addition, an apparatus licensee, or a person authorised under section 114 of the Act in relation to an apparatus licence, must not contravene a condition of the licence. Contravention is subject to a civil penalty (section 113 of the Act). The Act prescribes a maximum civil penalty of 100 penalty units (\$27,500).

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 Determination is subject to the sunset provisions of the LA.

Documents incorporated by reference

Subsection 314A(1) 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 as in force at a particular time, or as in force from time to time.

Subsection 314A(2) 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 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 Determination to incorporate the following legislative instruments, as in force from time to time:

- the *Radiocommunications Advisory Guidelines (Managing Interference to Spectrum Licensed Receivers – 3.4 GHz Band) 2015*, or any instrument replacing those guidelines;
- the RRL determination, or any instrument replacing that determination;

These legislative instruments are available, free of charge, from the Federal Register of Legislation at www.legislation.gov.au.

The instrument amends the Determination to incorporate the following documents, as existing from time to time:

- Radiocommunications Assignment and Licensing Instruction MS 46 (**RALI MS 46**), which is available, free of charge, from the ACMA's website at www.acma.gov.au;

- Radiocommunications Assignment and Licensing Instruction MS 47 (**RALI MS 47**), which is available, free of charge, from the ACMA’s website at www.acma.gov.au;
- “LTE; Evolved Universal Terrestrial Radio Access (E-UTRA); Physical channels and modulation (3GPP TS 36.211)”, published by the European Telecommunications Standards Institute and available, free of charge, from its website at <https://portal.etsi.org>.

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.

In July 2021, the ACMA established a Technical Liaison Group (**TLG**) to provide advice on what changes should be made to the 3.4 GHz band technical framework to accommodate AWLs in the 3400 MHz to 4000 MHz frequency range. Membership of the TLG included existing 3.4 GHz band spectrum and apparatus licensees, some adjacent band licensees, equipment manufacturers and some industry groups. The ACMA took into account the views expressed by the TLG when preparing variations to the Determination. The outcomes of the TLG are available on the ACMA website at www.acma.gov.au.

The ACMA also publicly consulted on a draft of the instrument, from 2 March 2022 to 4 May 2022.

Thirty submissions were received during the public consultation period. Submissions were generally supportive of the proposed changes but there were some comments on specific aspects of the draft instrument. After considering all submissions, the ACMA decided to remove a requirement for a radiocommunications transmitter operated under an AWL to synchronise with radiocommunications devices operated under a spectrum licence in the 3.4 GHz band.

Regulatory impact assessment

A Regulation Impact Statement (**RIS**) has been completed. The Office of Impact Analysis (formerly the Office of Best Practice Regulation) has certified that the RIS is compliant with Australian Government RIS requirements (OBPR21-01290). This RIS is available, free of charge, from the ACMA’s website at www.acma.gov.au.

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 parts of the 3400 MHz to 4000 MHz frequency range. The purpose of the instrument is to include conditions in the Determination that apply to AWLs in the 3400 MHz to 4000 MHz frequency range. These conditions largely relate to interference management, including conditions that enable radiocommunications transmitters operating under an AWL to coexist with other radiocommunications devices, and conditions imposing other responsibilities and requirements for managing interference. The instrument also imposes conditions that effectively require some radiocommunications transmitters operated under AWLs to be subject to the requirements of the RRL Determination.

These amendments allow AWLs to be efficiently used in the 3400 MHz to 4000 MHz frequency range to introduce the use of wireless broadband services such as 5G in remote areas.

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 2023 (No. 1)*

Section 1 Name

This section provides for the instrument to be cited as the *Radiocommunications Licence Conditions (Area-Wide Licence) Amendment Determination 2023 (No. 1)*.

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.

Section 3 Authority

This section identifies the provision of the Act that authorises the making of the instrument, namely subsection 110A(2) of the Act.

Section 4 Amendments

This section provides that Schedule 1 varies the Determination.

Schedule 1—Amendments

Item 1

Item 1 inserts a note after section 3 of the Determination, explaining how the Determination has been affected by the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020*.

Item 2

Item 2 repeals the definition of a **26 GHz band spectrum licence** from section 5 of the Determination, as that definition is now in Schedule 1 (see item 9).

Item 3

Item 3 inserts definitions of **AAS** (which stands for active antenna system) and **antenna port** in section 5 of the Determination.

Item 4

Item 4 repeals the definition of **indoor transmitter** from section 5 of the Determination, as that definition is now in Schedule 1 (see item 9).

Item 5

Item 5 repeals the definition of **low risk transmitter** from section 5 of the Determination, as that definition is now in Schedule 1 (see item 9) and Schedule 4 (see item 13). The definition of a **low risk transmitter** is different between the frequency ranges that are covered by Schedule 1 and by Schedule 4.

Item 6

Item 6 inserts definitions of **RALI MS 47** and **Register Determination** in section 5 of the Determination.

Item 7

Item 7 repeals the definition of *uplink-downlink configuration* from section 5 of the Determination. That definition is now in Schedule 1 (see item 9) and Schedule 4 (see item 13), as band specific definitions are now required.

Item 8

Item 8 replaces section 6 to account for AWLs being subject to specified conditions under subsection 110A(2) of the Act in two different frequency bands: 24.7 GHz to 30 GHz under Schedule 1 and 3400 MHz to 4000 MHz under Schedule 4.

Item 9

Item 10 inserts, in Schedule 1 to the Determination, definitions for *26 GHz band spectrum licence*, *indoor transmitter*, *low risk transmitter* and *uplink-downlink configuration*, as band specific definitions are now required for the purposes of Schedule 1. These definitions had previously been included in section 5 of the Determination, and are substantively unchanged.

Item 10

Item 10 makes a change consequential to the change in item 5.

Items 11, 12 and 13

Items 11, 12 and 13 make changes consequential to the change in item 14.

Item 14

A condition in Schedule 1 requires transmitters to be operated in accordance with certain matters set out in RALI MS 46. Item 12 inserts a clause to manage permissions to operate a transmitter otherwise in accordance with RALI MS 46. This includes the process for application, decision-making, reconsideration by the ACMA, and external review.

Item 15

Item 15 inserts a new Schedule 4 to the Determination, to impose conditions that apply to AWLs authorising the operation of radiocommunications transmitters in the frequency range 3400 MHz to 4000 MHz. The structure of Schedule 4 is similar to that of Schedule 1, which imposes conditions for the frequency range 25.1 GHz to 27.5 GHz.

Clause 1

Clause 1 of new Schedule 4 provides for definitions for the purposes of Schedule 4.

Clause 2

Clause 2 of new Schedule 4 imposes a licence condition setting the maximum total radiated power for radiocommunications transmitters. The limit is 48 dBm in a 5 MHz bandwidth; logarithmic scaling can be used to find the appropriate level in alternative bandwidths.

Clause 2 also imposes a licence condition setting the maximum total equivalent isotropically radiated power for radiocommunications transmitters at frequencies above 3700 MHz. The limit is 72 dBm/5 MHz, which can also be met by a dual polarisation system restricting the equivalent isotropically radiated power to 69 dBm/5 MHz in each plane of polarisation.

Clause 3

Clause 3 of new Schedule 4 imposes a licence condition prohibiting the operation of a radiocommunications transmitter, other than a “low risk transmitter”, unless certain details of the transmitter have been included in the Register. This licence condition is a condition of the kind referred to in subsection 10(4A), (5A), (6A) and (7A) of the RRL Determination.

Clause 3 also defines a **low risk transmitter** to be a radiocommunications transmitter that operates with a maximum total radiated power that is less than or equal to 28 dBm per occupied bandwidth.

Clause 4

Clause 4 of new Schedule 4 imposes a condition prohibiting the operation of radiocommunications devices in a manner which is inconsistent with certain specified requirements contained in RALI MS 47, as in existence from time to time. RALI MS 47 is available, free of charge, from the ACMA’s website at www.acma.gov.au. The specified requirements relate to the coordination of radiocommunications transmitters under an AWL with already registered radiocommunications receivers and other radiocommunications devices, and the location of the radiocommunication transmitter based on the ‘device boundary’ of the transmitter (a measurement of certain power levels at points surrounding the transmitter). At the time the instrument commenced, RALI MS 47 included requirements about the coordination of radiocommunications transmitters with radio altimeters used on aircraft (including in relation to the registration or non-registration of such transmitters, if they are proposed to be used in certain areas), earth station receivers and certain stations used in point-to-multipoint services, among other requirements. Each of these requirements is one of the kind of requirements specified in clause 4.

Clause 5

Clause 5 of new Schedule 4 imposes a licence condition that sets out a process for managing interference between two or more AWL licensees if there is a certain level of interference and the licensees cannot agree to a resolution between themselves.

Broadly, in the absence of agreement between the licensees on how to manage interference, the licensees of AWLs will be required to synchronise operation of their devices with the other affected devices in accordance with certain technical specifications (namely, a fallback time division duplex uplink-downlink configuration based on the **uplink-downlink configuration** definition which specifies a 3GPP Long Term Evolution frame structure).

Clause 6

Clause 6 of new Schedule 4 imposes a licence condition in relation to interference management procedures for radiocommunications devices that are co-sited (that is, located within 500 metres of each other).

Clause 7

Clause 7 of new Schedule 4 imposes a licence condition that the licensee of an AWL is responsible for managing interference between radiocommunications devices operated under the AWL, and between radiocommunications operated under the AWL and under any other licence held by the licensee, or operated by the licensee under a class licence.

Clause 8

Clause 8 of new Schedule 4 imposes a licence condition that requires the licensee of an AWL to ensure that operation of a low risk transmitter does not cause harmful interference to other radiocommunications devices operating under a spectrum licence or apparatus licence held by any other person.

Clause 9

Clause 9 of new Schedule 4 imposes a series of conditions prohibiting the operation of radiocommunications transmitters that are operated in a way that causes unwanted emissions to exceed specified limits. Section 5 of the Determination defines ***unwanted emission*** for an AWL to be an omission that occurs outside the frequency range within which the AWL authorises operation of radiocommunications transmitters. Different requirements apply depending on the frequency range that the radiocommunications transmitter is operating in, whether the transmitter is a low risk transmitter, and whether the transmitter has an active antenna system.

Clause 10

Clause 10 deals with permission to operate a transmitter otherwise in accordance with RALI MS 47. This includes the process for application, decision-making, reconsideration by the ACMA, and external review.