

# EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Radiocommunications Act 1992*

## ***Radiocommunications Licence Conditions (Amateur Licence) Omnibus Amendment Instrument 2023 (No. 1)***

### **Authority**

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications Licence Conditions (Amateur Licence) Omnibus Amendment Instrument 2023 (No. 1)* (**the Amendment Instrument**) under subsections 110A(2) and 132(1) 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, by legislative instrument, determine that an apparatus licence included in a specified class of apparatus licence is taken to include one or more conditions.

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

The purpose of the Amendment Instrument is to amend or vary the following instruments:

- the *Radiocommunications Licence Conditions (Amateur Licence) Determination 2015* (**the Amateur Licence LCD**), which applies common licence conditions to be observed by licensees authorised to operate an amateur station under an apparatus licence;
- the *Radiocommunications (Overseas Amateurs Visiting Australia) Class Licence 2015* (**the Overseas Amateurs Class Licence**), which authorises visiting overseas qualified persons to operate amateur stations and applies common licence conditions to the operation of these stations.

It is a general requirement of the Act that the operation of all radiocommunication devices within Australia be authorised by a licence. Apparatus licences and class licences are two types of licences available that authorise the operation of radiocommunication devices. Apparatus licences that are issued to licensees are subject to statutory conditions that are imposed by legislative instruments made under subsection 110A(2) of the Act and conditions included in individual licences. Amateur licences are a type of apparatus licence and are subject to additional conditions imposed by the Amateur Licence LCD. Class licences are an effective and efficient means of spectrum management for services where a limited set of shared frequencies are employed, and equipment is operated on a common set of conditions. A class licence is not issued to a particular user and does not involve the payment of charges or taxes. The Overseas Amateurs Class Licence authorises the operation of radiocommunication devices in Australia by amateur users visiting from outside Australia for a period of up to 90 continuous days after each entry into Australia.

The Amateur Licence LCD and the Overseas Amateurs Class Licence permit only amateur licensees with Advanced qualifications, and their overseas equivalents, to operate in the 50–52 MHz frequency band as a secondary service.

The Amateur Licence LCD and the Overseas Amateurs Class Licence permit amateur licensees with Advanced qualifications, and their overseas equivalents, to operate in parts of the 3.4–3.6 GHz frequency band, subject to geographic limitations specified in both instruments. The Hierarchical Cell Identification Scheme (**HCIS**) is used in both instruments to describe geographic areas of the 3.4–3.6 GHz frequency band where operation of an amateur advanced station is prohibited.

The changes made by the Amendment Instrument will:

- enable use of the 50–52 MHz frequency band for amateur licensees with Standard qualifications, and their overseas equivalents, subject to the restriction that operation does not interfere with primary services in the frequency band. The Australian Radiofrequency Spectrum Plan (**the Spectrum Plan**) designates broadcasting services as the primary service in the 50–52 MHz frequency band.
- prohibit use of the 3.4–3.6 GHz frequency band in metropolitan and regional areas for amateur licensees with Advanced qualifications, and their overseas equivalents. This change is necessary to prevent the cancellation of advanced amateur licences by operation of section 153H of the Act, which would otherwise occur as a result of the re-allocation of parts of the 3.4–3.6 GHz frequency band for spectrum licensing under the *Radiocommunications (Spectrum Re-allocation – 3.4 GHz and 3.7 GHz Bands) Declaration 2022*.

A provision-by-provision description of the Amendment Instrument is set out in the notes at **Attachment A**.

The Amendment Instrument and the instruments it amends or varies are disallowable legislative instruments for the purposes of the *Legislation Act 2003 (the LA)*.

### **Documents incorporated by reference**

The Amendment Instrument inserts references to the HCIS into the Amateur LCD and the Overseas Amateurs Class Licence. The HCIS is contained in the *Australian Spectrum Map Grid 2012 (the ASMG)*. As specified in the definition of the ASMG in section 3 of each of the Amateur LCD and the Overseas Amateurs Class Licence, the *Australian Spectrum Map Grid 2012* is incorporated as existing from time to time, as permitted by section 314A of the Act. The *Australian Spectrum Map Grid 2012* is available, free of charge, from the ACMA's website (<https://www.acma.gov.au/>).

### **Consultation**

Before the instrument was made, the ACMA was satisfied that the consultation undertaken was appropriate and reasonably practicable, in accordance with section 17 of the LA.

Section 136 of the Act requires that a written notice outlining the details of the proposed variation of the Overseas Amateurs Class Licence 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) of the Act also requires consultation with all spectrum licensees if their licences may be affected by the variation of the Overseas Amateurs Class Licence.

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On 1 May 2023, the ACMA published a written notice under section 136 of the Act about the proposed variation to the Overseas Amateurs Class Licence on its website and in the Government Notices Gazette, for all members of the public, including spectrum licensees, who may be affected by the variation of the Overseas Amateurs Class Licence.

Between 1 May and 1 June 2023, the ACMA also published a consultation paper and a draft of the Amendment Instrument on its website. The consultation paper invited comments on the proposed changes to the Amateur LCD and the Overseas Amateurs Class Licence reflected in the draft Amendment Instrument. The proposed changes would have the effect of providing access to the 50–52 MHz frequency band for Standard amateur licensees, and their overseas equivalents. The proposed changes would also remove access to the 3.4–3.6 GHz frequency band in metropolitan and regional areas for Advanced amateur licensees, and their overseas equivalents, to facilitate the ACMA’s decision to re-allocate spectrum for spectrum licensing in this frequency band.

The ACMA amended the consultation documents on 9 May 2023, after identifying minor editorial errors in the Schedules which describe the excluded frequency bands and areas for the operation of an advanced amateur station. A revised draft Amendment Instrument was published on the ACMA website and in e-bulletins.

The ACMA received six submissions. These were from the Wireless Institute of Australia, the Australian Mobile Telecommunications Association (AMTA) and licensed amateur radio operators. The majority of submissions provided strong support for the proposed changes to the Amateur Licence LCD and the Overseas Amateurs Class Licence, outlined in the draft Amendment Instrument.

One submitter expressed disappointment about the removal of amateur access in the 3.4–3.6 GHz frequency band but noted that it was necessary to clear amateur access in this frequency band to accommodate high spectrum demand in densely populated areas of Australia.

The ACMA considered all relevant issues and concerns raised when making the Amendment Instrument. The issues raised in the submissions did not result in any changes being made to the Amendment Instrument.

### **Regulatory impact assessment**

The proposed changes to the Amateur Licence LCD and Overseas Amateurs Class Licence fall under two broader projects that have been previously assessed by the Office of Impact Analysis (**the OIA**) to be minor and machinery in nature and therefore have a minor regulatory impact. The reference number for the OIA’s assessment for the proposed changes to the Amateur Licence LCD and the Overseas Amateurs Class Licence to provide access to the 50–52 MHz frequency band for amateur licensees with Standard qualifications, and their overseas equivalents, is OBPR 43295. The reference number for the OIA’s assessment for the proposed changes to remove access to the 3.4–3.6 GHz frequency band for amateur licensees with Advanced qualifications, and their overseas equivalents, is OBPR 22-01921.

### **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.

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**Notes to the *Radiocommunications Licence Conditions (Amateur Licence) Omnibus Amendment Instrument 2023 (No. 1)***

**Section 1 Name**

This section provides for the Amendment Instrument to be cited as the *Radiocommunications Licence Conditions (Amateur Licence) Omnibus Amendment Instrument 2023 (No. 1)*.

**Section 2 Commencement**

This section provides for the Amendment Instrument to commence at the start of the day after it 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 provisions of the Act that authorise the making of the Amendment Instrument, namely subsections 110A(2) and 132(1).

**Section 4 Amendments – *Radiocommunications Licence Conditions (Amateur Licence) Determination 2015* [F2015L01113]**

This section identifies that the *Radiocommunications Licence Conditions (Amateur Licence) Determination 2015*, specified in Schedule 1, is amended as set out in the items in that Schedule.

**Section 5 Amendments – *Radiocommunications (Overseas Amateurs Visiting Australia) Class Licence 2015* [F2015L01114]**

This section identifies that the *Radiocommunications (Overseas Amateurs Visiting Australia) Class Licence 2015*, specified in Schedule 2, is amended as set out in the items in that Schedule.

**Schedule 1 - Amendments**

***Radiocommunications Licence Conditions (Amateur Licence) Determination 2015* [F2015L01113]**

**Item 1**

Item 1 inserts a new section 24A after section 24 of the Amateur LCD. The new section authorises the operation of an amateur standard station in the frequency band 50–52 MHz. Subsection 24A(1) outlines the application of section 24A to the frequency band 50–52 MHz, and refers to the frequency band as ***the 50-52 MHz band***. Subsection 24A(2) restricts licensees from operating an amateur standard station in the frequency band 50–52 MHz if this interferes with any transmissions from primary services mentioned in the Spectrum Plan.

**Item 2**

The table in Schedule 3 of the Amateur LCD describes, for the purposes of sections 23 and 24 of the Amateur LCD, the permitted frequencies for the operation of an amateur standard station using specified emission modes. This item inserts into the table a new Item 5 to permit the operation of an amateur standard station in the frequency band 50–52 MHz with the specified emission modes. This

allows licensees to operate an amateur standard station in the frequency band 50–52 MHz with any emission mode and with a necessary bandwidth no greater than 100 kHz.

### **Item 3**

Item 3 repeals Schedule 5 of the Amateur LCD, which identified, for the purposes of section 15A of the Amateur Licence LCD, the geographic areas where operation of amateur advanced stations on the corresponding frequency bands was prohibited. This item replaces the previous Schedule with a new Schedule 5, to set out the geographic areas for the frequency band 3.4–3.6 GHz where operation of an amateur advanced station is prohibited for the purposes of section 15A.

## **Schedule 2 - Amendments**

### ***Radiocommunications (Overseas Amateurs Visiting Australia) Class Licence 2015 [F2015L01114]***

The amendments in Schedule 2 are designed to give effect to the same changes made to the conditions that apply to amateur licences under the Amateur Licence LCD, as amended, so that overseas qualified amateurs are subject to the same operating restrictions and conditions when operating equivalent amateur stations.

### **Item 1**

This item inserts a new Item 5 into Table 2, to permit a person who holds a qualification or licence listed in Table C (ii) of the Tables of Equivalent Qualifications and Licences, to operate an amateur station in the frequency band 50–52 MHz with any emission mode and with a necessary bandwidth no greater than 100 kHz.

### **Item 2**

Item 2 inserts a new section 28A after section 28 of the Overseas Amateurs Class Licence. The new section authorises the operation of an amateur station in the frequency band 50–52 MHz. Subsection 28A(1) outlines the application of section 28A to the frequency band 50–52 MHz, and refers to the frequency band as ***the 50-52 MHz band***. Subsection 28A(2) restricts the operation of an amateur station in the frequency band 50–52 MHz if this interferes with any transmissions from primary services mentioned in the Spectrum Plan.

### **Item 3**

Item 3 repeals Schedule 2 of the Overseas Amateurs Class Licence, which identified, for the purposes of sections 23 and 41 of the Overseas Amateurs Class Licence, the geographic areas where operation of amateur stations on the corresponding frequency bands was prohibited. This item replaces the previous Schedule with a new Schedule 2, to set out the geographic areas for the frequency band 3.4–3.6 GHz where operation of an amateur advanced station is prohibited for the purposes of sections 23 and 41.

### 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 Licence Conditions (Amateur Licence) Omnibus Amendment Instrument 2023 (No. 1)***

##### ***Overview of the instrument***

The purpose of the *Radiocommunications Licence Conditions (Amateur Licence) Omnibus Amendment Instrument 2023 (No. 1)* (**the Amendment Instrument**) is to amend the following instruments:

- the *Radiocommunications Licence Conditions (Amateur Licence) Determination 2015 (the Amateur Licence LCD)*, which applies common licence conditions to be observed by licensees authorised to operate an amateur station under an apparatus licence;
- the *Radiocommunications (Overseas Amateurs Visiting Australia) Class Licence 2015 (the Overseas Amateurs Class Licence)*, which authorises visiting overseas qualified persons to operate amateur stations and applies common licence conditions to the operation of these stations.

The effects of the changes made by the Amendment Instrument are to:

- allow amateur licensees with Standard qualifications to use the 50–52 MHz frequency band, so long as operation does not interfere with any primary services in the frequency band;
- prohibit amateur licensees with Advanced qualifications from using the 3.4–3.6 GHz frequency band in metropolitan and regional areas;
- update the Overseas Amateurs Class Licence relating to the operation of an amateur station in the 50–52 MHz and 3.4–3.6 GHz frequency band so that it is consistent with the amended Amateur Licence LCD.

The changes to amateur licence conditions made by the Amendment Instrument are consistent with Australia's obligations under the International Telecommunication Union Radio Regulations. The changes provide amateur licensees greater access and flexibility in using certain frequency bands, and limit amateur access to certain frequency bands.

##### ***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 engages the right to freedom of expression. Amateur radio licensing allows individuals to exercise the right to freedom of expression through the operation of amateur radio stations. The Amendment Instrument maintains the ability of amateur licensees to exercise this right, through the use of an amended set of authorised frequencies,

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while balancing the need to regulate access to spectrum for these purposes so that other spectrum users' rights are respected.

***Conclusion***

The instrument is compatible with human rights because it promotes the right to freedom of expression by maintaining the ability of amateur licensees to exercise their right to freedom of expression through the operation of amateur stations on authorised parts of the radiofrequency spectrum.