

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications (Public Safety and Emergency Response) Class Licence 2023

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Public Safety and Emergency Response) Class Licence 2023* (**the instrument**) under section 132 of the *Radiocommunications Act 1992* (**the Act**).

Section 132 of the Act provides that the ACMA may, by legislative instrument, issue class licences, which authorise any person to operate a radiocommunications 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. Subsection 9(2) of the spectrum plan provides that any frequency band specified in the spectrum plan may be used by a device that operates in accordance with a class licence, which includes the instrument. No frequency band plan relates to the parts of the spectrum covered by the instrument.

Section 138 of the Act imposes certain requirements before the ACMA can 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. Section 138 does not apply in relation to the instrument.

Purpose and operation of the instrument

The instrument's purpose is to authorise the operation of radiocommunications devices in relation to the performance, support or facilitation of a public safety or emergency response function. A person is not authorised to operate a radiocommunications device under the instrument unless they are an employee of a public safety body, or of a body authorised by the public safety body for the purposes of the instrument. The instrument supports the operation of radiocommunications devices for the purposes of law enforcement, ambulance services and firefighting services, as well as other services with a public safety or emergency response function. The operation of radiocommunications devices under the instrument is subject to conditions, including conditions designed to minimise the risk of interference, to ensure devices are only used for public safety or related purposes, and to minimise the risk of harm to persons.

The instrument replaces the *Radiocommunications (Public Safety and Emergency Response) Class Licence 2013* (**the 2013 class licence**), and continues the long standing arrangements under the 2013 class licence, with updated technical references and additional arrangements included to provide for the use of cellular mobile technologies. The instrument commences on the day the 2013 class licence sunsets in accordance with Part 4 of Chapter 3 of the *Legislation Act 2003* (**LA**).

Operation of a radiocommunications device is not authorised by a class licence if it is not in accordance with the class licence (subsection 132(3) of the Act). Under section 46 of 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 a class licence. 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 \$469,500 based on the current penalty unit amount of \$313);
- if the radiocommunications device is not a radiocommunications transmitter – 20 penalty units (\$6,260).

The Act prescribes the following maximum civil penalties:

- if the radiocommunications device is a radiocommunications transmitter – 300 penalty units (\$93,900);
- if the radiocommunications device is not a radiocommunications transmitter – 20 penalty units (\$6,260).

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.

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 LA. The instrument is subject to the sunset provisions in Part 4 of Chapter 3 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 the following Acts, or otherwise refers to them, as in force from time to time:

- the Act;
- the *Acts Interpretation Act 1901*;
- the *Australian Communications and Media Authority Act 2005*;
- the *Defence Act 1903*; and
- the LA.

The Acts and legislative instruments listed above may be accessed, free of charge, from the Federal Register of Legislation (www.legislation.gov.au).

The following documents, as existing from time to time, are also incorporated in the instrument by reference:

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- the Geodetic Datum of Australia known as GDA94, gazetted in the Commonwealth of Australia *Gazette* No. GN 35 on 6 September 1995. Gazette No. GN 35 is available, free of charge, from the Federal Register of Legislation (www.legislation.gov.au);
- the *Radiation Protection Standard for Limiting Exposure to Radiofrequency Fields – 100 kHz to 300 kHz (2021)* (**the ARPANSA Standard**) or any standard published as a replacement of that standard by the Australian Radiation Protection and Nuclear Safety Agency. The ARPANSA Standard is available, free of charge, from the Australian Radiation Protection and Nuclear Safety Agency website (www.arpansa.gov.au);
- TS 38.101-1 “3rd Generation Partnership Project; Technical Specification Group Radio Access Network; NR; User Equipment radio transmission and reception; Part 1: Range 1 Standalone”, published by the 3rd Generation Partnership Project. TS 38.101-1 is available, free of charge, from the 3rd Generation Partnership Project website (www.3gpp.org);
- TS 38.104 “3rd Generation Partnership Project; Technical Specification Group Radio Access Network; NR; Base Station (BS) radio transmission and reception”, published by the 3rd Generation Partnership Project. TS 38.103 is available, free of charge, from the 3rd Generation Partnership Project website (www.3gpp.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.

On 19 June 2023, the ACMA commenced a public consultation process to remake the 2013 class licence. The ACMA published a page on its website describing the issues for comment, the process for contributing to the consultation and providing a copy of a consultation paper and a draft of the instrument.

The consultation paper proposed remaking the 2013 class licence with minor changes, including expanded technical conditions to reflect current technology standards, and provision for the use of cellular mobile technologies.

The consultation closed on 21 July 2023. The ACMA received 12 submissions from stakeholders. They are available on the ACMA website.

All submissions were supportive of making the instrument, and most were supportive of the additional arrangements included for cellular mobile technologies. However, some submissions suggested that:

- the use of such technologies could have a detrimental effect on radiocommunications devices operated under the 2013 class licence;
- alternatively, the operating parameters for these technologies should be further expanded beyond the limits proposed in the draft instrument.

The ACMA did not make any changes to the instrument as a result of these submissions. The ACMA considers that the arrangements for the use of cellular mobile technologies in the instrument represent an appropriate balance between enabling use of cellular mobile technologies while keeping the potential for interference into other authorised radiocommunications devices manageable.

Some submissions suggested the instrument should include the power for the ACMA to nominate a ‘manager’ to coordinate the operation of radiocommunications devices under the instrument within a particular State or Territory. The ACMA did not make any changes to the instrument as a result of these submissions. The ACMA considers that public safety agencies may be able to coordinate themselves without the need for the instrument to make provision for a manager to be appointed. However, the ACMA is willing to consider this suggestion further, if public safety agencies were to prepare a coordinated, detailed proposal.

Some submissions also suggested apparatus licensing as an alternative means of authorising the operation of radiocommunications devices that could enable appointment of a ‘band manager’, by issuing the licence to the manager. The manager could then authorise public safety bodies to operate devices under the licence, under section 114 of the Act, and in doing so coordinate those bodies’ use of the relevant spectrum. The ACMA does not consider apparatus licensing to be an appropriate alternative given the general agreement that the class licensing model remains fit for purpose, affords the necessary flexibility to support public safety and emergency response operations, and does not involve the payment of any taxes or charges.

One submission suggested that certain protections for radioastronomy services included in the instrument be relaxed; however, a submission from the radioastronomy sector suggested that the existing protections remained necessary. The ACMA did not make any changes as a result of the first submission. The ACMA considers that the protections for radioastronomy services remain necessary; however, if public safety bodies and the radioastronomy sector are able to negotiate different coexistence arrangements, the ACMA would be able to consider that proposal and, if appropriate, consult on a variation to the instrument.

Regulatory impact assessment

A preliminary assessment of the proposal to make the class licence was conducted by the Office of Impact Analysis (OIA), 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 because the proposed regulatory change is minor or machinery in nature (OIA reference number OIA23-04591).

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’s purpose is to authorise the operation of radiocommunications devices in relation to the performance, support or facilitation of a public safety or emergency response function. A person is not authorised to operate a radiocommunications device under the instrument unless they are an employee of a public safety body, or of a body authorised by the public safety body for the purposes of the instrument. The instrument supports the operation of radiocommunications devices for the purposes of law enforcement, ambulance services and firefighting services, as well as other services with a public safety or emergency response function. The operation of radiocommunications devices under the instrument is subject to conditions, including conditions designed to minimise the risk of interference, to ensure devices are only used for public safety or related purposes, and to minimise the risk of harm to persons.

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 (Public Safety and Emergency Response) Class Licence 2023*

Part 1—Preliminary

Section 1 Name

This section provides for the instrument to be cited as the *Radiocommunications (Public Safety and Emergency Response) Class Licence 2023*.

Section 2 Commencement

This section provides for the instrument to commence on 1 October 2023.

Section 3 Authority

This section identifies the provision of the Act that authorises the making of the instrument, namely section 132 of the *Radiocommunications Act 1992 (the Act)*.

Section 4 Definitions

This section defines a number of key terms used throughout the instrument.

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 Interpretation

This section provides that a frequency band described using two frequencies starts immediately above the lower frequency and ends at the high frequency. It also provides that geographic coordinates are described using GDA94.

Section 6 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 as in force or existing from time to time.

Part 2 Class Licence

Section 7 Class licence

This section provides that the instrument authorises any person to operate a radiocommunications device for the purposes of performing public safety or emergency response functions. This section also defines what are public safety or emergency response functions.

Part 3 Conditions

Section 8 Operation subject to conditions

This section provides that the operation of radiocommunication devices is subject to conditions set out in Part 3 of the instrument.

Section 9 Operator of a radiocommunications device

This section provides that a person must not operate a radiocommunications device under the instrument unless the person is a member or employee of a public safety body (including police forces, ambulance services, firefighting services, search and rescue services, and the Australian Defence Force) or an ‘authorised body’.

Subsection 9(2) provides that a public safety body may authorise a body to operate a radiocommunications device, and sets out the requirements for that authorisation. A body so authorised is an ‘authorised body’.

No provision for merits review is made in respect of a decision of a public safety body whether or not to authorise a body under subsection 9(2), because:

- to the extent that the decision not to authorise a body affects the rights or interests of a person, that decision is expected usually to be subordinate to a different decision (such as a decision by a public safety body to engage a particular body to assist in the operation of radiocommunications devices, and not to engage other bodies for the same purpose). Although the exercise of the power is not conditioned on the existence of a contract between the public safety body and another body, or a legislative role for the other body, the ACMA expects that such an authorisation would generally only occur where there is such a contract or legislative role¹;
- to the extent that the decision not to authorise a body affects the rights or interests of a person, the person has the option to apply for an apparatus licence under the Act to authorise the operation of radiocommunications devices, or may be able to operate devices under another class licence;
- it is appropriate that the public safety bodies are the final decision-maker over which other bodies they choose to partner with in order to assist them perform their functions and duties in relation to public safety and emergency response;
- over the life of the 2013 class licence, the ACMA is not aware of any complaints that a public safety body has refused to authorise a particular body, and it is inherently unlikely that such a complaint would arise.

Section 10 Operation in the course of performing functions or duties

This section provides that operation of radiocommunication devices under the instrument must only be in the course of a person performing their functions or duties as a member or employee of a public safety body or authorised body.

¹ This is consistent with the Administrative Review Council’s guide, *What decisions should be subject to merits review?*, which states that decisions to appoint a person to undertake a specified function should not generally be subject to merits review (at [4.40]).

Section 11 Limitation in relation to authorised bodies

This section provides that members or employees of an authorised body must not operate radiocommunication devices under the instrument except for the purpose of facilitating a public safety or emergency response function performed by a public safety body. Such operation of radiocommunication devices must also be in accordance with the terms of the authorisation given by the public safety body.

Section 12 Compliance with emission masks

This section provides that a person must not operate a radiocommunications transmitter (other than cellular mobile transmitters) under the instrument unless the transmitter complies with one of the two emission masks specified in this section. ('Cellular mobile transmitters' are those that, when operated, comply with one of two emission masks not specified in the section: 'Mask O' or 'Mask P'. Whether a transmitter complies with Mask O or Mask P is to be ascertained in accordance with the requirements of specified documents published by the 3rd Generation Partnership Project.)

The section specifies two different emission masks, 'Mask L', which will generally be for low power transmitters (with a maximum transmitter power of 7 dBm/MHz), and 'Mask M', which will generally be for high power transmitters (with a maximum transmitter power of 20 dBm/MHz). The masks require certain levels of attenuation of the transmitter, relative to the transmitter's peak average power, for different fractions of the bandwidth of the channel used by the transmitter.

Section 13 Operation of radiocommunications transmitter within maximum EIRP level

This section provides that a person must not operate a radiocommunications transmitter under the instrument unless the transmitters complies with the equivalent isotropically radiated power (**EIRP**) limit specified in this section. The section identifies four different classes of transmitter, each with a different maximum EIRP requirement. This section also specifies the emission mask with which each type of transmitter must comply, except for cellular mobile transmitters. The section also provides for maximum overall transmitter powers for transmitters operated under the different emission masks.

The effect of sections 12 and 13 is that, for radiocommunications transmitters (other than cellular mobile transmitters), the applicable mask to be complied with depends on the operating parameters of the radiocommunications transmitter. If the radiocommunications transmitter is operated at 7dBm/MHz or below, the transmitter's operation must comply with Mask L. However, if the radiocommunications transmitter is operated between 7 and 20 dBm/MHz, the transmitter's operation must comply with Mask M. This will effectively mean that those radiocommunications transmitters operated in compliance with Mask M will also be operated in compliance with Mask L, which is less stringent.

Because of the definitions of these terms, the operation of a cellular mobile base station necessarily complies with Mask P, and the operation of cellular mobile equipment necessarily complies with Mask O.

Section 14 Harmful interference

This section provides that a person must not operate radiocommunications transmitters if the operation causes harmful interference to another radiocommunication device operated under a licence.

Section 15 Permitted channels

This section provides that a person can only operate a radiocommunications device on a channel, or two or more contiguous channels, specified in Schedule 1 to the instrument.

Section 16 Limitation in respect of fixed devices

This section provides that a person may only operate a radiocommunications device at a particular fixed location on a temporary basis, not exceeding six months. This limit has been imposed because radiocommunications devices authorised by the instrument are intended to be used on a temporary and itinerant basis.

Section 17 Interference with radio astronomy observations

This section provides that certain radiocommunications transmitters operating within the prescribed radius of a radio astronomy site (as specified in Schedule 2 to the instrument), operating on channels 7 to 18 (as specified in Schedule 1 to the instrument) must not cause interference above a certain threshold level specified in Schedule 2.

Section 18 Compliance with ARPANSA Standard

This section provides that a person must not operate a radiocommunications device, or a group of radiocommunications devices, if the electromagnetic energy emitted by the device, or group of devices, exceeds the general public exposure limits specified in the ARPANSA Standard in a place accessible by the public.

Schedule 1–Channel Plan Frequencies for Operation of Radiocommunications Devices

Schedule 1 specifies the channel number, bandwidth, and the lower and upper frequency, of each channel that may be used to operate radiocommunications devices under the instrument.

Schedule 2–Radio Astronomy Observations

Table 2.1–Radio Astronomy Sites

Table 2.1 provides the geographic coordinates of each radio astronomy site, for the purposes of section 17 of the instrument.

Table 2.2–Prescribed Radii

Table 2.2 specifies the prescribed radii for each radio astronomy site, for the purposes of section 17 of the instrument.

Table 2.3–Radio Astronomy Interference Thresholds

Table 2.3 provides the prescribed interference threshold levels, measured in dBm/Hz, applicable for each radio astronomy site, for the purposes of section 17 of the instrument.