

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications (Maritime Licensing) Amendment Instrument 2024 (No.1)

Authority

The Australian Communications and Media Authority (the **ACMA**) has made the *Radiocommunications (Maritime Licensing) Amendment Instrument 2024 (No.1)* (the **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 each apparatus licence included in a specified class of apparatus licences is taken to include one or more specified 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, or to operate a radiocommunications device of a specified kind for a specified purpose.

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, 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, or to be allocated or to be re-allocated by issuing spectrum licences.

Under section 137 of the Act, the ACMA must not issue a class licence that is inconsistent with the *Australian Radiofrequency Spectrum Plan 2021* (the **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 class licence varied by the instrument. There is no relevant frequency band plan.

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 instrument is to vary the following instruments:

- [*Radiocommunications Licence Conditions \(Maritime Coast Licence\) Determination 2015*](#) (the **Maritime Coast Licence Determination**), which applies common licence conditions to be observed by licensees authorised to operate a maritime coast station under an apparatus licence;
- [*Radiocommunications Licence Conditions \(Maritime Ship Licence\) Determination 2015*](#) (the **Maritime Ship Licence Determination**), which applies common licence conditions to be

observed by licensees authorised to operate a maritime ship station under an apparatus licence;

- [Radiocommunications \(Maritime Ship Station – 27 MHz and VHF\) Class Licence 2015](#) (the **Maritime Ship Station Class Licence**), which authorises qualified persons to operate maritime ship stations on designated 27 MHz and very high frequency (VHF) frequencies and applies common licence conditions to the operation of these stations.

The changes to these instruments reflect the positions agreed to by Australia at the International Telecommunication Union (the **ITU**) World Radiocommunication Conference held in 2019 (the **WRC-19**).

At the conclusion of WRC-19, Australia signed the Final Acts of the conference, which made revisions to the 2015 version of the ITU Radio Regulations, a treaty-level document. Following consideration by the Parliamentary Joint Standing Committee on Treaties, Australia ratified the Final Acts on 28 March 2022. The Final Acts are available on the Department of Foreign Affairs and Trade [website](#).

Australia is a signatory to the Constitution and Convention of the ITU. The ITU Radio Regulations are revised following the conclusion of each ITU World Radiocommunication Conference, normally held every 4 years, and member states subsequently take binding treaty action to give effect to the changes to the ITU Radio Regulations.

The ACMA gives effect to ITU Radio Regulations requirements through a number of domestic licensing and planning instruments, apparatus licence condition determinations and class licences.

Background

Maritime radio services in Australia are used to provide search and rescue assistance to ships in distress, and also for commercial and recreational communications uses.

The regulatory framework for maritime radio, including planning the use of channels, begins at the international level. The international framework for maritime radio is established through the ITU Radio Regulations and the Safety of Life at Sea (**SOLAS**) Convention. For most countries, including Australia, spectrum and frequency planning is informed by participation in the ITU.

The frequency allocations for the maritime mobile bands are detailed in Article 5 of the ITU Radio Regulations. Appendix 18 of the ITU Regulations provides the source for the channel structure of the VHF maritime mobile band, defines the channel numbering, and specifies the permitted use for each channel on an international basis. Appendix 15 of the ITU Radio Regulations sets out the frequencies and permitted uses for distress and safety communications for the Global Maritime Distress and Safety System (**GMDSS**).

The Australian maritime radio regulatory framework is generally consistent with the ITU Radio Regulations; however, there are some instances where channels and permitted uses are different to those provided for in Appendix 18 of the ITU Radio Regulations. In accordance with Article 4.4 of the ITU Radio Regulations, national differences in allocations are subject to conditions:

- that associated radio installations do not cause harmful interference to the radio services or communications of other ITU Members that operate in accordance with the provisions of the ITU Radio Regulations, and
- that the possibility of harmful interference from such services and communications is accepted.

The International Maritime Organisation (the **IMO**), of which Australia is a member state, is the United Nations agency with responsibility for the safety and security of shipping and the prevention of marine pollution by ships. The IMO implements its responsibility for the safety of shipping through the SOLAS Convention. The SOLAS Convention is an international maritime treaty that sets

minimum safety standards in the construction, equipment and operation of merchant ships. Australia is also a signatory to the SOLAS Convention.

The ACMA manages the radiofrequency spectrum in accordance with the Act, which sets out objectives for spectrum management using a range of regulatory tools. These include powers relating to radiofrequency planning, licensing and technical standards.

In addition to the spectrum plan, the ACMA specifies the permitted uses and conditions applicable to the use of the VHF maritime mobile band in the following four legislative instruments:

- the [Radiocommunications Licence Conditions \(Major Coast Receive Licence\) Determination 2015](#);
- the Maritime Coast Licence Determination;
- the Maritime Ship Licence Determination;
- the Maritime Ship Station Class Licence.

ACMA policies in relation to administrative decisions in the VHF maritime mobile band may be set out in the Radiocommunications Assignment and Licensing Instruction [RALI MS 42 – Frequency Plan for the VHF Bands 70 - 87.5 MHz and 148 - 174 MHz \(RALI MS 42\)](#).

Collectively, these legislative instruments and RALI MS 42 ensure that radiocommunications transmitters operated in the VHF maritime mobile band use the appropriate frequencies, transmitter output power and protocols to minimise the potential for interference to maritime radio operation.

The VHF maritime mobile band consists of the following radio frequency ranges:

- 156 MHz to 157.45 MHz;
- 160.6 MHz to 160.975 MHz;
- 161.475 MHz to 162.05 MHz.

The instrument amends the Maritime Coast Licence Determination, the Maritime Ship Licence Determination and the Maritime Ship Station Class Licence to implement changes made to the ITU Radio Regulations as a result of the WRC-19 outcomes ratified by Australia. These changes:

- support the introduction of an additional satellite system for the GMDSS. Iridium Satellite LLC has been recognised by the IMO to provide GMDSS.
- facilitate the use of new and existing autonomous maritime radio devices (**AMRD**) to protect the GMDSS and automatic identification system (**AIS**).
- enable a new VHF data exchange system (**VDES**) satellite component, while ensuring that this component will not degrade the current terrestrial VDES components, application specific messages and AIS operations, and will not impose any additional constraints on existing services in these and adjacent frequency bands.

Maritime Coast Licence Determination and the Maritime Ship Licence Determination

The Maritime Coast Licence Determination and the Maritime Ship Licence Determination impose conditions on particular transmitter licences that authorise the operation of radiocommunications transmitters in the VHF maritime mobile band. The instrument amends these two instruments to implement the changes made to the ITU Radio Regulations as a result of the WRC-19 outcomes ratified by Australia.

Operation of a radiocommunications device is not authorised by an apparatus licence (including the transmitter licences subject to the Maritime Coast Licence Determination and the Maritime Ship Licence Determination) if it is not in accordance with the conditions of the licence (subsection 97(4) 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.

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 (\$31,300).

Maritime Ship Station Class Licence

The Maritime Ship Station Class Licence authorises the operation of particular radiocommunications devices in the VHF maritime mobile band, subject to specified conditions. The instrument amends the Maritime Ship Station Class Licence to implement the changes made to the ITU Radio Regulations as a result of the WRC-19 outcomes ratified by Australia.

Operation of a radiocommunications device is not authorised by a class licence (including the Maritime Ship Station Class Licence) if it is not in accordance with the conditions of the 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 penalties applicable in relation to a contravention of section 46 are set out above.

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.

Generally

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

The instrument is a legislative instrument for the purposes of the *Legislation Act 2003* (the **LA**), and is disallowable.

Each of the Maritime Coast Licence Determination, the Maritime Ship Licence Determination and the Maritime Ship Station Class Licence is subject to the sunset provisions in Part 4 of Chapter 3 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) provisions of any Act as in force at a particular time, or 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 from time to time.

The instrument amends the Maritime Ship Licence Determination to incorporate the ITU Radio Regulations, and amends the Maritime Coast Licence Determination and the Maritime Ship Station Class Licence to incorporate Appendix 18 of the ITU Radio Regulations, by reference. The Radio Regulations are available, free of charge, at www.itu.int.

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 variation of the Maritime Ship Station 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.

On 29 September 2023, the ACMA published a written notice under section 136 of the Act about the proposed variation to the Maritime Ship Station Class Licence on its website and in the Government Notices *Gazette*, and invited interested persons to make representations about the proposed variation.

Between 29 September and 3 November 2023, the ACMA also published a consultation paper and a draft of the instrument on its website. The consultation paper invited comments on the proposed changes to the Maritime Coast Licence Determination, the Maritime Ship Licence Determination and the Maritime Ship Station Class Licence.

The ACMA received four submissions. These were from Australian Maritime Safety Agency (AMSA), Transport for NSW, Department of Transport WA, and an individual. All submitters supported the ACMA's proposals in the consultation paper and the changes proposed by the instrument.

AMSA recommended changes to definitions, frequency bands and related technical conditions in the instrument for consistency with the requirements of Appendix 18 of the ITU Radio Regulations.

The ACMA considered that the proposed changes recommended by AMSA would more accurately reflect the requirements of Appendix 18 of the ITU Radio Regulations. The instrument was updated to incorporate changes recommended by AMSA.

Regulatory impact assessment

A preliminary assessment of the proposal to make the instrument 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 instrument was not expected to have more than a minor impact on industry and recreational users of maritime radios (OIA reference number OIA23-05618).

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.

Notes to the *Radiocommunications (Maritime Licensing) Amendment Instrument 2024 (No. 1)*

Section 1 Name

This section provides for the instrument to be cited as the *Radiocommunications (Maritime Licensing) Amendment Instrument 2024 (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.

The Federal Register of Legislation may be accessed free of charge at www.legislation.gov.au.

Section 3 Authority

This section identifies the provisions of the Act that authorise making of the instrument, namely, subsections 110A(2) and 132(1).

Section 4 Amendments – *Radiocommunications Licence Conditions (Maritime Coast Licence) Determination 2015*

This section provides that the Maritime Coast Licence Determination is amended as set out in Schedule 1.

Section 5 Amendments – *Radiocommunications Licence Conditions (Maritime Ship Licence) Determination 2015*

This section provides that the Maritime Ship Licence Determination is amended as set out in Schedule 2.

Section 6 Amendments – *Radiocommunications (Maritime Ship Station – 27 MHz and VHF) Class Licence 2015*

This section provides that the Maritime Ship Station Class Licence is amended as set out in Schedule 3.

Schedule 1 – Amendments–*Radiocommunications Licence Conditions (Maritime Coast Licence) Determination 2015*

Item 1

Item 1 inserts the term ‘VHF Data Exchange System (VDES)’ into the list of terms in the note under subsection 1.4(1). The note identifies terms used in the Maritime Coast Licence Determination that are defined in the *Radiocommunications (Interpretation) Determination 2015*.

Item 2

Item 2 inserts a new section 6.15 of the Maritime Coast Licence Determination to impose the conditions on the operation of a maritime coast station for VDES communications. If a licensee operates a maritime coast station for VDES communications, the licensee must comply with the applicable frequency band, transmitter output power level and other limitations specified in Schedule 9.

Item 3

Item 3 inserts a new Schedule 9 into the Maritime Coast Licence Determinations that sets out the technical conditions for maritime coast stations for VDES. The technical conditions are the channels, receive and transmit frequencies, maximum transmitter output power, and the purpose and limitations relating to the use of each channel.

New Schedule 9 also provides that when a licensee is using more than one channel specified in Schedule 9, the channels used must have a contiguous bandwidth within the specified ranges, and use of the channels must be consistent with Appendix 18 of the ITU Radio Regulations.

Schedule 2 – Amendments–*Radiocommunications Licence Conditions (Maritime Ship Licence) Determination 2015*

Items 1 to 6

Items 1 to 6 amend subsection 1.3(1) of the Maritime Ship Licence Determination, to include new definitions and repeal existing definitions, and to change the notes to the subsection, as a consequence of other changes made to the Maritime Ship Licence Determination.

Items 7 to 9

Items 7 to 9 amend each of paragraph 2.8(a), 3.14(a) and 5.12B(a) to provide that each paragraph is ‘subject to clause 12.1 of Part 12 of Schedule 2’, which is introduced by item 14. Each of these paragraphs deals with the use of channels under a licence subject to the Maritime Ship Licence Determination. New clause 12.1 of Part 12 of Schedule 2 to the Maritime Ship Licence Determination provides that when a licensee is using more than one channel specified in Schedule 9, the channels used must have a contiguous bandwidth within the specified ranges and use of the channels must be consistent with Appendix 18 of the ITU Radio Regulations.

Item 10

Item 10 amends the table in Part 2 of Schedule 2 to the Maritime Ship Licence Determination, to replace some items and introduce new items. The items set out the technical conditions for very high frequency (VHF) and ultra high frequency (UHF) communications for distress, urgency, safety or calling. The new items include technical conditions for additional satellite systems for distress and safety communications for the GMDSS.

Item 11

Item 11 replaces item 350 of the table in Part 3 of Schedule 2 to the Maritime Ship Licence Determination. The changes remove terminal types and a reference to a specific satellite service provider that are no longer relevant.

Item 12

Item 12 repeals item 356 of the table in Part 3 of Schedule 2 to the Maritime Ship Licence Determination, as it contains a reference to a specific satellite service provider that is no longer relevant.

Item 13

Item 13 replaces the table in Part 12 of Schedule 2 to the Maritime Ship Licence Determination, that sets out the technical conditions for maritime ship licences used for VDES. The technical conditions

are the channels, receive and transmit frequencies, maximum transmitter output power, and the purpose and limitations relating to the use of each channel.

Item 14

Item 14 inserts a new clause 12.1 of Part 12 of Schedule 2 regarding ‘Use of channels’ that specifies conditions when a licensee is using more than one channel specified in column 1, Schedule 2, Part 12. New clause 12.1 provides that when a licensee is using more than one channel specified in Schedule 12, the channels used must have contiguous bandwidth within the specified ranges and that use of the channels must be consistent with Appendix 18 of the ITU Radio Regulations.

Item 15

Item 15 removes a reference to a specific satellite service provider that is no longer relevant.

Schedule 3 – Amendments–Radiocommunications (Maritime Ship Station – 27 MHz and VHF) Class Licence 2015

Item 1

Item 1 amends the Maritime Ship Station Class Licence to include new definitions.

Item 2

Item 2 amends section 20 of the Maritime Ship Station Class Licence to introduce conditions on the use of a channel in Part 2.11 of Schedule 2 to the Maritime Ship Station Class Licence related to the purpose of the use, and the limitations on the use. It also refers to new clause 2.11.1 of Part 2.11 of Schedule 2. That new clause provides that when a licensee is using more than one channel specified in Part 2.11 of Schedule 2, the channels used must have a contiguous bandwidth within the specified ranges and use of the channels must be consistent with Appendix 18 of the ITU Radio Regulations.

Item 3

Item 3 replaces item 12 of Part 2.2 of Schedule 2 to the Maritime Ship Station Class Licence, and inserts two additional items for AMRD Group B. The new items set out the technical conditions applicable for channels used for distress, urgency, safety or calling communications.

Item 4

Item 4 replaces item 15 of Part 2.2 of Schedule 2 to the Maritime Ship Station Class Licence, and inserts an additional item. The new items set out that the specified channels must be used for the purpose of ‘Distress and safety communications for the GMDSS’.

Item 5

Item 5 replaces Part 2.11 of Schedule 2 to the Maritime Ship Station Class Licence. The new Part 2.11 sets out the technical conditions for maritime ship stations used for VDES. The technical conditions are the channels, receive and transmit frequencies, maximum transmitter output power, and the purpose and limitations relating to the use of each channel.

The item also introduces a new clause 2.11.1. New clause 2.11.1 provides that when a licensee is using more than one channel specified in Part 2.11 of Schedule 2, the channels used must have contiguous bandwidth within the specified ranges and that use of the channels must be consistent with Appendix 18 of the ITU Radio Regulations.

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 (Maritime Licensing) Amendment Instrument 2024 (No. 1)

Overview of the instrument

The purpose of the *Radiocommunications (Maritime Licensing) Amendment Instrument 2024 (No. 1)* (the **Amendment Instrument**) is to vary the following instruments:

- *Radiocommunications Licence Conditions (Maritime Coast Licence) Determination 2015* (the **Maritime Coast Licence Determination**), which applies common licence conditions to be observed by licensees authorised to operate a maritime coast station under an apparatus licence;
- *Radiocommunications Licence Conditions (Maritime Ship Licence) Determination 2015* (the **Maritime Ship Licence Determination**), which applies common licence conditions to be observed by licensees authorised to operate a maritime ship station under an apparatus licence;
- *Radiocommunications (Maritime Ship Station – 27 MHz and VHF) Class Licence 2015* (the **Maritime Ship Station Class Licence**), which authorises qualified persons to operate maritime ship stations on designated 27 MHz and very high frequency (VHF) frequencies and applies common licence conditions to the operation of these stations.

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

- support the introduction of an additional satellite systems for the Global Maritime Distress and Safety System (**GMDSS**);
- facilitate the use of new and existing autonomous maritime radio devices to protect the GMDSS and automatic identification system; and
- enable a new VHF data exchange system (**VDES**) satellite component, while ensuring that this component will not degrade the current terrestrial VDES components, application specific messages and automatic identification system operations and will not impose any additional constraints on existing services in these and adjacent frequency bands.

The changes made by the Amendment Instrument will implement the treaty-level changes Australia agreed to at WRC-19, and are consistent with Australia's obligations under the International Telecommunication Union Radio Regulations.

Human rights implications

The ACMA has assessed whether the Amendment 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 Amendment Instrument and the nature of the applicable rights and freedoms, the ACMA has formed the view that the Amendment Instrument promotes the right to health and the right to freedom of expression.

Article 12 of the International Covenant on Economic, Social and Cultural Rights provides:

1. Everyone shall have the right to enjoy the highest attainable standard of physical and mental health.

2. The steps taken to achieve full realisation of this right shall include those necessary for:
 - a. The provision for the reduction of stillbirth rate and infant mortality and for the healthy development of children;
 - b. The improvement of all aspects of environmental and industrial hygiene;
 - c. The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
 - d. The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 19 of the International Covenant on Civil and Political Rights provides:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - a. For respect of the rights or reputations of others;
 - b. For the protection of national security or of public order (*ordre public*), or of public health or morals.

The Amendment Instrument promotes the right to health by providing greater protection for safety of life services in the VHF maritime channels. The Amendment Instrument also promotes the right to freedom of expression by facilitating communication between maritime stations for commercial and recreational purposes, without derogating from the use of maritime channels for safety of life services. The Amendment Instrument promotes these rights, while at the same time balancing the need to regulate access to spectrum for these purposes to ensure that other spectrum users' rights are respected and optimised.

Conclusion

The Amendment Instrument is compatible with human rights because it promotes the right to health and the right to freedom of expression by maintaining the ability of maritime radio operators to promote these rights through the operation of maritime stations in authorised parts of the radiofrequency spectrum.