

# EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Radiocommunications Act 1992*

*Radiocommunications (Cordless Communications Devices) Class Licence 2024*

*Radiocommunications Equipment (General) Amendment Rules 2024 (No. 1)*

## Authority

The Australian Communications and Media Authority (the **ACMA**) has made the *Radiocommunications (Cordless Communications Devices) Class Licence 2024* (the **CCD CL**) 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. 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.

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 CCD CL. Subsection 9(5) of the *Radiocommunications (Australian Radio Quiet Zone Western Australia) Frequency Band Plan 2023* provides that the frequency bands covered by that instrument may be used for services provided under, and in accordance with, the conditions of a class licence, which includes the CCD CL.

Under section 138 of the Act, before issuing 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, the ACMA must be satisfied that:

- issuing 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
- issuing the class licence would be in the public interest.

The ACMA must also consult with all affected spectrum licensees. However, the CCD CL does not authorise the operation of radiocommunications devices at such frequencies.

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.

The ACMA has made the *Radiocommunications Equipment (General) Amendment Rules 2024 (No. 1)* (the **Equipment Rules amendment**) under subsection 156(1) of the Act and subsection 33(3) of the AIA.

Subsection 156(1) of the Act provides that the ACMA may, by legislative instrument, make rules relating to equipment (**equipment rules**).

Subsection 156(3) provides that equipment rules must be directed towards achieving any or all of the objectives listed in that subsection, including relevantly:

- containing interference to radiocommunications;
- containing interference to any uses or functions of equipment;
- protecting the health or safety of individuals from any adverse effect likely to be attributable to radio emissions resulting from a reasonably foreseeable use (including a misuse) of radiocommunications transmitters; and
- ensuring that persons who operate equipment have access to information about the equipment.

## Purpose and operation of the instruments

### *CCD CL*

It is generally a requirement of the Act that the operation of all radiocommunications devices within Australia be authorised by a radiocommunications licence.

A class licence is one kind 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 is employed, and equipment is operated under a common set of conditions. A class licence sets out the conditions under which any person is permitted to operate any device to which the class licence is applicable; it is not issued to an individual user, and does not involve the payment of licence fees. The licences are issued by the ACMA as legislative instruments and are registered on the Federal Register of Legislation.

The purpose of the CCD CL is to revoke and replace the *Radiocommunications (Cordless Communications Devices) Class Licence 2014* (the **2014 Class Licence**).

The ACMA has made the CCD CL because the 2014 Class Licence was due to “sunset” on 1 April 2025, in accordance with Part 4 of Chapter 3 of the *Legislation Act 2003* (the **LA**). Further, changes to the CCD CL were required to:

- remove the authorisation to operate devices in the 857 MHz to 861 MHz and 861 MHz to 865 MHz frequency bands by 1 July 2024, when spectrum licences commence across these frequency bands.
- updating arrangements in the 1880 MHz to 1900 MHz band to reflect decisions outlined in the [Replanning of the 1880–1920 MHz band: Outcomes paper](#) to support both Digitally Enhanced Cordless Telecommunications (DECT) and ‘future DECT’ technologies, and remove authorisation for personal handy phone system (PHS) technology, which has become obsolete.

The CCD CL authorises the operation of cordless communications devices, including handsets or land stations for cordless telephone services, and radiocommunications devices that use DECT technologies, in specified frequency bands. DECT technology is technology covered by a European Telecommunications Standards Institute standard, EN 301 406, which is available, free of charge, from the Institute’s website ([www.etsi.org](http://www.etsi.org)). The *Radiocommunications Equipment (General) Rules 2021* (the **General Equipment Rules**) make provision for equipment that uses DECT technology.

Operation of the cordless communications device must be in accordance with the conditions set out in the CCD CL, including:

- a requirement that operation of the device is not used for the provision of carriage services to the public. A carriage service provider must not operate a cordless communications device to provide a carriage service to a person outside the provider’s immediate circle.
- compliance by devices with the equivalent isotropically radiated power limits mentioned in section 9 of the Class Licence;
- compliance with the electromagnetic energy emission requirements specified by the Australian Radiation Protection and Nuclear Safety Agency (**ARPANSA**).

Operation of a radiocommunications device is not authorised by a class licence (including the CCD CL) 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 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.

#### *Equipment Rules amendment*

The ACMA regulates specified radiocommunications equipment to manage:

- the risk of interference to radiocommunications services; and
- human exposure to electromagnetic energy (**EME**) emissions from equipment.

The purpose of the Equipment Rules amendment is to amend the General Equipment Rules.

The amendment is required to ensure devices currently operating in the 1880 MHz to 1900 MHz frequency band using legacy DECT technology continue to be authorised, alongside devices using newer DECT technology.

Section 160 of the Act provides that it is an offence, and subject to a civil penalty, for a person to engage in conduct that is prohibited by the General Equipment Rules, or to engage in conduct that contravenes an obligation imposed by the General Equipment Rules. (Contravention of some prohibitions or obligations may only be subject to a civil penalty, and not an offence: see subsections 160(9) and (10) of the Act.)

Parliament has prescribed that the maximum penalty for an offence, and the maximum civil penalty, is in each case 500 penalty units (\$156,500).

#### *Generally*

A provision-by-provision description of:

- the CCD CL is set out in the notes at **Attachment A**.
- the Equipment Rules amendment is set out in the notes at **Attachment B**.

Each of the instruments is a legislative instrument for the purposes of the LA, and is disallowable.

The CCD CL and the General Equipment Rules are 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 document *ETSI EN 301 406 'Digital Enhanced Cordless Telecommunications (DECT); Harmonised Standard for access to radio spectrum'* (**ETSI EN 301 406**), published by the European Telecommunications Standards Institute, is incorporated into the CCD CL, as existing from time to time. At the date of making the instrument the European Telecommunications Standards Institute (ETSI) standards and guides are available free of charge from the ETSI website: [www.etsi.org](http://www.etsi.org).

The General Equipment Rules already incorporate ETSI EN 301 406, as existing from time to time.

The CCD CL also incorporates the *Radiation Protection Standard for Limiting Exposure to Radiofrequency Fields – 100 kHz to 300 GHz (2021)* (the **ARPANSA standard**) published by ARPANSA, as existing from time to time. The ARPANSA standard is available, free of charge, at [www.arpansa.gov.au](http://www.arpansa.gov.au).

The CCD CL incorporates the *Telecommunications Act 1997*, as in force from time to time. The CCD CL also refers to the Act, the AIA, the LA and the *Australian Communications and Media Authority Act 2005* without incorporating them.

Each of these Acts and legislative instruments is available, free of charge, from the Federal Register of Legislation ([www.legislation.gov.au](http://www.legislation.gov.au)).

### **Consultation**

Before the CCD CL and the Equipment Rules amendment were 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 revocation of the 2014 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 8 April 2024, the ACMA published a written notice under section 136 of the Act about the proposed revocation of the 2014 Class Licence on its website and in the Government Notices *Gazette*, and invited interested persons to make representations about the proposed revocation.

Between 8 April and 13 May 2024, the ACMA also published a consultation paper, a draft of the CCD CL and a draft of the Equipment Rules amendment on its website. The consultation paper invited comments on the proposed changes to arrangements for cordless communications devices.

The ACMA received three submissions. These were from Australian Mobile Telecommunications Association (**AMTA**), the DECT Forum and Shure. All submitters generally supported the ACMA's proposals in the consultation paper and the changes proposed by the CCD CL and Equipment Rules amendment.

The DECT Forum recommended removal of the limitation in the CCD CL that operation of cordless communications devices cannot be used for the provision of carriage services to the public. Although the ACMA changed the CCD CL to partly address the concerns of the DECT Forum, the ACMA intends to conduct further public consultation on the broader reforms suggested by the DECT Forum submission.

### **Regulatory impact assessment**

A preliminary assessment of the proposal to make the CCD CL and Equipment Rules amendment 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 (OIA reference number OIA24-07198).

### **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 instruments***

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

The CCD CL authorises the operation of cordless communications devices on specified frequency bands, subject to several conditions. The CCD CL revokes and replaces the 2014 Class Licence.

Subsection 156(1) of the Act provides that the ACMA may, by legislative instrument, make equipment rules.

The purpose of the Equipment Rules amendment is to amend the General Equipment Rules. The amendment is required to ensure devices currently operating in the 1880 MHz to 1900 MHz frequency range using legacy DECT technology continue to be authorised alongside devices using newer DECT technology.

### ***Human rights implications***

The ACMA has assessed whether the CCD CL and Equipment Rules amendment are compatible with human rights, being the rights and freedoms recognised or declared in the international instruments listed in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Having considered the likely impact of the CCD CL and Equipment Rules amendment and the nature of the applicable rights and freedoms, the ACMA has formed the view that the CCD CL and Equipment Rules amendment do not engage any of those rights or freedoms.

### ***Conclusion***

Each of the CCD CL and Equipment Rules amendment is compatible with human rights as it does not raise any human rights issues.

**Notes to the *Radiocommunications (Cordless Communications Devices)  
Class Licence 2024***

**Part 1 Preliminary**

**Section 1 Name**

This section provides for the instrument to be cited as the *Radiocommunications (Cordless Communications Devices) Class Licence 2024*.

**Section 2 Commencement**

This section provides for the instrument to commence on 1 July 2024.

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 provision of the Act that authorises the making of the instrument, namely, section 132.

**Section 4 Repeal**

This section repeals the *Radiocommunications (Cordless Communications Devices) Class Licence 2024* [F2014L01800].

**Section 5 Interpretation**

Section 5 defines terms used in CCD CL.

A number of other expressions used in the CCD CL are defined in the Act or in the *Radiocommunications (Interpretation) Determination 2015*.

**Section 6 References to other instruments**

This section provides that in the CCD CL, unless the contrary intention appears:

- a reference to another 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 or writing as in force or existing from time to time.

**Part 2 Class licence**

**Section 7 Class licence**

This section authorises any person to operate a cordless communications device under the CCD CL, subject to the conditions in Part 3. ‘Cordless communications device’ is defined in section 5.

**Part 3 Conditions**

**Section 8 Operation – private use only**

This section provides that a cordless communications device must not be used by a carriage service provider to provide carriage services to a person outside the provider’s immediate circle (within the meaning of the *Telecommunications Act 1997*).

**Section 9      Operation – power level**

This section prescribes the maximum equivalent isotropically radiated power (**EIRP**) limits that cordless communications devices must comply with.

**Section 10      Operation – compliance with ARPANSA standard**

This section provides that a person must not operate a cordless communications device, or a group of such devices, unless it complies with the electromagnetic energy emission requirements specified in the ARPANSA standard, in any place accessible by the public.

## Notes to the *Radiocommunications Equipment (General) Amendment Rules 2024 (No. 1)*

### Section 1 Name

This section provides for the instrument to be cited as the *Radiocommunications Equipment (General) Amendment Rules 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](http://www.legislation.gov.au).

### Section 3 Authority

This section identifies the provision of the Act that authorises the making of the instrument, namely, subsection 156(1) of the Act.

### Section 4 Schedule

This section provides that the General Equipment Rules are amended as set out in Schedule 1.

### Schedule 1 – Amendments

#### Item 1 Clause 48 of Schedule 5

Item 1 amends clause 48 of Schedule 5 to replace the term ‘ETSI EN 301 406 V2.2.2 (2016-09)’ with ‘the most recently published version of ETSI EN 301 406’. This change ensures consistency with the CCD CL.

#### Item 2 Clause 48 of Schedule 5 (note)

Item 2 repeals the note and inserts a new note describing where to find ETSI EN 301 406, and stating that at the time of making, ETSI EN 301 406 consisted of two parts (Part 1 and Part 2).

#### Item 3 Subclause 50(2) of Schedule 5

Under the General Equipment Rules, certain cordless communications devices are required to comply with ETSI 301 406. However, subclause 50(2) of Schedule 5 to the General Equipment Rules modifies ETSI 301 406 for this purpose.

Item 3 repeals the subclause and replaces it with a new provision which has the effect of modifying ETSI 301 406, such that it limits operation of particular devices to the frequency band 1880 MHz to 1900 MHz, and to a maximum radiated power of:

- 36 dBm EIRP, if the equipment is covered by the scope of Part 1 of ETSI EN 301 406; or
- 30 dBm EIRP, if the equipment is covered by the scope of Part 2 of ETSI EN 301 406.