

# EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Radiocommunications Act 1992*

## ***Radiocommunications (Cordless Communications Devices) Class Licence Variation 2024 (No. 1)***

### **Authority**

The Australian Communications and Media Authority (the **ACMA**) has made the *Radiocommunications (Cordless Communications Devices) Class Licence Variation 2024 (No. 1)* (the **instrument**) 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 *Radiocommunications (Cordless Communications Devices) Class Licence 2024* (the **CCD Class Licence**), as varied by the instrument. 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 Class Licence as varied by the instrument.

Under subsection 136(1A) of the Act, if varying a class licence would affect the spectrum allocated or to be allocated by issuing or re-issuing spectrum licences, before varying the class licence, the ACMA must be satisfied that:

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

The ACMA must also consult with all affected spectrum licensees. However, the instrument does not vary the CCD Class Licence to authorise the operation of radiocommunications devices in such spectrum, and as such does not affect such spectrum.

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**

#### *Generally*

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.

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

#### *Cordless communications devices*

The CCD Class Licence 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.

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

- compliance by devices with the equivalent isotropically radiated power limits mentioned in section 9 of the CCD Class Licence;
- compliance with the electromagnetic energy emission requirements specified by the Australian Radiation Protection and Nuclear Safety Agency.

#### *Changes to the CCD Class Licence*

When the ACMA consulted on the CCD Class Licence, one person made a submission to remove a condition that 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. Rather than make that change without getting additional views on it from other interested persons, the ACMA decided to make the CCD Class Licence with the condition included, and consult on a proposal to remove the

condition. Having considered that subsequent consultation, the ACMA has decided to remove that condition from the CCD Class Licence.

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.

The CCD Class Licence is subject to the sunset provisions in Part 4 of Chapter 3 of the LA.

### **Documents incorporated by reference**

The instrument does not incorporate any documents by reference.

### **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, before varying a class licence, the ACMA must cause to be published a written notice outlining the details about the variation, and inviting interested persons to make representations about the proposed variation. The notice must 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 July 2024, the ACMA published a written notice under section 136 of the Act about the proposed variation of the CCD Class Licence on its website. This notice was registered in the Government Notices *Gazette* on 11 July 2024. The notice invited interested persons to make representations about the proposed revocation.

Between 8 July and 12 August 2024, 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 arrangements for cordless communications devices.

The ACMA received two submissions. These were from the DECT Forum and Optus. Both submitters generally supported the ACMA's proposals in the consultation paper and the changes proposed by the instrument.

### **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 (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 instrument***

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.

The CCD Class Licence authorises the operation of cordless communications devices on specified frequency bands, subject to several conditions. The instrument varies the CCD Class Licence to remove the condition that carriage service provider must not operate a cordless communications device to provide a carriage service to a person outside the provider's immediate circle.

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

The ACMA has assessed whether the instrument is 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 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 (Cordless Communications Devices) Class Licence Variation 2024 (No. 1)***

**Section 1 Name**

This section provides for the instrument to be cited as the *Radiocommunications (Cordless Communications Devices) Class Licence Variation 2024 (No. 1)*.

**Section 2 Commencement**

This section provides for the instrument to commence on 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 authorise making of the instrument, namely, section 132 of the Act.

**Section 4 Variations**

This section provides that the legislative instrument specified in Schedule 1 to the instrument is varied as set out in that Schedule.

**Schedule 1–Variations**

***Radiocommunications (Cordless Communications Devices) Class Licence 2024 (F2024L00764)***

**Item 1 Subsection 5(1), definition of *immediate circle***

Item 1 repeals the definition of *immediate circle*. This definition is no longer required as the use of the term in the CCD Class Licence is removed by item 3.

**Item 2 Subsection 5(1), note 2, paragraphs (b) and (c)**

Item 2 repeals the part of the note that refers to the definitions of *carriage service* and *carriage service provider*. These references are no longer required as the use of the terms in the CCD Class Licence is removed by item 3.

**Item 3 Section 8**

Item 3 repeals section 8 of the CCD Class Licence, which has the effect of removing the condition that 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.