

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications Licence Conditions (Broadcasting Licence) Determination 2025

Authority

The Australian Communications and Media Authority (the **ACMA**) has made the *Radiocommunications Licence Conditions (Broadcasting Licence) Determination 2025* (the **instrument**) under subsection 110A(2) 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 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

An apparatus licence may be either a transmitter licence or a receiver licence. A ‘broadcasting licence’ is a type of transmitter licence specified by the ACMA in a determination made under section 98 of the Act. The current determination made under section 98 is the *Radiocommunications (Specified Radiocommunications Receivers and Types of Transmitter Licences and Receiver Licences) Determination 2024*. Broadcasting licences generally authorise the operation of one or more radiocommunication transmitters used in the provision of certain broadcasting services under the *Broadcasting Services Act 1992* (the **BSA**).

Most apparatus licences are issued under section 100 of the Act. However, section 101A of the Act allows the ACMA to issue a transmitter licence to a person who is allocated a temporary community broadcasting licence under the BSA. Particular rules apply to such transmitter licences.

The purpose of the instrument is to revoke and replace the *Radiocommunications Licence Conditions (Broadcasting Licence) Determination 2015* (the **Broadcasting LCD 2015**) and the *Radiocommunications Licence Conditions (Temporary Community Broadcasting Licence) Determination 2015* (the **TCBL LCD 2015**).

The Broadcasting LCD 2015 was determined under former paragraph 107(1)(f) of the Act, while the TCBL LCD 2015 was determined under former paragraph 108A(1)(e) of the Act. These two paragraphs were repealed by the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020*, and the power to determine conditions for apparatus licences is now provided for in section 110A of the Act. As a result, the instrument incorporates the operational provisions of both the Broadcasting LCD 2015 and the TCBL LCD 2015.

The ACMA has made the instrument because the Broadcasting LCD 2015 was due to ‘sunset’ (i.e. be automatically repealed) on 1 October 2025 and the TCBL LCD 2015 was due to sunset on 1 April 2025. Both these instruments were due to sunset in accordance with Part 4 of Chapter 3 of the *Legislation Act 2003* (the **LA**). Following review, and consultation as described below, the ACMA formed the view that both the Broadcasting LCD 2015 and the TCBL LCD 2015 were operating effectively and efficiently, and continued to form a necessary and useful part of the legislative

framework. Accordingly, the ACMA has made the instrument so that the on-going effect of both the Broadcasting LCD 2015 and the TCBL LCD 2015 is preserved.

The only significant change in the instrument, compared to the Broadcasting LCD 2015 and the TCBL LCD 2015, has been the inclusion of a new class of broadcasting licence for 're-transmission services'. Re-transmission services re-transmit radio or television programs that are transmitted by a national broadcaster or by a commercial or community broadcasting licensee, in accordance with section 212 of the BSA. Transmitter licences for re-transmission services are issued under section 100 of the Act.

While transmitter licences used for re-transmission services have not previously been subject to conditions in either the Broadcasting LCD 2015 or TCBL LCD 2015, the ACMA has included conditions in these transmitter licences that reflected the conditions in the Broadcasting LCD 2015. To set out licence conditions relating to re-transmission services which are consistent, accessible, and transparent for all stakeholders concerned, transmitter licences used for re-transmission services have now been included in the instrument.

The instrument specifies the conditions to which different classes of broadcasting licence are subject. The licence conditions specified in the instrument include:

- conditions setting out the statements required to be made available to the public before a person first operates a radiocommunications transmitter under a broadcasting licence;
- conditions prohibiting the operation of a radiocommunications transmitter if harmful interference is caused; and
- conditions prohibiting the operation of certain radiocommunications transmitters otherwise than in accordance with emission requirements contained in an instrument developed under section 33 of the BSA.

Operation of a radiocommunications device is not authorised by an apparatus licence (including a broadcasting licence) 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 \$495,000 based on the current penalty unit amount of \$330);
- if the radiocommunications device is not a radiocommunications transmitter – 20 penalty units (\$6,600).

The Act prescribes the following maximum civil penalties:

- if the radiocommunications device is a radiocommunications transmitter – 300 penalty units (\$99,000);
- if the radiocommunications device is not a radiocommunications transmitter – 20 penalty units (\$6,600).

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 (\$33,000).

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 LA, and is disallowable.

The instrument 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 incorporates all or parts of the following Acts and legislative instruments, as in force from time to time:

- the AIA;
- the BSA;
- the *Corporations Act 2001*;
- guidelines developed by the ACMA under section 33 of the BSA. The current such instrument is the *Broadcasting Services (Technical Planning) Guidelines 2017* (the **Technical Planning Guidelines**);
- the LA;
- the licence area plans prepared under section 26 of the BSA.

The instrument contains provisions that incorporate:

- the Broadcasting LCD 2015, as in force:
 - immediately before the instrument commenced; and
 - at particular times when a radiocommunications transmitter was being operated in accordance with particular conditions of the Broadcasting LCD 2015; and
- the *Radiocommunications Licence Conditions (Broadcasting Licence) Determination No. 1 of 1998* (the **Broadcasting LCD 1998**), as in force at particular times when a radiocommunications transmitter was being operated in accordance with particular conditions of the Broadcasting LCD 1998.

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

Part of the following document, as existing from time to time, is incorporated in the instrument by reference:

- Statistical Geography: Volume 3 – Australian Standard Geographic Classification (ASGC) Urban Centres/Localities, 2001 (cat. No. 2909.0).

This document is available, free of charge, from the Australian Bureau of Statistics' website at www.abs.gov.au.

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.

Under Part 4 of Chapter 3 of the LA, the Broadcasting LCD 2015 and the TCBL LCD 2015 were due to sunset on 1 October 2025 and 1 April 2025, respectively. The ACMA analysed the instruments and identified that they were necessary and useful parts of the regulatory framework. Given this, the ACMA decided to remake the Broadcasting LCD 2015 to ensure its effect would continue to apply. The ACMA also proposed to repeal the TCBL LCD 2015 but place its operational provisions into the remade instrument, so its effect would also continue. The only significant change from the previous regulatory framework was the addition of a new class of broadcasting licence, for re-transmission services, as explained above.

A proposal for the remaking of the Broadcasting LCD 2015 and the TCBL LCD 2015 was released for public consultation on 19 November 2024, together with the proposed draft instrument. Relevant stakeholders were notified about the consultation by ebulletin. The consultation closed on 14 January 2025. This provided an opportunity for stakeholders and members of the public to comment on the proposal.

The ACMA received 4 submissions on the proposal.

None of the submissions expressed any concerns over the proposal to make the instrument or to incorporate the relevant operational provisions of the TCBL LCD 2015 into the instrument and repeal the TCBL LCD 2015.

Some issues were raised in relation to the draft instrument which have resulted in changes to the final instrument compared to the draft. These included comments:

- that the proposed Part 5, in relation to transmitter licences used for the provision of temporary community broadcasting services, would overlap with provisions in the Technical Planning Guidelines; and
- noting a typographical error in proposed section 19.

The ACMA considered the submissions and decided to omit certain sections on ‘start up’ procedures and emission requirements for transmitter licences for temporary community broadcasting services, as these procedures and requirements are adequately covered by the Technical Planning Guidelines (which apply to transmitter licences for temporary community broadcasting services, under paragraph 108A(1)(d) of the Act) and to avoid unnecessary duplication. The typographical error was corrected and some minor editorial changes were made for clarity.

Another matter raised in response to the consultation related to licence conditions imposing a maximum field strength on transmitter licences used for the provision of low power open narrowcasting (LPON) services. The ACMA considered these submissions; however, it decided not to make further changes to the instrument and to retain the maximum field strength conditions as drafted. These conditions have been in place since at least 1998, and a change to these long-standing and established parameters may lead to undesirable outcomes, such as interference between existing LPON services, which would reduce the utility of the services.

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 with human rights set out below has been prepared to meet that requirement.

Overview of the instrument

The instrument sets out the conditions that apply to transmitter licences held by the providers of certain broadcasting services. It seeks to provide transparency, clarity and consistency on the conditions relating to a range of broadcasting licences. The instrument affects the national broadcasters (the Australian Broadcasting Corporation (the **ABC**) and the Special Broadcasting Service Corporation (**SBS**)), the providers of open narrowcasting services, the holders of commercial broadcasting licences allocated under section 40 of the BSA, the holders of temporary community broadcasting licences, and those persons who provide ‘re-transmission services’ covered by section 212 of the BSA.

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 Licence Conditions (Broadcasting Licence) Determination 2025*

Part 1 Preliminary

Section 1 Name

This section provides for the instrument to be cited as the *Radiocommunications Licence Conditions (Broadcasting Licence) Determination 2025*.

Section 2 Commencement

This section provides for the instrument to commence on 31 March 2025.

Section 3 Authority

This section identifies the provision of the Act that authorises the making of the instrument, namely subsection 110A(2) of the Act.

Section 4 Repeal of instruments

This section provides that the Broadcasting LCD 2015 and the TCBL LCD 2015 are repealed.

Section 5 Interpretation

Subsection 5(1) 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 by a determination made under subsection 64(1) of the *Australian Communications and Media Authority Act 2005*.

Subsection 5(2) provides that unless the contrary intention appears, a reference to a station is taken to be a reference to each radiocommunications transmitter that forms part of the station.

Subsection 5(3) provides that unless the contrary intention appears, a reference to a part of the spectrum or frequency band includes all frequencies that are greater than but not including the lower frequency, up to and including the higher frequency.

Subsection 5(4) provides that unless the contrary intention appears, no condition in Parts 2 to 6 of the instrument (inclusive) limits any other condition in those Parts.

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 legislative instrument as in force from time to time; and
- a reference to another instrument or writing is a reference to that instrument or writing as in force or existing from time to time.

Part 2 Conditions – broadcasting licence (national broadcast service)

Section 7 Application of Part 2

This section provides that every broadcasting licence (national broadcast service) is subject to the conditions in Part 2 of the instrument, except when a condition is specified in the licence under

paragraph 107(1)(g) of the Act, or imposed on the licence under paragraph 111(1)(a) of the Act that is inconsistent with a condition in Part 2.

A broadcasting licence (national broadcast service) is a broadcasting licence that authorises the operation of a ‘national broadcast service station’, which is a radiocommunications transmitter that is used to provide a national broadcasting service. National broadcasting services are those broadcasting services provided by the ABC and SBS.

Section 8 Condition – person to advertise before commencing service

Subsection 8(1) provides that a person must not operate a national broadcast service station except where subsection 8(2) has been satisfied.

Subsection 8(2) is satisfied if a person has made the statements and information available to the public listed in that subsection not later than 7 days before the person first operates a national broadcast service station. This information includes the intention to operate the service, the date and time of commencement, the frequency of the station, notification that the public can contact the person about interference issues, and contact details.

Subsection 8(3) provides that subsection 8(1) does not apply to a person who operated a national broadcast service station before the commencement of the instrument and, before the operation of the station, the person had made the requisite statements or information available to the public as listed in subsection 8(2) or substantially similar statements and information.

Section 9 Condition – operation of national broadcast service station

This section provides that a person must only operate a national broadcast service station to provide a national broadcasting service, or for engineering test transmissions.

Section 10 Conditions – harmful interference

Subsection 10(1) provides that a person must not operate a national broadcast service station on a frequency in the broadcasting service bands if that operation causes harmful interference to a commercial or community broadcasting service within its licence area; or to a national broadcasting service or an open narrowcasting service (other than a low power open narrowcasting service) within its ‘service area’ (as defined in section 5). The broadcasting services bands are a part of the radiofrequency spectrum designated by the Minister under section 31 of the Act.

Subsection 10(2) provides that a person must not operate a national broadcast service station on a frequency outside the broadcasting service bands if that operation causes harmful interference to radiocommunications of a radiocommunications transmitter that was first authorised to operate by a licence, and first operated, before the person operated the national broadcast service station.

Section 11 Condition – emission requirements

This section provides that a person must not operate a national broadcast service station otherwise than in accordance with guidelines 21 and 22 of the Technical Planning Guidelines.

Part 3 Conditions – broadcasting licence (narrowcasting service)

Section 12 Application of Part 3

This section provides that every broadcasting licence (narrowcasting service) is subject to the conditions in Part 3 of the instrument, except when a condition is specified in the licence under paragraph 107(1)(g) of the Act, or imposed on the licence under paragraph 111(1)(a) of the Act that is inconsistent with a condition in Part 3.

A broadcasting licence (narrowcasting service) is a broadcasting licence that authorises the operation of a ‘narrowcasting service station’, which is a radiocommunications transmitter that is used to provide an open narrowcasting service or a subscription narrowcasting service in the broadcasting services bands. Open narrowcasting services and subscription narrowcasting services are broadcasting services whose reception is limited in some way, such as by targeting special interest groups or being intended only for limited locations (see sections 17 and 18 of the BSA).

Subsection 12(3) provides that sections 14, 15, 16 and 17 of the instrument do not apply to a broadcasting licence (narrowcasting service) that authorises the operation of a radiocommunications transmitter for the provision of a low power open narrowcasting service. These are licences that have conditions limiting the maximum effective radiated power of the transmitter to 1 W, when operated in a residential area, or 10 W in any other case.

Section 13 Condition – person to advertise before commencing service

Subsection 13(1) provides that a person must not operate a narrowcasting service station except where subsection 13(2) has been satisfied.

Subsection 13(2) is satisfied if a person has made the statements and information available to the public as listed in that subsection not later than 7 days before the person first operates a narrowcasting service station. This information includes the intention to operate the service, the date and time of commencement, the frequency of the station, notification that the public can contact the person about interference issues, and contact details.

Subsection 13(3) provides that subsection 13(1) does not apply to a person who operated a narrowcasting service station before the commencement of the instrument and, before the operation of the station, the person had made the requisite statements or information available to the public as listed in subsection 13(2) or substantially similar statements and information.

Section 14 Conditions – operating requirements for narrowcasting service station

The conditions in section 14 do not apply to transmitter licences issued for LPON services.

Subsection 14(1) provides that a person must not operate a narrowcasting service station otherwise than to provide an open narrowcasting service.

Subsection 14(2) provides that, subject to subsection 14(3), if the licence is issued and it is not a renewal under section 130 of the Act, the licensee must commence the provision of an open narrowcasting service using a narrowcasting service station within the 6-month period from when the licence was issued, unless the licensee has a reasonable excuse for not doing so.

Subsection 14(3) provides that the ACMA may extend the 6-month period referred to in subsection 14(2) if it is the ACMA’s opinion that there is a valid reason for a delay by the person in complying with subsection 14(2).

Subsection 14(4) provides that, for the purposes of subsection 14(3), the term ‘valid reason for delay’ does not include that the licence was obtained within the 6-month period referred to pursuant to a transfer from a relative or associate of the licensee, financial reasons, or that the licence is subject to an arrangement contingent on the disposal of another licence held by the licensee.

Subsection 14(5) provides that a person must not operate a narrowcasting service station except where subsection 14(6) is satisfied. Subsection 14(6) provides that it is satisfied if, before a person operated the narrowcasting service station, the person complied with the start up procedures in Part 2 of the Technical Planning Guidelines. Subsection 14(7) provides that for the purposes of a person complying with subsection 14(6), in Part 2 of the Technical Planning Guidelines, ‘licensee’ means a person

authorised to operate a narrowcasting service station under a broadcasting licence (narrowcasting service).

Subsection 14(8) provides that subsection 14(5) does not apply to a person who operated a station to provide a narrowcasting service before the commencement of the instrument and, before the operation of the station, the person had complied with procedures identified as start up procedures in the Technical Planning Guidelines as in force at the time the person first operated the station.

Section 15 Conditions – additional operating requirements for narrowcasting service station in the AM radio band

The conditions in section 15 do not apply to transmitter licences issued for LPON services.

Subsection 15(1) provides that a person must not operate a narrowcasting service station on a frequency in the AM radio band otherwise than in compliance with subsections 15(2) and (3). The AM radio band is the part of the broadcasting services bands from 526.5 kHz to 1606.5 kHz.

Subsection 15(2) provides that a person must only operate a narrowcasting service station:

- if a licence area plan, prepared under section 26 of the BSA, has planned the open narrowcasting service provided or to be provided using the station – in a manner complying with the planned technical specifications; and
- in a manner that limits interference caused to other radiocommunications operating on the AM radio band.

Subsection 15(3) provides that a person must not operate the narrowcasting service station otherwise than in accordance with guidelines 11, 12 and 13 of the Technical Planning Guidelines. Subsection 15(4) defines terms in the Technical Planning Guidelines, for the purposes of a person complying with subsection 15(3). Subsection 15(5) provides that, for the purposes of a person complying with subsection 15(3), a reference in the Technical Planning Guidelines to a matter specified in a licence area plan is taken to be a reference to the equivalent matter in a condition or advisory note of the broadcasting licence (narrowcasting service) that authorises the operation of the narrowcasting service station.

Section 16 Condition – additional operating requirements for narrowcasting service station in the FM radio band

The condition in section 16 does not apply to transmitter licences issued for LPON services.

Subsection 16(1) provides that a person must not operate a narrowcasting service station on a frequency in the FM radio band otherwise than in accordance with guidelines 11, 12 and 13 of the Technical Planning Guidelines. The FM radio band is the part of the broadcasting services bands from 87.5 MHz to 108 MHz. Subsection 16(2) defines terms in the Technical Planning Guidelines, for the purposes of a person complying with subsection 16(1). Subsection 16(3) provides that, for the purposes of a person complying with subsection 16(1) a reference in the Technical Planning Guidelines to a matter specified in a licence area plan is taken to be a reference to the equivalent matter in a condition or advisory note of the broadcasting licence (narrowcasting service) that authorises the operation of the narrowcasting service station.

Section 17 Condition – additional operating requirements for narrowcasting service station in the TV bands

The condition in section 17 does not apply to transmitter licences issued for LPON services.

Subsection 17(1) provides that a person must not operate a narrowcasting service station in the TV bands otherwise than in accordance with guidelines 11, 12 and 13 of the Technical Planning

Guidelines. The TV bands are the parts of the broadcasting services bands from 174 MHz to 230 MHz, and from 520 MHz to 694 MHz. Subsection 17(2) defines terms in the Technical Planning Guidelines, for the purposes of a person complying with subsection 17(1). Subsection 17(3) provides that, for the purposes of a person complying with subsection 17(1) a reference in the Technical Planning Guidelines to a matter specified in a licence area plan is taken to be a reference to the equivalent matter in a condition or advisory note of the broadcasting licence (narrowcasting service) that authorises the operation of the narrowcasting service station.

Section 18 Condition – additional operating requirements for narrowcasting service station used to provide low power open narrowcasting service in a residential area

Subsection 18(1) provides that a person must not operate a narrowcasting service station in a residential area to provide an LPON otherwise than in accordance with subsection 18(2). Residential areas are worked out in accordance with data published by the Australian Bureau of Statistics.

Subsection 18(2) provides that the person must not operate a station with a maximum effective radiated power greater than 1 W, or such that the station's field strength is greater than 48 dB μ V/m when measured at 10 metres above ground level at any location more than 2 kilometres from the station's antenna.

Section 19 Condition – additional operating requirements for narrowcasting service station used to provide low power open narrowcasting service in a non-residential area

Subsection 19(1) provides that a person must not operate a narrowcasting service station in a non-residential area to provide an LPON service otherwise than in accordance with subsection 19(2).

Subsection 19(2) provides that the person must not operate a station with a maximum effective radiated power greater than 10 W, or such that the station's field strength is greater than 48 dB μ V/m when measured at 10 metres above ground level at any location more than 10 kilometres from the station's antenna.

Section 20 Conditions – additional operating requirements for narrowcasting service station used to provide low power open narrowcasting service between 87.5 MHz and 88.0 MHz

The conditions in section 20 are included in compliance with the *Australian Communications Authority (LPON Transmitter Licences) Direction No. 2 of 2000*, which is available, free of charge, from the Federal Register of Legislation at www.legislation.gov.au. The direction applies to the ACMA because of item 8 of Schedule 4 to the *Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005*.

Subsection 20(1) provides that section 20 only applies to a broadcasting licence (narrowcasting service) that authorises the operation of a narrowcasting service station to provide an LPON service.

Subsection 20(2) provides that, subject to subsection (3), if the licence is issued and it is not a renewal under section 130 of the Act, the licensee must commence the provision of an open narrowcasting service using a narrowcasting service station within the 6-month period from when the licence was issued, unless the licensee has a reasonable excuse for not doing so.

Subsection 20(3) provides that the ACMA may extend the 6-month period referred to in subsection 20(2) if it is the ACMA's opinion that there is a valid reason for a delay in complying with subsection 20(2).

Subsection 20(4) provides that, for the purposes of subsection 20(3), the term 'valid reason for delay' does not include that the licence was obtained within the 6-month period referred to, pursuant to a

transfer from a relative or associate of the licensee, financial reasons, or that the licence is subject to an arrangement contingent on the disposal of another licence held by the licensee.

Subsection 20(5) provides that, subject to subsection 20(2), the licensee must continue to provide the low power open narrowcasting service with reasonable regularity for the duration of the licence.

Subsection 20(6) provides that the licensee must maintain records of the commencement, hours of operation and provision of the low power open narrowcasting service.

Section 21 Conditions – harmful interference

Subsection 21(1) provides that a person must not operate a narrowcasting service station on a frequency in the broadcasting service bands if that operation causes harmful interference to a commercial or community broadcasting service within its licence area, or to a national broadcasting service or open narrowcasting service (other than an LPON service) within its service area.

Subsection 21(2) provides that a person must not operate a narrowcasting service station on a frequency outside the broadcasting service bands if that operation causes harmful interference to radiocommunications of a radiocommunications transmitter that was first authorised to operate by a licence, and first operated, before the person operated the narrowcasting service station.

Section 22 Condition – emission requirements

This section provides that a person must not operate a narrowcasting service station otherwise than in accordance with guidelines 21 and 22 of the Technical Planning Guidelines.

Part 4 Conditions – broadcasting licence (narrowband area service)

Section 23 Application of Part 4

This section provides that every broadcasting licence (narrowband area service) is subject to the conditions in Part 4 of the instrument, except when a condition is specified in the licence under paragraph 107(1)(g) of the Act, or imposed on the licence under paragraph 111(1)(a) of the Act that is inconsistent with a condition in Part 4.

A broadcasting licence (narrowband area service) is a broadcasting licence that authorises the operation of a ‘narrowband area service station’, which is a radiocommunications transmitter that is used to provide broadcasting services outside broadcasting services bands, using a bandwidth not greater than 4 MHz. These stations may be used to provide commercial or community broadcasting services, or open or subscription narrowcasting services, outside the broadcasting services bands.

Section 24 Condition – person to advertise before commencing service

Subsection 24(1) provides that a person must not operate a narrowband area service station except where subsection 24(2) has been satisfied.

Subsection 24(2) is satisfied if a person has made the statements and information available to the public as listed in that subsection not later than 7 days before the person first operates the narrowband area service station. This information includes the intention to operate the service, the date and time of commencement, the frequency of the station, notification that the public can contact the person about interference issues, and contact details.

Subsection 24(3) provides that subsection 24(1) does not apply to a person who operated a station under a broadcasting licence (narrowband service) before the commencement of the instrument and, before the operation of the station, the person had made the requisite statements or information available to the public as listed in subsection 24(2) or substantially similar statements and information.

Section 25 Condition – using narrowband area service station to provide commercial broadcasting service in the frequency band 1606.5 kHz to 1705 kHz

The condition in section 25 was originally included in all broadcasting licences (narrowband area service) in compliance with the *Australian Communications Authority (MF NAS Transmitter Licences) Direction No. 1 of 2003*, which is available, free of charge, from the Federal Register of Legislation at www.legislation.gov.au. The direction applied to the ACMA because of item 8 of Schedule 4 to the *Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005*. The direction was repealed by the *Broadband, Communications and the Digital Economy (Spent and Redundant Instruments) Repeal Regulation 2013*. According to the explanatory statement for that regulation, as the requirement of the direction ‘has been met, the repeal of the direction does not alter existing arrangements’. As such, the ACMA has decided to continue the effect of this condition.

Subsection 25(1) provides that, except where section 26 applies, a person must not operate a narrowband area service station in the frequency band 1606.5 kHz to 1705 kHz to provide a commercial broadcasting service unless all the following apply:

- the licence was originally issued before 6 November 2002 (though it may have been renewed since then);
- a commercial broadcasting service is provided under a commercial broadcasting licence allocated under the BSA before 6 November 2002;
- a commercial broadcasting service was first provided under that commercial broadcasting licence before 29 August 2004; and
- the narrowband area service station is either within 10 kilometres of where it was located on 6 November 2002, or a location determined by the ACMA in accordance with subsection 25(2).

Subsection 25(2) provides that, for the purposes of subparagraph 25(1)(d)(ii), the ACMA may determine a location for a narrowband area service station if the ACMA is satisfied that transmissions from that location would provide a service that is substantially the same as the audience intended to be covered from the previous location of the station, and that the transmissions would not significantly interfere with any existing radiocommunications.

Subsection 25(3) defines terms for the purposes of the section.

Subsection 25(4) is a transitional provision that provides that, if a person operated a narrowband area service station to provide a commercial broadcasting service immediately before the commencement of this instrument and the operation of that station complied with the condition in section 5.3 of the Broadcasting LCD 2015, then the operation of the station is taken to comply with the condition in subsection 25(1).

Subsection 25(5) provides that subsection 25(4) ceases to apply in relation to a narrowband area service station upon the first of any of the following occurring: the person ceases to operate the station, the person ceases to provide a commercial broadcasting service, or the person changes the location of the station. If subsection 25(4) applied in relation to a narrowband area service station, but ceases to apply because of subsection 25(5), that does not necessarily mean that a person operating the station will be in breach of the condition in subsection 25(1). The person may still be able to comply with that condition without the benefit of the transitional provision.

Subsection 25(6) provides that if the ACMA decides or refuses to decide to determine a new location for a narrowband area station under subsection 25(2), the holder of the broadcasting licence (narrowband area service) that authorises the operation of that narrowband area station, may apply to the Administrative Review Tribunal for review of the decision.

Section 26 Condition – using narrowband area service station to provide commercial broadcasting service in the frequency band 1606.5 kHz to 1705 kHz where original licence expired

The condition in section 26 was originally included in the Broadcasting LCD 1998 in compliance with the *Australian Communications Authority (MF NBS Transmitter Licences) Direction No. 1 of 2009*, which is available, free of charge, from the Federal Register of Legislation at www.legislation.gov.au. The direction was repealed by the *Spent and Redundant Instruments Repeal Regulation 2014 (No. 2)*. According to the explanatory statement for that regulation, as the ACMA complied with the direction, the direction is ‘now spent. The repeal of the direction does not alter existing arrangements’ As such, the ACMA has decided to continue the effect of this condition.

Subsection 26(1) provides that section 26 applies to a broadcasting licence (narrowband area service) (the **new licence**) held by a person if all the following apply:

- the person operated a narrowband area service station under a different licence (the **old licence**) in accordance with section 25 of the instrument, or an equivalent section of the Broadcasting LCD 2015 or the Broadcasting LCD 1998;
- the old licence expired;
- the person did not apply for renewal of the old licence under the Act;
- after the old licence expired, the new licence was issued to the person (and may have been renewed).

If section 26 applies to a broadcasting licence (narrowband area service), subsection 26(2) provides that a person must not operate a narrowband area service station in the frequency band 1606.5 kHz to 1705 kHz to provide a commercial broadcasting service unless all the following apply:

- the licence specifies a frequency in the frequency band 1606.5 kHz to 1705 kHz, on which the narrowband area service station may be operated;
- the commercial broadcasting service is provided under a commercial broadcasting licence allocated under the BSA before 6 November 2002;
- the narrowband area service station is either within 10 kilometres of where it was located on 6 November 2002, or a location determined by the ACMA in accordance with subsection 26(3);
- the person notified the ACMA of their intention to provide a commercial broadcasting service, in writing, at least 14 days before first operating the narrowband area service station to provide the service. (It does not matter whether this notification, or the first operation of the station, occurred before the commencement of the instrument.)

Subsection 26(3) provides that, for the purposes of subparagraph 26(2)(c)(ii), the ACMA may determine a location for a narrowband area service station if the ACMA is satisfied that transmissions from that location would provide a service that is substantially the same as the audience intended to be covered from the previous location of the station, and that the transmissions would not significantly interfere with any existing radiocommunications.

Subsection 26(4) defines terms for the purposes of the section.

Subsection 26(5) is a transitional provision that provides that if a person operated a narrowband area service station to provide a commercial broadcasting service immediately before the commencement of the instrument and the operation of that station complied with the condition in section 5.4 of the Broadcasting LCD 2015, then the operation of the station is taken to comply with the condition in subsection 26(2).

Subsection 26(6) provides that subsection 26(5) ceases to apply in relation to a narrowband area service station upon the first of any of the following occurring: the person ceases to operate the

station, the person ceases to provide a commercial broadcasting service, or the person changes the location of the station. If subsection 26(5) applied in relation to a narrowband area service station, but ceases to apply because of subsection 26(6), that does not necessarily mean that a person operating the station will be in breach of the condition in subsection 26(2). The person may still be able to comply with that condition without the benefit of the transitional provision.

Subsection 26(7) provides that if the ACMA decides or refuses to decide to determine a new location for a narrowband area service station under subsection 26(3), the holder of the broadcasting licence (narrowband area service) that authorises the operation of that narrowband area service station, may apply to the Administrative Review Tribunal for review of the decision.

Section 27 Conditions – harmful interference

Subsection 27(1) provides that a person must not operate a narrowband area service station on a frequency in the broadcasting service bands if that operation causes harmful interference to a commercial or community broadcasting service within its licence area, or to a national broadcasting service or open narrowcasting service (other than an LPON service) within its service area.

Subsection 27(2) provides that a person must not operate a narrowband area service station on a frequency outside the broadcasting service bands if that operation causes harmful interference to radiocommunications of a radiocommunications transmitter that was first authorised to operate by a licence, and first operated, before the person operated the narrowband area service station.

Subsection 27(3) provides that a person must not operate a narrowband area service station in the frequency band 1606.5 kHz to 1705 kHz if operation of the station causes harmful interference to the reception of broadcasting services provided in the AM radio band.

Part 5 Condition – broadcasting licence (temporary community broadcasting service)

Section 28 Application of Part 5

This section states that every broadcasting licence (temporary community broadcasting service) is subject to the condition in Part 5 of the instrument, except when a condition is specified in the licence under paragraph 107(1)(g) of the Act, or imposed on the licence under paragraph 111(1)(a) of the Act that is inconsistent with the condition in Part 5.

A broadcasting licence (temporary community broadcasting service) is a broadcasting licence issued under section 101A of the Act, to a person who holds a temporary community broadcasting licence allocated under Part 6A of the BSA.

Section 29 Condition – harmful interference

This section provides that a person must not operate a radiocommunications transmitter if operation of the transmitter causes harmful interference to a commercial or community broadcasting service within its licence area, or to a national broadcasting service or open narrowcasting service (other than an LPON service) within its service area.

Part 6 Conditions – broadcasting licence (re-transmission service)

Section 30 Application of Part 6

This section states that every broadcasting licence (re-transmission service) is subject to the conditions in Part 6 of the instrument, except when a condition is specified in the licence under paragraph 107(1)(g) of the Act, or imposed on the licence under paragraph 111(1)(a) of the Act that is inconsistent with a condition in Part 6.

A broadcasting licence (re-transmission service) is a broadcasting licence that authorises the operation of a ‘re-transmission service station’, which is a radiocommunications transmitter operated for the purpose of re-transmitting programs in the manner specified by section 212 of the BSA.

Section 31 Condition – person to advertise before commencing service

Subsection 31(1) provides that a person must not operate a re-transmission service station except where subsection 31(2) has been satisfied.

Subsection 31(2) is satisfied if a person has made the statements and information available to the public as listed in that subsection not later than 7 days before the person first operates a re-transmission service station. This information includes the intention to operate the service, the date and time of commencement, the frequency of the station, notification that the public can contact the person about interference issues, and contact details.

Subsection 31(3) provides that subsection 31(1) does not apply to a person who operated the re-transmission service station before the commencement of the instrument to provide a service of the kind specified in subsection 212(1) of the BSA, and before the operation of the re-transmission service station the person had made the requisite statements or information available to the public as listed in subsection 31(2) or substantially similar statements and information.

Section 32 Condition – using re-transmission service station to re-transmit programs

This section provides that the person must only operate the re-transmission service station to provide a service of the kind described in subsection 212(1) of the BSA.

Section 33 Condition – harmful interference

Subsection 33(1) provides that a person must not operate a re-transmission service station on a frequency in the broadcasting service bands if operation of the station causes harmful interference to a commercial or community broadcasting service within its licence area, or to a national broadcasting service or open narrowcasting service (other than an LPON service) within its service area.

Subsection 33(2) provides that a person must not operate a re-transmission service station on a frequency outside the broadcasting service bands if that operation causes harmful interference to radiocommunications of a radiocommunications transmitter that was first authorised to operate by a licence, and first operated, before the person operated the re-transmission service station.

Section 34 Condition – emission requirements

This section provides that a person must not operate a re-transmission service station otherwise than in accordance with guidelines 21 and 22 of the Technical Planning Guidelines.