

EXPLANATORY STATEMENT

Issued by the Authority of the Australian Communications Authority

***Radiocommunications Licence Conditions (Scientific Licence) Amendment
Determination 2005 (No. 1)***

Radiocommunications Act 1992

Legislative Provisions

Paragraph 107(1)(f) of the *Radiocommunications Act 1992* (the Act) allows the Australian Communications Authority (the ACA) to determine, by written instrument, conditions applicable to particular types of apparatus licences.

A Determination made under paragraph 107(1)(f) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Purpose

This amendment to the *Radiocommunications Licence Conditions (Scientific Licence) Determination No. 1 of 1997* (the Scientific LCD) adds an inconsistency clause to clarify that, where a condition in an LCD is inconsistent with a special condition printed on a licence, the condition specified on the licence applies.

Background

The operation of radiocommunications equipment authorised by an apparatus licence is subject to:

- conditions specified in the Act, including an obligation to comply with the Act;
- a condition that any radiocommunications device operated under the licence must comply with all the standards applicable to it;
- conditions specified in the *Radiocommunications Licence Conditions (Apparatus Licence) Determination No. 1 of 1997* and any other determinations made by the ACA under paragraph 107(1)(f) of the Act;
- conditions specified in the licence; and
- any further conditions imposed by the ACA under section 111 of the Act.

Under paragraph 107(1)(f) of the Act, the ACA may determine, by written instrument, conditions relating to a particular type of apparatus licence. These instruments are known as Licence Conditions Determinations (LCDs). LCDs contain the generic conditions particular to various radiocommunications licence types and licensing options, including details of any common frequencies or frequency bands, permitted power levels, type of communications permitted, persons with whom the licensee is permitted to communicate, callsign usage and any other relevant transmission parameters. Conditions applicable to the licence referred to in this explanatory statement are specified in the *Radiocommunications Licence Conditions (Apparatus Licence) Determination 2003* and the *Radiocommunications Licence Conditions (Scientific Licence) Determination No. 1 of 1997*.

Any other conditions of operation which apply to an individual licence but are not included in the LCD, are printed on the licence under the heading 'Special Conditions'.

Discussion of Issues

The Act does not provide direction on whether precedence is to be given to conditions in an LCD or to special conditions on an apparatus licence, should there be an inconsistency between the two. The ACA currently has 16 LCDs in effect. Ten of these LCDs contain the following inconsistency clause to address this issue:

'However, if a condition in this Determination is inconsistent with a condition specified in the licence, the condition specified in the licence applies.'

To avoid potential conflict between conditions in the LCD and special conditions on licences and to be consistent, the Scientific LCD has been amended with the addition of this clause.

Two other minor amendments have been included. For consistency in drafting conventions, the *Radiocommunications Licence Conditions (Scientific Licence) Determination No. 1 of 1997* has been renamed the *Radiocommunications Licence Conditions (Scientific Licence) Determination 1997*. Additionally, the note in Subsection 3(1) has been amended to update the Instruments listed as a source for definitions of expressions used in this Determination.

The *Radiocommunications Licence Conditions (Scientific Licence) Amendment Determination 2005 (No. 1)* commences on registration.

Consultation

The ACA consulted the Office of Regulation Review (ORR) who advised that a Regulation Impact Statement is not required for the amendment to the Scientific LCD (ORR ID: 3857). ORR noted that proposed amendments have no direct or significant indirect impact on business.

Further external consultation was not considered necessary as the amendments are of a minor and machinery nature. They are intended to clarify conditions for licence holders.

Details of the Determination are set out in Attachment 1.

ATTACHMENT 1

Notes about instrument

Section 1 Name of Determination

Section 1 provides for the citation of the Determination.

Section 2 Commencement

Section 2 states the day on which the Determination has effect.

Section 3 Amendment of the *Radiocommunications Licence Conditions (Scientific Licence) Determination No.1 of 1997*

Section 3 provides that Schedule 1 amends the *Radiocommunications Licence Conditions (Scientific Licence) Determination No.1 of 1997*.

Schedule 1 Amendments

[1] Section 1

Item [1] amends the name of the LCD to the *Radiocommunications Licence Conditions (Scientific Licence) Determination 1997*.

[2] & [3] Section 2

Items [2] & [3] insert a new subsection to clarify that where there is any inconsistency between the provisions of the *Radiocommunications Licence Conditions (Scientific Licence) Determination 1997* and any condition specified in an individual licence, the condition that is specified in the licence is to be given precedence.

[4] Subsection 3(1), note

Item [4] updates the Acts listed as a source for definitions of expressions used in the Determination.

[5] Section 6 (1) (a)

Item [5] substitutes ACA for SMA.