

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Radiocommunications (Cellular Mobile Telecommunications Devices) Class Licence Variation 2010 (No. 1)

Radiocommunications Act 1992

Legislative Basis

Section 134 of the *Radiocommunications Act 1992* (the Act) allows the Australian Communications and Media Authority (the ACMA), by notice published in the Commonwealth Gazette, to vary a class licence subject to section 136 of that Act.

Section 136 of the Act requires the ACMA, before varying a class licence, to publish a notice in the Commonwealth Gazette inviting persons to make representations about the proposed variation and providing those persons with an opportunity of at least one month in which to make those representations.

A variation made under paragraph 134 of the Act is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (the LIA). Section 56 of the LIA provides that registration on the Federal Register of Legislative Instruments (FRLI) satisfies the requirement for publication of the variation in the Gazette.

Purpose

The purpose of the *Radiocommunications (Cellular Mobile Telecommunications Devices) Class Licence Variation 2010 (No. 1)* (the Class Licence Variation) is to extend existing arrangements in the *Radiocommunications (Cellular Mobile Telecommunications Devices) Class Licence 2002* (the CMTD Class Licence), to allow for the use of new technologies that facilitate mobile communication services on aircraft.

Prior to the amendments set out in the Class Licence Variation, sections 5 and 6 of the CMTD Class Licence limited authorisation of devices (referred to as ‘stations’¹) to operation on land, or communication with a land station. The Class Licence Variation amends the CMTD Class Licence to authorise the use of devices onboard aircraft to communicate with an onboard system where the operation of that system is authorised by and in accordance with the conditions imposed on an apparatus licence. The relevant licence for these purposes is a PTS licence (PMTS C) which will be defined in the *Radiocommunications Licence Conditions (PTS Licence) Determination 1997*.²

The Class Licence Variation is one of a number of amending legislative instruments forming part of the radiocommunications regulatory framework that seeks to facilitate the provision of mobile communication services on aircraft.

The other amending legislative instruments are the:

- *Radiocommunications (Interpretation) Amendment Determination 2010 (No. 2)*;

¹ The term ‘station’ is defined in the *Radiocommunications Regulations 1993*.

² The new PTS licence (PMTS C) will be introduced to the *Radiocommunications Licence Conditions (PTS Licence) Determination 1997* by the *Radiocommunications Licence Conditions (PTS Licence) Amendment Determination 2010 (No. 2)*.

- *Radiocommunications (Charges) Amendment Determination 2010 (No. 2);*
- *Radiocommunications (Transmitter Licence Tax) Amendment Determination 2010 (No. 4); and*
- *Radiocommunications Licence Conditions (PTS Licence) Amendment Determination 2010 (No. 2).*

Background

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 type 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. Class licences require minimal licence administration by the ACMA.

The CMTD Class Licence contains the licence conditions, operating requirements and technical parameters associated with the operation of radiocommunications devices including cellular mobile telephone handsets that communicate with a station authorised under a Public Telecommunications Service (PTS) apparatus licence.

Consultation

Section 17 of the LIA requires the ACMA to be satisfied that any consultation it considers to be appropriate and that is reasonably practicable to undertake has been undertaken in relation to the Class Licence Variation.

In accordance with section 136 of the Act, notice of ACMA's proposed variation to the CMTD Class Licence was published in the Commonwealth Gazette on 2 December 2009, inviting public submissions until 29 January 2010. No submissions were received in response to this invitation for public comment.

Notice of the proposed variation and an invitation for public submissions was also provided on ACMA's internet site from 8 December 2009 through to 29 January 2010. Twelve submissions were received to this invitation for comment. Eight submissions argued that the use of devices onboard aircraft should be permitted at a height of 3000 metres above ground level rather than 6000 metres above ground level.

Having considered all stakeholder views the ACMA considers that it is appropriate to manage the operating height restriction by way of a licence condition imposed under paragraph 107(1)(g) of the Act to manage interference concerns and to ensure that air safety considerations determined by the Civil Aviation and Safety Authority are met. The ACMA will assess the technology and operating specifications of individual onboard service providers on a case by case basis in order to set an appropriate minimum height for operation. As the operation of mobile phones under the CMTD Class Licence will only be permitted for communication with an onboard system where the operation of that system is authorised by an apparatus licence, and the base station on an aircraft can only be used in accordance with

the conditions specified in that apparatus licence, mobile phone use will only be permitted at or above the minimum height specified as a condition of that licence.

Regulation Impact Statement

The ACMA obtained advice from its SES contact officer for the Government's regulation impact analysis arrangements that the Class Licence Variation has no or low impact on businesses or the economy. For those reasons under the self-assessment regime administered by the Office of Best Practice Regulation (OBPR), the ACMA has determined that there is no need to produce a Business Cost Calculator report or to prepare a Regulation Impact Statement. The ACMA RIS exemption reference number is 155.

Detailed Description of the Instrument

Details of the Class Licence Variation are set out in Attachment 1.

NOTES ON THE INSTRUMENT

Section 1 - Name of variation

Section 1 provides that the Class Licence Variation is the *Radiocommunications (Cellular Mobile Telecommunications Devices) Class Licence Variation 2010 (No. 1)*.

Section 2 - Commencement

Section 2 provides that the Class Licence Variation commences on the day after it is registered on the Federal Register of Legislative Instruments.

Section 3 - Variation of *Radiocommunications (Cellular Mobile Telecommunications Devices) Class Licence 2002*.

Section 3 provides that Schedule 1 varies the *Radiocommunications (Cellular Mobile Telecommunications Devices) Class Licence 2002* (the CMTD Class Licence).

Schedule 1 - Variations

[1] Subsection 5 (1) - Addition to the class of devices to which the CMTD Class Licence applies

Item [1] widens the class of the radiocommunications devices to which the CMTD Class Licence applies, from stations that communicate with a *land station* under a PTS apparatus licence to stations that communicate with a *station* (including stations on an airborne aircraft) under a PTS apparatus licence.

[2] Subsection 5 (3) – Amendment permitting the operation of a station that is in an airborne aircraft

Item [2] removes the prohibition on the authorisation of the operation of a station that is in an airborne aircraft and enables authorisation of the operation of a station where :

- (a) the station is in an aircraft; and
- (b) the operation of the station is to communicate only with a station that is:
 - (i) on board the aircraft; and
 - (ii) authorised by a PTS licence.

The note to item [2] clarifies that under the PTS licence, the station on board the aircraft will be permitted to operate only at a minimum height above ground level as provided in the conditions specified in the licence pursuant to paragraph 107(1)(g) of the Act.

[3], [4] and [5] Subsections 6 (1), 6 (2) and 6 (3)

Items [3], [4] and [5] replace the references to a '*land station*' in subsections 6(1), 6(2) and 6(3) respectively with a '*station*'. This has the effect of widening the application of subsections 6(1), 6(2) and 6(3) to include any *station* (including stations on an airborne aircraft) authorised under a PTS apparatus licence.