

## EXPLANATORY STATEMENT

### Prepared by the Australian Communications and Media Authority

*Radiocommunications (Overseas Amateurs Visiting Australia) Class Licence Variation 2012 (No. 1)*

*Radiocommunications Act 1992*

#### **Purpose**

The purpose of the *Radiocommunications (Overseas Amateurs Visiting Australia) Class Licence Variation 2012 (No. 1)* (the **Variation**) is to vary the *Radiocommunications (Overseas Amateurs Visiting Australia) Class Licence 2008* (the **Class Licence**) by removing the permission granted to qualified persons to operate amateur stations in the 420 to 430 MHz frequency band and by permitting operation in the 472 to 479 kHz frequency band.

#### **Legislative Provisions**

Under subsection 132(1) of the *Radiocommunications Act 1992* (the **Act**) the ACMA may, by notice published in the Gazette, issue class licences.

The Variation is made under section 134 of the Act.

Section 134 of the Act provides that, subject to section 136 of the Act, the Australian Communications and Media Authority (the **ACMA**) may, by notice published in the Gazette, vary a class licence by including further conditions or by revoking or varying any conditions of the class licence.

Section 136 of the Act provides that, before varying a class licence, the ACMA must cause to be published in the *Gazette* a written notice stating various matters relating to the proposed class licence variation and the making of representations by interested persons about the proposed class licence variation. Subsection 136(4) of the Act provides that the ACMA must give due consideration to any representations made before varying or revoking a class licence.

A Variation made under section 134 of the Act is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (the **LIA**).

#### **Background**

The Class Licence authorises a person who:

- is visiting Australia from another country; and
- is not an Australian resident; and
- entered Australia 90 days or less beforehand; and
- holds an amateur licence or qualification that has been recognised by the ACMA; and
- has been issued with a call sign,

to operate an amateur station if the amateur station is operated in accordance with all of the relevant conditions of the Class Licence.

The Class Licence contains the conditions relevant to operation of an amateur station by amateurs visiting Australia for short periods of time. The Class Licence prescribes the frequency ranges on which the overseas amateurs visiting Australia are permitted to operate, including in the 420 to 430 MHz range. The Class Licence provides for five different levels of operation. Each of these levels relates to a specific level of overseas qualification or overseas licence. Information about which level of operation applies to a person's qualification or licence can be found in the ACMA's policy information paper entitled *Apparatus licensing—Amateurs visiting Australia*.

The reason for removing permission to operate amateur stations in the 420 to 430 MHz frequency band and including a permission to operate amateur stations in the 472 kHz to 479 kHz frequency band is to achieve consistency with:

- the requirements in the ACMA's Radiocommunications Assignment Licensing Instruction MS22 (RALI MS22); and
- the *Australian Radiofrequency Spectrum Plan 2013* (the **ARSP**).

RALI MS22 is an ACMA policy document that codifies planning arrangements for radiocommunication services in the two bands 403 to 430 MHz and 450 to 520 MHz (known collectively as the 400 MHz band). RALI MS22 advises the service allocations in the two bands, specifies the segment frequency limits applicable to these allocations, and the channelling arrangements within these segments.

The ACMA also proposes to include in the ARSP requirements that will remove amateur service access to the 420 to 430 MHz frequency range and will specify amateurs as a secondary service in the 472 to 479 kHz range. Section 12 of the ARSP, inter alia, provides that a secondary service must not cause harmful interference to a primary service using the frequency band and that it cannot claim protection from harmful interference caused by a primary service using the frequency band.

The Class Licence as varied will be consistent with the ARSP as it will permit use of the 472 to 479 kHz band and because the Class Licence provides that an amateur station must not be operated if its operation causes harmful interference to radiocommunications.<sup>1</sup>

An additional reason for permitting the operation of amateur stations in the frequency range 472 to 479 kHz is that it will align Australia's regulation with the agreed outcomes of the World Radiocommunication Conference 2012 (WRC-12). Australia implements outcomes of the WRC-12 in a treaty that is ratified by the Australian Government. The Class Licence is being varied to reflect these agreed outcomes.

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<sup>1</sup> Section 7 of the LCD and subsection 10(1) of the Class Licence prohibit the operation of an amateur station if that operation would cause harmful interference to radiocommunications.

## Consultation

The ACMA consulted the Wireless Institute of Australia (WIA) and wrote to amateur licence holders prior to *Gazetta* of a notice to vary the Class Licence.

In accordance with the requirements of section 136 of the Act, notice of the ACMA's intention to vary the Class Licence was published in the *Gazette* on 10 October 2012. The notice sought comment on the proposed variation. Following publication of the *Gazette* notice, the draft variation and accompanying consultation paper were published on the ACMA website. Interested persons were invited to provide comment by 9 November 2012.

The ACMA received 4 submissions and took comments received into account in finalising the Variation.

The ACMA is satisfied that the consultation undertaken was appropriate for the purpose of section 17 of the LIA.

## Regulatory Impact

The Office of Best Practice Regulation (**OBPR**) was consulted in relation to the ACMA's intention to vary the Class Licence. OBPR advised that no Regulation Impact Statement was required. The OBPR reference number is ID 14230.

## Detailed description of the Variation

Details of the Variation are set out in **Attachment A**.

## Statement of Compatibility with Human Rights

A statement of compatibility with human rights for the purpose of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out in **Attachment B**.

## Notes on Sections

### Section 1 Name of Variation

Section 1 provides that the name of the Variation is the *Radiocommunications (Overseas Amateurs Visiting Australia) Class Licence Variation 2012 (No. 1)*.

### Section 2 Commencement

This section provides that the Variation commences on the later of 1 January 2013 or the day on which it is published in the *Gazette*.

### Section 3 Variation of *Radiocommunications (Overseas Amateurs Visiting Australia) Class Licence 2008*

Section 3 provides that Schedule 1 to the Variation varies the *Radiocommunications (Overseas Amateurs Visiting Australia) Class Licence 2008*.

## Schedule 1 Variations

### Item [1] – Subsection 3(1) – Definition of *Exmouth Non Directional Beacon Area*

This item inserts a definition of *Exmouth Non Directional Beacon Area*. The Exmouth Non Directional Beacon is an aeronautical navigation aid that is located at latitude 21° 26' 7" south, longitude 114° 3' 57" east off the coast near Exmouth, Western Australia. The Exmouth Non Directional Beacon Area is stated to mean the part of the geographic area with a 1000km radius around the Exmouth Non Directional Beacon that is within Australia. "Australia" is defined in the Act. The Exmouth Non Directional Beacon Area is referred to in the new Table 1B (inserted by item [9]) as an area of operation to which an excluded frequency range applies in relation to the operation of amateur stations.

### Items [2], [3] and [4] – Subsection 3(1) - Definitions of *Melbourne Area, Perth Area and Sydney Area*

These items omit the definitions of *Melbourne Area, Perth Area* and *Sydney Area* from the Class Licence. These definitions have been omitted as they are no longer required following the substitution of Table 1B and the omission of Table 4B from the Class Licence as a result of items [9] and [13] of Schedule 1 to the Variation.

### Item [5] – Subsection 3(1) – Definition of *Timor Non Directional Beacon Area*

This item inserts a definition of *Timor Non Directional Beacon Area*. The Timor Non Directional Beacon is an aeronautical navigation aid that is located at latitude 10° 37' 21" south, longitude 126° 2' 0" east in the Timor Sea. The Timor Non Directional Beacon Area is stated to mean the part of the geographic area with a 2000km radius around the Timor Non

Directional Beacon that is within Australia. "Australia" is defined in the Act. The Timor Non Directional Beacon Area is referred to in the new Table 1B (inserted by item [9]) as an area of operation to which an excluded frequency range applies in relation to the operation of amateur stations.

**Item [6] – After section 24A**

This item inserts a new section 24B to give effect to the International Telecommunication Union table of allocations footnote 80A. The new section provides that an amateur station must not be operated in the frequency band 472 to 479 kHz using a radiated power of more than 5 Watts pX EIRP.

**Item [7] – Table 1A, item 1A, column 2**

This item varies Table 1A to add a new frequency range 472 to 479 kHz to the table for use by overseas amateurs visiting Australia.

**Item [8] – Table 1A, item 4, column 2**

This item varies item 4 in Table 1A by substituting 430 to 450 MHz as a frequency range available to overseas amateurs visiting Australia. This variation has the effect of removing the permission for overseas amateurs visiting Australia to operate in the 420 MHz-430 MHz frequency range.

**Item [9] – Table 1B**

This item substitutes Table 1B. The amendments to Table 1B reflect that the excluded frequency ranges which all fall within the 420 MHz-430 MHz frequency range have been removed as a result of the variation in item 7 of Schedule 1 to the Variation. The new Table 1B inserts the Timor Non Directional Beacon Area and the Exmouth Non Directional Beacon Area as areas of operation for which the frequency range of 472 kHz – 479 kHz is an excluded frequency range pursuant to paragraph 20(b).

**Item [10] – Table 2, item 1, column 2**

This item substitutes column 2 at item 1 of Table 2 to include a new frequency range 472 kHz to 479 kHz for use by overseas amateurs visiting Australia.

**Item [11] – Section 38**

This item substitute a new section 38 which removes the reference to operating an amateur station only on a frequency that is outside an excluded frequency range specified in an item in Table 4B. The new section 38 clarifies that the licensee must operate an amateur station only on a frequency that is in a frequency band in the varied Table 4A.

**Item [12] – Table 4A, item 2, column 2**

This item varies item 2 in Table 4A by substituting 430 to 450 MHz as a frequency range available to overseas amateurs visiting Australia. This variation has the effect of removing the permission for overseas amateurs visiting Australia to operate in the 420 MHz-430 MHz frequency range.

**Item [13] – Table 4B**

This item omits Table 4B from the Class Licence. Table 4B is omitted because it relates to excluded frequency ranges which all fall within the 420 MHz-430 MHz frequency range which has been removed as a result of the variation in item [12] of Schedule 1 to the Variation. The omission of Table 4B also reflects the variation made to section 38 as a result of item [10] of Schedule 1 to the Variation.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### ***Radiocommunications (Overseas Amateurs Visiting Australia) Class Licence Variation 2012 (No. 1)***

The *Radiocommunications (Overseas Amateurs Visiting Australia) Class Licence Variation 2012 (No. 1)* (the Variation) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

The *Radiocommunications (Overseas Amateurs Visiting Australia) Class Licence 2008* is issued under subsection 132(1) of the *Radiocommunications Act 1992* (the Act). The Class Licence contains the conditions relevant to operation of an amateur station by amateurs visiting Australia for short periods of time. The Class Licence prescribes the frequency ranges on which the overseas amateurs visiting Australia may currently operate. Section 134 of the Act provides that the ACMA may vary a class licence by including further conditions or revoking or varying any conditions of the class licence.

The Variation will:

- remove permission to operate devices in the 420 to 430 MHz frequency range to achieve consistency with the requirements in the ACMA's Radiocommunications Assignment Licensing Instruction MS22 and with a planned update to the Australian Radiofrequency Spectrum Plan; and
- authorise access for amateurs to use the 472 to 479 kHz frequency range to achieve consistency with the agreed outcomes of the World Radiocommunication Conference 2012.

#### **Human rights implications**

This Variation does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This Variation is compatible with human rights as it does not raise any human rights issues.

**Australian Communications and Media Authority**