

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Radiocommunications Licence Conditions (Apparatus Licence) Amendment Determination 2013 (No. 1)

Radiocommunications Act 1992

Purpose

The *Radiocommunications Licence Conditions (Apparatus Licence) Amendment Determination 2013 (No. 1)* (**the Apparatus Licence LCD Amendment**) amends the *Radiocommunications Licence Conditions (Apparatus Licence) Determination 2003* (**the Apparatus Licence LCD**).

The Apparatus Licence LCD adopts the mandatory requirements in the Australian Standard *AS 2772.2:1988 – Radiofrequency radiation – Part 2: Principles and methods of measurement – 300 kHz to 100 GHz* (**the AS Standard**). The AS Standard was replaced by the Australian/New Zealand Standard *AS/NZS 2772.2 - Radiofrequency fields Part 2: Principles and methods of measurement and computation — 3 kHz to 300 GHz* published by Standards Australia and Standards New Zealand (**the AS/NZS Standard**) in May 2011.

The purpose of the Apparatus Licence LCD Amendment is to amend the Apparatus Licence LCD to replace references to the AS Standard with references to the AS/NZS Standard. The Apparatus Licence LCD Amendment also includes transitional mechanisms for compliance after the Apparatus Licence LCD Amendment has commenced. Transmitters can be tested either against either the AS Standard or the AS/NZS Standard for a period of one year after the Apparatus Licence LCD Amendment takes effect.

Legislative Provisions

The Apparatus Licence LCD is made under paragraph 107(1)(f) of the *Radiocommunications Act 1992* (**the Act**). This provision allows the Australian Communications and Media Authority (**the ACMA**) to determine, by written instrument, conditions in relation to a particular type of apparatus licence.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make a legislative instrument, the power shall be construed to include 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. The Apparatus Licence LCD Amendment is made under paragraph 107(1)(f) and amends the Apparatus Licence LCD.

The Apparatus Licence LCD sets the conditions applicable to all apparatus licenses issued under sections 100 and 100B of the Act.

Background

The Apparatus Licence LCD sets out, among other things, the circumstances under which a transmitter may be operated to communicate with another station and sets conditions regulating human exposure to electromagnetic radiation (EMR) emitted by a transmitter.

The Apparatus Licence LCD references the AS Standard as the applicable standard for assessing radiofrequency (RF) emissions for a transmitter to which section 9 of the Determination does not apply.

The Apparatus Licence LCD currently requires compliance with the AS Standard. The purpose of the Apparatus Licence LCD Amendment is to amend the Apparatus Licence LCD to replace references to the AS Standard with references to the AS/NZS Standard.

Operation

The Apparatus Licence LCD Amendment amends the Apparatus Licence LCD to adopt the mandatory requirements of the AS/NZS Standard. The Apparatus Licence LCD Amendment also includes transitional arrangements if the AS/NZS Standard is amended. The transitional provisions allow for transmitters to be tested either against the amended AS/NZS Standard or the AS/NZS Standard as in force immediately before the amendment date for a period less than one year after the date the amended standard takes effect.

The Apparatus Licence LCD currently references the AS Standard as the applicable standard for assessing RF emissions where a transmitter to which section 9 of the Apparatus Licence LCD does not apply. In 2011, the AS Standard was amended to be issued as a joint industry standard for Australia and New Zealand. The AS/NZS Standard is an updated industry standard that includes minor and machinery updates to the previous AS Standard.

Consultation

The ACMA conducted a public consultation process in relation to the Apparatus Licence LCD Amendment. The consultation period commenced on 23 January 2013 and was open until 22 February 2013. A draft copy of the Apparatus Licence LCD Amendment was made available on the ACMA website during the consultation period. Additionally, the ACMA directly emailed interested stakeholders to notify them of the consultation process.

Prior to making the AS/NZS Standard, a public consultation process on the proposed amendments to the AS Standard was conducted by Standards Australia and Standards New Zealand.

During the consultation period on the Apparatus Licence LCD Amendment, one submission from the Australian Mobile Telecommunications Association (AMTA) was received and considered by the ACMA. The AMTA submission supported the Apparatus Licence LCD Amendment but submitted that appropriate transitional mechanisms should be included to minimise the regulatory burden on industry stakeholders. The ACMA took this submission into account and has incorporated transitional arrangements into the Apparatus Licence LCD

Amendment. Those arrangements allow transmitters to be tested against either the AS Standard or the AS/NZS Standard for a period of one year after the Apparatus Licence LCD Amendment takes effect.

Regulation Impact

The Office of Best Practice Regulation (**OBPR**) has considered the matter and formed the opinion that the Apparatus Licence LCD Amendment will have minor and machinery impact and does not impose any substantial additional regulatory burden. Accordingly, OBPR advised that a regulatory impact statement is not required. The OBPR exemption number is ID 14522.

Documents Incorporated in this Instrument by Reference

The Australian/New Zealand Standard *AS/NZS 2772.2 - Radiofrequency fields Part 2: Principles and methods of measurement and computation — 3 kHz to 300 GHz* (the **AS/NZS Standard**) - published by Standards Australia and Standards New Zealand is incorporated, as in force from time to time. Copies of the AS/NZS Standard can be obtained from Standards Australia at www.standards.org.au.

Notes on the Apparatus Licence LCD Amendment

The provisions of the Apparatus Licence LCD Amendment are described in **Attachment 1**.

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 *Legislative Instruments Act 2003* applies, to cause a statement of compatibility to be prepared in respect of that legislative instrument. This statement is in **Attachment 2**.

Attachment 1

Notes on the instrument

Section 1 Name of Amendment

Section 1 provides that the name of the instrument is the *Radiocommunications Licence Conditions (Apparatus Licence) Amendment Determination 2013 (No. 1)*.

Section 2 Commencement

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

Section 3 Amendment of *Radiocommunications Licence Conditions (Apparatus Licence) Determination 2003*

Section 3 provides that Schedule 1 amends the *Radiocommunications Licence Conditions (Apparatus Licence) Determination 2003*.

Schedule 1

Item [1] provides an additional definition in subsection 4(1), namely, defining *AS/NZS 2772.2*.

Item [2] updates the definition of *NATA-accredited body* in subsection 4(1) to include *AS/NZS 2772.2*.

Item [3] replaces section 10 with a new section 10 and adds a section 10A. The new section 10 updates references to the industry standard to *AS/NZS 2772.2* and provides a mechanism for use of existing assessments made under *AS 2772.2* under certain circumstances.

The added section 10A provides for a transitional arrangement in relation to measurements and calculations of RF fields produced by specified transmitters made in accordance with *AS/NZS 2772.2* if *AS/NZS 2772.2* is amended.

Item [4] updates references in subparagraph 12(1)(b)(i) to refer to the appropriate provision in the new section 10.

Item [5] removes a reference to an old commencement date for the requirements which is no longer necessary.

Attachment 2

Statement of Compatibility with Human Rights

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

Radiocommunications Licence Conditions (Apparatus Licence) Amendment Determination 2013 (No. 1)

This legislative instrument 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 legislative instrument amends the *Radiocommunications Licence Conditions (Apparatus Licence) Determination 2003 (the Apparatus Licence LCD)* made under paragraph 107 (1) (f) of the *Radiocommunications Act 1992*. The Apparatus Licence LCD currently refers to the industry standard *AS 2772.2:1988 – Radiofrequency radiation – Part 2: Principles and methods of measurement – 300 kHz to 100 GHz*. The AS Standard was replaced by the Australian/New Zealand Standard *AS/NZS 2772.2 - Radiofrequency fields Part 2: Principles and methods of measurement and computation — 3 kHz to 300 GHz* published by Standards Australia and Standards New Zealand. The legislative instrument will amend the Apparatus Licence LCD to reflect the new industry standard.

Human rights implications

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

Conclusion

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