

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Radiocommunications Licence Conditions (Temporary Community Broadcasting Licence) Determination 2015

Purpose

The Australian Communications and Media Authority (the ACMA) has made the *Radiocommunications Licence Conditions (Temporary Community Broadcasting Licence) Determination 2015* (the Determination).

The Determination revokes and replaces the *Radiocommunications Licence Conditions (Temporary Community Broadcasting Licence) Determination 2003* (the 2003 Determination) without making any significant changes to the regulatory arrangements created by the 2003 Determination.

The ACMA has made the Determination because the 2003 Determination was due to 'sunset' (i.e. be automatically repealed) on 1 April 2015, by operation of Part 6 of the *Legislative Instruments Act 2003* (the LIA).

Following review, and consultation as described below, the ACMA formed the view that the 2003 Determination was operating effectively and efficiently, and continued to form a necessary and useful part of the legislative framework. Therefore, in order to preserve the effect of the 2003 Determination, the ACMA has revoked the 2003 Determination before its sunset date and remade it with minor changes as the Determination.

Legislative Provisions

Paragraph 108A(1)(e) of the *Radiocommunications Act 1992* (the Act) allows the ACMA to determine, by written instrument, conditions applicable to apparatus licences issued for temporary community broadcasting (TCB) services under section 101A of the Act.

An instrument made under paragraph 108A(1)(e) of the Act is a legislative instrument for the purposes of the LIA. Section 33(3) of the *Acts Interpretation Act 1901* provides that the power to make an instrument includes the power to amend or revoke the instrument, unless the contrary intention appears.

Background

Temporary Community Broadcasting Services

Under Part 6A of the *Broadcasting Services Act 1992* a person may apply to the ACMA for a temporary community broadcasting licence (TCBL). TCBLs give aspirant broadcasters the opportunity to develop broadcasting skills before merit-based allocation of planned long-term community broadcasting licences. TCBLs may be allocated for a period of up to 12 months. The TCBL authorises the provision of broadcast content, while a TCB transmitter licence issued under section 101A of the *Radiocommunications Act 1992* (the Act) authorises the transmission of that content.

Under paragraph 108A(1)(e) of the Act, the ACMA may determine conditions relating to TCB apparatus licences issued under section 101A of the Act. The Determination:

- addresses community concerns associated with the possible health effects caused by exposure to electromagnetic radiation or electromagnetic emission (EME) from apparatus licensed transmitters by incorporating by reference Part 3 and 4 of the

Radiocommunications Licence Conditions (Apparatus Licence) Determination 2015 (the 'Apparatus Licence Determination') which applies to most other apparatus licences;¹

- sets out the circumstances for permitted communications by TCB licensees; and
- imposes specific conditions that require TCB licensees not to cause harmful interference to other broadcasting services or to other existing radiocommunications services.

The relevant provisions relating to EME have been incorporated by reference because subsection 107(3) of the Act expressly excludes the application of the Apparatus Licence Determination to transmitter licences issued under 101A of the Act.

Operation

The conditions imposed by the Determination relate to the exposure of the general public to EME from radiocommunications transmitters, permitted communications and requirements not to cause harmful interference to specified services.

Scope

The Determination provides, that in accordance with paragraph 108A(1)(e) of the Act, a licensee must comply with the conditions set out in:

- sections 7 and 8 of the Determination; and
- Parts 3 and 4 of the Apparatus Licence Determination which deal with the regulation of exposure limits to EME.²

Permitted communications

The Determination provides that a licensee may only operate a transmitter to communicate with a station or receiver if that communication is permitted by the licensee's licence. The only exceptions are if:

- the licensee is transmitting a message relating to an emergency situation; or
- the licensee has been authorised by the ACMA, or an inspector, to operate the transmitter in relation to an interference investigation.

EME Exposure

To address community concerns about possible health effects resulting from exposure to EME, the Determination requires that a licensee:

- ensure that members of the general public are not exposed, in excess of non-occupational exposure limits, to EME produced by a transmitter operated by the licensee;
- for a defined set of transmitters (that meet level 2 criteria), assess compliance with the exposure limits, keep certain records relating to the assessment and produce this documentation to the ACMA upon request; and
- for other transmitters (that meet level 1 criteria), provide evidence of compliance to the ACMA upon request.

The exposure limits are derived from the *Radiation Protection Standard for Maximum Exposure Levels to Radiofrequency Fields – 3 kHz to 300 Ghz (2002)* published by the Australian Radiation Protection and Nuclear Safety Agency (the ARPANSA Standard).

A member of the general public is any person who is not a radiofrequency worker (or 'RF worker') as defined in the ARPANSA Standard. A RF worker is defined in the Apparatus

¹ The Apparatus LCD provides licence conditions with respect to the regulation of EME, for transmitter licences issued under subsections 100(1) and 100B(1) of the Act.

² In accordance with section 6 of the Determination, Parts 3 and 4 of the Apparatus Licence Determination are taken to apply to licences issued under 101A of the Act.

Licence Determination as a person who may be exposed to radiofrequency fields under controlled conditions, in the course of and intrinsic to the nature of their work.

Harmful interference

The Determination requires licensees who operate a broadcast service station by transmitting on a frequency in the broadcasting service bands (BSBs) not to cause harmful interference:

- to other broadcasting services transmitting on a frequency in the BSBs and operating within the same licence or coverage area; or
- to other existing radiocommunications services operating outside of the BSBs.

Consultation

Subsection 17(1) of the LIA requires that, before the ACMA makes a legislative instrument, it must be satisfied that any consultation that it considers appropriate and reasonably practicable to undertake, has been undertaken.

The ACMA published a draft version of the Determination on its website between 7 January 2015 and 6 February 2015, accompanied by information that explained the sunseting process and the ACMA's preliminary view that the existing arrangements under the 2003 Determination should be remade with minor changes. In particular, notice was given of the ACMA's proposal to incorporate by reference, in accordance with section 314A of the Act, Parts 3 and 4 of the Apparatus LCD. Interested parties were invited to comment.

The ACMA received one submission in response to its proposal from the Community Broadcasting Association of Australia (CBAА). The CBAА was supportive of the proposal to remake the Determination with the minor changes proposed to streamline its operation. In addition, the ACMA also considered the three submissions from the previous consultation undertaken in relation to the remaking of the Apparatus Licence Determination as key provisions have been incorporated into the Determination.³ Those submissions supported the remaking of the Apparatus Licence Determination and did not raise issues relevant to the Determination.

Regulatory Impact

The Office of Best Practice Regulation (OBPR) has determined that the proposed regulatory change in this submission is minor or machinery in nature and has therefore verified that no further regulatory impact analysis is required – OBPR reference number 17962.

Detailed Description of the Determination

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

Documents incorporated in this Determination by Reference

The Determination incorporates by reference the following documents as in force from time to time or otherwise refers to them:

- *Radiocommunications Act 1992*
- *Broadcasting Services Act 1992*
- *Radiocommunications Licence Conditions (Broadcasting Licence) Determination No.1 of 1998*
- *Radiocommunications (Interpretation) Determination 2015*
- *Radiocommunications Licence Conditions (Apparatus Licence) Determination 2015*
- *Radiation Protection Standard for Maximum Exposure Levels to Radiofrequency Fields—3 kHz to 300 GHz (ARPANSA Standard)*

³ The consultation undertaken for the remaking of the Apparatus Licence Determinations commenced on 4 July 2014 and ended on 18 August 2014. The submitters were: the Australian Mobile Telecommunications Association, Telstra and ARPANSA.

- *AS/NZS 2772.1 (Int):1998 Radiofrequency fields Part 1: Maximum exposure levels—3 kHz to 300 GHz*
- *AS/NZS 2772.2 Radiofrequency fields Part 2: Principles and methods of measurement and computation—3 kHz to 300 GHz*

Acts and legislative instruments referenced in the Determination can be found on the Australian Government's ComLaw website (<http://www.comlaw.gov.au/>).

Copies of the technical standards referenced in the Apparatus Licence Determination, and incorporated by reference in the Determination, can be obtained from the SAI Global Limited website (<http://www.saiglobal.com>).

The ARPANSA Standard can be found on the Australian Radiation Protection and Nuclear Safety Agency's website (<http://www.arpansa.gov.au>).

Statement of Compatibility with Human Rights

As required by subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*, a Statement of Compatibility with Human Rights has been prepared by the ACMA and is at **Attachment B**.

ATTACHMENT A

Part 1 Preliminary

Section 1 Name of Determination

Section 1 provides that the Determination is the *Radiocommunications Licence Conditions (Temporary Community Broadcasting Licence) Determination 2015*

Section 2 Commencement

Section 2 provides that the Determination commences on the day after it is registered on the Federal Register of Legislative Instruments (FRLI).

Section 3

Section 3 revokes the *Radiocommunications Licence Conditions (Temporary Community Broadcasting Licence) Determination 2003* [F2005B00257].

Section 4 Scope

Section 4 provides that the Determination sets out conditions to which a transmitter licence, issued under section 101A of the Act (i.e., relating to temporary community broadcasting services), is subject. Section 4 also stipulates, that if a condition specified in an individual licence is inconsistent with a condition in the Determination, the condition specified in the individual licence applies.

Section 5 Interpretation

Subsection 5 defines terms used in the Determination. The notes explain where other terms used in the Determination are defined.

Part 2 Licence conditions

Section 6 Conditions

Subsection 6(1) provides that all licences issued under section 101A of the Act are subject to the following conditions

- sections 7 and 8 of the Determination relating to the operation of transmitters under the licence; and

- Part 3 and 4 of the *Radiocommunications Licence Conditions (Apparatus Licence) Determination 2015* which relate to the operation of any transmitter under the licence by the TCB licensee and the keeping and production of records regarding EME exposure limits, set by the ARPANSA standard, in respect of any transmitter authorised by the licence.

Section 7 Permitted communications

Section 7 provides that a licensee may only operate a transmitter to communicate with other stations in accordance with the terms of its licence. However, operation not in accordance with the licence may be permitted in an emergency, or if the ACMA, or an inspector, provides written authorisation to the licensee to operate in a particular manner in order to investigate interference.

Section 8 Harmful interference

Section 8 provides that a licensee, operating a broadcast service station transmitting on a frequency in the broadcasting service bands (BSBs) is required not to cause harmful interference to certain other broadcasting services transmitting on a frequency in the BSBs and operating within the same licence or coverage area or to other radiocommunications services, authorised by licence, operating outside of the BSBs.

ATTACHMENT B

Statement of Compatibility with Human Rights

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

Radiocommunications Licence Conditions (Temporary Community Broadcasting Licence) Determination 2015

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 *Radiocommunications Licence Conditions (Temporary Community Broadcasting Licence) Determination 2015* (the Determination) revokes and replaces the *Radiocommunications Licence Conditions (Temporary Community Broadcasting Licence) Determination 2003* (the 2003 Determination) making only minor changes to the regulatory arrangements created by that instrument in order to streamline its operation.

The Determination contains conditions that apply to apparatus licences issued under section 101A of the *Radiocommunications Act 1992*. The conditions imposed by the Determination relate to:

- permitted communications;
- the exposure of the general public to EME from radiocommunications transmitters; and
- the management of harmful interference caused by transmitters used to provide temporary community broadcasting services.

Human Rights Implications

The Determination does not engage any of the applicable rights or freedoms.

Conclusion

The Determination is compatible with human rights as it does not raise any human rights issues.