

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications (Citizen Band Radio Stations) Class Licence 2015

Purpose

The Australian Communications and Media Authority (the **ACMA**) has made the *Radiocommunications (Citizen Band Radio Stations) Class Licence 2015* (the **Class Licence**).

The Class Licence revokes and replaces the *Radiocommunications (Citizen Band Radio Stations) Class Licence 2002* (the **2002 Class Licence**) without making any significant changes to the regulatory arrangements created by the 2002 Class Licence.

The ACMA has made the Class Licence because the 2002 Class Licence was due to 'sunset' (i.e. be automatically repealed) on 1 October 2015, by operation of Part 6 of the *Legislative Instruments Act 2003* (the **LIA**).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 2002 Class Licence was operating effectively and efficiently, and continued to form a necessary and useful part of the legislative framework. To preserve the effect of the 2002 Class Licence, the ACMA has, therefore, revoked the 2002 Class Licence before its sunset date and remade it with minor changes as the Class Licence.

Legislative Provisions

The Class Licence has been made by the ACMA in accordance with subsection 132(1) of the *Radiocommunications Act 1992* (the **Act**) and in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the **AIA**).

Subsection 132(1) of the Act provides that the ACMA, may, by notice published in the *Gazette*, issue class licences.

Subsection 33(3) of the AIA 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.

Background

It is generally a requirement of the Act that the operation of radiocommunications devices within Australia be authorised by a spectrum licence, an apparatus licence or a class licence.

Class licences typically authorise users of designated segments of spectrum to operate on a shared basis. Class licences can be 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 are issued by the ACMA and are registered on the Federal Register of Legislative Instruments (**FRLI**).

Operation

The Citizen Band (CB) radio service is a two-way communications service that may be used by any person in Australia. The service operates on designated channels in the High Frequency (HF) (26.965 to 27.405 MHz) and Ultra High Frequency (UHF) (476.425 to 477.400 MHz) bands with no exclusive access. It may be used for voice communications or for telemetry and telecommand applications. The operation of a CB radio station is subject to the regulatory arrangements set out in the Class Licence.

This Class Licence authorises the operation of CB stations subject to compliance with the conditions, operating requirements and technical standards set out in the Class Licence.

Consultation

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

Pursuant to subsections 136(2) and (2A) of the Act, before revoking a class licence, the ACMA must cause to be published, a written notice on its website and in one or more forms that are readily accessible to the public. That notice must: state that the ACMA proposes to revoke the licence, set out the licence, and invite interested persons to make representations about the proposed revocation.

In accordance with the requirements of the LIA and the Act, the ACMA published a draft version of the Class Licence and an associated consultation paper on its website between 17 December 2014 and 6 February 2015. The consultation paper set out the 2002 Class Licence, the ACMA's proposal to revoke the 2002 Class Licence and the ACMA's preliminary view that the 2002 Class Licence should be remade without any significant changes. Interested parties were invited to comment. In addition, the ACMA published a notice in the *Gazette* on 2 January 2015 that set out the terms of the 2002 Class Licence, advising that it proposed to revoke the 2002 Class Licence and remake it in substantially the same form and inviting interested persons to make representations about the proposed revocation. The ACMA received two supportive submissions in response to the consultation paper.

Regulatory Impact

Under the Guidance Note *Sunsetting Legislation* published by the Office of Best Practice Regulation (OBPR) in July 2014, streamlined administrative processes apply to sunseting legislative instruments. As the ACMA has determined that the 2002 Class Licence was fit for purpose and should be remade without any significant changes, and has certified those matters to OBPR, no Regulation Impact Statement (RIS) is required in relation to the remaking of the Instrument. The OBPR reference number is 17545.

Detailed Description of the Instrument

Details of the Class Licence are set out in **Attachment A**.

Documents Incorporated in the Instrument by Reference

The Class Licence incorporates, by reference, the following documents as in force from time to time or otherwise refer to them:

- *Radiocommunications Act 1992*
- *Radiocommunications Regulations 1993*
- *Telecommunications (Labelling Notice for Customer Equipment and Customer Cabling) Instrument 2015*
- *Radiocommunications (Compliance Labelling – Devices) Notice 2014*

Acts and legislative instruments mentioned above can be found on the Australian Government's ComLaw website (<http://www.comlaw.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

DETAILS OF THE *RADIOCOMMUNICATIONS (CITIZEN BAND RADIO STATIONS) CLASS LICENCE 2015*

Section 1 – Name Of Class Licence

Section 1 provides that the Class Licence is the *Radiocommunications (Citizen Band Radio Stations) Class Licence 2015*.

Section 2 – Commencement

Section 2 provides that the Class Licence commences on the later of the day after it is registered on the FRLI or the day of its gazettal. Both events must occur before the Class Licence commences.

Section 3 – Revocation

Section 3 revokes the *Radiocommunications (Citizen Band Radio Stations) Class Licence 2002*.

Section 4 – Definitions

Section 4 defines the terms used in the Class Licence and provides that, unless the contrary intention appears, a reference to another legislative instrument is a reference to that other legislative instruments as in force from time to time.

Section 5 – Class Licence

Section 5 of the Class Licence authorises persons to operate particular kinds of CB stations, and for particular purposes, subject to the conditions in the Class Licence.

Section 6 – Conditions - general

Section 6 sets out the general conditions that regulate the operation of a CB station.

Section 7 – Operating a CB station to transmit audio tones

Section 7 sets out the conditions upon which a person can operate a CB station to transmit audio tones for initiating communications with another CB station.

Section 8 – Condition relating to a CB station that operates through a CB repeater station.

Section 8 prohibits the operation of a CB station on certain channels, except where that operation is for the purpose of transmitting to a CB repeater station.

Section 9 – Directions

Section 9 provides that a person must comply with a direction given by a member of the Australian Federal Police, a member of the police force of a State or Territory, an officer of the Defence Force, an officer of the Australian Maritime Safety Authority who is employed in the Authority's Rescue Coordination Centre or an officer mentioned in Schedule 2 to the *Radiocommunications Regulations 1993* where that direction is reasonably necessary to secure the safety of an aircraft or a vessel that is in danger, deal with an emergency that involves a serious threat to the environment, deal with an emergency that involves the risk of death of, or

injury to, a person, or deal with an emergency that involves the risk of substantial damage to, or substantial loss of, property.

Section 10 – Condition relating to applicable standards for a CB station

Section 10 prohibits the operation of a CB station unless that station complies with an applicable standard made under section 162 of the Act.

Section 11 – Condition relating to a CB station connected to a telecommunications network.

Section 11 prohibits the operation of a CB station connected to a telecommunications network unless the CB station complies with the *Telecommunications Labelling (Customer Equipment and Customer Cabling) Notice 2015* or the *Radiocommunications (Compliance Labelling – Devices) 2014* (whichever is applicable to the particular CB station).

Schedule 1 – CB station operational requirements

Schedule 1 sets out the operating requirements and technical parameters that must be complied with for the operation of CB stations in certain frequencies.

ATTACHMENT B

Statement of Compatibility with Human Rights

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

Radiocommunications (Citizen Band Radio Stations) Class Licence 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 (Citizen Band Radio Stations) Class Licence 2015* (the Class Licence) revokes and replaces the *Radiocommunications (Citizen Band Radio Stations) Class Licence 2002* without making any significant changes to the regulatory arrangements created by that instrument.

The Class Licence authorises the use of citizen band radio stations on specified frequencies, subject to certain conditions and operating requirements.

Human Rights Implications

The condition set out in paragraph 6(f) of the Class Licence restricts the operation of citizen band radio stations in a way that would be likely to cause a reasonable person, justifiably in all the circumstances, to be seriously alarmed or seriously affronted; or for the purposes of harassing a person. The condition at paragraph 6(f) of the Class Licence may engage article 19(2) of the International Covenant on Civil and Political Rights (ICCPR) which protects freedom of expression. Article 19(3) of the ICCPR provides that the right to freedom of expression may be subject to certain restrictions.

The condition at paragraph 6(f) of the Class Licence has been in force for the past 13 years (by virtue of its inclusion in the *Radiocommunications (Citizen Band Radio Stations) Class Licence 2002*, which the Class Licence replaces) and provides a useful tool for managing the appropriate operation of citizen band radio stations. Over that period, the ACMA (and its predecessor agencies) have received and investigated complaints concerning behaviour relevant to the condition at paragraph 6(f) of the Class Licence and in some cases individuals have been successfully prosecuted for breaching the condition. Accordingly, it is considered that any limitation on the right to freedom of expression established by the operation of paragraph 6(f) of the Class Licence is a reasonable, necessary and proportionate for the purpose of protecting the rights of others and for the protection of public order (paragraphs 19.3(a) and (b) of the ICCPR).

Conclusion

The Class Licence is compatible with human rights because, while it may limit the right to freedom of expression (by restricting persons from operating citizen band radio stations in a way likely to cause a reasonable person to be seriously alarmed or seriously affronted; or for the purpose of harassing a person), that limitation is reasonable, necessary and proportionate.