

EXPLANATORY STATEMENT

Prepared by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications Licence Conditions (Major Coast Receive Licence)

Determination 2015

Purpose

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications Licence Conditions (Major Coast Receive Licence) Determination 2015 (the Determination)* under paragraph 107(1)(f) of the *Radiocommunications Act 1992 (the Act)*. The Determination revokes and replaces the *Radiocommunications Licence Conditions (Major Coast Receive Licence) Determination 1997 (the 1997 Determination)* with modifications to update and to replace outdated provisions.

Under Part 6 of the *Legislative Instruments Act 2003 (the LIA)*, most legislative instruments 'sunset' (that is, they are automatically repealed) on the 1 April or 1 October that first occurs 10 years after they are registered on the Federal Register of Legislative Instruments.

The 1997 Determination was due to sunset on 1 October 2015 and has been remade in a new instrument prior to the sunset date without any significant changes, so that its ongoing effect is preserved.

Legislative provisions

The Determination has been made by the ACMA under paragraph 107(1)(f) of the Act, and subsection 33(3) of the *Acts Interpretation Act 1901 (the AIA)*.

Paragraph 107(1)(f) of the Act allows the ACMA to determine licence conditions for the operation of apparatus licences. The Determination sets out the conditions to which a major coast receive licence (as defined in the Determination) is subject.

Subsection 33(3) of the AIA provides that where an Act confers a power to make a legislative instrument, the power shall be construed as including 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 Determination is a disallowable legislative instrument for the purposes of the LIA.

Background

The Determination, in conjunction with other related instruments is intended to ensure that maritime ship stations and coast stations use the appropriate maritime frequencies, transmitter output power and protocols to minimise the potential for interference to maritime radio operation. These frequencies, powers and protocols are set internationally and used by all commercial shipping and recreational boaters around the world. Instruments like the Determination are put in place with the objective of harmonising marine radio use in Australia.

Lack of harmonisation would have the potential to cause serious damage to the Australian marine radio framework and to place vessels in serious danger. Australia operates as part of the international marine radio community, with all international ships visiting using the same channels as Australian vessels. If existing arrangements were not available, businesses and individual boaters could find the marine radio network becoming overloaded and congested due to misuse. Significant costs could accrue if alternative communication methods needed to be employed. Therefore, it is appropriate to remake the 1997 Major Coast Receive Licence Determination as it has ongoing relevance.

Summary of Changes

The main differences between the 1997 Determination and the new Determination include:

- Updating references to standards and technical documents with which licensees are required to comply. Several of the standards/documents referred to in the 1997 Determination were outdated and/or not readily accessible. Under the new Determination, licensees are required to ensure that the operation of a major coast receive station complies with any standards specified in Part 1 of the Schedule to the Determination that apply to the device, and with any documents specified in Part 2 of the Schedule that apply to the device.
- Inclusion of grandfathering provisions for major coast receive stations manufactured in, or imported, into Australia before the commencement of the new Determination. If such stations comply with a specified provision of the 1997 Determination, they are taken to comply with the equivalent provision of the new Determination.
- Updating of names of marine radio certificates of proficiency following changes made at recent World Radio Conferences. For example, the Marine Radio Operators Certificate of Proficiency and Marine Radio Operators VHF Certificate of Proficiency have been updated to Long Range and Short Range Operator Certificates of Proficiency respectively.
- Updating of references from 'ACA' to 'the ACMA'.
- Updating of frequencies, transmission powers and protocols to reflect current international practice with regard to frequencies, powers and protocols used in maritime communications.

Documents incorporated by reference

The following documents are incorporated by reference:

- International Standard IEC 62320-1, Maritime navigation and radiocommunication equipment and systems — Automatic identification system (AIS) — Part 1: AIS Base Stations — Minimum operational and performance requirements, methods of testing and required test results, published by the International Electrotechnical Commission and as existing from time to time. Documents made or published by the International Electrotechnical Commission are available at <http://www.iec.ch>.
- International Standard IEC 62320-2, Maritime navigation and radiocommunication equipment and systems — Automatic identification system (AIS) — Part 2: AIS AtoN Stations — Operational and performance requirements, methods of testing and required test results, published by the International Electrotechnical Commission and as existing from time to time.
- International Standard IEC 62320-3, Maritime navigation and radiocommunication equipment and systems – Automatic identification systems (AIS) – Part 3: Repeater Stations – Minimum operational and performance requirements - Methods of test and required test results, published by the International Electrotechnical Commission and as existing from time to time.
- *Radiocommunications (Devices Used in the Inshore Boating Radio Services Band) Standard 2008.*
- *Radiocommunications (MF and HF Radiotelephone Equipment - International Maritime Mobile Service) Standard 2014.*
- *Radiocommunications (VHF Radiotelephone Equipment – Maritime Mobile Service) Standard 2014.*

Regulation Impact Statement (RIS)

The Office of Best Practice Regulation (**OBPR**) has advised that the ACMA can self-assess the performance of the Determination and follow an alternate self-certification process to remake it without significant change. The OBPR reference number is: RIS ID 17346.

Public consultation

The ACMA conducted public consultation on the proposed remake of the 1997 Determination by releasing a draft of the new Determination and a consultation paper outlining the changes for comment. The consultation paper and draft instrument were made available on the ACMA website from 6 May 2015 to 19 June 2015.

Submissions were received from Marine Rescue New South Wales and the Australian Maritime Safety Authority (**AMSA**). The ACMA considered the submissions and added an additional document to Part 2 of the Schedule (relating to Automatic Identification Systems) as a result. (Licensees are required under section 7 of the Determination to comply with applicable documents specified in Part 2 of the Schedule.)

In addition, the ACMA has consulted with AMSA to ensure that the new Determination reflects current international practice with regard to frequencies, transmission powers and protocols used in maritime communications.

Notes on Sections

The provisions of the Determination, and how they operate, are described in **Attachment A**.

Statement of Compatibility with Human Rights

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

ATTACHMENT A

NOTES ON SECTIONS

Section 1 Name of Determination

Section 1 provides that the name of the Determination is the *Radiocommunications Licence Conditions (Major Coast Receive 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.

Section 3 Revocation

Section 3 revokes the *Radiocommunications Licence Conditions (Major Coast Receive Licence) Determination 1997*.

Section 4 Purpose and scope

Section 4 provides that the purpose of the Determination is to set out the conditions to which a major coast receive licence is subject, and states that if a condition in the Determination is inconsistent with a condition specified in the licence, the condition in the licence applies.

Section 5 Interpretation

Section 5 provides definitions for terms used in the Determination and notes that terms used in the Determination which are defined in the Act or the *Radiocommunications (Interpretation) Determination 2015* (the Interpretation Determination) have the same meaning as in those instruments.

Section 5(2) provides that unless the contrary intention appears, a reference to another legislative instrument in the Determination is a reference to that other legislative instrument as in force from time to time.

Section 6 Conditions

Section 6 provides that every major coast receive licence is subject to the conditions in the Determination relating to the operation of major coast receive stations under the licence.

Section 7 Technical performance of a station

Section 7 provides that a licensee must not operate a major coast receive station unless the operation complies with subsections (2) and (3). Major coast receive stations must comply with the requirements of any applicable standards mentioned in Part 1 of the Schedule and any applicable documents mentioned in Part 2 of the Schedule, that were in force at the time the station was manufactured in Australia or imported.

Section 8 Services that may be provided

Section 8 provides that a licensee must only operate a major coast receive station to provide the services specified in paragraphs (a) to (c). These services are search and rescue services (in conjunction with AMSA or a body with similar functions), continuous listening watch on international distress frequencies, and reception of public correspondence.

Section 9 Qualified operator

Section 9 provides that a person who operates a major coast receive station under a licence must be, or must be under the supervision of, a qualified operator. A qualified operator (defined in the Act) is a person who holds a certificate of proficiency issued by the ACMA or its delegate under section 121 of the Act.

Section 10 Response to distress, urgency or safety signals and record keeping

Section 10 provides that if a licensee receives a distress, urgency or safety signal from another station and does not receive immediate indication that the signal has been acknowledged, the licensee must acknowledge the signal and forward it to the appropriate station or authority by the quickest and most effective means available. The licensee must

also keep a record of the information specified in subsection (2) about the signal for a period of 2 years.

Section 11 Transitional and savings

Subsection 11(1) provides definitions for terms used in section 11.

Subsection 11(2) provides that section 11 has effect despite the revocation of the 1997 Determination.

Subsection 11(3) provides for deemed compliance with subsection 7(1) of the Determination for major coast receive stations that were manufactured or imported before the day on which the Determination commenced. If the licensee of a major coast receive station was in compliance with section 5 of the 1997 Determination as in force immediately before the day on which the Determination commenced, the licensee is taken to comply with subsection 7(1) of the Determination.

Schedule Standards and documents

Part 1 Standards

Part 1 specifies the standards made under section 162 of the Act applicable to major coast receive stations, for the purposes of subsection 7(2) of the Determination. These standards are registered legislative instruments.

Part 2 Documents

Part 2 specifies the documents applicable to major coast receive stations for the purposes of subsection 7(3) of the Determination. The documents specified are published by the International Electrotechnical Commission and are incorporated by reference, as in existence from time to time.

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 (Major Coast Receive 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 (Major Coast Receive Licence) Determination 2015* (the Determination) revokes and replaces the *Radiocommunications Licence Conditions (Major Coast Receive Licence) Determination 1997* without making significant changes to the regulatory arrangements created by that instrument.

The Determination sets out the conditions to which licensees of major coast receive stations are subject to ensure that all maritime coast stations use the appropriate maritime frequencies, transmitter output power and protocols, to minimise the potential for interference to maritime radio operation.

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.