

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Radiocommunications Licence Conditions (Fixed Licence) Determination 2015

Purpose

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

The Determination revokes and replaces the *Radiocommunications Licence Conditions (Fixed Licence) Determination 1997* (the 1997 Determination) without making any significant changes to the regulatory arrangements created by the 1997 Determination.

The ACMA has made the Determination because the 1997 Determination was due to 'sunset' (i.e. be automatically repealed) on 1 October 2015, by operation of Part 6 of the *Legislative Instruments Act 2003* (the LIA).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 1997 Determination was operating effectively and efficiently, and continued to form a necessary and useful part of the legislative framework.

Legislative Provisions

Paragraph 107(1)(f) of the *Radiocommunications Act 1992* (the Act) provides that the ACMA may, by legislative instrument, determine conditions applicable to particular types of apparatus licences.

A determination made under paragraph 107(1)(f) of the Act is a legislative instrument and may be subject to disallowance in accordance with section 42 of the LIA.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative character, 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 revokes the 1997 Determination.

Background

Under paragraph 107(1)(f) of the Act, the ACMA may determine conditions relating to a particular type of apparatus licence. A fixed licence is a type of transmitter licence specified by the ACMA in a determination made under section 98 of the Act, being the *Radiocommunications (Specified Radiocommunications Receivers and Types of Transmitter Licences and Receiver Licences) Determination 2014*.

The Determination sets out conditions to which each fixed licence is subject.

A fixed licence is a type of apparatus licence which authorises 1 or more stations that:

- (a) are located principally:
 - (i) at fixed points specified in the transmitter licence that relates to the station; or
 - (ii) in an area specified in the licence; and
- (b) are operated principally for communications with stations located:
 - (i) at 1 or more other fixed points specified in the transmitter licence; or
 - (ii) in an area specified in the licence; and
- (c) if permitted by the transmitter licence that relates to the station, may communicate with:
 - (i) an aircraft station, but not in an aeronautical frequency; and
 - (ii) a maritime ship station, but not on a maritime frequency; and

- (iii) a land mobile station, but not on a land mobile frequency.

Each of the following is a class of fixed licence:

- a fixed licence (point to multipoint station);
- a fixed licence (point to point station);
- a fixed licence (sound outside broadcast station);
- a fixed licence (television outside broadcast network station);
- a fixed licence (television outside broadcast station);
- a fixed licence (television outside broadcast system station).

Operation

The conditions applied by the Determination that apply to fixed licences include conditions as to the type of communications permitted, station identification, permitted operating frequencies, transmission specifications, equipment type and configuration, and a requirement to comply with relevant standards. The conditions are applied to ensure that, to the extent possible, users are able to communicate effectively with a minimum amount of radiocommunications interference.

Some conditions apply only to particular classes of fixed licences.

Consultation

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

The ACMA published a consultation paper (about the Determination, and two other instruments) and a draft of the Determination on its website between 9 July 2014 and 22 August 2014. The consultation paper explained the sunseting process and the ACMA's preliminary view that the existing arrangements under the 1997 Determination should be saved from automatic repeal and remade without any significant changes. Interested parties were invited to comment.

The ACMA received two submissions in response to the consultation paper which it took into account when making the Determination. The submissions are available on the [ACMA website](#).

Regulatory Impact

The Office of Best Practice Regulation (OBPR) applies streamlined administrative processes to sunseting legislative instruments. As the ACMA has determined that the 1997 Determination 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 making of the Determination (OBPR reference ID 16968).

Detailed Description of the Instrument

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

Documents incorporated in the Instrument by Reference

The Determination refers to Acts and other legislative instruments as in force from time to time (as permitted by section 314A of the Act). Those Acts and legislative instruments are:

- the Act;
- standards made under section 162 of the Act.

Acts and legislative instruments referenced in the Determination can be found on the 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 LICENCE CONDITIONS (FIXED LICENCE) DETERMINATION 2015*

PART 1 PRELIMINARY

Section 1 Name of Determination

Section 1 provides that the Determination is the *Radiocommunications Licence Conditions (Fixed Licence) Determination 2015*.

Section 1A Commencement

Section 1A provides that the Determination commences on the day after it is registered on the Federal Register of Legislative Instruments.

Section 1B Revocation

Section 1B provides that the *Radiocommunications Licence Conditions (Fixed Licence) Determination 1997* is revoked.

Section 2 Scope

Section 2 sets out the Parts (each containing conditions) of the Determination to which the specified classes of fixed licences are subject.

Paragraph 2(1)(a) provides that every fixed licence (point to point station) is subject to the conditions in Part 2 of the Determination.

Paragraph 2(1)(b) provides that every fixed licence (point to multipoint station), except for fixed licence (point to multipoint stations) referred to in paragraph 2(1)(ba) or paragraph 2(1)(bc), is subject to the conditions in Part 3 of the Determination.

Paragraph 2(1)(ba) provides that every fixed licence (point to multipoint station) used in the provision of distance education services is subject to the conditions in Part 3A of the Determination (see also section 11A).

Paragraph 2(1)(bc) provides that every fixed licence (point to multipoint station) that operates in the 1 GHz to 275 GHz frequency band is subject to the conditions in Part 3E of the Determination.

Paragraph 2(1)(c) provides that every fixed licence (sound outside broadcast station) is subject to the condition in Part 4 of the Determination.

Paragraph 2(1)(d) provides that every fixed licence (television outside broadcast station) is subject to the condition in Part 5 of the Determination.

Paragraph 2(1)(e) provides that every fixed licence (television outside broadcast network station) is subject to the condition in Part 6 of the Determination.

Paragraph 2(1)(f) provides that every fixed licence (television outside broadcast system station) is subject to the condition in Part 7 of the Determination.

Subsection 2(2) provides that if a condition in the Determination is inconsistent with a condition specified in the licence, the condition specified in the licence applies.

Section 3 Interpretation

Subsection 3(1) defines the terms used in the Determination.

Subsection 3(2) provides that unless otherwise specified, frequency band ranges in the Determination include the higher, but not the lower, number.

PART 2 CONDITIONS FOR FIXED LICENCE (POINT TO POINT STATION)

Section 4 Conditions

Section 4 provides that every fixed licence (point to point station) is subject to the conditions in Part 2 of the Determination.

Section 5 Technical performance of antenna

Subsection 5(1) has the effect that a licensee operating a fixed licence (point to point station) in the 148 MHz – 174 MHz, 403 MHz – 520 MHz or 820 MHz – 960 MHz frequency ranges must use the antenna specified in the licence or, where no antenna is specified in the licence, an antenna that complies with antenna requirements set out in columns 3, 4 and 5 of Schedule 1 to the Determination.

Subsection 5(2) provides that a licensee operating a point to point station to transmit on a frequency not mentioned in column 2 of Schedule 1 to the Determination must operate the station using the antenna specified in the licence or, where no antenna is specified in the licence, an antenna that will not cause harmful interference to a service provided by another station.

PART 3 CONDITIONS FOR FIXED LICENCES (POINT TO MULTIPOINT STATION), EXCEPT LICENCES FOR STATIONS USED TO PROVIDE DISTANCE EDUCATION SERVICES OR STATIONS THAT OPERATE IN THE 1 GHZ TO 275 GHZ FREQUENCY BAND

Section 6 Conditions

Subsection 6(1) provides that every fixed licence (point to multipoint station), with the exception of those licences specified in subsection 6(2), is subject to the conditions in Part 3 of the Determination.

Subsection 6(2) provides that if a fixed licence (point to multipoint station) authorises the operation of a station used to provide distance education services, or a station that operates in the 1 GHz to 275 GHz frequency band, the licensee is not subject to the conditions in Part 3 of the Determination.

Section 7 Restrictions on communications

Section 7 provides that the licensee of a fixed licence (point to multipoint station) must operate a fixed station only to communicate with other stations to which the licence relates.

Section 8 Supplementary base stations

Section 8 sets out conditions for operating a supplementary base station, including a prohibition on causing harmful interference to other stations, a condition as to the authorised receive or transmit frequencies of the station, and conditions on the operation of a base station as it relates to the coverage area of the base station.

Section 9 Remote stations

Subsection 9(1) provides that a licensee must not operate a remote station if it causes harmful interference to a service provided by another station, and that a station operated to transmit to a base or supplementary station (if any) must use receive or transmit frequencies specified in the licence for the base station.

Subsection 9(2) provides for conditions in relation to the duty cycle of the station, the duration of transmissions, and the minimum repetition interval requirements for a remote station that is operated for data transmission, telecommand or telemetry.

Subsection 9(3) specifies the required transmitter output power of a remote station if the station is operated for data transmission, telecommand or telemetry. The specified transmitter output power is contained in column 3 of Schedule 2 to the Determination.

Subsection 9(4) provides that a remote station may be used for purposes other than data transmission, telecommand or telemetry, if the station is operated at the maximum transmitter output power specified in the licence or, if no power is specified in the licence, using a maximum transmitter output power of 1 watt at the antenna input.

Subsection 9(5) specifies requirements for the antenna height of a remote station located in a central business district of a city or town, and requires the attachment of a device that ensures that specified intermodulation performance levels are met for such a station.

Section 10 Remote control stations

Subsection 10(1) specifies conditions relating to the operation of a remote control station, including a prohibition on causing harmful interference to services provided by other stations, a condition as to the frequencies on which a remote control station is permitted to transmit to a base station or supplementary station (if any), and a condition as to the maximum permitted transmitter output power at the antenna input.

Subsection 10(2) provides that a remote control station must not operate using a transmitter output power exceeding the power necessary to achieve a specified bit error ratio at the base station.

Subsection 10(3) specifies requirements for the antenna height of a remote control station located in a central business district of a city or town, and requires the attachment of a device that ensures that specified intermodulation performance levels are met for such a station.

Section 11 Short range communications

Subsection 11(1) applies the conditions in section 11 to a fixed station under a fixed licence (point to multipoint station) that communicates with another station not more than 100 metres from it.

Subsection 11(2) specifies, for such a fixed station, limits in relation to the transmitter or receiver spurious power levels, the external antenna height above ground, and the transmitter noise power.

Subsection 11(3) specifies the maximum adjacent channel power to be used when a fixed station is operated in a temperature range of 0-40 degrees Celsius (inclusive).

PART 3A CONDITIONS FOR FIXED LICENCES (POINT TO MULTIPOINT STATION) USED TO PROVIDE DISTANCE EDUCATION SERVICES

Section 11A Conditions

Section 11A provides that every fixed licence (point to multipoint station) for a station used to provide distance education services (distance education station) is subject both to the conditions in Part 3A of the Determination and, if a condition in Part 3B or Part 3C of the Determination applies to the licence, that condition.

Section 11B Transmitter output power

Section 11B provides that the maximum transmitter output power for a distance education station must not be greater than the power required to achieve efficient communications.

Section 11C Restrictions on communications

Section 11C provides that a licensee must only operate a distance education station to communicate with other stations to which the relevant licence relates, except, that the licensee may transmit or receive messages in relation to distress or emergency situations where no other satisfactory means of communications is available.

Section 11D Call signs

Section 11D provides that a distance education station must use an ACMA allocated call sign or another form of identification that clearly identifies the station. This section also requires that the call sign or form of identification be transmitted at the start of each transmission or series of transmissions.

PART 3B CONDITIONS FOR FIXED LICENCES (POINT TO MULTIPOINT STATION) MF OR HF STATIONS

Section 11E Technical performance of base stations operating in the MF or HF bands

Subsection 11E(1) provides that the section applies to a base station authorised under a fixed licence (point to multipoint station) if the station operates in the MF or HF bands and is operating single sideband suppressed carrier radiotelephony equipment. It only applies to such a station if the station is authorised by a licence that is covered by section 11A.

Subsection 11E(2) provides that a station must comply with the requirements of any applicable standard (that is, one that applies to the particular station) as in force when the station was manufactured, or imported into Australia, or when the station was modified. A standard is defined in the Act as a standard made under section 162 of the Act.

Section 11F Technical performance of remote stations operating in the MF or HF bands

Subsection 11F(1) provides that the section applies to a remote station authorised under a fixed licence (point to multipoint station) if the station operates in the MF or HF bands and is operating single sideband suppressed carrier radiotelephony equipment. It only applies to such a station if the station is authorised by a licence that is covered by section 11A.

Subsection 11F(2) provides that a station must comply with the requirements of any applicable standard (that is, one that applies to the particular station) as in force when the station was manufactured, or imported into Australia, or when the station was modified. A standard is defined in the Act as a standard made under section 162 of the Act.

Section 11G Transmitter output power for remote stations operating in the MF or HF bands

Subsection 11G(1) provides that the section applies to a remote station authorised under a fixed licence (point to multipoint station) if the station operates in the MF or HF bands and is operating single sideband suppressed carrier radiotelephony equipment. It only applies to such a station if the station is authorised by a licence that is covered by section 11A.

Subsection 11G(2) provides for the maximum transmitter output power for a remote station (100 watts pX).

Section 11H Additional conditions for remote stations operating in the MF or HF bands

Subsection 11H(1) provides that the section applies to a remote station authorised under a fixed licence (point to multipoint station) if the station operates in the MF or HF bands and is

operating single sideband suppressed carrier radiotelephony equipment. It only applies to such a station if the station is authorised by a licence that is covered by section 11A.

The section provides that the operation of a station must not cause harmful interference to services provided by other stations, and provides that only frequencies specified in the licence for the base station may be used to operate the station.

PART 3C CONDITIONS FOR FIXED LICENCES (POINT TO MULTIPOINT STATION) VHF STATIONS

Section 11I Technical performance for base stations operating in the VHF bands

Subsection 11I(1) provides that the section applies to a base station authorised under a fixed licence (point to multi point station) if the station operates in the VHF bands and is operating VHF radiotelephony equipment. It only applies to such a station if the station is authorised by a licence that is covered by section 11A.

Subsection 11I(2) provides that a station must comply with the requirements of any applicable standard (that is, one that applies to the particular station) as in force when the station was manufactured, or imported into Australia, or when the station was modified. A standard is defined in the Act as a standard made under section 162 of the Act.

Section 11J Supplementary base stations operating in the VHF bands

Subsection 11J(1) provides that the section applies to a supplementary base station authorised under a fixed licence (point to multi point station) if the station operates in the VHF bands and is operating VHF radiotelephony equipment. It only applies to such a station if the station is authorised by a licence that is covered by section 11A.

Subsection 11J(2) provides that the operation of a station must not cause harmful interference to services provided by other stations, that only frequencies specified in the licence for the base station may be used to operate the station, and that a station must not be operated unless it is used to overcome a deficiency within the coverage area of the base station.

Section 11K Additional conditions for remote stations operating in the VHF bands

Subsection 11K(1) provides that the section applies to a remote station authorised under a fixed licence (point to multipoint station) if the station operates in the VHF bands and is operating VHF radiotelephony equipment. It only applies to such a station if the station is authorised by a licence that is covered by section 11A.

The section provides that the operation of a station must not cause harmful interference to services provided by other stations, and that a station must transmit to a base station or supplementary base station (if any) using only the frequency specified in the licence for the base station.

Section 11L Remote control stations operating in the VHF bands

Subsection 11L(1) provides that the section applies to a remote control station authorised under a fixed licence (point to multipoint station) if the station operates in the VHF bands and is operating VHF radiotelephony equipment. It only applies to such a station if the station is authorised by a licence that is covered by section 11A.

Subsection 11L(2) provides that the operation of a station must not cause harmful interference to services provided by other stations, and that the station must not be operated unless it uses a frequency specified in the licence for the base station. The subsection also specifies 1 watt as the maximum transmitter output power at the antenna input when operating the station.

Subsection 11L(3) specifies requirements for the antenna height of a remote control station located in a town, and requires the attachment of a device that ensures that specified intermodulation performance levels are met for such a station.

PART 3E CONDITIONS FOR FIXED LICENCES (POINT TO MULTIPOINT STATION) FOR STATIONS THAT OPERATE IN THE 1 GHZ TO 275 GHZ FREQUENCY BAND

Section 11R Conditions

Section 11R provides that every fixed licence (point to multipoint station) for a station that operates in the 1 GHz to 275 GHz frequency band is subject to the conditions in Part 3E.

Section 11S Remote stations

Section 11S provides that the operation of a remote station must not cause harmful interference to services provided by other stations, and that the remote station must not be operated to transmit to the base station unless it uses a frequency specified in the licence for the base station.

Section 11T Adjacent channel interference

Section 11T provides the adjacent channel interference conditions for the operation of a base station that uses time division duplex in either the 1900 MHz to 1920 MHz band or the 3400 MHz to 3700 MHz band.

Subsection 11T(1) specifies that the licensee must not cause harmful interference to a base station receiver on an adjacent channel if that receiver is operating in accordance with its licence using time division duplex. This subsection also provides that the licensee of a base station cannot claim protection from interference caused by an adjacent channel base station if the station is being operated in accordance with its licence using time division duplex.

Subsection 11T(2) sets out specific circumstances in which a licensee is taken to have complied with the condition in subsection 11T(1).

Subsection 11T(3) defines *adjacent channel* in relation to a licence.

Section 11U Transmit power control

Section 11U provides that a licensee must use transmit power control on each station that is authorised to be operated under the licence.

PART 4 CONDITION FOR FIXED LICENCE (SOUND OUTSIDE BROADCAST STATION)

Section 12 Condition

Section 12 provides that every fixed licence (sound outside broadcast station) is subject to the condition in Part 4.

Section 13 Harmful interference

Section 13 provides that a licensee must not operate a sound outside broadcast station if its operation causes harmful interference to a service provided by another station.

PART 5 CONDITION FOR FIXED LICENCE (TELEVISION OUTSIDE BROADCAST STATION)

Section 14 Condition

Section 14 provides that every fixed licence (television outside broadcast station) is subject to the condition in Part 5.

Section 15 Harmful interference

Section 15 provides that a licensee must not operate a television outside broadcast station if its operation causes harmful interference to a service provided by another station.

PART 6 CONDITION FOR FIXED LICENCE (TELEVISION OUTSIDE BROADCAST NETWORK STATION)

Section 16 Condition

Section 16 provides that every fixed licence (television outside broadcast network station) is subject to the condition in Part 6.

Section 17 Harmful interference

Section 17 provides that a licensee must not operate a television outside broadcast network station if its operation causes harmful interference to a service provided by another station.

PART 7 CONDITION FOR FIXED LICENCE (TELEVISION OUTSIDE BROADCAST SYSTEM STATION)

Section 21 Condition

Section 21 provides that every fixed licence (television outside broadcast system station) is subject to the condition in Part 7.

Section 22 Harmful interference

Section 22 provides that a licensee must not operate a television outside broadcast system station if its operation causes harmful interference to a service provided by another station.

Schedules

Schedule 1 Requirements for the antenna of a point to point station

Schedule 1 provides, for the purposes of section 5 of the Determination, the requirements for the antenna of a point to point station.

Schedule 2 Transmitter power levels for a remote station

Schedule 2 provides, for the purposes of subsection 9(3) of the Determination, the transmitter power levels for a remote station.

Statement of Compatibility with Human Rights

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

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

The Determination is made under paragraph 107(1)(f) of the *Radiocommunications Act 1992*. The Determination sets out the conditions that apply to fixed licences (a type of apparatus licence determined under section 98 of the *Radiocommunications Act 1992*).

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.