

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications (Aircraft and Aeronautical Mobile Stations) Class Licence 2016

Purpose

The Australian Communications and Media Authority (the ACMA) has made the *Radiocommunications (Aircraft and Aeronautical Mobile Stations) Class Licence 2016* (the Class Licence).

The Class Licence revokes and replaces the *Radiocommunications (Aircraft and Aeronautical Mobile Stations) Class Licence 2006* (the 2006 Class Licence) without making any significant changes to the regulatory arrangements created by the 2006 Class Licence.

The ACMA has made the Class Licence because the 2006 Class Licence was due to 'sunset' (i.e. be automatically repealed) on 1 October 2016, by operation of Part 4 of Chapter 3 of the *Legislation Act 2003* (the LA).

Following review, and consultation as described below, the ACMA formed the view that the 2006 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 2006 Class Licence, the ACMA has revoked the 2006 Class Licence before its sunset date and remade it with minor changes as the Class Licence.

Legislative Provisions

Under subsection 132(1) of the *Radiocommunications Act 1992* (the Act), the ACMA may issue class licences. Section 133 of the Act empowers the ACMA to include in a class licence such conditions as it thinks fit. 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.

Background

It is generally a requirement of the Act that the operation of all radiocommunications devices within Australia be authorised by a radiocommunications licence.

A class licence is one type of licence available to authorise the operation of radiocommunications devices. It is 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.

Operation

The Class Licence contains the licence conditions, operating requirements and technical parameters associated with the operation of a range of aeronautical radiocommunications and radionavigation equipment that are operated on a common group of frequencies and that are fixed to, or carried on board an aircraft (aircraft stations). The Class Licence also authorises the operation of ground-based mobile aeronautical stations that operate on the same common group of frequencies (aeronautical mobile stations).

The authorisation provided by the Class Licence is subject to conditions, including that:

- > aircraft stations and aeronautical mobile stations only be operated for particular purposes on specified frequencies;

- > devices included in aircraft stations or aeronautical mobile stations comply with certain technical specifications and standards;
- > aircraft and aeronautical mobile station operators be appropriately qualified; and
- > aircraft stations and aeronautical mobile stations be identified.

Consultation

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

Under section 136 of the Act, before revoking a class licence, the ACMA must cause to be published a written notice that states that the ACMA proposes to revoke the licence, that sets out the licence, and that invites interested persons to make representations about the proposed revocation by a date at least one month after the publication of the notice. The notice must be published on the ACMA's website and in at least one other place readily accessible by the public. The ACMA must give due consideration to any representations made.

Subsection 138(2) of the Act provides that the ACMA must consult all licensees of spectrum licences who may be affected by the proposed class licence. The Class Licence does not authorise the operation of devices in frequencies designated for spectrum licensing.

The ACMA published a written notice, consultation paper and draft instrument on its website and the business.gov.au website between 12 April 2016 and 13 July 2016. The consultation paper explained the sunseting process and the ACMA's preliminary view that the existing arrangements under the 2006 Class Licence should be revoked and remade without any significant changes. Interested parties were invited to comment.

The ACMA received one submission in response to the consultation paper, from the Civil Aviation Safety Authority.

Regulatory impact

Under the Guidance Note *Sunsetting Legislative Instruments* published by the Office of Best Practice Regulation (OBPR) in February 2016, streamlined administrative processes apply to sunseting legislative instruments. As the ACMA has determined that the 2006 Class Licence was fit for purpose and should be remade without any significant changes, no Regulation Impact Statement (RIS) is required in relation to the making of the Determination (OBPR reference ID 20107).

Detailed description of the Class Licence

A detailed description of the Class Licence is set out in **Attachment A**.

Documents incorporated in the Class Licence by reference

The Class Licence incorporates the Acts, instruments, industry standards, international treaty and other documents listed below by reference, as in force or in existence from time to time (pursuant to section 314A of the Act). The Acts and legislative instruments listed can be found on the Australian Government's Federal Register of Legislation (<http://www.legislation.gov.au/>), and the industry standard listed can be obtained from SAI Global's website (<http://infostore.saiglobal.com/store/>). The international treaty can be found on the website of the International Civil Aviation Organization (<http://www.icao.int/publications/pages/doc7300.aspx>). The other documents are available on the websites set out below:

Acts:

- *Air Services Act 1995*
- *Civil Aviation Act 1988*
- *Radiocommunications Act 1992*

Legislative instruments:

- *Civil Aviation Orders*
- *Civil Aviation Regulations 1988*
- *Civil Aviation Safety Regulations 1998*
- *Radiocommunications (118MHz to 137MHz Amplitude Modulated Equipment - Aeronautical Radio Service) Standard 2012*
- *Radiocommunications (406 MHz Satellite Distress Beacons) Standard 2014*
- *Radiocommunications (Aircraft and Aeronautical Mobile Stations) Class Licence 2006* (as in force immediately before it was revoked by the Class Licence)
- *Radiocommunications (Interpretation) Determination 2015*
- *Radiocommunications (VHF Radiotelephone Equipment – Maritime Mobile Service) Standard 2014*
- *Radiocommunications Licence Conditions (Aeronautical Licence) Determination 2015*

International treaty

- Convention on International Civil Aviation, ratified in Chicago on 7 December 1944

Industry standard

- AS/NZS IEC 62287.1: 2007: Maritime navigation and radiocommunication equipment and systems – Class B shipborne equipment of the Automatic Identification System (AIS) - Part 1: Carrier-sense time division multiple access (CSTDMA) techniques

Other documents:

- Aeronautical Information Publication (<https://www.airservicesaustralia.com/aip/aip.asp>)
- Radio Regulations published by the International Telecommunication Union (<http://www.itu.int/pub/R-REG-RR>)

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

Detailed description of the *Radiocommunications (Aircraft and Aeronautical Mobile Stations) Class Licence 2016*

Part 1 Preliminary

Section 1 – Name of Class Licence

Section 1 provides that the Class Licence is the *Radiocommunications (Aircraft and Aeronautical Mobile Stations) Class Licence 2016*.

Section 2 – Commencement

Section 2 provides that the Class Licence commences on the day after it is registered on the Federal Register of Legislation.

Section 3 – Revocation

Section 3 provides that the *Radiocommunications (Aircraft and Aeronautical Mobile Stations) Class Licence 2006* is revoked.

Section 4 – Definitions

Section 4 defines terms used in the Class Licence.

Part 2 Class Licence

Section 5 – Class Licence

Section 5 provides that the Class Licence authorises a person (subject to the conditions in Part 3 of the Class Licence) to operate aircraft and aeronautical mobile stations. Aircraft stations are stations that are operated on board an aircraft for communication with other aircraft stations authorised by the Class Licence, and with aeronautical mobile stations, on particular listed frequencies. Aeronautical mobile stations are, subject to some exceptions, mobile stations that operate on particular listed frequencies and, for some of those frequencies, are only operated for particular listed purposes. However, the Class Licence does not apply to any radiocommunications devices operating under an apparatus licence.

The note to subsection 5(1) explains that other requirements may apply to the person in relation to the operation of an aircraft station or an aeronautical mobile station. Examples include requirements imposed by Airservices Australia or the Civil Aviation and Safety Authority (CASA).

Part 3 Conditions

Section 6 – Compliance with specifications, equipment compliance requirements and standards

Section 6 provides that a person must not operate an aircraft station or an aeronautical mobile station under the Class Licence unless, for each device included in the station:

- if the device was manufactured or imported into Australia before the commencement of the Class Licence - the device complies with section 6 of the 2006 Class Licence, as in force immediately before it was revoked; or
- if the device was manufactured or imported into Australia on or after the commencement of the Class Licence –the device complies with each of several listed standards that may be applicable to the device.

A note to this section explains additional compliance requirements for any equipment required to be fitted to, or carried on, an aircraft under the *Civil Aviation Regulations 1988*. Two further notes describe the operation of the relevant standards.

Section 7 – Operator qualifications

Section 7 sets out the qualifications a person must have to operate an aircraft station or aeronautical mobile station, namely, any qualification required by the *Civil Aviation Regulations 1988* or any relevant Civil Aviation Orders.

Section 8 – Station identification

Section 8 requires a person operating an aircraft station or aeronautical mobile station to identify the station, by reference to particular identifiers.

Section 9 – Communications between stations

Section 9 permits a person operating an aircraft station or an aeronautical mobile station to communicate only with other such stations, aeronautical stations or stations that are operated on specified frequencies for particular purposes (relating to the conduct of a flight, emergencies, or particular occupations or industries). This condition does not apply to a person who is employed by Airservices Australia or the Civil Aviation Safety Authority.

Section 10 – Operations outside Australia (aircraft stations)

Section 10 includes conditions upon which an aircraft station may be operated outside Australia. The Act and the Class Licence have application outside Australia in some circumstances (see section 16 of the Act). Broadly speaking, the aircraft station must be operated in accordance with international treaties and with the requirements of any country in which it is being operated.

Section 11 – Use of frequencies

Section 11 provides that a person operating an aircraft station or aeronautical mobile station must not operate the station unless it is operating on the frequencies, and for the purposes, specified in that section or referred to in specified provisions of Schedule 1 to the Class Licence.

Section 12 – Operation on radionavigation frequencies (aircraft stations)

Section 12 provides that a person may operate an aircraft station on radionavigation frequencies only for a particular purpose and on a particular corresponding frequency specified in Schedule 1 of the Class Licence.

Schedule 1 – Frequencies for operation

Schedule 1 specifies various purposes for which, and the corresponding frequencies on which, aircraft stations and aeronautical mobile stations can be operated in accordance with the Class Licence.

Statement of Compatibility with Human Rights

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

Radiocommunications (Aircraft and Aeronautical Mobile Stations) Class Licence 2016

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 (Aircraft and Aeronautical Mobile Stations) Class Licence 2016* (the Class Licence) revokes and replaces the *Radiocommunications (Aircraft and Aeronautical Mobile Stations) Class Licence 2006* without making any significant changes to the regulatory arrangements created by that instrument.

The Class Licence authorises the operation of a range of aeronautical radiocommunications and radionavigation equipment that is operated on a common group of frequencies and that are fixed to, or carried on board an aircraft (aircraft stations). The Class Licence also authorises the operation of ground-based mobile aeronautical stations that operate on the same common group of frequencies (aeronautical mobile stations).

Human Rights Implications

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

Conclusion

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