

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications Legislation (2020 Measures No. 1) Instrument 2020

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications Legislation (2020 Measures No. 1) Instrument 2020* (**the Instrument**) under paragraph 7(1)(b) and subsections 98(1) and 147(1) of the *Radiocommunications Act 1992* (**the Act**), subsection 64(1) of the *Australian Communications and Media Authority Act 2005* (**the ACMA Act**), and in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (**the AIA**).

Purpose

The purpose of the Instrument is to amend the following instruments:

- the *Radiocommunications (Specified Radiocommunications Receivers and Types of Transmitter Licences and Receiver Licences) Determination 2014* [F2014L01790] (**the Types Determination**), which specifies the radiocommunications receivers that are radiocommunications devices for the purposes of the Act and sets out the types of radiocommunications receiver and transmitter licences that the ACMA may issue;
- the *Radiocommunications (Interpretation) Determination 2015* [F2015L00178] (**the Interpretation Determination**) which contains the definitions of expressions found in specified legislative instruments made by the ACMA; and
- the *Radiocommunications (Register of Radiocommunications Licences) Determination 2017* [F2017L01069] (**the RRL Determination**) which determines the range of information about spectrum, apparatus and class licences to be included in the Register of Radiocommunications Licences (**the Register**).

The ACMA has developed two new apparatus licence types, known as the area-wide and area-wide receive licence types.

These new licence types authorise the operation of one or more radiocommunications devices within a defined geographic area at a frequency or frequencies specified in the licence, subject to the conditions included in the issued licence. The licence types will be scalable, enabling their use for authorising radiocommunications devices in different-sized geographic areas and bandwidths. Unlike existing apparatus licence types—which typically align with specific uses and purposes—the area-wide licence (AWL) types, for both radiocommunications transmitters and radiocommunications receivers, will be capable of authorising a variety of services, uses, applications and technologies.

The changes made by the Instrument are consistent with the following objects of the Act:

- maximising, by ensuring the efficient allocation and use of the spectrum, the overall public benefit derived from using the radiofrequency spectrum;
- providing a responsive and flexible approach to meeting the needs of users of the spectrum;
- encouraging the use of efficient radiocommunication technologies so that a wide range of services of an adequate quality can be provided.

The ACMA is amending existing legislative instruments that make up the apparatus licensing framework to create the AWL types. The Instrument is an omnibus instrument that contains the following amendments:

Radiocommunications (Specified Radiocommunications Receivers and Types of Transmitter Licences and Receiver Licences) Determination 2014

The ACMA is amending the Types Determination to add the area-wide type to Schedule 1 for transmitters and the area-wide receive type to Schedule 2 for receivers. This will enable the ACMA to issue both a transmitter licence and receiver licence for area-wide purposes. The amendment also ensures that area-wide receive stations are radiocommunications devices for the purposes of the Act (see subsection 7(1) of the Act).

Radiocommunications (Interpretation) Determination 2015

The ACMA is amending the Interpretation Determination to add definitions in relation to the AWL types.

The definition of an area-wide licence is based on the following attributes:

- > the licence will authorise the operation of one or more radiocommunications transmitters, which may also be used in conjunction with one or more radiocommunications receivers;
- > the licence will authorise the operation of radiocommunications transmitters that are:
 - > operated in the frequency band(s) specified in the licence;
 - > located within the geographic area specified in the licence;

Operation under the licence is to be in accordance with any other conditions in the licence or within an applicable licence conditions determination made under paragraph 107(1)(f) of the Act (for example, boundary conditions).

Several other definitions are also added, namely *area-wide station* to identify a kind of radiocommunications transmitter, *area-wide receive station* to identify a kind of radiocommunications receiver, and *area-wide service* to identify the nature of the radiocommunications service. These are defined broadly to enable licensees to have high levels of flexibility relating to deployment of radiocommunications devices.

The definition of an *area-wide receive licence* is an apparatus licence that authorises the operation of a receiver as part of an area-wide service (i.e. it does not authorise the operation of a transmitter).

Radiocommunications (Register of Radiocommunications Licence) Determination 2017

The ACMA amended the RRL Determination to qualify the application of section 10 of the RRL Determination to AWL types. The amendments provide that details about the use of spectrum, operation of devices, antennas and sites are not required to be contained in the Register for area-wide and area-wide receive apparatus licences. The exemptions do not apply if there is a condition in the *Radiocommunications Licence Conditions (Area-Wide Licence) Determination 2020 (the AWL LCD)*, or the relevant area-wide licence or area-wide receive licence that requires those details to be contained in the Register.

A provision-by-provision description of the Instrument is set out in the notes at **Attachment A**.

Legislative provisions

The Instrument has been made by the ACMA under paragraph 7(1)(b) and subsections 98(1) and 147(1) of the Act, subsection 64(1) of the ACMA Act and in accordance with subsection 33(3) of the AIA.

Paragraph 7(1)(b) of the Act provides that for the purposes of the Act, a radiocommunications device includes a radiocommunications receiver of a kind specified in a written determination made by the ACMA for the purposes of that paragraph.

Subsection 98(1) of the Act provides that the ACMA may, by legislative instrument, determine the types of transmitter licences and the types of receiver licences that it may issue.

Subsection 147(1) of the Act provides that the Register is to contain for each apparatus licence certain details. These details include what the ACMA determines, in writing, about the conditions of apparatus licences and about radiocommunications devices that are operated under apparatus licences.

Subsection 64(1) of the ACMA Act provides that the ACMA may make a written determination defining one or more expressions used in specified instruments, being instruments that are made by the ACMA under one or more specified laws of the Commonwealth.

Subsection 33(3) of the AIA relevantly 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 Instrument is a legislative instrument and may be subject to disallowance in accordance with section 42 of the *Legislation Act 2003*.

Incorporation by reference

The Instrument inserts into the RRL Determination references to the AWL LCD as in force from time to time (as permitted by section 314A of the Act¹).

The AWL LCD may be obtained, free of charge, from the Federal Register of Legislation (www.legislation.gov.au).

Consultation

Before the Instrument was made, the ACMA was satisfied that consultation was undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the *Legislation Act 2003*.

On 9 June 2019, the ACMA published the *Proposed Area-Wide Apparatus Licence* consultation paper (**the consultation paper**), and a draft *Radiocommunications Legislation (2019 Measures No. 1) Instrument 2019* alongside a draft AWL LCD on its website. The consultation paper invited comments on the proposed AWL types and the draft amendments and draft AWL LCD that would facilitate them.

¹ The existing *Radiocommunications Licence Conditions (Apparatus Licence) Determination 2015* will also apply to AWLs. That instrument imposes conditions dealing with matters such as electromagnetic radiation requirements and record-keeping rules.

The ACMA received submissions from 19 submitters. Submitters included members of industry, industry peak bodies and government agencies.

The consultation paper stated that where the ACMA proposes to use AWLs in a particular band, it expects to consult publicly on additional regulatory changes and administrative documents. These could include draft variations to the AWL LCD to give effect to band-specific schedules. The consultation paper outlined the scope of that consultation, including technical arrangements and pricing. The ACMA also proposes to publish an implementation paper setting out its approach to introducing AWLs in specific bands (**Area-wide licensing: ACMA approach to introducing Area Wide Licences**).

Regarding the proposed changes to the RRL Determination, the consultation paper also stated that the intent is that licensees are only required to include details about use of spectrum, operation of radiocommunications devices, antennas and location of sites for devices authorised under an AWL if a condition applies to the licence that requires the device(s) to be registered. The consultation paper said that in considering the implementation of AWLs in a particular band, the ACMA may decide that devices will need to be registered if this is required to manage interference risk, which would lead to the imposition of a relevant licence condition. The ACMA expects that “low-power” portable or mobile devices will not need to be registered as a general rule.

Several stakeholders raised concerns about the proposed approach to device registration. A small number also offered reasons for why registration is important without raising concerns per se about the proposed amendment. One noted that knowledge of incumbent’s equipment deployments and operating characteristics is critical to ensuring protection. Another requested more information about the proposal, stating that it would ‘be useful to understand what limits will be applied to the number of devices under an AWL’.

The ACMA’s starting position regarding device registration for AWLs is best described as minimal registration. As noted in the consultation paper, section 147 of the Act [*Radiocommunications Act 1992*] prescribes that for each apparatus licence, the licensee’s name, postal address, and the date of issue and expiry of the licence must be included in the Register. In addition to these details, the information requirements under subsections 10(2) and 10(3) of the RRL Determination will apply to all AWLs.

The amendments made by the Instrument mean that the information requirements about spectrum, devices, antennas and sites, under subsections 10(4), 10(5), 10(6) and 10(7) of the RRL Determination will apply to AWLs if there is a condition in the AWL LCD or in the licence stating that the Register must contain those details.

In summary, the starting position for registration is that there will be limited details about all radiocommunications devices under AWL types in the Register and they will be exempt from specific device registration requirements in section 10 of the RRL Determination.

The key reason for reducing device registration requirements is because AWLs will authorise access within a defined frequency range and geographic area, and will include conditions at the frequency and area boundaries to manage interference, so there is a reduced requirement for full device registration in comparison to other site-based apparatus licence types.

Another reason for minimal device registration is to lessen the administrative reporting cost on licensees. For example, if the overall risk of interference is sufficiently low, registration of

radiocommunications devices may become an unnecessary regulatory burden on AWL licensees in a given band, especially when the licensee is potentially deploying many devices.

The ACMA considered all relevant issues raised when making the Instrument.

Regulatory impact assessment

The ACMA consulted with the Office of Best Practice Regulation (the OBPR) on the requirement for a Regulation Impact Statement (RIS). The OBPR advised that the proposed amendments in the draft Instrument and draft AWL LCD do not appear to have a more than minor regulatory impact on business, community organisations or individuals and that a RIS is not required.

The reference number for the OBPR's assessment is 25196.

Statement of compatibility with human rights

The ACMA has assessed whether the Instrument is compatible with human rights, being the rights and freedoms recognised or declared by the international instruments listed in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* as they apply to Australia.

Having considered the likely impact of the Instrument and the nature of the applicable rights and freedoms, the ACMA has formed the view that the Instrument does not engage any of those rights or freedoms.

Conclusion

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

Attachment A

Notes to the *Radiocommunications Legislation (2020 Measures No. 1) Instrument 2020*

Section 1 Name of instrument

This section provides for the Instrument to be cited as the *Radiocommunications Legislation (2020 Measures No. 1) Instrument 2020*.

Section 2 Commencement

This section provides for the Instrument to commence at the start of the day after it is registered on the Federal Register of Legislation.

Section 3 Authority

This section identifies the provisions of the Acts that authorise the making of the Instrument, namely paragraph 7(1)(b), subsections 98(1) and 147(1) of the Act and subsection 64(1) of the ACMA Act.

Sections 4, 5 and 6 Amendments

Sections 4, 5 and 6 provide that the instruments specified in Schedules 1, 2 and 3 are amended as set out in the items in the relevant Schedule.

Schedule 1 *Radiocommunications (Specified Radiocommunications Receivers and Types of Transmitter Licences and Receiver Licences) Determination 2014* [F2014L01790]

Items 1 and 2 of Schedule 1 update references to reflect the renaming of the *Legislative Instruments Act 2003* as the *Legislation Act 2003*, and the remaking of the *Radiocommunications (Interpretation) Determination 2000* in 2015.

Items 3 to 5 of Schedule 1 amend the Types Determination by adding to section 4 of the Types Determination area-wide receive stations as being radiocommunications receivers that are subject to the Act and by adding the area-wide type to the transmitter licence types in Schedule 1 to the Types Determination and the area-wide receive type to the receiver licence types in Schedule 2 to the Types Determination.

Schedule 2 *Radiocommunications (Interpretation) Determination 2015* [F2015L00178]

Item 1 amends Schedule 1 to the Interpretation Determination to include definitions for the terms 'area-wide licence', 'area-wide receive licence', 'area-wide receive station', 'area-wide service' and 'area-wide station'.

Schedule 3 *Radiocommunications (Register of Radiocommunications Licences) Determination 2017* [F2017L01069]

Items 1 to 4 amend section 10 of the RRL Determination so that details about the use of spectrum, operation of devices, antennas and sites are not required to be contained in the Register for area-wide and area-wide receive licences.

However, the exemptions do not apply if there is a condition in the AWL LCD or the relevant area-wide licence or area-wide receive licence that requires those details to be contained in the Register.