

# EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Radiocommunications Act 1992*

## ***Radiocommunications Licence Conditions (Scientific Licence) Determination 2023***

### **Authority**

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications Licence Conditions (Scientific Licence) Determination 2023* (**the instrument**) under subsection 110A(2) of the *Radiocommunications Act 1992* (**the Act**) and subsection 33(3) of the *Acts Interpretation Act 1901* (**the AIA**).

Subsection 110A(2) of the Act provides that the ACMA may, by legislative instrument, determine that each apparatus licence included in a specified class of apparatus licences is taken to include one or more specified conditions.

Subsection 33(3) of the AIA relevantly provides that, where an Act confers a power to make, grant or issue an 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.

### **Purpose and operation of the instrument**

The instrument's purpose is to determine the conditions that apply to the scientific licence type of transmitter licence.

The ACMA has determined the scientific licence type in Schedule 1 to the *Radiocommunications (Specified Radiocommunications Receivers and Types of Transmitter Licences and Receiver Licences) Determination 2014*.

The instrument repeals and replaces the *Radiocommunications Licence Conditions (Scientific Licence) Determination 2015* (**the previous scientific LCD**), which was due to sunset on 1 October 2025.

The previous scientific LCD imposed conditions relating to the operation of a station under a scientific licence (**scientific station**), principally in order to limit the activities for which a scientific station may be operated, and to impose requirements around identifying scientific stations. For some scientific licences, the previous scientific LCD provided common frequencies for operation of radiocommunications transmitters under a class of scientific licences (called **non-assigned scientific licences**).

The ACMA has issued the *Radiocommunications (Science and Research) Class Licence 2023* (**the science class licence**) under section 132 of the Act. The science class licence authorises persons to operate certain radiocommunications devices for a range of specified purposes, including operation of radiocommunications devices at frequencies in any part of the spectrum (that is, the range of frequencies within which radiocommunications are capable of being made) under specified conditions. The science class licence is intended to replace non-assigned scientific licences. The ACMA does not intend to issue any further non-assigned scientific licences, nor renew existing non-assigned scientific licences.

Accordingly, although the instrument will continue to provide common conditions for other scientific licences, after a transition period it no longer needs to provide for conditions relevant only to non-assigned scientific licences.

Operation of a radiocommunications device is not authorised by an apparatus licence (including a scientific licence) if it is not in accordance with the conditions of the licence (subsection 97(4) of the Act). Under section 46 of the Act, it is an offence, and subject to a civil penalty, to operate a radiocommunications device otherwise than as authorised by a spectrum licence, apparatus licence or a class licence. The Act prescribes the following maximum penalties for the offence:

- if the radiocommunications device is a radiocommunications transmitter, and the offender is an individual – imprisonment for 2 years;
- if the radiocommunications device is a radiocommunications transmitter, and the offender is not an individual – 1,500 penalty units (which is \$469,500 based on the current penalty unit amount of \$313);
- if the radiocommunications device is not a radiocommunications transmitter – 20 penalty units (\$6,260).

The Act prescribes the following maximum civil penalties:

- if the radiocommunications device is a radiocommunications transmitter – 300 penalty units (\$93,900);
- if the radiocommunications device is not a radiocommunications transmitter – 20 penalty units (\$6,260).

It is an offence, and subject to a civil penalty, to possess a radiocommunications device for the purpose of operating the device otherwise than as authorised by a spectrum licence, apparatus licence or class licence (section 47 of the Act). The Act prescribes the same penalties for this offence and civil penalty contravention as for the offence and civil penalty contravention in section 46.

In addition, an apparatus licensee, or a person authorised under section 114 of the Act in relation to an apparatus licence, must not contravene a condition of the licence. Contravention is subject to a civil penalty (section 113 of the Act). The Act prescribes a maximum civil penalty of 100 penalty units (\$31,300).

Although operation of a radiocommunications device in accordance with the instrument will ensure a person complies with sections 46 and 47 of the Act, there may be other provisions of the Act that prevent a person operating the device, or that require a person to do some other thing before operating the device (such as obtaining a permit under the *Radiocommunications Equipment (General) Rules 2021* made under the Act).

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

The instrument is a disallowable legislative instrument for the purposes of the *Legislation Act 2003* (**the LA**), and is subject to the sunset provisions in Part 4 of Chapter 3 of the LA.

### **Documents incorporated by reference**

Section 314A of the Act provides that an instrument under the Act may make provision in relation to a matter by applying, adopting or incorporating (with or without modifications) matters contained in any Act or any other instrument or writing as in force or existing at a particular time or from time to time.

The instrument incorporates the previous scientific LCD. The previous scientific LCD imposed conditions on non-assigned scientific licences. Although, as a result of the commencement of the science class licence, a person no longer needs a non-assigned scientific licence to operate a radiocommunications device for scientific purposes on the common frequencies used for such purposes, existing non-assigned scientific licences will continue in force until they expire. Accordingly, the instrument includes a transitional provision that imposes the same conditions on those existing non-assigned scientific licences as imposed by the previous scientific LCD as in force immediately before the instrument commenced. The previous scientific LCD is available, free of charge, from the Federal Register of Legislation ([www.legislation.gov.au](http://www.legislation.gov.au)). A person who holds such a licence may choose whether to operate a station under that licence, or under the science class licence.

The following Acts and legislative instruments are referred to in the instrument, but are not incorporated by reference:

- the Act;
- the AIA;
- the *Australian Communications and Media Authority Act 2005*;
- the LA;
- the science class licence.

These Commonwealth Acts and legislative instruments are available, free of charge, from the Federal Register of Legislation website (<http://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 LA.

Between 5 December 2022 and 28 February 2023, the ACMA consulted on a review of scientific licensing arrangements. The review was aimed at ensuring the ACMA's scientific licensing arrangements encourage spectrum users to develop, trial and assess new and innovative radiocommunications technologies and services.

As part of the review, the ACMA sought views on how it should regulate stations operated under scientific licences. The ACMA also sought views on how to manage the sunset of the previous scientific LCD during the consultation.

The ACMA received seven submissions. These were from the Australian Mobile Telecommunications Association, Boeing Australia, Free TV, NBN Co, Optus, Radio Amateur Society of Australia and Telstra.

The submissions broadly supported the ACMA's proposal to issue the science class licence to replace non-assigned scientific licences, and no views were expressed in respect of dealing with the sunset of the previous scientific LCD.

### **Regulatory impact assessment**

The ACMA consulted with the Office of Impact Analysis (OIA) on the requirement for a Regulation Impact Statement (RIS). The OIA advised that the instrument does not warrant the preparation of a RIS because the proposed changes in the instrument were minor or machinery in nature (OIA-23-05136).

## **Statement of compatibility with human rights**

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires the rule-maker in relation to a legislative instrument to which section 42 (disallowance) of the LA applies to cause a statement of compatibility with human rights to be prepared in respect of that legislative instrument.

The statement of compatibility set out below has been prepared to meet that requirement.

### ***Overview of the instrument***

The ACMA has made the instrument under subsection 110A(2) of the Act, to determine the conditions that apply to the scientific licence type of transmitter licence. The conditions require a person operating a radiocommunications transmitter under a scientific licence to identify themselves (except where identification is not possible) and only to operate the transmitter for specified science and research purposes.

### ***Human rights implications***

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.

## **Notes to the *Radiocommunications Licence Conditions (Scientific Licence) Determination 2023***

### **Section 1      Name**

This section provides for the instrument to be cited as the *Radiocommunications Licence Conditions (Scientific Licence) Determination 2023*.

### **Section 2      Commencement**

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

### **Section 3      Authority**

This section identifies the provision of the Act that authorises the making of the instrument, namely subsection 110A(2) of the Act.

### **Section 4      Repeal of the *Radiocommunications Licence Conditions (Scientific Licence) Determination 2015***

This section provides that the *Radiocommunications Licence Conditions (Scientific Licence) Determination 2015* (F2015L01284) is repealed.

### **Section 5      References to other instruments**

This section provides that in the instrument, unless the contrary intention appears:

- a reference to any other legislative instrument is a reference to that other legislative instrument as in force from time to time; and
- a reference to any other kind of instrument or writing is a reference to that other instrument or writing as in force, or existing, from time to time.

### **Section 6      Application**

Subsection 6(1) provides that, subject to subsection (3), every scientific licence must comply with the conditions in sections 7 and 8 of the instrument.

Subsection 6(2) provides that, subject to subsection (3), every scientific licence that authorises the operation of a scientific non-assigned station must comply with the conditions in section 9 of the Determination. A scientific non-assigned station is one whose operation is authorised by a non-assigned scientific licence.

Subsection 6(3) provides that, where there is inconsistency between a condition specified in a scientific licence under paragraph 107(1)(g) or paragraph 111(1)(a) of the Act and a condition specified in the instrument, then the condition under paragraph 107(1)(g) or paragraph 111(1)(a) of the Act prevails. Paragraph 107(1)(g) of the Act provides that an apparatus licence is subject to any other conditions that are specified in the licence, and paragraph 111(1)(a) of the Act provides that the ACMA may by written notice to the licensee, impose one or more additional conditions in an apparatus licence.

## **Section 7      Condition – purpose of operation**

This section imposes a condition that a person must not operate a radiocommunications transmitter under a scientific licence except for one or more of the following purposes:

- research into radiocommunications;
- investigation of radiocommunications;
- instruction in radiocommunications;
- demonstration of equipment;
- testing of equipment;
- trials of new radiocommunications technology;
- radio propagation path testing;
- repair and maintenance of the transmitter.

## **Section 8      Condition – call sign**

Subsection 8(1) provides that a person must not operate a radiocommunication transmitter under a scientific licence unless it is in accordance with subsection (2) or (3).

A person operates a radiocommunications transmitter in accordance with subsection (2) if they transmit the call sign specified in the scientific licence when it was issued, or another form of identification that clearly identifies the radiocommunication transmitter, at the start of each transmission, or at the start of each series of transmissions.

A person operates a station in accordance with subsection (3) if they transmit inaudible information, or use a mode of transmission such that it is not practicable to identify the station in a manner set out in subsection (2).

## **Section 9      Conditions – non-assigned scientific licences**

Section 9 is a transitional provision that continues the effect of conditions imposed by the previous scientific LCD on non-assigned scientific licences. Those conditions continue to apply for one year after the commencement of the instrument. After that time, the ACMA expects there will be no further non-assigned scientific licences in force.