

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications Licence Conditions (Transmitter Licence) Determination 2025

***Radiocommunications (Exemption – Corrective Services NSW) Amendment Determination 2025
(No. 1)***

Authority

The Australian Communications and Media Authority (the **ACMA**) has made the *Radiocommunications Licence Conditions (Transmitter Licence) Determination 2025* (the **Transmitter LCD**) 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 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 ACMA has made the *Radiocommunications (Exemption – Corrective Services NSW) Amendment Determination 2025 (No. 1)* (the **CSNSW Exemption Amendment**) under subsection 27(2) of the Act and subsection 33(3) of the AIA.

Subsection 27(2) of the Act provides that the ACMA may determine, in writing, that acts or omissions by members of a class of persons to whom section 27 of the Act applies are exempt from one or more of Parts 3.1, 4.1 and 4.2 of the Act, or specified provisions in those Parts of the Act.

Purpose and operation of the instruments

Transmitter LCD

An apparatus licence may be either a transmitter licence or a receiver licence. Transmitter licences authorise the operation of one or more radiocommunications transmitters. When operating a radiocommunications transmitter under a transmitter licence, a person is required to comply with any conditions of the licence.

The purpose of the Transmitter LCD is to revoke and replace the *Radiocommunications Licence Conditions (Apparatus Licence) Determination 2015* (the **2015 Determination**). The 2015 Determination imposed licence conditions in relation to electromagnetic energy (**EME**). The conditions required that the EME produced by a radiocommunications transmitter operated under a transmitter licence not exceed safety limits for EME set by the Australian Radiation Protection and Nuclear Safety Agency (**ARPANSA**). The safety limits for EME are currently contained in the *Radiation Protection Standard for Limiting Exposure to Radiofrequency Fields – 100 kHz to 300 GHz (2021)* (the **ARPANSA Standard**).

The 2015 Determination was determined under former paragraph 107(1)(f) of the Act. This paragraph was repealed by the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020* (the **Modernisation Act**), and the power to determine conditions for apparatus licences is now provided for in section 110A of the Act.

The ACMA has made the Transmitter LCD because the 2015 Determination was due to ‘sunset’ (i.e. be automatically repealed) on 1 April 2025 in accordance with 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 2015 Determination was operating effectively and efficiently, and continued to form a necessary and useful part of the legislative framework. Accordingly, the ACMA has made the Transmitter LCD so that the on-going effect of the 2015 Determination is preserved.

There are two significant changes in the Transmitter LCD, compared to the 2015 Determination.

The first change is that the instrument will also apply to transmitter licences issued under section 101A (in relation to temporary community broadcasting services) and section 102 (in relation to commercial and community broadcasting services) of the Act. These licences were not subject to the conditions in the 2015 Determination, because former paragraph 107(3)(a) of the Act excluded transmitter licences issued under sections 101A or 102 of the Act from determinations made under former paragraph 107(1)(f) of the Act. As discussed above, the power to determine conditions for apparatus licences, which includes transmitter licences issued under sections 101A and 102 of the Act, is now provided for in section 110A of the Act.

While transmitter licences issued under sections 101A or 102 of the Act were not subject to the conditions in the 2015 Determination, the ACMA had included conditions on these licences that reflected the conditions in the 2015 Determination. As such, the ACMA does not expect this change from the 2015 Determination to have any practical or adverse effect on transmitter licences issued under sections 101A or 102 of the Act. What the change will do is set out licence conditions relating to transmitter licences issued under sections 101A or 102 of the Act which are consistent, accessible, and transparent for all stakeholders.

The second change is with respect to compliance documentation obtained before 1 March 2003. Under the 2015 Determination, if a person had compliance documentation obtained before 1 March 2003 showing that the EME emitted by the radiocommunications transmitter, at that time, did not exceed certain exposure levels, then this would provide a person with an exception to assessing a radiocommunications transmitter with compliance with the ARPANSA Standard. As a change to a radiocommunications transmitter may change EME exposure levels and may also change the risk classification of a radiocommunications transmitter, the instrument has qualified this exception. Now, if there has been a change to a radiocommunications transmitter, a person no longer has the benefit of the exception. The person may need, upon a change to the radiocommunications transmitter, to assess the transmitter for compliance with the ARPANSA Standard. Changes that may have this result include changes to a radiocommunications transmitter’s power, antenna type, or antenna gain.

In addition to the two changes discussed above, there are other minor changes in the Transmitter LCD, compared to the 2015 Determination. One such change is to replace a requirement by a licence holder to provide information on EME compliance with a presumption about EME compliance if documentation measuring EME compliance is retained. This change was made because the Modernisation Act has provided the ACMA with information gathering powers under section 284S of the Act, and the requirement to provide information in the 2015 Determination was duplicative of this power.

Another minor change to the 2015 Determination has been to name the Transmitter LCD to reflect that it applies only to transmitter licences, not apparatus licences more broadly.

To address community concerns about possible health effects resulting from exposure to EME, the Transmitter LCD specifies that each transmitter licence include:

- a condition setting out that a person must not operate a radiocommunications transmitter if the EME produced by a radiocommunications transmitter exceeds the reference levels for general public exposure at a place accessible to a member of the general public;
- a presumption about EME compliance for low risk radiocommunications transmitters;
- conditions setting out EME measurements or calculations which are required for higher risk radiocommunications transmitters; and
- record-keeping requirements for higher risk radiocommunications transmitters.

Those licence conditions which relate to EME exposure do not apply when a person operates a radiocommunications transmitter under a space licence or a compliant mobile station.

Operation of a radiocommunications device is not authorised by an apparatus licence (including a transmitter 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 \$495,000 based on the current penalty unit amount of \$330);
- if the radiocommunications device is not a radiocommunications transmitter – 20 penalty units (\$6,600).

The Act prescribes the following maximum civil penalties:

- if the radiocommunications device is a radiocommunications transmitter – 300 penalty units (\$99,000);
- if the radiocommunications device is not a radiocommunications transmitter – 20 penalty units (\$6,600).

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 (\$33,000).

CSNSW Exemption Amendment

The purpose of the CSNSW Exemption Amendment is to amend the *Radiocommunications (Exemption – Corrective Services NSW) Determination 2021* (the **CSNSW Exemption**). The CSNSW Exemption Amendment exempts Corrective Services NSW, and its staff and contractors from all of Parts 3.1, 4.1, and 4.2 of the Act, with respect to the use of certain jamming equipment. The purpose

of the CSNSW Exemption Amendment is to update the reference to the 2015 Determination in the CSNSW Exemption to refer instead to the Transmitter LCD.

Generally

A provision-by-provision description of:

- the Transmitter LCD is set out in the notes at **Attachment A**;
- the CSNSW Exemption Amendment is set out in the notes at **Attachment B**.

Both the Transmitter LCD and the CSNSW Exemption Amendment are legislative instruments for the purposes of the LA, and are disallowable.

Both the Transmitter LCD and the CSNSW Exemption are subject to the sunset provisions in Part 4 of Chapter 3 of the LA.

Documents incorporated by reference

Subsection 314A(1) 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) provisions of any Act as in force at a particular time, or from time to time. Subsection 314A(2) 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) matter contained in any other instrument or writing as in force or existing at a particular time, or from time to time.

The Transmitter LCD incorporates all or parts of the following Acts and legislative instruments, as in force from time to time:

- the *A New Tax System (Australian Business Number) Act 1999*;
- the *Corporations Act 2001*;
- the *Radiocommunications Equipment (General) Rules 2021* (the **Equipment Rules**);
- the *Radiocommunications (Interpretation – Technical Framework) Determination 2024*, or any instrument replacing that determination.

The Transmitter LCD contains provisions that incorporate the *Radiocommunications (Apparatus Licence) Determination 2015*, as in force immediately before the instrument commenced.

Each of these Acts and legislative instruments is available, free of charge, from the Federal Register of Legislation (www.legislation.gov.au).

The Transmitter LCD also incorporates the following documents, as existing from time to time:

- the ARPANSA Standard, published by the ARPANSA, and available, free of charge, at www.arpansa.gov.au;
- AS/NZS 2722.2:2016 Radiofrequency fields, Part 2: Principles and methods of measurement and computation – 3 kHz to 300 GHz (**AS/NZS 2772.2**), published by Standards Australia. AS/NZS 2772.2 is available, for a fee, directly from the website of Standards Australia or a distributor listed on the Standards Australia website (www.standards.org.au). AS/NZS 2772.2 is also available to be viewed, on prior request, at an ACMA office, subject to licensing conditions;

- AS/NZS IEC 62232:2023 – Determination of RF field strength, power density and SAR in the vicinity of base stations for the purpose of evaluating human exposure, published by the International Electrotechnical Commission (**AS/NZS IEC 62232**). AS/NZS IEC 62232 is available, for a fee, directly from the website of Standards Australia or a distributor listed on the Standards Australia website (www.standards.org.au). AS/NZS IEC 62232 is also available to be viewed, on prior request, at an ACMA office, subject to licensing conditions;
- IEC 62232:2022 – Determination of RF field strength, power density and SAR in the vicinity of base stations for the purpose of evaluating human exposure, published by the International Electrotechnical Commission (**IEC 62232**). IEC 62232 is available, for a fee, directly from the website of Standards Australia or a distributor listed on the Standards Australia website (www.standards.org.au). IEC 62232 is also available to be viewed, on prior request, at an ACMA office, subject to licensing conditions;
- IEC 62577:2009 – Evaluation of human exposure to electromagnetic fields from a stand-alone broadcast transmitter (30 MHz – 40 GHz), published by the International Electrotechnical Commission (**IEC 62577**). IEC 62577 is available, for a fee, directly from the website of Standards Australia or a distributor listed on the Standards Australia website (www.standards.org.au). IEC 62232 is also available to be viewed, on prior request, at an ACMA office, subject to licensing conditions;
- IEEE C95.3:2021 – IEEE Recommended Practice for Measurements and Computations of Electric, Magnetic, and Electromagnetic Fields with Respect to Human Exposure to Such Fields, 0 Hz to 300 GHz (**C95.3**), published by the Institute of Electrical and Electronics Engineers. C95.3 is available free of charge, from the website of the Institute of Electrical and Electronics Engineers (standards.ieee.org).

The Transmitter LCD also incorporates the following documents, as existing from time to time:

- AS 2772.2-1988 Radiofrequency radiation Part 2: Principles and methods of measurement – 300 kHz to 100 GHz (**AS 2772.2**), published by Standards Australia. AS 2772.2 is available, for a fee, directly from the website of Standards Australia or a distributor listed on the Standards Australia website (www.standards.org.au). AS 2772.2-1988 is also available to be viewed, on prior request, at an ACMA office, subject to licensing conditions;
- AS/NZS 2772.1 (Int)-1998 Radiofrequency fields, Part 1: Maximum exposure levels – 3 kHz to 300 GHz (**AS/NZS 2772.1**), published by Standards Australia. AS/NZS 2772.1 is available, for a fee, directly from the website of Standards Australia or a distributor listed on the Standards Australia website (www.standards.org.au). AS/NZS 2772.1 (Int)-1998 is also available to be viewed, on prior request, at an ACMA office, subject to licensing conditions.

The CSNSW Exemption Amendment amends the CSNSW Exemption to incorporate the Transmitter LCD, as in force from time to time. The Transmitter LCD is available, free of charge, from the Federal Register of Legislation (www.legislation.gov.au).

Consultation

Before the Transmitter LCD and the CSNSW Exemption Amendment were made, the ACMA was satisfied that consultation was undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the LA.

Under Part 4 of Chapter 3 of the LA, the 2015 Determination was due to sunset on 1 April 2025. The ACMA analysed the 2015 Determination and identified that it was a necessary and useful part of the regulatory framework. Given this, the ACMA decided to remake the 2015 Determination to ensure its continuing effect.

A proposal for the remaking of the 2015 Determination was released for public consultation on 19 November 2024, together with the proposed draft Transmitter LCD. Relevant stakeholders were notified about the consultation by e-bulletin. The consultation paper noted that the ACMA will make necessary amendments to any instruments that refer to the 2015 Determination. The consultation closed on 14 January 2025, with one stakeholder provided with an extension in time to provide their submissions.

The ACMA received 2 submissions on the proposal, and an email from a telecommunications company endorsing one of the submissions.

Neither of the submissions expressed any concerns over the proposal to make the Transmitter LCD. Matters raised in the submissions included suggestions to:

- change the name of the Transmitter LCD;
- change the terms used to describe transmitters as ‘low risk’ and ‘higher risk’, to ‘level 1’ and ‘level 2’, which were the terms used in the 2015 Determination;
- list the types of transmitter licences that the Transmitter LCD applies to in section 5 of the instrument; and
- change the requirement for making a declaration under subsection 17(3) of the Transmitter LCD from any change to a ‘material’ change.

The ACMA considered all the submissions; however, it decided not to make further changes to the Transmitter LCD. In particular:

- the ACMA considered that the terms ‘low risk’ and ‘higher risk’ better reflect the attributes of the transmitters to which the different parts of the Transmitter LCD apply;
- the suggestion to qualify that a declaration is required when there has been a ‘material’ change, would be a departure from what is required under the 2015 Determination and would likely lead to differing interpretations of what was considered ‘material’.

The ACMA also consulted with Corrective Services NSW on the need to update the CSNSW Exemption to reflect that the 2015 Determination would be replaced by the Transmitter LCD. No concerns were raised by Corrective Services NSW.

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 with human rights set out below has been prepared to meet that requirement.

Overview of the instruments

The Transmitter LCD sets out conditions in relation to EME on all transmitter licences, affecting each person operating radiocommunications transmitters under those licences. The conditions require that the EME produced by a radiocommunications transmitter operated under a transmitter licence not exceed the reference levels for general public exposure at a place accessible to a member of the general public, as set out in the ARPANSA Standard. The Transmitter LCD applies to every transmitter licence; however, parts of the Transmitter LCD do not apply when a person operates a radiocommunications transmitter under a space licence, or operates a compliant mobile station.

The CSNSW Exemption Amendment is merely consequential upon the making of the Transmitter LCD.

Human rights implications

The ACMA has assessed whether the Transmitter LCD and CSNSW Exemption Amendment are 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 Transmitter LCD and the CSNSW Exemption Amendment 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 Transmitter LCD and the CSNSW Exemption Amendment are compatible with human rights as neither instrument raises any human rights issues.

Notes to the *Radiocommunications Licence Conditions (Transmitter Licence) Determination 2025*

Part 1 – Preliminary

Section 1 Name

This section provides for the Transmitter LCD to be cited as the *Radiocommunications Licence Conditions (Transmitter Licence) Determination 2025*.

Section 2 Commencement

This section provides for the Transmitter LCD to commence on 31 March 2025.

Section 3 Authority

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

Section 4 Repeal

This section provides that the *Radiocommunications Licence Conditions (Apparatus Licence) Determination 2015* (F2015L00210) is repealed.

Section 5 Application

This section provides that every transmitter licence is subject to the conditions in the Transmitter LCD, except when a condition is specified in the licence under paragraph 107(1)(g) of the Act, or imposed on the licence under paragraph 111(1)(a) of the Act that is inconsistent with a condition in the Transmitter LCD.

Section 6 Interpretation

Subsection 6(1) defines a number of key terms used throughout the Transmitter LCD.

A number of other expressions used in the Transmitter LCD are defined in the Act or by a determination made under subsection 64(1) of the *Australian Communications and Media Authority Act 2005*.

Subsection 6(2) provides that, where a term is used in the Transmitter LCD and not defined in the Transmitter LCD, but is defined in the Glossary of the ARPANSA Standard, the term has the meaning given by the Glossary.

Subsection 6(3) provides that, unless the contrary intention appears, a reference to a part of the spectrum or frequency band includes all frequencies that are greater than but not including the lower frequency, up to and including the higher frequency.

Section 7 References to other instruments

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

- a reference to any other legislative instrument is a reference to that legislative instrument as in force from time to time; and

- a reference to another instrument or writing is a reference to that instrument or writing as in force or existing from time to time.

Part 2 – Operation of transmitters – general condition

Section 8 Condition – permitted communications

This section provides that a person must operate a radiocommunications transmitter only to communicate with stations or receivers permitted by the conditions of the licence, except in an emergency situation or if the person is authorised, in writing, by the ACMA or an inspector, to communicate with another station or receiver in relation to the investigation of interference.

Part 3 – Operation of transmitters – electromagnetic radiation requirements

Section 9 Application of Part 3

Subsection 9(1) provides that the conditions in Part 3 do not apply to the operation of a radiocommunications transmitter under a space licence, or of a compliant mobile station.

Subsection 9(2) provides that a mobile station is a ‘compliant mobile station’ if clause 3 of Schedule 4 to the Equipment Rules prescribes a standard for the mobile station, the mobile station complies with that standard, and the mobile station is not a device mentioned in section 53 of the Equipment Rules.

Section 10 Condition – compliance with electromagnetic energy standard

Subsection 10(1) prohibits the operation of a radiocommunications transmitter if the radiofrequency field produced by the radiocommunications transmitter exceeds the reference levels for general public exposure set out in the ARPANSA Standard at a place accessible to a member of the general public.

Subsection 10(2) sets out the requirements for measuring compliance with those reference levels. These requirements depend on whether the radiocommunications transmitter is operating between 10 MHz and 30 MHz, between 30 MHz and 2 GHz, or above 2 GHz.

Subsection 10(3) provides that the meanings of three expressions used in subsection 10(2) are the same as they are in the ARPANSA Standard.

Subsection 10(4) prohibits the operation of a radiocommunications transmitter where it transmits on multiple frequencies simultaneously, unless the radiocommunications transmitter meets particular requirements specified in the ARPANSA Standard.

Section 11 Presumption about compliance with the condition in subsection 10(1) – low risk transmitters

Section 11 is about working out whether ‘low risk transmitters’ comply with the condition in subsection 10(1).

Subsection 11(1) and subsection 11(2) define low risk transmitters by reference to whether or not they are mobile stations, and by reference to certain power levels.

Subsection 11(3) sets out a presumption in favour of a person operating a low risk transmitter, to the effect that the person will be taken not to have contravened subsection 10(1) if the person has a document that sets out certain measurements or calculations for the radiocommunications transmitter, and those measurements or calculations are to the effect that the operation of the radiocommunications transmitter complies with subsection 10(1). The presumption may be rebutted by evidence to the contrary (e.g., physical measurements of the station’s emissions).

Section 12 Condition – measurements or calculations of electromagnetic energy – higher risk transmitters

Subsection 12(1) applies section 12 to a radiocommunications transmitter that is not a low risk transmitter.

Subsection 12(2) imposes a condition on the operation of a radiocommunications transmitter that is not a low risk transmitter. A person must not operate a radiocommunications transmitter unless the person has measured or calculated the radiofrequency fields produced by the radiocommunications transmitter in accordance with one or more of AS/NZS 2772.2, AS/NZS IEC 62232, C95.3, IEC 62232, or IEC 62577.

Subsection 12(3) is a savings provision about measurements and calculations taken to have been made in relation to the operation of a radiocommunications transmitter before 31 March 2025 (the date the Transmitter LCD commenced) in compliance with the 2015 Determination.

Subsections 12(4) and 12(5) are savings provisions that deal with measurements or calculations made for the purposes of subsection 12(2), where one or more of the documents specified in subsection 12(2) has been amended after 31 March 2025 (the date the Transmitter LCD commenced).

Subsection 12(6) contains definitions for the purposes of section 12.

Section 13 Condition – requirement to reassess installed transmitter after change

Subsection 13(1) provides that where a radiocommunications transmitter is a low risk station to which section 11 applies, and a change is made to the radiocommunications transmitter so that the radiocommunications transmitter is no longer a low risk transmitter, then section 12 applies to that radiocommunications transmitter from the time the change occurs.

Subsection 13(2) provides that a change to a radiocommunications transmitter includes, for example, where a radiocommunications transmitter is moved to a different site, or the amount of power fed to the radiocommunication transmitter's antennas is altered.

Section 14 Multi-transmitter sites

Subsection 14(1) applies to the operation of a radiocommunications transmitter located at a site that has more than one radiocommunications transmitter.

Subsection 14(2) sets out a similar presumption to that which is in subsection 11(3), which arises where measurements or calculations are made, and documents setting out those measurements and calculations are retained. Again, the presumption may be rebutted by evidence to the contrary.

Subsection 14(3) provides that a person who has retained possession of the documents mentioned in subsection 14(2) is taken to have complied with the record keeping condition in paragraph 17(1)(d) of the Transmitter LCD.

Section 15 Compliance documentation obtained before 1 March 2003 – exception to ARPANSA Standard

Section 15 provides an exception to the ARPANSA Standard.

Subsection 15(1) applies the exception to a person operating a radiocommunications transmitter who obtained compliance documentation before 1 March 2003 which shows that the radiofrequency field produced by the radiocommunications transmitter did not exceed exposure levels mentioned in sections 6.3, 6.7 and 6.8 of AS/NZS 2772.1, as existing at the time the documentation was obtained.

For the exception to apply, the radiofrequency field needs to have been measured according to AS2772.2 or calculated using a method derived from Appendix B to AS 2772.2, as existing at the time the radiofrequency field was measured or calculated.

Subsection 15(2) applies the exception to the ARPANSA Standard to a person who operates a low risk transmitter to which subsection 11(1) applies, on a site with no other radiocommunications transmitters, and keeps the compliance documentation mentioned in subsection 15(1). Such a person is considered compliant with the electromagnetic energy standard in subsection 10(1).

Subsection 15(3) applies the exception to the ARPANSA Standard to a person who operates a higher risk transmitter to which subsection 12(1) applies, on a site with no other radiocommunications transmitters, and keeps the compliance documentation mentioned in subsection 15(1). Such a person is considered to have made the measurement mentioned in subsection 12(2).

Subsection 15(4) provides that a person who operates a higher risk transmitter to which subsection 12(1) applies and keeps the compliance documentation mentioned in subsection 15(1), is considered to have complied with the record keeping requirement in paragraph 17(1)(d).

Subsection 15(5) applies the exception to the ARPANSA Standard to a person who operates a radiocommunications transmitter located at a site that has more than one radiocommunications transmitter and keeps the compliance documentation mentioned in subsection 15(1). If the compliance documentation shows that the combined radiofrequency fields of all transmitters on the site do not exceed the exposure levels mentioned in sections 6.3, 6.7 and 6.8 of AS/NZS 2772.1, then the person is considered compliant with the electromagnetic energy standard in subsection 10(1).

Subsection 15(6) provides that if a person keeps the compliance documentation mentioned in subsection 15(5), the person is considered to have complied with the record keeping requirement in paragraph 17(1)(d).

Subsection 15(7) provides that the exception to the ARPANSA Standard will cease to apply to a person if there has been a change at the site of the radiocommunications transmitters after the compliance documentation required for the exception to apply was obtained.

Subsection 15(8) provides that a change at a site includes, for example, a change in the number of radiocommunications transmitters, or altering the amount of power fed to the radiocommunication transmitters at the site, or changes in the characteristics of antennas at the site.

Subsection 15(9) defines what ‘member of the general public’ and ‘RF worker’ means for the purposes of section 15. The meanings of these terms are different to how these terms are defined in subsection 6(1).

Part 4 – Record-keeping for higher risk transmitters

Section 16 Application of Part 4

Section 16 provides that Part 4 applies to a radiocommunications transmitter to which section 12 applies.

Section 17 Condition – record-keeping

Subsections 17 imposes a record-keeping condition in relation to a radiocommunications transmitter that is not a low risk transmitter.

Subsections 17(1) and 17(2) set out the particular records a person who operates a transmitter must maintain, including:

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- the name and qualification of any person who assessed whether the radiocommunications transmitter complied with the requirements of the Transmitter LCD, and the date of the assessment;
- a declaration made by the person setting out the person's identity, the details of the radiocommunications transmitter, and a statement that the operation of the radiocommunications transmitter complies with the condition in subsection 10(1);
- the measurements or calculations made for the purposes of section 12.

The ACMA may request these records, or may require a person to produce them under section 284S of the Act. Giving false or misleading information is a serious offence under the *Criminal Code*.

Subsection 17(3) provides that if any information in a declaration changes, a new declaration must be made.

Subsection 17(4) sets out that records must be kept until the licence expires, be available for inspection, be kept in English, and can be copies of an original record or kept in electronic form.

Many persons who operate radiocommunications transmitters will be an 'organisation' within the meaning of the *Privacy Act 1988*. If so, the person will have to comply with the Australian Privacy Principles in the collection, use and disclosure of personal information. The collection, use and disclosure of this information is necessary to ensure that there is compliance with the conditions in the Transmitter LCD, especially those relating to EME.

A person who keeps such records may not be subject to the *Privacy Act 1988* in relation to any personal information so kept (because they are a 'small business operator', or on the basis that their acts or practices may be exempt under section 7B of the Act, which exempts acts done, or practices engaged in, by an individual if done or engaged in other than in the course of a business carried on by the individual). Where the *Privacy Act 1988* does not apply (in particular, in relation to 'small business operators'), the Office of the Australian Information Commissioner has recommended that, while such persons may not be required to comply with the Privacy Act, they should, as a matter of best practice, protect any personal information they hold, and should consider whether to opt-in to the *Privacy Act 1988*, given the benefits that may result. More information can be obtained from the website of the Office of the Australian Information Commissioner at www.oaic.gov.au.

Subsection 17(5) provides that the location for inspection of records for the purposes of paragraph 17(4)(b) may be at a person's street address in Australia or the site address for multi-transmitter locations.

Section 18 Condition – dispute over reliability of evaluation provided in compliance documentation

Subsection 18(1) provides that if the ACMA is not satisfied that a radiocommunications transmitter complies with section 10, the ACMA may request the person to have the radiocommunications transmitter assessed by a body accredited by the National Association of Testing Authorities (NATA) and to obtain and provide a report on compliance.

Subsections 18(2) outlines considerations the ACMA must have regard to before giving a request including the location, nature and power level of the radiocommunications transmitter.

Subsections 18(3) and 18(4) provide that a person must comply with a request within 30 days of receiving it and the ACMA may extend the time for compliance with a request.

No provision for merits review is made in respect of a decision by the ACMA to request a person to have a radiocommunications transmitter assessed by a NATA-accredited body under subsection 18(1), because:

- to the extent that the decision to request an assessment of a radiocommunications transmitter by a NATA accredited body affects the rights or interests of a person, that decision is subordinate to an overriding public interest to ensure exposure to EME does not exceed safety limits for EME as set by the ARPANSA;
- to the extent that the decision does affect the rights or interests of a person, it does not have a substantive effect on those rights or interests, other than in relation to any expense incurred by the person in obtaining a report. That is, a decision under subsection 18(1) does not, of itself, mean that a person has contravened a condition or must cease operating a radiocommunications transmitter. The report obtained may, if it contains material suggesting that a condition has been breached, lead to the ACMA taking enforcement action (e.g., cancelling a transmitter licence). That enforcement action will likely either be subject to merits review under the Act (see section 285 of the Act), or will need the ACMA to commence proceedings in the Federal Court;
- it is appropriate to ensure both public safety and the public's confidence in the legislative framework. In circumstances where there is a dispute over the reliability of an evaluation, an appropriately accredited body provides an independent report which can then be used to assess compliance with section 10.

This is consistent with the guidelines issued by the Administrative Review Council in its publication 'What Decisions Should be Subject to Merits Review?', which is available from the website of the Attorney-General's Department (www.ag.gov.au). This is because a decision by the ACMA to request a person have a radiocommunications transmitter assessed by a NATA-accredited body, is analogous to decisions described at [4.3] of that publication, being a preliminary or procedural decision. Of these decisions, the Council said that they should not generally be subject to merits review, because review of these decisions may lead to the proper operation of the administrative decision-making process being unnecessarily frustrated or delayed, and they do not have substantive consequences (at [4.4]).

Section 19 Condition – use of agent

Subsection 19(1) provides that the condition in subsection 19(2) applies if a person uses an agent to ensure that a radiocommunications transmitter complies with the Transmitter LCD, and to keep the required documentation.

Subsection 19(2) provides that if a person uses an agent, both parties must keep a copy of the agency agreement for the same period that records must be kept under the Transmitter LCD.

Notes to the *Radiocommunications (Exemption – Corrective Services NSW) Amendment Determination 2025 (No. 1)*

Section 1 Name

This section provides for the CSNSW Exemption Amendment to be cited as the *Radiocommunications (Exemption – Corrective Services NSW) Amendment Determination 2025 (No. 1)*.

Section 2 Commencement

This section provides for the CSNSW Exemption Amendment to commence at the later of:

- the start of the day after the day it is registered on the Federal Register of Legislation;
- immediately after the commencement of the Transmitter LCD.

The Federal Register of Legislation may be accessed free of charge at www.legislation.gov.au.

Section 3 Authority

This section identifies the provision of the Act that authorises the making of the CSNSW Exemption Amendment, namely, subsection 27(2) of the Act.

Section 4 Amendments

This section specifies that the instrument specified in Schedule 1, which is the CSNSW Exemption, is amended as set out in the schedule.

Schedule 1 Amendments

Item 1

This item amends paragraph 10(8)(d) of the CSNSW Exemption, so that the reference to the 2015 Determination is omitted and replaced by a reference to the Transmitter LCD.

Item 2

This item amends paragraph 10(8)(d) of the CSNSW Exemption, so that the phrase ‘under an apparatus licence’ is omitted and replaced by the phrase ‘under a transmitter licence’.

Item 3

This item amends the note to subsection 10(8) of the CSNSW Exemption, so that the reference to the 2015 Determination is omitted and replaced by a reference to the Transmitter LCD.