

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications (Apparatus Licences – Authorisations and Transfers) Determination 2025

Authority

The Australian Communications and Media Authority (the **ACMA**) has made the *Radiocommunications (Apparatus Licences – Authorisations and Transfers) Determination 2025* (the **instrument**) under subsections 115(1) and 131AC(1) of the *Radiocommunications Act 1992* (the **Act**), and subsection 33(3) of the *Acts Interpretation Act 1901* (the **AIA**).

Subsection 115(1) of the Act provides that the ACMA may, by legislative instrument, determine:

- (a) the categories of apparatus licences in respect of which licensees must not authorise other persons to operate radiocommunications devices; or
- (b) the classes of persons who must not be so authorised; or
- (c) the circumstances in which persons must not be so authorised.

Subsection 131AC(1) of the Act provides that the ACMA may, by legislative instrument, determine:

- (a) that particular types of apparatus licence are not transferable; and
- (b) that in specified circumstances an apparatus licence is not transferable.

Subsection 33(3) of the AIA 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.

Purpose and operation of the instrument

The instrument repeals and replaces the *Radiocommunications (Limitation of Authorisation of Third Party Users and Transfer of Apparatus Licences) Determination 2015* (the **2015 determination**), which was due to sunset on 1 October 2025 by operation of Part 4 of Chapter 3 of the *Legislation Act 2003* (the **LA**). The instrument does not make any significant changes to the regulatory arrangements created by the 2015 determination.

Following a review of the 2015 determination, and consultation as described below, the ACMA formed the view that the 2015 determination was operating effectively and efficiently, and that it continued to form a necessary part of the legislative framework.

An apparatus licence authorises the licensee to operate radiocommunications devices. Under section 114 of the Act, the licensee may authorise a third party to operate radiocommunications devices under the licence. Under section 131AB of the Act, the ACMA may, on application, transfer an apparatus licence to another person.

The purpose of the instrument is twofold and aimed at ensuring the integrity of the apparatus licensing system. First, the instrument specifies the circumstances in which a licensee cannot authorise a third party to operate a radiocommunications device under an apparatus licence. Second, it specifies the circumstances in which an apparatus licence cannot be transferred to another person.

The instrument operates by specifying 5 circumstances in which a licensee of an apparatus licence cannot authorise a third party to operate a radiocommunications device under the licence or the licence cannot be transferred. Broadly speaking, the circumstances are those in which:

- (a) the licensee has the benefit of a discount or exemption in respect of apparatus licence tax, and the third party or proposed transferee does not; or
- (b) the ACMA would not issue an apparatus licence of a particular kind to the third party or proposed transferee, if they were to apply for the licence to be issued to them.

The instrument is a legislative instrument for the purposes of the LA, and is disallowable. The instrument is subject to the sunset provisions of the LA.

A provision-by-provision description of the instrument is at **Attachment A**.

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 modification) 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 following Acts and legislative instrument, as in force from time to time:

- *Broadcasting Services Act 1992*;
- *Radiocommunications Taxes Collection Act 1983*;
- *Radiocommunications (Transmitter Licence Tax) Determination 2025*.

Each of these Acts and the instrument is available, free of charge, from the Federal Register of Legislation at www.legislation.gov.au.

Consultation

Before the ACMA made the instrument, it was satisfied that consultation was undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the LA.

The ACMA published a consultation paper and draft of the instrument on its website on 4 February 2025. In addition, the ACMA notified persons of the publication using its e-bulletin service.

The consultation process closed on 28 March 2025. The ACMA did not receive any submissions in response to that process.

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 in **Attachment B** has been prepared to meet that requirement.

Notes to the *Radiocommunications (Apparatus Licences – Authorisations and Transfers) Determination 2025*

Section 1 Name

This section provides for the instrument to be cited as the *Radiocommunications (Apparatus Licences – Authorisations and Transfers) Determination 2025*.

Section 2 Commencement

This section provides that the instrument commences at the start of 30 September 2025.

The Federal Register of Legislation is available, free of charge at www.legislation.gov.au.

Section 3 Authority

This section identifies the provisions of the Act that authorise the making of the instrument, namely subsections 115(1) and 131AC(1) of the Act.

Section 4 Repeal

This section provides that the *Radiocommunications (Limitation of Authorisation of Third Party Users and Transfer of Apparatus Licences) Determination 2015* (Registration No. F2015L01218) is repealed.

Section 5 Definitions

This section defines key expressions used in the instrument.

Several other expressions used in the instrument are defined in the Act or in a determination made under subsection 64(1) of the *Australian Communications and Media Authority Act 2005*.

Section 6 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 7 Circumstances in which persons must not be authorised to operate radiocommunications devices, or in which a licence is not transferable

For the purposes of paragraphs 115(1)(c) and 131AC(1)(b) of the Act, this section specifies the 5 circumstances in which an apparatus licensee must not authorise a third party under an apparatus licence, and in which an apparatus licence cannot be transferred to a proposed transferee. For each item listed in the table, the first column describes an apparatus licence by either an attribute that the licensee has, or the purpose for which the licence is held (or both). The second column in the table specifies the circumstances in which the authorisation or transfer cannot occur.

In item 1 of the table, the circumstance is where the licensee is an ‘exempt person’ for the purposes of the *Radiocommunications Taxes Collection Act 1983*, but the third party or proposed transferee is not. An ‘exempt person’ is one who is exempt from the payment of apparatus licence tax. This ensures

that someone who is not exempt from apparatus licence tax cannot inappropriately benefit from the licensee's exemption from tax.

In item 2 of the table, the circumstance is where the licensee is an 'eligible person' for the purposes of the *Radiocommunications (Transmitter Licence Tax) Determination 2025*, but the third party or proposed transferee is neither an exempt person nor an eligible person. An 'eligible person' is one who obtains a discount on the amount of transmitter licence tax payable in relation to the transmitter licences they hold (a transmitter licence is a kind of apparatus licence). This ensures that someone who is not exempt from apparatus licence tax, and who would not obtain the benefit of the discount, cannot inappropriately benefit from the licensee's discount.

In item 3 of the table, the circumstance is where the licensee holds an apparatus licence for the provision of an international broadcasting service, but the third party or proposed transferee does not hold an international broadcasting licence. It is a requirement of the *Broadcasting Services Act 1992* that a person must hold an international broadcasting licence issued under that Act to provide an international broadcasting service. The item precludes a person from being an authorised third party or transferee of an apparatus licence where they do not satisfy a requirement in the *Broadcasting Services Act 1992* that is necessary for the person to make use of the licence.

In item 4 of the table, the circumstance is where both:

- the licensee is the Australian Broadcasting Corporation or the Special Broadcasting Service Corporation and operates a radiocommunications device under the licence to provide a broadcasting service to locations outside Australia; and
- the third party or proposed transferee intends to operate a radiocommunications device under the licence to provide an international broadcasting service, or to provide a broadcasting service within Australia.

In item 5 of the table, the circumstance is where the apparatus licence authorises the operation of a radiocommunications device for the provision of an 'exempt broadcasting service' under the *Broadcasting Services Act 1992*, and the third party or proposed transferee intends to operate a radiocommunications device under the licence for another purpose.

Statement of compatibility with human rights

Prepared by the Australian Communications and Media Authority under subsection 9(1) of the
Human Rights (Parliamentary Scrutiny) Act 2011

Radiocommunications (Apparatus Licences – Authorisations and Transfers) Determination 2025

Overview of the instrument

The ACMA has made the *Radiocommunications (Apparatus Licences – Authorisations and Transfers) Determination 2025* (the **instrument**) under subsection 115(1) and subsection 131AC(1) of the *Radiocommunications Act 1992* (the **Act**).

It is a requirement of the Act that the operation of a radiocommunications device, or the possession for the purposes of operation of a radiocommunications device must be licensed by one of 3 types of licence: spectrum, apparatus or class. The instrument operates in relation to the apparatus licensing of radiocommunications devices.

Under section 114 of the Act, the licensee of an apparatus licence may, by written instrument, authorise other persons to operate radiocommunications devices under the licence. However, under subsection 115(1) of the Act, the ACMA may, by legislative instrument, determine:

- (a) categories of apparatus licences in respect of which licensees must not authorise other persons to operate radiocommunications devices;
- (b) classes of persons who must not be so authorised; or
- (c) circumstances in which persons must not be so authorised.

Under section 131AB of the Act, the ACMA may, on application, transfer an apparatus licence to another person. However, under subsection 131AC(1) of the Act, the ACMA may, by legislative instrument, determine that particular types of apparatus licence are not transferable, and that in specified circumstances an apparatus licence is not transferable.

The instrument specifies 5 circumstances in which the licensee of an apparatus licence cannot authorise a person to operate a radiocommunication device under the licence, and in which the licensee cannot transfer the apparatus licence to another person. This is to ensure the integrity of the apparatus licence system by preventing the authorisation of a third party or the transfer of a licence to a third party in circumstances where:

- (a) the licensee has the benefit of a discount or exemption in respect of apparatus licence tax, and the third party or proposed transferee does not; or
- (b) the ACMA would not issue an apparatus licence of a particular kind to the third party or proposed transferee, if they were to apply for the licence to be issued to them.

The instrument has potential implications for two parties: the apparatus licensee seeking to authorise a third party or to transfer their apparatus licence to a third party, and the third party who would be the recipient of the authorisation or transfer.

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.

Article 19 of the International Covenant on Civil and Political Rights provides:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as provided by law and are necessary.

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 engages the freedom of expression. This is because the instrument prevents an apparatus licensee from authorising a third party to operate a radiocommunications device under an apparatus licence, or transferring their apparatus licence to a third party, in particular circumstances. Thus, the third party is not authorised under the Act to operate, or possess for the purposes of operation, a radiocommunications device that would allow the third party to communicate with other persons.

The ACMA has also formed the view that the restriction imposed is permissible because it is aimed at achieving a legitimate objective. The object of the Act is to promote the long-term public interest derived from the use of radiofrequency spectrum. To avoid interference between multiple users, operation of a radiocommunications device, or possession of equipment for the purposes of operation of a radiocommunication device must be licensed under the Act. One objective of licensing is to ensure that interference between users of radiofrequency spectrum is minimised, thereby ensuring individuals have greater access to freedom of expression when utilising the radiofrequency spectrum to communicate.

The objective of the instrument is to ensure the integrity of the apparatus licence system specifically, by preventing a person who does not meet specified criteria from being authorised under an apparatus licence or being the transferee thereof. Broadly speaking, the circumstances in which a person may not be authorised, or in which the licence may not be transferred, are those in which:

- (a) the licensee has the benefit of a discount or exemption in respect of apparatus licence tax, and the third party or proposed transferee does not; or
- (b) the ACMA would not issue an apparatus licence of a particular kind to the third party or proposed transferee, if they were to apply for the licence to be issued to them.

The effect of the instrument is limited to the particular circumstances mentioned above, and does not prevent a person from:

- applying for, and being issued, other kinds of licences under the Act; or
- operating a radiocommunications device under a class licence; or
- being authorised under a different kind of apparatus licence or a spectrum licence, or being transferred such licences.

Conclusion

The instrument is compatible with human rights because the restriction on the freedom of expression is for a legitimate purpose and is reasonable and proportionate to ensure that the integrity of the apparatus licence system is preserved.