

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications Licence Conditions (Amateur Licence) Omnibus Amendment Instrument 2019 (No.1)

Authority

The Australian Communications and Media Authority (ACMA) has made the *Radiocommunications Licence Conditions (Amateur Licence) Omnibus Amendment Instrument 2019 (No. 1)* (the **Amendment Instrument**) under paragraph 107(1)(f) and subsection 132(1) of the *Radiocommunications Act 1992* (the **Act**) and subsection 33(3) of the *Acts Interpretation Act 1901* (the **AIA**).

Paragraph 107(1)(f) of the Act provides that an apparatus licence is subject to such conditions (if any) as the ACMA may, by legislative instrument, determine in relation to that particular type of apparatus licence.

Subsection 132(1) of the Act provides that the ACMA may, by legislative instrument, issue class licences. A class licence authorises any person to operate a radiocommunications device of a specified kind or for a specified purpose.

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.

Purpose and operation of the instrument

The purpose of the Amendment Instrument is to amend or vary the following instruments:

- *Radiocommunications Licence Conditions (Amateur Licence) Determination 2015* (the **Amateur LCD**), which applies common licence conditions to be observed by licensees authorised to operate an amateur station under an apparatus licence;
- *Radiocommunications (Overseas Amateurs Visiting Australia) Class Licence 2015* (the **Overseas Class Licence**), which authorises visiting overseas qualified persons to operate amateur stations and applies common conditions to the operation of these stations.

It is a general requirement of the Act that the operation of all radiocommunications devices within Australia be authorised by a licence. Apparatus licences and class licences are two types of licence available to authorise the operation of radiocommunications devices. Apparatus licences are issued to licensees, and are subject to statutory conditions, conditions imposed by legislative instrument made under paragraph 107(1)(f), and conditions included in the licence. Amateur licences are a type of apparatus licence and are subject to the conditions imposed by the Amateur LCD. Class licences are an effective and efficient means of spectrum management for services where a limited set of common frequencies are employed, and equipment is operated under a common set of conditions. A class licence is not issued to a particular user and does not involve the payment of charges or taxes. The Overseas Class Licence authorises the operation in Australia of radiocommunications devices by amateur users visiting from outside Australia.

The amendments to the Amateur LCD and the Overseas Class Licence were identified as part of the ACMA's review of amateur licence conditions, which was conducted in response to requests made by the amateur community.

The changes made by the Amendment Instrument will account for technological changes, reduce restrictions and increase flexibility for licensees, and are consistent with the following objects of the Act:

- to maximise, by ensuring the efficient allocation and use of the spectrum, the overall public benefit derived from using the radiofrequency spectrum; and
- to provide a responsible and flexible approach to meeting the needs of users of the spectrum.

The Amendment Instrument also includes changes that are necessary to prevent the cancellation of advanced amateur licences by operation of section 153H of the Act that would otherwise occur as a result of the re-allocation of the 3575-3600 MHz band (the **3.6 GHz band**) for spectrum licensing. The changes ensure that amateur licensees with advanced qualifications may continue to use the 3575–3600 MHz band outside spectrum-licensed areas, as well as in other bands that have been allocated for amateur use.

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

The Amendment Instrument and the instruments it amends or varies are disallowable legislative instruments for the purposes of the *Legislation Act 2003* (the **LA**).

Documents incorporated by reference

The Amendment Instrument inserts into the Amateur LCD and the Overseas Class Licence references to the following legislative instruments, as in force from time to time, as permitted by section 314A of the Act:

- the *Radiocommunications (Spectrum Re-allocation – 3.6 GHz Band for Adelaide and Eastern Metropolitan Australia) Declaration 2018*;
- the *Radiocommunications (Spectrum Re-allocation – 3.6 GHz Band for Perth) Declaration 2018*; and
- the *Radiocommunications (Spectrum Re-allocation – 3.6 GHz Band for Regional Australia) Declaration 2018*.

The legislative instruments listed above may be obtained for free from the Federal Register of Legislation (www.legislation.gov.au).

Consultation

Before making the Amendment Instrument, the ACMA was satisfied that consultation was undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the LA.

Section 136 of the Act requires that a notice setting out particular details of the variation of the Overseas Class Licence be published on the ACMA's website, and in one or more other forms that are readily accessible by the public. The notice must allow for a period of at least one month to be provided for public comment. Paragraph 136(1A)(b) also requires consultation with spectrum licensees if their licences would be affected by the variation of the Overseas Class Licence.

On 27 June 2019, the ACMA published a written notice under section 136 about the proposed variation to the Overseas Class Licence on its website and in the Government Notices Gazette. The ACMA also wrote to all winning bidders who had been allocated spectrum in the 3.6 GHz band as a result of the ACMA's recent 3.6 GHz band auction.

Between 27 June and 9 August 2019, the ACMA published a consultation paper and a draft of the Amendment Instrument on its website. The consultation paper invited comments on the proposed

changes to the Amateur LCD and Overseas Class Licence reflected in the draft Amendment Instrument. The proposed changes would have the effect of removing amateur licensees' access to spectrum in the 3.6 GHz band that has been re-allocated by issuing spectrum licences and changing the licence conditions that apply to operation of amateur stations by amateur licensees with certain qualifications.

The consultation paper also sought comments more generally on any other potential changes to the amateur licence conditions and regulatory regime that the ACMA may consider in the future, including opportunities that could reduce regulatory burden on licensees while not detracting from other legitimate uses of the relevant spectrum.

The ACMA received 86 submissions from various parties including the Wireless Institute of Australia, the Radio Amateur Society of Australia, Telstra, licensed amateur radio operators and amateur radio licensed clubs. The majority of submissions provided strong support for the changes outlined in the draft Amendment Instrument.

Submissions in relation to the change to remove the 3.6 GHz band from the authorised frequencies indicated that amateur licensees understood the need to remove access to the band in order to avoid the cancellation of amateur apparatus licences by operation of section 153H.

Most submissions were supportive of reducing the restrictions on the operation of amateur stations by amateur licensees with standard or foundation level qualifications so as to allow use of higher power, self-made radiocommunication equipment and digital modes of transmission. Some submissions did not support these changes to licence conditions applying to less qualified operators on the basis of safety and interference, and also suggested that these changes could reduce the incentive to study for higher level qualifications.

The ACMA has considered these objections and considers that any increased risk to safety or interference that might result from allowing amateur licensees with foundation or standard qualifications to operate amateur stations in this way will be mitigated by:

- existing provisions in the Amateur LCD and the Overseas Class Licence that specify maximum output power and spurious emission limits; and
- the requirement for radiocommunications devices to comply with relevant standards made by the ACMA under section 162 of the Act, including the *Radiocommunications (Electromagnetic Radiation – Human Exposure) Standard 2014* which incorporates the Radiation Protection Standard for Maximum Exposure Levels to Radiofrequency Fields—3 kHz to 300 GHz.

Imposing more restrictive licence conditions on such licensees is, therefore, not justified.

The ACMA considered all relevant issues raised when making the Determination. The matters raised in the submissions did not result in any changes to the Amendment Instrument being made.

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 Amendment Instrument does not warrant the preparation of a RIS because the proposed regulatory changes in the Amendment Instrument are minor and machinery in nature and verified that no further regulatory impact analysis is required. The reference number for the OBPR's assessment for the proposed changes to the

Amateur LCD and Overseas Class Licence arising from the review of amateur licence conditions is OBPR ID 25180. The reference number for the OBPR's assessment for the proposed changes to remove access to the 3.6 GHz band from the Amateur LCD and the Overseas Class Licence is OBPR ID 25172.

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

Attachment A

Notes to the *Radiocommunications Licence (Amateur Licence) Omnibus Amendment Instrument 2019 (No.1)*

Section 1 Name

This section provides for the instrument to be cited as the *Radiocommunications Licence Conditions (Amateur Licence) Omnibus Amendment Instrument 2019 (No.1)*.

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.

The Federal Register of Legislation may be accessed 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 paragraph 107(1)(f) and subsection 132(1).

Section 4 Amendments – *Radiocommunications Licence Conditions (Amateur Licence) Determination 2015 [F2015L01113]*

This section identifies that the *Radiocommunications Licence Conditions (Amateur Licence) Determination 2015*, specified in Schedule 1, is amended as set out in the items in that Schedule.

Section 5 Amendments – *Radiocommunications (Overseas Amateurs Visiting Australia) Class Licence 2015 [F2015L01114]*

This section identifies that the *Radiocommunications (Overseas Amateurs Visiting Australia) Class Licence 2015*, specified in Schedule 2, is amended as set out in the items in that Schedule.

Schedule 1 – Amendments

Radiocommunications Licence Conditions (Amateur Licence) Determination 2015 [F2015L01113]

Items 1A, 6, 7 and 8

Explanatory Statement to the Radiocommunications Licence Conditions (Amateur Licence) Omnibus Amendment Instrument 2019 (No. 1)

These items amend sections 2, 11A and 11B, and the heading to Part 2A, of the Amateur LCD. The changes have the effect of making each amateur licence (amateur foundation station) subject to the conditions in sections 11A and 11B, which relate to the connection of amateur stations to a public telecommunications network.

Items 1, 2 and 4

These items update section 3 of the Amateur LCD to include definitions of the following terms: **3.6 GHz band**, **Adelaide and Eastern Metropolitan Australia designated areas**, **Perth designated area**, and **Regional Australia designated area**. These terms define the parts of the 3.6 GHz spectrum that has been re-allocated for spectrum licensing and which are removed from the range of permitted frequencies for use by amateur licensees under item 9.

Item 3

The definition of public telecommunications network has been amended to correct the spelling of the word “telecommunications”.

Item 5

This section omits the two examples after paragraph 9(1)(e) to remove reference to specific technologies..

Items 9 and 18

A new section 15E has been added to the Amateur LCD to impose a condition that an amateur advanced station must not be operated in the 3.6 GHz band within areas designated for spectrum licensing from the day occurring before the end of the relevant re-allocation period for the each of the designated areas, as set out in new Schedule 7 to the Amateur LCD.

Item 10

Section 27A has been repealed to remove licence conditions specific to the operation of an amateur foundation station. This change has the effect of allowing amateur licensees with foundation level qualifications to authorise another person to operate the station. It will also allow foundation licensees to operate an amateur station in automatic mode or computer-controlled mode, and to operate a station that is directly connected to a public telecommunications network.

Item 11

Section 28 has been repealed to remove the licence condition restricting amateur licensees from transmitting using equipment that has not been manufactured commercially. This change will allow foundation licensees to transmit using equipment constructed by themselves or others.

Item 12

Paragraph 29(b) has been repealed to remove reference to emission mode 200HA1A that is used to transmit information using a manually operated morse key. This will allow amateur licensees to operate an amateur foundation station in a frequency band mentioned in column 1 of an item in Schedule 3A using any of the emission modes mentioned in column 2 of that item, provided the transmission remains entirely within that frequency band.

Item 13

The Table in Part 1 of Schedule 2 describes the permitted frequencies for the operation of an amateur advanced station using specified emission modes. The table has been replaced and updated with changes that allow amateur licensees to use wider bandwidths within the relevant available frequencies when operating an advanced amateur station using any emission mode.

Items 14 and 15

These items move Notes 1 – 6, relating to the operation of an advanced amateur station in frequency bands listed in Schedule 2, from Part 2 of that Schedule to Part 1 of that Schedule. These notes advise of general operating restrictions imposed on the use of frequency ranges that are specified elsewhere in the Amateur LCD. These are more appropriately related to the permitted frequency ranges and emission modes listed in Part 1 of Schedule 2. Item 14 also inserts a new Note 7, which refers to the new operating restrictions imposed on the use of the 3.6 GHz band inserted by new section 15E.

Item 16

The Table in Schedule 3 describes the permitted frequencies for the operation of an amateur standard station using specified emission modes. The table has been replaced and updated with changes that allow amateur licensees to use wider bandwidths within the relevant available frequencies when operating a standard amateur station using any emission mode.

Item 17

The Table in Schedule 3A describes the permitted frequencies and specifies emission modes for the operation of an amateur foundation station. The table has been replaced and updated with changes that allow amateur licensees to use wider bandwidths within the relevant available frequencies when operating a foundation amateur station using any emission mode.

Schedule 2 – Amendments

Radiocommunications (Overseas Amateurs Visiting Australia) Class Licence 2015 [F2015L01114]

The amendments in Schedule 2 are designed to give effect to the same changes made to the conditions that apply to amateur licences under the Amateur LCD, as amended, so that overseas qualified amateurs are subject to the same operating restrictions and conditions when operating equivalent amateur stations.

Items 1, 2 and 3

These items update section 3 of the Overseas Class Licence to include definitions of the following terms: **3.6 GHz band**, **Adelaide and Eastern Metropolitan Australia designated areas**, **Perth designated area**, and **Regional Australia designated area**. These terms define the parts of the 3.6 GHz spectrum that have been re-allocated for spectrum licensing and which are removed from the range of permitted frequencies for use by visiting amateurs under this class licence under item 5.

Item 4

Table 1A in section 21 of the Overseas Class Licence sets out the permitted frequencies for the operation of an amateur station using specified emission modes by a person who holds a qualification or licence listed in Table C (i) of the Tables of Equivalent Qualifications and Licences. The table has

been replaced and updated with changes that allow the qualified person to use wider bandwidths within the permitted frequencies using any emission mode.

A note has also been added to Table 1A to advise that the operation of an amateur station in the 3.6 GHz band is subject to the limitations specified in new section 24AA as inserted by item 5.

Items 5, 13 and 16

New sections 24AA and 42A have been added to the Overseas Class Licence to impose a condition that an amateur station must not be operated in the 3.6 GHz band within areas designated for spectrum licensing from the day before the end of the relevant re-allocation period for each of the designated areas, as set out in new Schedule 6 to the Overseas Class Licence.

Item 6

Table 2 in section 28 of the Overseas Class Licence sets out the permitted frequencies for the operation of an amateur station using specified emission modes by a person who holds a qualification or licence listed in Table C (ii) of the Tables of Equivalent Qualifications and Licences. The table has been replaced and updated with changes that allow the qualified person to use wider bandwidths within the permitted frequencies using any emission mode.

Item 7

Section 31 has been repealed to remove restrictions specific to the operation of an amateur foundation station by a person who holds a qualification or licence listed in Table C (iii) of the Tables of Equivalent Qualifications and Licences. This will allow the qualified person to operate an amateur station in automatic mode or computer controlled mode and to operate a station that is directly connected to a public telecommunications network.

Item 8

Section 32 has been repealed to remove the restriction on a person who holds a qualification or licence listed in Table C (iii) of the Tables of Equivalent Qualifications and Licences from operating a station using equipment that has not been manufactured commercially. This change will allow the qualified person to transmit using equipment constructed by themselves or others.

Item 9

Paragraph 34(b) has been repealed to remove reference to the emission mode 200HA1A that is used to transmit information using a manually operated morse key. This change will allow a person who holds a qualification or licence listed in Table C (iv) of the Tables of Equivalent Qualifications and Licences to operate a station in a frequency band mentioned in column 1 of an item in Table 3 of section 34 using any of the emission modes mentioned in column 2 of that item, provided the transmission remains entirely within that frequency band.

Item 10

Table 3 in section 34 of the Overseas Class Licence sets out the permitted frequencies and specified emission modes for the operation of an amateur station by a person who holds a qualification or licence listed in Table C (iv) of the Tables of Equivalent Qualifications and Licences. The table has been replaced and updated with changes that allow the qualified person to use wider bandwidths within the permitted frequencies using any emission mode.

Item 11

Section 37 has been repealed to remove restrictions specific to the operation of an amateur station by a person who holds a qualification or licence listed in Table C (iv) of the Tables of Equivalent Qualifications and Licences. This will allow the qualified person to operate an amateur station in automatic mode or computer controlled mode and to operate a station that is directly connected to a public telecommunications network.

Item 12

Table 4A in section 39 of the Overseas Class Licence sets out the permitted frequencies and specified emission modes for the operation of an amateur station by a person who holds a qualification or licence listed in Table C (iv) of the Tables of Equivalent Qualifications and Licences. The table has been replaced and updated with changes that allow the qualified person to use any emission mode when transmitting on the permitted frequencies.

As Table 4A includes the 3.6 GHz band as a permitted frequency range, a note has also been added to Table 4A to advise that the operation of an amateur station in the 3.6 GHz band is subject to the limitations specified in new section 42A.

Item 14

Section 45 has been repealed to remove restrictions specific to the operation of an amateur station by a person who holds a qualification or licence listed in Table C (v) of the Tables of Equivalent Qualifications and Licences. This will allow the qualified person to operate an amateur station in automatic mode or computer controlled mode and to operate a station that is directly connected to a public telecommunications network.

Item 15

This item updates section 47 to remove the limitation on the operation of an amateur station to the emission mode 16K0F3E. This change will allow a person who holds a qualification or licence listed in Table C (v) of the Tables of Equivalent Qualifications and Licences to use any emission mode when operating an amateur station, provided the transmission remains entirely within the frequency band mentioned in section 46.

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 Licence (Amateur Licence) Omnibus Amendment Instrument 2019 (No.1)

Overview of the instrument

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

- *Radiocommunications Licence Conditions (Amateur Licence) Determination 2015* (the **Amateur LCD**), which applies common licence conditions to be observed by licensees authorised to operate an amateur station under an apparatus licence;
- *Radiocommunications (Overseas Amateurs Visiting Australia) Class Licence 2015* (the **Overseas Class Licence**), which authorises visiting overseas qualified persons to operate amateur stations and applies common conditions to the operation of these stations.

The effects of the changes made by the Amendment Instrument are to:

- allow amateur licensees with foundation level qualifications to use digital transmission modes, any emission mode, non-commercially manufactured equipment, and internet-connected repeater systems;
- increase the permitted bandwidths for all licensees;
- specify that an amateur station must not be operated in the 3.6 GHz band within certain areas after certain dates, as a result of the re-allocation of the 3.6 GHz band for spectrum licensing;
- update the Overseas Class Licence conditions relating to the operation of amateur stations so that they are consistent with the amended Amateur LCD.

The changes to amateur licence conditions made by the Amendment Instrument are consistent with Australia's obligations under the ITU Radio Regulations. The changes will provide the following benefits, consistent with the ACMA's Principles for Spectrum Management:

- removing unnecessary restrictions on amateur licensees and ensuring continued access to spectrum using the least cost and least restrictive approach;
- simplifying the amateur licensing regime and allowing all licensees greater flexibility in using frequency bands, emission modes and equipment;
- maintaining existing conditions of the Amateur LCD and the Overseas Class Licence relating to interference management so as to adequately balance the risk of interference, while allowing amateur licensees to better utilise allocated frequency bands.

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 engages the right to freedom of

expression. Amateur radio licensing allows individuals to exercise the right to freedom of expression through the operation of amateur radio stations. The current amendment enhances the ability of amateur licensees to exercise this right by reducing restrictive licence conditions, while at the same time balancing the need to regulate access to spectrum for these purposes to ensure that other spectrum users' rights are respected.

Conclusion

The instrument is compatible with human rights because it promotes the right to freedom of expression by enhancing the ability of amateur licensees to exercise their right to freedom of expression through reduction of restrictive licence conditions.