

# **Proposed changes to class licences**

Updating references to standards to include references to equipment rules, and harmonising electromagnetic energy requirements

MARCH 2021

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# Executive summary

In December 2020, the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020* (the Modernisation Act) received Royal Assent. One of the reforms introduced by the Modernisation Act is the replacement of Part 4.1 of the *Radiocommunications Act 1992* with a new technical regulation framework that will enable the ACMA to determine technical regulation requirements through equipment rules.

On commencement of the Modernisation Act reforms, the power to make standards will be replaced with the power to make equipment rules.

The Modernisation Act contains transitional arrangements that will retain existing standards as equipment rules.

We are proposing to make changes to several class licences to update references to standards made under the Act to include references to equipment rules, before the new arrangements commence.

We are also taking the opportunity during this process to consult on our proposal to harmonise the way our electromagnetic energy (EME) regulatory framework applies EME radiation limits to class-licensed radiocommunications transmitters.

This paper set out our proposals for public consideration. We are seeking stakeholder views on:

- > a new licence condition in 11 class licences (listed in Appendix A) to require compliance with any applicable standard or any applicable equipment rule, depending on the compliance day of the device in question
- > a new licence condition in 11 class licences (listed in Appendix B) to require compliance with the general public exposure limits for EME as specified by the Australian Radiation and Nuclear Protection Safety Agency (ARPANSA) in the [Radiation Protection Standard for Limiting Exposure to Radiofrequency Fields – 100 kHz to 300 GHz \(2021\)](#) or any instrument that replaces that standard.

# Issues for comment

This consultation does not ask specific questions. We welcome comment from interested stakeholders on the issues raised in this consultation or any other issues relevant to the way the ACMA's technical and EME regulation frameworks apply to class-licensed radiocommunications devices.

# Introduction

The ACMA is responsible for regulating radiocommunications, broadcasting, some internet content and telecommunications in Australia. The ACMA manages the radiofrequency spectrum under the *Australian Communications and Media Authority Act 2005* (the ACMA Act) in accordance with the *Radiocommunications Act 1992* (the Act) and the *Broadcasting Services Act 1992*.

In December 2020, the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020* (the Modernisation Act) received Royal Assent. The amendments to be made to the Act will take effect when the relevant provisions of the Modernisation Act commence, which will either be a date fixed by proclamation, or the day after the end of the 6-month period beginning on the date the Modernisation Act received Royal Assent.

As part of the Modernisation Act's targeted reforms, the technical regulation framework in the Act is being replaced with a new framework. This new framework, premised on equipment rules, will expand the ACMA's regulatory options, granting us more flexibility to maintain safeguards while reducing the compliance burden on manufacturers and suppliers. To implement these reforms, a range of class licences must be amended to ensure that the radiocommunications equipment authorised by these licences comply with all equipment rules, and with the limits on EME exposure set by ARPANSA.

This paper sets out our proposal to amend several class licences to ensure that licence conditions that require devices to comply with the Act's technical regulation framework continue to be enforceable under the Modernisation Act. This paper also sets out our proposal to harmonise the EME arrangements in several class licences to ensure that these important general licensing instruments are consistently drawn.

# Background

## Licensing

Under current sections 46 and 47 of the Act, it is unlawful to possess or operate a radiocommunications device in Australia unless it is authorised by a licence.<sup>1</sup> The Act provides for, and the amendments made by the Modernisation Act maintain, 3 licensing categories: spectrum licences, apparatus licences and class licences.

Apparatus licences generally authorise the operation of a specific transmitter at a specific location or area at a specific frequency. Devices operated under an apparatus licence are required to comply with conditions specified in an associated licence conditions determination (LCD) and the [Radiocommunications Licence Conditions \(Apparatus Licence\) Determination 2015](#) (the Apparatus LCD).

Class licences are general authorisations for any person (or a specified kind of people) to operate radiocommunications devices on shared frequencies. The frequencies for class licences can be subject to geographic limitations in the licence itself but are often available on an Australia-wide basis. Class licences are broad, general authorisations and users do not need to apply, renew or pay any fees to operate the licensed equipment. This makes class licences useful for authorising the use of spectrum by 'unaware' users (end-users who are unaware of their use of spectrum) and ubiquitous devices and technologies (for example, wi-fi).

Class licences impose a diverse range of licence conditions intended to ensure that devices are used appropriately. These conditions can include power limits, rules governing when, where and for what purpose a device may be used, and a requirement that devices comply with any relevant technical standards (including standards dealing with EME) set by the ACMA.

## Technical regulations for radiocommunications equipment

Part 4.1 of the Act currently establishes a technical regulation framework that applies to devices that use, or are affected by, radio emissions. The framework is designed to contain interference between devices, promote electromagnetic compatibility between devices, establish standards and secure compliance with those standards, control the sale and supply of non-standard devices, and protect the health and safety of those who use, or are exposed to emissions made by devices. This is achieved primarily by the ACMA making standards and setting requirements for device testing, labelling and record-keeping.

## Standards under the current Act

Under the current Act, and the instruments made under it, a reference to a 'standard' is a reference to a standard made by the ACMA under section 162 of the Act. The ACMA has made 16 legislative standards under section 162. Broadly, these standards impose performance and emission requirements on the devices that they apply to. The requirement for devices to be operated in compliance with standards is applied through offences in the Act (such as current section 157) and conditions specified in the relevant class licence or an apparatus licence conditions determination (LCD). Licence conditions may reference a specific standard by name, or they may include a broad condition that the user must comply with 'any applicable standard' made under section 162 of the Act.

In cases where a class licence or apparatus LCD requires compliance with 'any applicable standard', this means that if the technical and operational characteristics of a

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<sup>1</sup> There are some exemptions from what would otherwise be unlawful operation of radiocommunications devices. For example, section 27 of the Act provides a mechanism for exemptions for defence, law enforcement and emergency personnel.



licensed device fall within the scope of a particular standard, that device must comply with the requirements set by that standard.

### **Compliance with standards under class licensing**

Class-licensed devices that do not comply with all applicable standards may be in breach of section 157<sup>2</sup> and section 46<sup>3</sup> of the Act. The current Act limits the ACMA to remedying these kinds of breaches by pursuing them as criminal offences (although a penalty notice may be issued and paid, in lieu of such action).

### **Compliance with standards under apparatus licensing**

Apparatus-licensed devices that do not comply with all applicable standards may be in breach of section 157 and section 46 of the Act. An apparatus licensee who operates a 'non-standard transmitter' may also be in breach of section 113<sup>4</sup> of the Act.

A breach of a condition included in an LCD allows the ACMA to suspend or cancel the relevant apparatus licence, but otherwise, the only enforcement actions available under the current Act are criminal proceedings (although a penalty notice may be issued and paid, in lieu of such action).

### **EME regulation framework**

The ACMA has developed an EME regulatory framework that regulates EME exposure levels for radiocommunications transmitters authorised under our licensing arrangements. The objective of our EME management framework is to ensure that exposure to EME from radiocommunications devices does not exceed the limits specified by ARPANSA in the [Radiation Protection Standard for Limiting Exposure to Radiofrequency Fields – 100 kHz to 300 GHz \(2021\)](#)<sup>5</sup> (ARPANSA standard).

The ARPANSA standard is made by ARPANSA, Australia's principal authority on radiation protection and nuclear safety. The ARPANSA standard is not a legally enforceable standard under section 162 of the Act. Instead, the ARPANSA standard is designed as a resource for Commonwealth, state and territory authorities that are responsible for regulating communications and other applications of EME. As such, the EME restrictions set by the ARPANSA standard are only enforceable where Australian lawmaking authorities have incorporated the ARPANSA standard into legislation, legislative instruments or other enforceable obligations. Where the ACMA has adopted the ARPANSA standard, its provisions are enforced according to the applicable regulations and conditions of the relevant licence or legislative instrument.

The current class licensing system takes 2 different approaches to restricting EME radiation within public exposure limits. Some class licences impose a condition that directly adopts the limits set by the ARPANSA standard. Others require devices to comply with any applicable standard made by the ACMA under section 162 of the Act. To this end, the ACMA has made the [Radiocommunications \(Electromagnetic Radiation – Human Exposure\) Standard 2014](#) (the ACMA standard) to regulate EME exposure levels

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<sup>2</sup> Under section 157, a person must not cause an emission to be made by a non-standard transmitter.

<sup>3</sup> Under section 46, a person must not operate a radiocommunications device otherwise than as authorised by a licence.

<sup>4</sup> Under section 113, an apparatus licensee commits an offence if their conduct contravenes a licence condition.

<sup>5</sup> ARPANSA recently published this standard to update and replace the previous Radiation Protection Standard for Maximum Exposure Levels to Radiofrequency Fields – 3 kHz to 300 GHz. The limits for public exposure to EME did not change in the updated standard.

for mobile stations<sup>6</sup> with integral antennas.<sup>7</sup> The ACMA standard adopts the EME radiation limits recommended by ARPANSA, measured using specified measurement methods.

While there are 2 different approaches – class licences that directly reference the ARPANSA standard and class licences that reference the ACMA standard – they essentially differ in drafting mechanics only, and both are designed to apply the same EME restrictions consistent with the general public exposure limits specified by ARPANSA.

## **Modernisation Act reforms – Equipment rules**

The Modernisation Act will replace Part 4.1 of the Act with a new technical regulation framework premised on equipment rules. Under the Modernisation Act reforms, the definition of and power to make standards will be removed and replaced with the power to make equipment rules.

The Modernisation Act grants the ACMA an expanded set of regulatory options for regulating modern equipment supply arrangements, including graduated responses to non-compliance and the capacity to target those within supply chains responsible for different aspects of compliance.

Equipment rules made by the ACMA under these powers will be legislative instruments that can set, incorporate, or reference standards for devices, and impose obligations or prohibitions for the operation, supply, offers of supply, possession, or importation of equipment.

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<sup>6</sup> Section 5 of the ACMA standard defines a mobile station as a radiocommunications transmitter that is established for use in motion, whether on land, on water or in the air, or a in a stationary position at unspecified points whether on land, on water or in the air.

<sup>7</sup> Section 5 of the ACMA standard defines an integral antenna as an antenna that is permanently attached to the equipment, or intended for direct attachment to a fixed connector on equipment, with the use of an external cable.

# Amendments to update references to standards to include references to equipment rules

## Transitioning standards to equipment rules

The Modernisation Act contains transitional arrangements intended to save existing standards made under section 162 as equipment rules, as if they were made under the new section 156 of the Modernisation Act.

Although the current standards are saved as equipment rules, their names are not changing under the Modernisation Act, meaning any specific reference to a standard in a class licence will continue to refer to the correct legislative instrument.

## Class licences with generic references to standards

There are 11 class licences (Appendix A) with conditions requiring devices authorised under the licence to comply with 'any applicable standard' made under section 162 of the Act.

When the Modernisation Act removes the current standards-based technical regulation framework, these licence conditions have no force as they reference a type of instrument (a standard made under section 162 of the Act) that will no longer exist. In other words, because these licence conditions do not incorporate any standards by name, the transitional arrangements will not preserve their enforceability under the Act as amended.

As a result, the 11 class licences need amending before the Modernisation Act commences, so we can enforce compliance by pursuing a non-standard device user for breach of a licence condition.

The 11 class licences identified at Appendix A authorise a wide variety of transmitters that are used for different purposes and are therefore subject to different technical and operational standards.

We propose to amend these class licences so we can take relevant enforcement action against users who do not restrict the radiation from their devices within the limits set by ARPANSA for general public exposure to EME.

## Amending class licences to require compliance with applicable equipment rules

We are proposing to amend each of the 11 class licences at Appendix A by replacing the current 'applicable standards' conditions with new licence conditions that require devices to either comply with any 'applicable standards' or 'equipment rules' depending on the 'device compliance day' of the device in question.

This approach will provide continuity of arrangements for a device that was manufactured, imported, or materially altered before the commencement of a currently-in-force standard<sup>8</sup>, so that compliance is required with the relevant standard in place on the day it was manufactured, imported or altered (its 'device compliance day') – even if that standard has subsequently been repealed or replaced. A device with a device

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<sup>8</sup> The latest version of a standard registered on the Federal Register of Legislation.

compliance day on or after the commencement of a currently-in-force standard will continue to be required to comply with that standard.

Any future equipment rule made under Part 4.1 of the Act as amended will automatically apply to, and be enforceable for, any device authorised by a class licence that meets the technical and operational specifications of that rule, if the device compliance day for the device occurs after the equipment rule is made. This approach should minimise the administrative impost associated with making new equipment rules.

There are a range of apparatus LCDs with licence conditions requiring licensees to ensure that the devices they operate comply with 'any applicable standard'. However, paragraph 107(1)(a) of the Act imposes a licence condition on every apparatus licence that requires the licensee to comply with the Act. On commencement of the Modernisation Act, this would include compliance with any new prohibitions and obligations included in equipment rules. We do not consider it necessary to amend these LCDs given paragraph 107(1)(a) of the Act.

## **Compliance and enforcement under the modernised technical regulations**

Once the relevant provisions of the Modernisation Act commences, users who breach a class licence condition by operating a device that does not comply with an applicable standard or equipment rule will be subject to the modernised compliance and enforcement regime.

This modernised regime has a more flexible suite of compliance tools and powers to respond to breaches of the technical regulations. The capacity to seek civil penalties, issue infringement notices, accept enforceable undertakings, and issue forfeiture notices, will allow us to exercise a graduated, proportionate enforcement approach to address non-compliance. This will protect the rights of spectrum users, while reducing the need for more coercive enforcement powers to be used in situations where this is not a proportionate response. Criminal penalties and sanctions will remain available for use, commensurate to the seriousness of the potential breach.

# Amendments to harmonise EME regulations in class licences

## Differences across class licences

EME continues to be a significant issue to the community. There is value in aligning and clarifying the EME arrangements in our class licences, so they reflect the contemporary EME regulatory framework, which is premised on the limits set by ARPANSA for general public exposure to EME.

We are taking the opportunity during this consultation to address differences in approach in 8 class licences and, to bring 3 class licences into line with the rest of the radiocommunications regulatory framework for EME (identified at Appendix B).

## Amendments to require compliance with the ARPANSA standard

We are proposing to amend the 11 relevant class licences so that every device authorised is required to comply with recognised, best-practice limits for general public exposure to EME as specified in the ARPANSA standard. The amendments will also ensure that these class licences fully reflect the EME arrangements for comparable devices authorised under the apparatus licensing regime.

The relevant class licences authorise a diverse range of transmitters for a wide variety of purposes. However, for 9 of the 11 class licences, if the devices authorised were authorised by an apparatus licence, they would be required to comply with less onerous measuring and reporting requirements than other transmitters which have a higher risk profile.

The remaining 2 class licences, the [Radiocommunications \(Communication with Space Object\) Class Licence 2015](#) and the [Radiocommunications \(Overseas Amateurs Visiting Australia\) Class Licence 2015](#), authorise the operation of radiocommunications stations, which can also be authorised under comparable apparatus licences. For these class licences, the proposed amendments are designed to ensure that the EME requirements for class-licensed users are harmonised with the requirements for users operating under the corresponding apparatus licence (the [earth apparatus licence](#) and the [amateur apparatus licence](#)).

## Regulatory impact of the proposed amendments

There will be a regulatory impact due to a new licence condition in each of the 11 class licences that explicitly requires device users to observe the EME public exposure limits specified by ARPANSA. However, we do not anticipate that our proposal will impose any additional compliance costs on equipment users, suppliers, or manufacturers.

The proposed amendments are designed to expressly specify limits that are understood as best practice and are consistent across industry and the ARPANSA standard's requirements.

We do not expect that users, importers and manufacturers will be required to purchase any additional equipment or incur any additional record keeping or reporting costs because of the proposed amendments.

# Proposed changes to class licences

We are proposing to make the Radiocommunications (Class Licence) Amendment Instrument 2021 (No.1), which will vary the class licences listed in appendixes A and B.

The instrument (which can be downloaded on the webpage for this consultation) proposes changes to include references to equipment rules and harmonise EME requirements. These are:

- > a new licence condition in 11 class licences (listed in Appendix A) to require compliance with any applicable standard or equipment rule depending on the device compliance day of the device in question
- > a new licence condition in 11 class licences (listed in Appendix B) to require compliance with the public exposure limits for EME as specified in the ARPANSA standard or in any instrument that replaces that standard. Eight of these class licences overlap with those listed in Appendix A.

In total, there are 14 class licences we are proposing to amend under the draft instrument:

- > 8 class licences that require both the equipment rule and the ARPANSA standard change
- > 3 class licences that only require an equipment rule change
- > 3 class licences that only require a change to reference the ARPANSA standard.

# Invitation to comment

## **Making a submission**

We invite comments on the issues set out in this consultation paper.

- > [Online submissions](#) can be made by uploading a document. Submissions in PDF, Microsoft Word or Rich Text Format are preferred.
- > Submissions can be emailed to [SLPSConsultations@acma.gov.au](mailto:SLPSConsultations@acma.gov.au)
- > Submissions by post can be sent to:  
The Manager  
Spectrum Licensing Policy  
Australian Communications and Media Authority  
Law Courts  
Melbourne VIC 8010

The closing date for submissions is **COB, Friday, 9 April 2021**.

Consultation enquiries can be emailed to [spectrumlicensingpolicy@acma.gov.au](mailto:spectrumlicensingpolicy@acma.gov.au).

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Information on the *Privacy Act 1988*, how to access or correct personal information, how to make a privacy complaint and how we will deal with any complaints, is available in our [privacy policy](#).

# Appendix A

## **Class licences to be amended to refer to equipment rules**

1. [Radiocommunications \(Communication with Space Object\) Class Licence 2015](#)
2. [Radiocommunications \(Maritime Ship Station – 27 MHz and VHF\) Class Licence 2015](#)
3. [Radiocommunications \(Emergency Locating Devices\) Class Licence 2016](#)
4. [Radiocommunications \(27 MHz Handphone Stations\) Class Licence 2015](#)
5. [Radiocommunications \(Cellular Mobile Telecommunications Devices\) Class Licence 2014](#)
6. [Radiocommunications \(Citizen Band Radio Stations\) Class Licence 2015](#)
7. [Radiocommunications \(Cordless Communications Devices\) Class Licence 2014](#)
8. [Radiocommunications \(Radio-controlled Models\) Class Licence 2015](#)
9. [Radiocommunications \(Low Interference Potential Device\) Class Licence 2015](#)
10. [Radiocommunications \(Radionavigation Satellite Service\) Class Licence 2015](#)
11. [Radiocommunications \(Intelligent Transport Systems\) Class Licence 2017](#)



# Appendix B

## **Class licences without a condition requiring compliance with the ARPANSA standard or any applicable standard**

1. [Radiocommunications \(Aircraft and Aeronautical Mobile Stations\) Class Licence 2016](#)
2. [Radiocommunications \(Overseas Amateurs Visiting Australia\) Class Licence 2015](#)
3. [Radiocommunications \(Public Safety and Emergency Response\) Class Licence 2013](#)

## **Class licences with a condition requiring compliance with any applicable standard**

1. [Radiocommunications \(Communication with Space Object\) Class Licence 2015](#)
2. [Radiocommunications \(Maritime Ship Station – 27 MHz and VHF\) Class Licence 2015](#)
3. [Radiocommunications \(Emergency Locating Devices\) Class Licence 2016](#)
4. [Radiocommunications \(27 MHz Handphone Stations\) Class Licence 2015](#)
5. [Radiocommunications \(Cellular Mobile Telecommunications Devices\) Class Licence 2014](#)
6. [Radiocommunications \(Citizen Band Radio Stations\) Class Licence 2015](#)
7. [Radiocommunications \(Cordless Communications Devices\) Class Licence 2014](#)
8. [Radiocommunications \(Radio-controlled Models\) Class Licence 2015](#)