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| Automatic sunsetting of  legislative instruments—  Proposal to amend and reissue:   * Radiocommunications Licence Conditions (Amateur Licence) determination * Radicommunications (Overseas Amateurs Visiting Australia) Class Licence |
| Consultation paper |
| March 2015 |

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# Background

This paper outlines actions that the Australian Communications and Media Authority (the ACMA) will take to reissue instruments in combination with amendments to provide protection to future PMTS Class B licences in the 3.5 GHz band. For reasons of efficiency, the ACMA aims to streamline these two processes into one public consultation and reissue process.

Under Part 6 of the *Legislative Instruments Act 2003*, most legislative instruments ‘sunset’ (that is, they are automatically repealed) on the 1 April or 1 October that first occurs 10 years after they are registered on the Federal Register of Legislative Instruments. This is an automatic process applying to most legislative instruments regardless of their particular content.

The following legislative instruments made by the ACMA are due to sunset on 1 October 2015 and 1 April 2018:

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| **Name of instrument** | **Sunset date** |
| [Radiocommunications Licence Conditions (Amateur Licence) Determination No. 1 of 1997](http://www.comlaw.gov.au/Details/F2013C00061) | 1 October 2015 |
| [Radiocommunications (Overseas Amateurs Visiting Australia) Class Licence 2008](http://www.comlaw.gov.au/Details/F2015C00160) | 1 April 2018 |

In terms of the sunsetting process, the ACMA has formed the preliminary view that these instruments should continue to operate largely in their present form as they play a necessary role in the radiocommunications regulatory framework.

In parallel with the sunsetting process, the instruments also require amendment to protect future PMTS class B apparatus licences from interference in the 3.5 GHz band. This would result in these future PMTS Class B licences being allocated with the same interference protection afforded to current apparatus licences of that class.

The ACMA proposes to reissue the instruments and retitle them as follows:

* Radiocommunications Licence Conditions (Amateur Licence) Determination 2015
* Radiocommunications (Overseas Amateurs Visiting Australia) Class Licence 2015.

# Brief details of what the legislative instruments do

Apparatus licences are issued by the ACMA under the *Radiocommunications Act 1992* and are subject to licence conditions set out in the Act. Under paragraph 107(1)(f) of the Act, the ACMA may determine, by written instrument, additional licence conditions relating to particular apparatus licence types. Under section 132 of the Act, the ACMA may, by notice published in the Commonwealth of Australia Gazette, issue class licences.

The Radiocommunications Licence Conditions (Amateur Licence) Determination No. 1 of 1997 (the Amateur LCD) is made under paragraph 107(1)(f) of the Act. The Amateur LCD is made to authorise common conditions to be observed by apparatus licensees operating an amateur service in Australia. These conditions are aimed at reducing the potential for interference caused by and to equipment used by amateur operators.

The Radiocommunications (Overseas Amateurs Visiting Australia) Class Licence 2008(the Class Licence)is made under section 132(1) of the Act. The Class Licence is made to authorise common conditions to be observed by overseas visiting amateurs to Australia. These conditions are aimed at reducing the potential for interference caused by and to equipment used by overseas visiting amateur operators.

# Proposed changes to the legislative instruments

With the exception of the amendments concerning the 3.5 GHz band, the ACMA proposes to reissue the instruments largely in their current form so that their ongoing effect is preserved. The ACMA proposes to make the following minor amendments to the Amateur LCD:

* update a reference to the previous Australian Radiofrequency Spectrum Plan 2009 to reflect the revised plan made in 2013
* remove a section that revoked several old determinations and is no longer required
* update a number of sections to reflect the closure of the analog television channel 0 and protect against interference for future services. These sections previously required that amateurs not interfere with channel 0. The future use of that spectrum is as yet undecided by the ACMA
* clarify power levels in the 472–479 kHz frequency range.

The ACMA proposes to make the following similar minor amendments to the Class Licence:

* update a number of sections to reflect the closure of the analog television channel 0 and protect against interference for future services. These sections previously required that amateurs not interfere with channel 0. The future use of that spectrum is as yet undecided by the ACMA
* clarify power levels in the 472–479 kHz frequency range.

In parallel, but as a separate issue from the sunsetting process, the Australian Communications and Media Authority (3.5 GHz frequency band) Direction 2014 (the 3.5 GHz Direction) requires the ACMA to have completed all steps necessary to enable apparatus licences of a type that would be appropriate for use by the NBN in the relevant spectrum to be issued by 30 April 2015.

The ACMA has decided that PMTS Class B licences are the appropriate licence type to be used. In order to optimally manage the risk of interference from amateur services to future PMTS Class B licences in the band, it is proposed that advanced amateur licensees be precluded from using the frequency ranges 3400–3425 MHz and   
3492.5–3542.5 MHz. This will ensure that future PMTS Class B apparatus licences in the relevant spectrum will operate on the same interference protection basis as current users of the licence type in other spectrum.

The ACMA’s decision to make PMTS Class B licences available in this band is consistent with the Australian Government’s core communication policy objectives for the NBN, which include ensuring that all Australians have access to very fast broadband as soon as possible, at affordable prices and at least cost to taxpayers.

Given their national and economic importance, the types of networks deployed using PMTS Class B licences require a high degree of protection from interference. The proposal will mitigate the risk of interference to any future rollout of PMTS Class B services in the relevant frequency ranges.

In making this proposal, the ACMA has been conscious that amateur services are specified to be ‘secondary services’ in the relevant frequency ranges in the Australian Radiofrequency Spectrum Plan 2013. A secondary service must not cause harmful interference to a primary service using the frequency range. However, the types of networks deployed using PMTS Class B licences require a higher degree of protection from interference than afforded by the secondary service arrangements, given their national and economic importance. The proposal will minimise the risk of interference to any PMTS Class B services operating in the band, which reflects the commercial and social dependence on such services. In particular, it will minimise any safety of life issues arising from interference affecting access to 000 emergency service.

Other than the amendments mentioned above, it is proposed that the instruments are largely the same as the Radiocommunications Licence Conditions (Amateur Licence) Determination No. 1 of 1997 and the Radiocommunications (Overseas Amateurs Visiting Australia) Class Licence 2008.

The proposed drafts of the Radiocommunications Licence Conditions (Amateur Licence) Determination 2015 and the Radiocommunications (Overseas Amateurs Visiting Australia) Class Licence 2015 are on the [ACMA website](http://www.acma.gov.au/theACMA/Consultations/Consultations/Current/remaking-amateur-lcd-and-overseas-visiting-amateurs-class-licence).

# Issue for comment

The ACMA considers that the instruments continue to form a necessary part of the legislative framework. Accordingly, the ACMA proposes to reissue the new instruments before the sunset dates referred to above so that the majority of the provisions preserve their ongoing effect.

The new amendments will remove advanced amateur licensee access to the relevant frequency ranges in the 3.5 GHz band.

**The ACMA welcomes comments from affected stakeholders on its proposal to reissue the sunsetting instruments with the proposed amendments.**

The ACMA will carefully consider any submissions received on issues raised in this paper before revoking and reissuing the instruments. The ACMA will not provide a formal response to submissions but will provide links to submissions on its [website](http://www.acma.gov.au/).

# Making a submission

Submissions should be directed:

By email: [SpectrumLicensingPolicySection@acma.gov.au](mailto:SpectrumLicensingPolicySection@acma.gov.au)

By mail: Manager

Spectrum Licensing Policy Section

The Australian Communications and Media Authority

PO BOX 13112

Melbourne VIC 8010

**The closing date for submissions is COB, Friday 24 April 2015.**

Each submission should specify:

* the name of the individual or organisation making the submission
* their contact details (such as a telephone number, postal address or email address).

A submitter may claim confidentiality over their name or contact details (see Publication of submissions below) or may make a submission anonymously or through use of a pseudonym (see Privacy below).

Effective consultation

The ACMA is committed to ensuring the effectiveness of its stakeholder consultation processes, which are an important source of evidence for its regulatory development activities. To assist stakeholders in formulating submissions to its formal, written consultation processes, it has developed the following guide: [*Effective consultation: A guide to making a submission*](http://www.acma.gov.au/theACMA/About/Corporate/Responsibilities/acma-evidenceinformed-regulation-and-effective-consultation). This guide provides information about the ACMA’s formal, written, public consultation processes and practical guidance on how to make a submission.

Publication of submissions

In general, the ACMA publishes all submissions it receives, including any personal information in the submissions (such as names and contact details of submitters). The ACMA prefers to receive submissions which are not claimed to be confidential. However, the ACMA accepts that a submitter may sometimes wish to provide information in confidence. In these circumstances, submitters are asked to identify the material (including any personal information) over which confidentiality is claimed and provide a written explanation for the claim. The ACMA will consider each confidentiality claim on a case-by-case basis. If the ACMA accepts a claim, it will not publish the confidential information unless authorised or required by law to do so.

Release of submissions where authorised or required by law

Any submissions provided to the ACMA may be released under the *Freedom of Information Act 1982* (unless an exemption applies) or shared with other Australian Government agencies and certain other parties under Part 7A of the *Australian Communications and Media Authority Act 2005*. The ACMA may also be required to release submissions for other reasons including for the purpose of parliamentary processes or where otherwise required by law (for example, under a court subpoena). While the ACMA seeks to consult submitters of confidential information before that information is provided to another party, the ACMA cannot guarantee that confidential information will not be released through these or other legal means.

***Privacy***

The [*Privacy Act 1988*](http://www.comlaw.gov.au/Series/C2004A03712) imposes obligations on the ACMA in relation to the collection, security, quality, access, use and disclosure of personal information. These obligations are detailed in the [*Australian Privacy Principles*](http://www.oaic.gov.au/privacy/privacy-resources/privacy-fact-sheets/other/privacy-fact-sheet-17-australian-privacy-principles) that apply to organisations and Australian Government agencies from 12 March 2014.

The ACMA may only collect personal information if it is reasonably necessary for, or directly related to, one or more of its functions or activities.

The purposes for which personal information is being collected (such as the names and contact details of submitters) are to:

* contribute to the transparency of the consultation process by clarifying, where appropriate, whose views are represented by a submission
* enable the ACMA to contact submitters where follow-up is required or to notify them of related matters (except where submitters indicate they do not wish to be notified of such matters).

The ACMA will not use the personal information collected for any other purpose, unless the submitter has provided their consent or the ACMA is otherwise permitted to do so under the Privacy Act.

Submissions in response to this paper are voluntary. As mentioned above, the ACMA generally publishes all submissions it receives, including any personal information in the submissions. If a submitter has made a confidentiality claim over personal information which the ACMA has accepted, the submission will be published without that information. The ACMA will not release the personal information unless authorised or required by law to do so.

If a submitter wishes to make a submission anonymously or through use a pseudonym, they are asked to contact the ACMA to see whether it is practicable to do so in light of the subject matter of the consultation. If it is practicable, the ACMA will notify the submitter of any procedures that need to be followed and whether there are any other consequences of making a submission in that way.

Further information on the Privacy Act and the ACMA’s privacy policy is available at [www.acma.gov.au/privacypolicy](http://www.acma.gov.au/privacypolicy). The privacy policy contains details about how an individual may access personal information about them that is held by the ACMA, and seek the correction of such information. It also explains how an individual may complain about a breach of the Privacy Act and how the ACMA will deal with such a complaint.