Proposal to remake the Public Telecommunication Services Licence Condition Determination and Cellular Mobile Telecommunication Devices Class Licence

Automatic sunsetting of legislative instruments: Outcomes paper

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# Introduction

We released the [*Proposal to remake the Public Telecommunication Services Licence Condition Determination and the Cellular Mobile Telecommunication Devices Class Licence* consultation paper](https://www.acma.gov.au/consultations/2023-10/proposal-remake-public-telecommunication-services-licence-condition-determination-and-cellular-mobile-telecommunication-devices-class-licence) on 25 October 2023. The consultation sought industry feedback on our proposed draft legislative instruments that are due to sunset on   
1 April 2024 and 1 April 2025 respectively.

The proposed legislative instruments to be made were:

Radiocommunications Licence Conditions (PTS Licence) Determination 2024 (PTS LCD).

Radiocommunications (Cellular Mobile Telecommunications Devices) ClassLicence 2024 (CMTD CL).

The changes proposed in the legislative instruments to be made also required amendments to other related instruments and documents. These were:

1. Radiocommunications (Register of Radiocommunications Licences) Determination 2017 (RRL determination) through making the Radiocommunications (Register of Radiocommunications Licences) Amendment Determination 2024 (No. 1) (RRL amendment determination).
2. Radiocommunications assignment and licensing instructions (RALI) MS33: Frequency coordination and licensing procedures for apparatus licensed PTS in the 2 GHz bands.
3. RALI MS34: Frequency coordination and licensing procedures for apparatus licensed PTS in the 1800 MHz bands.

Two submissions were received in response to the consultation from the following organisations:

* Australian Mobile Telecommunications Association (AMTA)
* Optus.

These submissions are available on the [ACMA website](https://www.acma.gov.au/consultations/2023-10/proposal-remake-public-telecommunication-services-licence-condition-determination-and-cellular-mobile-telecommunication-devices-class-licence). A summary of submissions received and our response to the issues raised are outlined below. A summary of the [outcomes of the consultation](#_3_Outcomes_of) are listed in the final section of this paper.

# Summary and response to issues

Both submissions were generally supportive of the proposed draft legislative instruments. They suggested some editorial changes and corrections, but also proposed some more substantive amendments to consider.

This section summarises the main issues raised in the submissions. Our views on these are also provided. We have not included discussion on the simple editorial changes and corrections identified. However, these have generally been incorporated into the remade instruments.

## Issues for comment

**Question 1**

The ACMA seeks comment on the draft Radiocommunications Licence Conditions (PTS Licence) Determination 2024. This includes whether arrangements for Public Mobile Telecommunications Service (PMTS) Class C licences are still required.

Both submissions supported the retention of conditions related to PMTS Class C licences in some form – whether this is in the PTS LCD or otherwise. One submission noted that should the ACMA remove the PMTS Class C part from the PTS LCD, it should ensure there are no unintended consequences.

One submission sought clarification on how the ACMA will enforce proposed conditions that prohibit the operation of low power base stations and repeaters in spectrum spaces subject to spectrum licensing or a re-allocation declaration (after the re-allocation period has ended) given they are not required to be recorded on the licence.

Another submission made the following comments:

* Further clarity is required regarding the removal of the recordkeeping requirements. While it is clear that low power base stations are not required to be recorded on the licence, it is not clear whether we also intended for this to apply to other types of transmitters such as repeaters. The submission further queried whether the ‘no interference, no protection’ condition placed on repeater stations in both the Radiocommunications Licence Conditions (PTS Licence) Determination 2013 (2013 PTS LCD) and the draft PTS LCD consulted on are an indication that the ACMA’s policy is to not require repeaters to be recorded on the licence.
* A simplification of the definition of a ‘base station’ could help clarify that it does not encompass repeaters.
* The definition of PMTS Class B in the Radiocommunications (Interpretation) Determination 2015(interpretation determination)*,* which has been reproduced in a note associated with the definition of PTS licence (PMTS B), may unintentionally prohibit the operation of a single base station under a PTS licence (PMTS B).
* Clarification was sought on the definition of PTS licence (PMTS B). The submission queried if the text ‘whether or not the land station could be operated for the purposes of PMTS Class C’ meant that we intended to allow PMTS Class B base stations to communicate with aircraft.
* Clarification was sought on the definition of PTS licence (PMTS C). The submission considered that use of the term ‘land station’ in subsection (a) was not appropriate. This was because the interpretation determination defines a land station as being at a fixed point on land, which does not align with the use of stations on aircraft. The submission also sought clarification of the intent of subsection (b), which states ‘does not authorise the operation of a land station for the purposes of PMTS Class B’.
* Regarding conditions for PTS licence (PMTS C), the geographic area that the licence pertains to should be included on the licence. Such information is recorded on the existing PTS licence (PMTS C) on the Register of Radiocommunications Licences (RRL). To address this, the submission proposed modification of   
  section 15 of the PTS LCD to remove the exception to paragraph 10(4)(h) of the RRL Determination.
* The wording of section 18, which requires that the operation of a transmitter ‘does not cause harmful interference to communications’, differs from the wording of similar conditions elsewhere in the PTS LCD. Clarification was sought on whether the different language used should be interpreted and applied differently.

#### ACMA response

After considering submissions, the ACMA has decided to retain the PMTS Class C provisions as proposed in the draft PTS LCD. This will provide flexibility to issue new PMTS Class C licences in the future, if the need arises.

We have reviewed whether repeater stations need to be recorded on the RRL. Based on comments made in submissions, we have decided to retain the same registration requirement as set out in the 2013 PTS LCD. This means that indoor repeaters with a radiated true mean power not exceeding 24 dBm EIRP per occupied bandwidth are exempt from registration, while all other repeaters will be required to have their details recorded on the RRL. The PTS LCD has been amended accordingly. This includes changing the term ‘low power base station’ to ‘registration exempt station’ and expanding the definition of that term so it also applies to low power indoor repeaters.

The requirement to register repeaters, that do not meet the definition of a registration exempt station, is expected to assist in the management of interference by allowing licensees to identify the operator of outdoor and/or high-powered repeaters. Furthermore, the requirement to register repeaters means sections 12, 13, 16 and 17 of the PTS LCD (regarding the operation of transmitters not recorded on the RRL in   
re-allocated spectrum and spectrum subject to spectrum licensing) will no longer apply. We have amended these sections accordingly. We note that section 105 (Restrictions on issuing apparatus licences) and 153P (Restrictions on issuing apparatus licences for parts of the spectrum subject to re-allocation) of the *Radiocommunications Act* 1992 (the Act) will continue to apply. These sections restrict the circumstances under which we can issue licences for repeaters and base stations, within re-allocated spectrum and spectrum subject to spectrum licensing.

With regard to the enforcement of the proposed conditions that prohibit the operation of registration exempt stations in spectrum spaces subject to spectrum licensing or a re-allocation declaration (after the re-allocation period), the procedures in place to manage this include:

* Within the spectrum space (the 3-dimensional space consisting of a frequency band and geographic area) subject to a re-allocation declaration:
* We notify PTS licensees with devices recorded in the RRL inside the  
   re-allocated spectrum space that their licence will be cancelled after the   
  re-allocation period ends.
* We notify geographically proximate PTS licensees whose service area has a reasonable chance of extending into a re-allocated spectrum space that they will not be able to operate services within the re-allocated spectrum space after the re-allocation period ends.
* We provide guidance in relevant RALIs, used by Accredited Persons for the coordination of new stations and licences, on restrictions on issuing new licences and operating services within re-allocated spectrum spaces after the re-allocation period has ended.
* Within the spectrum space of a spectrum licence:
* We provide guidance in relevant RALIs about the restrictions on issuing new licences and operating services within the spectrum space of an existing spectrum licence.

In addition to the above measures, in the event there is an interference issue or complaint related to unauthorised operation of a radiocommunications device, we may investigate and act as required.

As indicated in one submission, the definition of PMTS Class B has been taken directly from the interpretation determination. We note the concern raised that the current definition may unintentionally prohibit the operation of a single base station under a PTS licence (PMTS B). As this definition is in a legislative instrument which was not consulted on, we do not intend to change it as part of this process. However, we have taken note of the issue and will consider it as part of the sunsetting process for interpretation determination, which is planned for the third quarter of 2024.

Regarding the clarification sought on the definitions of PTS licence (PMTS B) and PTS licence (PMTS C):

* We do not intend for communications to occur between PMTS Class B and   
  PMTS Class C stations. If there is interest from industry in supporting such use, this would need to be considered under a separate process.
* Operation of PMTS Class C stations is supported on aircraft. The operation of transmitters is only intended on an airborne aircraft, though operation on land can occur for testing and maintenance purposes (as specified in section 18 of the   
  PTS LCD).

Based on the above points, we have amended the definitions of PTS licence   
(PMTS B) and PTS licence (PMTS C) to simplify them and remove any ambiguity. We have also reviewed use of the term ‘land station’ (i.e., a station at a fixed point on land) in the definition of PTS licence (PMTS C). As a PMTS Class C station is intended to be located onboard aircraft, it needs to operate while the aircraft is in motion. This means the term ‘land station’ is not appropriate. To fix this issue, we have replaced the term ‘land station’ with ‘station’ in the PTS LCD.

We agree that a PTS licence (PMTS C) needs to include a geographic area as this defines where PMTS Class C stations are authorised to operate. As such, the exception to paragraph 10(4)(h) of the RRL Determination (i.e., the geographical area operation of a device is authorised) in section 15 of the PTS LCD has been removed. This means that existing and new PTS licences will be required to define the area PMTS Class C stations are authorised to operate in, and that will be recorded in   
the RRL.

We have reviewed the wording of sections 9, 10 and 18 of the PTS LCD, which contain text related to the operation of a transmitter such that it does not cause harmful interference to other licensed services. While the relevant text in the draft PTS LCD differed in each section, the intention is they all have the same effect. To avoid confusion, we have adopted common text for all 3 sections.

**Question 2**

The ACMA seeks comment on the draft Radiocommunications (Register of Radiocommunications Licences) Amendment Determination 2024 (No. 1). We   
also seek comment on the proposed changes to the special conditions C0, C1, C3   
and C17.

Both submissions were supportive of the changes proposed to the RRL amendment determination. Neither submission proposed any amendments to the RRL amendment determination.

Both submissions were also generally supportive of the proposed changes to special conditions C0, C3 and C17.

One submission made the following comments:

* An amendment to special condition C0 is proposed to eliminate overlap between the definition of lower power base station in the PTS LCD. The submission proposed removing subsections (i) to (iv) and including the text: ‘Furthermore, the low power base station must be located within 15 kilometres of another base station (other than a low power base station) operated under this licence’.
* Special condition C0 is only listed in RALI MS33 but not in RALI MS34. The submission recommended that special condition C0 be included in both   
  RALI MS33 and MS34.
* A discrepancy in the third dot point of section 5.2 of RALI MS34 regarding the conditions related to low power base stations was also identified. It is inconsistent with the definition of a low power base station in the PTS LCD.
* It was suggested that special condition C3 in RALI MS 34 refers to a base station that is not necessarily low power. This means use of the term ‘low power base station’ could cause confusion. It was recommended a different term be used.

Both submissions identified that the revised text for special condition C17 changed the radiated maximum power limit from 10 microwatts to 10 milliwatts per occupied bandwidth. They queried if the new limit was a drafting error.

Both submissions supported the inclusion of the ‘no interference, no protection’ conditions to low power base stations and repeaters in the draft PTS LCD. They agreed this made special condition C1 redundant.

#### ACMA response

We have considered the proposed simplification of special condition C0. While much of the criteria for special condition C0 is the same as a registration exempt station (as defined in the PTS LCD), we consider it is necessary to include all pertinent criteria within the special condition itself. This helps to make it clear what criteria applies. As such, we have maintained the criteria for the updated special condition C0 as proposed in the consultation paper.

To address other comments concerning special conditions, we have made the following changes:

* For all special conditions, we have replaced the term ‘low power base station’ with ‘registration exempt station’. This will help to remove ambiguity from special conditions that enable devices such as cells on wheels or other higher-powered transmitters to operate without being recorded on the RRL.
* Special condition C0 is now included in both RALI MS33 and RALI MS34.
* The text in section 5.2 of RALI MS34 has been amended to reflect the definition of a registration exempt station in the PTS LCD.
* The unit for the radiated maximum power limit in special condition C17 has been corrected to be microwatts rather than milliwatts per occupied bandwidth to align with the current arrangements.

We also note that the introductory text of each special condition has been amended to ensure the special condition is enforceable. These amendments do not have any effect on the criteria within the special condition.

**Question 3**

The ACMA seeks comment on the draft Radiocommunications (Cellular Mobile Telecommunications Devices) Class Licence 2024.

Submissions were supportive of the changes proposed to the CTMD CL. No material issues were raised.

# Outcomes of consultation

After considering submissions, we have remade the identified legislative instruments as proposed in the consultation paper, with the amendments summarised in this section. We also made some editorial amendments and corrections that were identified in submissions – those are not individually detailed here.

A summary of the main changes made to the instruments consulted on follows:

* Radiocommunications Licence Conditions (PTS Licence) Determination 2024:

The term ‘low power base station’ has been changed to ‘registration exempt station’. The definition of this term has been amended to encompasses repeaters that are indoor and operated with a radiated true mean power not greater than 24 dBm EIRP per occupied bandwidth.

The definition of a ‘repeater station’ has been amended so it no longer includes the text ‘that is not specified in the licence’.

The definition of PTS licence (PMTS B) has been simplified to mean a ‘PTS licence that authorises the operation of a land station for the purposes of PMTS Class B’.

The definition of PTS licence (PMTS C) has been simplified to mean a ‘PTS licence that authorises the operation of a station for the purposes of PMTS Class C’.

Sections 8 and 15 (registration of devices) have been amended so repeater stations are also required to be recorded on the RRL.

Sections 12, 13, 16 and 17 (regarding the operation of transmitters not recorded on the licence in re-allocated spectrum and spectrum subject to spectrum licensing) have been amended to remove mention of repeater stations.

The text ‘(other than paragraph (4)(h))’ has been removed from   
paragraph 15 (a).

* Radiocommunications (Cellular Mobile Telecommunications Devices) Class Licence 2024:

No amendments to what was consulted on.

* Radiocommunications (Register of Radiocommunications Licences) Amendment Determination 2024 (No. 1):

No amendments to what was consulted on.

A summary of the main changes made to the relevant special conditions and RALIs follows:

* Special conditions:

the term ‘low power base station’ has been changed to ‘registration exempt station’ for all special conditions.

The introductory text of each special condition has been amended to ensure that they are enforceable.

Special condition C17: has been amended to ‘radiated maximum power less than or equal to 10 microWatts/occupied bandwidth’.

To assist with updating of conditions on existing PTS licences, the identifiers for the reworded special conditions C0, C3 and C17 have been changed to C21, C22 and C23 respectively.

* RALI MS33 and RALI MS34:

Relevant sections have been updated to reflect the new and updated text and numbering of the special conditions.

Special condition C0 (now C21) has been included in RALI MS34.

Special condition C1 has been removed as it is no longer required due its incorporation into the PTS LCD.

References to legislative instruments and associated hyperlinks have been updated.

## Next steps

To implement the required changes to special conditions, we will vary all existing PTS licensees that special conditions C0, C3 and C17 apply to via section 111 of the Act. We will also inform existing PTS licensees that were subject to C1, that this condition has been removed as it has been incorporated into the PTS LCD. We will write to all affected licensees to notify them of this change.