Compliance priorities 2023–24

Low Power Open Narrowcasting (LPON) audit

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[Executive summary 1](#_Toc178602470)

[Summary of our findings 2](#_Toc178602471)

[Background 6](#_Toc178602472)

[Limitations 7](#_Toc178602473)

[Methodology 9](#_Toc178602474)

[Audit sample 9](#_Toc178602475)

[Desktop audit 10](#_Toc178602476)

[Field audit 10](#_Toc178602477)

[Outcomes 12](#_Toc178602478)

[Desktop audit findings 12](#_Toc178602479)

[Field audit findings 12](#_Toc178602480)

[Systemic issues 14](#_Toc178602481)

[Audit trends 16](#_Toc178602482)

[Industry education strategy 17](#_Toc178602483)

[Next steps 17](#_Toc178602484)

Executive summary

Low power open narrowcasting (LPON) is used for niche radio broadcasting services.

LPON allows services to be delivered to specific locations or at certain times, or to be targeted to audiences representing special interest groups, such as tourist information, ethnic or religious programming. The Australian Communication and Media Authority (ACMA) issues LPON licences and regulates them to ensure compliance with licence conditions.

This report describes the outcomes of a program that audited levels of compliance by LPON licensees with conditions applying to transmitter licences under the scheme in the *Radiocommunications Act 1992.[[1]](#footnote-2)* In summary, the level of compliance among audited licensees was very poor.

For background, in June 2023, we announced LPON licence compliance as one of our [Compliance priorities for 2023–24](https://www.acma.gov.au/compliance-priorities), following smaller audit programs in 2022 and 2023 which identified consistently high levels of non-compliance amongst LPON licensees.

For the 2023–24 compliance priority program, we expanded our audit activity by increasing the sample size to 150 LPON licensees (compared with 60 in 2022–23) and the geographic coverage to gather further information on licensees’ compliance with licence conditions and market practices which may be driving compliance levels.

This latest audit aimed to:

* test licensee understanding of regulatory requirements
* assess licensee compliance with licence conditions
* educate industry to minimise public detriment
* explore potential concerns about LPON licensees’ practices
* analyse trends in LPON compliance.

Components of our LPON audit program

The reason for the focus on LPON licence compliance as a compliance priority is that Australia’s spectrum management framework relies on the careful planning and coordination of radiocommunications services. The effective management of spectrum is important for a range of public interest reasons, including public safety, defence, national security, and for local communities, who rely on the use of the spectrum.

Significant non-compliance such as that identified with LPON licensees in ACMA audits creates risks to the efficient and effective use of spectrum, including the risk of causing interference to other radiocommunications services.

Drawing upon the learnings from all the audit work and particularly the most recent audit in 2023–24, we are taking immediate steps to address these issues of persistent non-compliance with the LPON sector, as described in this report.

## Summary of our findings

### Audit findings

As noted, and consistent with previous audit findings, we found significant non-compliance with licence conditions by LPON licensees. We also found evidence of systemic non-compliance issues which are undermining the licensing framework and planning models.

Of the audited licences, 83% were found to be non-compliant with at least one licence condition. In ‘metro’ areas (that is, within 50 km of a state capital city), no audited licensees were compliant with all their licence conditions, with only 17% of audited licensees in regional areas being fully compliant.

That said, the overall non-compliance level of 83% was 11% lower than the previous audit findings, potentially indicating that the previous audits may have had a small impact on compliance levels, at least in regional areas.

Figure 2: Percentage of LPON licence condition non-compliance by type 2023–24[[2]](#footnote-3)

Figure 2 displays the different types of non-compliance found during the audit. Findings also indicated multiple instances of clustering and licence hoarding.

The most frequent non-compliance identified was breaches of the ‘use it or lose it’ (UIOLI) condition, often associated with practices such as clustering and networking.[[3]](#footnote-4) This was most commonly found in licensees with substantial numbers of LPON licences.

Given the high proportion of non-compliance identified in the audit sample, it is difficult to identify common threads of compliance. However, across the data set, it appears that the licensees with less than 10 licences were more likely to be compliant. LPON licenses in regional locations[[4]](#footnote-5) also had a higher compliance rate.

In almost all instances, field audits revealed non-compliance in the form of evidence indicating a breach of the UIOLI condition, or an overpowered transmitter. The average measured field strength for transmitters was found to be significantly more than the permitted level of 48 decibels microvolt per metre squared (dBµV/m2).[[5]](#footnote-6)

The ACMA is concerned that only 30% of licences measured during field audits were operating at a compliant field strength, with a number of licensees operating at 20 times the permitted level. This represents a high risk of interference to other LPON stations and in some instances other spectrum.

In response to these findings, throughout the audits, where possible and as issues were identified, we worked with LPON licensees to encourage voluntary compliance and informal resolution of minor concerns and potential non-compliance – including through direct communications and publishing guidance material.

We will also be working with the majority of licensees from the recent audit to remedy instances of more subtstantial non-compliance identified during the audit.

Consistent with our policy of graduated enforcement, in the first instance we will expect the licensees to co-operate and take active steps to come into compliance.

However, where the seriousness of the breaches warrants, or where licensees are unwilling to comply with legislative obligations, we will use our formal powers as appropriate (including investigative and administrative powers, and powers to enforce civil and criminal penalties in court) to ensure the integrity of the licensing system and manage the risk of harms. An example of recent enforcement action is illustrated below.

### Court proceedings against Phaze FM

Following an investigation in July 2023, the ACMA initiated court proceedings against Phaze FM for breaching its low power open narrowcasting licence by operating radiocommunications transmitters from an unlicensed address in Ballarat, Victoria. A person operating an LPON service must do so only as authorised by their licence, which includes only transmitting from the location listed in their licence.

On 7 May 2024, the Federal Court published its judgement that Phaze contravened the *Radiocommunications Act 1992*. The Court found that Phaze was in possession of, and operated, unlicensed radiocommunications transmitters. As a result, Phaze was required to forfeit 3 radiocommunications transmitters and was issued an injunction preventing it from carrying out further contraventions. It was also issued a fine of $8,000.

Following the recent audits, we have a number of investigations underway in relation to instances of licensees engaging in activities which breach the UIOLI conditions and their licence conditions.

### Identified trends – business practices and licence condition compliance

Through our audit activity and compliance work we have observed that there are certain business practices employed by LPON licensees which are more likely to give rise to non-compliance with the licensing framework.

We have identified 3 key practices which we believe contribute to LPON licence compliance issues – in particular the practices known as ‘clustering’, ‘hoarding’ and ‘networking’. Short definitions follow (described in more detail later in this report):

* **Clustering** – refers to the practice of a licensee accumulating a number of contiguous licences in a geographic area, utilising a single station in that cluster, and operating it in excess of the licence power limitation.
* **Hoarding** – refers to the practice of a licensee holding a licence and not commencing a service at the licensed site within 6 months of the licence being allocated, or not providing a service with reasonable regularity.
* **Networking** – refers to playing the same content across a number of LPON licences. It is not in itself a contravention of LPON conditions, however, we have observed that there is a strong correlation between networked LPON licences and practices that do contravene the regulatory framework.

The LPON regulatory framework has provisions to address hoarding set out in the Broadcasting LCD and LPON Direction commonly referred to as the ‘use-it-or lose-it conditions’ (UIOLI). Clustering appears to have emerged as an issue in more recent times as networking has become more common amongst licensees.

While technological changes and shifts in the way content is accessed and consumed are driving broadcast market changes, it is important that the integrity of the licensing framework is maintained for the benefit of all spectrum users.

Throughout the coming year, we will continue to focus on ensuring licensees’ compliance with LPON licence conditions through a combination of education and enforcement, as appropriate.

Through educational materials, we will be encouraging licensees to focus on record-keeping, and to understand the UIOLI conditions. We will also be publicising the risks of non-compliance created by practices of clustering, hoarding and networking.

However, we will also escalate to enforcement if LPON licensees are unwilling to take steps to meet their regulatory obligations.

# Background

The ACMA regulates radio broadcasting in Australia, through its licensing and planning processes and compliance activities.

LPON licences are subject to regulatory provisions in the following legislation:

* [*Broadcasting Services Act 1992*](https://www.legislation.gov.au/C2004A04401/latest/text) (BSA)
* [[*Radiocommunications Act 1992* (Radiocommunications Act)](https://www.legislation.gov.au/C2004A04465/latest/text)](https://www.legislation.gov.au/C2004A04465/latest/text)
* Australian Communications Authority (LPON Transmitter Licences) Direction No. 2 of 2000 (LPON Direction)
* [Radiocommunications Licence Conditions (Broadcasting Licence) Determination 2015](https://www.legislation.gov.au/F2015L01489/latest/text) (Broadcasting LCD).

LPON licences permit licensees to provide niche radio broadcasting services.[[6]](#footnote-7) LPON services are considered secondary to the provision of long-term community, national, commercial, or high power open narrowcasting services available in [licence area plans](https://www.acma.gov.au/licence-area-plans-laps) (LAPs).

There are approximately 2400 issued LPON licences held by 271 licensees.

LPON licences are allocated in accordance with the [LPON Planning Model](https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.acma.gov.au%2Fsites%2Fdefault%2Ffiles%2F2019-10%2FPlanning%2520Model%2520for%2520Low%2520Power%2520Open%2520Narrowcasting%2520LPON%2520Services_1.docx&wdOrigin=BROWSELINK), which provides limitations on the radio frequency of LPON services, the proximity to other FM broadcasting services and the separation requirements from other LPON services.

A primary object of the [Radiocommunications](https://www.legislation.gov.au/Details/C2017C00201) Act is to maximise the overall public benefit derived from using the radiofrequency spectrum by ensuring the efficient allocation and use of the spectrum. Systemic non-compliance issues with LPON licensees undermine this objective and impede effective licence planning and allocation arrangements.

We have managed a consistent stream of complaints and compliance activities in relation to LPON licences in recent years. Most complaints are from parties aggrieved by clustering, interference and UIOLI breaches, normally linked to suspected hoarding.

The ACMA has conducted LPON licence audits for 3 consecutive years.

In 2021–22, we conducted a pilot audit program in Victoria to assist in understanding compliance culture and whether there was a need for further audits and intervention. In 2022–23, we conducted a larger LPON licence compliance audit program. The audit was scoped to include metro Melbourne and Sydney based licences. The audit sought to build on the findings of the pilot audit, increase regulatory awareness in the market and educate licensees. Both audits cemented our concerns about the levels of licensee compliance. In communicating audit outcomes and undertaking compliance actions, we observed a culture of non-compliance and a limited understanding of the regulatory framework and relevant obligations.

In 2023–24, the LPON compliance priority program sought to expand the scope of previous audits by increasing the sample size significantly and focusing on known compliance issues, such as clustering and hoarding. Similar to previous years, in 2023–24, the audit program comprised 2 phases:

### Desktop audit

The audit sample was 150 licences held by 73 licensees. Each licensee was asked to demonstrate compliance with record keeping requirements in the Broadcasting LCD, with a focus on the UIOLI requirements.[[7]](#footnote-8)

### Field audit

90 of the 150 licences were audited for compliance with conditions relating to their field strength and coverage,[[8]](#footnote-9) and whether they had established a service.

Where non-compliance has been identified, we are adopting a graduated and strategic risk-based approach in accordance with our [compliance and enforcement policy](https://www.acma.gov.au/compliance-and-enforcement-policy). We will take regulatory action commensurate with the seriousness of the breach and the level of harm. We will generally use the minimum power or intervention necessary to achieve the desired result, which in many instances involves the licensee coming into compliance voluntarily.

We also engaged with industry and licensees holding large numbers of licences to educate and increase licence condition awareness and positive compliance culture.

## Limitations

There are limitations in comparing the audit programs as a result of the slightly different audit methodology (different conditions audited in 2021–22) and the evolution and growth in methodology which resulted from learnings carried forward throughout the audit programs.

A 3 dBµV/m2 error factor was included in assessing the measured signal strength for the field audit measurements, in favour of the licensee. It is noted that this provides a significant leniency to a licensee. This should be kept in mind when considering the field audit findings below. This is significant because decibels are a logarithmic scale. In linear terms, a decrease of 3dBuV/m2 is equivalent to a reduction of 70% of the measured electric field strength. For example, 51 dBµV/m2 = 354 µV/m2, whereas 48 dBµV/m2 = 251 µV/m2.

Desktop audits conducted where the licence was not subject to a field work component rely entirely on the veracity of information provided by a licensee. We have concerns about the accuracy of these results. Our concern stems from finding contradicting information in several audits where a licence was both desktop audited and field audited. For example, a licensee response to a desktop audit states that a transmitter is active, and the subsequent field audit indicates no evidence of an LPON station at the licensed location.

It is also important to note that not all licences were both field and desktop audited in 2023–24. When both field and desktop audits are undertaken, it tends to increase the prospects of finding non-compliance as a field audit will test additional regulatory requirements not considered by a desktop audit.

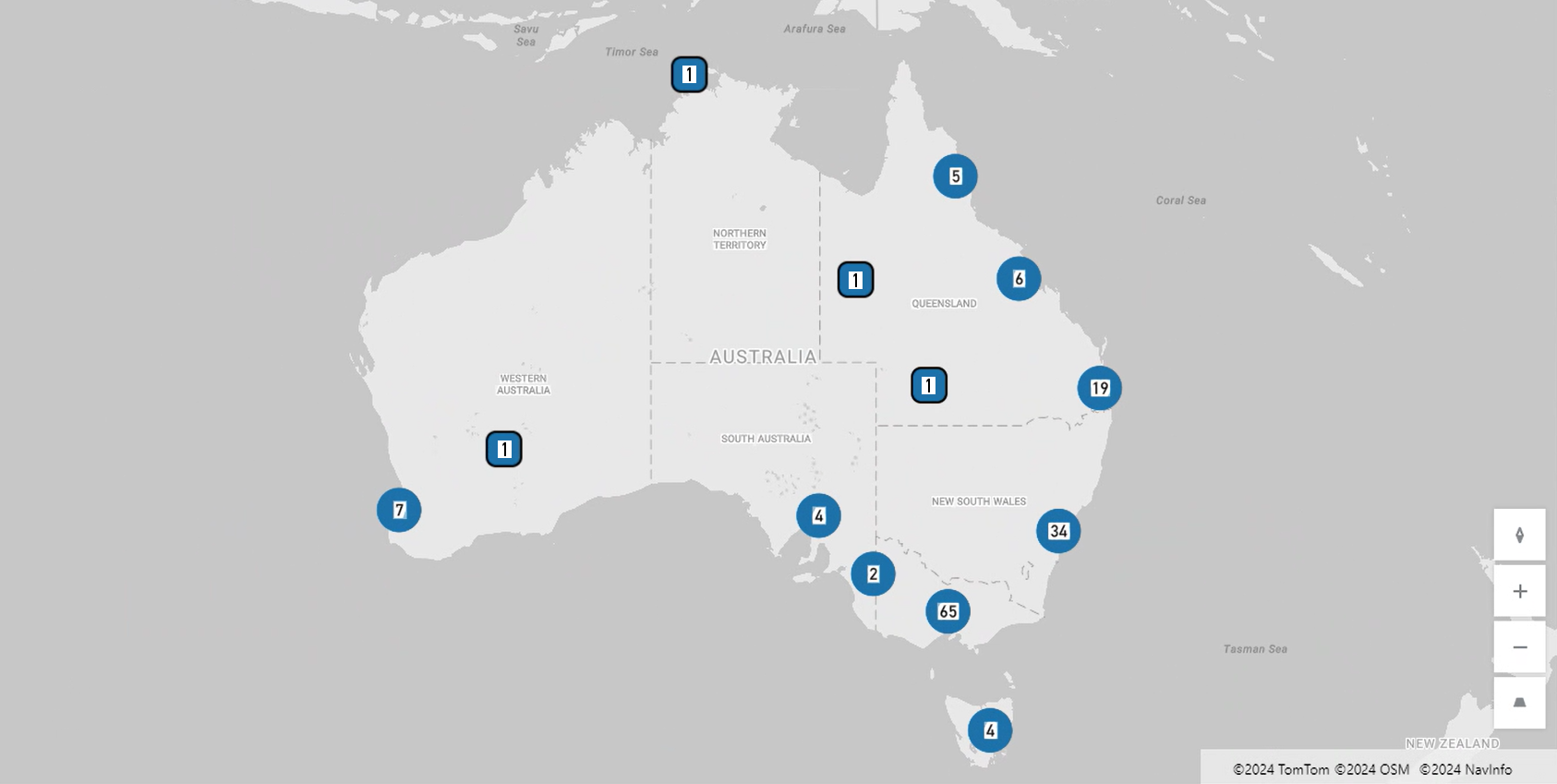
# Methodology

## Audit sample

We selected the sample of licences from the ACMA [Register of Radiocommunications Licences](https://web.acma.gov.au/rrl/register_search.main_page) (RRL), a public database containing current information of all Radiocommunications licences issued by the ACMA. We reviewed the constitution of LPON licence allocations, looking at geographic patterns, licensee licence holdings and other features (such as suspected clustering[[9]](#footnote-10)). We took a partially randomised sample stratified by state.

Our sample was 150 licences spread between all states and territories. Of the 150 licences selected, 90 were included for the field audit component. Licensees were not advised of their inclusion in the field audit component ahead of the audit activity.

Sites included in the audit



## Desktop audit

### Request for records

We emailed all licensees in the audit, asking them to demonstrate, for each licence, that:

* they had maintained a logbook for a recent 2-month period containing the hours/events of operation
* they had evidence that they were keeping broadcast recordings
* they had information about the nature of the service the licensee was providing.

Requests for removal from the audit were considered during this stage where special or compelling circumstances were demonstrated. Compelling circumstances included, for example, where the licence was a recent acquisition, or had been the subject of recent compliance or audit action, which had caused the licence to come into compliance.

### Assessment of records

All responses were audited separately, by 2 different ACMA staff members. Each audit was conducted fresh and based only upon the specific material provided in response to the letter.

**Narrowing of field audit sample**

After considering the information provided through the desktop audit, the field audit sample was reduced to exclude the licences where staff formed the reasonable view that the station was not active. These licences were flagged for follow-up compliance action.

## Field audit

**Drive-by assessment**

Using a handheld spectrum analyser and a small portable VHF antenna, such as a telescopic whip, ACMA staff conducted a drive-by assessment at the licensed LPON location to ascertain whether a service was active in the correct location and at the licenced frequency.

Photographs and contemporaneous observations were made of the antenna type and the station technical parameters.

If the drive-by assessment indicated that the station was inactive, further enquiries were made at the licensed site to inform the possibility of service regularity or UIOLI condition breaches.

### Field strength assessment

If the drive-by assessment indicated that the station was active, ACMA staff undertook a field strength assessment in accordance with Section 4.9 or 4.10 of the Broadcasting LCD, that is, the received signal strength must not exceed 48 dbµV/m2.

This assessment required a series of calibrated field strength measurements and calculations to determine what the field strength was at, or just beyond, the boundary (2 or 10 km radius) around the station’s antenna.

A Rhode and Schwartz ETL spectrum analyser and a 10m pump-up pneumatic mast were used to conduct the measurements. A Hills 3 element fold-up VHF Yagi antenna or a Matchmaster FM-03 fold-up VHF Yagi antenna was connected to the analyser. Each antenna had its own unique antenna factor which formed part of the corrected field strength calculations.

Two or 3 measurements at each measurement location were made, spaced approximately 20–50 meters apart, for a total of 6 to 9 measurements. ACMA staff, subject to environmental factors, made best endeavours to equally space measurement sites around the boundary. Each measurement was entered into the LPON audit tracker app and an averaged field strength was calculated for the licence by averaging all measurements made by applying the following formula:

**CFS (dBµV/m2) = MFS+AF+SL-MU**

Where:CFS = Calculated Field Strength  
MFS (dBµV/m2) = Measured Field Strength  
AF (in dB) = Antenna factor  
SL (in dB) = System loss  
MU (in dB) = Measurement uncertainty[[10]](#footnote-11)

Field measurement result example

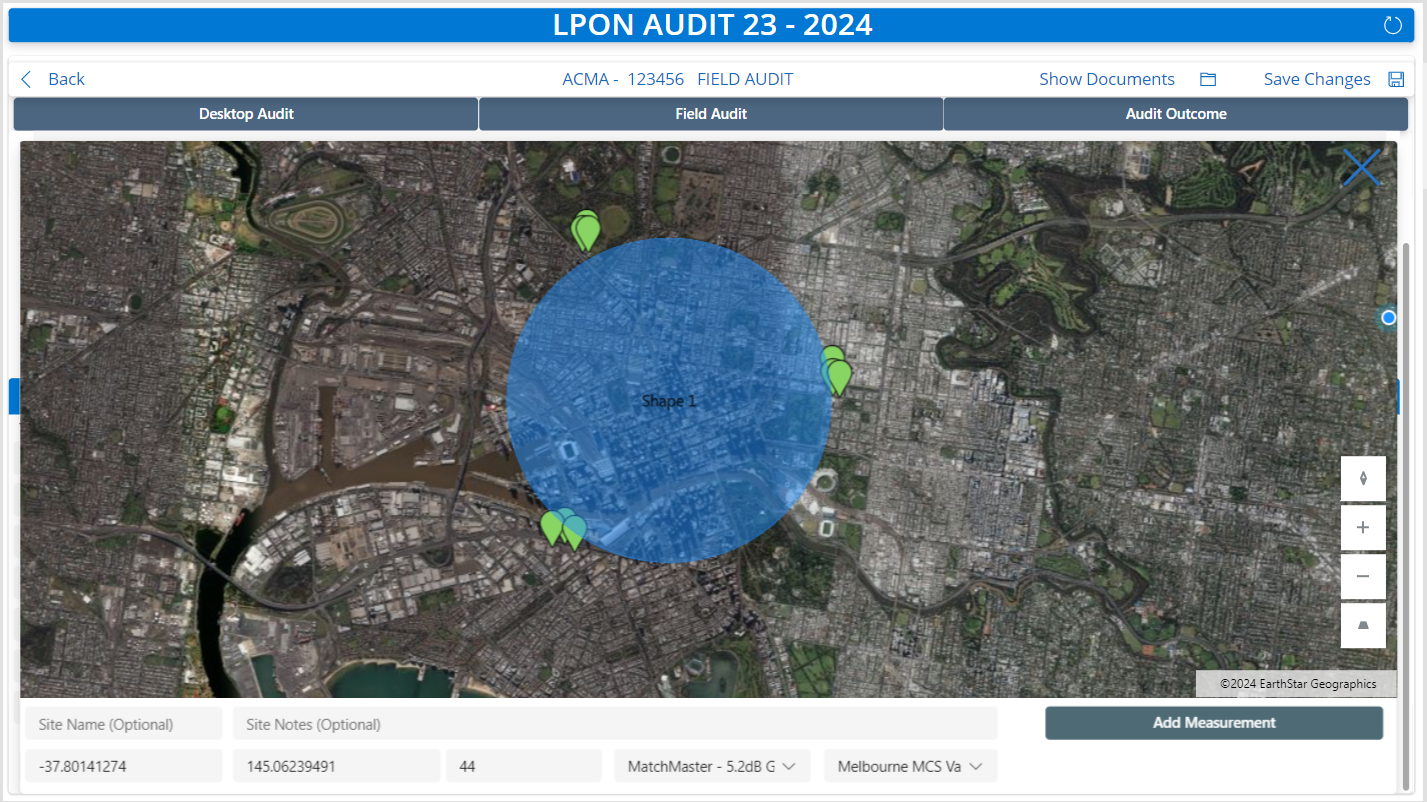


Figure 3 shows the typical measurement pattern for an LPON licence audit being entered into the audit application.

# Outcomes

## Desktop audit findings

At the outset of the audit, the initial sample (150), was reduced due to removal of licences due to transfer, surrender and other factors occurring between the sampling date and the commencement of audit. All licensees in the reduced sample (142) were audited for compliance with the desktop audit obligations.

Findings of the desktop audit indicated significant non-compliance with the requirements to keep records (49%). This was comprised of inadequate record keeping (30%) and no records, or a failure to respond to the request for information (19%).

A significant number of licensees were found to be in breach of the UIOLI provisions (21%). There were also a small number of breaches in relation to service regularity and unlicensed transmitters.

### Record keeping obligations

The record keeping obligations include the requirements to keep a logbook containing all of the following:

* the hours/events of operation
* commencement of the service
* provision of the service.

Administrative Appeals Tribunal decisions[[11]](#footnote-12) have provided further guidance on the requirements and importance of keeping records.

We observed that most records found to be inadequate were due to:

* a single logbook being maintained for multiple licences, typically associated with a network of LPON transmitters
* insufficient details included in the logbook to determine when and what service was provided
* licensees being unaware of their licence conditions or conflating the record keeping requirements with provisions under the BSA, and not keeping or prematurely disposing of records.

We also observed that licensees tended to provide inadequate records where they had leased, or authorised, a licence to be operated by a third party.

## Field audit findings

Of the 142 licences that were desk audited, we initially intended to include 60% in the field audit. However, where licensees had indicated in response to the desktop audit that a licence was not active, they were not field audited.

We therefore field audited 58 licences, which resulted in 46 findings of non-compliance.

The non-compliance found by field audits constituted:

* breaches of the UIOLI conditions (38%)
* overpowered transmitters (between 3dB and 10dB) (19%)
* significantly overpowered transmitters (over 10dB) (19%)
* service regularity breaches (6%)
* unlicensed transmitters (incorrect transmitter location) (6%).

The remaining licensees (11%) were found to be compliant in the field audit.

In 19 instances where licensees had provided information in the desk audit that the station was active, the field audit yielded no evidence that an LPON station had been established.

Where field measurements were undertaken, the mean power was 52.01 dbµV/m2 (after removal of 3dB measurement uncertainty factor in favour of licensee).

Standard distribution of measured power levels

Figure 4 shows the standard distribution of measured power levels. The vertical purple line represents the permitted field strength of 48dBµV/m2 . The curved teal line shows the standard distribution of measured power levels as a percentage of the regulatory requirement. The mean power is 52.01dBµV/m2 and the highest measured field strength is 75.9dBµV/m2.

Only 30% of licences were measured at a compliant field strength. We have serious concerns that a number of licensees have a measured field strength of 20 times the permitted level. This represents a high risk of interference to other LPON stations and in some instances other spectrum users.

ACMA staff also noted a trend of licensees moving transmitters or locating transmitters near a licensed site. Some licensees appear unaware that an LPON station must operate from the licensed address, or they are operating unlicensed and may be in contravention of section 46 of the Radiocommunications Act.[[12]](#footnote-13)

## Systemic issues

As introduced in the Executive Summary, in the course of the audits we have identified a number of business practices which we believe contribute to LPON licence compliance issues in a significant way. In particular:

* **Clustering** – refers to the practice of a licensee accumulating a number of contiguous licences in a geographic area, utilising a single station in that cluster, and operating it in excess of the licence power limitation. Practices such as clustering breach a number of licence conditions. Overpowered transmitters also risk causing interference to other licensed services.
* **Hoarding** – refers to the practice of a licensee holding a licence and not commencing a service at the licensed site within 6 months of the licence being allocated, or not providing a service with reasonable regularity, thereby preventing other potential users offering a service in that area. This practice can be associated with clustering and networking, but we have also observed it as a standalone practice.
* **Networking** – refers to playing the same content across a number of LPON licences. The content is simulcast to each LPON station with an internet or other backhaul connection from a central location, such as a studio. It is not in itself a contravention of LPON conditions; however, we have observed that there is a strong correlation between networked LPON licences and practices such as clustering and hoarding which do contravene the regulatory framework.

### Clustering

We believe clustering is a significant issue because it means the public benefit of spectrum use and allocation cannot be maximised. The [LPON planning Model](https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.acma.gov.au%2Fsites%2Fdefault%2Ffiles%2F2019-10%2FPlanning%2520Model%2520for%2520Low%2520Power%2520Open%2520Narrowcasting%2520LPON%2520Services_1.docx&wdOrigin=BROWSELINK) did not envisage the use of clustered, networked broadcasting stations. The planning model anticipated co-channelled LPONs to have a minimum distance separation of 10 kilometres and for LPON stations to have reasonable stereophonic sound quality up to 2 km from a station’s antenna.

We observed clustering where a licensee increases the transmitter output power beyond the 1-watt licence limitation, or where the licensee takes advantage of particular topographical features of a licensed location and transmits with 1 watt output power, without consideration to the separate field strength limitation of 48dBµV/m2 at any location more than 2 km from the station’s antenna.

From our observations, licensees appear to conflate the transmitter output power limitations and field strength limitation. Licensees should be aware that these are separate requirements, both of which are designed to provide LPON licensees with reasonable stereophonic sound quality within a 2 km radius from the station’s antenna.

ACMA staff also observed an increased likelihood of interference to co-channelled LPON services where evidence of clustering was found. In the audits, ACMA staff uncovered evidence indicating clustering in 3 separate instances. These instances remain under investigation. While the legislation has no specific anti-clustering provisions, clustering gives rise to potential contraventions of the UIOLI provisions, and the field strength provisions in the Broadcasting LCD.

### Licence hoarding

We also observed a related licence hoarding issue associated with clustering, where licensees acquire licences, and do not activate the LPON station, for the purposes of precluding other licensees from obtaining nearby co-channelled LPON stations, in effect protecting a coverage area from competition.

We found UIOLI hoarding related contraventions to be the most prominent type of non-compliance in the audit. We believe licence hoarding remains a serious threat to the efficient allocation of spectrum. Our response is to address it through the anti-hoarding provisions in the Broadcasting LCD.

We have noticed that only a very small number of operators make requests for an extension of time under section 4.11(2) of the Broadcasting LCD when they exceed the 6-month UIOLI period. A large number of licensees still cite COVID-19 and financially related reasons for their failure to comply with the UIOLI condition. Licensees should be aware that the Broadcasting LCD states that financial reasons are not a valid reason for delay when licensees request an extension of time.

We are aware that some licensees acquire significant numbers of licences simultaneously without the means to comply with the hoarding provisions around the time allowed to commence a service. It is the responsibility of licensees to undertake the necessary due diligence or resource planning to ensure they can comply with their licence conditions for each licence they acquire.

### Third party authorisations

ACMA staff also observed a trend of licensees who had third party authorised their licence to be operated by a third party under Section 114 of the Radiocommunications Act not maintaining records or believing they had contracted out of their requirement to keep records.

We would like to remind licensees that the regulatory obligations on licensees are not shifted to a third party by contract or authorisation.

### Networking

As previously discussed, the LPON planning framework did not contemplate networked LPON transmitters. Whilst networking is not of itself a contravention of the LPON transmitter licence conditions, we observed a trend for the networking of licences to be strongly associated with breaches of LPON licence conditions, particularly record keeping requirements, requirements to commence a service, and the requirement for transmitters to be located at the site indicated on the licence.

## Audit trends

### Compliance by region

We defined any licence within 50 km of a state capital city to be a ‘metro’ licence and all other licences to be ‘regional’ licences, for the purposes of this audit. We found that regional licences were more likely to be compliant. We find this to be particularly problematic given the increased risk of interference in metro areas.

We found 0% of metro licences audited to be compliant with all conditions.

We found 17% of regional licences audited to be compliant with all conditions.

### Compliance by licence holdings

Of the licensees which were found to be compliant in respect to all of their licences in the sample (8 licensees in total), 4 had a licence holding of less than 5 licences, 2 had a licence holding of less than 10 licences and 2 had a licence holding of less than 20 licences. No entities with more than 20 licences were compliant.

**Past years’ audit results**

In the 2021–22 LPON pilot audit program, due to COVID-19-related travel restrictions, ACMA staff undertook a simplified audit of LPON licences in Victoria only (34 licences). The audit methodology was streamlined and did not involve field strength measurements. Transmitter power was tested against section 4.8 of the Broadcasting LCD. The audit aimed to sample the compliance levels of LPON licences and to educate LPON licensees. The audit focused on educating licensees in relation to their legislative responsibilities and no escalated compliance actions were taken in response to findings of non-compliance as part of this audit. The non-compliance rate was 85%. Some utility is lost in comparing different years’ audit findings due to different methodologies and different conditions audited.

In the 2022–23 LPON audit program, ACMA staff undertook an expanded compliance audit of 60 LPON licences. The audit program was conducted in Victoria and New South Wales. Transmitter power was tested against section 4.9 or 4.10 of the Broadcasting LCD. The findings of this audit led to our undertaking investigations and escalated compliance activities. The non-compliance rate was 94%.

The makeup of the non-compliance found in each year is contrasted in the figure below.

Non-compliance composition by year

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | No records | Inadequate records | Location | Over-powered | Regularity | UIOLI |
| 2023 | 18% | 28% | 2% | 13% | 5% | 34% |
| 2022 | 6% | 32% | 3% | 17% | 0% | 43% |
| 2021 | 34% | 9% | 4% | 11% | 0% | 43% |

Each year’s audit findings are broadly similar and continue to indicate significant and systemic non-compliance. ACMA staff have engaged in specific and general education programs throughout the audit programs. The impact of these programs does not seem quantifiable, yet nor does engagement with industry seem to have had a measurable impact on compliance levels.

## Industry education strategy

We have reviewed the data and considered the information received during the audit. The findings have helped us develop a [guide to compliance with licence conditions](https://acmagovau.sharepoint.com/:w:/r/sites/MonitoringComplianceSection/Shared%20Documents/ACMA%20compliance%20priorities/2023-24/LPON%20audit/outcome%20report/LPON%20conditions%20guide.docx?d=wa1a48e5869fa450ba4eee0458d3a9cfc&csf=1&web=1&e=nWf4NV) to assist licensees in understanding what their obligations are and how to achieve compliance.

The guide focuses on identified areas of non-compliance, such as:

* the field strength power limitations
* the transmitter power limitations
* the location of the LPON station
* the content and format of a logbook
* commencement and regularity of service.

Our licence conditions guide will be provided to each licensee when we communicate the audit outcomes. We will also provide specific information to each licensee in the audit outcome letter in relation to any non-compliance we believe they may have engaged in. We do this to help licensees achieve compliance through educational means.

We also reached out to the licensees with larger licence holdings in one-on-one sessions to discuss general and specific compliance concerns. In addition, we engaged with the Australian Narrowcasting Radio Association (ANRA) so that it could disseminate information about licence condition compliance and common types of non-compliance.

## Next steps

We are continuing a number of commenced investigations into suspected LPON non-compliance arising from the 2022–23 audit program and will commence further compliance activity following the completion of the 2023–24 audit and publication of this report.

Over the coming year, we will continue to investigate the non-compliance identified in the course of the audit programs and where appropriate consider proportionate enforcement activity. We also believe it will take some time to see the impacts of our newly developed educational resources and the increased licensee awareness from this audit program on LPON licensee compliance levels. As a result, we do not plan to conduct a formal audit program next year. However, we will be conducting random re-audits and spot audits to inform our compliance activity and may plan for further future audit activities. Increasing LPON regulatory awareness and compliance levels will remain a focus.

The ACMA will continue to engage with industry and licensees to bolster awareness of the regulatory requirements for LPON licences and the reasoning for those requirements.

1. Note that compliance with separate conditions under the *Broadcasting Services Act* *1992* was not in scope. [↑](#footnote-ref-2)
2. This includes all licences that were desktop audited or field audited. [↑](#footnote-ref-3)
3. Note that the terms ‘clustering’ and ‘networking’ are explained and discussed in more detail under the ‘Business Practices’ heading in this Executive Summary [↑](#footnote-ref-4)
4. We defined any licence within 50 kms of a state capital city to be a ‘metro’ licence and all other licences to be ‘regional’ licences for the purposes of this audit. [↑](#footnote-ref-5)
5. The average found was 51.33 dBµV/m2. Decibels are a logarithmic scale used to produces simple numbers for large-scale variations in signal strengths, further discussion in results. [↑](#footnote-ref-6)
6. Section 18(1) of the [Broadcasting Services Act 1992](https://www.legislation.gov.au/C2004A04401/latest/text) [↑](#footnote-ref-7)
7. The UIOLI, recording keeping, and regularity conditions are contained within Section 4.11 (1) of the Radiocommunications Licence Conditions (Broadcasting Licence) Determination 2015 [↑](#footnote-ref-8)
8. Section 4.9 of the Radiocommunications Licence Conditions (Broadcasting Licence) Determination 2015 permits a licensee to operate a service in a residential area, where the field strength must not exceed 48 decibel microvolt per meter square when measured at 10 metres above ground level at any location more than 2 kilometres from the station’s antenna. [↑](#footnote-ref-9)
9. [↑](#footnote-ref-10)
10. Measurement uncertainty is an error factor of 3dB applied in favour of the licensee – discussed in limitations. [↑](#footnote-ref-11)
11. [Futrends Pty Ltd and Australian Communications and Media Authority](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/AATA/2020/2102.html?context=1;query=W%20&%20A%20Willmington%20Pty%20Ltd%20;mask_path=au/cases/cth/AATA) and [W&A Willmington and Australian Communications and Media Authority](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/AATA/2020/2102.html?context=1;query=W%20&%20A%20Willmington%20Pty%20Ltd%20;mask_path=au/cases/cth/AATA) [↑](#footnote-ref-12)
12. See recent Federal Court Decision in the matter of the [*Australian Communications and Media Authority v Phaze Broadcasting Pty Ltd* [2024] FCA 473](https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2024/2024fca0473) [↑](#footnote-ref-13)