

The logo for Optus, consisting of the word "OPTUS" in a bold, teal, sans-serif font.

Submission in response to
ACMA Consultation Papers

**Radiocommunications
equipment rules; and
Proposed changes to
class licences**

Public Version

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INTRODUCTION

1. Optus welcomes the opportunity to respond to the Australian Communications and Media Authority (ACMA) consultation papers on:
 - (a) *Radiocommunication equipment rules; and*
 - (b) *Proposed changes to class licences.*
2. These Consultation Papers action several amendments enabled by the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020* (the Modernisation Act) to modernise the legislative framework for spectrum management.
3. In general, Optus supports the intent of the arrangements introduced under the new equipment rules, and the proposed variations to the class licences to give effect to the new arrangements set out in the Modernisation Act.

ARRANGEMENTS UNDER THE NEW EQUIPMENT RULES

4. In general, Optus supports the intent of the arrangements being introduced under the new equipment rules; as well as the initial introduction of the proposed new equipment rules which will commence at the same time as the new arrangements come into effect.
5. The proposed new equipment rules are designed to provide certainty to the equipment supply industry and, in many cases, also enable for the seamless transition of current arrangements into the new framework.
6. These come into effect through the repeal of the existing Part 4.1 of the Act (sections 155-191 inclusive) and its replacement with a new Part 4.1 relating to equipment.
7. Other key changes include:
 - (a) Transitional provisions which save several existing arrangements, such as standards and labelling notices made under sections 162 and 184 of the Act, to remain as equipment rules made under the new provisions of the Act.
 - (b) The amendments include new and revised definitions, such as new definitions of the terms 'equipment' and 'offer to supply'; and revised definitions of the terms 'label' and 'permit'.
 - (c) The new arrangements will enable the ACMA with greater flexibility to make equipment rules, which may include the prescription of standards for equipment and provides the additional flexibility for the ACMA to place obligations on the most appropriate person in the supply chain.
8. Specifically, the equipment rules will expand the range of obligations and prohibitions that the ACMA may impose on people who offer equipment for supply. The amendments will also provide the ACMA with the powers to impose interim or permanent bans on equipment, and to require a supplier to recall equipment.

Transitional provisions

9. Optus welcomes the ‘automatic’ transition of existing arrangements¹ into the new regime, including:
 - (a) the existing 16 standards made by the ACMA under section 162 of the Act that identify required technical characteristics for equipment, and methods for assessing the compliance of equipment with those characteristics; and
 - (b) the three labelling notices made under section 182 of the Act.
10. However, the ACMA has also acknowledged some existing powers in relation to non-standard devices and to limitations on the supply of devices will no longer be available following commencement of the new provisions. The ACMA’s flexibility to issue permits to authorise such use and ability to possess will similarly lapse at the same time.
11. Finally, the new provisions will also remove the current section 301 provisions in the Act which imposes limitations on the supply of an ‘eligible radiocommunications device’ as specified in the Radiocommunications Regulations 1993 made under the Act and move those limitations in the proposed new equipment rules.

New proposed equipment rules

12. To retain the prohibitions on non-standard equipment, including the limitation on the supply of certain devices (i.e. cellular mobile repeaters), the ACMA is proposing to issue new equipment rules under section 159 of the Act that will:
 - (a) Require persons manufacturing or importing specified equipment to apply labels to such equipment in accordance with the saved labelling notices;
 - (b) Prohibit the possession, operation or supply of equipment that does not comply with the requirements of the applicable saved standards, unless the person has been issued the appropriate permit that allows for the possession, operation or supply of such equipment;
 - (c) Prohibit the supply of certain equipment without a label that certifies that the equipment meets applicable standards set out in the equipment rules; and
 - (d) Prohibit the supply of cellular mobile repeaters to a person unless the person has a licence authorising the operation of such equipment.
13. A key feature of these new equipment rules – the *Draft Radiocommunications Equipment (General) Rules 2021* (Draft Equipment Rules) – will be the inclusion of prohibitions and obligations to give effect to the enforcement measures under the new section 160 provisions in the Act in relation to the saved standards and labelling notices.
14. Optus welcomes this intent. However, Optus notes that while the application of Parts 2, 3, 4 and 5 of the Draft Equipment Rules which deal with the possession, operation and supply of certain equipment, including in relation to the saved standards and labelling notices and role of permits, Part 6 relating to mobile repeaters only deals with the initial supply of such equipment to authorised persons.

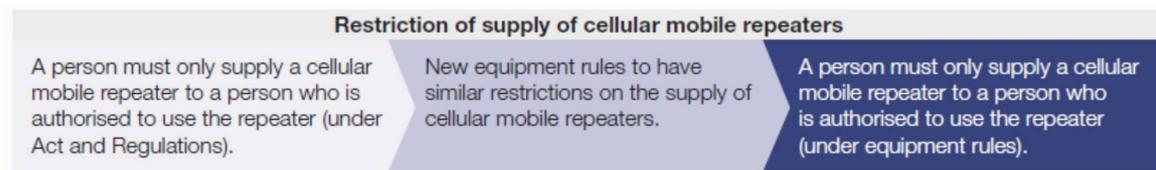
¹ The saved standards and labelling notices are listed at section 4 of the *Draft Radiocommunications Equipment (General) Rules 2021*

15. We also welcome the proposed Part 7 of the Draft Equipment Rules which enables the ACMA's new powers to issue permits to authorise use in relation to the saved standards and labelling notices.

Restriction on the supply of mobile repeaters

16. The ACMA intends to retain the removed section 301 provisions for mobile repeaters in the form of new equipment rules, as summarised below and contained under Part 6 of the Draft Equipment Rules.

Figure 1 Changes to radiocommunications equipment rules



Source: ACMA

17. Optus supports limiting supply of mobile repeaters to authorised persons and requirement to keep records of that supply for at least two years as this is a continuation of the current regulatory regime under section 301. Optus further notes the proposed changes are also intended to ensure compliance is followed and to ensure the ACMA's enforcement powers can be used in any instances of potential breaches.
18. Operators currently do not have sufficient powers to properly identify, investigate and deactivate illegal repeaters. Optus therefore anticipates that with the new ACMA powers, this would be supported by sufficient resourcing to conduct the investigation and enforcement of any breaches, including but not limited to rights to enter property for investigation or issue of formal directives to repeater users.

PROPOSED CHANGES TO CLASS LICENCES

19. In general, Optus supports the proposed changes to class licences to update the licensing references 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.
20. This includes to give effect to the arrangements being introduced under the new equipment rules once they commence, and the ACMA's proposal to harmonise the electromagnetic energy (EME) arrangements across the various licensing instruments.

Amendments to update references to standards to include equipment rules

21. Optus supports the proposed machinery changes to the existing class licences to ensure that all existing generic references for compliance with 'any applicable standard' made under section 162 of the Act will continue to apply once the Modernisation Act commences.

22. This will ensure that the ACMA can continue to enforce compliance by pursuing a non-standard device user for breach of a licence condition. This will also enable the ACMA to take relevant enforcement action in relation to breaches of the EME arrangements.
23. The proposed changes will apply to each of the existing 11 class licences (as listed in Appendix A of the Consultation Paper) and set out in the *Radiocommunications (Class Licence) Amendment Instrument 2021 (No. 1)* (draft Class Licence Amendment Instrument).

Amending class licences to require compliance with applicable equipment rules

24. With the introduction of the new Part 4.1 in the Act, and the new Equipment Rules, the proposed amendments to the class licences will include 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.
25. As set out in the Class Licence Amendment Instrument , a 'device compliance day' has been specified for each class licence type.
26. Optus welcomes this change as it will reduce administrative impost and also allow for any future equipment rules made under the new Part 4.1 of the Act to automatically apply, where the device compliance day for the device occurs after the equipment rule is made. However, to ensure ongoing compliance, when a new equipment rule is developed or amended, then the device compliance day and its implications should be clearly highlighted during the consultation process.

Compliance and enforcement under the modernised technical regulations

27. A key change enabled by the Modernisation Act will be the ACMA's ability to access a more flexible suite of compliance tools and powers to respond to breaches of the technical regulation. These changes should support the ACMA in empowering them to take proportionate action in response to breaches.

Amendments to harmonise EME regulations in class licences

28. Optus supports the proposed approach to harmonise the EME regulations set out in the class licences to reflect the overall EME regulatory framework for spectrum licensing arrangements more generally. Appropriately, the EME regulations are premised on the limits set by ARPANSA for general exposure to EME.
29. The proposed changes will apply to the 11 class licences (as listed in Appendix B of the Consultation Paper).

Amending class licences to require compliance with the ARPANSA standard

30. Optus acknowledges the proposed change to ensure that these class licences fully reflect the EME arrangements for comparable devices authorised under the apparatus licensing regime (i.e. as specified under the ARPANSA standard).
31. Optus also notes the ACMA's comment that the regulatory impact of the proposed amendments are not anticipated to impose any additional compliance costs on equipment users, suppliers or manufacturers.