

Wireless LANs – licensing requirements

There has been a marked increase in the use of spread spectrum radiocommunications equipment for wireless access systems by small business and the public in Australia. The equipment is low cost and designed to operate in a class-licensed band of the radiofrequency spectrum suitable for short-range applications such as wireless local area networks (WLANs), which can be used to link computers.

This fact sheet provides a guide to the key licensing requirements for the use of WLAN technology under the *Telecommunications Act 1997* and the *Radiocommunications Act 1992*.

Who uses WLANs?

WLANs are commonly used by:

- companies in work places to connect devices in a local area network;
- hotels and airports to provide wireless Internet connections to their customers;
- Internet service providers and
- community groups to connect members to the internet.

If you use a WLAN, you need to comply with licensing requirements under the *Radiocommunications Act* and the *Telecommunications Act*.

What are these licensing requirements?

There are two main types of licensing:

- Radiocommunications licensing (under the *Radiocommunications Act*), which covers the use of radiocommunications equipment within the radiofrequency spectrum.
- Telecommunications licensing (under the *Telecommunications Act*)-carrier licences authorise the use of network units for the supply of telecommunications services to the public.

What does the Radiocommunications Act require?

The Radiocommunications Act requires that operation of radiocommunications equipment is covered by a licence. There are three types of radiocommunications licence: apparatus, class and spectrum.

Most WLANs operate radiocommunications equipment under class licences. These are 'open, standing authorities' allowing anyone to operate specific equipment, provided that operation is within the conditions of the licence. Class licences do not have to be applied for and no licence fees are payable. Equipment subject to class licences includes citizen band radios, mobile phone handsets, cordless telephones and other low output devices. Equipment operating under a class licence is often described as operating in a 'public park'.

Under a particular class licence, all users operate in the same segment of the radiofrequency spectrum on a shared basis and are subject to the same conditions. A class licence governs the frequencies that may be used, imposes power limits, commonly prescribes equipment standards, and may specify other technical and operational parameters.

What does the Telecommunications Act require?

Under the *Telecommunications Act*, an owner of a network unit must have a carrier licence or a nominated carrier declaration if the network unit is used to supply a carriage service to the public, unless an exemption applies.

Supplying a carriage service to the public means supplying carriage services to people outside the immediate circle of the network unit owner, as defined in section 23 of the *Telecommunications Act 1997*. For example:

- if the owner of the network unit is an individual, the immediate circle consists of employees of the individual;
- if the owner of the network unit is a partnership, the immediate circle consists of employees of the partnership; and
- if the owner of the network unit is a body corporate, the immediate circle consists of officers of the body corporate and, if another body corporate is related to the first body corporate (within the meaning of the *Corporations Act*), that other body corporate and officers of that body corporate.

The radiocommunications equipment used for a WLAN is generally a 'designated

CANBERRA
Purple Building Benjamin Offices
Chan Street
Belconnen ACT 2617
PO Box 78
Belconnen ACT 2616
T: 02 6219 5555
F: 02 6219 5200

MELBOURNE
Level 44, Melbourne Central Tower
360 Elizabeth Street
Melbourne VIC 3000
PO Box 13112 Law Courts
Melbourne VIC 8010
T: 03 9963 6800
F: 03 9963 6899

SYDNEY
Level 15, Tower 1 Darling Park
201 Sussex Street
Sydney NSW 2000
PO Box Q500
Queen Victoria Building NSW 1230
T: 02 9334 7700
F: 02 9334 7799

radiocommunications facility', one of the types covered under the Telecommunications Act. The exceptions to this situation are discussed below.

Under the Telecommunications Act, a WLAN may be a base station that is a part of terrestrial radiocommunications customer access network if:

- a) the base station is part of a telecommunications network;
- b) the base station is not an exempt base station; and
- c) the base station is used, or for use, in connection with the supply of carriage services;
- d) customer equipment used for the supply of the service is not in physical contact with any part of the telecommunications network by means of which the service is supplied;
- e) the service is wholly or principally used, or wholly or principally for use, by each end-user at premises occupied or used by the end-user; or in the immediate vicinity of these premises;
- f) the network does not have intercell hand-over functions; and
- g) the network is not an exempt network.

A terrestrial radiocommunications customer access network is an exempt network under g. if the network is used, or for use, or intended for use for the sole purpose of supplying carriage services on a non-commercial basis.

What is commercial?

The following questions may assist you to determine whether your use of a WLAN fits the concept of commercial and therefore requires a carrier licence.

If you answer no to all of the questions, you may be exempt from the requirement to hold a carrier licence. If you answer yes to any of the questions, you should contact the ACMA to discuss your situation. See **More information** for contact details.

To encourage innovation, and in accordance with a light touch approach to regulation, the ACMA will consider WLAN applications individually.

- Q.1** Do you receive any direct or indirect reward, monetary or other, for use by others of your network equipment?
- Q.2** Do you have a contract or any other agreement (verbal or written) with parties involved in the use of the network, dealing, for example, with the payment of money and performance obligations?
- Q.3** Do you use the network for the purpose of making a profit?
- Q.4** Do you have an ABN for use in connection with the operation of the network?

Other situations where a carrier licence is not required

There are other WLAN situations, in addition to exempt networks, where a carrier licence is not required. These situations include:

- company LANs used by company employees where supply to the public is not involved;
- wireless networks in an airport lounges, hotels, shopping centres and Internet cafes where the service is provided in a single place.

Under a determination announced by the Minister for Communications, Information Technology and the Arts on 20 September 2002, these wireless networks do not constitute network units.

Consumer protection

Carriage service providers, including internet service providers, which own and use radiocommunications equipment to supply carriage services to the public on a commercial basis, are required to be licensed under the Telecommunications Act.

There are obligations and safeguards imposed on licensed carriers and carriage service providers by the Telecommunications Act that protect consumers.

It is important to note that, if consumers use an unlicensed network, they will not receive the same protections as they would if they used a licensed network.

More information

For more information about licensing and WLANs, see ACMA's comprehensive set of answers to frequently asked questions [Wireless local area networks in the 2.4 GHz band accessing the public telecommunications network and related issues](#).

See also information about:

- [radiocommunications licences](#);
- [carrier licences](#);
- the fact sheet [Wireless LANs and exempt non-commercial networks](#); or
- email the ACMA's [Telecommunications Licensing, Numbering & Submarine Cables Section](#) or telephone (03) 9963 6800.

Readers should also be aware of the report of the [House of Representatives Inquiry into Wireless Broadband Technologies](#).

Please note: this document is intended as a guide only and should not be relied on as legal advice or regarded as a substitute for legal advice in individual cases.