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AMTA Submission

Australian Communications & Media Authority

The Modernisation Act consultations:

- Radiocommunications Equipment Rules – 7/2021
- Accredited Person Scheme – 8/2021



About AMTA

The Australian Mobile Telecommunications Association (AMTA) is the peak industry body representing Australia's mobile telecommunications industry. Its mission is to promote an environmentally, socially and economically responsible, successful and sustainable mobile telecommunications industry in Australia, with members including the mobile network operators and service providers, handset manufacturers, network equipment suppliers, retail outlets and other suppliers to the industry. For more details about AMTA, see <http://www.amta.org.au>.



Introduction

AMTA welcomes the reforms that will commence in June 2021 when the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020* (the Modernisation Act) takes effect and appreciates the opportunity to provide comments on how some of those reforms should be implemented.

1. Equipment Rules

Importance of preventing interference to mobile networks

Mobile networks, complemented by the NBN, are fundamental to delivering connectivity to the community, businesses and industry. Connectivity is an enabling force in our economy and society, driving productivity and innovation. Mobile networks are also critical to ensuring public safety through the provision of services including Triple Zero.

The mobile telecommunications industry makes a significant investment in spectrum resources to deploy mobile and wireless networks which play a critical role in our communications infrastructure and given this investment, the Associations assert that allocated spectrum should be available to licence holders free from interference by non-compliant equipment or other users.

We also acknowledge that the management of spectrum resources is increasingly complex as both the number of users and types of use increase. 5G and the continued growth of the IoT will put pressure on the regulatory framework of prohibitions and exemptions as both devices and applications proliferate. Sharing and co-existence mean that interference must be adequately managed so that licence holders are able to make full and efficient use of their allocated spectrum.

In this context, AMTA proposes some changes to the implementation of equipment rules in relation to illegal mobile repeaters and the issuing of permits which we have outlined below as well as providing proposed amendments to the draft Equipment Rules in mark-up form in **Appendix A**.

Industry proposal - Introduction of a “Carrier authorised repeater”

AMTA members have burdensome arrangements in place with independent distributors of authorised mobile repeaters to enable compliance with the existing Act by both those suppliers and our customers with the existing restricted supply regime. Unfortunately, the proposed draft of Part 6 duplicates the existing restricted supply regulations in respect of mobile repeaters. These regulations date back to 2013 when the first such “smart repeater” devices were introduced to the Australian market. At the time, the regulations reflected the requirements of the old s301 of the Act (to be repealed) which itself dated back to 1992 and was a poor fit with supply of mass market devices. We strongly urge the ACMA to take the opportunity to update the restricted supply scheme to remove unnecessary red tape on record-keeping for supply of “smart repeater”

devices that are authorised by mobile network operators for use on their networks. We note that many thousands of these authorised “smart repeaters” have been supplied to mobile users and have been in operation without causing any adverse interference events over the past 8 years.

We propose changes to Part 6 in order to include the concept of a “**carrier authorised repeater**”, for which streamlined record-keeping compliance will be available by way of publication by mobile network operators of relevant information on their websites instead of collection of this information from individual authorised persons. This eliminates an unnecessary and circular step in record collection in the case of carrier authorised repeaters where the individual authorised persons would need to obtain the information from the mobile network operator holding the relevant licence(s) under which use of the repeater is being authorised. It would be more efficient for the mobile network operator / licensee to simply be required to publish the relevant information regarding the carrier authorised repeater in a manner which is publicly accessible (such as on the carrier’s website) and for that information to be “retrievable” rather than specifically “recorded” in respect of each carrier authorised repeater device which is supplied.

Our approach would also remove the need for competitive independent distributors of carrier authorised repeaters in Australia to collect the same information set out in subsection 33(3)(a) repetitively (such as licence numbers and licensee information), and instead only require that they collect or have the ability to retrieve already collected information unique to each specific supply they are making, such as the details of the purchaser, date of supply and the unique serial number of each carrier authorised repeater. As a practical matter this unique information is entered by the purchaser into the user interface application of the carrier authorised repeater to enable activation of the device. The information is retained for, and available to, the supplier and the authorising licensee for the purpose of regulatory compliance and hence is readily “retrievable”.

The proposed amendments are additional to, and do not disturb, the existing text enabling supply of a cellular mobile repeater using the legacy restricted supply approach where the end user first seeks authorisation from the licensee and then provides evidence to the supplier that authorisation has been provided, following which supply is made. That approach reflected the process under section 301 of the Act which is being repealed. While that series of events is rare in practice, it should be retained for the instances when it may possibly still arise.

Please also see **Appendix A** for a proposed amendments to the Equipment Rules which we consider would achieve the outcome outlined in this submission.

Modernisation of the provisions dealing with a presumption of possession for the purpose of operation

We suggest that a further opportunity should be taken to modernise the presumption that applies to the possession of a device that does not comply with certain standards (subsections 11(2) and 11(3), subsections 16(2) and 16(3), and subsections 21(2) and 21(3) of the Proposed Equipment Rules). We propose that the ACMA should align the presumption as set out in these subsections, with similar provisions in the Modernisation Act that deal with the presumption of possession for

the purpose of operation. We acknowledge that the subsections in the proposed Equipment Rules reflect the current wording of the presumption in subsections 159(1) and 159(2) of the Act, which in turn are consistent with the current wording of section 48. However, section 48 is amended by the Modernisation Act to reflect that some of the current wording is becoming anachronistic, for example in the reference to “dials” in subsection (e), with its analogue connotations. We are also concerned that the presumption as currently drafted is too easily rebutted, as “any evidence to the contrary” will be sufficient to ensure that the presumption will not apply.¹

The Government recognised these concerns during the consultation process for the Modernisation Act and introduced amendments to section 48 of the Act to align it with new sections 178(2)–(4). Those amendments were intended to update references in subsection 48(1) and 48(2) so that they no longer describe steps that can be taken by reference to analogue equipment, and maintain the ability of a defendant to adduce evidence to rebut the presumption.²

We suggest that each pair of subsections 11(2) and 11(3), 16(2) and 16(3) and 21(2) and 21(3) in the Proposed Equipment Rules be replaced with the updated wording of subsections 48(1) and 48(2) in the Modernisation Act. In addition to resolving the issues identified above, our proposal also has the added benefit of ensuring that a consistent approach is taken when determining whether a person is possessing a device for the purpose of operation.

Purpose for which permit is sought

Under the existing Act, the ACMA may consider whether the purpose for which a permit is sought is a purpose related to:

- education or research;
- testing of devices; or
- demonstration of devices.

The Proposed Equipment Rules do not explicitly state that the ACMA may consider the purpose of use. We consider it would be helpful to be clear that, at a minimum, the ACMA may have regard to whether the purpose for which the permit is sought fits into one of these categories.

No mandatory considerations when issuing permits

Under the existing Act, the ACMA is required to consider the protection of the health or safety of persons who operate or work on devices, use services supplied by means of devices or are otherwise reasonably likely to be affected by the operation of devices. The Proposed Equipment Rules do not require the ACMA to have regard to any specific considerations, and there is no explanation as to why the mandatory considerations have been removed. The considerations in the existing Act appear appropriate to us and give a level of protection to entities that would be impacted by permits, particularly since there remains no obligation to consult with impacted

¹ See Radiocommunications Act 1992 (Cth) s 159(2), Exposure Draft of the Radiocommunications Equipment (General) Rules 2021 ss 11(3), 16(3) and 21(3).

² Explanatory Memorandum, Radiocommunications Legislation Amendment (Reform and Modernisation) Bill 2020 (Cth), 29.

licensees. We propose the ACMA should include the considerations it was previously required to have regard to, into the Radiocommunications Equipment (General) Rules 2021.

No public consultation or notification when permits are issued

We suggest the ACMA should include guidance as to when it will consult potentially impacted licensees. For example, the ACMA should always consult a spectrum or AWL licensee if a permit is to be issued for a device that it is aware will be operated in that licensee's spectrum space.

ACMA power to suspend a permit

The Proposed Equipment Rules grant the ACMA the option of suspending a permit for up to 3 months if the permitholder has contravened a condition of the permit. As with cancellation, the ACMA must have regard to the permitholder's submissions when deciding whether to suspend a permit; however, the Proposed Equipment Rules do not specify any other matters that the ACMA may or must consider in deciding whether to suspend a permit, in contrast to cancellation of a permit. In addition, the ACMA may suspend a permit without giving reasons for the suspension. We support the addition of a suspension option (under the Act to date, outright cancellation was the only option available to the ACMA in such a situation) but suspension could also have a very significant impact on the person relying on the permit. We appreciate that a suspension decision may need to be made as a matter of urgency and that it is temporary and easily reversible, unlike cancellation. Nonetheless, our view is that guidance should be provided on when the ACMA may consider suspending a permit, instead of cancelling the permit.

2. Accredited Persons Scheme

AMTA supports the continued operation of the Accredited (AP) Scheme and welcomes the majority of the changes to the Scheme, including the consolidation of FAC only and IIC only accreditations into a single General Licensing Accreditation as well as the removal of the requirement for AP applicants to sign a Deed of Indemnity.

AMTA makes the following suggestions that we believe would improve the AP scheme:

i. Interference Impact Certificates

We observe the Interference Impact Certificate (IIC) Determination 2021 still only allows IICs to be issued in relation to spectrum licenses (not apparatus licences), and hence applies only between spectrum licensees. There is no ability for IICs to be issued between a spectrum licensee and an apparatus licensee or between apparatus licensees. With the introduction of Area-Wide Licences (AWLs), we consider this is a missed opportunity to incorporate the ability for IICs to be issued in relation to AWLs. While AWLs are an over-the-counter licence, many other aspects of AWLs are more akin to spectrum licences. AWLs allow for a spectrum space (combination of frequency and geography) to be licensed, as well as having a device boundary and device boundary conditions (DBC) like spectrum licences. The inability for an IIC to be issued between a spectrum licensee and an AWL licensee will mean that if the spectrum licensee needs to 'spill-over' into a co-channel

geographically adjacent AWL, they will not be able to do so without breaching the spectrum licence DBCs, even if the spectrum licensee and the AWL licensee are the same person/entity.

A similar scenario can occur where there are no licences of any type (spectrum or apparatus) on the other side of a geographic border of a spectrum licence. This vacant spectrum space is akin to 'crown land' where the government effectively holds the 'title' for that spectrum space, waiting to sell apparatus licences for that spectrum space. Often this 'crown land' spectrum space has low population density (such as forest or sparsely populated farmland), with little chance of a WISP or other service provider suddenly springing up and applying for an apparatus licence (e.g., point-to-multipoint). While the Radiocommunications (subsection 145(3) Certificates) Determination 2012³ does allow an AP to issue a certificate under subsection 145(3) of the Act, it is our view that this does not provide certainty to the spectrum licensee (or in the future, the AWL licensee) as while unlikely that a service provider suddenly appears, it is not a zero probability. Should it occur, the spectrum licensee would be forced to comply with the DBCs, which could result in having to relocate or close the base station. We consider a better approach would be for the ACMA to introduce a mechanism for IICs to be agreed with the Government, which would provide a first-in-time status to a transmitter registered on the Register of Radiocommunications Licences (RRL) that exceeds the DBCs in the s.145 determination.

ii. Introduction of Specific Licensing Accreditation

AMTA supports the proposed introduction of Specific Licensing Accreditation.

We note, however, that this proposal would allow the ACMA to accredit a person to issue Frequency Assignment Certificates (FACs) for a single, specified licence type, such as assigned amateur licences (beacon and repeater). While we have no objection to the concept of a Specific Licensing Accreditation *per se*, we are potentially concerned where the issuance of a FAC requires coordination with other technology types outside the speciality the Specific Licensing Accreditation authorises the AP to operate in. RALIs and RAGs are designed as a guide to minimise, but not eliminate the potential for interference between geographic or frequency adjacent licensees. As such, following a RALI or RAG as a 'recipe' is often insufficient, and experience with other technology types is often required.

AMTA considers that the potential for an AP holding a Specific Licensing Accreditation to issue a FAC that would result in harmful interference could be resolved by a requirement imposed on specialist APs to contact the licensee of adjacent services to have that licensee's AP confirm the coordination has been done correctly. This would minimise the risk of interference accidentally being introduced by a specialist AP unfamiliar with alternate technologies.

iii. Accreditation of companies

AMTA does not support the ACMA's proposal to accredit a company. Accreditation is based on having sufficient skills and experience and should reflect the skills and experience and resources of the person actually performing the AP work. This includes their ability to perform the technical

³ <https://www.legislation.gov.au/Details/F2012L01719>

assessment, interference assessment, coordination and assignment required for the issue of assigned apparatus licences and device registrations required under spectrum licences. A company can lose key people such that as an organisation it no longer meets the accreditation requirements. This means accreditation must always be given to an individual with the appropriate skill set, rather than a company.

We also note that there is a potential conflict of interest and loss of independence when APs are employed by a company that is also delivering network build.

iv. Withdrawing accreditation

AMTA notes that the ACMA's enforcement capability with regard to APs is relatively weak, with the only available penalty being to cancel an AP's accreditation. We understand that this power has rarely been exercised, and therefore suggest that in addition to the General Accreditation Rules for withdrawing accreditation, there should also be an option for the ACMA to downgrade an accreditation from General to Specific.

v. Record keeping

Given that the IIC Determination relates to compliance with the s145 boundary determination, AMTA considers that in providing a record relating to IICs, this should be similar to the FAC requirements and include details on interference management criteria used, the method used to apply those criteria and the rationale for use of the criteria and method if the AP is not using the s145 methodology.

vi. New proposed AP Roles

AMTA does not support the proposal to allow APs to expand into spectrum management roles that are more appropriately undertaken directly by the Regulator. We strongly suggest that the ACMA needs to maintain an ability to independently manage spectrum for the benefit of all stakeholders.

Likewise, AMTA does not support APs undertaking a conciliator role. We are concerned that this could risk scope creep and further de-skilling of the Regulator and its resources.

The ACMA needs to be an effective and appropriately resourced and engaged Regulator and Spectrum Manager as this will better inform the ACMA's policy development and outcomes.

Part 6—Prohibitions and obligations in relation to supply to unlicensed person

30 Simplified outline of this Part

Section 156 of the Act allows the ACMA to make equipment rules. Section 159 of the Act provides that the equipment rules may impose obligations or prohibitions in relation to equipment, and that those rules may prohibit a person from supplying, or offering to supply, a specified kind of equipment unless the person satisfies one or more specified conditions.

This Part imposes a prohibition on the supply of equipment known as cellular mobile repeaters, other than the supply of a carrier authorised repeater or a supply except to a person with a licence that has been provided with an authorisation to the operation of that equipment in accordance with a licence, and imposes related obligations on the suppliers of that equipment.

31 Object of this Part

The object of this Part is to ensure that certain radiocommunications transmitters are not supplied to persons intending to operate those transmitters unless those persons are authorised by or under the Act to operate those transmitters.

32 Definitions

In this Part:

authorised person, in relation to a licensee, means:

- (a) for the licensee of an apparatus licence – a person authorised under subsection 114(1) of the Act;
- (b) for the licensee of a spectrum licence – a person authorised under subsection 68(1) of the Act.

base station means a radiocommunications transmitter that is part of a telecommunications network by means of which a public mobile telecommunications service is supplied.

carrier authorised repeater means a specific brand and model number of cellular mobile repeater which a carrier supplying a public mobile telecommunications service has authorised for use on the mobile telecommunications network which it operates, provided the carrier publishes a notice on its website (or otherwise provides a widely accessible notice to the public by other means as determined by the carrier) setting out a description of the cellular mobile repeater it has authorised, which must include:

- (a) the brand name of the cellular mobile repeater;
- (b) the model number of the cellular mobile repeater;
- (c) a photograph or other representative image of the cellular mobile repeater;
- (d) the date of publication of the notice; and
- (e) the information set out in subsections 33(3)(a)(i) to (v) in respect of the licences held by the carrier under which the cellular mobile repeater may be operated by an authorised person.

Section 33

cellular mobile repeater means a radiocommunications device that draws power from a power source and that, operating as a single radiocommunications device or as part of a system of radiocommunications devices, is able to:

- (a) receive a radio emission from a base station and retransmit the radio emission (or transmit a replica of the radio emission) to:
 - (i) another base station; or
 - (ii) a mobile station that is used to access a public mobile telecommunications service; or
- (b) receive a radio emission from a mobile station that is used to access a public mobile telecommunications service and retransmit the radio emission (or transmit a replica of the radio emission) to:
 - (i) a base station; or
 - (ii) another mobile station that is used to access a public mobile telecommunications service.

mobile station means a transmitter that is established for use:

- (a) in motion on land, on water or in the air; or
- (b) in a stationary position at unspecified points on land, on water or in the air.

Example 1: A wireless modem operating in a laptop computer.

Example 2: A hand-held cellular telephone with a radiating antenna in the telephone.

public mobile telecommunications service has the meaning given by section 32 of the *Telecommunications Act 1997*.

supplier means a person who carries on a supply business.

supply business means the business of supplying radiocommunications devices to persons intending to operate them.

telecommunications network has the meaning given by section 7 of the *Telecommunications Act 1997*.

33 Prohibition – supply of cellular mobile repeater to unlicensed person

- (1) A supplier must not supply another person (**other person**) with a cellular mobile repeater in the course of carrying on a supply business.
- (2) Subsection (1) does not apply ~~if~~:
 - (a) ~~if~~:
 - (i) the cellular mobile repeater is a carrier authorised repeater; or
 - (ii) the other person presents to the supplier a licence, or a duplicate of the licence, that authorises the other person to operate the cellular mobile repeater; and
 - (b) the supplier is capable of retrieving the details of records the matters specified in subsection (3) in relation to the supply of the cellular mobile repeater if requested by the ACMA.
- (3) For the purposes of paragraph (2)(b), the matters are:
 - (a) if the cellular mobile repeater is not a carrier authorised repeater, the following details about the licence, or duplicate of the licence, that was presented to the supplier:
 - (i) the licence number;

- (ii) the date of issue;
- (iii) the date of expiry;
- (iv) the licence type;
- (v) the full name of the licensee;
- (b) if the supplier provided the cellular mobile repeater to a person other than the licensee – the full name of the person to whom the supplier provided the cellular mobile repeater (*recipient*);
- (c) other matters that the supplier considers, on reasonable grounds, confirm the identity of the recipient, such as a passport number or driver's licence number;
- (d) the date on which the supplier provided the cellular mobile repeater to the recipient;
- (e) matters that the supplier considers, on reasonable grounds, allow the cellular mobile repeater to be uniquely identified, such as the cellular mobile repeater's brand name, model number or serial number;
- (f) if the recipient claimed to the supplier to be an authorised representative or agent of the licensee – matters that the supplier considers, on reasonable grounds, confirm that the recipient is an authorised representative or agent of the licensee;
- (g) if the recipient claimed to the supplier to be an authorised person in relation to the licensee – matters that the supplier considers, on reasonable grounds, confirm that the recipient is an authorised person in relation to the licensee;
- (h) if the recipient claimed to the supplier to be an authorised representative or agent of a person (*the intermediary*) that is claimed to be an authorised person in relation to the licensee – matters that the supplier considers, on reasonable grounds, confirm that:
 - (i) the intermediary is an authorised person in relation to the licensee; and
 - (ii) the recipient is an authorised representative or agent of the intermediary.

Example: An example of matters mentioned in paragraph (f), (g) or (h) is relevant content of a written communication from the licensee, or from a person authorised by the licensee.

- (4) Without limiting this section, paragraph (2)(a)(ii) is satisfied if:
 - (a) the other person presents to the supplier a document purporting to be a licence, or a duplicate of the licence, that authorises the other person to operate the cellular mobile repeater; and
 - (b) the supplier believes, on reasonable grounds, that the document was such a licence, or a duplicate of such a licence.

34 Obligation – keeping records of supply of cellular mobile repeater

~~The~~ If a supplier must be capable of retrieving records a matter specified in subsection 33(3) for a period of at least 2 years after in relation to the supply of a cellular mobile repeater, ~~the supplier must keep the record for at least 2 years after the supply.~~

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