

CBRS Legislation

The following was prepared using publicly available information from the Australian Communications & Media Authority (ACMA). It is intended as a guide only and should not be regarded as a substitute for legal advice in individual cases.

Despite common beliefs, the Citizen Band Radio Service (CBRS or CB) is governed by federal legislation, which is enforced by the Commonwealth agency Australian Communications and Media Authority or “ACMA”. The primary pieces of legislation that affect CB are:

- Radiocommunications (Citizen Band Radio Stations) Class Licence 2025 [“the Class Licence”];
- Radiocommunications Act 1992 [“the Act”];
- UHF CB Equipment Standard [refers to AS/NZS 4365];
- HF CB and Handphone Equipment Standard [refers to AS/NZS 4355 or ETSI EN 300].

The Class Licence

When CB was first legalised in Australia, each user had to apply and pay for an individual “apparatus licence”, initially for each CB they owned, then eventually for each CB station. Then, in 1994, the Australian Government changed the CB service to a **Class Licence** system, revoking the need for each user to apply and pay for a licence.

Class licences are used for a number of services, including 27MHz and VHF marine, Outpost Stations, Amateur Radio, and mobile telephone. A class licence automatically covers the user without the need for them to apply for a licence or pay a licence fee. But, despite views to the contrary, it does not mean the CB bands are “deregulated” or even “licence-free” (a common if not erroneous claim by many manufacturers). The Class Licence is still a licence, and it contains licence conditions very similar to the old apparatus licences CB users paid for, including:

- Designation of certain channels for specific uses (emergency, data, etc.);
- Maximum power output;
- Frequencies;
- Appropriate use, etc.

The Act

The Act covers *all* radio communication devices in Australia, including CB. The Class Licence is created under the Act, and therefore the Act sets the various offences and what the penalty will be if you choose to operate contrary to the Class Licence.

What many fail to realise is the difference between operating contrary to the conditions of an apparatus licence, like the old CB licences of pre-1994, and operating contrary to a class licence. Section 132(3) of the Act stipulates that operation of a radiocommunications device (e.g. a CB) is *not authorised* by a class licence if such operation is contrary to the conditions of that class licence. In other words, if you use a channel for a use it is not legally designated for, operate a higher power level, or just cause interference to the legitimate use of a channel by others, you are deemed under the Act to be **operating without a licence!**

Unlicensed operation & unlawful possession

Section 46 of the Act sets the penalty for “unlicensed operation”. This is the primary section that those operating contrary to the Class Licence will breach, as the Act stipulates that any operation not in accordance with the Act is not authorised by the Class Licence (section 132(3)).

For those who think all they need to do is pack away that high-powered CB, or their unlicensed ham radio, and all is fine because they’re not “operating” it, section 47 of the Act covers the unlawful *possession* of a device. In other words, all you need to have is an illegal CB (or other unlicensed transceiver) that is capable of operating should you plug it into power, an antenna and/or a microphone, and you can be charged with an offence under section 47.

Both sections 46 and 47 have a provision that an offence is not committed if you have a reasonable excuse; however, the fine print on that is that the burden of proof that you indeed have a reasonable excuse lies with **you**, the **defendant**. In other words, if you claim you had a reasonable excuse for operating without a licence or possessing unlawful equipment, **you** have to prove it (and having equipment “just in case of an emergency” is **not** considered a reasonable excuse!)

One last comment, section 49 provides that in the case of a genuine emergency, you can operate any radiocommunications device without committing an offence under section 46 or 47. This section is primarily intended to allow you to use (for example) an amateur or marine radio you would otherwise not be able to use, or even a private two-way radio (people have even used a police radio to summon help when a police officer has been attacked). Once again, however, the burden of proof that the incident fell under the provisions of section 49 lies with **you** – in other words, you have committed an offence and now you have to prove it was justified.

Interfering with an emergency call

Another concern is sections 193 and 194 of the Act. These sections involve “Interference in relation to certain radiocommunications” (i.e. interference to emergency services and other specific agencies), and “Interference likely to endanger safety or cause loss or damage” respectively. Put simply, for CB use, this means if you choose to use the designated emergency channels for normal conversation and an emergency call is blocked, you can be charged under one of these sections rather than under s46. This also means the potential penalty is far greater than simply being “unlicensed.”

Can ACMA really search my home or car?

The simple answer is YES. The Act provides for general searches, either with the consent of the owner/occupier or under a search warrant, and also emergency search and seizure without a warrant should circumstances require urgent intervention. Warrants can also be obtained via telephone, and as the ACMA inspectors are federal officers, they can be accompanied by either State/Territory Police or the Australian Federal Police if necessary (although this is not essential in order for them to exercise their duties). The Act grants ACMA power to use such force as is reasonable and necessary to enter any premises, vehicle, vessel, aircraft or even a space object either under a search warrant (section 269 and 270), or if deemed urgent under the powers of section 275 for emergency searches without a warrant.

One last thing to remember, under the Act, all members of a Territory Police Force are authorised inspectors, and based on advice from ACMA, **all** State Police officers can also act as an inspector under the Act.

The Standards

The Standards set the various technical specifications for both 27MHz (HF) and UHF CB equipment. Under the Class Licence, all CB equipment must have been tested and approved under the relevant CB Standard, commonly referred to as “type-approved”. The common misconception is that all UHF commercial Land Mobile Service radios are also approved for use on UHF CB, but this is not true. If the radio was tested against both the Land Mobile *and* UHF CB Standards then it holds dual “type-approval” and can indeed be used on both bands (it can even be programmed with Land Mobile and UHF CB frequencies at the same time, as long as it is programmed according to the Class Licence), but if it wasn’t then using it on CB bands is a breach of the Class Licence (and you are therefore operating an unlicensed *and* non-standard device.)

Using a commercial radio

As mentioned, providing the commercial or “Land Mobile” radio has been type-approved for use on CB, it can be programmed with CB frequencies, provided it is programmed according to the Class Licence, which means:

- Narrow band FM;
- 5 Watts power output maximum;
- Analogue voice or tones to initiate contact (unless being used for data telemetry on ch.22 or 23) – no digital voice, although scrambled voice is permitted with some restrictions;
- No CTCSS on emergency channels 5 or 35;
- Frequencies as per the Class Licence frequency chart.

It also means if all 80 channels aren’t being programmed (e.g. a 10 or 12 channel handheld, etc.), then the display channel must match the frequency shown in the Class Licence for that channel – i.e. display channel 1 must be UHF CB channel 1, etc.

What are the penalties?

The Act sets penalties for all the above-mentioned offences. For fines, the Act, like all legislation, uses “penalty units.” What’s a penalty unit? Penalty units are used to calculate the dollar value of a fine or penalty. This allows the value of the fines to be changed through a single piece of legislation without having to change every Act of Parliament. The value of a penalty unit is set by Parliament, and for Commonwealth legislation (which the Radiocommunications Act is), the value is set in section 4AA of the federal *Crimes Act 1914*.

As of 7th November 2024, the value of a Commonwealth penalty unit increased to \$330 *per penalty unit*, and will increase automatically in line with the Consumer Price Index (CPI). The total dollar value of the penalty is calculated by simply multiplying this value by the number of penalty units.

Section 46 or 47 offences

The maximum penalty for section 46 (unlicensed device) or 47 (unlawful possession) is:

- For individuals – 2 years prison; or
- For others (i.e. business, etc.) – 1,500 penalty units (= **\$495,000**)

If the matter is handled as a civil penalty, the maximum penalty under sections 46 and 47 is 300 penalty units (= **\$99,000**).

But there is a saving grace for those committing only *minor* offences. The above penalties are the maximum that can be handed down by a court of law, but section 314 of the Act provides for the possibility of a penalty notice to the maximum value of 10 penalty units.

Section 193 or 194 offences

The maximum penalty for section 193 (interfering with certain radiocommunications) or 194 (interference likely to endanger safety) is:

- For individuals – 5 years in prison; or
- For others (i.e. business, etc.) – 5,000 penalty units (= **\$1,650,000**)

These sections have no option for a penalty notice and must be dealt with by a court of law, so you would be charged with an offence against a Commonwealth Act and appear before a court.

Penalty values are correct as of 7th November 2024.

More information?

For more information on CB Radio, or the equipment that can be used for CB, contact:

- ACMA: www.acma.gov.au or phone **1300 850 115**
- RREC: www.radiorescue.org.au or phone **0448 402 359**