

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Telecommunications (Prohibition of Mobile Phone Boosters) Declaration 2011

Telecommunications Act 1997

Purpose

The *Telecommunications (Prohibition of Mobile Phone Boosters) Declaration 2011* (the Declaration) prohibits the operation or supply, or the possession for the purpose of operation or supply, of mobile phone boosters which are designed or intended to be used in connection with the supply of public mobile telecommunication services (PMTS).

The Declaration revokes the existing *Declaration of Prohibited Customer Equipment Mobile Phone Booster Amplifiers for Global System for Mobiles ("GSM") and Code Division Multiple Access ("CDMA") Mobile Telecommunications Services* (the 2001 Declaration).

The use of mobile phone boosters has previously been identified as a cause of significant interference to mobile telecommunications networks, affecting coverage and therefore consumer access to mobile networks. In the worst case, the use of mobile phone boosters can restrict access to the emergency call service.

The purpose of the Declaration is to protect PMTS from substantial interference or disruption or disturbance.

The intent of the Declaration is to be technology neutral; that is, whilst it is specific to equipment used in connection with the supply of PMTS, unlike the 2001 Declaration, it does not specify particular mobile network technologies. In this way, the Declaration will be adaptable to technology developments, such as the introduction of Long Term Evolution (LTE) technology that will likely be used for the future supply of PMTS.

Legislative provisions

Subsection 450(1) of the *Telecommunication Act 1997* (the Act) provides that the Australian Communications and Media Authority (the ACMA) may, by written instrument, declare that operation or supply, or possession for the purpose of operation or supply, of a specified device is prohibited for the reasons set out in the notice. A copy of the instrument must be published in one or more newspapers circulating in the capital city of each State, the ACT and the Northern Territory.

A Declaration made under subsection 450(1) of the Act is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (the LIA).

Background

The Australian Communications Authority (the ACA) made the 2001 Declaration under section 450 of the Act.

The 2001 Declaration prohibits the operation or supply, or possession for the purpose of operation or supply, of mobile phone booster amplifiers designed to operate in frequency

bands used by GSM and CDMA mobile telephone services. This prohibition was considered necessary because of the detrimental effects the operation of such devices can have on the integrity and operation of the mobile telecommunications networks, including consequential risks to safety of life.

At the time the 2001 Declaration was made, PMTS were supplied by means of GSM and CDMA technologies. The technical evolution of mobile telecommunications networks means that new technologies have been introduced and the 2001 Declaration does not reflect the contemporary technical and commercial operating environment.

As a consequence of these developments and following a recommendation received from Communications Alliance requesting the ACMA to update the 2001 Declaration, the ACMA undertook a review of the regulatory framework surrounding mobile phone boosters.

In February 2011, the ACMA released a draft of a proposed new Declaration for public comment. Seven submissions were received.

The main viewpoints expressed in the submissions received were that:

- the original reasons for making the 2001 Declaration remained relevant; and
- a declaration to prohibit mobile phone boosters should be retained.

Several submissions cited mobile phone boosters as a means of improving cellular coverage for individual users. While the use of a mobile phone booster may provide an individual end-user with enhanced coverage, it may also result in a reduction in coverage for other users connected to the same cell.

Having taken public comments into account, the ACMA has made the Declaration, which includes provision for the revocation of the 2001 Declaration.

Consultation

In accordance with the requirements of section 451 of the Act, notice of the ACMA's intention to make the Declaration and a copy of the draft declaration were published in the *Gazette* on 23 February 2011. The notice sought comment on the proposal to make the Declaration and to revoke the existing 2001 Declaration. Following the *Gazette* notice publication, the draft declaration and accompanying information were published on the ACMA website. Interested persons were invited to provide comment by 6 April 2011.

Seven submissions were received in response to the invitation for public comment, most of which were supportive of the proposal. The ACMA gave due consideration to all submissions received.

The ACMA is satisfied that the consultation undertaken was appropriate for the purpose of section 17 of the LIA.

The Office of Best Practice Regulation (the OBPR), was consulted about the making of the Declaration. The OBPR did not require a Regulation Impact Statement (RIS). The RIS exemption number for the Declaration is ID 12140.

Detailed description of the Declaration

Details of the Declaration are set out below.

Notes on Sections

Section 1 Name of Declaration

Section 1 provides that the name of the Declaration is the *Telecommunications (Prohibition of Mobile Phone Boosters) Declaration 2011*.

Section 2 Commencement

This section provides that the Declaration commences on the day after it is registered on the Federal Register of Legislative Instruments.

Section 3 Definitions

Section 3 defines terms used in the Declaration. These include 'Act', 'base station', 'frequency band', 'mobile station', 'radio emission' and 'station'.

Section 4 Meaning of mobile phone booster

This section defines a mobile phone booster as customer equipment that:

- connects, by means of physical contact, with a mobile station;
- transmits radio emissions to and receives radio emissions from a base station;
- amplifies those radio emissions transmitted to the base station;
- draws power from a power source; and
- operates within one or more frequency bands used for the supply of a PMTS.

It is further provided that a mobile phone booster does not include customer equipment that is manufactured in Australia solely for the purpose of being exported.

Section 5 Prohibition of mobile phone boosters

Section 5 specifies that the operation or supply, or possession for the purpose of operation or supply, of a mobile phone booster is prohibited.

Section 6 Revocation

This section provides that the declaration known as the *Declaration of Prohibited Customer Equipment Mobile Phone Booster Amplifiers for Global System for Mobiles ("GSM") and Code Division Multiple Access ("CDMA") Mobile Telecommunications Services* is revoked.

Schedule 1 Reasons for Prohibition

The schedule sets out the reasons for prohibiting the operation or supply, or possession for the purposes of operation or supply, of mobile phone boosters.

These reasons include that the integrity of the telecommunications networks by means of which PMTS are supplied, is at risk from the operation of mobile phone boosters. Consequently, a mobile phone booster can substantially interfere with, disrupt or disturb PMTS by jeopardising the quality and coverage of carriage services. This can cause inconvenience to, or loss of business for mobile phone users.

The disruption caused to PMTS by the use of mobile phone boosters can also impede access to emergency call services from mobile phones, which creates a risk to public health and safety.