

## EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

*Radiocommunications Advisory Guidelines (Registration of Devices under Spectrum Licences without an Interference Impact Certificate) Revocation Instrument 2012*

*Radiocommunications Act 1992*

### Purpose

The purpose of the *Radiocommunications Advisory Guidelines (Registration of Devices under Spectrum Licences without an Interference Impact Certificate) Revocation Instrument 2012* (the **Instrument**) is to revoke the *Radiocommunications Advisory Guidelines (Registration of Devices under Spectrum Licences without an Interference Impact Certificate) 1998* (the **Guidelines**).

### Legislative Provisions

The Instrument is made under section 262 of *the Radiocommunications Act 1992* (the **Act**) which provides that the Australian Communications and Media Authority (the **ACMA**) may make written advisory guidelines about any aspect of radiocommunication or radio emissions.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make an instrument, that power shall, unless the contrary intention appears, be construed as including a power exercisable in a like manner and subject to like conditions, to revoke that instrument.

The Instrument is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

### Operation

The Instrument revokes the Guidelines which were made by the ACMA under section 262 of the Act.

The Guidelines provide guidance on the use of guard space and agreements for the registration of radiocommunications transmitters under the Act. Under the *Radiocommunications (section 145(3) Certificates) Determination 2000*, one of the conditions applicable to the issue of certificates under subsection 145(3) of the Act was that an accredited person was satisfied that sufficient internal guard space was allocated to mitigate potential interference in accordance with the Guidelines. As part of the ACMA's review of the spectrum licence regulatory framework, the *Radiocommunications (section 145(3) Certificates) Determination 2000* will be revoked and replaced with a new determination under section 266A setting out an updated set of conditions for the issue of certificates under subsection 145(3). The new determination will no longer contain a condition that allows for certificates to be issued if compliance with the Guidelines is demonstrated.

As a result of these amendments, the ACMA seeks to revoke the Guidelines.

The ACMA has published an information paper, *Registration of radiocommunications devices under spectrum licences* which provides licensees with additional information on the use of guard space and agreements for the registration of radiocommunications transmitters. It replicates much of the information in the Guidelines, but has been expanded to also provide details of all mechanisms for device registration. It also details the methodology for registering a device under a spectrum licence. The information paper is available on the ACMA website – [www.acma.gov.au](http://www.acma.gov.au).

## **Consultation**

The ACMA has undertaken significant consultation with stakeholders about its plans to update the spectrum licence framework.

In March 2012, the ACMA released a consultation paper, *Proposed updates to the spectrum licence framework*. Among a number of regulatory and administrative changes, the consultation paper proposed changes to the device registration requirements for radiocommunications transmitters operating under a spectrum licence. A part of the proposed changes was the revocation of the Guidelines and the making of an information paper to replace the Guidelines.

There were three submissions received in response to the consultation paper. None of the submissions made comment on the proposed revocation of the Guidelines or objected to the revocation of the Guidelines.

All written submissions from this consultation are available on the ACMA's website at [www.acma.gov.au](http://www.acma.gov.au).

## **Statement of compatibility with human rights**

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires the rule maker in relation to a legislative instrument to which section 42 (disallowance) of the *Legislative Instruments Act 2003* applies to cause a statement of compatibility to be prepared in respect of that legislative instrument. This statement is in **Attachment B**.

## **Regulatory Impact**

The ACMA has consulted with the Office of Best Practice Regulation (the **OBPR**) on the requirement for a Regulation Impact Statement (**RIS**) for this legislative instrument. The OBPR advised that these Advisory Guidelines did not warrant the preparation of a RIS (OBPR ID 14062).

## **Documents incorporated by reference**

None

## **Detailed Description of the Instrument**

Details of the Instrument are set out in **Attachment A**.

## ATTACHMENT A

**DETAILS OF THE RADIOCOMMUNICATIONS ADVISORY GUIDELINES  
(REGISTRATION OF DEVICES UNDER SPECTRUM LICENCES WITHOUT AN  
INTERFERENCE IMPACT CERTIFICATE) REVOCATION INSTRUMENT 2012**

**Section 1 – Name of Instrument**

This section provides that the name of the Instrument is the *Radiocommunications Advisory Guidelines (Registration of Devices under Spectrum Licences without an Interference Impact Certificate) Revocation Instrument 2012*.

**Section 2 - Commencement**

This section states that the Instrument will commence on the day after it is registered on the Federal Register of Legislative Instruments.

**Section 3 – Revocation of *Radiocommunications Advisory Guidelines (Registration of Devices under Spectrum Licences without an Interference Impact Certificate) 1998***

This section revokes the *Radiocommunications Advisory Guidelines (Registration of Devices under Spectrum Licences without an Interference Impact Certificate) 1998*.

**ATTACHMENT B****Statement of Compatibility with Human Rights**

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

***Radiocommunications Advisory Guidelines (Registration of Devices under Spectrum Licences without an Interference Impact Certificate) Revocation Instrument 2012***

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Legislative Instrument**

Section 262 of the *Radiocommunications Act 1992* (the Act) provides that the ACMA may make written advisory guidelines about any aspect of radiocommunication or radio emissions. Under subsection 33(3) of the *Acts Interpretation Act 1901*, the power to make an instrument includes the power, exercisable in a like manner and subject to like conditions, to revoke that instrument.

The *Radiocommunications Advisory Guidelines (Registration of Devices under Spectrum Licences without an Interference Impact Certificate) Revocation Instrument 2012* (the **Instrument**) revokes the *Radiocommunications Advisory Guidelines (Registration of Devices under Spectrum Licences without an Interference Impact Certificate) 1998* (the **Guidelines**). As a result of significant changes to the device registration process for radiocommunications transmitters under the Act, the Guidelines are no longer considered necessary.

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires the rule-maker in relation to a legislative instrument to which section 42 (disallowance) of the *Legislative Instruments Act 2003* applies to cause a statement of compatibility to be prepared in respect of that legislative instrument.

The Instrument is a legislative instrument that is subject to disallowance under section 42 of the *Legislative Instruments Act 2003*.

**Human Rights Implications**

The Instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

The Instrument is compatible with human rights as it does not raise any human rights issues.