

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority *Radiocommunications (Accreditation Body) Determination 2014* *Radiocommunications Act 1992*

Purpose

The Australian Communications and Media Authority (the **ACMA**) has made the *Radiocommunications (Accreditation Body) Determination 2014* (the **2014 Determination**) to replace the *Radiocommunications (Accreditation Body) Determination 1998* (the **1998 Determination**) without making any changes to the regulatory arrangements created by the 1998 Determination.

The ACMA has made the 2014 Determination as the 1998 Determination is due to be automatically repealed on 1 October 2015, in accordance with Part 6 of the *Legislative Instruments Act 2003* (the **LIA**).

Legislative Provisions

The ACMA made the 2014 Determination under subsection 183(1) of the *Radiocommunications Act 1992* (the **Act**). Subsection 183(1) provides that the ACMA may, by notice, determine that a specified person or association is an accreditation body for the purposes of section 183.

The 2014 Determination is a legislative instrument for the purposes of the LIA.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make a legislative instrument, the power shall be construed to include a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument. The 2014 Determination is made under subsection 183(1) of the Act and revokes the 1998 Determination.

Background

The supply to the Australian market of radiocommunications devices is subject to the regulatory regime established under the Act including radiocommunications performance standards made under subsection 162(1) of the Act and the *Radiocommunications (Compliance Labelling – Devices) Notice 2014* (the **Labelling Notice**) made under subsection 182(1) of the Act. Together, the performance standards and the Labelling Notice ensure that devices supplied and used in Australia comply with Australian laws including permissible electromagnetic emissions, channel width, modulation types and operating frequencies.

The Labelling Notice may specify that certain devices that carry a high risk in relation to non-compliance must be tested. This provides a high degree of certainty regarding the compliance of the equipment with mandatory Australian standards. Section 183 of the Act provides that the ACMA may, by notice in the Gazette, determine that a specified person or association is an accreditation body. The role of an accreditation body includes determining that a specified person is a “recognised testing authority” for the purposes of the regulatory arrangements in relation to the compliance testing and labelling of devices.

Operation

The 2014 Determination determines that the National Association of Testing Authorities, Australia (NATA) ABN 59 004 379 748 is an accreditation body for the purposes of section 183 of the Act.

Consultation

Subsection 17(1) of the LIA requires that, before the ACMA makes a legislative instrument, it must be satisfied that any consultation that the ACMA considers is appropriate and reasonably practicable to undertake, has been undertaken.

The ACMA has consulted with industry stakeholders and the general public on the making of the 2014 Determination. Between 16 April 2014 and 6 June 2014, the ACMA conducted a public consultation process on a number of instruments, including the 2014 Determination, that comprise the regulatory arrangements for supply of radiocommunications equipment. A consultation paper which explained the sunseting (automatic repeal) process and the ACMA's preliminary view that the existing arrangements should be continued without any significant changes, was made available on the ACMA website. Interested parties were notified of the release of the discussion paper and invited to comment. No submissions were made on remaking this instrument.

Regulation Impact

The Office of Best Practice Regulation (**OBPR**) has considered the matter and formed the opinion that making the 2014 Determination is minor or machinery in nature. Accordingly, OBPR advised that no further analysis (in the form of a Regulation Impact Statement) was required. The OBPR exemption number is ID 16649.

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 LIA applies to cause a statement of compatibility to be prepared in respect of that legislative instrument.

The following statement has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The 2014 Determination, which determines that the National Association of Testing Authorities, Australia is an accreditation body for the purposes of section 183 of *the Radiocommunications Act 1992*, 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*.

The ACMA has considered whether the 2014 Determination engages any applicable human rights or freedoms and has formed the view that it does not. The 2014 Determination is compatible with human rights as it does not raise any human rights issues.

Attachment A

Detailed description of the 2014 Determination

Section 1 Name of Determination

This section names the 2014 Determination as the *Radiocommunications (Accreditation Body) Determination 2014*.

Section 2 Commencement

This section provides that the 2014 Determination commences on the later of the day after it is registered on the Federal Register of Legislative Instruments or, the day on which it is published in the *Gazette*.

Section 3 Revocation

This section revokes the previous determination, the *Radiocommunications (Accreditation Body) Determination 1998* (the **1998 Determination**).

Section 4 Accreditation Body

This section determines that for the purposes of section 183 of the Act, the National Association of Testing Authorities, Australia ABN 59 004 379 748 is an accreditation body.