

## EXPLANATORY STATEMENT

### Issued by the Australian Communications and Media Authority *Radiocommunications (Foreign Space Objects) Determination 2014*

#### *Radiocommunications Act 1992*

#### **Purpose**

The Australian Communications and Media Authority (the ACMA) has made the *Radiocommunications (Foreign Space Objects) Determination 2014* (the 2014 Determination) to revoke and replace the *Radiocommunications (Foreign Space Objects) Determination 2000* (the 2000 Determination) without making any significant changes to the regulatory arrangements created by the 2000 Determination.

The ACMA has made the 2014 Determination as the 2000 Determination was due to be automatically repealed on 1 October 2015, in accordance with Part 6 of the *Legislative Instruments Act 2003* (the LIA).

#### **Legislative Provisions**

Subsection 16(1)(ca) of the *Radiocommunications Act 1992* (the Act) gives the ACMA the power to specify in a determination the circumstances in which foreign space objects are subject to the Act.

A determination made under paragraph 16(1)(ca) of the Act is a legislative instrument and may be subject to disallowance in accordance with section 42 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.

#### **Background**

Under section 5 of the Act, a foreign space object is a 'space object that is not an Australian space object.' Paragraph 16(1)(ca) provides that the Act applies outside Australia to 'foreign space objects, in the circumstances specified in a written determination by the ACMA'; consequently the 2014 Determination extends application of the Act to the foreign space objects listed in the 2014 Determination in the circumstances specified in the 2014 Determination.

In making the 2014 Determination, the objective is to regulate foreign space objects to the extent necessary to license communications to and from Australia. Extending the application of the Act allows satellite operators to apply to the ACMA for space and/or space receive apparatus licences in relation to the foreign space objects listed in the 2014 Determination.

From time to time, the circumstances specified in the 2014 Determination may change. Amendments to the 2014 Determination will be made when considered necessary in order to reflect such changes and maintain the accuracy of the information specified in the 2014 Determination.

Following review and consultation, the ACMA formed the view that the 2000 Determination was operating effectively and efficiently, and continued to form a necessary part of the legislative framework. Accordingly, the ACMA decided to make the 2014 Determination to replace the 2000

Determination without making any significant changes to the regulatory arrangements created by the 2000 Determination so that its ongoing effect is preserved.

### **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.

Between 28 July 2014 and 8 September 2014, the ACMA conducted a formal public consultation process in relation to the Determination. A consultation paper was made available on the ACMA website. The consultation paper explained the sunseting (automatic repeal) process and the ACMA's preliminary view that the existing arrangements should be saved from automatic repeal and remade without any significant changes. Interested parties were notified of the release of the consultation paper and invited to comment.

The ACMA received 13 written submissions in response to the consultation paper and all submissions were considered when making the 2014 Determination.

### **Regulation Impact**

The Office of Best Practice Regulation (**OBPR**) has considered the matter and formed the opinion that the proposed updates did not have more than minor regulatory impact. Accordingly, OBPR advised that a Regulation Impact Statement was not required. The OBPR exemption number is ID 17009.

### **Detailed description of the 2014 Determination**

Details of the 2014 Determination are set out in **Attachment A**.

### **Documents incorporated in the 2014 Determination by reference**

The 2014 Determination incorporates the following document by reference:

- the *Radiocommunications (Communication with Space Object) Class Licence 1998*.

This Class Licence can be found on the Australian Government's ComLaw website (<http://www.comlaw.gov.au/>).

### **Statement of Compatibility with Human Rights**

As required under the *Human Rights (Parliamentary Scrutiny) Act 2011*, a Statement of Compatibility with Human Rights has been prepared by the ACMA and is at **Attachment B**.

## **Attachment A**

### **Detailed description of the *Radiocommunications (Foreign Space Objects) Determination 2014***

#### **Section 1 Name of Determination**

Section 1 provides that the 2014 Determination is the *Radiocommunications (Foreign Space Objects) Determination 2014*.

#### **Section 2 Commencement**

Section 2 provides that the 2014 Determination commences on the day after it is registered on the Federal Register of Legislative Instruments.

#### **Section 3 Definitions**

Section 3 defines various terms used in the Determination.

#### **Section 4 Application of Act outside Australia – foreign space objects operating in frequency range mentioned in class licence**

Section 4 lists the foreign space objects operating in the frequency range mentioned in the *Radiocommunications (Communication with Space Object) Class Licence 1998* (the Class Licence) to which the Act applies. These are mentioned in Schedules 1 and 2.

#### **Section 5 Application of Act outside Australia – other foreign space objects**

Section 5 lists other foreign space objects to which the Act applies. These are mentioned in Schedule 3.

#### **Section 6 Revocation of previous Determination**

Section 6 revokes the *Radiocommunications (Foreign Space Objects) Determination 2000*.

#### **Schedule 1**

Schedule 1 lists the owners, controllers or operators of foreign space objects operating in the frequency range mentioned in the Class Licence.

#### **Schedule 2**

Schedule 2 lists other foreign space objects operating in the frequency range mentioned in the Class Licence.

#### **Schedule 3**

Schedule 3 lists the owners, controllers or operators of other foreign space objects.

## **Attachment B**

### **Statement of Compatibility with Human Rights**

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

#### ***Radiocommunications (Foreign Space Objects) Determination 2014***

The 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**

The *Radiocommunications (Foreign Space Objects) Determination 2014* revokes and replaces the *Radiocommunications (Foreign Space Objects) Determination 2000* without making any significant changes to the regulatory arrangements created by that instrument.

The *Radiocommunications (Foreign Space Objects) Determination 2014* lists the foreign space objects to which the *Radiocommunications Act 1992* applies.

#### **Human Rights Implications**

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

#### **Conclusion**

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