

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Radiocommunications (Specified Radiocommunications Receivers and Types of Transmitter Licences and Receiver Licences) Determination 2014
Radiocommunications Act 1992

Purpose

The Australian Communications and Media Authority (the ACMA) has made the *Radiocommunications (Specified Radiocommunications Receivers and Types of Transmitter Licences and Receiver Licences) Determination 2014* (the Determination).

The Determination revokes and replaces the *Radiocommunications (Radiocommunications Receivers) Determination 2000 (No. 2)* (the Receivers Determination) and the *Radiocommunications (Transmitter and Receiver Licences) Determination* (the Transmitter and Receiver Determination) without making any significant changes to the regulatory arrangements created by those instruments.

The ACMA has made the Determination because the Receivers Determination and the Transmitter and Receiver Determination were each due to 'sunset' (i.e. be automatically repealed) on 1 April 2015 and 1 October 2015, respectively, by operation of Part 6 of the *Legislative Instruments Act 2003* (the LIA).

Following review, and consultation as described below, the ACMA formed the view that the Receivers Determination and the Transmitter and Receiver Determination were each operating effectively and efficiently, and continued to form a necessary and useful part of the legislative framework. The ACMA considered that the instruments were complementary in their purpose and that combining their contents into one, consolidated instrument would benefit stakeholders. The ACMA has therefore revoked the instruments before their sunset dates, and remade them into a consolidated single instrument with only minor and machinery changes.

Legislative Provisions

Paragraph 7(1)(b) of the *Radiocommunications Act 1992* (the Act), provides that for the purposes of the Act a radiocommunications receiver of a kind specified in a written determination made by the ACMA for the purposes of that paragraph is a radiocommunications device.

Under subsection 98(1) of the Act, the ACMA may determine, by legislative instrument, the types of transmitter licences and the types of receiver licences that it may issue.

Subsection 98(2) of the Act provides that the ACMA must not issue an apparatus licence that is not a transmitter licence or a receiver licence of a type so determined (under subsection 98(1) of the Act).

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 Determination is a legislative instrument and may be subject to disallowance in accordance with section 42 of the LIA.

Background

By specifying that a radiocommunications receiver of a certain kind is a radiocommunications device for the purposes of the Act, a determination made under paragraph 7(1)(b) of the Act brings those receivers within the scope of provisions in the Act that regulate the possession, operation and supply of radiocommunication devices.

A determination made under subsection 98(1) of the Act specifies the kinds of receiver or transmitter licences that the ACMA may issue for the purposes of section 97 of the Act.

Operation

The Determination specifies the radiocommunications receivers that are radiocommunications devices for the purposes of the Act.

The Determination also sets out the 21 types of radiocommunications receiver and transmitter licences that the ACMA may issue.

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 published a consultation paper and draft instrument on its website between 28 April 2014 and 11 June 2014. The consultation paper explained the sunseting process and the ACMA's preliminary view that the existing arrangements under the the Receivers Determination and the Transmitter and Receiver Determination should be saved from automatic repeal and remade in a single, consolidated instrument, and without any significant changes to the operative provisions. Interested parties were invited to comment.

The ACMA received no submissions to the consultation paper.

Regulatory Impact

The Office of Best Practice Regulation (OBPR) applies streamlined administrative processes to sunseting legislative instruments. As the ACMA has determined that the Receivers Determination and the Transmitter and Receiver Determination were fit for purpose, and should be remade without any significant changes, and has certified those matters to OBPR, no Regulation Impact Statement (RIS) is required in relation to the making of the Determination. (OBPR reference ID 16603 and 16604).

Detailed Description of the Instrument

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

Documents referred to in the Instrument

The Determination refers to the *Radiocommunications (Interpretation) Determination 2000* as in force from time to time.

The *Radiocommunications (Interpretation) Determination 2000* can be found on the Australian Government's ComLaw website (<http://www.comlaw.gov.au/>).

Statement of Compatibility with Human Rights

As required by subsection 9(1) of 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**.

DETAILS OF THE *RADIOCOMMUNICATIONS (SPECIFIED RADIOCOMMUNICATIONS RECEIVERS AND TYPES OF TRANSMITTER LICENCES AND RECEIVER LICENCES) DETERMINATION 2014*

Section 1 Name of Determination

Section 1 provides that the Determination is the *Radiocommunications (Specified Radiocommunications Receivers and Types of Transmitter Licences and Receiver Licences) Determination 2014*.

Section 2 - Commencement

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

Section 3 – Revocation of previous determinations

Section 3 provides that the *Radiocommunications (Radiocommunications Receivers) Determination 2000 (No. 2)* and the *Radiocommunications (Transmitter and Receiver Licences) Determination* are revoked.

Section 4 – Radiocommunications receivers

Section 4 specifies, for the purposes of paragraph 7(1)(b) of the Act, the kinds of radiocommunications receivers that are taken to be radiocommunications devices. A radiocommunications receiver is specified if it is, or forms part of, the types of stations listed at paragraphs 4(a) to (e).

The note to section 4 explains that descriptions of the types of stations specified in section 4 are set out in the *Radiocommunications (Interpretation) Determination 2014*.

Section 5 – Transmitter licences

Section 5 specifies, for the purposes of subsection 98(1) of the Act, that the ACMA may issue a transmitter licence of a type listed in column two of Schedule 1.

The note to section 5 explains that the licence types specified in Schedule 1 are described in the *Radiocommunications (Interpretation) Determination 2014*.

Section 6 – Receiver licences

Section 6 specifies, for the purposes of subsection 98(1) of the Act, that the ACMA may issue a receiver licence of a type listed in column two of Schedule 2.

The note to section 6 explains that the licences specified in Schedule 2 are described in the *Radiocommunications (Interpretation) Determination 2014*.

Schedules of the Determination

Schedule 1 – Transmitter licences

Schedule 1 lists the types of transmitter licence the ACMA may issue.

Schedule 2 – Receiver licences

Schedule 2 lists the types of receiver licence the ACMA may issue.

Statement of Compatibility with Human Rights

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

Radiocommunications (Specified Radiocommunications Receivers and Types of Transmitter Licences and Receiver Licences) Determination 2014

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

The *Radiocommunications (Specified Radiocommunications Receivers and Types of Transmitter Licences and Receiver Licences) Determination 2014* (the Determination) revokes and replaces the *Radiocommunications (Radiocommunications Receivers) Determination 2000 (No. 2)* and the *Radiocommunications (Transmitter and Receiver Licences) Determination* without making any significant changes to the regulatory arrangements created by those instruments.

The Determination specifies the kinds of radiocommunications receivers that are radiocommunications devices for the purposes of the application of the *Radiocommunications Act 1992* (the Act). It also specifies the types of receiver or transmitter licence the ACMA may issue under the Act.

Human Rights Implications

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

Conclusion

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

Australian Communications and Media Authority