

EXPLANATORY STATEMENT

Space Activities (Approved Scientific or Educational Organisations) Guidelines 2015

Issued by the authority of the Minister for Industry and Science

Authority

The *Space Activities (Approved Scientific or Educational Organisations) Guidelines 2015* (the 2015 Guidelines) are made under subsection 8B(1) of the *Space Activities Act 1998* (the Act) which provides that the Minister must develop written guidelines which he or she must have regard to when deciding whether or not to make a declaration under the Act.

The 2015 Guidelines are a legislative instrument for the purpose of the *Legislative Instruments Act 2003*.

Background

The Act establishes a system for the regulation of space launch/re-entry activities conducted either in Australia or by Australian nationals outside Australia.

Amendments were made to the Act in November 2002. These amendments included provisions for a tailored application and assessment process and a lower fee regime for approved scientific or educational organisations. The amendments to the Act in relation to scientific or educational organisations reflect the public good aspect of bona fide scientific and educational space activities, and the modest scale nature of these activities. For example, these activities are usually conducted on a one-off basis and do not involve the construction of major infrastructure.

Section 8A of the Act allows the Minister to declare, by writing, an educational institution, a scientific organisation or a non-profit body to be an approved scientific or educational organisation for the purposes of the Act.

A declaration to be an approved scientific or educational organisation under section 8A of the Act will only be considered in relation to an organisation proposing to conduct a space activity that must be covered by an approval under the Act. A space activity commonly includes the launch of vehicles into an area beyond 100 kilometres above mean sea level as conducted either from Australia or by Australian nationals outside Australia.

Purpose and operation

The *Space Activities (Approved Scientific or Educational Organisations) Guidelines 2004* (the 2004 Guidelines) were made on 3 February 2004, gazetted on 11 February 2015 and will sunset on 1 October 2015. The purpose of the 2015 Guidelines is to replace the 2004 Guidelines.

Making a declaration under section 8A of the Act in accordance with the 2015 Guidelines allows an approved scientific or educational organisation to access to the different forms of application for approvals under the Act, and a different licensing and fee regime from those applicable to commercial organisations (section 9 of the *Space Activities Regulations 2001* - refer to table 1 below). However, the criteria for being granted an approval under the regulations remain the same for both approved scientific and educational organisations and organisations which are not approved scientific or educational organisations.

Table 1 - Comparison of space activity fees (current as at the date of the 2015 Guidelines)

Activity	Fee for a person other than an approved scientific or educational organisation	Fee for an approved scientific or educational organisation
Space Licences	\$300,000 application fee and a \$190,000 annual fee	\$3,000 application fee and a \$1,900 annual fee
Launch Permit	\$40,000 application and \$10,000 for each additional launch	\$400 application and \$100 for each additional launch
Overseas Launch Certificate	\$10,000	\$100
Variation Authorisation	\$10,000	\$100
Exemption Certificate	\$10,000	\$100

The 2015 Guidelines are not intended to preclude an approved scientific or educational organisation from subsequently seeking to commercialise the results, data or intellectual property arising from their activities. However, the 2015 Guidelines are intended to prevent an organisation gaining a declaration under section 8A of the Act in relation to a proposed space activity that is, or is likely to be, a precursor to the commercial operation of a launch facility or the commercial operation of a space object by the applicant or a related party or entity.

Consultation

The Office of Best Practice Regulation was consulted in relation to the regulatory impact of the 2015 Guidelines. As the 2015 Guidelines only affect the Minister's decision-making process and have no impact on the requirements for an applicant, the Office of Best Practice Regulation confirmed that a Regulation Impact Statement is not required.

Further consultation was considered unnecessary because the purpose of the 2015 Guidelines is simply to replace the 2004 Guidelines, which sunset on 1 October 2015. The 2015 Guidelines do not substantially alter the existing arrangements set out in the 2004 Guidelines. However, there were two minor amendments:

- adding a condition clarifying that the Minister, when deciding to make a declaration, must consider whether the declaration should be expressly limited to a particular space activity or series of space activities that the applicant proposes that it will, or is likely to, undertake; and
- amending Note 1 in the 2015 Guidelines to reflect that regulation 1.04 of the Space Activities Regulations 2001 was made subsequent to the 2004 Guidelines, providing how an application for a declaration under section 8A of the Act must be made.

At the time of the making of the 2004 Guidelines, consultation was undertaken with stakeholders who were given the opportunity to provide feedback to the Space Licensing and Safety Office. This feedback was taken into account in developing the 2004 Guidelines. It was not necessary to consult on this new condition as it does not provide a further power to, or limit the power of, the Minister to make a declaration but merely makes it clear that the Minister must consider whether to limit the scope of the declaration to relevant space activity or a series of activities when deciding whether to make a declaration.

DETAILED EXPLANATION OF THE 2015 GUIDELINES

1 Name of Guidelines

This section sets out the name of the 2015 Guidelines as the *Space Activities (Approved Scientific or Educational Organisations) Guidelines 2015*.

2 Commencement

This section provides that the 2015 Guidelines will commence on 1 October 2015.

3 Definitions

This section provides that words and phrases that have been defined in the *Space Activities Regulations 2001* and used in the 2015 Guidelines shall have the same meaning as they do in the Regulations.

4. Matters that the Minister must consider

In deciding whether or not to make a declaration under section 8A of the Act, the Minister must consider a number of matters.

Matters relating to determining whether the applicant for a declaration is a bona fide scientific or educational organisation intending to undertake a bona fide scientific or educational space activity

Paragraphs 4(1)(a) to (e) go to determining whether the applicant is a bona fide scientific or educational organisation having regard to the applicant's principal function and activities: in the case of an applicant that is not an individual, the purpose and manner in which the applicant was established; whether the applicant carries on business for profit or gain; and whether the applicant is prohibited by its constitution or by law from making distribution of its assets to members and persons while it is operating or being wound up.

Matters relating to determining the scientific or educational character of the space activity proposed to be undertaken by the applicant.

Paragraphs 4(1)(f) to (h) focus on the scientific or educational character of the space activity proposed to be undertaken by the applicant. The Minister must have regard to the purpose of the applicant's space activity, which is to be determined by the nature, origin and function of the payload relating to the activity, and the proposed use of the results, data, intellectual property or other products relating to the activity. The Minister must also have regard to: the nature and source of the funding for the activity; any conditions under which the funding will be provided; and any agreements, memorandums of understanding, or other arrangements entered into by the applicant or which the applicant is proposing to enter into in relation to the activity or series of activities.

Matters relating to when the activity is likely to be undertaken by the applicant

Paragraph 4(1)(i) relates to when the activity is likely to be undertaken by the applicant. This will assist the Minister in determining whether the activity will be undertaken within a reasonable period of time.

Paragraph 4(1)(l) relates to whether the declaration should be expressly limited to particular space activity or series of space activities that the applicant proposes that it will, or is likely to, undertake as expressed in their application and considered by the Minister.

Matters relating to the activities and purpose of each party that is a related entity or related party to the applicant

Paragraphs 4(1), (j) and (k) allow the Minister to have regard to the activities and purpose of each party that is a related entity or related party to the applicant and whether a related entity or a related party that is not an educational institution, non-profit body or scientific organisation may gain a benefit from the making of the declaration by the Minister. These paragraphs reinforce the intention of the 2015 Guidelines to prevent an organisation from gaining a declaration in relation to a proposed space activity that is likely to be a precursor to the commercial operation of a launch facility or the commercial operation of a space object by the applicant or a related entity or related party.

Matters relating to the broader national and international policy considerations

Paragraphs 4(2)(a) and (b) highlight the broader national and international policy considerations that the Minister must also consider in making a declaration. They include consideration of the impact of the proposed space activity on Australia's national security, foreign policy, international obligations and the extent of participation by Australian nationals in the proposed space activity.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

SPACE ACTIVITIES (APPROVED SCIENTIFIC OR EDUCATIONAL ORGANISATIONS) GUIDELINES 2015

The 2015 Guidelines are 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 Guidelines

The 2015 Guidelines prescribe the information that the Minister must have regard to when deciding whether or not to make a declaration under section 8A of the *Space Activities Act 1998* (the Act).

Section 8A of the Act allows the Minister to declare by writing an educational institution, a scientific organisation or a non-profit body to be an approved scientific or educational organisation for the purposes of the Act.

A declaration to be an approved scientific or educational organisation under section 8A of the Act will only be considered in relation to an organisation proposing to conduct a space activity that must be covered by an approval under the Act.

The effect of the Minister making a declaration under section 8A of the Act in accordance with the 2015 Guidelines is to allow an approved scientific or educational organisation access to the different forms of application for approvals under the Act and a different licensing and fee regime from those applicable to commercial organisations. However, the criteria for being granted an approval under the regulations remain the same for both approved scientific and educational organisations and organisations which are not approved scientific or educational organisations.

Human rights implications

The 2015 Guidelines do not engage any of the applicable rights or freedoms.

Conclusion

The 2015 Guidelines are compatible with human rights as they do not raise any human rights issues.

The Minister for Industry and Science, the Honourable Ian Macfarlane MP