

## EXPLANATORY STATEMENT

Prepared by the Australian Communications and Media Authority

*Radiocommunications Act 1992*

*Radiocommunications (Qualified Operators) Consequential Amendments Instrument 2016 (No. 1)*

### Purpose

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Qualified Operators) Consequential Amendments Instrument 2016 (No. 1)* (**the Instrument**) under subsection 64(1) of the *Australian Communications and Media Authority Act 2005* (**the ACMA Act**) and paragraph 107(1)(f) of *Radiocommunications Act 1992* (**the Radcoms Act**).

The *Radiocommunications (Qualified Operators) Determination 2005* (**the Qualified Operators Determination**) was due to sunset on 1 April 2016 and has been remade in a new instrument prior to the sunset date, with minor changes in order to preserve its ongoing effect. Minor changes were made to the arrangements previously provided for in the Qualified Operators Determination to establish a more transparent approach to determining whether an overseas licence or qualification is recognised so that it amounts to an exception to the requirement to have a certificate of proficiency. In order to implement this approach a number of minor changes were also required to be made to the *Radiocommunications Licence Conditions (Amateur Licence) Determination 2015*. Some minor changes were also made to update definitions in the *Radiocommunications (Interpretation) Determination 2015* and to correct a typographical error in the *Radiocommunications Licence Conditions (Maritime Ship Licence) Determination 2015*.

### Legislative provisions

The Instrument has been made by the ACMA under subsection 64(1) of the ACMA Act and paragraph 107(1)(f) of the Radcoms Act, and in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (**AIA**).

Subsection 33(3) of the AIA relevantly provides that, where an Act confers a power to make a legislative instrument, the power shall be construed as including 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.

Subsection 64(1) of the ACMA Act allows the ACMA to make a written determination defining one or more expressions used in specified instruments. The ACMA has made the *Radiocommunications (Interpretation) Determination 2015*, which defines several terms used in instruments made under the Radcoms Act. The Instrument amends that Determination.

Paragraph 107(1)(f) of the Radcoms Act allows the ACMA to determine licence conditions for the operation of apparatus licences. The Instrument amends two such licence conditions determinations, being the *Radiocommunications Licence Conditions (Amateur Licence) Determination 2015* and the *Radiocommunications Licence Conditions (Maritime Ship Licence) Determination 2015*.

The Instrument is a disallowable legislative instrument for the purposes of the *Legislation Act 2003* (**LA**).

## Background

The Instrument makes some minor and consequential changes to ensure that, in line with the operation of the *Radiocommunications (Qualified Operators) Determination 2016*, operators of amateur stations, maritime ship stations and maritime coast stations are appropriately qualified and therefore know to use the appropriate frequencies, transmitter output power and protocols to minimise the potential for interference to each other and other users of radiocommunications devices.

In the course of remaking the Qualified Operators Determination, it became apparent that the exceptions that apply to the requirement to hold a practising certificate could be clarified by ensuring that persons who meet the definition of 'a qualified person' for the purpose of the *Radiocommunications Licence Conditions (Amateur Licence) Determination 2015* should also be exempt from a requirement to hold a certificate of proficiency (i.e. from the requirement to be a qualified operator). This is because the requirement to be a qualified person already involves an assessment of the equivalency of overseas qualifications. To reduce duplication of requirements and simplify the assessment of whether or not someone meets the definition of a qualified person, the *Radiocommunications Licence Conditions (Amateur Licence) Determination 2015* has been amended to explain that a person will be taken to hold a qualification recognised by the ACMA if the qualification they hold is listed in the ACMA's Table of Equivalent Qualifications and Licences.

In addition, some minor changes have been made to update references in the *Radiocommunications (Interpretation) Determination 2015* and to correct typographical errors.

## Incorporation by reference

The Instrument inserts some references to the Act and legislative instruments as in force from time to time (as permitted by the section 314A of the Act) into the amended legislative instruments. These are references to:

- the Act;
- *Radiocommunications (Citizen Band Radio Stations) Class Licence 2015*;
- *Radiocommunications (Overseas Amateurs Visiting Australia) Class Licence 2015*;

That Act and these legislative instruments are available at [www.legislation.gov.au](http://www.legislation.gov.au).

The Instrument inserts into amended legislative instruments references to the Tables of Equivalent Qualifications and Licences as in force from time to time, as permitted by section 314A of the Act. The Tables of Equivalent Qualifications and Licences are available at <http://www.acma.gov.au>.

## Consultation

Subsection 17(1) of the LA 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 conducted public consultation by releasing a draft of this instrument along with the draft *Radiocommunications (Qualified Operators) Determination 2016* and a consultation paper outlining the changes for comment. The consultation paper and draft instruments were made available on the ACMA website from 22 December 2015 to 29 January 2016.

One submission was received from the Wireless Institute of Australia which supported the ACMA's proposed changes to establish a uniform and transparent approach to determining

whether an overseas licence or qualification amounts to an exception to the requirement to have a certificate of proficiency.

### **Regulation Impact Statement (RIS)**

The Office of Best Practice Regulation (**OBPR**) has advised that the ACMA can self-assess the performance of the Instrument and follow an alternate self-certification process. The OBPR reference number is: RIS ID 19975.

### **Notes on Sections**

The provisions of the Instrument, and how they operate, are described in **Attachment A**.

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

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out in **Attachment B**.

## **ATTACHMENT A**

### **NOTES ON SECTIONS**

#### **Section 1 Name of Instrument**

Section 1 provides that the name of the Instrument is the *Radiocommunications (Qualified Operators) Consequential Amendments Instrument 2016 (No.1)*.

#### **Section 2 Commencement**

Section 2 provides that the Instrument commences on the day that the *Radiocommunications (Qualified Operators) Determination 2016* commences.

#### **Section 3 Amendments – Radiocommunications (Interpretation) Determination 2015**

Section 3 provides that Schedule 1 amends the *Radiocommunications (Interpretation) Determination 2015*.

#### **Section 4 Amendments – Radiocommunications Licence Conditions (Amateur Licence) Determination 2015**

Section 4 provides that Schedule 2 amends the *Radiocommunications Licence Conditions (Amateur Licence) Determination 2015*.

#### **Section 5 Amendments – Radiocommunications Licence Conditions (Maritime Ship Licence) Determination 2015**

Section 5 provides that Schedule 3 amends the *Radiocommunications Licence Conditions (Maritime Ship Licence) Determination 2015*.

#### **Schedule 1**

Schedule 1 amends the *Radiocommunications (Interpretation) Determination 2015* in order to:

- update references to legislative instruments that have since been remade;
- ensure consistency of language in relation to references to equivalent qualifications; and
- insert a new definition of Tables of Equivalent Qualifications and Licences.

#### **Schedule 2**

Schedule 2 amends the *Radiocommunications Licence Conditions (Amateur Licence) Determination 2015* to clarify that a person will be a qualified person in relation to an amateur station if they hold an overseas licence or qualification that has been recognised by the ACMA. Subsection 3(1C) is inserted to clarify that, for the purpose of the definition of qualified person, a licence or qualification is recognised by the ACMA if it is listed in either Table A or Table B of the Tables of Equivalent Qualifications and Licences maintained by the ACMA on its website.

#### **Schedule 3**

Schedule 3 corrects a typographical error in the *Radiocommunications Licence Conditions (Maritime Station Licence) Determination 2015*.

## **ATTACHMENT B**

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

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

#### ***Radiocommunications (Qualified Operators) Consequential Amendments Instrument 2016 (No. 1)***

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 (Qualified Operators) Consequential Amendments Instrument 2016 (No. 1)* (the Instrument) makes minor and consequential changes to help establish a transparent approach to determining whether an overseas licence or qualification amounts to an exception to the requirement for an operator to hold a certificate of proficiency. To fully establish this approach a number of minor amendments to definitions have been made along with minor changes to the following instruments:

- *Radiocommunications (Interpretation) Determination 2015*;
- *Radiocommunications Licence Conditions (Amateur Licence) Determination 2015*; and
- *Radiocommunications Licence Conditions (Maritime Ship Licence) Determination 2015*.

#### **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.