

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Industry, Science and Technology

Space (Launches and Returns) Act 2018

Space (Launches and Returns) (Insurance) Rules 2019

Purpose and Operation

The *Space Activities Amendment (Launches and Returns) Act 2018* was passed by parliament in August 2018 and amended the *Space Activities Act 1998* (the 1998 Act). The *Space (Launches and Returns) Act 2018* (the Act), as the amended Act is known, provides an improved and streamlined framework for the regulation of space activities in Australia or by Australians overseas as well as arrangements for the launch of high power rockets. Section 110 of the Act includes powers for the Minister to make rules by legislative instrument. The rules are needed to support the effective operation of the Act. They are intended to provide clear information and a streamlined process relevant to the approval of an activity under the Act.

The purpose of the *Space (Launches and Returns) (Insurance) Rules 2019* (the Rules) is to provide the detail on the insurance/financial requirements for certain applications¹ made in accordance with the Act. The Rules provide the amount of insurance required, and the means for demonstrating direct financial responsibility. Prescribing this detail in the Rules provides the flexibility to update the insurance requirements as the nature of space activities evolves.

The Rules incorporate the Maximum Probable Loss Methodology (MPL Methodology) by reference, as in force from time to time. The MPL Methodology is freely available on the website of the Australian Space Agency (Agency) (www.space.gov.au). Notwithstanding subsection 14(2) of the *Legislation Act 2003*, subsection 110(3) of the Act facilitates such an incorporation by reference.

The MPL Methodology details the complex modelling required to enable a quantitative assessment of the potential consequences due to mishaps during launches or returns. The MPL Methodology is incorporated in the Rules in this way to increase the flexibility of the Rules to respond to the rapidly evolving nature of space technologies (therefore supporting the growth of the sector), and to allow any potential updates to international best-practice in relevant calculation methodologies. The MPL methodology is developed and owned by the Australian Government. The document is amended by the Australian Government, as required, when it is identified that the equations for calculation of the potential consequences due to mishaps that may occur during phases of flight need to be updated.

¹ For an Australian launch permit, Australian high power rocket permit, overseas payload permit or return authorisation.

Background

In 2015, the Australian Government commenced a review of the 1998 Act to ensure Australia's space regulation was appropriate for technology advancements and did not unnecessarily inhibit innovation in Australia's space activities. The review identified that the 1998 Act required higher insurance amounts than other space-faring nations and would benefit from increased flexibility and a focus on the nature of the activity rather than the type of organisation undertaking the activity.

A Bill to amend the 1998 Act was drafted that provided improvements appropriate to Australia's national context and supported participation in the Australian space industry, whilst balancing the safety of space activities, and the risk of damage to persons or property as a result of space activities. The framework implements certain Australian obligations under the UN Space Treaties. The *Space Activities Amendment (Launches and Returns) Act 2018* passed both houses of Parliament in August 2018 and received Royal Assent on 31 August 2018. The Act commenced on 31 August 2019.

Authority

Subsection 110(1) of the Act provides that the Minister may, by legislative instrument, make rules prescribing matters required or permitted by the Act to be prescribed by the rules, or make rules prescribing matters necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Accordingly, the Rules are made under subsection 110(1) of the Act.

Consultation

Public consultation on the draft Rules was undertaken in May to June 2019 for a period of four weeks. As part of this consultation, the Australian Space Agency (the Agency) released a consultation paper along with an exposure draft of the Rules and accepted submissions on the draft Rules. Additionally, a public meeting was held in every capital city. The Agency also consulted with relevant Australian Government agencies.

The Rules were drafted by the Office of Parliamentary Counsel.

Regulatory Impact

The regulatory impact of the Rules was considered during its development. A preliminary assessment form was completed and provided to the Office of Best Practice Regulation (OBPR) for consideration. It was determined that the development of streamlined rules to support the Act would only have a minor regulatory impact. As such a Regulatory Impact Statement was not required (OBPR reference number 25273).

Details of the *Space (Launches and Returns) (Insurance) Rules 2019*

Part 1—Preliminary

Section 1—Name of Instrument

This section specifies the name of the instrument as the *Space (Launches and Returns) (Insurance) Rules 2019* (the Rules).

Section 2—Commencement

This section sets out the commencement date for the Rules, which provides that the whole instrument commences at the same time as the *Space Activities Amendment (Launches and Returns) Act 2018*. The commencement of the Rules has been linked to the commencement of that Act as that is when the rule making power under section 110 of the *Space (Launches and Returns) Act 2018* (the Act) comes into force.

Section 3—Authority

This section identifies that this instrument is made under the Act.

Section 4—Definitions

This item provides the following definitions of terms used in the Rules:

The definition of the Act is the *Space (Launches and Returns) Act 2018*.

Part 2—Insurance/financial requirements

Section 5—Satisfying the insurance/financial requirements—when a holder has shown direct financial responsibility

The purpose of this section is to explain how an applicant may demonstrate direct financial responsibility for a launch or return.

Sections 57 and 103 of the *Space (Launches and Returns) (General) Rules 2019* provide that an application for an Australian launch permit or a return authorisation must include evidence to satisfy the insurance/financial requirements. Section 23 of the *Space (Launches and Returns) (High Power Rocket) Rules 2019* also includes a requirement that an application for an Australian high power rocket permit must include evidence to satisfy the insurance/financial requirements.

One way of satisfying the insurance/financial requirements is to show direct financial responsibility for the launch or return under paragraph 47(2)(b) of the Act. Section 5 of the Rules establishes the requirements for demonstrating direct financial responsibility.

Paragraph 5(2)(a) provides that, in order to show direct financial responsibility, a holder must provide evidence of being able to meet any liability under the Act, either by having a sufficient amount of available assets or by other means to cover the liability.

Paragraph 5(2)(b) of the Rules sets out that, in order to demonstrate direct financial responsibility, a written response is required providing additional information to support the evidence provided under paragraph 5(2)(a) in response to any request from the Minister for further information.

For example, an applicant may provide evidence that a related company has an amount of assets of at least the minimum amount of insurance under subsection 48(4) of the Act, which may be used to meet the applicant's liabilities under the Act. The applicant may also provide information on the company structure that would satisfy the Minister that the applicant would be able to use the assets of the company to meet any liability under the Act, if needed.

Section 6—Specified minimum amount of insurance

Subsection 48(4) of the Act provides that the minimum amount of insurance required for each launch or return concerned is the lower of the amounts determined in accordance with paragraphs 48(4)(a) and (b) of the Act.

The purpose of this section of the Rules is to specify an amount for determining the minimum amount of insurance for the purposes of paragraph 48(4)(a) of the Act. This amount is specified for each relevant type of permit or authorisation. The other amount is calculated using the methodology prescribed under section 7 of the Rules.

The table in section 6 provides the amounts for the purposes of paragraph 48(4)(a) of the Act. Each row of the table relates to a different type of permit or authorisation and sets out a corresponding amount of insurance.

Section 7—Method for determining minimum amount of insurance

Subsection 48(4) of the Act provides that the minimum amount of insurance required for each launch or return concerned is the lower of the amounts determined in accordance with paragraphs 48(4)(a) and (b) of the Act.

The purpose of this section of the Rules is to specify a methodology for calculating an amount relevant to determining the minimum amount of insurance. This amount will be specific to the launch or return. The other amount relevant to determining the minimum amount of insurance is the amount listed in section 6 of the Rules.

Section 7 provides a method for determining an amount for the purposes of paragraph 48(4)(b) of the Act. The method will be set out in the Maximum Probable Loss Methodology (the MPL Methodology), which is published on the Agency's website (www.space.gov.au). The MPL Methodology is a methodology for determining risks and potential consequences

due to mishaps that could potentially occur during phases of flight of space vehicles and high power rockets, beginning at ignition and ending either on orbit, impact or recovery.

Subsection 110(3) of the Act allows for the rules to incorporate documents as in force or existing from time to time. The MPL Methodology is incorporated in the Rules in this way to increase the flexibility of the Rules to respond to the rapidly evolving nature of space technologies (therefore supporting the growth of the sector), and to allow any potential updates to international best-practice in relevant calculation methodologies.

Part 3—Miscellaneous

Section 8—Delegation

The purpose of section 8 of the Rules is to provide the Minister with the flexibility to delegate the Minister's powers or functions under the Rules, in writing, to:

- the Secretary of the department; or
- the Head of the Australian Space Agency; or
- an SES employee, or acting SES employee, in the department.

Under subsection 8(2), the delegate must comply with any directions of the Minister in relation to the use of their powers under the delegation.

The purpose of including this delegation power is to allow for efficient and more flexible decision making. Given the number of decisions the Minister may need to make, this will be particularly important if the volume of activity increases. The level of delegation is appropriate as it is limited to government officials at a sufficiently senior level, who therefore have experience in exercising decision making powers.

Statement of Compatibility with Human Rights

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

Space (Launches and Returns) (Insurance) Rules 2019

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 *Space Activities Amendment (Launches and Returns) Act 2018* was passed by parliament in August 2018 and amended provisions of the *Space Activities Act 1998*. The renamed *Space (Launches and Returns) Act 2018* (the Act) provides an improved and streamlined framework for the regulation of space activities in Australia or by Australians overseas, as well as arrangements for the launch of high power rockets. Section 110 of the Act includes powers for the Minister to make rules by legislative instrument. The rules are needed to support the effective operation of the Act. They are intended to provide clear information and a streamlined process relevant to the approval of an activity under the Act.

The purpose of the *Space (Launches and Returns) (Insurance) Rules 2019* (the Rules) is to provide the detail on the insurance/financial requirements for certain applications made in accordance with the *Space (Launches and Returns) Act 2018*. The Rules provide the minimum amount of insurance required, and the methods for satisfying the insurance/financial requirements.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

The Honourable Karen Andrews MP
Minister for Industry, Science and Technology