

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications (Foreign Space Objects) Amendment Determination 2020 (No. 1)

Authority

The Australian Communications and Media Authority (the ACMA) has made the *Radiocommunications (Foreign Space Objects) Amendment Determination 2020 (No. 1)* (the instrument) under paragraph 16(1)(ca) of the *Radiocommunications Act 1992* (the Act) and subsection 33(3) of the *Acts Interpretation Act 1901* (the AIA).

Under paragraph 16(1)(ca), the Act applies outside Australia (whether or not in a foreign country), but only in relation to foreign space objects, in the circumstances specified in a determination by the ACMA.

Subsection 33(3) of the AIA 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 instrument is a disallowable legislative instrument for the purposes of the *Legislation Act 2003* (the LA).

Purpose and operation of the instrument

The purpose of the instrument is to amend the *Radiocommunications (Foreign Space Objects) Determination 2014* (the Foreign Space Objects Determination) to include Kepler Communications Inc. (Kepler), SpaceX Services, Inc. (SpaceX) and Swarm Technologies, Inc. (Swarm) as specified owners, controllers or operators of a foreign space object.

In certain planned radiofrequency bands, the ACMA supports the operation of ubiquitous earth stations without the requirement for individual licensing of those earth stations. Space stations on foreign space objects may communicate with those earth stations. For this to occur, the owner, controller or operator of a foreign space object needs to be identified in the Foreign Space Objects Determination. The owners, controllers or operators of foreign space objects may then apply for radiocommunication apparatus licences that authorise communications between space stations on space objects and earth stations in Australia.

Inclusion of a space object in the Foreign Space Objects Determination also has the effect of extending application of the Act to the specified space object, thereby requiring its radio emissions to be authorised by a licence issued in accordance with the Act.

The instrument amends Schedule 1 of the Foreign Space Objects Determination by adding Kepler Communications Inc. (incorporated in Canada); SpaceX Services, Inc. (incorporated in the United States of America); and Swarm Technologies, Inc. (incorporated in the United States of America)". The inclusion of these foreign entities in the Foreign Space Objects Determination will enable them to apply for radiocommunication apparatus licences that authorise communications between space stations and ubiquitous earth stations in frequency bands identified in the *Radiocommunications (Communication with Space Object) Class Licence 2015*.

A provision-by-provision description of the instrument is set out in the notes at **Attachment A**.

Documents incorporated by reference

The instrument does not incorporate any document by reference.

Consultation

Before the instrument was made, the ACMA was satisfied that consultation was undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the LA.

Between 21 October 2019 and 27 November 2019, the ACMA conducted a formal public consultation process in relation to the instrument. A consultation statement and a draft of the instrument were made available on the ACMA website for comment.

The ACMA received eight written submissions in response to the draft instrument. There were no objections to the proposed amendments.

Regulatory impact assessment

The Office of Best Practice Regulation (OBPR) has considered the matter and formed the opinion that the proposed variation is minor and machinery in nature. Accordingly, OBPR advised that a Regulation Impact Statement was not required. The OBPR reference ID number is 25649.

Statement of compatibility with human rights

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires the rule-maker in relation to a legislative instrument to which section 42 (disallowance) of the LA applies to cause a statement of compatibility with human rights to be prepared in respect of that legislative instrument.

The statement of compatibility set out below has been prepared to meet that requirement.

Overview of the instrument

The *Radiocommunications (Foreign Space Objects) Amendment Determination 2020 (No. 1)* (the instrument) amends the *Radiocommunications (Foreign Space Objects) Determination 2014* to include Kepler Communications Inc., SpaceX Services, Inc. and Swarm Technologies, Inc. as specified owners, controllers or operators of a foreign space object. The inclusion of those foreign entities in the *Radiocommunications (Foreign Space Objects) Determination 2014* will enable them to access licensing arrangements for space-based communications systems that permit communications with ubiquitous earth stations.

Human rights implications

The ACMA has assessed whether the instrument is compatible with human rights, being the rights and freedoms recognised or declared by the instruments listed in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* as they apply to Australia.

Having considered the likely impact of the instrument and the nature of the applicable rights and freedoms, the ACMA has formed the view that the instrument does not engage any of those rights or freedoms.

Conclusion

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

Notes to the *Radiocommunications (Foreign Space Objects) Amendment Determination 2020 (No. 1)*

Section 1 Name

This section provides for the instrument to be cited as the *Radiocommunications (Foreign Space Objects) Amendment Determination 2020 (No. 1)*.

Section 2 Commencement

This section provides for the instrument to commence at the start of the day after it is registered on the Federal Register of Legislation.

Section 3 Authority

This section identifies the provision of the Act that authorises the making of the instrument, namely paragraph 16(1)(ca) of the *Radiocommunications Act 1992*.

Section 4 Amendments

This section provides that the amendments set out in Schedule 1 have effect.

Schedule 1 Amendments

Item 1

This item includes Kepler Communications Inc., SpaceX Services, Inc., and Swarm Technologies, Inc. as specified owners, controllers or operators of a foreign space object for the purposes of the *Radiocommunications Act 1992*.