

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Broadcasting Services Act 1992

Broadcasting Services (Parental Lock) Amendment Technical Standard 2021 (No.1)

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Broadcasting Services (Parental Lock) Amendment Technical Standard 2021 (No.1)* (**the instrument**) under subsections 130B(1) and 130B(7) of the *Broadcasting Services Act 1992* (**the Act**), and subsection 33(3) of the *Acts Interpretation Act 1901* (**the AIA**).

Subsection 130B(1) provides that the ACMA may determine technical standards relating to domestic reception equipment capable of receiving any or all of commercial, national, community or subscription television broadcasting services, television broadcasting services provided under a class licence or datacasting services provided under a datacasting licence, transmitted in digital mode using the broadcasting services bands. Subsection 130B(7) provides that the ACMA may, by legislative instrument, exempt specified domestic reception equipment from the offence provision in subsection 130B(2) of the Act and the civil penalty provision in subsection 130B(3) of the Act.

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.

Purpose and operation of the instrument

This instrument amends the *Broadcasting Services (Parental Lock) Technical Standard 2020* (**the Standard**). The amendments are necessary as a result of amendments to the *Radiocommunications Act 1992* (**Radcomms Act**), that will take effect upon commencement of Schedule 9 to the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020* (**Modernisation Act**). Schedule 9 to the Modernisation Act will repeal the definition of **domestic digital television receiver** from the Radcomms Act and the cross-referencing of this definition in the Act.

The instrument will insert the definition of **domestic digital television receiver** into the Standard, as it will remain relevant in the Standard and is still required after the definition is repealed from the Radcomms Act. This definition excludes paragraph (c) of the definition in the Radcomms Act, which provided a legislative power to specify further characteristics of a **domestic digital television receiver** in a legislative instrument. The ACMA cannot replicate the content of paragraph (c) in the Standard as it would be beyond the powers of the ACMA.

The Modernisation Act received Royal Assent on 17 December 2020. If Schedule 9 to the Modernisation Act is not commenced by proclamation, the default commencement date is 17 June 2021. The instrument is drafted to commence on the later of (a) the day after registration of the instrument; or (b) the commencement of Schedule 9 to the Modernisation Act.

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

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

Documents incorporated by reference

The instrument does not incorporate any documents 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.

On 23 February 2021, the ACMA undertook targeted consultation through the release of an e-bulletin to an extensive list of stakeholders regarding the proposed minor amendments of the Standard as reflected in Attachment A. The ACMA did not receive any submissions and decided to proceed with the proposal.

Regulatory impact assessment

In accordance with the agreed process in place between the ACMA and the Office of Best Practice Regulation (OBPR) for legislative changes arising from the Modernisation Act, OBPR has determined that regulatory changes of a minor or machinery nature do not require a further regulatory impact analysis (OBPR reference number 19096).

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 instrument is required as an amendment in the Modernisation Act repeals the definition of ***domestic digital television receiver*** from the Radcomms Act and the cross-referencing of this definition in the Act. A definition of ***domestic digital television receiver*** is still required in the Standard, and the instrument will insert that definition and make minor consequential amendments.

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 international 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 Broadcasting Services (Parental Lock) Amendment Technical Standard 2021 (No.1)

Section 1 Name

This section provides for the instrument to be cited as the *Broadcasting Services (Parental Lock) Amendment Technical Standard 2021 (No.1)*.

Section 2 Commencement

This section provides for the instrument to commence on the later of two alternate dates: the start of the day after the day it is registered on the Federal Register of Legislation, or at the commencement of Schedule 9 to the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020*.

The Federal Register of Legislation may be accessed free of charge at www.legislation.gov.au.

Section 3 Authority

This section identifies the provisions of the Act that authorise the making of the instrument, namely subsections 130B(1) and 130B(7) of the Act.

Section 4 Amendments

This section provides that the *Broadcasting Services (Parental Lock) Technical Standard 2020* is amended as set out in Schedule 1.

Schedule 1 Amendments

Broadcasting Services (Parental Lock) Technical Standard 2020 (F2020L01182)

Item 1 Subsection 5(1)

This item inserts two new definitions of digital mode and domestic digital television receiver.

Item 2 Subsection 5(1)

This item inserts a new definition of HDTV digital mode.

Item 3 Subsection 5(1)

This item inserts a new definition of SDTV digital mode.

Item 4 Subsection 5(1), (paragraph (c) of the note to the definition of program classification information)

This item omits “service;” and substitutes “service.”

Item 5 Subsection 5(1), (paragraph (d) of the note to the definition of program classification information)

This item repeals paragraph (d) from the note at the end of subsection 5(1).

Item 6 After subsection 5(2)

This item inserts a new subsection 5(3) into section 5. The new subsection provides that for the purposes of paragraph (b) of the newly inserted definition of domestic digital television receiver, clause 6 of Schedule 6 to the Act should be disregarded.