

SUPPLEMENTARY EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications Equipment (General) Rules 2021

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications Equipment (General) Rules 2021 (instrument)* under subsection 156(1) of the *Radiocommunications Act 1992 (the Act)*.

This supplementary explanatory statement amends the explanatory statement to the instrument as set out below.

Purpose and operation of the instrument

After the fourth paragraph, insert:

New Part 4.1 of the Act includes section 160, which provides that it is an offence, and subject to a civil penalty, for a person to engage in conduct that is prohibited by the instrument, or to engage in conduct that contravenes an obligation imposed by the instrument. (Contravention of some prohibitions or contraventions may only be subject to a civil penalty, and not an offence; see subsections 160(9) and (10) of the Act).

Parliament has prescribed that the maximum penalty for an offence, and the maximum civil penalty, is in each case 500 penalty units, or \$111,000 based on the current penalty unit amount of \$222.

Attachment A

Section 33 Prohibition – supply of cellular mobile repeater to unlicensed person

After the third paragraph, insert:

A person will not be an ‘organisation’ under the *Privacy Act 1988* if, among other things, they are a ‘small business operator’. Section 6D of the *Privacy Act 1988* sets out how to work out whether a person is a small business operator. In essence, a business is a small business at a time in a financial year if its annual turnover for the previous financial year was \$3 million or less or, if it is a new business, its annual turnover for the current financial year is \$3 million or less.

The major telecommunications carriers may engage in the supply of cellular mobile repeaters to their customers, as they have a significant interest in controlling the devices that connect to their mobile networks. These carriers would all be ‘organisations’ for the purposes of the *Privacy Act 1988*.

The Australian Information Commissioner has recognised the Telecommunications Industry Ombudsman (**TIO**) as an entity that may handle a complaint about mishandling of personal information by a telecommunications provider. The TIO also deals with complaints about compliance with the Telecommunications Consumer Protection Code (**Code**). The Code includes privacy protections that apply to those carriage service providers who are not subject to the *Privacy Act 1988*. Among other requirements, such carriage service providers must have robust procedures for storing their customers’ personal information, and to keep that information secure.

There may be some cases where the suppliers of cellular mobile repeaters are small business operators, and are not covered by the Code. Where this is the case, the Office of the Australian Information Commissioner has issued general advice to the effect that, while such suppliers are not obliged to comply with the *Privacy Act 1988*, they should, as a matter of best practice, protect any personal information they hold, and should consider whether to opt-in to the *Privacy Act 1988*, given the benefits that may result. More information can be obtained from the website of the Office of the Australian Information Commissioner at www.oaic.gov.au.

Section 39 Decision on application

Omit the fifth paragraph, substitute:

The instrument does not prescribe particular matters that the ACMA must have regard to when deciding whether to issue a permit. However, it is likely that the ACMA will have regard to the purpose for which a person has applied for a permit.

In accordance with subsection 156(3) of the Act, Parliament has required that the instrument be directed towards achieving any or all of a series of objectives. When deciding whether to issue a permit, the ACMA would have to consider any of these objectives that are relevant to the acts that the permit would allow a person to do. For example, if a person applied for a permit to possess a device that did not comply with a standard that requires equipment to meet certain performance requirements in relation to electromagnetic compatibility, the ACMA would have to consider the objective in paragraph 156(3)(a) of the Act when deciding whether to issue the permit. In any particular case, one or more of the objectives prescribed by Parliament in subsection 156(3) of the Act may be relevant to the ACMA's decision.

When deciding whether to issue a permit, the ACMA would also have regard to the object of the Act, which is to promote the long-term public interest derived from the use of the spectrum by providing for the management of the spectrum in a manner that, among other things, facilitates the use of the spectrum for commercial purposes, defence purposes, national security purposes and other non-commercial purposes (section 3 of the Act).

Depending on the effect issuing the permit may have on other persons, the ACMA may also be required to consult with third parties.