

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Australian Communications and Media Authority Act 2005

Radiocommunications (Interpretation) Amendment Determination 2021 (No. 1)

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Interpretation) Amendment Determination 2021 (No. 1)* (**the Amendment Instrument**) under subsection 64(1) of the *Australian Communications and Media Authority Act 2005* (**the ACMA Act**) and in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (**the AIA**).

Subsection 64(1) of the ACMA Act provides that the ACMA may make a written determination defining one or more expressions used in specified instruments, being instruments that are made by the ACMA under one or more specified laws of the Commonwealth.

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

The purpose of the Amendment Instrument is to amend the *Radiocommunications (Interpretation) Determination 2015* (**the Interpretation Determination**).

The Interpretation Determination defines common expressions used in a number of instruments made by the ACMA that deal with radiocommunications. It applies these definitions to these instruments through reference to the provisions of the Act under which these instruments were made.

The *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020* (**the Reform Act**) will amend the *Radiocommunications Act 1992* (**the Act**) so that some existing instruments made by the ACMA will now be taken to be made under different provisions of the Act. In particular:

- licence conditions determinations made under paragraph 107(1)(f) of the Act, as currently in force, will be taken to be licence conditions determinations made under new subsection 110A(2) of the Act;
- licence conditions determinations made under paragraph 108(1)(e) of the Act, as currently in force, will be taken to be licence conditions determinations made under new subsection 110A(2) of the Act;
- standards made under subsection 162(1) of the Act, as currently in force, will be taken to be equipment rules made under new subsection 156(1) of the Act; and
- notices made under subsection 182(1) of the Act, as currently in force, will be taken to be equipment rules made under new subsection 156(1) of the Act.

The Reform Act also amends sections 115, 119 and 131AC of the Act so that, in the future, relevant instruments will be made under subsections 115(1), 119(1) and 131AC(1) respectively.

The Amendment Instrument amends references within the Interpretation Determination to reflect these changes and to ensure that common expressions defined in the Interpretation Determination continue to apply to the relevant instruments once the Reform Act commences.

The Amendment Instrument also amends the definition of *licence conditions determination* in the Interpretation Determination to reflect that such an instrument now taken to be made under subsection 110A(2).

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

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

Documents incorporated by reference

The Amendment Instrument does not incorporate any document by reference.

Consultation

Before the Amendment 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 19 April 2021 and 17 May 2021, the ACMA published a draft version of the Amendment Instrument on its website and invited comment on the proposed changes to the Interpretation Determination from stakeholders. The consultation on the ACMA website described the purpose of the Amendment Instrument and the amendments that were proposed to be made to the Interpretation Determination.

The ACMA received one submission in response to the consultation, which supported the proposed changes.

Regulatory impact assessment

The Office of Best Practice Regulation (**OBPR**) has confirmed that the [Review of the Radiofrequency Spectrum Management Framework](#) undertaken by the then Department of Communications and the Arts (**the Department**) in conjunction with the ACMA, and certified by the Department, meets the requirements of a Regulation Impact Statement (**RIS**)(OBPR ref:19096). As such, the OBPR advised the ACMA that no further RIS is required for the Amendment Instrument.

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 Amendment Instrument amends the Interpretation Determination so that references to instruments to which certain definitions apply are updated to reflect that the relevant instruments are now taken to be made under different parts of the Act as a result of amendments made by the Reform Act.

Human rights implications

The ACMA has assessed whether the Amendment 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 Amendment Instrument does not engage any of those rights or freedoms.

Conclusion

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

Notes to the *Radiocommunications (Interpretation) Amendment Determination 2021 (No. 1)*

Section 1 Name

This section provides for the instrument to be cited as the *Radiocommunications (Interpretation) Amendment Determination 2021 (No. 1)*.

Section 2 Commencement

This section provides for the instrument to commence at the later of either the same time as Part 1 of Schedule 4, and Schedule 5, to the Reform Act commence, or the start of the day after the day the instrument is registered on the Federal Register of Legislation.

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

Section 3 Authority

This section identifies the provision of the Act that authorises the making of the instrument, namely subsection 64(1) of the *Australian Communications and Media Authority Act 2005*.

Section 4 Amendments

This section gives effect to the amendments set out in Schedule 1.

Schedule 1

Item 1

Item 1 substitutes references in subparagraph 3(2)(a)(ii) of the Interpretation Determination to sections in the Act, as in force before the commencement of Schedule 5 to the Reform Act, that confer powers on the ACMA to make particular legislative instruments with references to the new provisions that confer those powers, after the commencement of Schedule 5 to the Reform Act.

Item 2

Item 2 repeals paragraphs 3(2)(g) and 3(2)(h) of the Interpretation Determination, which were references to standards and notices made under, respectively, subsection 162(1) and 182(1) of the Act as in force before the commencement of Part 1 of Schedule 4 to the Reform Act, and inserts a new paragraph 3(2)(g) which refers to equipment rules made under new subsection 156(1), inserted by Part 1 of Schedule 4.

The changes effected by items 1 and 2 mean that definitions in Schedule 1 to the Interpretation Determination will continue to apply to the relevant instruments.

Items 3 and 4

Items 3 and 4 operate in the same way as items 1 and 2, in relation to section 4 of the Interpretation Determination.

These changes mean that references to ‘the Act’ in the relevant instruments continue to mean the *Radiocommunications Act 1992*.

Items 5 and 6

Items 5 and 6 operate in the same way as items 1 and 2, in relation to section 5 of the Interpretation Determination.

These changes mean that a reference to the *Radiocommunications (Interpretation) Determination 2000* in a relevant instrument continues to be a reference to the Interpretation Determination.

Items 7 and 8

Items 7 and 8 operate in the same way as items 1 and 2, in relation to section 7 of the Interpretation Determination.

These changes mean that a reference to a spectrum plan in a relevant instrument continues to be a reference to the spectrum plan in force from time to time under the Act.

Item 9

Item 9 repeals and substitutes the definition of *licence conditions determination* in Schedule 1 to the Interpretation Determination. The term is now defined by reference to the new power to make such determinations, which is contained in subsections 110A(1) and 110(2) of the Act.