

# EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Telecommunications Act 1997*

## *Telecommunications (Prohibition of Mobile Phone Boosters) Declaration 2021*

### **Authority**

The Australian Communications and Media Authority (**the ACMA**) has made the *Telecommunications (Prohibition of Mobile Phone Boosters) Declaration 2021* (**the instrument**) under subsection 450(1) of the *Telecommunications Act 1997* (**the Act**).

Subsection 450(1) of the Act relevantly provides that the ACMA may, by legislative instrument, declare that the operation or supply, or possession for the purpose of operation or supply, of a specified device is prohibited for the reasons set out in the instrument.

### **Purpose and operation of the instrument**

The instrument prohibits the operation or supply, or the possession for the purpose of operation or supply, of mobile phone boosters which are designed or intended to be used in connection with public mobile telecommunication services (**PMTS**).

The use of mobile phone boosters has been identified as a cause of significant interference to mobile telecommunications networks, affecting coverage and therefore consumer access to mobile networks. In the worst case, the use of mobile phone boosters can restrict access to the emergency call service.

The purpose of the instrument is to protect PMTS from substantial interference, disruption or disturbance.

The instrument repeals the *Telecommunications (Prohibition of Mobile Phone Boosters) Declaration 2011* (**the 2011 instrument**) which is due to sunset on 1 October 2021 in accordance with Part 4 of the *Legislation Act 2003* (**LA**).

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

The instrument is a disallowable legislative instrument for the purposes of the LA.

### **Documents incorporated by reference**

The instrument incorporates by reference the following Act and legislative instrument as in force from time to time:

- *Radiocommunications Act 1992*
- *Radiocommunications (Interpretation) Determination 2015*

That Act and that legislative instrument can be accessed, free of charge, from the Federal Register of Legislation: <https://www.legislation.gov.au/>

### **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.

The ACMA conducted a public consultation process in relation to the making of the instrument during the period 19 April 2021 to 18 May 2021. A draft of the instrument and a consultation paper were

made available on the ACMA website for a period of four weeks. Potential interested parties were also notified of the release of the draft instrument and invited to comment.

Three submissions were received in response to the invitation for public comment and the ACMA has given due consideration to all the submissions received. No changes were made to the draft instrument as a result of the consultation. One submission requested that a plain English description of both a mobile phone booster and a cellular mobile repeater be included in this explanatory statement. These descriptions have been included in the notes to section 6 of the instrument in Attachment A.

### **Regulatory impact assessment**

A preliminary assessment of the proposal to make the instrument was conducted by the Office of Best Practice Regulation (**OBPR**), based on information provided by the ACMA, for the purposes of determining whether a Regulation Impact Statement (**RIS**) would be required. OBPR advised that a RIS would not be required because the proposed regulatory change is minor or machinery in nature (OBPR reference number 43583).

### **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 prohibits the operation or supply, or the possession for the purpose of operation or supply, of mobile phone boosters which are designed or intended to be used in connection with the PMTS.

The instrument also repeals the existing 2011 instrument.

The purpose of the instrument is to protect PMTS from substantial interference, disruption or disturbance.

### ***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 *Telecommunications (Prohibition of Mobile Phone Boosters) Declaration 2021***

### **Section 1 Name**

This section provides for the instrument to be cited as the *Telecommunications (Prohibition of Mobile Phone Boosters) Declaration 2021*.

### **Section 2 Commencement**

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

The Federal Register of Legislation may be accessed free of charge at [www.legislation.gov.au](http://www.legislation.gov.au).

### **Section 3 Authority**

This section identifies the provision of the Act that authorises the making of the instrument, namely subsection 450(1) of the Act.

### **Section 4 Repeal of the *Telecommunications (Prohibition of Mobile Phone Boosters) Declaration 2011***

This section provides that the *Telecommunications (Prohibition of Mobile Phone Boosters) Declaration 2011* [Registration No. F2011L00866] is repealed.

### **Section 5 Definitions**

This section defines a number of key terms used in the instrument. These include ‘base station’, ‘frequency band’, ‘mobile station’, ‘radio emission’ and ‘station’.

The definition of ‘mobile phone booster’ in the instrument (section 6 – see discussion below) now specifically excludes cellular mobile repeaters. As a result, the following new definitions have been included - ‘cellular mobile repeater’, ‘radiocommunications device’, ‘radiocommunications receiver’ and ‘radiocommunications transmitter’.

### **Section 6 Meaning of *mobile phone booster***

Section 6 defines the term ‘mobile phone booster’. The definition differs from the definition in the 2011 instrument in that the definition now specifically excludes cellular mobile repeaters. As mobile phone boosters and cellular mobile repeaters have similar end functionality, there is a potential that repeaters may be inadvertently captured by definition of mobile phone booster, unless they are expressly excluded from the definition.

Typically, a mobile phone booster uses a wired connection to a single mobile station to boost its signal. By contrast, a cellular mobile repeater is typically used by carriers as a network extension device and it communicates wirelessly with a mobile station or another base station. Cellular mobile repeaters are not a prohibited device under the Act and are typically used by telecommunications carriers for network management purposes.

## **Section 7      References to other instruments**

This section provides that in the instrument, unless the contrary intention appears, a reference to any other legislative instrument is a reference to that other legislative instrument as in force from time to time.

## **Section 8      Prohibition of mobile phone boosters**

This section declares that the operation or supply, or possession for the purpose of operation or supply, of a mobile phone booster is prohibited for the reasons listed in Schedule 1.

Under subsection 452(1) of the Act it is an offence to operate or supply, or possess for the purposes of operation or supply, customer equipment or customer cabling, in respect of which a declaration is in force under section 450 of the Act. Subsection 452(2) states that a person who contravenes subsection (1) commits an offence punishable on conviction by a fine not exceeding 2,000 penalty units.

## **Schedule 1      Reasons for Prohibition**

This schedule sets out the reasons for prohibiting the operation or supply, or possession for the purposes of operation or supply, of mobile phone boosters.

These reasons include that the integrity of the telecommunications networks by means of which PMTS are supplied, is at risk from the operation of mobile phone boosters. Consequently, a mobile phone booster can substantially interfere with, disrupt or disturb PMTS by jeopardising the quality and coverage of carriage services. This can cause inconvenience to, or loss of business for, mobile phone users.

The disruption caused to PMTS by the use of mobile phone boosters can also impede access to emergency call services from mobile phones, which creates a risk to public health and safety.