

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Broadcasting Services Act 1992

Broadcasting Services (Parental Lock) Amendment Technical Standard 2021 (No. 2)

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Broadcasting Services (Parental Lock) Amendment Technical Standard 2021 (No. 2)* (**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 Standard had recently been amended by the *Broadcasting Services (Parental Lock) Amendment Technical Standard 2021 (No. 1)* (**the Amendment Standard**) as a result of changes made to the Act and the *Radiocommunications Act 1992* by the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020*.

The Amendment Standard included in the Standard a definition of ***domestic digital television receiver***, as a result of the definition of that term being removed from the Act and the *Radiocommunications Act 1992*.

The purpose of this instrument is to correct a technical legal flaw in the definition of ***domestic digital television receiver*** that was included in the Standard by the Amendment Standard. There is no intention to change the scope of the instrument, which is intended to apply to domestic reception equipment that is capable of receiving services provided under television broadcasting licences and datacasting licences in SDTV digital mode or in HDTV digital mode.

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 *Legislation Act 2003* (**LA**).

The Standard is subject to the sunset provisions in Part 4 of Chapter 3 of the LA.

Documents incorporated by reference

The instrument amends the Standard to incorporate, by reference, a definition in Schedule 6 to the Act as in force from time to time, as permitted by section 14 of the LA. The Act is available free of charge from the Federal Register of Legislation (www.legislation.gov.au).

Consultation

Given the purpose of the instrument and the previous consultation undertaken (see below), the ACMA was satisfied that it was appropriate not to conduct any consultation, in accordance with section 17 of the LA.

On 23 June 2020, the ACMA published a consultation paper and a draft of the Standard on its website, and announced the release of the consultation by releasing an e-bulletin to an extensive list of industry stakeholders. The ACMA received three submissions, none of which raised significant issues with the proposal to make the Standard. On 23 February 2021, the ACMA undertook targeted consultation on a proposal to make the Amendment Standard, through the release of an e-bulletin to an extensive list of stakeholders. The ACMA did not receive any submissions.

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 *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020*, 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 makes a technical amendment to the Standard, in relation to the definition of ***domestic digital television receiver***. There is no intention to change the scope of the Standard, which is intended to apply to domestic reception equipment that is capable of receiving services provided under television broadcasting licences and datacasting licences in SDTV digital mode or in HDTV digital mode.

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 human 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. 2)*

Section 1 Name

This section provides for the instrument to be cited as the *Broadcasting Services (Parental Lock) Amendment Technical Standard 2021 (No. 2)*.

Section 2 Commencement

This section provides for the instrument to commence on 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.

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 a new definition of *designated datacasting service*, by reference to the definition in clause 2A of Schedule 6 to the Act.

Item 2 Subsection 5(1), definition of *domestic digital television receiver*

This item replaces the definition of *domestic digital television receiver*. A domestic digital television receiver is domestic reception equipment that is not hand-held, and which is capable of receiving:

- television programs provided in SDTV or HDTV digital mode (for example, under a commercial television broadcasting licence, or by a national television broadcasting service);
- a designated datacasting service provided under a datacasting licence, transmitted in SDTV or HDTV digital mode.

Item 3 Subsection 5(1) (note to the subsection)

This item amends the note to subsection 5(1), to refer to the Act's definition of *datacasting licence*.

Item 4 Subsection 5(3)

This item repeals subsection 5(3), which is redundant as a result of the changed definition of *domestic digital television receiver*.