Explanatory Statement

## **Issued by the authority of the Minister for Communications**

Radiocommunications Act 1992

***Radiocommunications (Space Licence Limits) Repeal Direction 2023***

**Purpose**

The purpose of the *Radiocommunications (Space Licence Limits) Repeal Direction 2023* (the Repeal Direction) is to repeal the *Radiocommunications (Space Licence Limits) Direction No. 1 of 2001* (the Direction)*.*

**Authority**

Subsection 106(9) of the *Radiocommunications Act 1992* (the Act) authorises the Minister to give written directions to the Australian Communications and Media Authority (ACMA) in relation to the exercise of the power to determine procedures imposing a limit on a price‑based allocation system for allocating and/or issuing specified transmitter licences (including space licences).

Subsection 33(3) of the *Acts Interpretation Act 1901* relevantly provides that where an Act confers a power to make an instrument of a legislative character the power shall be construed as including a power exercisable in the like manner and subject to the like conditions to repeal any such instrument.

The Repeal Direction is a legislative instrument for the purposes of section 8 of the *Legislation Act 2003.*

**Background**

The Direction imposed a limit of one space licence per person or specified group when determining a price-based allocation system for allocating and/or issuing two or more space licences under subsection 106(1) of the Act.

The Direction is outdated due to reforms to the Act introduced by the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020* (the Reform and Modernisation Act). Following the reforms, the Minister is less involved in day-to-day spectrum management decisions, and ACMA has greater flexibility to develop fit-for-purpose allocation arrangements.

Consistent with this, the Reform and Modernisation Act repealed subsection 106(8) which required ACMA first be directed by the Minister under subsection 106(9) before it could impose limits on a price‑based allocation system for certain transmitter licences under subsection 106(3). Further, subsection 106(11A) was inserted to require ACMA to first consult the Australian Competition and Consumer Commission (ACCC) on the imposition and nature of limits before determining a price-based allocation system. The Minister is still able to make directions under subsection 106(9) should the need arise.

While at the time the Direction was necessary to impose limits, this is no longer the case. The Direction also constrained ACMA by restricting its capacity to adapt to changing space licence use cases and market needs.

The repeal of the Direction supports ACMA’s intentions to allocate the 2 GHz band in 2024‑2025. ACMA is preparing to allocate space apparatus licences in 2170‑2195 MHz in conjunction with associated space receive apparatus licences in the paired band 1980‑2005 MHz.

**Impact Analysis**

The Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the department) was advised by the Office of Impact Analysis that the repeal of the Direction is unlikely to have more than minor regulatory impact and therefore an Impact Analysis is not required (OIA23‑04874).

**Consultation**

The department consulted ACMA, which indicated that the Direction was not required to provide effective or efficient regulation and could be repealed.

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

***Radiocommunications (Space Licence Limits) Repeal Direction 2023***

The *Radiocommunications (Space Licence Limits) Repeal Direction 2023* (the Repeal Direction) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The Repeal Direction repeals the *Radiocommunications (Space Licence Limits) Direction No. 1 of 2001* which, for the purposes of subsection 106(1) of the *Radiocommunications Act 1992*, required the Australian Communications and Media Authority (ACMA) to impose a limit of one space licence per person or specified group when determining a price-based allocation system for allocating and/or issuing two or more space licences.

The Repeal Direction does not engage any of the applicable rights or freedoms.

This Repeal Direction is compatible with human rights as it does not raise any human rights issues.

**Notes on sections**

**Section 1 – Name**

This section provides that the title of the instrument is the *Radiocommunications (Space Licence Limits) Repeal Direction 2023*.

**Section 2 – Commencement**

This section provides for the commencement of the instrument on the day after it is registered on the Federal Register of Legislation.

**Section 3 – Authority**

This section provides that the instrument is made under subsection 106(9) of the *Radiocommunications Act 1992*. This provision authorises the Minister to give written directions to the ACMA in relation to the exercise of the power to determine procedures imposing a limit as mentioned in subsection 106(3) on a price-based allocation system for allocating and/or issuing specified transmitter licences.

In addition, subsection 33(3) of the *Acts Interpretation Act 1901* relevantly provides that where an Act confers a power to make an instrument of a legislative character the power shall be construed as including a power exercisable in the like manner and subject to the like conditions to repeal any such instrument.

**Section 4 – Schedules**

This section enables Schedule 1 to this instrument, which contains the provision repealing the *Radiocommunications (Space Licence Limits) Direction No. 1 of 2001*.

**Schedule 1 – Repeals**

***Radiocommunications (Space Licence Limits) Direction No. 1 of 2001***

**1 – The whole of the instrument**

This item repeals the entirety of the *Radiocommunications (Space Licence Limits) Direction No. 1 of 2001*.

This means that ACMA is not required to impose a limit of one space licence per person or specified group when determining a price-based allocation system for allocating and/or issuing space licences under subsection 106(1) of the *Radiocommunications Act 1992*.