

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Industry and Science

Space (Launches and Returns) Act 2018

*Space (Launches and Returns) Legislation Amendment (Suitably Qualified Experts)
Rules 2023*

Purpose and Operation

The *Space (Launches and Returns) Act 2018* (the Act) establishes a system for the regulation of space activities from Australia or by Australians overseas, as well as a system for the regulation of high power rocket activities in Australia. Section 110 of the Act includes powers for the Minister to make rules by legislative instrument. The rules are needed to support the effective operation of the Act. They are intended to provide clear information and a streamlined process relevant to the approval of an activity under the Act.

The *Space (Launches and Returns) Legislation Amendment (Suitably Qualified Experts) Rules 2023* (the Amendment Rules) make amendments to two sets of rules under the Act, being the *Space (Launches and Returns) (General) Rules 2019* (the General Rules) and the *Space (Launches and Returns) (High Power Rocket) Rules 2019* (the High Power Rocket Rules).

The General Rules and the High Power Rocket Rules require certain aspects of an application for a launch facility licence, Australian launch permit, return authorisation or Australian high power rocket permit to be conducted by, or include written confirmation from, a suitably qualified expert or person with suitable qualifications and experience. The Amendment Rules remove most requirements in the General Rules and the High Power Rocket Rules that a suitably qualified expert or person with suitable qualifications and experience must not be a related party of an applicant. The requirement has been retained for environmental plans required for an application for a launch facility licence.

The Amendment Rules also remove the requirement in the General Rules for a person with suitable qualifications and experience to be independent of an applicant, in relation to the assessment of a cybersecurity strategy for a launch facility licence.

The amendments will enable applicants to develop and use in-house capability, should they decide to do so and where suitably qualified, rather than requiring external expertise. The amendments do not prevent an applicant from engaging third parties to carry out activities as a suitably qualified expert or person with suitable qualifications and experience. There is no change to the requirement that the Minister, or their delegate, must approve suitably qualified experts who confirm a flight safety plan or return safety plan, or undertake certain risk hazard analyses.

The amendments are intended to remove barriers to participation in the launch industry and reduce regulatory burden. They are consistent with evidence heard during the inquiry by the

House of Representatives Standing Committee on Industry, Innovation, Science and Resources into *Developing Australia's Space Industry*.

Further details on the Amendment Rules are outlined in [Attachment A](#).

Authority

Subsection 110(1) of the Act provides that the Minister may, by legislative instrument, make rules prescribing matters required or permitted by the Act to be prescribed by the rules, or make rules prescribing matters necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Consultation

Public consultation on the Amendment Rules was undertaken over a period of five weeks in April and May 2022.

As part of this consultation, the Australian Space Agency (the Agency), a division of the Department of Industry, Science and Resources, released a consultation paper outlining the proposed changes and received submissions on the proposal. While the majority of submissions were in favour of the proposed changes, the Agency also considered submissions which raised potential consequences that may result from the changes.

A summary of the submissions received during the consultation period and the Agency's response to the consultation can be found on the Department of Industry, Science and Resources [consultation hub webpage](#).

Regulatory Impact

A preliminary assessment form was completed during the development of the Amendment Rules and provided to the Office of Impact Analysis (OIA). The Amendment Rules are unlikely to have more than a minor impact on individuals, businesses or community organisations. As such a Regulatory Impact Statement was not required (OIA reference number OBPR22-02094).

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights is set out in [Attachment B](#).

Details of the *Space (Launches and Returns) Legislation Amendment (Suitably Qualified Experts) Rules 2023*

Section 1 – Name of Instrument

This section specifies the name of the instrument as the *Space (Launches and Returns) Legislation Amendment (Suitably Qualified Experts) Rules 2023*.

Section 2 – Commencement

This section provides that the instrument commences on the day after registration of the instrument.

Section 3 – Authority

This section specifies that the instrument is made under the *Space (Launches and Returns) Act 2018*.

Section 4 – Schedules

This section provides that each instrument specified in a schedule to the Amendment Rules is amended or repealed as set out by the schedule, and any other item in a schedule has effect according to its terms.

SCHEDULE 1 – AMENDMENTS

Space (Launches and Returns) (General) Rules 2019

Item 1 – Subsection 22(3)

This item omits the words “an independent person” and replaces them with “a person” in subsection 22(3). The change is intended to remove barriers to participation and reduce regulatory burden for launch facility licence applicants. It removes the requirement that a person assessing the adequacy of the applicant’s cybersecurity strategy must be independent of the applicant. The person assessing the cybersecurity strategy is still required to have suitable qualifications and experience.

Item 2 – Paragraph 52(2)(a)

This item omits the words “and is not a related party of the applicant” from paragraph 52(2)(a). The change is intended to remove barriers to participation and reduce regulatory burden for Australian launch permit applicants. It removes the requirement that a suitably qualified expert who performs the risk hazard analysis for each launch and any connected return must not be a related party of the applicant. The suitably qualified expert must still be approved by the Minister.

Item 3 – Subsection 53(3)

This item omits the words “and is not a related party of the applicant” from subsection 53(3). The change is intended to remove barriers to participation and reduce regulatory burden for Australian launch permit applicants. It removes the requirement that a suitably qualified expert who provides confirmation in relation to the flight safety plan must not be a related party of the applicant. The suitably qualified expert must still be approved by the Minister.

Item 4 – Subsection 56(3)

This item omits the words “who is not a related party of the applicant” from subsection 56(3). The change is intended to remove barriers to participation and reduce regulatory burden for Australian launch permit applicants. It removes the requirement that a person assessing the adequacy of the applicant’s cybersecurity strategy must not be a related party of the applicant. The person assessing the cybersecurity strategy is still required to have suitable qualifications and experience.

Item 5 – Paragraph 98(2)(a)

This item omits the words “and is not a related party of the applicant” from paragraph 98(2)(a). The change is intended to remove barriers to participation and reduce regulatory burden for return authorisation applicants. It removes the requirement that a suitably qualified expert who performs the risks hazard analysis for each return must not be a related party of the applicant. The suitably qualified expert must still be approved by the Minister.

Item 6 – Subsection 99(3)

This item omits the words “and is not a related party of the applicant” from subsection 99(3). The change is intended to remove barriers to participation and reduce regulatory burden for return authorisation applicants. It removes the requirement that a suitably qualified expert who provides confirmation in relation to the return safety plan must not be a related party of the applicant. The suitably qualified expert must still be approved by the Minister.

Item 7 – Subsection 102(3)

This item omits the words “who is not a related party of the applicant” from subsection 102(3). The change is intended to remove barriers to participation and reduce regulatory burden for return authorisation applicants. It removes the requirement that a person assessing the adequacy of the applicant’s cybersecurity strategy must not be a related party of the applicant. The person assessing the cybersecurity strategy is still required to have suitable qualifications and experience.

Item 8 – At the end of the instrument

This item adds a new Part 10 dealing with application and transitional provisions.

The new section 125 provides that the amendments made to the General Rules by this amending instrument apply to applications made on or after the day on which it commences, as well as to applications made, but not finally determined, before that day.

New section 125 will allow the changes made by the amending instrument to apply immediately to all new applications and to existing applications that have not been finally determined. The provisions have been extended to existing applications to provide those applicants with flexibility in how they meet requirements relating to use of a suitably qualified expert or person with suitable qualifications and experience. As the amending instrument does not change or add to existing requirements, there is no prejudice to applicants or the Commonwealth in extending flexibility to existing applications.

Space (Launches and Returns) (High Power Rocket) Rules 2019

Item 9 – Subsection 26(3)

This item omits the words “and is not a related party of the applicant” from subsection 26(3). The change is intended to remove barriers to participation and reduce regulatory burden for Australian high power rocket permit applicants. It removes the requirement that a suitably qualified expert who provides confirmation in relation to the flight safety plan must not be a related party of the applicant. The suitably qualified expert must still be approved by the Minister.

Item 10 – Subsection 29(3)

This item omits the words “who is not a related party of the applicant” from subsection 29(3). The change is intended to remove barriers to participation and reduce regulatory burden for Australian high power rocket permit applicants. It removes the requirement that a person assessing the adequacy of the applicant’s cybersecurity strategy must not be a related party of the applicant. The person assessing the plan is still required to have suitable qualifications and experience.

Item 11 – At the end of the instrument

This item adds a new Part 4 dealing with application and transitional provisions.

The new section 44 provides that the amendments made to the High Power Rocket Rules by this amending instrument apply to applications made on or after the day on which it commences, as well as to applications made, but not finally determined, before that day.

New section 44 will allow the changes made by the amending instrument to apply immediately to all new applications and to existing applications that have not been finally determined. The provisions have been extended to existing applications to provide those applicants with flexibility in how they meet requirements relating to use of a suitably qualified expert or person with suitable qualifications and experience. As the amending

instrument does not change or add to existing requirements, there is no prejudice to applicants or the Commonwealth in extending flexibility to existing applications.

Statement of Compatibility with Human Rights

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

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This instrument 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*.

Overview of the Legislative Instrument

The *Space (Launches and Returns) Act 2018* (the Act) provides a framework for the regulation of space activities from Australia or by Australians overseas, as well as arrangements for the launch of high power rockets.

The *Space (Launches and Returns) Legislation Amendment (Suitably Qualified Experts) Rules 2023* (the Amendment Rules) make amendments to two sets of rules under the Act, being the *Space (Launches and Returns) (General) Rules 2019* (the General Rules) and the *Space (Launches and Returns) (High Power Rocket) Rules 2019* (the High Power Rocket Rules).

The General Rules and the High Power Rocket Rules require certain aspects of an application for a launch facility licence, Australian launch permit, return authorisation or Australian high power rocket permit to be conducted by, or include written confirmation from, a suitably qualified expert or person with suitable qualifications and experience. The Amendment Rules remove most requirements in the General Rules and the High Power Rocket Rules that a suitably qualified expert or person with suitable qualifications and experience must not be a related party of an applicant. The requirement has been retained for environmental plans required for an application for a launch facility licence.

The Amendment Rules also remove the requirement in the General Rules for a person with suitable qualifications and experience to be independent of an applicant, in relation to the assessment of a cybersecurity strategy for a launch facility licence.

The amendments will enable applicants to develop and use in-house capability, should they decide to do so and where suitably qualified, rather than requiring external expertise. The amendments do not prevent an applicant from engaging third parties to carry out activities as a suitably qualified expert or person with suitable qualifications and experience. There is no change to the requirement that the Minister, or their delegate, must approve suitably qualified experts who confirm a flight safety plan or return safety plan, or undertake certain risk hazard analyses.

Human rights implications

This instrument does not engage any of the applicable rights or freedoms.

Conclusion

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

The Hon Ed Husic MP
Minister for Industry and Science