EXPLANATORY STATEMENT

Issued by the authority of the Australian Communications and Media Authority

Notification that the Australian Communications and Media Authority prohibits the operation or supply, or possession for the purpose of operation or supply, of specified devices Amendment Declaration 2009 (No. 1)

Radiocommunications Act 1992

Purpose

The Notification that the Australian Communications and Media Authority prohibits the operation or supply, or possession for the purpose of operation or supply, of specified devices dated 4 March 1999 (‘the Declaration’) made under section 190 of the Act, prohibits the operation of a radiocommunications device designed to operate within the frequency bands 870-960 MHz or 825-845 MHz and to interfere with radiocommunications or disrupt or disturb radiocommunications.

This Amendment Declaration amends the Declaration to create an exemption allowing for the operation of a device if:
(a) the device is designed to facilitate a cellular mobile telephone service onboard an aircraft operating within another frequency; and
(b) the device is operated for that purpose.

The amendment is being made to define the type of device that Australian Communications and Media Authority (ACMA) is declaring to be prohibited in a more purposeful manner. The assumption underlying the Declaration when it was originally made was that there were no legitimate uses for devices that block or ‘jam’ mobile phone communications. This amendment is made in response to emerging technologies (in-flight GSM) that present a sound case for legitimate use and carry little risk of interference with existing public mobile telecommunications services. Successful trialling of these technologies has strengthened this case.

All references to trial aboard an aircraft have been removed. As the type of device previously trialled is made exempt from the Declaration by this Amendment Declaration, no specific exemption will be required for a trial to take place.

Despite the variation, in-flight mobile phone services cannot be provided in Australia unless the ACMA also establishes appropriate radiocommunications licensing arrangements. The immediate practical effect of the variation will be to allow airlines and their service providers to undertake further development work related to the provision of in-flight mobile phone services. Individual airlines will ultimately decide whether to offer in-flight mobile phone services, including whether those services should be limited to SMS (text) and GPRS (data) services or whether voice services should also be made available to passengers.

Legislative Provisions

ACMA makes this Amendment Declaration under section 190 of the Radiocommunications Act 1992 (the Act). Section 190 of the Act allows ACMA to declare, by notice published in one or more newspapers circulating generally in the capital city of each State and Territory, that 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 notice.

Section 56 of the *Legislative Instruments Act 2003* provides that the requirement for publication in the Gazette is satisfied by registration on the Federal Register of Legislative Instruments.

A Declaration issued under section 190 of the Act is a disallowable instrument for the purposes of the *Acts Interpretation Act 1901*.

**Background**

Section 190 of the Act describes the manner in which ACMA may declare a device to be prohibited and the kinds of devices that may be declare to be prohibited. Such devices must be devices that:

- are designed to have an adverse effect on radiocommunications; or
- would be likely substantially to:
  - interfere with radiocommunications; or
  - disrupt or disturb radiocommunications in any other way; or
- are radiocommunications transmitters or radiocommunications receivers that would be reasonably likely to have an adverse effect on the health or safety of persons who:
  - operate the devices; or
  - work on the devices; or
  - use services supplied by means of the devices; or
  - are reasonably likely to be affected by the operation of the devices.

The principal reasons given in 1999 for the making of the Declaration were:

- Mobile phone jammers cause deliberate interference to licensed services operated by mobile carriers, and may cause interference to other services operating in adjacent spectrum bands.
- Jammers transmit signals that interfere with reception from mobile phone base stations. All mobile phones being used within a radius of up to four kilometres from the jamming device could be 'jammed'.
- Concern that radiation levels of high-powered devices may result in human exposure to levels of electromagnetic radiation that exceed the maximum permitted under Australian health exposure standards. This has implications for public health and safety, especially in confined areas.

However, communications technologies have evolved since the making of the Declaration in 1999. Recent innovation in technology has rendered mobile communication services on aircraft, for use by passengers, a viable option. There is evidence of increasing interest worldwide in providing in-flight mobile phone services in recent years.

So that in-flight services are to be provided safely, the device that provides those services includes a component that blocks access to terrestrially based radiocommunications within the frequency bands 870-960 MHz or 825-845 MHz (the 900 MHz band). However, the primary purpose of the device is to facilitate mobile phone communications in an environment where they otherwise could not otherwise operate, either legally or safely.

After public consultation, ACMA concluded that the component part of the device which is captured by the definition of the prohibited device in the Declaration was not the type of device that
the Declaration had been intended to prohibit. In order to facilitate licensed operation of these devices, ACMA, on 12 October 2006 amended the Declaration to create an exemption for the operation of a device if that operation is authorised under a scientific assigned apparatus licence for a trial on board an aircraft. A trial subsequently took place on one Qantas aircraft between 18 April 2007 and 27 January 2008. There were no complaints of interference received by ACMA during the trial.

A more purposeful definition of prohibited devices will allow ACMA to differentiate between devices designed only to disrupt and interfere with licensed mobile phone communications and those which are designed to act as component parts of a system that facilitates mobile phone communications on board aircraft. This is in keeping with the intention of the Declaration to prohibit the possession and operation of ‘nuisance’ mobile phone jammers.

It would not be sensible for ACMA to commit resources to the development of licensing arrangements, including public consultation about those arrangements, if the devices that would be authorised by those licences were prohibited devices. Importantly, in-flight mobile phone services cannot be provided in Australia unless ACMA also establishes radiocommunications licensing arrangements that would authorise operation of the device and the mobile phones that would communicate with it.

Consultation

In accordance with section 17 of the *Legislative Instruments Act 2003* and section 191 of the Act respectively, public consultation was undertaken by ACMA. A Notice was published in the *Commonwealth Gazette* and *The Australian* on 15 October 2008 calling for submissions on the proposal to amend the Declaration. The duration of the consultation period was 30 days.

Seventeen representations were received during the consultation phase. Five were supportive submissions. These submissions noted that a successful trial of the on board system (under a temporary exemption) had resulted in no complaints of interference to either aircraft avionics or terrestrial networks. They also noted that demand existed for the mobile phone telephone services that could potentially be provided if the amendment was made. Most submissions did not address issues relevant to the proposed amendment to the Declaration. One submission was neutral on the matter of the Amendment Declaration. One submission expressed concern over emission limits and possible interference to future services. ACMA gave due consideration to all submissions.

Regulatory Impact Statement

ACMA obtained advice from its SES contact officer for the Government’s regulation impact analysis arrangements that the Variation has no or low impact. For those reasons under the self-assessment regime administered by the Office of Best Practice Regulation, ACMA has determined that there is no need to produce a Business Cost Calculator report or to prepare a Regulation Impact Statement (RIS). The RIS exemption identification number for this issue is 071.

Detailed description of the instrument

Details of the Amendment Declaration are set out in the notes in Attachment 1.
Notes on the instrument

PART 1

Section 1   Name of Declaration

Section 1 names the Amendment Declaration as the *Notification that the Australian Communications and Media Authority prohibits the operation or supply, or possession for the purpose of operation or supply, of specified devices Amendment Declaration 2009 (No. 1).*

Section 2   Commencement

Section 2 provides that the Amendment Declaration commences on the day after it is registered on the Federal Register of Legislative Instruments.

Section 3   Amendment

Section 3 provides for the amendment of the *Notification that the Australian Communications and Media Authority prohibits the operation or supply, or possession for the purpose of operation or supply, of specified devices,, dated on 4 March 1999,* as indicated in Schedule 1.

Schedule 1   Amendments

Item 1   Notice, subheading after first paragraph

Item 1 omits reference to trial on board an aircraft and inserts a reference to facilitating service on board an aircraft.

Item 2   Notice, second paragraph

Item 2 replaces the second paragraph of the notice, which refers to a trial scenario, with a paragraph excluding devices used to facilitate a cellular mobile telephone service operating onboard an aircraft operating on a frequency other than the one on which the device operates from the prohibition against operation. The device can only be used for this purpose.

Item 3   Notice, third paragraph

Item 3 replaces the third paragraph of the notice, which refers to a trial scenario, with a paragraph excluding devices used to facilitate a cellular mobile telephone service onboard an aircraft operating on a frequency other than the one on which the device operates from the prohibition against the possession or supply.

Item 4   Notice, before definition of *trial on board an aircraft*

Item 4 inserts a definition of *cellular mobile telephone service* so that it has the same meaning as in the *Radiocommunications (Interpretation) Determination 2000.*
Item 5  Notice, definition of *trial on board an aircraft*

Item 5 removes the definition of *trial on board an aircraft*

Item 6  Reasons for declaration, second dot point

Item 6 updates the previous text in the second dot point to reflect changes to the reasons for the Declaration.

Item 7  Reasons for declaration, third dot point

Item 7 changes the wording of the third dot point to clarify that licensing of (non-prohibited) jamming devices could only occur in the limited circumstances specified in the Declaration. This reason for prohibition is based on the understanding that most mobile phone jammers, and operation of those devices, do not fit those limited circumstances and cannot be licensed.

Item 8  Reasons for declaration, third dot point

Item 8 clarifies that operation outside of the limited circumstances specified is prohibited.

Item 9  Reasons for declaration, fourth dot point

Item 9 changes the wording of the fourth dot point in order to differentiate between devices that are prohibited by the Declaration and do not comply with the Radiocommunication 900 MHz Band Plan 1992 and those that are not prohibited and may comply with the Radiocommunication 900 MHz Band Plan 1992.

Item 10  Reasons for declaration, fifth dot point

Item 10 changes the wording of the fifth dot point in acknowledgement of the fact that, while the use of a jamming device was not permitted in any circumstances at the time when the Declaration was first made, it now may occur in limited circumstances (under which, as specified in the Declaration, the device in question would not be considered a prohibited device).