EXPLANATORY STATEMENT
Issued by the Australian Communications and Media Authority

Radiocommunications (Interpretation) Amendment Determination 2010 (No.1)
Australian Communications and Media Authority Act 2005

Purpose
The purpose of the Radiocommunications (Interpretation) Amendment Determination 2010 (No. 1) (the Amendment Determination) is to amend the definitions of PTS licence and PMTS Class B in such a way as to ensure that there is inherent flexibility in the application of the definitions in the future as a result of technological developments and evolution.

The Amendment Determination also includes a new definition of public mobile telecommunications service in an attempt to resolve potential issues associated with defining the number of stations authorised for operation by licensees under the PTS licence type and the PMTS Class B licensing option.

These definitions are contained in the Radiocommunications (Interpretation) Determination 2000 (the Interpretation Determination).

Legislative Provisions
Subsection 64 (1) of the Australian Communications and Media Authority Act 2005 provides that the ACMA may make written determinations defining one or more expressions used in legislative instruments made by the ACMA.

The Amendment Determination is a legislative instrument for the purposes of the Legislative Instruments Act 2003 (the LIA).

Subsection 33 (3) of the Acts Interpretation Act 1901 provides that where an Act confers a power to make an instrument, that power shall, unless the contrary intention appears, be construed as including a power exercisable in a like manner and subject to like conditions, to amend that instrument.

Background
The proposed amendment to the definitions of PTS licence and PMTS Class B hinge on recent developments in relation to the increased levels of demand witnessed by the ACMA for access to spectrum and regulatory arrangements that best support arrangements for the deployment of advanced telecommunications technologies (3G, 4G, LTE) in various radiofrequency bands.

The ACMA came to the view that it is not necessary to specify frequency bands of operation for PTS licences in the Interpretation Determination. This is because frequency bands can be more efficiently specified in individual licences, with additional conditions for specific frequency ranges set out in the relevant licence conditions determinations specified by the ACMA in accordance with paragraph 107 (1) (f) of the Radiocommunications Act 1992.

Removing references to the specific frequency bands from the definition of PMTS Class B is a technology-flexible approach that would enable the ACMA to issue PMTS Class B apparatus licences in new frequency bands more quickly. This will improve the ACMA’s responsiveness to advances in technology, particularly as new bands are internationally identified and allocated domestically for use by mobile telecommunications.

The amendment to the definition of PTS licence removes the condition for the licensee to hold a carrier licence. This requirement is unnecessary because it duplicates the requirements under section 42 of the Telecommunications Act 1997 (the Telecommunications Act), which already apply to licensees who supply a carriage service to the public. It is only in rare circumstances (e.g. immediate circle), which are expressly permitted by the Telecommunications Act, that a carrier licence would not be required. There is no reason to duplicate the requirement for the majority of cases, and in the rare circumstances, keeping
the carrier licence requirement removes the benefit of the express provisions in the Telecommunications Act.

The amendment also changes the requirement of a PTS licence from operating “2 or more land stations” to “1 or more stations”. This amendment will allow the future deployment of a PMTS Class C apparatus licence option which is currently being proposed. It is anticipated that the PMTS Class C licence option will authorise the operation of a picocell device on board aircraft which is only one station. A change to the definition of a PTS licence to allow for 1 or more stations will incorporate the PMTS Class C licence type.

The amendment to the definition of public mobile telecommunications service removes regulatory inconsistencies with sections 32 and 33 of the Telecommunications Act. These sections require the public mobile telecommunications service to have at least 2 stations. Consequently, the definition has been amended to include both:

- A public mobile telecommunications service as defined by section 32 of the Telecommunications Act (operating at least 2 stations); and

- A service that:
  - Would be a public mobile telecommunications service except that it does not comply with paragraph 32(1)(c) regarding intercell handover functionality; and
  - Is an exempt service defined by subsection 32(4) of the Telecommunications Act (operating with only 1 station).

**Operation**

The amendments to the Interpretation Determination will:

- Remove references to frequency bands for the PMTS Class B apparatus licence;
- Remove the requirement that the licensee must hold a carrier licence under the Telecommunications Act;
- Replace the requirement of a PTS licence from operating “2 or more land stations” to “1 or more stations”; and
- Ensure that any regulatory inconsistencies with sections 32 and 33 of the Telecommunications Act are removed by including a new definition for public mobile telecommunications service.

**Consultation**

Section 17 of the LIA requires the ACMA to be satisfied that any consultation it considers to be appropriate and that is reasonably practicable to undertake has been undertaken. The Amendment Determination, along with a number of other legislative instruments, was included for consultation in a package of regulatory proposals to facilitate the deployment of public mobile telecommunications services in the 2 GHz band.

The package was released on the ACMA website for consultation for the period 6 October to 23 November 2009 and was accompanied by a media release. Two submissions were received in relation to the package. The respondents to the 2 GHz consultation process were supportive of the proposed Amendment Determination.

**Regulatory Impact Statement**

The ACMA obtained advice from its SES contact officer for the Government’s regulation impact analysis arrangements that the Amendment Determination has no or low impact. For those reasons under the self-assessment regime administered by the Office of Best Practice Regulation (OBPR), the ACMA has determined that there is no need to produce a Business Cost Calculator report or to prepare a Regulation Impact Statement. The ACMA RIS exemption reference number is ACMA 129.

**Detailed Description of the Instrument**
Details of the Amendment Determination are set out in the Attachment.
NOTES ON SECTIONS

Section 1 – Name of Determination
This section provides the name of the Amendment Determination.

Section 2 – Commencement
This section provides that the Amendment Determination commences on the day after it is registered.

Section 3 – Amendment of Radiocommunications (Interpretation) Determination 2000
This section provides that Schedule 1 amends the Radiocommunications (Interpretation) Determination 2000.

Schedule 1 Amendments

Item [1] Schedule 1, definition of PMTS Class B
This section amends the definition of PMTS Class B.

Item [2] Schedule 1, definition of PTS licence
This section provides an updated definition of PTS licence.

Item [3] Schedule 1, definition of public mobile telecommunications service
This section provides a new definition of public mobile telecommunications service that expands the scope of the definition to take into account PTS licences that operate using either 2 or more land stations or 1 or more stations.