

Radiocommunications Amendment Regulations (No. 1) 1998 No. 330

EXPLANATORY STATEMENT

STATUTORY RULES 1998 NO. 330

Issued by the Authority of the Minister for Communications, Information Technology and the Arts.

Radiocommunications Act 1992

Radiocommunications Amendment Regulations (No. 1)

Under subsection 314 (1) of the *Radiocommunications Act 1992* ('the Act') the Governor-General may make regulations prescribing matters required or permitted to be prescribed under the Act or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Radiocommunications Amendment Regulations (No. 1) amend the Radiocommunications Regulations ('the Regulations') to facilitate the licensing of proposed satellite services, to provide for consequential amendments to new Communications Legislation and to accommodate changes for marine rescue services.

Licensing Australian Satellites - Items 10, 11, 12, 13, 14 and 15 of Schedule 1

A new generation of communications services is to be provided by means of satellites communicating with large numbers of transceivers in Australia. The number and nature of the transceivers make it impractical to license them individually and, therefore, impose licence tax on the spectrum that they use. An alternative approach is to license, and impose licence tax on, the transmitters and receivers on the satellites used to provide the services.

However, under section 23 of the Act, the Australian Communications Authority ('ACA') is unable to license a transmitter or a receiver on a satellite, unless the satellite is declared to be an 'Australian satellite' in Regulation 4 of the Regulations. The following satellites have already been declared to be "Australian satellites" under Regulation 4:

- * space satellites operated by Optus Networks Pty Limited;
- * space satellites operated by Iridium LLC;
- * space satellites operated by KITComm Pty Limited;
- * space satellites operated by PanAmSat Corporation; and
- * space satellites operated by Mobile Communications Holdings, Inc.

Those satellites are declared to be "Australian satellites" for various purposes, eg "to provide mobile satellite services to Australia". For reasons of flexibility and consistency, items 10 to 14 of Schedule 1 have amended each of paragraphs 4 (a), (b), (c), (d) and (e) of the Regulations to declare the above-mentioned satellites as "Australian satellites" to provide "radiocommunication services to Australia".

Another company, Teledesic LLC, has recently expressed its desire to operate radiocommunications devices in Australia using satellites. Accordingly, Teledesic LLC has asked

for satellites operated by it to be declared, under Regulation 4 to be 'Australian satellites', for the purposes of the Act. This has been done by the amendment in item 15 of Schedule 1.

Reference to ITU Radio Regulations-Item 3 of Schedule 1

Regulation 3 of the Regulations previously contained a definition of "Distress, Urgency, Alarm and Safety Signals". That definition included a reference to the Radio Regulations published by the International Telecommunications Union, as in force on a particular date. As the reference to the ITU Radio Regulations is expressed to be "as in force on... [a particular date]", any amendments to those Radio Regulations made by the ITU would not have been capable of being incorporated into the definition. However, section 314A of the Act provides that "An instrument under this Act may make provision in relation to a matter ... as in force from time to time." Therefore, the amended definition of "Distress, Urgency, Alarm and Safety Signals" now refers to the ITU Radio Regulations as in force from time to time.

Amendments consequential to new Communications Legislation - Items 1, 2, 6, 7, 8, 9, 17, 18, 19, 20, 21, 23, 24 and 25 of Schedule 1

The transfer of functions from the former Spectrum Management Agency ('SMA') to the ACA under the *Australian Communications Authority Act 1997* ('the ACA Act') and associated communications legislation on 1 July 1997 meant that some references in the Regulations became incorrect. For example, the Regulations contained references to 'Spectrum Manager' and 'SMA'. The legal effect of this was remedied by an instrument made under section 14 of the ACA Act. That instrument had the effect of substituting the obsolete term with the appropriate term for the new legislative scheme. For example, 'Spectrum Manager' was to be read as 'Chairman of the ACA'. However, the obsolete terminology remained in the Regulations, and it is necessary to bring the terminology into line with the new legislative scheme to prevent readers of the Regulations being confused about this. The amending regulations have remedied this situation.

Item 7 of Schedule 1 amended the definition of "penalty" in Regulation 3 as a consequence of the amendment of the Act.

Marine Rescue Services-Items 4 and 22 of Schedule 1

Prior to the amendment, Regulation 43 required the Chairman of the ACA to make a declaration that a specified body is prepared to provide a comprehensive emergency radiocommunications service to vessels at sea without discrimination. This regulation was introduced so that these kinds of organisations could receive a lower licence fee because of the service they provide. The reduction in licence fees is now provided for under the Radiocommunications Taxes Collection Regulations instead. Consequently, Regulation 43 became redundant. The amending regulations have removed Regulation 43.

The definition of 'limited coast marine rescue' has been amended to reflect the removal of Regulation 43 and also the introduction of a Licence Conditions Determination made under paragraph 107 (1) (f) of the Act.

Details of the amending regulations are set out in the Attachment.

The Regulations commenced on gazettal.

ATTACHMENT

Regulation 1 sets out the citation for the amending regulations.

Regulation 2 provides that the amending regulations commence on gazettal.

Regulation 3 provides that Schedule 1 of the amending regulations is to amend the Radiocommunications Regulations.

Item 1 of Schedule 1 provides for the citation in Regulation 1 of the Radiocommunications Regulations to be amended.

Item 2 of Schedule 1 omits the definition of "carriage service" in Regulation 3 of the Regulations as this term has been removed from the Regulations by the amendments in items 5 and 6 of Schedule 1.

Item 3 of Schedule 1 provides for the replacement of the definition of "Distress, Urgency, Alarm and Safety Signals" in Regulation 3 of the Regulations with a new definition.

Item 4 of Schedule 1 provides for the replacement of the definition of limited coast marine rescue station" in Regulation 3 of the Regulations with a new definition.

Items 5 and 6 of Schedule 1 provide for the amendment of the definition of "outpost station" in Regulation 3 of the Regulations. These changes are to reflect changes brought about by the new communications legislative package that came into effect on 1 July 1997.

Item 7 of Schedule 1 provides for a minor amendment of the definition of „penalty" in Regulation 3 of the Regulations.

Item 8 of Schedule 1 provides for the definition of "Spectrum Manager" in Regulation 3 of the Regulations to be omitted.

Item 9 of Schedule 1 provides for the insertion of new definitions into Regulation 3 of the Regulations as a consequence of the new telecommunications regime under the *Telecommunications Act 1997* ('the Telecommunications Act').

Items 10 to 14 of Schedule 1 provide for minor amendments to Regulation 4 of the Regulations.

Item 15 of Schedule 1 provides for space satellites operated by Teledesic LLC to be declared as "Australian satellites" for the purposes of the Act. This extends the application of the Act to those space satellites even though they are not in Australia.

Item 16 of Schedule 1 provides for subregulation 4 (2) of the Regulations to be omitted.

Item 17 of Schedule 1 provides for Regulation 20 of the Regulations to be replaced with a new regulation that replaces references to "SMA" with references to "ACA".

Item 18 of Schedule 1 provides for a reference to section 293 of the Act to be replaced with a reference to section 53 of the ACA Act. Section 53 of the ACA Act gives the ACA power to determine charges in relation to the exercise of its functions. Section 293 of the Act, prior to its repeal, empowered the SMA to determine charges for the exercise of its functions.

Item 19 of Schedule 1 provides for Regulation 35 of the Regulations to be omitted. Regulation 35 was about remuneration and allowances for the ,Spectrum Manager. As that office no longer exists, Regulation 35 became redundant.

Item 20 of Schedule 1 provides for Regulation 37 of the Regulations to be omitted. Regulation 37 became redundant as a result of the repeal of section 293 of the Act.

Item 21 of Schedule 1 provides for the substitution of Regulation 42 in order to reflect the arrangements regarding the exercise of functions now performed by the ACA and the Chairman of the ACA that were previously performed by the SMA and Spectrum Manager respectively.

Item 22 of Schedule 1 provides for Regulation 43 of the Regulations to be omitted as a result of changes to the arrangements for dealing with limited coast marine rescue stations. The changes are reflected in the new definition of "limited coast marine rescue station" in item 4 of Schedule 1.

Item 23 of Schedule 1 provides for the amendment of the Regulations to replace references to "SMA" with references to "ACA".

Item 24 of Schedule 1 provides for the amendment of the Regulations to replace references to "Spectrum Manager" with references to "ACA".

Item 25 of Schedule 1 provides for the amendment of the Regulations to replace references to "Spectrum Manager" with references to "Chairman".