

EXPLANATORY STATEMENT

Issued by the authority of the Australian Communications and Media Authority

Notification that the Australian Communications Authority prohibits the operation or supply, or possession for the purpose of operation or supply, of specified devices Amendment Declaration 2006 (No. 1)

Radiocommunications Act 1992

Legislative Provisions

The Australian Communications and Media Authority (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 the *Gazette*, 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*.

Purpose

The Notification that the Australian Communications 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 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 operation of the device is authorised under a scientific assigned apparatus licence for a trial on board an aircraft issued by ACMA under subsection 100 (1) of the *Radiocommunications Act 1992*; and
- (b) the device is operated in accordance with any conditions specified in the licence mentioned in paragraph (a).

It further allows the possession or supply of a device if:

- (a) the operation of the device is authorised under a scientific assigned apparatus licence for a trial on board an aircraft issued by ACMA under subsection 100 (1) of the *Radiocommunications Act 1992*; and
- (b) the device is:
 - (i) supplied to; or
 - (ii) possessed for the purpose of supply to; or
 - (iii) possessed by;a person who holds a licence mentioned in paragraph (a).

Through the exclusion of devices from the Declaration in this manner the Amendment Declaration will support the trialling of radiocommunications devices, authorised by a scientific assigned

licence, on-board aircraft. This will provide ACMA, and other Agencies, with an opportunity to fully assess the systems operation, prior to determining future arrangements. In addition, the licensing framework will include a mandatory reporting system that will include the assessment, recording and reporting of any incident of interference to existing terrestrial radiocommunications. This mandatory reporting system will further allow ACMA to determine and investigate appropriate technical approaches for the provision of such a service.

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 declared 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.

In accordance with section 190, the principal reasons for the Declaration are:

- 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. Both technical viability of, and consumer interest in, providing mobile communications on aircraft, for use by passengers, has increased in recent years. International regulatory bodies have initiated investigations with industry representatives from the avionics and telecommunications sectors into GSM services on aircraft, specifically at 1800 MHz.

In line with these international developments, and the increased interest in the provision of 1800 MHz GSM services on-board aircraft, ACMA made the Amendment Declaration to provide for trials of radiocommunications devices authorised under a scientific assigned apparatus licence. The amendment is specifically restrictive to the operation, or supply for the purposes of operation, of radiocommunications devices for the purposes of trialling devices on-board aircraft for the provision of GSM mobile phone services. It is not a permanent or long term licensing solution, and no decision has been made on future regulatory or licensing frameworks for on-board aircraft mobile phone use.

The 1800GSM service, on-board aircraft, is expected to provide consumers with mobile phone services comparable to existing terrestrially based services including:

1. full duplex voice and text messaging support for GSM phones capable of operating within the 1800 MHz / 1900 MHz GSM frequency band; and
2. GPRS and related services i.e. MMS, EMS, picture messaging, and/or email.

However, integral to the provision of this service is the fact that part of the device blocks access to terrestrially based radiocommunications within the frequency bands 870 – 960 MHz or 825 - 845 MHz (the 900 MHz band). Therefore, in order to support the trial of such a radiocommunications device AMCA made the Amendment Determination.

After consideration of section 17 of the *Legislative Instruments Act 2003*, public consultation was undertaken and consideration was given to all the representations received. Seven representations were received during the consultation phase. Six were supportive submissions. The one submission that did not support the Amendment Declaration related specifically to the use of radiocommunications devices in aircraft and the possible adverse reactions, including the impact on passenger health, that use might have. To address this concern ACMA developed licence conditions, in consultation with the Civil Aviation and Safety Authority, that require the operation of radiocommunications devices in aircraft to comply with ACMA's EMR policies, including the *Radiocommunications (Electromagnetic Radiation Human Exposure) Standard 2003* and that the licensee must report on any and all adverse impacts on passenger health.

The Office of Regulation Review did not require a Regulation Impact Statement (RIS). The RIS identification number for this issue is 6356.

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 Authority prohibits the operation or supply, or possession for the purpose of operation or supply, of specified devices Amendment Declaration 2006 (No. 1)*.

Section 2 Commencement

Section 2 provides that the Amendment Declaration commences on the day after registration.

Section 3 Amendment

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

Schedule 1 Amendments

Item 1 Title

Item 1 omits each mention of Australian Communications Authority and inserts the Australian Communications and Media Authority.

Item 2 Exemption – trial on board an aircraft

Item 2 amends the Declaration to introduce an exemption to the prohibition in the Declaration so that the Declaration does not prohibit the operation of a device if:

(a) the operation of the device is authorised under a scientific assigned apparatus licence for a trial on board an aircraft issued by ACMA under subsection 100 (1) of the *Radiocommunications Act 1992* (the Act); and

(b) the device is operated in accordance with any conditions specified in the licence mentioned in paragraph (a).

Further, the Declaration does not prohibit the possession or supply of a device if:

(a) the operation of the device is authorised under a scientific assigned apparatus licence for a trial on board an aircraft issued by ACMA under subsection 100 (1) of the *Radiocommunications Act 1992*; and

(b) the device is:

(i) supplied to; or

(ii) possessed for the purpose of supply to; or

(iii) possessed by; a person who holds a licence mentioned in paragraph (a).

Item 2 further provides that in the Declaration:

trial on board an aircraft means the operation of a device on board an aircraft only if:

- (a) the aircraft is in flight; and
- (b) the device is operated in order to test the efficacy or suitability of the device for the control of the use of mobile telephones on board the aircraft.

Item 3 Reasons for declaration, first paragraph

Item 3 amends the first paragraph of the reasons for the declaration to provide that this declaration applies to the operation or supply, or possession for the purpose of operation or supply, of the device, commonly known as a mobile telephone jammer, and declares such devices to be prohibited unless the circumstances specified in the exemption for the purposes of trial on board an aircraft exist.

Item 4 Reasons for declaration, third dot point

Item 4 amends the third dot point of the reasons for the declaration to replace the reference to the ACA's knowledge with a reference to the Authority's knowledge.

Item 5 Reasons for the declaration, fourth dot point

Item 5 amends the fourth dot point of the reasons for the declaration to replace the reference to ACA with a reference to the Authority