**EXPLANATORY STATEMENT**

**Select Legislative Instrument 2011 No. 208**

Issued by authority of the Minister for Broadband, Communications and the Digital Economy

*Radiocommunications Act 1992*

*Radiocommunications Amendment Regulations 2011 (No. 1)*

Subsection 314(1) of the *Radiocommunications Act 1992* (the Act) provides that the Governor-General may make regulations prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Regulation 3 of the *Radiocommunications Regulations 1993* (the Principal Regulations) provides for the interpretation of terms. Under the previous regulatory arrangements, radiocommunications definitions were expressed in a number of instruments, more specifically, the Principal Regulations, the *Radiocommunications (Interpretation) Determination 2000* (the Interpretation Determination) and a number of legislative instruments made by the Australian Communications and Media Authority (ACMA). This resulted in a cumbersome and complex referencing process.

The purpose of the Regulations is to make a number of minor, administrative amendments to the Principal Regulations designed to:

* remove a number of obsolete definitions that are no longer used in the Principal Regulations and the Interpretation Determination;
* amend several definitions to provide consistency with the definitions contained in other legislative instruments;
* remove a number of unnecessary duplicate definitions used in both the Principal Regulations and the Interpretation Determination;
* update references from the former ACA (Australian Communications Authority) to its successor the ACMA; and
* update references to the former *Australian Communications Authority Act 1997* (ACA Act) with the *Australian Communications and Media Authority Act 2005* (ACMA Act) which replaced the ACA Act following its repeal.

These minor, administrative changes improve the management of radiocommunications definitions by reducing the need for cross-referencing through the removal of redundant and duplicate definitions that are no longer necessary in the Principal Regulations.

Consequential to the amendments made by the Regulations, the ACMA have, in parallel, made necessary changes to the Interpretation Determination, through the *Radiocommunications (Interpretation) Amendment Determination 2011 (No. 1)* (the Interpretation Amendment Determination). The Interpretation Amendment Determination also makes a number of minor, administrative changes to the Interpretation Determination to remove redundant definitions and update some references to ensure consistency with other relevant radiocommunications subordinate legislation. The Interpretation Amendment Determination similarly updates references made in the Interpretation Determination to the ACMA Act, rather than the superseded ACA Act.

As the amendments to the Principal Regulations and the Interpretation Determination are dependent on each other to provide a consistent and functional legal basis for the on‑going regulation of radiocommunications by the ACMA, there is a need for both instruments to commence at the same time. The commencement date for both the Regulations and the Interpretation Amendment Determination is specified as being the day after each instrument is registered on the Federal Register of Legislative Instruments. As such, both instruments are to be registered on the same day to allow for each instrument to commence simultaneously.

*Consultation*

Consultation on the proposed amendments to the Principal Regulations was undertaken as part of the consultation process conducted by the ACMA in relation to changes to the Interpretation Determination. This level of consultation was considered appropriate as consistent with the proposed amendments being characterised as minor, administrative changes, per sections 17 and 18 of the *Legislative Instruments Act 2003* (LIA).One submission was received in response to the consultation process which was supportive of the proposed amendments to the Principal Regulations.

Details of the accompanying Regulations are set out in the Attachment.

The Act specifies no conditions that need to be satisfied before the power to make the

Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the LIA.

The Regulations commenced on the day after they were registered on the Federal Register of Legislative Instruments.

**ATTACHMENT**

**Details of the *Radiocommunications Amendment Regulations 2011 (No. 1)***

**Regulation 1 - Name of the Regulations**

This regulation provides that the title of the Regulations is the *Radiocommunications Amendment Regulations 2011 (No. 1)*.

**Regulation 2 - Commencement**

This regulation provides that the Regulations are to commence on the day after they are registered on the Federal Register of Legislative Instruments.

**Regulation 3 – Amendment of *Radiocommunications Regulations 1993***

This regulation provides that the *Radiocommunications Regulations 1993* (the Principal Regulations) are amended as set out in Schedule 1.

**Schedule 1 – Amendments**

**Item 1 – Regulation 3**

Subregulation 3(1) provides definitions for certain terms used in the Principal Regulations.

By substituting the existing definitions in the Principal Regulations with a new definitions section, this item amends subregulation 3(1) by removing a number of obsolete definitions for the purposes of the Principal Regulations. This item also removes definitions which are to be defined under the *Radiocommunications (Interpretation) Determination 2000* so as to remove duplication (see subregulation 3(2) below).

However, the following terms have been retained in the definitions to the Regulations and have the same meaning as applies to these terms under the Principal Regulations:

* ***Act***
* ***Distress, Urgency, Alarm and Safety Signals***
* ***examination***
* ***penalty***
* ***Telecommunications Convention***

This item also amends the definition of the term ***authorised person*** as a consequential amendment following the change in nomenclature from ‘Chairman’ to ‘Chair’ as described below.

Prior to the commencement of the Regulations, regulation 3 defined the term ‘Chairman’ by reference to its meaning given under section 7 of the *Telecommunications Act 1997* (Tel Act). This definition has been repealed in the Tel Act.

This item substitutes the term ‘Chairman’ with ***Chair,*** which is definedby reference to section 3 of the *Australian Communications and Media Authority Act 2005* (ACMA Act). Under section 3 of the ACMA Act, the term ‘Chair’ means ‘head of the ACMA’.

This item also makes a technical change in nomenclature for the term ***facsimile***.

This item also inserts the term ***Interpretation Determination*** into subregulation 3(1) and defines it to mean the *Radiocommunications (Interpretation) Determination 2000.* This change is because of the insertion of subregulation 3(2) as described below.

This item also makes a minor change to the definition of the term ***SOLAS*** to note that the Protocol to the International Convention for the Safety of Life at Sea was done at London on 17 February 1978. This change is intended to provide further information to the reader on the particular Protocol.

This item also inserts a subregulation 3(2) into the Principal Regulations that identifies certain terms that, unless noted otherwise, have the same meaning in the Principal Regulations as they do in the Interpretation Determination. A note is included at the end of this subregulation to specify that these terms are defined in the Dictionary to Schedule 1 of the Interpretation Determination:

* ***maritime coast station***
* ***message***
* ***ship***
* ***ship station Class B***
* ***ship station Class C***
* ***station***

**Item 2 – Regulation 20**

Item 2 substitutes regulation 20 of the Principal Regulations to change two references to ‘the ACA’ (referring to the former Australian Communications Authority) from the Principal Regulations with the acronym ‘ACMA’ (as the successor to the Australian Communications Authority) throughout the Principal Regulations. On 1 July 2005, the former Australian Broadcasting Authority (ABA) and the former ACA were amalgamated to form the ACMA (established under the ACMA Act). Whilst item 8 of Schedule 4 to the *Australian Communications and Media Authority (Consequential and Transitional Provisions) Act* *2005* provides that instruments (including regulations) which contain references to the ACA continue to have effect from the transition time as if a reference in the instrument were a reference to the ACMA, the update is considered necessary for providing ease of use and manageability of the Principal Regulations.

**Item 3 – Paragraph 21(1)(b)**

Item 3 substitutes from paragraph 21(1)(b) of the Principal Regulations the phrase ‘section 53 of the *Australian Communications Authority Act 1997*’ with ‘section 60 of the *Australian Communications and Media Authority Act 2005*’. This change brings the regulation up to date with the legislative regime to which it applies.

**Item 4 – Paragraph 25(1)(f)**

Item 4 omits from paragraph 25(1)(f) of the Principal Regulations the phrase ‘the Chairman or’. This is a necessary consequential amendment because of the following:

1. The repeal of the term ‘Chairman’ from regulation 3 under item 1; and
2. Paragraph 25(1)(f) allows for ‘an authorised person’ to carry out the same activity as the Chairman. Thus, as the term ‘authorised person’ encompasses the term ‘Chair’ into its definition under item 1, it would be unnecessary to replace ‘Chairman’ with ‘Chair’.

**Item 5 – Regulation 26**

Item 5 substitutes from regulation 26 of the Principal Regulations each mention of the phrase, ‘the Chairman, or an authorised person,’ with ‘an authorised person’. As noted with item 4 above, this amendment is designed to clean up the redundant usage of the term, ‘the Chairman’, and replace it with the all encompassing term ‘authorised person’, which encompasses the term ‘the Chair’ (see item 1 above).

**Item 6 – Paragraph 27(1)(a)**

Item 6 omits from paragraph 27(1)(a) of the Principal Regulations the phrase, ‘the Chairman or’. As with item 4 above, the rationale behind this amendment is to remove the redundant terminology, since the phrase, ‘an authorised person’ includes ‘the Chair’ (see item 1 above).

**Item 7 – Further amendments**

Item 7 substitutes the acronym ‘ACA’ from the Principal Regulations with the acronym ‘ACMA’ throughout the Principal Regulations. As noted with item 2 above, the rationale for this change is to provide ease of use and manageability of the Principal Regulations, by bringing references to the ACA up to date to the ACMA.