

EXPLANATORY STATEMENT

Prepared by the Australian Communications and Media Authority

Radiocommunications (Interpretation) Amendment Determination 2012 (No. 1)

Australian Communications and Media Authority Act 2005

Legislative Provisions

The Australian Communications and Media Authority (the **ACMA**) makes the *Radiocommunications (Interpretation) Amendment Determination 2012 (No. 1)* (the Amendment Determination) under subsection 64(1) of the *Australian Communications and Media Authority Act 2005* (the ACMA Act).

Background

Subsection 64(1) of the ACMA Act provides that the ACMA may make a written determination defining 1 or more expressions used in specific instruments, being instruments that are made by the ACMA under 1 or more specified laws of the Commonwealth. The relevant written determination that defines expressions used in determinations or class licences made by the ACMA under the *Radiocommunications Act 1992* (the Act), is the *Radiocommunications (Interpretation) Determination 2000* (the Interpretation Determination).

The Interpretation Determination defines a 'PTS licence' as an apparatus licence issued for a service that consists of 1 or more stations that are operated for the provision of a public mobile telecommunications service (PMTS). The Interpretation Determination incorporates the definition of a PMTS found in the *Telecommunications Act 1997* (Telco Act).

Femtocells are small base stations that may be deployed on the customer's side of the network boundary. They operate by connecting a mobile device (such as a mobile phone) to a mobile operator's network using the premises' fixed digital subscriber line or cable broadband. From an end user's perspective, the service accessed using a femtocell displays the functionality of a PMTS.

Femtocells are radiocommunications devices for the purpose of section 46 of the Act and must be licensed. However, there is some uncertainty about whether the operation of a femtocell can be authorised under the PTS licence apparatus licence type. The service provided by means of a femtocell may not fall within the definition of PMTS in the Telco Act because that definition requires that the customer equipment used for or in relation to the supply of the service must not be in physical contact with any part of the telecommunications network by means of which the service is supplied.

There is some uncertainty about whether femtocells that need to be physically plugged into a broadband router which in turn needs to be connected to a wall socket will meet this requirement.

Operation of the Amendment Determination

The Amendment Determination expands the definition of PTS licence in Schedule 1 of the Interpretation Determination to authorise the operation of 1 or more stations (the **licensed stations**) where:

- the licensed stations communicate with mobile stations; and
- the mobile stations are ordinarily used for or in relation to the supply of a PMTS, but when used in conjunction with the licensed stations, do not involve the use of the mobile stations for or in relation to the supply of a PMTS.

A femtocell is an example of such a licensed station. The mobile stations that the licensed stations communicate with are separately licensed under the *Radiocommunications (Cellular Mobile Telecommunications Devices) Class Licence 2000*.

The Amendment Determination has the effect of broadening the definition of 'PTS licence' so it is not limited to the licensing of stations that are operated for the provision of a PMTS.

The amendment to the Interpretation Determination will enable the authorisation of femtocells and other like devices used to provide similar services under the PTS licence apparatus licence type. The amendment will also maintain consistency in licensing arrangements for stations that are operated to provide a carriage service to an end user's mobile device (for example, a mobile phone).

Details of the Amendment Determination are in **Attachment A**.

Statement of Compatibility with Human Rights

A statement of compatibility with human rights for the purpose of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out in the Attachment B.

Consultation

From 14 August 2012 to 21 September 2012, in accordance with section 17 of the *Legislative Instruments Act 2003*, the ACMA publicly consulted on the draft Amendment Determination as part of the regulatory arrangements proposed for femtocells.

The ACMA received six submissions and one enquiry in response to the public consultation process.

The ACMA also circulated the consultation paper and the draft Amendment Determination to all PTS licensees in the 2 GHz band. On 4 October 2012, the ACMA met with key industry stakeholders to clarify the proposed regulatory arrangements, including the proposed amendment.

The Office of Best Practice Regulation (**OBPR**) was also consulted and advised that no Regulation Impact Statement was required. The OBPR reference number is ID 13949.

Notes on Amendment Determination

Section 1 **Name of Determination**

Section 1 provides the name of the Amendment Determination.

Section 2 **Commencement**

Section 2 provides for the Amendment Determination to commence on the day after it is registered.

Section 3 **Amendment of *Radiocommunications (Interpretation) Determination 2000***

Section 3 provides that Schedule 1 amends the Interpretation Determination.

Schedule 1 **Amendments**

[1] **Schedule 1, definition of *PTS licence***

Item 1 substitutes a new definition of 'PTS licence' into Schedule 1 of the Interpretation Determination.

Paragraph (a) of the new definition replicates the terms of the current definition of 'PTS licence' which is an apparatus licence issued for a service that consists of 1 or more stations that are operated for the provision of a public mobile telecommunications service.

Paragraph (b) expands the definition of 'PTS licence' to include an apparatus licence that authorises the operation of 1 or more licensed stations where:

- the licensed stations communicate with mobile stations; and
- the mobile stations are ordinarily used for or in relation to the supply of a PMTS, but when used in conjunction with the licensed stations, do not involve the use of the mobile stations for or in relation to the supply of a PMTS.

A note is also included to clarify that paragraph (b) of the definition of 'PTS licence' recognises that some stations may be used to deliver a carriage service to an end-user's mobile device, but that service will not be a PMTS within the meaning of the Telco Act.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Radiocommunications (Interpretation) Amendment Determination 2012 (No. 1)

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

Subsection 64(1) of the *Australian Communications and Media Authority Act 2005* provides that the ACMA may make a written determination defining 1 or more expressions used in specified instruments, being instruments that are made by the ACMA under 1 or more specified laws of the Commonwealth. The ACMA has made the Radiocommunications (Interpretation) Determination 2000 (the **Interpretation Determination**) under subsection 64(1). The Interpretation Determination includes a definition of PTS licence.

A PTS licence is defined in the Interpretation Determination as ‘a licence issued for a service that consists of 1 or more stations that are operated for the provision of a public mobile telecommunications service’. Public mobile telecommunications service is defined in section 32 of the *Telecommunications Act 1997* (Telco Act) and in the Interpretation Determination.

The Legislative Instrument amends the definition of PTS licence in the Interpretation Determination to include within the category of stations that can be authorised under a PTS licence, stations that may be used to deliver a carriage service to an end-user’s mobile device, where that carriage service is not a PMTS within the meaning of the Telco Act. The amendment is to enable the PTS licence type to keep pace with technological developments.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Australian Communications and Media Authority