

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Telecommunications Act 1997

Telecommunications (Approving Body) Determination 2017

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Telecommunications (Approving Body) Determination 2017* (**the instrument**) under subsection 410(1) of the *Telecommunications Act 1997* (**the Act**) and subsection 33(3) of the *Acts Interpretation Act 1901* (**the AIA**).

Subsection 410(1) of the Act provides that the ACMA may determine that a specified person or association is an ‘approving body’ for the purposes of that section.

Subsection 33(3) of the AIA relevantly provides that where an Act confers a power to make a legislative instrument, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Purpose and operation of the instrument

The instrument is made to repeal the *Telecommunications (Approving Bodies) Determination 2007* (**the 2007 Determination**) on 1 July 2017 and to determine that the Joint Accreditation System of Australia and New Zealand (**JAS-ANZ**) is an approving body for the purposes of section 410 of the Act.

Subsection 410(1) of the Act provides that the ACMA may determine that a specified person or association is an ‘approving body’ for the purposes of that section. Under subsection 410(2) of the Act, an approving body may determine that a specified person or association is a certification body for the purposes of Division 7 of Part 21 of the Act.

Division 7 of Part 21 of the Act deals with the labelling of customer equipment and customer cabling and has empowered the ACMA to make the *Telecommunications (Labelling Notice for Customer Equipment and Customer Cabling) Instrument 2015* (**the Labelling Notice**).

Under the Labelling Notice, a supplier of certain customer equipment or customer cabling (**equipment or cabling**), which is subject to an applicable technical standard (including a high-risk applicable technical standard), may use a statement from a certification body, indicating that the equipment or cabling complies with the standard, as a basis for labelling it as compliant.

Under the *Telecommunications (Approving Bodies) Determination 2007* there was previously only one approving body, being the officer holding a particular position within the ACMA (**the ACMA officer**). The ACMA believes that JAS-ANZ has the relevant expertise to make determinations that a specified person or association is a certification body and the capacity to ensure a high level of competence in certification bodies.¹

¹ JAS-ANZ is an independent, not-for-profit organisation that provides accreditation to certification and inspection bodies in Australia and New Zealand. JAS-ANZ manages certification body schemes across a range of industries in Australia. This includes the process of assessing the suitability of a person or body to be a certification body, as well as the ongoing monitoring of certification bodies to ensure compliance with the requirements of any applicable rules for the operation of the certification bodies.

The ACMA also believes that it is appropriate that the responsibility for performing that function be transferred entirely to JAS-ANZ on 1 July 2017, in order to increase industry involvement in the ACMA's technical regulation arrangements, as well as to promote the overall integrity of these arrangements.

A provision-by-provision description of the instrument is set out in the notes at **Attachment A**.

The instrument is a legislative instrument for the purposes of the *Legislation Act 2003 (the LA)*.

Documents incorporated by reference

The instrument does not incorporate any document by reference.

Consultation

Before the instrument was made, the ACMA was satisfied that consultation was undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the LA.

The ACMA conducted a public consultation process in relation to the proposal to make the instrument during the period 4 November 2016 – 2 December 2016.

A consultation paper was published on the ACMA's website at the beginning of that period. The consultation paper described the existing approving body arrangements and the rationale for making a new instrument that would repeal the 2007 Determination and determine that JAS-ANZ is an approving body. The consultation paper noted that the proposed instrument would be complemented by scheme rules (which would be called the Telecommunications Equipment Certification Scheme **(the Scheme)** and published by the ACMA) describing the requirements for the assessment of the suitability of persons or associations wishing to become a certification body and the operation of certification bodies. A copy of the proposed Scheme was also attached to the consultation paper.

Interested parties, including four certification bodies directly affected by the proposal, were notified of the release of the consultation paper and invited to comment.

The ACMA received four submissions in response to the consultation paper. The issues raised in the submissions were considered by the ACMA and have been addressed in the instrument as well as the Scheme.

Regulatory impact assessment

A preliminary assessment of the proposal to make the instrument was conducted by the Office of Best Practice Regulation (**OBPR**), based on information provided by the ACMA, for the purposes of determining whether a Regulation Impact Statement (**RIS**) would be required. OBPR advised that a RIS would not be required because the instrument was not expected to have a regulatory impact on businesses, community organisations or individuals (OBPR reference number 20792).

Statement of compatibility with human rights

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires the rule-maker in relation to a legislative instrument to which section 42 (disallowance) of the LA applies to cause a statement of compatibility to be prepared in respect of that legislative instrument.

The statement of compatibility set out below has been prepared to meet that requirement.

Overview of the instrument

As noted above:

- the instrument has been made to repeal the 2007 Determination on 1 July 2017 and to determine that JAS-ANZ is an approving body for the purposes of section 410 of the Act;²
- the ACMA believes that JAS-ANZ has the relevant expertise and capacity to perform the function of an approving body;³
- the ACMA also believes that it is appropriate that the responsibility for performing that function (which is currently performed by the ACMA officer) be transferred entirely to JAS-ANZ on 1 July 2017, in order to increase industry involvement in the ACMA's technical regulation arrangements, as well as to promote the overall integrity of these arrangements; and
- these changes are not expected to have a regulatory impact on businesses, community organisations or individuals.

Human rights implications

The ACMA has assessed whether the instrument is compatible with human rights, being the rights and freedoms recognised or declared by the international instruments listed in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* as they apply to Australia.

Having considered the likely impact of the instrument and the nature of the applicable rights and freedoms, the ACMA has formed the view that the instrument does not engage any of those rights or freedoms.

Conclusion

The instrument is compatible with human rights as it does not raise any human rights issues.

² See the discussion of the purpose and operation of the instrument on pages 1 and 2.

³ See footnote 1 above.

Notes to the *Telecommunications (Approving Body) Determination 2017*

Section 1 Name

This section provides for the instrument to be cited as the *Telecommunications (Approving Body) Determination 2017*.

Section 2 Commencement

This section provides for the instrument to commence at the start of the day after it is registered on the Federal Register of Legislation.

The Federal Register of Legislation may be accessed at www.legislation.gov.au.

Section 3 Authority

This section identifies the provision that authorises the making of the instrument, namely subsection 410(1) of the *Telecommunications Act 1997* (**the Act**).

Section 4 Repeal of the *Telecommunications (Approving Bodies) Determination 2007*

This section provides that the *Telecommunications (Approving Bodies) Determination 2007* (F2007L02578) is repealed on 1 July 2017.

Section 5 Determination of approving body

This section provides that the Joint Accreditation System of Australia and New Zealand (ABN 49 614 982 550) is an approving body for the purposes of subsection 410(1) of the Act.