

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Broadcasting Services Act 1992

Broadcasting Services (Parental Lock) Technical Standard 2020

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Broadcasting Services (Parental Lock) Technical Standard 2020* (**the instrument**) under subsections 130B(1) and 130B(7) of the *Broadcasting Services Act 1992* (**the Act**) of the *Acts Interpretation Act 1901* (**the AIA**).

Subsection 130B(1) provides that the ACMA may determine technical standards relating to domestic reception equipment capable of receiving any or all of commercial, national, community or subscription television broadcasting services, television broadcasting services provided under a class licence or datacasting services provided under a datacasting licence, transmitted in digital mode using the broadcasting services bands.

Under subsections 130B(2) and (3), it is an offence and subject to a civil penalty to supply domestic reception equipment that does not comply with a technical standard determined under subsection (1). Subsection 130B(7) provides that the ACMA may, by legislative instrument, exempt specified domestic reception equipment from subsections (2) and (3).

Subsection 33(3) of the AIA provides that when an Act confers a power to make any instrument of a legislative character, that power shall, unless the contrary intention appears, be construed as including a power exercisable in a like manner and subject to like conditions (if any), to repeal any such instrument.

Purpose and operation of the instrument

In 2010, the then Minister gave the ACMA the *Australian Communications and Media Authority (Development of Technical Standards for Domestic Digital Television Reception Equipment) Direction No. 1 of 2009* (**the Direction**), which required the ACMA to exercise its power under subsection 130B(1) under the Act. The ACMA subsequently made the *Broadcasting and Datacasting Services (Parental Lock) Technical Standard 2010* (**the 2010 Standard**). The 2010 Standard was due to sunset under Part 4 of Chapter 3 of the *Legislation Act 2003* (**LA**). The instrument repeals and replaces the 2010 Standard.

The instrument ensures that particular domestic reception equipment has parental lock capabilities or distributes information that enables the parental lock capabilities in other domestic reception equipment to operate.

It sets out the requirement for equipment to have parental lock capability by:

- describing the function to be performed by the parental lock capabilities;
- requiring that the parental lock capabilities must function on the basis of program classification codes:
 - employed by national, commercial and community free-to-air television broadcasters under their respective codes of practice (no such code of practice currently exists in relation to datacasting licensees);
 - transmitted to equipment as part of the service information data provided as part of a digital video broadcasting-terrestrial broadcast, or the same classification code information transmitted to equipment by a separate mode of transmission; and

- specifying program classification levels at which users must be able to set the parental lock capabilities so that programs classified at or above those levels will be blocked from being shown.

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 LA.

Documents incorporated by reference

The instrument does not incorporate any documents 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.

On 23 June 2020, the ACMA published a consultation paper and draft instrument on its website which provided background to and reasons for its proposal. The consultation also canvassed views on broader aspects of parental lock regulation more generally. The ACMA also announced the release of the consultation by releasing an e-bulletin to an extensive list of industry stakeholders.

Due to the impact of COVID-19, the ACMA allowed for a longer than usual consultation period, which ended on 31 July 2020. The ACMA received three submissions. One of these submissions discussed views on parental lock systems more generally and did not put forward a view on the instrument. The second supported the need for the instrument and considered it relevant regulation. The third stated that it did not oppose the proposal and did not know of anything in the current environment that would necessitate substantial changes to the instrument. All of these submissions were considered by the ACMA.

No submission raised significant issues with the proposal to remake the instrument and the ACMA decided to proceed with the proposal.

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 proposed instrument was minor or machinery in nature (OBPR reference number 26099).

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 with human rights 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

The instrument requires particular domestic reception equipment to have parental lock capabilities, or to distribute information enabling the operation of parental lock capabilities in other domestic reception equipment. The instrument regulates equipment, providing consumer safeguards which can be used to protect children from unsuitable television content. Television equipment manufacturers and suppliers in Australia will be mainly affected by the instrument as it sets out a standard to be met before domestic television receivers can be supplied.

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.

Notes to the *Broadcasting Services (Parental Lock) Technical Standard 2020*

Section 1 Name

This section provides for the instrument to be cited as the *Broadcasting Services (Parental Lock) Technical Standard 2020*.

Section 2 Commencement

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

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

Section 3 Authority

This section identifies the provisions of the Act that authorises the making of the instrument, namely subsections 130B(1) and 130B(7) of the Act.

Section 4 Repeal of the *Broadcasting and Datacasting Services (Parental Lock) Technical Standard 2010*

This section provides that the *Broadcasting and Datacasting Services (Parental Lock) Technical Standard 2010* (F2010L02220) is repealed.

Section 5 Definitions

This section defines a number of key terms used in the instrument.

A number of other expressions used in the instrument are defined in the Act.

Section 6 References to other instruments

This section provides that in the instrument, unless the contrary intention appears:

- a reference to any other legislative instrument is a reference to that other legislative instrument as in force from time to time; and
- a reference to any other kind of instrument or writing is a reference to that other instrument or writing as in force at the commencement of the instrument.

Section 7 Purpose

This section states the purpose of the instrument, being to ensure that particular domestic reception equipment has parental lock capabilities, or distributes information that enables the parental lock capabilities in other domestic reception equipment to operate.

Section 8 Standard – domestic digital television receiver (general)

This section sets out the technical standard for a domestic digital television receiver, except where section 9 or 10 applies to the receiver. It states that the receiver must have parental lock capabilities and that those capabilities must be able to identify the classification code applying to a television program or datacasting content using the program classification information.

It also states that the parental lock capabilities must allow the user to block television programs or datacasting content by reference to certain classification codes. At the time the instrument was made, the classification codes were those set out in relevant codes of practice registered under Part 9 of the Act, or under legislation relating to national broadcasters.

Section 9 Standard – domestic digital television receiver (modulation reception equipment)

This section sets out the technical standard for a domestic digital television receiver that can operate to show a television program or datacasting content only if used with another device and cannot be connected to an electricity system other than when used with another device. It states that when such a receiver is supplied with software and operates as a domestic digital television receiver using that software, it must have parental lock capabilities, and that those capabilities must be able to identify the classification code applying to a television program or datacasting content using the program classification information.

It also states that the parental lock capabilities must allow the user to block television programs or datacasting content by reference to certain classification codes. At the time the instrument was made, the classification codes were those set out in relevant codes of practice registered under Part 9 of the Act, or under legislation relating to national broadcasters.

Section 10 Standard – domestic digital television receiver (amplifiers and distribution devices)

This section sets out the technical standard for a domestic digital television receiver that:

- > is an amplifier or distribution device used in the installation of antenna systems supporting reception of broadcasting services, datacasting services or both;
- > can receive a service using coded orthogonal frequency-division multiplexing, using one of the specified techniques;
- > is designed to demodulate or decode a service and then remodulate or re-encode the service;
- > is designed to use coded orthogonal frequency-division multiplexing to distribute the service to one or more other domestic digital television receivers connected to the amplifier or distribution device, which uses either of the specified modulation techniques to receive the service.

It states that the amplifier or distribution service must include in the distributed service the program classification information necessary to enable parental lock capabilities to operate in the connected receivers.

Section 11 Exemptions

This section sets out in a table domestic reception equipment that is exempt in relation to this instrument from subsections 130B(2) and 130B(3) of the Act, as allowed under subsection 130B(7) of the Act. A domestic digital television receiver that was first supplied before the 2010 Standard applied (and was, therefore, never subject to the 2010 Standard) is exempt, as is a domestic digital television receiver that is imported into Australia for the sole purpose of being exported (and will, therefore, not be supplied to the public for use in Australia).