

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Australian Communications and Media Authority Act 2005

Radiocommunications (Interpretation) Amendment Determination 2020 (No. 1)

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Interpretation) Amendment Determination 2020 (No. 1)* (**the instrument**) under subsection 64(1) of the *Australian Communications and Media Authority Act 2005* (**the ACMA Act**) and in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (**the AIA**).

Subsection 64(1) of the ACMA Act provides that the ACMA may make a written determination defining one or more expressions used in specified instruments, being instruments that are made by the ACMA under one or more specified laws of the Commonwealth.

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

In January 2020, the ACMA determined a new type of transmitter licence – the area-wide licence – under subsection 98(1) of the *Radiocommunications Act 1992* (**the Act**). At the same time, the ACMA amended the *Radiocommunications (Interpretation) Determination 2015* (**the Interpretation Determination**) to include a definition of ‘area-wide licence’ (**AWL**) and the term ‘area-wide service’. An ‘area-wide service’ was defined to be a radiocommunications service that is used for radiocommunications between any combination of persons or things at fixed points, and/or mobile stations.

The ACMA is preparing to issue AWLs in the 26 GHz (24.25–27.5 GHz) and 28 GHz (27.5–30 GHz) bands. As part of the development of the technical frameworks for 26 GHz and 28 GHz bands, the ACMA proposed that AWLs in these bands would authorise the operation of a radiocommunications transmitter for radiocommunications to satellites, as part of a fixed-satellite service (**FSS**). The ACMA has since made the *Radiocommunications Licence Conditions (Area-Wide Licence) Amendment Determination 2020 (No. 1)*, which facilitates AWLs authorising radiocommunications transmitters for radiocommunications to FSS satellites.

The instrument amends the Interpretation Determination so that earth stations communicating with a space receive station (on a satellite or other space object) may be part of an area-wide service, and thereby authorised under an AWL.

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

The instrument is a disallowable 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.

On 19 August 2020, the ACMA published the “Apparatus Licences in the 26 GHz and 28 GHz bands consultation paper” (**the consultation paper**), a draft Applicant Information Pack, a draft amended Radiocommunications Licence Conditions (Area-Wide Licence) Determination 2020, a draft new Radiocommunications Assignment and Licensing Instructions (RALIs) for AWLs in the 26 GHz and 28 GHz bands, and a draft of an updated Radiocommunications Assignment and Licensing Instruction for coordination between earth station transmitters in the FSS and other services in the 25.5–30 GHz band. The ACMA sought comment on the allocation approach, pricing structure and technical framework of AWLs in the two bands, including a proposal to authorise the operation of FSS earth stations under AWLs. The ACMA received 16 submissions. Submitters included members of industry, peak bodies and government agencies

Most submitters agreed in principle with the proposal to authorise FSS earth-stations under AWLs in the 27–30 GHz range. A small number of submitters questioned aspects of the proposal, including whether AWLs should be used in the 29.5–30 GHz range. The ACMA has considered these views and has concluded that the proposal as discussed in the consultation package is appropriate.

This consultation package was a key part of the process of implementing previous planning decisions for the deployment of fifth-generation wireless broadband services in the 26 GHz and 28 GHz bands, and FSS services in the 27–29.5 GHz frequency range. These decisions were the culmination of a lengthy period of consultation, technical studies and engagement domestically and internationally, and are encapsulated in the 26 GHz band planning decisions and preliminary views paper and the 28 GHz band planning decisions and preliminary views paper, which were released in April and September 2019 respectively.

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 regulatory change is minor or machinery in nature (OBPR reference number 43143).

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

An AWL is a type of transmitter licence determined by the ACMA under section 98 of the Act. The Interpretation Determination contains several definitions relevant to AWLs, including a definition of an ‘area-wide service’. Before the instrument was made, an area-wide service was defined as a radiocommunications service that is used for radiocommunications between any combination of persons or things at fixed points and/or mobile stations.

The ACMA is preparing to issue AWLs in the 26 GHz and 28 GHz bands. The ACMA intends to allow AWLs in these bands to authorise radiocommunications transmitters that communicate with satellites in the FSS.

The instrument amends the Interpretation Determination so that earth stations communicating with a space receive station (on a satellite or other space object) may be part of an area-wide service, and thereby authorised under an AWL.

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 *Radiocommunications (Interpretation) Amendment Determination 2020 (No. 1)*

Section 1 Name

This section provides for the instrument to be cited as the *Radiocommunications (Interpretation) Amendment Determination 2020 (No. 1)*.

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 provision that authorises the making of the instrument, namely subsection 64(1) of the *Australian Communications and Media Authority Act 2005*.

Section 4 Amendments

Section 4 provides that the instrument specified in Schedule 1 is amended as set out in the items in that Schedule.

Schedule 1 – Amendments

Schedule 1 makes two amendments to the Interpretation Determination. First, it replaces the definition of ‘area-wide service’; the definition now provides that an area-wide service includes a radiocommunications service that is used for radiocommunications to space receive stations. This will enable an earth station, which communicates to space receive stations, to be authorised by an area-wide licence.

Secondly, it makes a consequential amendment to the definition of an ‘earth licence’.