

Explanatory Statement

Issued by the authority of the Minister for Communications

Radiocommunications Act 1992

Radiocommunications Regulations 2023

Purpose

The purpose of the *Radiocommunications Regulations 2023* (the Regulations) is to remake and update the *Radiocommunications Regulations 1993* (the 1993 Regulations) that are scheduled to be repealed because of the sunset provisions in the *Legislation Act 2003*.

Authority

The *Radiocommunications Act 1992* (the Act) provides for matters including the management of radiofrequency spectrum through the planning, allocation and licensing of spectrum.

Section 314 of the Act provides that the Governor-General may make regulations prescribing 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.

The 2023 Regulations are a legislative instrument for the purposes of section 8 of the *Legislation Act 2003*.

Background

The *Radiocommunications Regulations 1993* sunset on 1 April 2023. Remaking the Regulations is necessary to ensure the continuation of the legislative framework that supports the proper management of radiofrequency spectrum in Australia.

The Regulations prescribe the specific circumstances in which the exemption for defence-related matters applies under section 26 of the Act; specify the office holders able to exercise emergency powers under section 108 of the Act; and specify the names of emergency organisations whose radiocommunications are protected from substantial interference (by way of an offence under section 193 of the Act). The Regulations include a general transitional provision for emergency powers exercised prior to the commencement of the Regulations and any prosecutions underway for a breach of section 193.

Impact Analysis

The department wrote to the Office of Impact Analysis certifying that the regulations were operating efficiently and effectively, with only minor updates required. As a result, the OIA determined that an Impact Analysis was not required (ref:04092).

Consultation

The Department of Defence and the Australian Communications and Media Authority (ACMA) were consulted and support the remaking of the 1993 Regulations. The ACMA made recommendations to amend the 1993 Regulations. The ACMA's feedback was taken into account in the drafting process.

The department contacted the organisations listed in Schedules 2 and 3 of the 1993 Regulations, and organisations established after the 1993 Regulations that, because of their functions, were assessed as candidates for inclusion in the Regulations. Following advice from the relevant organisations, the Schedules were updated to remove organisations that no longer exist, to include new organisations, and to update organisation details, including the classes of officers to which subsection 108(3) of the Act applies.

Statement of Compatibility with Human Rights

The *Radiocommunications Regulations 2023* (the Regulations) are 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*.

The Regulations:

- prescribe the criteria for an exemption that may be granted to defence personnel, visiting forces and contractors under section 26 of the *Radiocommunications Act 1992* (the Act);
- detail the officer holders who may give directions in emergencies to which subsection 108(3) of the Act applies;
- prescribe the Commonwealth, state and territory fire, rescue and ambulance organisations whose radiocommunications are protected from interference, under paragraph 193(1)(a) of the Act, by making it an offence to undertake such interference;
- require the treaty between Australia and Timor-Leste governing maritime boundaries in the Timor Sea to be observed in making decisions under the Act;
- prescribe qualifications of persons able to give evidentiary certificates; and
- allow duplicate instruments to be issued in the event one is destroyed or lost.

The Regulations do not engage any of the applicable rights or freedoms. Therefore, the Regulations are compatible with human rights as they do not raise any human rights issues.

Notes on Regulations

Section 1 – Name

This section provides that the title of the Regulations is the *Radiocommunications Regulations 2023*.

Section 2 – Commencement

This section provides for the Regulations to commence on the day after the instrument is registered.

Section 3 – Authority

This section provides that the *Radiocommunications Regulations 2023* is made under the *Radiocommunications Act 1992*.

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Section 5 – Definitions

The note to this section indicates that certain terms mentioned in the note are defined in the *Radiocommunications Act 1992*.

This section defines ‘Act’ as the Radiocommunications Act 1992.

This section defines ‘Interpretation Determination’ as meaning an instrument made under subsection 64(1) of the *Australian Communications and Media Authority Act 2005*), which allows the ACMA to make a written determination defining expressions used in specified instruments made by the ACMA.

This section indicates that an expression used in the Regulations and in the Interpretation Determination has the same meaning in these Regulations as it has in the Interpretation Determination.

Section 6 – Exemptions from Parts 3.1, 4.1 and 4.2 of the Act

Subsection 6(1) sets out the functions and duties of a member of the Defence Force or an officer of the Defence Department that are taken for the purposes of subsection 26(1) in the Act to be a function or duty that relates to (i) military command and control; (ii) intelligence; (iii) weapons systems; (iv) safety; or (v) security.

Subsection 6(2) sets out the functions and duties of a member of a visiting force, or a member of a civilian component of a visiting force that are taken for the purposes of

Subsection 26(1) in the Act to be a function or duty that relates to (i) military command and control; (ii) intelligence; (iii) weapons systems; (iv) safety; or (v) security.

Subsection 6(3) sets out the functions and duties of an authorised defence supplier that are taken for the purposes of subsection 26(1) in the Act to be a function or duty that relates to (i) military command and control; (ii) intelligence; (iii) weapons systems; (iv) safety; or (v) security.

Section 7 – Officers who may give directions to which subsection 108(3) of the Act applies

This section specifies the classes of officers that may give directions to licensees or persons authorised by the licensee to operate a radiocommunications transmitter under a transmitter licence under subparagraph 108(3)(b)(v) of the Act when reasonably necessary for the purposes of (i) securing the safety of a vessel, aircraft or space object that is in danger; (ii) dealing with an emergency involving a serious threat to the environment; (iii) dealing with an emergency involving risk of death of, or injury to, persons; or (iv) dealing with an emergency involving risk of substantial loss of, or substantial damage to, property.

Section 8 – Organisations specified for the purposes of paragraph 193(1)(a) of the Act

This section specifies organisations for the purposes of subparagraph 193(1)(a)(i) and subparagraph 193(1)(a)(ii) of the Act, which prohibit any person from using a transmitter in a way that the person knows is likely to interfere substantially with the radiocommunications carried on by certain emergency services organisations.

Several organisations in the Regulations have a fire-fighting role which is not readily apparent from the organisational title. Further details on the statutory role of these organisations have been provided below.

The rescue and fire-fighting services of Airservices Australia are provided under subpart 139.H of the *Civil Aviation Safety Regulations 1998*.

The fire-fighting services of the Director of National Parks are provided under section 514B of the *Environment Protection and Biodiversity Conservation Act 1999*.

The fire-fighting services of the NSW National Parks and Wildlife Service are provided under section 12 of the *National Parks and Wildlife Act 1974* (NSW).

The fire-fighting services of the Victorian Department administered by the Minister administering the *Forests Act 1958* (Vic) are provided under subsection 62(2) of that Act.

The fire-fighting services of Forestry Tasmania are provided under section 8 of the *Forest Management Act 2013* (Tas).

The Tasmanian Department of Natural Resources and Environment through the Parks and Wildlife Division provide fire-fighting services to protected land managed under the *National Parks and Reserves Management Act 2002* (Tas).

Section 9 – Instrument to be regarded in exercising power under Act

This section prescribes the Treaty between Australia and the Democratic Republic of Timor-Leste Establishing their Maritime Boundaries in the Timor Sea done at New York on 6 March 2018, as in force from time to time, as a treaty for the purposes of section 299 of the Act to which a person or body exercising a power conferred under this Act must have regard.

Section 10 – Qualifications required by officers who issue evidentiary certificates

This section specifies the qualifications required to be held by a Commonwealth officer that gives an evidentiary certificate under subsection 305(1) of the Act. The qualifications required are that of an associate diploma, diploma or degree granted by an Australian education organisation in engineering, or qualifications, experience or training that the ACMA is satisfied is equivalent to one of the aforementioned qualifications.

Section 11 – Issue of duplicate instruments

This section authorises the holder of an original licence, certificate or permit issued under the Act to apply to the ACMA for a duplicate of the instrument if the original has been lost or destroyed, for the purposes of paragraph 314(2)(h) of the Act.

Section 12 – Things done under the *Radiocommunications Regulations 1993*

Under this section, a thing done for a particular purpose under the *Radiocommunications Regulations 1993* will be considered as if it has been done under the *Radiocommunications Regulations 2023* if the thing can be done for that purpose under these Regulations.

The reference in the section to a thing being done includes a reference to a notice, application or other instrument being given or made.

This section means that any investigation or legal proceeding that relates to paragraph 193(1)(a) of the Act can begin or continue as if the *Radiocommunications Regulations 1993* has not been repealed; and that any direction made under subsection 108(3) of the *Radiocommunications Act 1992* remains in place as if the *Radiocommunications Regulations 1993* has not been repealed.

Schedule 1 – Repeals

Radiocommunications Regulations 1993

1 – The whole of the instrument

This item repeals the entirety of the *Radiocommunications Regulations 1993*.