

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Australian Communications and Media Authority Act 2005

Radiocommunications (Interpretation) Amendment Determination 2024 (No. 1)

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Interpretation) Amendment Determination 2024 (No. 1)* (**the Amendment Instrument**) under subsubsection 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

The purpose of the Amendment Instrument is to amend the *Radiocommunications (Interpretation) Determination 2015* (**the Interpretation Determination**).

The Interpretation Determination defines common expressions used in a number of instruments made by the ACMA that deal with radiocommunications. It applies these definitions to these instruments through reference to the provisions of the Act under which these instruments were made.

The Amendment Instrument amends the definition of ***area-wide service*** in the Interpretation Determination to include radio emissions received by earth receive stations from space stations, which may originate as radiocommunications from stations at fixed points or mobile stations, then through a space receive station and space station, to be received by earth receive stations.

The Amendment Instrument also amends the definition of ***earth receive licence*** in the Interpretation Determination to not include those earth receive stations that operate under an area-wide receive licence. This means an earth receive station could be authorised to operate under either an earth receive licence or an area-wide receive licence.

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

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

Documents incorporated by reference

The Amendment Instrument does not incorporate any document by reference.

Consultation

Before the Amendment 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.

In July 2021, the ACMA established a Technical Liaison Group (**TLG**) to provide advice on what changes should be made to the 3.4 GHz band technical framework to accommodate area-wide licences in the 3400 MHz to 4000 MHz frequency range, including how to accommodate earth receive stations under area-wide receive licences. Membership of the TLG included existing 3.4 GHz band spectrum and apparatus licensees, some adjacent band licensees, equipment manufacturers and some industry groups. The ACMA took into account the views expressed by the TLG when preparing the Amendment Instrument. The outcomes of the TLG are available on the ACMA website at www.acma.gov.au.

The ACMA also publicly consulted on a draft amendment instrument, from 20 June 2023 to 1 August 2023. This was part of a wider consultation that included the proposed amendments to the Interpretation Determination.

Twelve submissions were received during the public consultation period. Submissions were generally supportive of the proposed changes, but some submitters remained strongly opposed to the use of area-wide receive licences for earth receive stations, which the amendments to the Interpretation Determination enable. The ACMA understands that this is mainly due to pricing implications rather than licensing or technical issues. One submitter was concerned that the proposed changes would enable satellite direct-to-device use without other necessary regulation. There are, however, other mechanisms available to the ACMA to manage this concern. After considering all submissions, the ACMA decided to make changes to a draft amendment instrument. The changes are designed to address the direct-to-device concerns.

Regulatory impact assessment

A preliminary assessment for a possible Regulation Impact Statement (**RIS**) has been completed for the overall allocation process which includes the Amendment Instrument that assists with forming the licensing framework. The Office of Impact Analysis (**OIA**) has indicated (OIA ID OIA23-05294) that it considers the proposal is unlikely to have a more than minor impact. Consequently, the preparation of an Impact Analysis is not required.

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 Amendment Instrument amends the Interpretation Determination to include reception of radio emissions from space stations to earth receive stations in the definition of **area-wide service**. These radio emissions may originate as radiocommunications from stations at fixed points or mobile stations, then through a space receive station and space station, to be received by earth receive stations. This kind of area-wide service is capable of being licensed under an area-wide receive licence. Where that is the case, the Amendment Instrument, by amending the definition of **earth receive licence**, makes clear that the reception of these radio emissions would not be licensed under

the operation of an earth receive licence. Instead they would be licensed under an area-wide receive licence.

Human rights implications

The ACMA has assessed whether the Amendment 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 Amendment Instrument and the nature of the applicable rights and freedoms, the ACMA has formed the view that the Amendment Instrument does not engage any of those rights or freedoms.

Conclusion

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

Attachment A

Notes to the Radiocommunications (Interpretation) Amendment Determination 2024 (No. 1)

Section 1 Name

This section provides for the instrument to be cited as the *Radiocommunications (Interpretation) Amendment Determination 2024 (No. 1)*.

Section 2 Commencement

This section provides for the instrument to commence at the start of the day after the day the instrument 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 of the Act that authorises the making of the instrument, namely subsection 64(1) of the *Australian Communications and Media Authority Act 2005*.

Section 4 Amendments

This section gives effect to the amendments set out in Schedule 1.

Schedule 1 – Amendments

Item 1

Item 1 repeals the definition of *area-wide-service* in Schedule 1 and substitutes a new definition. The definition now allows an area-wide service to include the reception of radio emissions from space stations to earth receive stations.

Item 2

Item 2 repeals the definition of an *earth receive licence* in Schedule 1 and substitutes a new definition so as to not include those earth receive stations that operate under an area-wide receive licence. This means an earth receive station could be authorised to operate under either an earth receive licence or an area-wide receive licence.