**EXPLANATORY STATEMENT**

Approved by the Australian Communications and Media Authority

*Radiocommunications Act 1992*

***Radiocommunications (Australian Space Objects) Determination 2025***

**Authority**

The Australian Communications and Media Authority (the **ACMA**) has made the *Radiocommunications (Australian Space Objects) Determination 2025* (the **instrument**) under section 5 of the *Radiocommunications Act 1992* (the **Act**) and subsection 33(3) of the *Acts Interpretation Act 1901* (the **AIA**).

Under section 5 of the Act, the ACMA may, by legislative instrument, determine a space object to be an Australian space object for the purposes of the Act.

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 and such instrument.

**Purpose and operation of the instrument**

The instrument determines that certain space objects are Australian space objects for the purposes of the Act. By determining a space object to be an Australian space object, the transmission and reception of radio emissions by a station on board the space object may be regulated under the Act. This allows the ACMA to issue a space licence (for transmission) and a space receive licence (for reception) authorising operation of a station on board the space object. Space licences and space receive licences are both types of apparatus licences.

The instrument determines a space object to be an Australian space object if it satisfies two conditions. First, it must be owned, controlled or operated by or for a corporation or Commonwealth entity listed in the instrument. Second, it must operate in a frequency range listed in the *Radiocommunications (Communication with Space Object) Class Licence 2025* (the **class licence**).

The class licence authorises any person to operate an earth station in specified frequencies for the purpose of communication with an Australian or foreign space object. This is provided that the space stations on board the space object are authorised by space and/or space receive licences. The class licence is primarily used for satellite systems with numerous or ubiquitous earth stations, such as portable or handheld satellite communications devices. It provides an efficient means of licensing a large number of earth stations and earth receive stations, avoiding the need to obtain a licence for every earth station and earth receive station in a satellite system.

This means that a corporation or Commonwealth entity operating a space station or space receive station seeking to access satellite radiocommunications frequencies specified in the class licence must be listed in the instrument as a prerequisite to applying to the ACMA for space and space receive licences.

The ACMA considers that for an entity to be eligible for entry in the instrument as an owner, controller or operator of a space object, it must have access to a satellite filing that:

* has been lodged with the International Telecommunication Union (**ITU**) by the ACMA acting as the Australian administration in the ITU satellite filing process; and
* refers to a frequency range listed in the class licence.

Satellite filing is the process of international recognition of the spectrum and orbital resources used by a satellite system. This process is conducted under the ITU Radio Regulations, which require that before a satellite system is operated, its technical details must be filed with the ITU by an ITU member state.

The Radio Regulations are internationally binding administrative regulations made under the Constitution and Convention of the ITU, which is an international treaty (to which Australia is a signatory) that governs global use of the radiofrequency spectrum and satellite orbits.

An entity with access to a satellite filing that has been lodged with the ITU by a foreign administration is not eligible for entry in the instrument. Instead, the entity may be eligible for entry in the *Radiocommunications (Foreign Space Objects) Determination 2025*.

The instrument repeals and replaces the *Radiocommunications (Australian Space Objects) Determination 2014* (the **2014 determination**). The ACMA has made the instrument because the 2014 determination was due to “sunset” on 1 April 2025 in accordance with Part 4 of Chapter 3 of the *Legislation Act 2003* (the **LA**). It continues the arrangements made under the 2014 determination, with minor wording and structural changes to clarify its intended effect and operation.

Specifically, the instrument explicitly states that a space object is determined to be an Australian space object if it is operating in a frequency range mentioned in the class licence. Second, the instrument describes the listed entities as “owners, controllers or operators of space objects”. This replaces the wording used in the 2014 determination which referred to a “satellite operated by, or for” a listed entity.

The instrument commences at the start of the day after the day it is registered on the Federal Register of Legislation. It repeals the 2014 determination at the same time.

If a space object is an Australian space object, operation of a radiocommunications device on the object may require a licence. It is an offence, and subject to a civil penalty, to operate a radiocommunications device otherwise than as authorised by a licence (section 46 of the Act). The Act prescribes the following maximum penalties for the offence:

* if the radiocommunications device is a radiocommunications transmitter and the offender is an individual – imprisonment for 2 years;
* if the radiocommunications device is a radiocommunications transmitter and the offender is not an individual – 1,500 penalty units (which is $495,000 based on the current penalty unit amount of $330);
* if the radiocommunications device is not a radiocommunications transmitter – 20 penalty units ($6,600).

The Act prescribes the following maximum civil penalties:

* if the radiocommunications device is a radiocommunications transmitter – 300 penalty units ($99,000);
* if the radiocommunications device is not a radiocommunications transmitter – 20 penalty units ($6,600).

It is an offence, and subject to a civil penalty, to possess a radiocommunications device for the purpose of operating the device otherwise than as authorised by a licence (section 47 of the Act). The Act prescribes the same penalties for this offence and civil penalty contravention as for the offence and civil penalty contravention in section 46.

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, and is disallowable.

The instrument is subject to the sunsetting provisions of the LA.

**Documents incorporated by reference**

Section 314A of the Act provides that an instrument under the Act may make provision in relation to a matter by applying, adopting or incorporating (with or without modifications) matters contained in any Act or any other instrument or writing as in force or existing at a particular time or from time to time.

The instrument incorporates all or part of the following Acts and legislative instruments, or otherwise refers to them, as in force from time to time:

* the Act;
* the AIA;
* the *Australian Communications and Media Authority Act 2005*;
* the LA;
* the *Public Governance, Performance and Accountability Act 2013*;
* the *Radiocommunications (Communication with Space Object) Class Licence 2025*.

The Acts and legislative instruments listed above may be accessed, free of charge, from the Federal Register of Legislation (www.legislation.gov.au).

**Consultation**

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

On 28 November 2024, the ACMA commenced a public consultation on a proposal to remake the 2014 determination. The ACMA published a page on its website describing the issues for comment, the process for contributing to the consultation and provided a copy of a consultation paper and a draft of the instrument.

The consultation paper proposed remaking the 2014 instrument with minor changes, including to:

* explicitly state that a space object is determined to be an Australian space object if it is operating in a frequency range mentioned in the class licence; and
* change the terms describing the listed entities to owners, controllers or operators of space objects.

The consultation closed on 17 January 2024. The ACMA received 5 written submissions in response to the consultation, which are available on the ACMA website. All respondents supported the proposals or had no objections.

The ACMA did not make any changes to the draft instrument.

**Regulatory impact assessment**

A preliminary assessment of the proposal to make the instrument was conducted by the Office of Impact Analysis (**OIA**), based on information provided by the ACMA, for the purposes of determining whether a Regulation Impact Statement (**RIS**) would be required. OIA advised that a RIS would not be required because the proposed regulatory change is minor or machinery in nature (OIA reference number OIA24-08498.

**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 purpose of the instrument is to determine that certain space objects are Australian space objects for the purposes of the Act. By determining a space object to be an Australian space object, the transmission and reception of radio emissions by a station on board the space object may be regulated under the Act. This allows the ACMA to issue a space licence (for transmission) and a space receive licence (for reception) authorising operation of a station on board the space object.

The instrument determines a space object to be an Australian space object if it satisfies two conditions. First, it must be owned, controlled or operated by or for a corporation or Commonwealth entity listed in the instrument. Second, it must operate in a frequency range listed in the class licence.

***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.

**Attachment A**

**Notes to the *Radiocommunications (Australian Space Objects) Determination 2025***

**Section 1 Name**

This section provides for the instrument to be cited as the *Radiocommunications (Australian Space Objects) Determination 2025*.

**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 of the Act that authorises the making of the instrument, namely section 5.

**Section 4 Repeal**

This section repeals the *Radiocommunications (Australian Space Objects) Determination 2014* (F2014L01586).

**Section 5 Interpretation**

This section defines key terms used throughout the instrument. Some other expressions used in the instrument are defined in the Act or in an instrument made under subsection 64(1) of the *Australian Communications and Media Authority Act 2005*.

**Section 6 Australian space objects**

This section provides for a space object to be determined to be an Australian space object for the purposes of the Act if it satisfies two conditions. First, a space object must be owned, controlled or operated by or for a corporation or Commonwealth entity mentioned in Schedule 1 to the instrument. Second, a space station on the space object must operate in a frequency range mentioned in paragraph 8(a) or (b) of the class licence.

**Schedule 1 – Owners, controllers or operators of Australian space objects operating in a frequency range mentioned in the class licence**

Schedule 1 specifies Commonwealth entities or corporations owning, controlling or operating an Australian space object for the purposes of paragraph 6(a) of the instrument.