

# EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Radiocommunications Act 1992*

## ***Radiocommunications (Certificates of Proficiency – Minimum Age) Declaration 2025***

### **Authority**

The Australian Communications and Media Authority (the **ACMA**) has made the *Radiocommunications (Certificates of Proficiency – Minimum Age) Declaration 2025* (the **Minimum Age Declaration**) under subsection 122(2) of the *Radiocommunications Act 1992* (the **Act**) and subsection 33(3) of the *Acts Interpretation Act 1901* (the **AIA**).

Subsection 122(1) of the Act provides that the ACMA must not issue a certificate of proficiency unless, among other things, the ACMA is satisfied that the applicant has reached the minimum age in relation to the class of certificates in which the certificate is included. Subsection 122(2) of the Act defines ‘minimum age’, in relation to a class of certificates of proficiency, to mean the age that the ACMA declares to be the minimum age for the purposes of section 122 in relation to that class.

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 Minimum Age Declaration is to revoke and replace the *Radiocommunications (Minimum Age for Issue of Certificates of Proficiency) Declaration 2015* (the **2015 Declaration**) without making any significant changes to the regulatory arrangements created by the 2015 Declaration.

The ACMA has made the Minimum Age Declaration because the 2015 Declaration was due to ‘sunset’ (that is, to be automatically repealed) on 1 October 2025 under Part 4 of the *Legislation Act 2003* (the **LA**). Following a review, informed by a public consultation process described below, the ACMA formed the view that the 2015 Determination was operating effectively and efficiently and continued to form a necessary and useful part of the legislative framework.

Under section 120 of the Act, a person who wishes to be a qualified operator for certain kinds of transmitter licences may apply to the ACMA for a certificate of proficiency. Under subsection 122(1), the ACMA must not issue a certificate of proficiency unless the ACMA is satisfied that the applicant has reached the minimum age in relation to the class of certificates in which the certificate applied for is included.

The Minimum Age Declaration sets out the minimum age (16 years) required to be met before specified classes of certificates of proficiency can be issued. A certificate of proficiency is required to be held in order to operate radiocommunication devices under certain apparatus licences.

The Minimum Age Declaration does not refer to certificates of proficiency that are no longer issued by the ACMA under section 122 of the Act. Global Maritime Distress and Safety System (**GMDSS**) certificates are now issued by the Australian Maritime Safety Authority (**AMSA**) under the *Navigation Act 2012* in accordance with the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers requirements.

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

The Minimum Age Declaration is a legislative instrument for the purposes of the LA, and is disallowable. The Minimum Age Declaration is subject to the sunset provisions in Part 4 of Chapter 3 of the LA.

### **Documents incorporated by reference**

The Minimum Age Declaration does not incorporate any document by reference.

### **Consultation**

Before the Minimum Age Declaration 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.

The ACMA published a draft of the Minimum Age Declaration alongside a related instrument and an accompanying consultation paper on the ACMA website on 1 November 2024 for a period of 6 weeks. The consultation paper invited comments on the proposed draft of the Minimum Age Declaration. The ACMA used its bulletin subscription service to notify interested stakeholders and the public about the publication. AMSA and relevant State and Territory authorities were advised of the publication directly. The ACMA also consulted with AMSA throughout the remaking process to ensure that the Minimum Age Declaration reflects current international practice.

The ACMA received 2 submissions in response to the consultation paper. A submission received from AMSA supported making the Minimum Age Declaration as proposed. A submission from the Scout Association of Australia, Western Australian Branch requested that the minimum age required to obtain a certain certificate of proficiency be lowered.

The ACMA had regard to these views, and considered that 16 remains an appropriate minimum age to obtain a certificate of proficiency.

A person that holds a certificate of proficiency and operates a marine radio outside Australia's territorial sea has a duty of care to respond to a distress signal. We do not think it is appropriate that such a duty of care is potentially be placed on someone under the age of 16. We consider that requiring a person to be 16 years of age to obtain a certificate is a balanced approach considering the safety, training and practical responsibilities involved in operating maritime radio in situations of distress beyond the Australian territorial sea.

Accordingly, no changes were made to the Minimum Age Declaration arising from consultation.

### **Regulatory impact assessment**

The ACMA considered whether a regulatory impact analysis process is required by undertaking a preliminary assessment. Based on this preliminary assessment, the Office of Impact Analysis (OIA) has determined that the proposed regulatory change effected by the Minimum Age Declaration is minor or machinery in nature and has therefore verified that no further regulatory impact analysis is required (OIA24-08474).

### **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 with human rights set out below has been prepared to meet that requirement.

### ***Overview of the instrument***

Under section 120 of the Act, a person who wishes to be a qualified operator for certain kinds of transmitter licences may apply to the ACMA for a certificate of proficiency. Under subsection 122(1), the ACMA must not issue a certificate of proficiency unless the ACMA is satisfied that the applicant has reached the minimum age in relation to the class of certificates in which the certificate applied for is included.

The Minimum Age Declaration sets out the minimum age (16 years) required to be met before specified classes of certificates of proficiency can be issued. A certificate of proficiency is required to be held in order to operate radiocommunication devices under certain apparatus licences.

### ***Human rights implications***

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

### ***Conclusion***

The Minimum Age Declaration is compatible with human rights as it does not raise any human rights issues.

**Notes to the *Radiocommunications (Certificates of Proficiency – Minimum Age) Declaration 2025***

**Section 1      Name**

This section provides for the Minimum Age Declaration to be cited as the *Radiocommunications (Certificates of Proficiency – Minimum Age) Declaration 2025*.

**Section 2      Commencement**

This section provides for the Minimum Age Declaration 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](http://www.legislation.gov.au).

**Section 3      Authority**

This section identifies the provision of the Act that authorises the making of the Minimum Age Declaration, namely subsection 122(2) of the Act.

**Section 4      Repeal**

This section provides that the 2015 Declaration is repealed.

**Section 5      Certificates of proficiency – minimum age**

This section provides that the minimum age for the following certificates of proficiency is 16 years:

- the Long Range Operator Certificate of Proficiency;
- the Marine Satellite Communications Endorsement;
- the Short Range Operator Certificate of Proficiency.