

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Australian Communications and Media Authority Act 2005

Broadcasting Services Act 1992

Radiocommunications Act 1992

Telecommunications Act 1997

Radiocommunications (Interpretation) Determination 2025

Communications (Interpretation) (Consequential Amendments) Instrument 2025

Authority

The Australian Communications and Media Authority (the **ACMA**) has made the *Radiocommunications (Interpretation) Determination 2025* (the **Interpretation Determination**) under subsection 64(1) of the *Australian Communications and Media Authority Act 2005* (the **ACMA Act**), and 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 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.

The ACMA has made the *Consequential (Interpretation) (Consequential Amendments) Instrument 2025* (the **Consequential Amendments Instrument**) under section 33 of the *Broadcasting Services Act 1992* (the **BSA**), subsection 262(1) of the *Radiocommunications Act 1992* (the **Radcoms Act**), subsection 450(1) of the *Telecommunications Act 1997* (the **Telco Act**), and subsection 33(3) of the AIA.

Section 33 of the BSA provides that the ACMA is to develop in writing guidelines for the technical planning of individual services that use the broadcasting services bands as a means of delivery.

Subsection 262(1) of the Radcoms Act provides that the ACMA may make written advisory guidelines about any aspect of radiocommunication or radio emissions.

Subsection 450(1) of the Telco Act provides that the ACMA may, by legislative instrument, declare that operation or supply, or possession for the purpose of operation or supply, of specified customer equipment or specified customer cabling is prohibited for the reasons set out in the instrument.

Purpose and operation of the instruments

Interpretation Determination

The purpose of the Interpretation Determination is to revoke and replace the *Radiocommunications (Interpretation) Determination 2015* (the **2015 Determination**) without making any significant changes to the regulatory arrangements created by the 2015 Determination.

The ACMA has made the Interpretation Determination because the 2015 Determination was due to ‘sunset’ (that is, to be automatically repealed) on 1 April 2025 under Part 4 of Chapter 3 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 was a necessary and useful part of the legislative framework. To preserve the effect of the 2015 Determination, the ACMA has revoked the 2015 Determination before its sunset date and remade it with only minor changes as the Interpretation Determination.

The Interpretation Determination contains the definitions of expressions found in specified legislative instruments made by the ACMA. The legislative instruments to which most of the definitions apply are specified in section 6 of the Interpretation Determination. The expressions and their definitions are primarily in the Schedule to the Interpretation Determination.

A provision-by-provision description of the Interpretation Determination is in the notes at **Attachment A**.

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

Consequential Amendments Instrument

The purpose of the Consequential Amendments Instrument is to make amendments to four legislative instruments made by the ACMA. The amendments replace references to the 2015 Determination with references to the Interpretation Determination in each of those instruments. The four instruments are:

- the *Broadcasting Services (Technical Planning) Guidelines 2017* (the **Technical Planning Guidelines**);
- the *Radiocommunications Advisory Guidelines (Managing Interference from Spectrum Licensed Transmitters) – 26 GHz Band* 2020 (the **26 GHz Transmitter Guidelines**);
- the *Radiocommunications Advisory Guidelines (Managing Interference to Spectrum Licensed Receivers) – 26 GHz Band* 2020 (the **26 GHz Receiver Guidelines**);
- the *Telecommunications (Prohibition of Mobile Phone Boosters) Declaration 2021* (the **Prohibition Declaration**).

A provision-by-provision description of the Consequential Amendments Instrument is in the notes at **Attachment B**.

The Consequential Amendments Instrument is a legislative instrument for the purposes of the LA, and is disallowable. Each of the Technical Planning Guidelines, the 26 GHz Transmitter Guidelines, the 26 GHz Receiver Guidelines and the Prohibition Declaration is subject to the sunset provisions in Part 4 of Chapter 3 of the LA.

Documents incorporated by reference

Interpretation Determination

Section 65 of the ACMA Act provides that a determination made under subsection 64(1) of the ACMA Act may make provision in relation to a matter by applying, adopting, or incorporating (with or without modifications) matters contained in any other instrument or writing as in force or existing at a particular time, or from time to time.

The Interpretation Determination incorporates the following Acts and legislative instruments, as in force from time to time:

- the *Australian Radiofrequency Spectrum Plan 2021*;
- the BSA;
- the Marine Orders made under the *Navigation Act 2012*;

- the Radcoms Act;
- the *Radiocommunications Accreditation (General) Rules 2021*;
- the *Radiocommunications (Australian Radio Quiet Zone Western Australia) Frequency Band Plan 2023*;
- the *Radiocommunications (Citizen Band Radio Stations) Class Licence 2015*;
- the *Radiocommunications Regulations 2023*;
- the Telco Act.

Each of these Acts and legislative instruments is available, free of charge, from the Federal Register of Legislation at www.legislation.gov.au.

The Interpretation Determination contains transitional provisions that refer to the 2015 Determination as in force at a particular time, namely, immediately before the commencement of the Interpretation Determination. That version of the 2015 Determination is available, free of charge, from the Federal Register of Legislation at www.legislation.gov.au.

The Interpretation Determination incorporates the following documents, as existing from time to time:

- the Australian Spectrum Map Grid 2012, which is available, free of charge, from the ACMA website at www.acma.gov.au;
- IEC 61097-14, *Global maritime distress and safety system (GMDSS) – Part 14: AIS search and rescue transmitter (AIS-SART) – Operational and performance requirements, methods of testing and required test results*. IEC 61097-14 is available, for a fee, from the International Electrotechnical Commission website at www.iec.ch and the Standards Australia website at www.standards.org.au. It may also be viewed, on prior request, at an ACMA office, subject to licensing conditions;
- the *Radiation Protection Standard for Limiting Exposure to Radiofrequency Fields – 100 kHz to 300 GHz* (2021), which is available, free of charge, from the Australian Radiation Protection and Nuclear Safety Agency website at www.arpsa.gov.au;
- the Radio Regulations, which are available, free of charge, from the International Telecommunication Union website at www.itu.int;
- Radiocommunications Assignment and Licensing Instruction No. MS 42 *Frequency Plan for the VHF Bands 70 – 87.5 MHz and 148 – 174 MHz*, which is available, free of charge, from the ACMA website at www.acma.gov.au;
- Table A and Table B of the Tables of Equivalent Qualifications and Licences, which are available from the ACMA website at www.acma.gov.au.

Consequential Amendment Instrument

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

The Consequential Amendment Instrument amends the 26 GHz Transmitter Guidelines and the 26 GHz Receiver Guidelines to incorporate the Interpretation Determination, as in force from time to time.

Section 589 of the Telco Act relevantly provides that an instrument made under that Act may make provision in relation to a matter by applying, adopting or incorporating (with or without modifications) matter contained in any other instrument, as in force at a particular time or from time to time.

The Consequential Amendment Instrument amends the Prohibition Declaration to incorporate the Interpretation Determination, as in force from time to time.

Section 14 of the LA relevantly provides that a legislative instrument may make provision in relation to a matter by applying, adopting or incorporating (with or without modification) the provisions of a disallowable legislative instrument, as in force at a particular time, or from time to time.

The Consequential Amendment Instrument amends the Technical Planning Guidelines to incorporate the Interpretation Determination, as in force from time to time.

Consultation

Before the Interpretation Determination 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 Interpretation Determination together with an accompanying consultation paper on its website on 3 September 2024. The ACMA used social media and its e-bulletin subscription service to notify interested stakeholders and the public about the publication. The consultation process closed on 18 October 2024.

The ACMA received one submission from the Australian Mobile Telecommunications Association, which was contributed to, and endorsed by, Telstra Limited. The submission suggested changes to some definitions and the deletion of others. The submission also made broader comments about the area-wide licence type and suggested the ACMA develop an interpretation determination for spectrum licences and the spectrum licence technical framework.

The ACMA adopted some of the suggestions made. However, given the nature of the Interpretation Determination and its application to a range of legislative instruments made by the ACMA, other suggestions (such as those relating to the area-wide licence type) were not practical to consider and implement as part of this sunseting process of the Interpretation Determination. For example, some of these suggestions may have required consequential amendments to many more instruments, each of which might require its own consultation. It may be more practical to consider these suggestions in relation to review or sunseting of other instruments (in the case of the suggestions about the area-wide licence type, that may be when legislative instruments that primarily affect only that licence type are due to sunset). The ACMA published a response to the submission on the ACMA website.

Regulatory impact assessment

A preliminary assessment of the proposal to make the Interpretation Determination 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 changes to the Interpretation Determination were not significant or substantive and were expected to have only minor or machinery impacts on businesses and not-for-profit organisations (OIA reference number OIA24-07824).

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 instruments

Interpretation Determination

The Interpretation Determination is made under subsection 64(1) of the ACMA Act and subsection 33(3) of 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 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.

The objective of the instrument is to function as a repository for the definitions of common expressions used in relation to radiocommunications in some (but not all) legislative instruments concerning radiocommunications made by the ACMA. In doing so, it removes the need to replicate those definitions in the different legislative instruments. Given this, the Interpretation Determination's impact on users of the radiofrequency spectrum is beneficial as various definitions are applied consistently and located in the one instrument.

Consequential Amendments Instrument

The Consequential Amendments Instrument is made under section 33 of the BSA, subsection 262(1) of the Radcoms Act, subsection 450(1) of the Telco Act, and subsection 33(3) of the AIA.

Section 33 of the BSA provides that the ACMA is to develop in writing, guidelines for the technical planning of individual services that use the broadcasting services bands as a means of delivery.

Subsection 262(1) of the Radcoms Act provides that the ACMA may make written advisory guidelines about any aspect of radiocommunication or radio emissions.

Subsection 450(1) of the Telco Act provides that the ACMA may, by legislative instrument, declare that operation or supply, or possession for the purpose of operation or supply, of specified customer equipment or specified customer cabling is prohibited for the reasons set out in the instrument.

The objective of the Consequential Amendments Instrument is to make minor consequential amendments to four legislative instruments made by the ACMA under the above provisions: the Technical Planning Guidelines, the 26 GHz Transmitter Guidelines, the 26 GHz Receiver Guidelines and the Prohibition Declaration. The amendments replace references to the 2015 Determination with references to the Interpretation Determination in each of those instruments. It does not change the substance or effect of any of those instruments.

Human rights implications

The ACMA has assessed whether the Interpretation Determination and the Consequential Amendments Instrument are 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 instruments and the nature of the applicable rights and freedoms, the ACMA has formed the view that the instruments do not engage any of those rights or freedoms.

Conclusion

The instruments are compatible with human rights as they do not raise any human rights issues.

Notes to the *Radiocommunications (Interpretation) Determination 2025*

Section 1 Name

This section provides for the Interpretation Determination to be cited as the *Radiocommunications (Interpretation) Determination 2025*.

Section 2 Commencement

This section provides for the Interpretation Determination 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 Interpretation Determination, namely subsection 64(1) of the ACMA Act.

Section 4 Repeal

This section repeals the 2015 Determination.

Section 5 References to other instruments

This section provides that in the Interpretation Determination, unless the contrary intention appears:

- a reference to any other legislative instrument is a reference to that other legislative instrument as in force from time to time; and
- a reference to any other kind of instrument or writing is a reference to that other instrument or writing as in force, or existing, from time to time.

Section 6 Definitions in the Schedule

Subsection 6(1) provides that, unless there is a contrary intention, the definition of an expression in the Schedule applies to each use of that expression in:

- the Interpretation Determination;
- any charges determination made under subsection 60(1) of the ACMA Act;
- tax determinations made under the *Radiocommunications (Receiver Licence Tax) Act 1983*, the *Radiocommunications (Spectrum Licence Tax) Act 1983*, and the *Radiocommunications (Transmitter Licence Tax) Act 1983*; and
- a selection of legislative instruments made under the Radcoms Act, including:
 - the spectrum plan made under subsection 30(1);
 - any frequency band plans made under subsection 32(1);
 - licence condition determinations made for apparatus licences under section 110A;
 - other instruments affecting apparatus licences made under subsections 98(1), 115(1), 119(1) and 131AC(1);
 - class licences issued under subsection 132(1); and
 - equipment rules made under subsection 156(1).

The Interpretation Determination does not apply to every legislative instrument made under the Radcoms Act. Other instruments made under subsection 64(1) of the ACMA Act may apply to other legislative instruments made under the Radcoms Act. At the time the Interpretation Determination

was made, the *Radiocommunications (Interpretation – Technical Framework) Determination 2024* applied in relation to a selection of spectrum licence-related instruments.

Subsection 6(2) is a transitional provision for the definitions of ***PABX cordless telephone service*** and ***major coast B station***, which were defined by the 2015 Determination but are not defined by the Interpretation Determination. The purpose of subsection 6(2) is to ensure that the definitions of those expressions that applied to certain legislative instruments before the Interpretation Determination commenced, continue to do so after its commencement. The ACMA intends, at the earliest opportunity, either to remove these terms from other legislative instruments, or to define them specifically in those legislative instruments.

Subsections 6(3) and (4) are transitional provisions for the definition of ***communal site***. Under the 2015 Determination, for a site to be a communal site, there needed to be ‘more than two’ fixed transmitters operating at the site. Under the Interpretation Determination, for a site to be a communal site, there needs to be ‘two or more’ fixed transmitters at the site. The subsections provide that any site that, immediately before the commencement of the Interpretation Determination, had two fixed transmitters is not taken to be a ***communal site*** until the number of fixed transmitters at the site is increased to three or more. This will ensure that legislative instruments dealing with ***communal sites*** do not impose requirements in relation to sites that had only two fixed transmitters immediately before the commencement of the Interpretation Determination, until the sites would have become communal sites under the 2015 Determination.

Section 7 Definitions of *Act* and *ACMA Act*

Subsection 7(1) provides that, unless there is a contrary intention, ***Act*** in the Interpretation Determination and in a selection of legislative instruments made under the Radcoms Act, means the Radcoms Act.

Subsection 7(2) provides that ***ACMA Act*** in the Interpretation Determination means the ACMA Act.

Section 8 References to *Radiocommunications (Interpretation) Determination 2015*

This section provides that, unless there is a contrary intention, a reference to the 2015 Determination in any one of the following is taken to be a reference to the Interpretation Determination:

- any charges determination made under subsection 60(1) of the ACMA Act;
- tax determinations made under the *Radiocommunications (Receiver Licence Tax) Act 1983*, the *Radiocommunications (Spectrum Licence Tax) Act 1983*, and the *Radiocommunications (Transmitter Licence Tax) Act 1983*; and
- a selection of legislative instruments made under the Radcoms Act, including:
 - licence condition determinations made for apparatus licences under section 110A;
 - other instruments affecting apparatus licences made under subsections 98(1), 115(1), 119(1) and 131AC(1);
 - class licences issued under subsection 132(1); and
 - equipment rules made under subsection 156(1).

This avoids the need to make consequential amendments to each of these instruments, to the extent those instruments refer to the 2015 Determination.

Section 9 Interpretation - references to a spectrum plan

This section provides that, unless there is a contrary intention, a reference to a ‘spectrum plan’ in the Interpretation Determination and in a selection of instruments made under the Radcoms Act, is a reference to that plan, however described, as in force from time to time. As the ACMA has frequently

replaced spectrum plans, following changes to the Radio Regulations published by the International Telecommunication Union, this avoids the need to make consequential amendments to each of these other instruments, to the extent those instruments refer to a specific spectrum plan that is not the most recent such plan.

Section 10 Interpretation – parts of the spectrum and frequency bands

This section provides that, unless there is a contrary intention, references to a part of the spectrum or a frequency band include all frequencies that are greater than but not including the lower frequency, up to and including the higher frequency.

Section 11 Interpretation – terms defined in the Act

Section 11 provides that, unless there is a contrary intention, an expression in the Interpretation Determination that is defined in the Radcoms Act has the same meaning as the Radcoms Act.

Schedule—Defined expressions

The Schedule lists—in alphanumerical order—various expressions used in the legislative instruments specified in section 6 of the Interpretation Determination.

The definitions are largely unchanged from the definitions in the 2015 Determination, though some minor structural and wording changes have been adopted. Several more significant changes are as follows:

- A new definition of **ARPANSA Standard** is included, to mean the *Radiation Protection Standard for Limiting Exposure to Radiofrequency Fields – 100 kHz to 300 GHz (2021)*, published by the Australian Radiation Protection and Nuclear Safety Agency. This document is referred to and defined in several legislative instruments made by the ACMA. Inclusion of this definition means it will no longer need to be separately defined in each of those instruments or any other legislative instrument to which the Interpretation Determination applies.
- A new definition of **ARQZWA** is included, to mean the Australian Radio Quiet Zone Western Australia. This zone is referred to and defined in several legislative instruments made by the ACMA. Inclusion of this definition means it will no longer need to be separately defined in each of those instruments or any other legislative instrument to which the Interpretation Determination applies.
- Definitions relating to the Australian Spectrum Map Grid 2012 have been included. The Australian Spectrum Map Grid 2012 is a document published by the ACMA on its website that divides Australia up into cells, and adopts a hierarchical naming convention for those cells. Several legislative instruments made by the ACMA use this division and convention for identifying particular areas in Australia, and the relevant terms are defined in each of those instruments. Inclusion of these definitions means they will no longer need to be separately defined in each of those instruments or any other legislative instrument to which the Interpretation Determination applies.
- As mentioned above, the definition of **communal site** has been changed, so that it covers sites that have two or more fixed transmitters, instead of more than two fixed transmitters.
- The definitions of **cellular mobile telephone service** has been removed, as it is no longer used in the Interpretation Determination or any other relevant legislative instrument.
- The definitions of **major coast B station** and **PABX cordless telephone service** have been removed. They are still used in some legislative instruments, and so a transitional provision has been included to maintain the definitions, pending amendment or repeal of those instruments (see above).

- Some definitions that adopted definitions in the spectrum plan have been included in full in the Interpretation Determination. The ACMA may remove those definitions from the spectrum plan at a later time.
- A number of definitions have been simplified, either by removing redundant words or referring to other defined terms (whether in the Interpretation Determination or in Commonwealth Acts) instead of duplicating their text.
- A number of notes have been added to the Schedule, to assist understanding. For example, a number of maritime-related definitions are based on definitions in the Radio Regulations or arise from other international instruments, as they relate to radiocommunications devices operated on ships that travel in and out of Australian waters; the Schedule includes notes referring to the relevant international instrument.

Notes to the *Communications (Interpretation) (Consequential Amendments) Instrument 2025*

Section 1 Name

This section provides for the Consequential Amendments Instrument to be cited as the *Communications (Interpretation) (Consequential Amendments) Instrument 2025*.

Section 2 Commencement

This section provides for the Consequential Amendments Instrument to commence at the start of the day after the day it is registered on the Federal Register of Legislation or immediately after the commencement of the Interpretation Determination, whichever is the later.

Section 3 Authority

This section identifies the provisions of the Acts that authorise the making of the Consequential Amendments Instrument, namely section 33 of the BSA, section 262 of the Radcoms Act, and subsection 450(1) of the Telco Act.

Section 4 Amendments

This section provides that the instruments specified in Schedule 1 to the Consequential Amendments Instrument are amended by the applicable items in that Schedule.

Schedule 1—Amendments

Items 1, 2, 3 and 4 deal with amendments to the Technical Planning Guidelines. Item 1 includes a definition of *interpretation determination* in the Technical Planning Guidelines, meaning the Interpretation Determination. The other items replace references to the 2015 Determination in the Technical Planning Guidelines with references to the expression *interpretation determination*.

Item 5 makes an amendment to the 26 GHz Transmitter Guidelines. The item repeals and substitutes subsection 4(3) of that instrument, to adopt definitions included in the Interpretation Determination.

Item 6 makes an amendment to the 26 GHz Receiver Guidelines. This item repeals and substitutes subsection 4(1) of that instrument, to adopt a definition included in the Interpretation Determination.

Items 7 and 8 deal with amendments to the Prohibition Declaration. Both items repeal and substitute a definition of an expression used in that instrument, to refer to definitions in the Interpretation Determination.