EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications (Qualified Operators – Maritime) Determination 2026

Radiocommunications (Maritime Licensing) Amendment Instrument 2026 (No. 1)

Authority

The Australian Communications and Media Authority (the **ACMA**) has made the *Radiocommunications (Qualified Operators – Maritime) Determination 2026* (the **Qualified Operators Determination**) under subsection 119 of the *Radiocommunications Act 1992* (the **Act**), and under subsection 33(3) of the *Acts Interpretation Act 1901* (the **AIA**).

Subsection 119 of the Act provides that the ACMA may, by legislative instrument, determine that persons operating transmitters under transmitter licences included in a class of transmitter licences specified in the instrument must be qualified operators. A qualified operator is defined in section 5 of the Act to be a person who holds a certificate of proficiency that is issued under section 121 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 any such instrument.

The ACMA has made the *Radiocommunications (Maritime Licensing) Amendment Instrument 2026 (No. 1)* (the **Maritime Amendment Instrument**) under subsection 110A(2) and subsection 132(1) of the Act, and subsection 33(3) of the AIA.

Subsection 110A(2) of the Act provides that the ACMA may, by legislative instrument, determine that each apparatus licence included in a specified class of apparatus licenses is taken to include one or more specified conditions.

Subsection 132(1) of the Act provides that the ACMA may, by legislative instrument, issue class licences. A class licence authorises any person to operate a radiocommunications device of a specified kind or for a specified purpose, or to operate a radiocommunications device of a specified kind for a specified purpose.

The Maritime Amendment Instrument amends the *Radiocommunications Licence Conditions (Maritime Coast Licence) Determination 2025* (the **Maritime Coast Licence Determination**) and the *Radiocommunications Licence Conditions (Maritime Ship Licence) Determination 2025* (the **Maritime Ship Licence Determination**), which are made under subsection 110A(2) of the Act. It also varies the *Radiocommunications (Maritime Ship Station) Class Licence 2025* (the **Maritime Ship Station Class Licence**), which is made under subsection 132(1) of the Act.

Paragraph 136(1A)(a) of the Act provides that, if the variation of a class licence would affect the spectrum allocated, to be allocated or to be re-allocated by issuing spectrum licences, before varying the class licence, the ACMA must be satisfied that:

- the variation of the class licence would not result in unacceptable levels of interference to the operation of radiocommunications devices, or likely to be operated, under spectrum licences; and
- the variation of the class licence would be in the public interest.

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In such a case, the ACMA must also consult with spectrum licensees. The variations to the Maritime Ship Station Class Licence made by the Maritime Amendment Instrument do not affect the spectrum allocated, or to be allocated or to be re-allocated by issuing spectrum licences.

Under section 137 of the Act, the ACMA must not issue a class licence that is inconsistent with the *Australian Radiofrequency Spectrum Plan (2025 Update) 2021* (the **spectrum plan**) or a frequency band plan. Subsection 9(2) of the spectrum plan provides that any frequency band specified in the spectrum plan may be used by a device that operates in accordance with a class licence, which includes the Maritime Ship Station Class Licence. Subsection 9(5) of the *Radiocommunications (Australian Radio Quiet Zone Western Australia) Frequency Band Plan 2023* provides that the frequency bands covered by that instrument may be used for services provided under, and in accordance with, the conditions of a class licence, which includes the Maritime Ship Station Class Licence.

Purpose and operation of the instruments

International maritime radiocommunications framework

The international framework for maritime radio is established through the International Telecommunication Union's (**ITU**) Radio Regulations and the International Maritime Organization's International Convention for the Safety of Life at Sea (the **SOLAS Convention**). Australia is a signatory to the Constitution and Convention of the ITU and the SOLAS Convention.

For most countries, including Australia, spectrum and frequency planning primarily occurs through participation in the ITU. The ITU maintains the Radio Regulations, which regulate radiocommunications services on an international basis and govern the utilisation of radio frequencies. This includes provisions for the operational use of the global maritime distress and safety system (the **GMDSS**). The concept of the GMDSS is that ashore authorities, as well as ships within the immediate vicinity of a vessel in distress, will be rapidly alerted to a distress incident and provide assistance as required under the SOLAS Convention. The functional requirements of the GMDSS are set out in the SOLAS Convention, which is an international maritime treaty that sets minimum safety standards in the construction, equipment and operation of merchant ships.

The Radio Regulations are revised by ITU World Radiocommunication Conferences, normally held every 4 years, and member states subsequently take binding treaty action to give effect to the changes to the Radio Regulations. The ACMA gives effect to the Radio Regulations requirements through domestic licensing and planning instruments, including the Qualified Operators Determination, the Maritime Coast Licence Determination, the Maritime Ship Licence Determination and the Maritime Ship Station Class Licence.

Domestic maritime radiocommunications licensing arrangements

An apparatus licence may be either a transmitter licence or a receiver licence. Maritime coast licences and maritime ship licences are types of transmitter licences and authorise the operation of a 'maritime coast station' or 'maritime ship station' respectively (broadly speaking, these stations are radiocommunications transmitters that facilitate ship to coast and coast to ship communication).

The Maritime Coast Licence Determination and the Maritime Ship Licence Determination specify some of the conditions regarding the operation of maritime coast stations and maritime ship stations under transmitter licences, including the operating frequencies for some stations, and the maximum power that may be used for various technologies or purposes.

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A class licence sets out the conditions under which any person is permitted to operate any device to which the class licence is applicable; it is not issued to an individual user, and does not involve the payment of licence taxes or charges. The Maritime Ship Station Class Licence authorises the operation of particular radiocommunications devices, subject to specified conditions.

Maritime coast stations and maritime ship stations are used in Australia to provide search and rescue assistance to ships in distress, while also providing commercial and recreational communications for marine users. Several of the conditions specified in the Maritime Coast Licence Determination, the Maritime Ship Licence Determination and the Maritime Ship Station Class Licence provide for the domestic implementation of requirements from international law, conventions and agreements.

Qualified Operators Determination

The purpose of the Qualified Operators Determination is to revoke and replace the *Radiocommunications (Qualified Operators) Determination 2016* (the **2016 Determination**) with modifications to update and replace outdated provisions.

The Qualified Operators Determination, in conjunction with other maritime radiocommunication instruments, ensures that operators of maritime ship stations and maritime coast stations under transmitter licences are appropriately qualified and use frequencies and procedures according to international requirements set by the ITU and the International Maritime Organization. Domestic implementation of qualification requirements ensures the frequencies, transmit powers and protocols of the GMDSS are used consistently and effectively in our region.

The Qualified Operators Determination imposes qualification requirements for specified transmitter licences that provide for the operation of maritime coast stations and maritime ship stations. Under paragraph 108(2)(e) of the Act, if the Qualified Operators Determination applies in relation to a transmitter licence, a person must not operate a transmitter under the licence unless the person is a 'qualified operator'. Under section 5 of the Act, a person is a qualified operator if they hold a certificate of proficiency issued under the Act. Under subsection 121(1) of the Act, the ACMA may issue to a person a certificate of proficiency that certifies that the person is taken to be a qualified operator in relation to a specified class of transmitter licences.

The Qualified Operators Determination specifies particular classes of maritime coast licences and maritime ship licences. These classes are based on the kind of transmitter authorised by the licence, the use to be made of the transmitter, and the frequencies on which the transmitter operates. These classes accord with the Article 47 of the ITU Radio Regulations. The Qualified Operators Determination also provides for exemptions from holding a certificate of proficiency where a person holds a foreign issued certificate that was issued by another Administration of the ITU that is equivalent to a certificate of proficiency, a person holds a GMDSS certificate issued by the Australian Maritime Safety Authority or an equivalent overseas certificate, or a person only operates the transmitter on particular frequencies.

The ACMA has made the Qualified Operators Determination because the 2016 Determination was due to 'sunset' (that is, to be automatically repealed) on 1 April 2026 under Part 3 of Chapter 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 2016 Determination was operating effectively and efficiently, and continued to form a necessary and useful part of the legislative framework. Accordingly, the ACMA has remade the 2016 Determination by making the Qualified Operators Determination, with minor changes, so that its on-going effect is preserved.

Generally, changes to the 2016 Determination that have been included in the Qualified Operators Determination are to restructure and modernise its drafting, with one exception. The Qualified

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Operators Determination includes a requirement in relation to maritime coast licences and maritime ship licences, such that a person must have a certificate of proficiency that includes a 'Marine Satellite Communications Endorsement' when operating a maritime ship station on a maritime mobile satellite frequency. The use of transmitters for this purpose, and the equivalent qualification requirement, was previously included in the *Radiocommunications (Communication with Space Object) Class Licence 2015* (the **2015 space object class licence**), which authorised the use of satellite systems with numerous or ubiquitous earth stations. The 2015 space object class licence has been replaced by the *Radiocommunications (Communication with Space Object) Class Licence 2025*, which did not include these qualification requirements.

Operation of a radiocommunications device is not authorised by an apparatus licence (including maritime coast licences and maritime ship licences) if it is not in accordance with the conditions of the licence (subsection 97(4) of the Act). Under section 46 of the Act, it is an offence, and subject to a civil penalty, to operate a radiocommunications device otherwise than as authorised by a spectrum licence, apparatus licence or a class licence. 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 spectrum licence, apparatus licence or class 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.

In addition, an apparatus licensee, or a person authorised under section 114 of the Act in relation to an apparatus licence, must not contravene a condition of the licence. Contravention is subject to a civil penalty (section 113 of the Act). The Act prescribes a maximum civil penalty of 100 penalty units ($33,000).

Maritime Amendment Instrument

The purpose of the Maritime Amendment Instrument is to:

- amend the Maritime Coast Licence Determination, which applies licence conditions to be observed by licensees authorised to operate a maritime coast station under a maritime coast licence; and
- amend the Maritime Ship Licence Determination, which applies licence conditions to be observed by licensees authorised to operate a maritime ship station under a maritime ship licence; and

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- vary the Maritime Ship Station Class Licence, which authorises qualified persons to operate maritime ship stations on designated frequencies and applies common licence conditions to the operation of these stations.

Amendments to the Maritime Coast Licence Determination and Maritime Ship Licence Determination remove conditions for licensees to hold specified certificates of proficiency that duplicate the condition in paragraph 108(2)(e) of the Act, as a result of the Qualified Operators Determination. These amendments make the Qualified Operators Determination the sole instrument that provides qualification requirements for maritime coast and maritime ship licences. The Maritime Amendment Instrument also makes a minor technical correction to the Maritime Ship Licence Determination to a condition imposed in relation to the use of Automatic Identification System (AIS).

The variation to the Maritime Ship Station Class Licence inserts a new definition and condition regarding certificates of proficiency with the Marine Satellite Communication Endorsement that was previously provided by the 2015 space objects class licence. The amendment should have little effect on persons who have been operating maritime ship stations under class licensing arrangements, as most maritime ship station communication with satellites would previously have occurred under the 2015 space objects class licence, and so such persons would have had to have met the qualification requirements.

However, persons who first commenced operating maritime ship stations to communicate with satellites under the Maritime Ship Station Class Licence (which commenced on 1 October 2025) would not have been required to meet the qualification requirements and may need to obtain qualifications to continue to operate the maritime ship stations. The ACMA does not expect there to be many such affected persons, and these persons may also have other permissible qualifications, such as a GMDSS certificate issued by the Australian Maritime Safety Authority.

Operation of a radiocommunications device is not authorised by a class licence (including the Maritime Ship Station Class Licence) if it is not in accordance with the conditions of the licence (subsection 132(3) of the Act). Under section 46 of the Act, it is an offence, and subject to a civil penalty, to operate a radiocommunications device otherwise than as authorised by a spectrum licence, apparatus licence or a class licence. The penalties applicable in relation to a contravention of section 46 are set out above.

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 spectrum licence, apparatus licence or class 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.

Generally

A provision-by-provision description of:

- the Qualified Operator Determination is set out in the notes at **Attachment A**; and
- the Maritime Amendment Instrument is set out in the notes at **Attachment B**.

Each instrument is a legislative instrument for the purposes of the LA, and is disallowable.

Each of the Qualified Operators Determination, the Maritime Coast Licence Determination, the Maritime Ship Licence Determination and the Maritime Ship Station Class Licence is subject to the sunsetting provisions in Part 4 of Chapter 3 of the LA.

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Documents incorporated by reference

Subsection 314A(1) 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) provisions of any Act as in force at a particular time, or from time to time. Subsection 314A(2) 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) matter contained in any other instrument or writing as in force or existing at a particular time, or from time to time.

The Qualified Operators Determination incorporates all or part of the following Acts and legislative instruments, as in force from time to time:

- the *Navigation Act 2012*;
- the *Seas and Submerged Lands Act 1973*;
- *Marine Order 70 (Seafarer certification) 2014*.

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

The Qualified Operators Determination also incorporates parts of the Radio Regulations published by the ITU, as existing from time to time. The Radio Regulations are available, free of charge, from the ITU's website at www.itu.int.

The changes made by the Maritime Amendment Instrument to the Maritime Coast Licence Determination and the Maritime Ship Licence Determination do not incorporate any documents by reference.

The changes made by the Maritime Amendment Instrument to the Maritime Ship Station Class Licence incorporate part of *Marine Order 70 (Seafarer certification) 2014* by reference. That instrument is available, free of charge, from the Federal Register of Legislation at www.legislation.gov.au.

Consultation

Before the Qualified Operators Determination and the Maritime Amendment Instrument were made, the ACMA was satisfied that consultation was undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the LA.

Section 136 of the Act requires that a written notice outlining the details of the variation of the Maritime Ship Station Class Licence be published on the ACMA's website, and in one or more other forms that are readily accessible by the public. The notice must allow for a period of at least one month to be provided for public comment.

On 8 December 2025, the ACMA published a written notice under section 136 of the Act about the proposed variation to the Maritime Ship Station Class Licence in the Government Notices Gazette and invited interested persons to make representations about the proposed variation.

The ACMA published drafts of the Qualified Operators Determination, the Maritime Amendment Instrument, a copy of the written notice under section 136 of the Act and an accompanying consultation paper on the ACMA website on 11 December 2025 for a period of 8 weeks, to 5 February 2026. The consultation paper invited comments on the proposed draft of the Qualified Operators Determination and Maritime Amendment Instrument. The ACMA used its bulletin subscription service to notify interested stakeholders and the public about the publication. The

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Australian Maritime Safety Authority was advised of the publication directly. No submissions were received.

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 in **Attachment C** has been prepared to meet that requirement.

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Attachment A

Notes to the *Radiocommunications (Qualified Operators – Maritime) Determination 2026*

Section 1 Name

This section provides for the Qualified Operators Determination to be cited as the *Radiocommunications (Qualified Operators – Maritime) Determination 2026*.

Section 2 Commencement

This section provides for the Qualified Operators 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 Qualified Operators Determination, namely subsection 119 of the Act.

Section 4 Repeal

This section provides that the 2016 Determination is repealed.

Section 5 Interpretation

This section defines a number of key terms used throughout the Qualified Operators Determination. A number of other expressions used in the instrument are defined in the Act or by a determination made under subsection 64(1) of the *Australian Communications and Media Authority Act 2005*.

Section 6 References to other instruments

This section provides that in the Qualified Operators 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 7 Qualified operators

Section 7 determines the classes of transmitter licences that are effectively subject to the condition in paragraph 108(2)(e) of the Act, that a person operating transmitters under one of those licences must be a qualified operator, subject to section 8 of the Qualified Operators Determination. Table 1 specifies the relevant classes by reference to one or more of the following:

- whether the licence is a maritime coast licence or a maritime ship licence;
- the kind of transmitter operated under the licence;
- the frequency bands on which a transmitter is operated under the licence;
- whether the transmitter is operated to communicate with a space station.

The table also sets out the relevant certificate of proficiency for each class, for information.

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Section 8 Exceptions

Section 8 provides exceptions to the requirements of section 7. Section 7 does not apply where a person operating a radiocommunications transmitter holds a specified overseas certificate that is equivalent to a certificate of proficiency, a GMDSS certificate, or a qualification recognised as equivalent to a GMDSS certificate in accordance with the *Marine Order 70 (Seafarer certification) 2014.* Section 7 also does not apply to a person who operates a maritime ship station on particular frequencies.

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Attachment B

Notes to the *Radiocommunications (Maritime Licensing) Amendment Instrument 2026*

Section 1 Name

This section provides for the Maritime Amendment Instrument to be cited as the *Radiocommunications (Maritime Licensing) Amendment Instrument 2026 (No. 1).*

Section 2 Commencement

This section provides for the Maritime Amendment Instrument to commence at the later of:

- the start of the day after it is registered on the Federal Register of Legislation; and
- the commencement of the Qualified Operators Determination.

However, the Maritime Amendment Instrument does not commence at all if the Qualified Operators Determination does not commence.

Section 3 Authority

This section identifies the provisions of the Act that authorise the making of the Maritime Amendment Instrument, namely subsection 110A(2) and subsection 132(1) of the Act.

Section 4 Amendments to licence condition determinations

This section provides that the instruments specified in in Schedule 1 (the Maritime Coast Licence Determination and Maritime Ship Licence Determination) are amended as set out in Schedule 1.

Section 5 Variation to class licence

This section provides that the instrument specified in Schedule 2 (the Maritime Ship Station Class Licence) is varied as set out in Schedule 2.

Schedule 1–Amendments to licence condition determinations

Radiocommunications Licence Conditions (Maritime Coast Licence) Determination 2025 (F2025L01130)

Item 1

Item 1 repeals the definition of GMDSS certificate from the Maritime Coast Licence Determination, including the note, as it is no longer required.

Item 2

Item 2 repeals references in the Maritime Coast Licence Determination to terms that are defined in the Act, as they are no longer relevant.

Item 3

Item 3 inserts a note at the end of section 9 of the Maritime Coast Licence Determination that refers to paragraph 108(2)(e) of the Act and the Qualified Operators Determination, or any instrument replacing it. Paragraph 108(2)(e) of the Act imposes a licence condition that, where the Qualified Operators Determination specifies a class of transmitter licence, a person operating a transmitter under such a licence is required to be a qualified operator.

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Item 4

Item 4 repeals section 12 of the Maritime Coast Licence Determination, which prescribed conditions requiring a person to hold a certificate of proficiency before operating a transmitter under a particular licence. That condition duplicated the condition in paragraph 108(2)(e) of the Act.

Item 5

Item 5 inserts a note at the end of section 14 of the Maritime Coast Licence Determination that refers to paragraph 108(2)(e) of the Act and the Qualified Operators Determination, or any instrument replacing it.

Item 6

Item 6 repeals section 17 of the Maritime Coast Licence Determination, which prescribed conditions requiring a person to hold a certificate of proficiency before operating a transmitter under a particular licence. That condition duplicated the condition in paragraph 108(2)(e) of the Act.

Item 7

Item 7 inserts a note at the end of section 21 of the Maritime Coast Licence Determination that refers to paragraph 108(2)(e) of the Act and the Qualified Operators Determination, or any instrument replacing it.

Item 8

Item 8 repeals section 29, which prescribed conditions requiring a person to hold a certificate of proficiency before operating a transmitter under a particular licence. That condition duplicated the condition in paragraph 108(2)(e) of the Act.

Item 9

Item 9 inserts a note at the end of section 33 of the Maritime Coast Licence Determination that refers to paragraph 108(2)(e) of the Act and the Qualified Operators Determination, or any instrument replacing it.

Item 10

Item 10 repeals section 41 of the Maritime Coast Licence Determination, which prescribed conditions requiring a person to hold a certificate of proficiency before operating a transmitter under a particular licence. That condition duplicated the condition in paragraph 108(2)(e) of the Act.

Radiocommunications Licence Conditions (Maritime Ship Licence) Determination 2025 (F2025L00314)

Item 11

Item 11 repeals a definition of "AIS satellite communications (ship-satellite)" from the Maritime Ship Licence Determination, as it is no longer required.

Item 12

Item 12 repeals a definition of "GMDSS certificate" from the Maritime Ship Licence Determination as it is no longer required.

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Item 13

Item 13 repeals references in the Maritime Ship Licence Determination to terms that are defined in the Act, as they are no longer relevant.

Item 14

Item 14 repeals references in the Maritime Ship Licence Determination to a definition made by the ACMA in an instrument under section 64 of the *Australian Communications and Media Authority Act 2005*, as it is no longer relevant.

Item 15

Item 15 inserts a note at the end of section 7 of the Maritime Ship Licence Determination that refers to paragraph 108(2)(e) of the Act and the Qualified Operators Determination, or any instrument replacing it.

Item 16

Item 16 repeals section 10 of the Maritime Ship Licence Determination, which prescribed conditions requiring a person to hold a certificate of proficiency before operating a maritime ship station under a particular licence. That condition duplicated the condition in paragraph 108(2)(e) of the Act..

Item 17

Item 17 repeals and substitutes section 13 of the Maritime Ship Licence Determination, which provides a minor correction to how specified frequencies for Automatic Identification System purposes can be used under a particular licence.

Schedule 2–Variation to class licence

Radiocommunications (Maritime Ship Station) Class Licence 2025 (F2025L01131)

Item 1

Item 1 inserts in the Maritime Ship Station Class Licence a reference to a definition made by the ACMA in an instrument under section 64 of the *Australian Communications and Media Authority Act 2005*.

Item2

Item 2 inserts a new subsection in section 11 of the Maritime Ship Station Class Licence that relates to operating a maritime ship station using an ultra high frequency specified in Schedule 1. The subsection imposes a condition requiring a person operating such a station to hold a particular qualification. One such qualification is a certificate of proficiency with a ‘Marine Satellite Communications Endorsement’.

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Attachment C

Statement of compatibility with human rights

Prepared by the Australian Communications and Media Authority under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Radiocommunications (Qualified Operators – Maritime) Determination 2026

Radiocommunications (Maritime Licensing) Amendment Instrument 2026 (No. 1)

Overview of the instruments

The *Radiocommunications (Qualified Operators – Maritime) Determination 2026* (the **Qualified Operators Determination**), in conjunction with other maritime radiocommunication instruments, ensures that operators of maritime ship stations and maritime coast stations under transmitter licences are appropriately qualified and use frequencies and procedures according to international requirements set by the International Telecommunication Union (the **ITU**) and the International Maritime Organization. Domestic implementation of qualification requirements ensures the frequencies, transmit powers and protocols of the global maritime distress and safety system (the **GMDSS**) are used consistently and effectively in our region.

The Qualified Operators Determination imposes qualification requirements for specified transmitter licences that provide for the operation of maritime coast stations and maritime ship stations. Under paragraph 108(2)(e) of the *Radiocommunications Act 1992* (the **Act**), if the Qualified Operators Determination applies in relation to a transmitter licence, a person must not operate a transmitter under the licence unless the person is a 'qualified operator'. Under section 5 of the Act, a person is a qualified operator if they hold a certificate of proficiency issued under the Act. Under subsection 121(1) of the Act, the ACMA may issue to a person a certificate of proficiency that certifies that the person is taken to be a qualified operator in relation to a specified class of transmitter licences.

The Qualified Operators Determination specifies particular classes of maritime coast licences and maritime ship licences. These classes are based on the kind of transmitter authorised by the licence, the use to be made of the transmitter, and the frequencies on which the transmitter operates. These classes accord with Article 47 of the ITU Radio Regulations. The Qualified Operators Determination also provides for exemptions from holding a certificate of proficiency where a person holds a foreign issued certificate that was issued by another Administration of the ITU that is equivalent to a certificate of proficiency, a person holds a GMDSS certificate issued by the Australian Maritime Safety Authority or an equivalent overseas certificate, or a person only operates the transmitter on particular frequencies.

The *Radiocommunications (Maritime Licensing) Amendment Instrument 2026 (No. 1)* (the **Maritime Amendment Instrument**) amends the *Radiocommunications Licence Conditions (Maritime Coast Licence) Determination 2025* (the **Maritime Coast Licence Determination**) and the *Radiocommunications Licence Conditions (Maritime Ship Licence) Determination 2025* (the **Maritime Ship Licence Determination**) to make a minor technical correction and to remove conditions for licensees to hold specified certificates of proficiency that duplicate paragraph 108(2)(e) of the Act. These amendments make the Qualified Operators Determination the sole instrument that provides qualification requirements for maritime coast and maritime ship licences.

The Maritime Amendment Instrument also varies the *Radiocommunications (Maritime Ship Station) Class Licence 2025* (the **Maritime Ship Station Class Licence**) by inserting conditions regarding

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maritime satellite radiocommunications that were previously provided by the *Radiocommunications (Communication with Space Object) Class Licence 2015*. The variation means that all qualification requirements for maritime radiocommunications under class licencing arrangements are provided by the Maritime Ship Station Class Licence.

Collectively, these maritime radiocommunication instruments ensure that operators of maritime ship stations and maritime coast stations are appropriately qualified and use frequencies and procedures according to international requirements set by the ITU and the International Maritime Organization. Compliance with the conditions imposed by these maritime radiocommunication instruments helps to maintain the safety and integrity of maritime radiocommunications.

Human rights implications

The ACMA has assessed whether the Qualified Operators Determination and the Maritime Amendment 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.

Freedom of expression

Article 19 of the International Covenant on Civil and Political Rights provides:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as provided by law and are necessary.
    a. For respect of the rights or reputations of others;
    b. For the protection of national security or of public order (*ordre public*), or public health or morals

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 Qualified Operators Determination engages the right to freedom of expression. This is because the Qualified Operators Determination limits who can use a maritime coast or maritime ship station under certain transmitter licences to those who have appropriate operator qualifications. As the Maritime Amendment Instrument supports the intentions of the Qualified Operator Determination and varies the qualifications requirements for maritime radiocommunications under class licensing arrangements, we consider that it also engages the right to freedom of expression.

Collectively, the Qualified Operators Determination, the Maritime Coast Licence Determination, the Maritime Ship Licence Determination and Maritime Ship Station Class Licence implement the distress, safety and urgency procedures from the ITU Radio Regulations, which support the GMDSS. The GMDSS enables coast stations and ship stations to communicate using channels allocated internationally for use in the event of a risk to the safety or a person or a ship, as well as to provide meteorological warnings and forecasts. The concept of the GMDSS is that search and rescue authorities, as well as ships within the immediate vicinity of a vessel in distress, will be rapidly alerted to a distress incident thereby supporting maritime search and rescue. Equally, people engaging with the GMDSS require knowledge of its protocols in order to support an effective emergency response.

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Without such conditions imposed, there would be a significant risk of interference to maritime radiocommunications, and communications that are irrelevant to maritime radiocommunications, leading to an increased threat to life in the event of an incident at sea, threatening the protection of public health and safety, and an overall reduction in spectrum efficiency.

Accordingly, the ACMA has formed the view that the restrictions imposed are permissible because they achieve a legitimate objective in a way that is reasonable, necessary and proportionate. The object of the Act is to promote the long-term public interest derived from the use of the spectrum by providing for the management of the spectrum in a manner that, among other things, facilitates the use of the spectrum for commercial purposes and non-commercial purposes, including public safety. To avoid interference between multiple users, operation of a radiocommunications device, or possession of equipment for the purposes of operation of a radiocommunication device, must be licensed under the Act. One objective of licensing is to ensure that interference between users of the spectrum is minimised, thereby ensuring all individuals have greater access to freedom of expression when utilising the radiofrequency spectrum to communicate.

The objective of the Qualified Operators Determination is to ensure the integrity of maritime radiocommunications, specifically by preventing a person who does not meet specified criteria from being authorised to operate a radiocommunications transmitter under a licence, thereby confining the use of such radiocommunications transmitters to specific purposes. The objective of the Maritime Amendment Instrument supports the Qualified Operators Determination by removing duplicative qualification requirements from transmitter licence instruments and by driving similar outcomes for maritime radiocommunications under class licensing arrangements. If the Qualified Operators Determination and Maritime Amendment Instrument were not made, there would be an increased risk of interference to stations that operate under licences for many purposes including ports and ship movement, commercial operations, as well as search and rescue response in the event of an emergency incident. Subsequently, this could reduce overall spectrum efficiency, be a threat to safety of life at sea and negatively impact other maritime services.

Right to life

Article 6 (1) of the International Covenant on Civil and Political Rights provides that every human being has the inherent right to life. It goes on to say that this right shall be protected by law and that no one shall be arbitrarily deprived of his life.

The ACMA has formed the view that the objectives of the Qualified Operators Determination and Maritime Amendment Instrument tangentially support this article. This is because the Qualified Operators Determination (and instruments varied by Maritime Amendment Instrument) have the effect of imposing conditions that are directed towards ensuring that maritime radiocommunications are conducted in a consistent way and by authorised people who are trained in how to manage distress, safety and urgency communications. Without these conditions there would be an increased risk that a person making or receiving distress, urgency or safety communications would be ill-prepared and potentially unaware of procedures to follow in the event of a threat to the safety of life at sea. This may impact the speed at which appropriate actions are taken to support persons in distress and may also delay search and rescue response by the appropriate authorities.

Conclusion

The Qualified Operations Determination and the Maritime Amendment Instrument are compatible with human rights because any restriction on the freedom of expression that they create is for a legitimate purpose and is reasonable, necessary and proportionate to support safety of life at sea and ensure that the integrity of maritime radiocommunications is preserved. These conditions also

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tangentially support Article 6(1) of the International Covenant on Civil and Political Rights in distress situations, by ensuring marine radio operators are trained in managing distress, safety and urgency communications.

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