

EXPLANATORY STATEMENT

Prepared by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications (Qualified Operators) Determination 2016

Purpose

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Qualified Operators) Determination 2016 (the Determination)* under section 119 of the *Radiocommunications Act 1992 (the Act)*. The Determination revokes and replaces the *Radiocommunications (Qualified Operators) Determination 2005 (the 2005 Determination)* with modifications to update and to replace outdated provisions.

Under Part 4 of Chapter 3 of the *Legislation Act 2003 (the LA)*, most legislative instruments 'sunset' (that is, they are automatically repealed) on the 1 April or 1 October that first occurs 10 years after they are registered on the Federal Register of Legislation.

Following review and consultation as described below, the ACMA formed the view that the 2005 Determination was operating effectively and efficiently, and continued to form a necessary and useful part of the regulatory framework. The ACMA also identified minor changes that could be made to the Qualified Operators Determination, along with minor changes to associated legislative instruments, to establish a transparent approach to determining whether an overseas licence or qualification amounts to an exception to the requirement to have a certificate of proficiency. Consequently, the ACMA has revoked the Determination before its sunset date and remade it with some minor changes.

Legislative provisions

The Determination has been made by the ACMA under section 119 of the Act.

Section 119 of the Act allows the ACMA to determine, by written instrument, that persons operating transmitters under certain classes of transmitters licence must be qualified operators. A person is a qualified operator if the person holds a certificate of proficiency issued by the ACMA under section 121 of the Act. The Determination sets out the transmitter licences for which an operator must be a qualified operator, and provides some exceptions to these requirements.

Subsection 33(3) of the *Acts Interpretation Act 1901 (the AIA)* provides that where an Act confers a power to make, grant or issue any instrument, the power includes a power to amend, vary or revoke that instrument, in the like manner and subject to the like conditions as making the instrument. To the extent that the Determination revokes the 2005 Determination it is made under section 119 of the Act and section 33(3) of the AIA. The Determination is a disallowable legislative instrument for the purposes of the LA.

Background

The Determination, in conjunction with other related instruments, is intended to ensure that operators of amateur stations, maritime ship stations and maritime coast stations are appropriately qualified to use the stations, in order to ensure that the operators use the appropriate frequencies, transmitter output power and protocols. These requirements are designed to minimise the potential for stations to interfere with each other and with other users of radiocommunications devices. The frequencies, powers and protocols used by these

amateur and maritime operators are set internationally and used by amateur radio operators, commercial shipping and recreational boaters around the world. Instruments like the Determination are put in place with the objective of harmonising amateur and marine radio use in Australia.

Summary of Changes

The main difference between the 2005 Determination and the new Determination is that the new Determination clarifies the circumstances in which an operator will be regarded as having an equivalent overseas licence of qualification; an operator who has such a qualification will be exempt from the requirement to hold a certificate of proficiency.

The new Determination does this by:

- for transmitters operated under certain amateur licences – exempting persons who are qualified persons within the meaning of the *Radiocommunications Licence Conditions (Amateur Licence) Determination 2015 (Amateur Licence Conditions Determination)*. A person is a qualified person under the Amateur Licence Conditions Determination if the person holds an amateur licence or amateur qualification that is listed in the Tables of Equivalent Qualifications and Licences available on the ACMA's website;
- for transmitters operated under certain maritime licences – exempting persons who hold a qualification listed within a table of equivalent qualifications included in the Determination itself.

Incorporation by reference

The Determination refers to Acts and other legislative instruments as in force from time to time (as permitted by section 314A of the Act). Those Acts and legislative instruments are:

- the Act;
- the *Acts Interpretation Act 1901*;
- the *Australian Communications and Media Authority Act 2005*;
- the *Legislation Act 2003*;
- the *Marine Orders – Part 6: Marine Radio Qualifications, Issue 5*;
- the *Navigation Act 2012*;
- the Amateur Licence Conditions Determination;
- the *Radiocommunications (Interpretation) Determination 2015*.

These Acts and legislative instruments are available at <http://www.legislation.gov.au>.

The Determination also refers to or incorporates the ITU Radio Regulations – Article 47, as in existence from time to time (as permitted by section 314A of the Act). The ITU Radio Regulations are available at <https://www.itu.int/>.

Consultation

Subsection 17(1) of the LA requires that, before the ACMA makes a legislative instrument, it must be satisfied that there has been undertaken any consultation that the ACMA considers is appropriate, and reasonably practicable to undertake. The ACMA conducted public consultation by releasing a draft of the new Determination and a consultation paper for comment. The consultation paper and draft instrument were made available on the ACMA website from 22 December 2015 to 29 January 2016.

One submission was received from the Wireless Institute of Australia which supported the remake of the Determination with the proposed changes.

Regulation Impact Statement

The Office of Best Practice Regulation (**OBPR**) applies streamlined administrative processes to sunseting legislative instruments. The ACMA has determined that the 2005 Determination was fit for purpose and that it should be remade with minor changes. The ACMA has certified those matters to the OBPR. The OBPR determined that the ACMA could follow the self-certification process to remake the instrument without significant change and that no further regulatory impact analysis was required (OBPR reference number19848).

Notes on Sections

The provisions of the Determination, and how they operate, are described in **Attachment A**.

Statement of Compatibility with Human Rights

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out in **Attachment B**.

ATTACHMENT A

NOTES ON SECTIONS

Section 1 Name of Determination

Section 1 provides that the name of the Determination is the *Radiocommunications (Qualified Operators) Determination 2016*.

Section 2 Commencement

Section 2 provides that the Determination commences on the day after it is registered on the Federal Register of Legislation.

Section 3 Revocation

Section 3 revokes the *Radiocommunications (Qualified Operators) Determination 2005*.

Section 4 Interpretation

Section 4 provides definitions for terms used in the Determination and notes that terms used in the Determination which are defined in the Act or the *Radiocommunications (Interpretation) Determination 2015* (the Interpretation Determination) have the same meaning as in those instruments.

Subsection 4(2) provides that, unless the contrary intention appears, a reference to another legislative instrument in the Determination is a reference to that other legislative instrument as in force from time to time, as permitted by section 314A of the Act.

Section 5 Qualified operators

Section 5 provides that a person must be a qualified operator to operate a transmitter under particular types of amateur or maritime licences that authorise the operation of particular stations. A qualified operator (as defined in the Act) is a person who holds a certificate of proficiency issued by the ACMA under section 121 of the Act. Section 5 provides that the requirement to hold a certificate of proficiency does not apply to persons who hold certain overseas qualifications or licences listed in the ACMA's Tables of Equivalent Qualifications and Licences, as these people are taken to be 'qualified persons' within the meaning of the *Radiocommunications Licence Conditions (Amateur Licence) Determination 2015*. In addition, persons who hold certain maritime qualifications listed in the Determination are exempted from the requirement to be a qualified operator.

Schedule Overseas qualifications for maritime licences

The Schedule provides a list of overseas maritime qualifications that are considered equivalent to a certificate of proficiency such as to allow operators to operate marine radio transmitters in Australia under the appropriate marine radio licences without the need to obtain an Australian certificate of proficiency.

ATTACHMENT B

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Radiocommunications (Qualified Operators) Determination 2016

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Radiocommunications (Qualified Operators) Determination 2016* (the Determination) revokes and replaces the *Radiocommunications (Qualified Operators) Determination 2005* without making significant changes to the regulatory arrangements created by that instrument.

The Determination provides that a person must be a qualified operator to operate a transmitter authorised under certain amateur or maritime licences. A qualified operator (as defined in the *Radiocommunications Act 1992* (the Act)) is a person who holds a certificate of proficiency issued by the ACMA under section 121 of the Act. Certain exceptions apply for overseas qualified operators and those holding GMDSS qualifications.

Human Rights Implications

The Determination does not engage any of the applicable rights or freedoms.

Conclusion

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