

# **Explanatory Statement**

**Issued by the authority of the Australian Communications Media Authority  
(‘ACMA’)**

*Radiocommunications Act 1992*

*Radiocommunications (section 145(3) Certificates) Amendment  
Determination 2005 (No. 1)*

## **Legislative Provisions**

Part 3.2 the Radiocommunications Act 1992 provides for the issuing of spectrum licences. Section 69 provides that a spectrum licence must include a condition that the relevant transmitter is not to be operated under the licence unless the requirements of Part 3.5 for registration of the transmitter have been met.

Part 3.5 provides for the creation and maintenance of a Register of Radiocommunications Licences (section 143). The register must contain certain information about each licence in question (section 144).

Section 145 provides that the ACMA may refuse to include on the register the details of a radiocommunications transmitter if the ACMA is satisfied that the transmitter could cause an unacceptable level of interference.

Sub-section 145(3) also provides that, before entering a transmitter’s details in the Register, the ACMA may require a certificate from a person accredited under section 263. That person must state that the operation of the device satisfies any conditions which have been imposed by way of a section 266A Determination. The Radiocommunications (section 145(3) Certificates) Determination 2000 (“the Determination”) is a Determination made under section 266A. The Determination requires the relevant accredited person to be satisfied that the operation of the device will not cause an unacceptable level of interference.

Accordingly, the issue of a sub-section 145(3) certificate by an accredited person (AP) warrants compliance with the ACMA technical requirements for interference management. Those requirements are set down via ACMA determination under sub-section 145(4) which states that the ACMA may determine, by written instrument, what are unacceptable levels of interference.

Part 5.3 provides that the ACMA may make advisory guidelines about any aspect of radiocommunications (section 262).

## **Background**

Section 69 of the Radiocommunications Act (the Act) requires registration with the ACMA of transmitters deployed under spectrum licences. Registering these devices on the ACMA’s public register records the fact that the devices are operating within their licence conditions, allows spectrum licensees to coordinate their devices and it enables speedy interference investigation and resolution by the ACMA if subsequent

interference complaints are made. Accredited Persons (APs) play an important role in spectrum management, including device registration.

Under current arrangements for managing interference there are three ways by which APs can apply to the ACMA to register a device under a spectrum licence:

**Option A.** By issuing a **sub-section 145(3)** certificate which states that the device will not cause an *unacceptable level of interference* as defined in the sub-section 145(4) Determination for the band; or

**Option B.** By stating that sufficient **internal guard space** has been allocated for the device (as defined in *Radiocommunications Advisory Guidelines (Registration of Devices under Spectrum Licences without an Interference Impact Certificate) 1998* made by the ACMA under section 262) to manage potential interference; or

**Option C.** By stating that an **agreement** has been reached with adjacent licensees to accept increased levels of interference into their spectrum space.

The non certification registration options are a source of confusion and uncertainty among some APs as to the status of devices so registered.

The intention of the proposed changes to the ACMA device registration requirements is to remove this source of potential confusion and uncertainty by prescribing that a sub-section 145(3) certificate will be required in all cases. This change does not alter any of the technical requirements for interference management, but improves procedural consistency and certainty by allowing for three alternative conditions for the issue of a certificate under sub-section 145(3) instead of only one, as at present.

Under the proposed new arrangements an AP will be able to choose one of the following **certification** options when they apply to register devices:

1. Certify that the device will not cause an unacceptable level of interference based on the application of the ACMA interference management methodology as set out in the relevant sub-section 145(4) determination for the band.

OR in the absence of compliance with the interference methodology set out in the sub-section 145(4) determination:

2. Certify that sufficient *internal* guard space has been allocated (in accordance with the *Radiocommunications Advisory Guidelines (Registration of Devices under Spectrum Licences without an Interference Impact Certificate) 1998* made by the ACMA under section 262) to manage potential interference.

OR

3. Certify that sufficient *external* guard space has been determined through a written agreement between affected licensees (in accordance with the *Radiocommunications Advisory Guidelines* made by the ACMA under section 262) to manage potential interference.

This amendment will commence on 1 January 2006. This will allow ACMA to undertake industry education and apply the new rules to all applications lodged from the beginning of the 2006 calendar year.

## **Consultation**

The proposed changes to device registration have been formulated in response to industry feedback and the Productivity Commission (PC) *Review of Radiocommunications Report* (No 22, 2002) released by the Government in December 2002. After the Government's endorsement of the PC report, the ACMA conducted an industry forum on spectrum licensing in which options for implementing improved device registration were canvassed.

In October 2003 the Radiocommunications Consultative Council (a high level joint industry/regulator body) examined the issue and suggested the ACMA undertake further industry consultation to determine the best way forward.

In December 2003 a public discussion paper on this topic was published by the ACMA putting forward the **two** proposals for change. These changes were –

- (a) certification for **all** registered devices; and
- (b) clarifying the advisory guidelines for use of guard space for interference management when registering devices under spectrum licensing.

Five industry submissions were received in response to the paper. Two of these argued that the proposed changes are unnecessary, while the other three supported the changes. As a result of subsequent discussion in which the intent and content of the proposed changes were clarified, the two who argued the changes were unnecessary withdrew their objections.

## ***Details of the Determination***

### **Section 1 - Title**

Section 1 provides for how the amendment determination is to be cited.

### **Section 2 - Commencement**

Section 2 sets the commencement date for the determination. The commencement date is 1 January 2006 to allow for further industry consultation.

### **Section 3 – Purpose**

Section 3 sets out the purpose of the determination. The purpose is to amend the existing *Radiocommunications (section 145(3) Certificates) Determination 2000* to reflect the new provisions for certification under device registration.

### **Schedule 1**

**Item [1] – Section 3**

Amends section 3 of the existing Determination to make it clear that there is now more than one condition which applies to the issuing of a certificate.

**Item [2] – Section 5**

Replaces the current section 5 and provides that there are now 3 alternative methods by which an Accredited Person may be satisfied that he or she may issue a section 145(3) certificate. The three alternative methods are:

- (a) the accredited person is satisfied that the operation of the device will not cause an unacceptable level of interference as set out in the relevant section 145 determination;
- (b) the accredited person is satisfied that sufficient internal guard space has been allocated to mitigate potential interference – such an assessment is to be made in accordance with the *Radiocommunications Advisory Guidelines (Registration of Devices under Spectrum Licences without an Interference Impact Certificate) 1998*; and
- (c) the accredited person is satisfied that all relevant licensees (ie those who might be affected by potential interference) have consented to the operation of the transmitter.