

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Radiocommunications (subsection 145 (3) Certificates) Determination 2012

Radiocommunications Act 1992

Purpose

The purpose of the *Radiocommunications (subsection 145 (3) Certificates) Determination 2012* (the **Determination**) is to set out the conditions which apply to the issuing of certificates under subsection 145 (3) of the *Radiocommunications Act 1992* (the **Act**) relating to the registration of radiocommunications transmitters in the Register of Radiocommunications Licences (the **Register**) established under section 143 of the Act.

Legislative Provisions

Subsection 145 (3) of the Act provides that the Australian Communications and Media Authority (the **ACMA**) may require that before details of a radiocommunications transmitter are included in the Register, there be presented to the ACMA a certificate, issued by a person accredited under section 263 of the Act to issue certificates for the purposes of subsection 145 (3), stating that the operation of the device under the spectrum licence satisfies any conditions that are required to be satisfied, in relation to the issue of such a certificate, under a determination made under section 266A of the Act.

The Determination is made under section 266A of the Act which provides that the ACMA may determine, in writing, the conditions that are to apply to the issuing of a certificate under this Act.

The Determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Operation

Section 69 of the Act provides that it is a condition of a spectrum licence that a radiocommunications transmitter must not be operated under the licence unless the registration requirements in Part 3.5 of the Act are satisfied. Subsection 69 (2) provides that a spectrum licence condition may exempt particular kinds of radiocommunications transmitters from meeting the registration requirements in Part 3.5 of the Act.

Under section 145 the ACMA may refuse to include details of a radiocommunications transmitter in the Register if it is satisfied that the operation of the transmitter could cause an unacceptable level of interference to the operation of other radiocommunications devices. The ACMA may, under subsection 145 (4), determine in writing what the unacceptable levels of interference are. In addition, the ACMA may, under subsection 145 (3), prescribe conditions under which a person accredited under the Act to issue certificates under subsection 145 (3) may issue such certificates. The ACMA can then use the certificates (**Interference Impact Certificates**) in determining whether a transmitter's details should be included in the Register.

The Determination specifies the conditions that apply to the issuing of Interference Impact Certificates. The Determination revokes the *Radiocommunications (section 145(3) Certificates) Determination 2000* (the **IIC Determination**) and in its place, provides an updated version of the conditions that apply to the issuing of a certificate under subsection 145 (3) of the Act.

The conditions in the IIC Determination required that prior to issuing a certificate under subsection 145 (3) of the Act, accredited persons must be satisfied that:

- (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 section 145 determination for the band; **or**
- (b) the accredited person is satisfied that sufficient internal guard space has been allocated to mitigate potential interference from the transmitter, in accordance with the *Radiocommunications Advisory Guidelines (Registration of Devices under Spectrum Licences without an Interference Impact Certificate) 1998*; **or**
- (c) the accredited person is satisfied that consent in writing to interference from the transmitter has been given by all licensees who, in the opinion of the accredited person, may be affected by the interference.

For paragraph (b), an accredited person could issue a certificate under the IIC Determination if they were satisfied that sufficient internal guard space has been allocated to mitigate potential interference from the transmitter, 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 266 of the Act.

As part of its review of the spectrum licence regulatory framework, the ACMA has decided to revoke the *Radiocommunications Advisory Guidelines (Registration of Devices under Spectrum Licences without an Interference Impact Certificate) 1998*.

Consequently, it was necessary to review and revise the conditions under which certificates are issued under subsection 145 (3), particularly in relation to the use of guard space to mitigate potential interference. Paragraph 6 (b) of the Determination now provides that one of the conditions that apply to the issue of an Interference Impact Certificate is that the accredited person is satisfied that the use of guard space is sufficient to mitigate potential interference from the radiocommunications transmitter.

The new provisions in the Determination remove the reference to the revoked guidelines, but retain the use of guard space as a mechanism for managing potential interference between radiocommunications transmitters and other devices.

Consultation

The ACMA has consulted widely about its plans to update the spectrum licence framework. In March 2012, the ACMA released a consultation paper, *Proposed updates to the spectrum licence framework*. This paper was the culmination of a comprehensive series of reviews of various components of the spectrum licensing technical and regulatory frameworks. The reviews were conducted in anticipation of forthcoming major spectrum allocations and processes to re-allocate or re-issue expiring spectrum licences.

Among a number of regulatory and administrative changes, the consultation paper proposed changes to the process for registration of radiocommunications transmitters under the Act. Part of the proposed changes included changes to the conditions that apply to the issuing of certificates under subsection 145 (3) of the Act. The paper attached a draft *Radiocommunications (subsection 145 (3) Certificates) Determination 2012* for public comment.

There were three submissions received in response to the broader consultation paper. While there was some comment made on the proposed device registration process, the submissions did not comment upon or object to the changes proposed in this Determination.

All written submissions on the consultation paper are available on the ACMA's website at www.acma.gov.au.

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 *Legislative Instruments Act 2003* applies, to cause a statement of compatibility to be prepared in respect of that legislative instrument. This statement is in **Attachment B**.

Regulatory Impact

Prior to releasing the draft Determination, the ACMA consulted with the Office of Best Practice Regulation (the **OBPR**) on the requirement for a Regulation Impact Statement (**RIS**) for this legislative instrument. The OBPR advised that this Determination did not warrant the preparation of a RIS [OBPR ID 14067].

Documents incorporated by reference

None

Detailed Description of the Determination

Details of the instrument are set out in **Attachment A**.

ATTACHMENT A**DETAILS OF THE RADIOCOMMUNICATIONS (SUBSECTION 145 (3) CERTIFICATES)
DETERMINATION 2012****Section 1 – Title**

This section provides that the title of the Determination is the *Radiocommunications (subsection 145 (3) Certificates) Determination 2012*.

Section 2 - Commencement

This section states that the Determination will commence on the day after it is registered on the Federal Register of Legislative Instruments.

Section 3 – Revocation of the *Radiocommunications (section 145 (3) Certificates) Determination 2000*

This section revokes the *Radiocommunications (section 145 (3) Certificates) Determination 2000*. The revocation will have effect on the day the Determination commences (see section 2).

Section 4 – Purpose

This section states that the purpose of the Determination is to set out the conditions that apply to the issuing of a certificate under subsection 145 (3) of the Act.

Section 5 – Interpretation

This section provides definitions for the terms used in the Determination. In particular, the section defines terms which are not defined in the *Radiocommunications (section 145 (3) Certificates) Determination 2000* including:

- guard area
- guard band
- guard space
- spectrum space

The terms are defined by reference to the frequency band and the geographic area (the spectrum space) of a spectrum licence.

Section 5 includes a note which provides that the meanings of the terms listed in the note have the same meaning as in the Act.

Section 6 – Conditions

This section sets out the conditions for the issue of a certificate under subsection 145 (3) of the Act, for a radiocommunications transmitter operating under a spectrum licence issued for a frequency band. The section provides that before issuing a certificate, an accredited person must be satisfied that one of the conditions specified in paragraphs (a)-(c) has been met in relation to the particular radiocommunications transmitter.

The three conditions prescribed in paragraphs 6 (a)-(c) provide that the accredited person must be satisfied that:

- (a) the operation of the radiocommunications transmitter will not cause an unacceptable level of interference as set out in the section 145 determination for the frequency band; or
- (b) the use of guard space is sufficient to mitigate potential interference from the radiocommunications transmitter; or
- (c) consent in writing to interference from the radiocommunications transmitter has been given by all licensees who, in the opinion of the accredited person, may be affected by the interference.

Under subsection 145 (4) of the Act, the ACMA determines what the unacceptable levels of interference for radiocommunications transmitters operating under spectrum licences in particular frequency bands are. Paragraph 6 (a) provides that an accredited person may issue a certificate under subsection 145 (3) in relation to a transmitter if they are satisfied that the transmitter will not cause an unacceptable level of interference as set out in the relevant subsection 145 (4) determination.

Paragraph 6 (b) allows the use of 'guard space' to mitigate potential interference. Guard space is defined in section 5 as isolation achieved by means of the guard area or guard band for a spectrum licence or a combination of the guard area and guard band, to ensure that a radiocommunications transmitter operated under a spectrum licence does not radiate significant levels of emission outside the spectrum space of that licence. An accredited person must be satisfied that the use of guard space for the radiocommunications transmitter is sufficient to mitigate potential interference before issuing a certificate.

In certain circumstances, potential interference caused by a radiocommunications transmitter may be managed by obtaining the written consent of other licensees who may be affected by the interference. This is another mechanism for allowing greater flexibility in interference management. An accredited person must be satisfied that written consent has been obtained from all licensees who, in the opinion of the accredited person, may be affected by the interference.

ATTACHMENT B**Statement of Compatibility with Human Rights**

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

Radiocommunications (subsection 145 (3) Certificates) Determination 2012

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

Section 266A of the *Radiocommunications Act 1992 (the Act)* provides that the ACMA may determine, in writing, the conditions that are to apply to the issuing of a certificate under the Act.

Subsection 145 (3) of the Act provides that the ACMA may require that before details of a radiocommunications transmitter operating under a spectrum licence are included in the Register established under section 143 of the Act, a certificate is provided, stating that the operation of the device under the licence satisfies any condition that is required for the issue of such a certificate under a determination made under section 266A of the Act. The *Radiocommunications (subsection 145 (3) Certificates) Determination 2012 (the Determination)* is made under section 266A of the Act and prescribes the conditions that apply to the issuing of certificates under subsection 145 (3) of the Act.

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 *Legislative Instruments Act 2003* applies to cause a statement of compatibility to be prepared in respect of that legislative instrument.

The Determination is a legislative instrument that is subject to disallowance under section 42 of the *Legislative Instruments Act 2003*.

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.