

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications Accreditation (General) Rules 2021

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications Accreditation (General) Rules 2021* (**the instrument**) under subsection 266(1) of the *Radiocommunications Act 1992* (**the Act**).

Subsection 266(1) will be inserted into the Act by Schedule 5 to the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020* (**the Reform Act**). In accordance with section 4 of the *Acts Interpretation Act 1901*, the instrument may be made before Schedule 5 to the Reform Act commences, but does not take effect until that Schedule commences. Attachment A to this explanatory statement has been written as though Schedule 5 to the Reform Act has commenced, unless stated otherwise.

Subsection 266(1) of the Act provides that the ACMA may, by legislative instrument, make rules prescribing matters required or permitted by the Act to be prescribed by such rules (**the accreditation rules**). Section 266 of the Act requires or permits the following matters to be prescribed by accreditation rules:

- the accreditation process;
- procedures that must be followed in relation to deciding whether to accredit persons, and whether to withdraw the accreditation of persons;
- different kinds of accreditation;
- in respect of each kind of accreditation, the qualifications and other requirements required before a person can be given that kind of accreditation.

Purpose and operation of the instrument

The Reform Act will make a series of amendments to the Act, including to Part 5.4, in relation to accreditation and the role of accredited persons.

The Accredited Persons scheme (**the AP scheme**) was established in 1996 by one of the ACMA's predecessor agencies, the Australian Communications Authority, using its powers under Part 5.4 of the Act. The broad objective of the scheme is to improve the efficiency of spectrum management by devolving specific activities to accredited persons. Accredited persons perform frequency assignment, coordination and registration activities, namely:

- the issue of Frequency Assignment Certificates (**FACs**), which state that the operation of a radiocommunications device on a proposed frequency would satisfy any conditions set out in a determination by the ACMA; and
- the issue of Interference Impact Certificates (**IICs**), which state that the operation of a radiocommunications device proposed to be registered in relation to a spectrum licence satisfies any conditions set out in a determination by the ACMA.

The AP scheme is a critical element of the ACMA's licensing framework. The technical coordination and frequency assignment required for approximately 98% of all apparatus licences issued by the ACMA is undertaken by accredited persons. The technical coordination and interference assessment required for all spectrum licence device registrations is undertaken by accredited persons.

At the time the instrument was made, the *Radiocommunications (Accreditation – Prescribed Certificates) Principles 2014 (the Accreditation Principles)*, made under subsection 266(1) of the Act, specified the kinds of accreditation that may be given by the ACMA under Part 5.4 of the Act.

The Reform Act will amend the Act, including by substituting a new subsection 266(1) of the Act. The Accreditation Principles will no longer apply and the instrument is made under the new subsection 266(1) of the Act. Transitional arrangements for existing accreditations are set out in the *Radiocommunications Accreditation (Transition) Rules 2021* and Schedule 5 to the Reform Act.

Because the Reform Act does not include transitional provisions for the Accreditation Principles, the effect of the changes will be that, upon commencement of Schedule 5 to the Reform Act, the Accreditation Principles will no longer have effect. To support the AP scheme, the ACMA must make accreditation rules. The ACMA has made the instrument for this purpose.

Under the changes made by the Reform Act, the ACMA may give a person an accreditation of a particular kind (see new section 263 of the Act, to be inserted by the Reform Act). Such accreditation may entitle the person to do things under the Act, including issue FACs and IICs (see, for example, section 100(4A) of the Act, as amended by the Reform Act). An accreditation is subject to such conditions as are included in the instrument of accreditation, and specified in the accreditation rules (new section 264 of the Act, to be inserted by the Reform Act). The ACMA may withdraw a person's accreditation in certain circumstances (new section 264A of the Act, to be inserted by the Reform Act).

The instrument provides for the kinds of accreditation that may be given, the qualifications and other requirements required before a person can be given a kind of accreditation, the accreditation process, and the procedures to be followed in relation to deciding whether to accredit persons, or whether to withdraw the accreditation of a person.

A provision-by-provision description of the instrument is set out in the notes at **Attachment A**.

The instrument is a disallowable legislative instrument for the purposes of the *Legislation Act 2003 (the LA)*.

Documents incorporated by reference

The instrument incorporates by reference the following Acts and legislative instruments:

- the Accreditation Principles;
- the Act;
- the *Australian Communications and Media Authority Act 2005*;
- the *Corporations Act 2001*;
- the *Insurance Act 1973*;
- the *National Vocational Education and Training Regulator Act 2011*;
- the Reform Act;
- the *Tertiary Education Quality and Standards Agency Act 2011*;
- the *Radiocommunications (Conditions of Frequency Assignment Certificates – Apparatus Licences) Determination 2021*;
- the *Radiocommunications (Conditions of Interference Impact Certificates) Determination 2021*.

The Acts and legislative instruments listed above can be accessed, free of charge, from the Federal Register of Legislation: www.legislation.gov.au

As permitted by section 314A of the Act, each of the above Acts or instruments is incorporated as in force from time to time, except for the Accreditation Principles, which are incorporated by reference in subsection 21(1) as in force immediately before Schedule 5 to the Reform Act commenced.

Consultation

Before the instrument was made, the ACMA was satisfied that consultation had been undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the LA.

Public consultation was conducted on the instrument from 9 March 2021 to 6 April 2021. A consultation paper and the draft instrument, along with other draft instruments related to the AP scheme, were published on the ACMA website and key stakeholders were invited to comment. Nine submissions were received. The majority of issues raised in submissions did not involve changes proposed to be made to the instrument, but rather matters of operational practice for the ACMA in relation to the AP scheme.

However, the ACMA did make a change to the instrument in response to submissions received. The ACMA has changed a condition of a kind of accreditation, such that the kinds of records required to be kept in relation to a certificate issued under subsection 145(3) of the Act have been specified.

Regulatory impact assessment

The Office of Best Practice Regulation (**OBPR**) has confirmed that the [Review of the Radiofrequency Spectrum Management Framework](#) undertaken by the then Department of Communications and the Arts (**the Department**), in conjunction with the ACMA, and certified by the Department, meets the requirements of a Regulation Impact Statement (**RIS**).

OBPR advised the ACMA that, for instruments which are designed to maintain existing arrangements under the Act, and which are implemented as part of the Reform Act, no further RIS is required so long as the ACMA provided a copy of the instrument to OBPR before it was made (OBPR ID 43339). The ACMA provided a copy to OBPR on 1 June 2021.

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 set out below has been prepared to meet that requirement.

Overview of the instrument

The Reform Act will amend Part 5.4 of the Act, in relation to accreditation. It will repeal provisions that empower the ACMA to make legislative instruments governing the accreditation of persons, and will insert new provisions giving the ACMA new powers.

The instrument is made under new subsection 266(1), which is one of those new powers, and forms part of the legislative framework for the AP scheme. Accredited persons conduct the majority of the technical coordination required for the issue of apparatus licences, and for the registration of devices under spectrum licences, under the Act.

The instrument specifies:

- the kinds of accreditation available;
- the qualifications and other prerequisites required to obtain each kind of accreditation;

- the conditions that apply to each kind of accreditation;
- the accreditation process;
- procedures for withdrawing accreditation.

The instrument impacts accredited persons and potential and current licensees who require the services of an accredited person.

The instrument is necessary as a consequence of the changes made by the Reform Act to the accreditation provisions of the Act.

Human rights implications

The ACMA has assessed whether the instrument is 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 instrument and the nature of the applicable rights and freedoms, the ACMA has formed the view that the instrument does not engage any of those rights or freedoms.

Conclusion

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

Notes to the *Radiocommunications Accreditation (General) Rules 2021*

Part 1—Preliminary

Section 1 Name

This section provides for the instrument to be cited as the *Radiocommunications Accreditation (General) Rules 2021*.

Section 2 Commencement

This section provides for the instrument to commence at the later of the commencement of Schedule 5 to the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020 (the Reform Act)*, or the day after the day the instrument 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 instrument, namely subsection 266(1) of the *Radiocommunications Act 1992 (the Act)*, as in force after the commencement of Schedule 5 to the Reform Act.

Section 4 Definitions

This section defines a number of key terms used throughout the instrument.

Section 5 References to other instruments

This section provides that in the instrument, 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.

Part 2—Kinds of accreditation

Section 6 Simplified outline of this Part

This section provides an outline of Part 2. Part 2 specifies the kinds of accreditation that a person may be given, and the qualifications and other requirements that a person must have before being given a kind of accreditation.

Section 7 Kinds of accreditation

This section specifies the two kinds of accreditation that a person may be given: General Licensing Accreditation and Specific Licensing Accreditation. In the case of a person who has been given a Specific Licensing Accreditation, subsection 7(2) requires the ACMA to specify in that person's instrument of accreditation the single type of transmitter or receiver licence to which the person's accreditation relates.

Section 8 Qualifications and requirement for kinds of accreditation

This section sets out qualifications and requirements for the two kinds of accreditation. Before the ACMA gives a person either kind of accreditation, the person must have a qualification approved by the ACMA, an associate diploma, diploma or degree from a higher education body in Australia that relates to electronic engineering, or other equivalent qualifications or training. The person must also have experience in radiocommunications that is relevant to frequency assignment (the identification and recommendation of frequencies that are suitable for use by radiocommunications devices) and interference assessment (the evaluation of whether the operation of a radiocommunications device could cause an unacceptable level of interference to the operation of other radiocommunications devices).

As permitted by subsection 266(6) of the Act, subsection 8(5) confers a power on the ACMA to approve a qualification for the purposes of section 8. Subsection 8(7) provides that the ACMA may withdraw its approval of a qualification.

Part 3—Accreditation process and giving accreditation

Section 9 Simplified outline of this Part

This section provides an outline of Part 3. Part 3 provides for the accreditation process, and the procedures to be followed when the ACMA decides whether to give a kind of accreditation to a person.

Section 10 Application

This section provides that a person may apply for a kind, or kinds, of accreditation in the form and by the method approved by the ACMA, if any, accompanied by the application charge, if a charge applies. The ACMA may determine charges under section 60 of the *Australian Communications and Media Authority Act 2005*.

Subsection 10(4) also provides that a form approved by the ACMA for a kind of accreditation must allow the applicant to include representations made by another person, body or organisation about the person's suitability for accreditation.

If the ACMA approves a form for applying for the Specific Licensing Accreditation, subsection 10(5) provides that any application made using that form is not valid if the applicant does not specify one type of licence that the applicant wishes to be specified in the instrument of accreditation.

Section 11 Matters to have regard to before deciding on accreditation

This section specifies the matters to which the ACMA must have regard before deciding whether to give a person a kind of accreditation, namely:

- the objects of the Act;
- any representations made by a person, body or organisation about the person on their application form;
- whether the ACMA has withdrawn accreditation from the person in the 2 years prior to their application; and
- any other matter the ACMA considers relevant.

Section 12 Decision on accreditation

This section provides that the ACMA must give a person to whom it has given a kind of accreditation an instrument of accreditation. It also requires the ACMA to notify a person to whom it has refused to give a kind of accreditation, and to give reasons for the refusal.

Part 4—Procedures for withdrawing accreditation

Section 13 Simplified outline of this Part

This section provides an outline of Part 4. Part 4 sets out procedures to be followed before withdrawing a person's accreditation.

Section 14 Withdrawing accreditation

Under section 264A of the Act, the ACMA may only withdraw a person's accreditation if it is satisfied that the person's accreditation is no longer in accordance with the accreditation rules, or if it is satisfied that the person has contravened a condition of the accreditation.

Subsection 14(2) provides that, before the ACMA withdraws a person's accreditation on the basis that it is no longer in accordance with the instrument, the ACMA must have regard to the person's experience in radiocommunications relevant to frequency assignment and interference assessment in the 2 years prior to the person's accreditation being withdrawn.

Subsection 14(3) provides that, before the ACMA withdraws a person's accreditation on the basis it is satisfied that the person has contravened a condition of the accreditation (**the relevant condition**), the ACMA must have regard to the following matters:

- whether a device covered by an FAC to which the relevant condition relates (and which has been issued by the person in the previous 2 years) has caused an adverse effect on radiocommunications;
- whether, in relation to a transmitter covered by an IIC to which the relevant condition relates (and which has been issued by the person in the previous 2 years):
 - the transmitter has caused an adverse effect on radiocommunications;
 - the transmitter has caused an unacceptable level of interference for the purposes of section 145 of the Act;
 - the person followed any relevant procedures, policies and guides published by the ACMA when issuing the IIC.

Subsection 14(4) provides that subsections 14(2) and 14(3) do not limit the matters to which the ACMA may have regard when deciding whether to withdraw a person's accreditation.

Part 5—Conditions of accreditation

Section 15 Simplified outline of this Part

This section provides an outline of Part 5. Part 5 provides for conditions that apply to kinds of accreditation.

Section 16 Condition that applies to all accreditations

This section provides that a person with any kind of accreditation must not be an insolvent under administration, within the meaning of the *Corporations Act 2001*.

Section 17 Conditions that apply to particular kinds of accreditation

Section 17 provides that General Licensing Accreditations and Specific Licensing Accreditations are subject to conditions in Schedule 1 to the instrument. It also specifies that Specific Licensing Accreditations are subject to the condition in Schedule 2 to the instrument.

Part 6–Transitional provisions

Section 18 Simplified outline of this Part

This section provides an outline of Part 6. Part 6 saves some actions done under the Act before the commencement of Schedule 5 to the Reform Act

Section 19 Definition for this Part

This section defines *commencement day* as the day Schedule 5 to the Reform Act commenced.

Section 20 Application for accreditation received before commencement day

This section provides that, if the ACMA has received an application for accreditation but has not made a decision about it prior to commencement day, the application is taken as an application for a General Licensing Accreditation.

The ACMA will need to make a decision about any such application in accordance with the Act, as amended by the Reform Act, and with the instrument.

Section 21 Actions in relation to withdrawal taken before commencement day

This section provides that, if the ACMA performs an act or does a thing under section 11 (procedures for withdrawal of accreditation) or section 12 (suspected breaches of conditions) of the *Radiocommunications (Accreditation-Prescribed Certificates) Principles 2014*, and that act or thing substantially corresponds with an act or thing under Part 4 of the instrument, then the ACMA is taken to have complied with any obligation to perform the act or do the thing under Part 4.

Such acts are relevant to any decision by the ACMA to withdraw a person's accreditation.

Schedule 1–Conditions of General Licensing Accreditation and Specific Licensing Accreditation

Clause 1 Definitions

This clause defines a number of key terms used throughout Schedule 1.

Clause 2 Keeping insurance policy

This clause specifies that an accredited person must be covered by a \$2 million insurance policy issued by an authorised insurer when issuing certificates, and for a period of 5 years after they last issued a certificate. This does not apply if the certificate is issued in the course of government service.

Clause 3 Statements in certificate – insurance and government service

This clause provides that an accredited person must state in a certificate whether it is issued in the course of government service, and, if not, that the person must state the reference number and expiry date of their insurance policy in the certificate.

Clause 4 Statements in frequency assignment certificate – circumstances in which conditions are met

This clause requires an accredited person to state in an FAC that the operation of the associated device will satisfy the conditions required under the *Radiocommunications (Conditions of Frequency Assignment Certificates – Apparatus Licences) Determination 2021*, and that the person believes that the ACMA would issue an apparatus licence for the device.

The *Radiocommunications (Conditions of Frequency Assignment Certificates – Apparatus Licences) Determination 2021* is made under section 266A of the Act. If a person applies for an apparatus licence, an FAC must state that the operation of a radiocommunications device under that licence would satisfy any conditions included in that determination (see subsection 100(4A) of the Act).

Clause 5 Statements in certificate – false or misleading statements

This clause provides that an accredited person must not include a false or misleading statement in a certificate.

Clause 6 Belief to be genuine and reasonable

If a person applies for an apparatus licence, an FAC must state that the operation of a radiocommunications device under that licence would satisfy any conditions included in a determination made under section 266A of the Act (see subsection 100(4A) of the Act). If a person seeks to have a radiocommunications device registered in relation to a spectrum licence, an IIC must state that operation of the device would satisfy any conditions included in a determination made under section 266A of the Act (see subsection 145(3) of the Act).

This clause provides that if a determination made under section 266A of the Act refers to the belief, satisfaction or opinion of an accredited person in relation to a condition, the belief, opinion or satisfaction must be honestly held, and the accredited person must have reasonable grounds for the belief, opinion or satisfaction. Clause 6 also provides that the person must have complied with any requirements of the determination in relation to those reasonable grounds.

Clause 7 Record keeping requirements

The *Radiocommunications (Conditions of Frequency Assignment Certificates – Apparatus Licences) Determination 2021* is made under section 266A of the Act, in relation to FACs. Among other things, it provides that in certain circumstances an FAC must state that the operation of a radiocommunications device under a proposed apparatus licence must be consistent with interference management criteria devised and used by the accredited person who issues the FAC, and recorded by the accredited person in accordance with clause 7 of Schedule 1 to the instrument (see paragraph 8(1)(e) of that determination).

Subclause 7(1) requires the accredited person to make certain records within 1 day of issuing the FAC. These records are a record of the interference management criteria devised, a record of the method used to apply the criteria, and a record of the rationale for the use of the criteria and method.

The *Radiocommunications (Conditions of Interference Impact Certificates) Determination 2021* is made under section 266A of the Act, in relation to IICs. It provides that an IIC must state that the operation of a radiocommunications transmitter under a spectrum licence would not cause an unacceptable level of interference, unless:

- the accredited person is satisfied that the use of guard space is sufficient to mitigate potential interference; or

- the accredited person is satisfied that each person who may be affected by interference has consented in writing to the interference.

Subclause 7(2) requires the accredited person to make a record within 1 day of issuing an IIC. This record must state whether the IIC was issued because the radiocommunications transmitter would not cause an unacceptable level of interference, because the accredited person was satisfied that the use of a guard band was sufficient, or because the accredited person was satisfied that all affected persons had consented, and certain details in relation to the view taken. If the accredited person was satisfied that all affected persons had consented, subclause 7(3) provides that the accredited person must obtain a copy of each such consent.

Subclause 7(4) provides that an accredited person must keep records made under this clause for 5 years and make them available to the ACMA or an inspector on request.

Schedule 2—Conditions of Specific Licensing Accreditation

Clause 1 Accreditation limited to specified types of licence

This section specifies that a person with a Specific Licensing Accreditation must not issue a FAC if the licence related to the FAC is not of the type specified in their accreditation.