



Radiocommunications Accreditation (General) Rules 2021

The Australian Communications and Media Authority makes the following rules under subsection 266(1) of the *Radiocommunications Act 1992*.

Dated: 10 June 2021

Fiona Cameron
[signed]
Member

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[signed]
Member/~~General Manager~~

Australian Communications and Media Authority

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Part 1—Preliminary

1 Name

These are the *Radiocommunications Accreditation (General) Rules 2021*.

2 Commencement

This instrument commences on the later of the following:

- (a) the same time as Schedule 5 to the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020*;
- (b) the day after the day the instrument is registered on the Federal Register of Legislation.

Note: The *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020* is available from the Federal Register of Legislation. The Federal Register of Legislation may be accessed, free of charge, at www.legislation.gov.au.

3 Authority

This instrument is made under subsection 266(1) of the *Radiocommunications Act 1992*.

4 Definitions

In this instrument:

Act means the *Radiocommunications Act 1992*.

application charge, for an application for a kind of accreditation, means the charge determined under section 60 of the *Australian Communications and Media Authority Act 2005* in relation to an application for that kind of accreditation.

Australian education organisation means:

- (a) a registered higher education provider, within the meaning given by section 5 of the *Tertiary Education Quality and Standards Agency Act 2011*;
- (b) a registered training organisation, within the meaning given by section 3 of the *National Vocational Education and Training Regulator Act 2011*.

frequency assignment means the identification and recommendation of frequencies in the spectrum that are suitable for use by a radiocommunications device.

frequency assignment certificate:

- (a) in relation to a spectrum licence – means a certificate issued:
 - (i) under procedures determined under subsection 60(1) of the Act; and
 - (ii) for the purpose set out in subsection 60(7A) of the Act;
- (b) in relation to an apparatus licence – means a certificate issued under subsection 100(4A) of the Act.

General Licensing Accreditation means the kind of accreditation specified in paragraph 7(1)(a).

insolvent under administration has the meaning given by section 9 of the *Corporations Act 2001*.

interference assessment means the evaluation of whether the operation of a radiocommunications device could cause an unacceptable level of interference to the operation of other radiocommunication devices.

interference impact certificate means a certificate issued under subsection 145(3) of the Act.

Specific Licensing Accreditation means the kind of accreditation specified in paragraph 7(1)(b).

specified type of licence:

- (a) in relation to an application for the Specific Licensing Accreditation, means the single type of transmitter or receiver licences listed in the application for the accreditation;
- (b) in relation to the Specific Licensing Accreditation, means the single type of transmitter or receiver licences specified in the instrument of accreditation given to a person, in accordance with subsection 7(2).

Note 1: A number of other expressions used in this instrument are defined in the Act, including the following:

- (a) certificate;
- (b) interference;
- (c) radiocommunication;
- (d) radiocommunications device;
- (e) radiocommunications transmitter;
- (f) spectrum.

Note 2: Other expressions used in this instrument may be defined in a determination made under subsection 64(1) of the *Australian Communications and Media Authority Act 2005*.

Note 3: The ACMA determines types of transmitter and receiver licences under section 98 of the Act.

5 References to other instruments

In this instrument, unless the contrary intention appears:

- (a) a reference to any other legislative instrument is a reference to that other legislative instrument as in force from time to time; and
- (b) 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.

Note 1: For references to Commonwealth Acts, see section 10 of the *Acts Interpretation Act 1901*; and see also subsection 13(1) of the *Legislation Act 2003* for the application of the *Acts Interpretation Act 1901* to legislative instruments.

Note 2: All Commonwealth Acts and legislative instruments are registered on the Federal Register of Legislation.

Note 3: See section 314A of the Act.

Part 2—Kinds of accreditation

6 Simplified outline of this Part

Section 263 of the Act provides that the ACMA may, by written notice, give a person an accreditation of a particular kind.

Under subsection 266(5) of the Act, accreditation rules made under subsection 266(1) may provide for the kinds of accreditation, and the qualifications and other requirements required before a person can be given a kind of accreditation.

This Part provides for the kinds of accreditation, for the purposes of the Act, and the qualifications and other requirements required before a person can be given that kind of accreditation.

7 Kinds of accreditation

- (1) Each of the following is a kind of accreditation:
 - (a) General Licensing Accreditation;
 - (b) Specific Licensing Accreditation.
- (2) If the ACMA gives a person the Specific Licensing Accreditation, the ACMA must specify, in the instrument of accreditation, the single type of transmitter or receiver licence to which the person's accreditation relates.

8 Qualifications and requirements for kinds of accreditation

Qualifications and requirements for General Licensing Accreditation

- (1) For a person to be given the General Licensing Accreditation, the person must have one of the following:
 - (a) a qualification approved by the ACMA for the purposes of this subsection; or
 - (b) an associate diploma, diploma or degree granted by an Australian education organisation in electronic engineering; or
 - (c) qualifications, experience or training that the ACMA is satisfied is equivalent to a qualification in paragraph (a) or (b).
- (2) For a person to be given the General Licensing Accreditation, the ACMA must be satisfied that the person has experience in radiocommunications that is relevant to:
 - (a) frequency assignment; and
 - (b) interference assessment.

Qualifications and requirements for Specific Licensing Accreditation

- (3) For a person to be given the Specific Licensing Accreditation, the person must have:
 - (a) a qualification approved by the ACMA for the purposes of this subsection; or
 - (b) an associate diploma, diploma or degree granted by an Australian education organisation in electronic engineering; or
 - (c) qualifications, experience or training that the ACMA is satisfied is equivalent to a qualification in paragraph (a) or (b);that is relevant to the specified type of licence.

- (4) For a person to be given the Specific Licensing Accreditation, the ACMA must be satisfied that the person has experience in radiocommunications that is relevant to:
- (a) frequency assignment; and
 - (b) interference assessment;
- that is relevant to the specified type of licence.

Approving qualifications

- (5) The ACMA may approve a qualification for the purposes of one or both of paragraphs (1)(a) and (3)(a).
- (6) If the ACMA approves a qualification under subsection (5), the ACMA must publish on its website:
- (a) the name of the qualification;
 - (b) the Australian education organisation that provides the qualification;
 - (c) the paragraph for which the qualification is approved; and
 - (d) if the qualification is approved for the purposes of paragraph (3)(a) – the types of transmitter or receiver licence the qualification is relevant to.
- (7) The ACMA may withdraw its approval of a qualification.

Note: If the ACMA withdraws its approval of a qualification, section 264A of the Act may apply.

- (8) If the ACMA withdraws its approval of a qualification under subsection (7), the ACMA must publish on its website a notice to the effect that the qualification's approval has been withdrawn.

Part 3—Accreditation process and giving accreditation

9 Simplified outline of this Part

Section 263 of the Act provides that the ACMA may, by written notice, give a person an accreditation of a particular kind, and that an accreditation is to be given in accordance with the accreditation rules.

Under subsection 266(3) of the Act, accreditation rules made under subsection 266(1) may provide for procedures that must be followed in deciding whether to accredit persons.

This Part provides for those procedures.

10 Application

- (1) A person may apply for a kind of accreditation in accordance with this section.
- (2) A person may apply for more than one kind of accreditation.
- (3) An application for accreditation must be:
 - (a) made in the form approved by the ACMA (if any);
 - (b) made by the method approved by the ACMA (if any);
 - (c) accompanied by the application charge (if any) for each kind of accreditation included in the application.
- (4) For the purposes of paragraph 10(3)(a):
 - (a) the ACMA may approve a form for each kind of accreditation, and may approve a form for multiple kinds of accreditation;
 - (b) if the ACMA approves a form for the Specific Licensing Accreditation, the form must require the applicant to list one specified type of licence;
 - (c) if the ACMA approves a form for any of the following kinds of accreditation:
 - (i) General Licensing Accreditation;
 - (ii) Specific Licensing Accreditation;the form must allow the applicant to include representations made, by another person, body or organisation, about the person's suitability to be given accreditation.
- (5) An application for Specific Licensing Accreditation is not valid if the application does not list one specified type of licence the applicant wishes to be specified in the instrument of accreditation.

11 Matters to have regard to before deciding on accreditation

- (1) Before the ACMA decides under subsection 263(1) of the Act whether to give a person a kind of accreditation specified in subsection (2), the ACMA must have regard to
 - (a) the objects of the Act;
 - (b) if, in the person's application, another person, body or organisation has made representations about the person's application – those representations;
 - (c) whether, in the 2 year period ending on the day before the person applied for accreditation, the ACMA had withdrawn accreditation from the person;
 - (d) any other matter the ACMA considers relevant.

- (2) The kinds of accreditation are:
 - (a) General Licensing Accreditation;
 - (b) Specific Licensing Accreditation.

12 Decision on accreditation

- (1) If the ACMA gives a person a kind of accreditation, the ACMA must give the person an instrument of accreditation in a form the ACMA considers appropriate.

Note 1: Section 264 of the Act provides for conditions of accreditation.

Note 2: If the ACMA gives a person the Specific Licensing Accreditation, see subsection 7(2).

- (2) If the ACMA refuses to give a person a kind of accreditation, the ACMA must, in writing:
 - (a) notify the person; and
 - (b) give the person the reasons for the refusal.

Part 4—Procedures for withdrawing accreditation

13 Simplified outline of this Part

Section 264A of the Act provides that the ACMA may, by written notice given to a person, withdraw a person's accreditation in certain circumstances. Section 265 sets out some procedures to be followed before withdrawing a person's accreditation.

Under subsection 266(4) of the Act, accreditation rules made under subsection 266(1) may provide for additional procedures that must be followed in deciding whether to withdraw the accreditation of a person.

This Part provides for those additional procedures.

14 Withdrawing accreditation

- (1) This section applies if any of the following kinds of accreditation given to a person is in force:
 - (a) General Licensing Accreditation;
 - (b) Specific Licensing Accreditation.
 - (2) Before withdrawing the accreditation on the basis that the ACMA is satisfied that the accreditation is no longer in accordance with this instrument, the ACMA must have regard to the experience the person has in radiocommunications, in the 2 year period ending on the day before the ACMA withdraws the accreditation, that is relevant to:
 - (a) frequency assignment;
 - (b) interference assessment.
- Note: Section 265 of the Act sets out procedures for withdrawing accreditation. Subsection 265(3) of the Act provides that the ACMA must give due consideration to any representations made by or on behalf of the accredited person on or before a day specified under paragraph 265(1)(b).
- (3) Before withdrawing the accreditation on the basis that the ACMA is satisfied that the person has contravened a condition of the accreditation (**relevant condition**), the ACMA must have regard to:
 - (a) if the accredited person, in the 2 year period ending on the day before the ACMA withdraws the accreditation, has issued a frequency assignment certificate and the relevant condition relates to the issue of that certificate – whether there has been any adverse effect on radiocommunications caused by the operation of a radiocommunications device covered by that certificate;
 - (b) if the accredited person, in the 2 year period ending on the day before the ACMA withdraws the accreditation, has issued an interference impact certificate and the relevant condition relates to the issue of that certificate:
 - (i) whether there has been any adverse effect on radiocommunications caused by the operation of a radiocommunications transmitter covered by that certificate;
 - (ii) whether the radiocommunications transmitter covered by that certificate has caused an unacceptable level of interference for the purposes of section 145 of the Act;
 - (iii) whether the person followed any procedures, policies or guides published by the ACMA that were relevant to the issue of the certificate.

Note 1: A radiocommunications transmitter may cause an unacceptable level of interference in accordance with a determination made under subsection 145(4) of the Act even if it has not had an adverse effect on radiocommunications.

Note 2: Subsection 265(3) of the Act provides that the ACMA must give due consideration to any representations made by or on behalf of the accredited person on or before a day specified under paragraph 265(1)(b).

- (4) Subsections (2) and (3) do not prevent the ACMA from having regard to any other matter, including any act or omission of an accredited person that occurred before the start of the period mentioned in subsection (2), or in paragraph (3)(a) or (3)(b).

Part 5—Conditions of accreditation

15 Simplified outline of this Part

Paragraph 264(a) of the Act provides that an accreditation of a particular kind is subject to such conditions as are specified in the accreditation rules.

This Part provides for conditions that apply to all accreditations, and conditions that apply to particular kinds of accreditation.

16 Condition that applies to all accreditations

- (1) Each accreditation is subject to the condition set out in this section.
- (2) A person who holds a kind of accreditation must not be an insolvent under administration.

17 Conditions that apply to particular kinds of accreditation

- (1) Each:
 - (a) General Licensing Accreditation; and
 - (b) Specific Licensing Accreditation;is subject to the conditions set out in Schedule 1.
- (2) Each Specific Licensing Accreditation is subject to the condition set out in Schedule 2.

Part 6—Transitional provisions

18 Simplified outline of this Part

This instrument has been made as a consequence of changes made to the Act by the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020*.

This Part preserves actions taken by applicants for accreditation, and by the ACMA in relation to withdrawals of accreditation, before the commencement of those changes.

19 Definition for this Part

In this Part, **commencement day** means the day Schedule 5 to the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020* commenced.

20 Application for accreditation received before commencement day

- (1) If:
- (a) a person applied for accreditation of a particular kind in accordance with subsection 263(1) of the Act, as in force immediately before the commencement day; and
 - (b) that application was made before the commencement day; and
 - (c) the ACMA had not decided whether to give the person the accreditation before the commencement day;

this section applies in relation to the application.

- (2) If the application was for:
- (a) accreditation to issue frequency assignment certificates for the purposes of subsection 100(4A) of the Act, as in force immediately before the commencement day; or
 - (b) accreditation to issue certificates for the purposes of subsection 145(3) of the Act, as in force immediately before the commencement day; or
 - (c) both the accreditation referred to in paragraph (a) and the accreditation referred to in paragraph (b);

the application is taken to be an application for General Licensing Accreditation.

21 Actions in relation to withdrawal taken before commencement day

- (1) This item applies to an act performed or a thing done by the ACMA before the commencement day under section 11 or section 12 of the *Radiocommunications (Accreditation—Prescribed Certificates) Principles 2014*, as in force immediately before the commencement day.
- (2) If the act or thing substantially corresponds with an act to be performed or a thing to be done under Part 4 of this instrument, the ACMA is taken to have complied with any obligation to perform the act or do the thing under Part 4 of this instrument.

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

(subsection 17(1))

1 Definitions

In this Schedule:

accredited person means an accredited person who has either:

- (a) the General Licensing Accreditation; or
- (b) the Specific Licensing Accreditation.

certificate means:

- (a) a frequency assignment certificate; and
- (b) an interference impact certificate.

government body means:

- (a) the Commonwealth;
- (b) a State or Territory;
- (c) a body corporate established for a public purpose by or under a law of the Commonwealth, or a law of a State or Territory;
- (d) a body corporate:
 - (i) incorporated under a law of the Commonwealth, and in which the Commonwealth has a controlling interest; or
 - (ii) incorporated under a law of a State or Territory, and in which the State or Territory has a controlling interest.

government service means:

- (a) employment in a government body; or
- (b) service as a member of the Defence Force;

that includes the function of issuing certificates.

IIC Determination means the *Radiocommunications (Conditions of Interference Impact Certificates) Determination 2021*.

2 Keeping insurance policy

- (1) Subject to subclauses (2) and (3), an accredited person must be covered by an insurance policy that is current at all times during the period:
 - (a) commencing on the day the person first issues a certificate;
 - (b) ending on the earlier of the following days:
 - (i) the day the person ceases to be an accredited person;
 - (ii) the day after the fifth anniversary of the day the person last issued a certificate.
- (2) Subclause (1) does not apply in relation to an accredited person who issues a certificate in the course of government service.
- (3) For the purposes of subclause (1), the insurance policy must:
 - (a) be issued by a body corporate for which an authorisation under Part III of the *Insurance Act 1973* to carry on an insurance business is in force;
 - (b) indemnify the accredited person for any loss or damage up to \$2 million as a result of the person's negligence when issuing a certificate or otherwise acting as an accredited person.

3 Statements in certificate – insurance and government service

- (1) An accredited person who issues a certificate must state in the certificate whether or not the certificate is issued in the course of government service.
- (2) An accredited person who issues a certificate otherwise than in the course of government service must state in the certificate the reference number and expiry date of the insurance policy kept in accordance with subclause 2(1).

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

An accredited person who issues a frequency assignment certificate must state in the certificate that:

- (a) the operation of the device, as specified in the certificate, will satisfy the conditions that are required to be satisfied under the *Radiocommunications (Conditions of Frequency Assignment Certificates – Apparatus Licences) Determination 2021*;
- (b) the person believes, on reasonable grounds and at the time when the certificate is issued, that the device is a device in relation to which the ACMA would issue an apparatus licence.

5 Statements in certificate – false or misleading statements

An accredited person who issues a certificate must not include a statement in the certificate that is false or misleading.

Note: If including a statement in a certificate required to be included by another clause of this Schedule would result in the certificate including a false or misleading statement, then issuing the certificate would result in the accredited person contravening a condition of their accreditation.

6 Belief to be genuine and reasonable

If a condition that is required to be satisfied, under a determination made under section 266A of the Act, refers to the belief, satisfaction or opinion of an accredited person, the accredited person must not issue a certificate that states that the operation of a device will satisfy that condition unless:

- (a) the person honestly holds the belief or opinion, or is honestly satisfied of a matter; and
- (b) the person has reasonable grounds for holding the belief or opinion, or of being so satisfied; and
- (c) the person has complied with any requirements in relation to those reasonable grounds specified in the determination.

7 Record keeping requirements

- (1) If:
 - (a) an accredited person issues a frequency assignment certificate; and
 - (b) subparagraph 8(1)(e)(ii) of the *Radiocommunications (Conditions of Frequency Assignment Certificates – Apparatus Licences) Determination 2021* applies in relation to the certificate;

the person must, no later than 1 day after issuing the certificate, cause the following records to be made:

- (c) a record of the interference management criteria devised and used by the person in relation to the issue of the certificate; and
- (d) a record of the method used by the person to apply the criteria; and

- (e) a record of the rationale for the use of the criteria and the method.
- (2) If an accredited person issues an interference impact certificate in relation to a radiocommunications transmitter, the person must, no later than 1 day after issuing the certificate, cause to be made a record of:
- (a) which of subsection 7(2), (3) or (4) of the IIC Determination applies in relation to the issue of the certificate; and
 - (b) if subsection 7(2) of the IIC Determination applies in relation to the issue of the certificate – the results of any assessment of the level of interference caused, or likely to be caused, by the operation of the radiocommunications transmitter; and
 - (c) if subsection 7(3) of the IIC Determination applies in relation to the issue of the certificate – the methodology and assumptions used by the accredited person in an assessment of the use of guard space, and the technical parameters of the operation of the radiocommunications transmitter.
- (3) If:
- (a) an accredited person issues an interference impact certificate in relation to a radiocommunications transmitter, and
 - (b) subsection 7(4) of the IIC Determination applies in relation to the issue of the certificate;
- the accredited person must, before the person issues the certificate, obtain a copy of each consent mentioned in subsection 7(4) of the IIC Determination.
- (4) The accredited person must:
- (a) keep any records made in accordance with subclause (1) or (2) for a period of 5 years commencing on the day the record was made; and
 - (b) keep any records obtained in accordance with subclause (3) for a period of 5 years commencing on the day the record was obtained; and
 - (c) make the records available to the ACMA, or an inspector, upon request, within the time specified in the request.
- (5) In this clause, *guard space* has the meaning given by the IIC Determination.

Schedule 2—Conditions of Specific Licensing Accreditation

(subsection 17(2))

1 Accreditation limited to specified types of licence

A person who has the Specific Licensing Accreditation must not issue a frequency assignment certificate if:

- (a) the certificate relates to a transmitter licence or receiver licence; and
- (b) that licence is not the specified type of licence in relation to that accreditation.