

# EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Radiocommunications Act 1992*

## ***Radiocommunications (Conditions of Interference Impact Certificates) Determination 2021***

### **Authority**

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Conditions of Interference Impact Certificates) Determination 2021 (the instrument)* under subsection 266A of the *Radiocommunications Act 1992 (the Act)* and subsection 33(3) of the *Acts Interpretation Act 1901 (the AIA)*.

Subsection 266A of the Act provides that the ACMA may, by legislative instrument, determine the conditions that are to apply in relation to the issuing of a certificate under the Act.

Subsection 33(3) of the AIA relevantly provides that where an Act confers a power to make a legislative instrument, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

### **Purpose and operation of the instrument**

Schedule 5 to the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020 (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. The broad objective of the scheme was 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, which state that operation of a radiocommunications device on a proposed frequency would satisfy any conditions set out in a determination made 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 made 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 section 266(1) of the Act, specified the matters for which the ACMA may accredit persons.

The ACMA maintains a Register of Radiocommunications Licences, that includes details of devices that are operated under spectrum licences, as required by sections 143 and 144 of the Act. It is a condition of each spectrum licence that a radiocommunications transmitter must not be operated under the licence unless the requirements of the ACMA in relation to registration of the transmitter have been met (section 69 of the Act). Subsection 145(1) of the Act provides that the ACMA may refuse to

register a radiocommunications transmitter where its operation could cause an unacceptable level of interference to the operation of other radiocommunications devices under that or any other spectrum licence, or any other licence. Subsection 145(3) of the Act provides that, before agreeing to register a radiocommunications transmitter device, the ACMA may require an IIC, issued by an accredited person, to be provided, stating that the relevant device satisfies any conditions set out in a determination by the ACMA under section 266A of the Act for that purpose.

Prior to the instrument being made, the *Radiocommunications (subsection 145 (3) Certificates) Determination (the IIC Determination)*, made under section 266A of the Act, determined the conditions that were to apply in relation to a certificate issued under subsection 145(3) of the Act.

The Reform Act amends the Act so that there is a new subsection 266(1), which enabled the ACMA to make the *Radiocommunications Accreditation (General) Rules 2021 (the Accreditation Rules)*.

Section 266A of the Act, under which the instrument is made, is unchanged by the Reform Act. However, as the IIC Determination is due to automatically expire (sunset) on 1 April 2023, the ACMA has decided to remake the IIC Determination at the same time as new related instruments are being made. This also provides the opportunity to align the instrument with the new Accreditation Rules. There are no substantive differences between the IIC Determination and the instrument.

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 Rules;
- the Act;
- determinations made by the ACMA under subsection 145(4) of the Act; and
- legislative rules made by the Minister under section 313B of the Act.

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

In accordance with section 314A of the Act, each of the above Acts or instruments is incorporated as in force from time to time.

The instrument also incorporates the core conditions of spectrum licences issued under the Act, as those conditions are in force from time to time. Spectrum licences, including their conditions, are available, free of charge, from the Register of Radiocommunications Licences maintained by the ACMA under Part 3.5 of the Act on its website: [www.acma.gov.au](http://www.acma.gov.au).

### **Consultation**

Before the instrument was made, the ACMA was satisfied that consultation was 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 issues raised in submissions did not involve changes to be made to the instrument, but involved matters of operational practice for the ACMA in relation to the AP scheme.

No changes were made to the instrument as a result of consultation.

### **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 implementation 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 amends Part 5.4 of the Act, in relation to accreditation. It repeals or amends some provisions that empower the ACMA to make legislative instruments governing the accreditation of persons, and inserts new provisions giving the ACMA new powers.

The instrument is 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 by the ACMA.

The instrument specifies the conditions that operation of a radiocommunications transmitter under a spectrum licence must meet before an accredited person issues an IIC in relation to the transmitter. The instrument impacts accredited persons and potential and current licensees who require the services of an accredited person.

### ***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 (Conditions of Interference Impact Certificates) Determination 2021***

### **Section 1 Name**

This section provides for the instrument to be cited as the *Radiocommunications (Conditions of Interference Impact Certificates) Determination 2021*.

### **Section 2 Commencement**

This section provides for the instrument to commence at the later of the commencement of the *Radiocommunications Accreditation (General) Rules 2021*, 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](http://www.legislation.gov.au).

### **Section 3 Authority**

This section identifies the provision of the Act that authorises the making of the instrument, namely section 266A of the *Radiocommunications Act 1992 (the Act)*.

### **Section 4 Repeal of the *Radiocommunications (subsection 145 (3) Certificates) Determination 2012***

This section provides that the *Radiocommunications (subsection 145 (3) Certificates) Determination 2012* (F2012L01719) is repealed.

### **Section 5 Definitions**

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

### **Section 6 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.

### **Section 7 Condition to be satisfied – no unacceptable level of interference**

This section sets out a condition to be satisfied by operation of a radiocommunications transmitter, proposed to be operated under a spectrum licence, for the purposes of subsection 145(3) of the Act. An interference impact certificate issued by an accredited person under subsection 145(3) of the Act must state that the condition would be satisfied.

The condition is that a radiocommunications transmitter operating under a spectrum licence must not cause an unacceptable level of interference (according to the relevant determination made under subsection 145(4) of the Act) unless the accredited person is satisfied that the use of guard space sufficiently mitigates potential interference, or all people who may be affected by interference have consented in writing to the interference.