



Radiocommunications (Conditions of Frequency Assignment Certificates – Apparatus Licences) Determination 2021

The Australian Communications and Media Authority makes the following determination under section 266A of the *Radiocommunications Act 1992*.

Dated: 10 June 2021

Fiona Cameron
[signed]
Member

Creina Chapman
[signed]
Member/~~General Manager~~

Australian Communications and Media Authority

Part 1—Preliminary

1 Name

This is the *Radiocommunications (Conditions of Frequency Assignment Certificates – Apparatus Licences) Determination 2021*.

2 Commencement

This instrument commences on the later of the following:

- (a) the same time as the *Radiocommunications Accreditation (General) Rules 2021*;
- (b) the day after the day the instrument is registered on the Federal Register of Legislation.

Note: The Federal Register of Legislation may be accessed, free of charge, at www.legislation.gov.au.

3 Authority

This instrument is made under section 266A of the *Radiocommunications Act 1992*.

4 Repeal of the *Radiocommunications (Frequency Assignment Certificates) Determination 2014*

The *Radiocommunications (Frequency Assignment Certificates) Determination 2014* (F2014L01193) is repealed.

5 Definitions

In this instrument:

accredited person means a person who holds a kind of accreditation specified in the legislative rules made for the purposes of subsection 100(4A) of the Act.

Act means the *Radiocommunications Act 1992*.

frequency assignment certificate means a certificate issued under subsection 100(4A) of the Act.

frequency channel has the same meaning as in paragraph 100(4A)(a) of the Act.

procedural document means a document that:

- (a) is published on the ACMA's website; and
- (b) sets out policies or procedures for an accredited person to follow or have regard to; and
- (c) is expressed to relate to the issue of frequency assignment certificates, or to the issue of frequency assignment certificates in relation to apparatus licences or a class of apparatus licences.

Note 1: The procedural documents are available, free of charge, from the ACMA's website: <http://www.acma.gov.au>.

Note 2: A number of other expressions used in this instrument are defined in the Act, including the following:

- (a) accreditation;
- (b) ACMA;
- (c) apparatus licence;
- (d) device;
- (e) frequency band plan;

- (f) legislative rules;
- (g) re-allocation period;
- (h) spectrum;
- (i) spectrum plan;
- (j) spectrum re-allocation declaration.

Note 3: 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*.

6 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 in existence 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—Conditions

7 Application of Part

Each section in this Part sets out a condition to be satisfied by the operation of a device under an apparatus licence, for the purposes of subsection 100(4A) of the Act.

8 Consistency with Act, instruments and procedural documentation

- (1) The operation of a device under the apparatus licence must be consistent with:
 - (a) the Act;
 - (b) subject to subsection (2), the spectrum plan;
 - (c) subject to subsection (2), any applicable frequency band plan;
 - (d) subject to subsection (2), any applicable condition specified in a determination made under subsection 110A(1) or (2) of the Act;
 - (e) except to the extent any of the following is inconsistent with the Act or any legislative instrument made under the Act:
 - (i) any procedural document, specified in the frequency assignment certificate, that applies to the frequency or frequencies, or the frequency channel, on which the device would operate;
 - (ii) if subparagraph (i) does not apply – the interference management criteria:
 - (A) devised and used by the accredited person; and
 - (B) recorded by the accredited person in accordance with the *Radiocommunications Accreditation (General) Rules 2021*.
- (2) The operation of a device under the apparatus licence may be inconsistent with the spectrum plan, an applicable frequency band plan, or an applicable condition specified in a determination made under subsection 110A(1) or (2) of the Act, if:
 - (a) the apparatus licence is of a kind mentioned in subsection 104(1) of the Act; and
 - (b) the accredited person has consulted with the ACMA before issuing a frequency assignment certificate in relation to the licence.

9 Belief that ACMA would issue the licence

The operation of a device under the apparatus licence must be such that the accredited person believes, on reasonable grounds, that the ACMA would issue an apparatus licence authorising operation of the device:

- (a) on a frequency or frequencies, or on a frequency channel;
 - (b) at a constancy;
 - (c) at a location;
 - (d) subject to the technical conditions;
- specified in the frequency assignment certificate issued by the accredited person.

10 Special cases – where spectrum licences planned or issued

- (1) If the apparatus licence is of a kind mentioned in subsection 105(1) or (2) of the Act, the operation of a device under the apparatus licence must be such that the accredited person believes, on reasonable grounds, that the ACMA would issue an apparatus licence authorising operation of the device in accordance with subsection 105(3) of the Act.

- (2) For the purposes of subsection (1), in order to believe, on reasonable grounds, that the ACMA would issue an apparatus licence authorising operation of the device in accordance with subsection 105(3) of the Act, the accredited person must have consulted with the ACMA before forming the belief.
- (3) If:
- (a) a spectrum re-allocation declaration states that a part or parts of the spectrum should be re-allocated, with respect to one or more specified areas; and
 - (b) the declaration specifies a re-allocation period; and
 - (c) the apparatus licence, if issued, would authorise operation of a device in one or more of those parts of the spectrum, in one or more of those areas; and
 - (d) the apparatus licence, if issued, would reasonably be likely to be issued during the re-allocation period;
- the operation of a device under the apparatus licence must be such that the accredited person believes, on reasonable grounds, that the ACMA would issue an apparatus licence authorising operation of the device in accordance with subsection 153P(2) of the Act.
- (4) For the purposes of subsection (3), in order to believe, on reasonable grounds, that the ACMA would issue an apparatus licence authorising operation of the device in accordance with subsection 153P(2) of the Act, the accredited person must have consulted with the ACMA before forming the belief.