

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications Accreditation (Amateur Radio Examinations) Rules 2023

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications Accreditation (Amateur Radio Examinations) Rules 2023* (**the instrument**) under subsection 266(1) of the *Radiocommunications Act 1992* (**the Act**).

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 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;
- the conditions relating to accreditation

Purpose and operation of the instrument

The instrument's purpose is to allow the ACMA to accredit suitably qualified amateur radio operators, so that they can conduct and assess theoretical, regulatory and practical amateur radio examinations.

Background

The amateur use of radiocommunications transmitters facilitates hobby radiocommunications and technical experimentation, and is a longstanding use of radiofrequency spectrum.

To date, the amateur use of radiocommunications transmitters has been authorised under apparatus licences issued under the Act (**amateur licences**). Amateur licences are subject to conditions that are imposed by the Act or by legislative instruments made under subsection 110A(2) of the Act, and to conditions included in individual licences.

A person must not operate a radiocommunications transmitter under an amateur licence unless the person has been issued a 'certificate of proficiency', after the person has successfully completed an approved examination.

In 2019, the ACMA entered into a Deed of Agreement (**the Deed**) with the University of Tasmania through its institute, the Australian Maritime College (**the AMC**). In accordance with the Act, the ACMA authorised the AMC to conduct examinations for amateur licences and issue certificates of proficiency. To conduct examinations, the AMC utilises a network of volunteer assessors (**AMC assessors**).

Class licensing of amateur use of transmitters

The ACMA has made the *Radiocommunications (Amateur Stations) Class Licence 2023* (**Amateur Stations Class Licence**). The Amateur Stations Class Licence commences on 19 February 2024.

Consistently with the International Telecommunication Union’s Radio Regulations, a person is not authorised to operate a radiocommunications device under the Amateur Stations Class Licence unless the person is appropriately qualified in the operation of radiocommunications devices.

Accordingly, the ACMA has introduced a new qualification framework for the Amateur Stations Class Licence. As part of the qualification framework, an assessor accreditation scheme has been established to enable the ACMA to accredit a person to conduct and assess theoretical, regulatory and practical examinations for amateur use of radiocommunications devices (**accredited assessor**). Part 5.4 of the Act sets out the main powers of the ACMA to give, and withdraw, accreditation, and those decisions are subject to reconsideration and review under Part 5.6 of the Act. The instrument establishes some key components for that scheme, in relation to those powers.

The instrument also allows the ACMA to give accreditation to an AMC assessor, without the assessor needing to apply. All provisions of the instrument apart from section 10 will commence on the day after the day the instrument is registered, to ensure that the ACMA can accredit AMC assessors before the commencement of the Amateur Stations Class Licence. Other persons interested in becoming an accredited assessor may apply for accreditation from 19 February 2024.

The instrument provides for the kinds of accreditation that may be given, the qualifications and other requirements of accreditation, the matters to consider in deciding whether to accredit persons or withdraw accreditation, and the conditions that apply to accreditation.

There is no penalty imposed for a failure to comply with the instrument. However, if a person does not comply with a condition of their accreditation, or if their accreditation is no longer in accordance with the instrument, the ACMA may withdraw the person’s accreditation (section 264A of the Act).

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**). The instrument is subject to the sunset provisions of the LA.

Documents incorporated by reference

Section 314A of the Act provides that an instrument under the Act may make provision in relation to a matter by applying, adopting or incorporating (with or without modifications) matters contained in any Act or any other instrument or writing as in force or existing at a particular time or from time to time.

The instrument incorporates the following Acts and legislative instruments (including by the adoption of definitions), as in force from time to time, by reference:

- the Act;
- the Amateur Stations Class Licence;
- the *Australian Communications and Media Authority Act 2005*;
- the *Australian Crime Commission Act 2002*;
- the *National Vocational Education and Training Regulator Act 2011*;
- the *Privacy Act 1988*;
- the *Tertiary Education Quality and Standards Agency Act 2011*.

These Acts are available free of charge from the Federal Register of Legislation (www.legislation.gov.au).

The instrument incorporates the following documents by reference:

- the Accredited Assessor Guidelines – Amateur Radio Examinations, published by the ACMA, as existing from time to time (**Assessor Guidelines**);
- any other guidelines, policies or procedures expressed to apply to an accredited person or an examination, published by the ACMA, as existing from time to time (**other guidelines**);
- the list of persons who were authorised by the AMC to conduct, on its behalf, approved examinations in relation to certificates of proficiency, as existing on the day section 4 of the instrument commenced (**List of Authorised Assessors**).

The Assessor Guidelines are available free of charge from the ACMA’s website (www.acma.gov.au). If other guidelines are made, they must be published on the ACMA’s website, and given to each accredited assessor, free of charge.

A redacted copy of the List of Authorised Assessors is available free of charge from the AMC’s website (www.amc.edu.au) and the ACMA’s website (www.acma.gov.au). The redacted copy does not include the personal information of any person who did not give their consent to the publication of that information. The ACMA may make a complete copy of the List of Authorised Assessors available for inspection at one of its offices, on prior appointment.

The following Acts and legislative instruments are referred to in the instrument, but are not incorporated by reference:

- the *Acts Interpretation Act 1901*;
- the *Criminal Code*;
- the LA;
- the *Radiocommunications (Amateur Stations) Amendment Instrument 2023 (No.1)*;
- the *Radiocommunications (Qualified Operators) Determination 2016*;
- the *Registration to Work with Vulnerable People Act 2013* (Tas);
- the *Worker Screening Act 2020* (Vic).

The Commonwealth Acts and legislative instruments listed above are available free of charge from the Federal Register of Legislation (www.legislation.gov.au).

The *Registration to Work with Vulnerable People Act 2013* (Tas) is available free of charge from the Tasmanian Legislation website (www.legislation.tas.gov.au).

The *Worker Screening Act 2020* (Vic) is available free of charge from the Victorian Legislation website (www.legislation.vic.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.

Between 29 August and 26 September 2023, the ACMA consulted on a draft of the instrument, and other material, to seek feedback on the new amateur qualification framework and assessor accreditation scheme.

The ACMA received 28 submissions in response to the consultation process. Some submitters expressed general satisfaction or agreement with the draft instrument. Others sought clarification or provided suggestions on certain aspects of the instrument, such as the qualifications considered by the ACMA when deciding to accredit a person and the procedures for withdrawing accreditation.

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The instrument provides that only amateur operators with advanced qualifications are permitted to become accredited assessors. A submitter suggested allowing amateur operators with standard qualifications to be able to become an accredited assessor for foundation level examinations. The submitter considered that this would provide opportunities for a wider range of amateur operators to be accredited assessors and would reduce the workload for accredited assessors with advanced qualifications. Another submitter recommended removing primary and secondary qualified teaching qualifications, as they considered such qualifications did not offer adequate knowledge and experience to conduct specialist assessments. The ACMA considers that maintaining the existing arrangements for assessor qualifications will ensure that consistency is maintained for amateur operators. In addition, continuing to require assessors to be advanced amateur operators allows for simpler administration whereby any candidate at any level can contact any accredited assessor to undertake any level of examination.

Some submitters also raised concerns about the condition prohibiting the conduct of an ‘in person’ amateur radio examination in a private residence, due to concerns that other venues may not have adequate public liability cover. The ACMA notes that there is no expectation for accredited assessors to take up public liability insurance policies or hire a venue for the purpose of conducting assessments, and suggests accredited assessors undertake examinations in venues with adequate public liability cover, such as local council offices or public libraries.

A submitter raised concerns that an accredited assessor may have their accreditation withdrawn if an examination is not marked correctly on one occasion and considered this to be unfair, particularly if there were mistakes in the examination questions. The Assessor Guidelines state that the ACMA will only consider withdrawing accreditation if an accredited assessor has incorrectly assessed an examination on more than one occasion. Additionally, a person whose accreditation has been withdrawn may seek a review under section 285 of the Act.

The ACMA considered all relevant issues and concerns raised, but did not consider any changes were required to the instrument.

Regulatory impact assessment

The ACMA consulted with the Office of Impact Analysis on the requirement for a Regulation Impact Statement (**RIS**). The OIA advised that the instrument does not warrant the preparation of a RIS because the proposed instrument is intended to substitute for the Deed and is unlikely to have more than a minor impact. Therefore, no further regulatory impact analysis is required – OIA reference number 23-05185.

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 ACMA has made the instrument under subsection 266(1) of the Act. The instrument enables the ACMA to accredit suitably qualified persons to conduct and assess the theoretical, regulatory and practical examinations necessary to allow a person to operate a radiocommunications device under the Amateur Stations Class Licence.

The instrument specifies:

- the kinds of accreditation available,
- the qualifications and requirements for each kind of accreditation,
- the accreditation process,
- the conditions that apply to each kind of accreditation, and
- the procedures for withdrawing accreditation.

The instrument impacts AMC assessors, those interested in becoming an accredited person, and those persons interested in operating radiocommunications devices under the Amateur Stations Class Licence. It sets up the arrangements for the delivery of examinations in a similar manner as under the Deed.

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 (Amateur Radio Examinations) Rules 2023*

Part 1–Preliminary

Section 1 Name

This section provides for the instrument to be cited as the *Radiocommunications Accreditation (Amateur Radio Examinations) Rules 2023*.

Section 2 Commencement

This section provides that all provisions of the instrument bar section 10 will commence at the start of the day after the day it is registered on the Federal Register of Legislation. Section 10 of the instrument, which allows people to apply for accreditation, will commence on 19 February 2024. This will allow the ACMA to give accreditation to AMC assessors, who do not need to apply for accreditation, before the commencement of the Amateur Stations Class Licence. Any other person who wishes to become accredited can apply after the commencement of the Amateur Stations Class Licence.

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 Act.

Section 4 Definitions

This section defines several key terms used in the instrument. Other expressions used in the instrument are defined in the Act.

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 Assessor Accreditation and Specialist Assessor Accreditation.

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Section 8 Qualifications and requirements for kinds of accreditation

Section 8 sets out the qualifications and requirements that a person must meet to become an accredited person. Before the ACMA gives a person either kind of accreditation, the person must:

- hold the equivalent of a ‘working with children and vulnerable people’ check (**WWCVPCC**) in the State or Territory where the person intends to conduct examinations, unless subsection 8(6) applies to the person (see below); and
- have a certificate of proficiency issued under the Act in relation to advanced amateur use of radiocommunications transmitters or an ACMA recognition certificate (Advanced) given under the Amateur Stations Class Licence; or
- have qualifications equivalent to such a qualification; or
- be an AMC assessor.

Before the ACMA gives a person a Specialist Assessor Accreditation, the person must also have an Australian qualification in education, teaching or the assessment of vocation-based training (unless the person is an AMC assessor).

Subsection 8(6) provides that the requirement to hold a WWCVPCC does not apply to a person in relation to a State or Territory if:

- the ACMA is satisfied that either the person does not require a WWCVPCC in the State or Territory to work with children or vulnerable people, or both, or that the person was not eligible for a WWCVPCC for reasons other than the person’s criminal record, the risk posed to children or vulnerable people by the person or the protection of children or vulnerable people; and
- the person holds a nationally coordinated criminal history check that was given by the Australian Federal Police or the police force of a State or Territory less than one month before the date the check was given to the person, or an application for accreditation is made by the person.

The purpose of subsection 8(6) is to provide for circumstances where a person who wishes to become an accredited person is not able to obtain a WWCVPCC in the State or Territory in which they intend to conduct or assess examinations, for reasons other than those associated with the person’s suitability to work with children or vulnerable people – for example, a person may not be able to obtain a WWCVPCC if the conduct or assessment of amateur examinations is not work of a kind covered by the relevant State or Territory legislation.

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 to give General Assessor Accreditation and Specialist Assessor Accreditation to a person.

Section 10 Application

This section provides that a person may apply for a General Assessor Accreditation or Specialist Assessor Accreditation in a form and by a method approved by the ACMA, if any apply.

Subsection 10(3) provides that the ACMA may approve forms for both kinds of accreditation. It also provides that a form may require an applicant to make a statement that the applicant agrees to comply

with guidelines, policies, or procedures that the ACMA publishes in relation to the conduct or assessment of examinations. The note to section 10 states that it is a serious offence under the *Criminal Code* to give false or misleading information.

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;
- the person's experience in conducting an approved examination or other similar examinations;
- the person's qualifications;
- whether the ACMA has withdrawn accreditation from the person in the 5 years prior to their application;
- whether the person was an AMC Assessor on the day section 4 commenced (**commencement day**);
- whether the person had been removed from the List of Authorised Assessors before commencement day if the person was not an AMC Assessor on the commencement day;
- whether the person holds a current WCVPPC;
- if the person holds a nationally coordinated criminal history check – the contents of that check; and
- any other matter the ACMA considers relevant.

Section 12 Decision on accreditation

The section provides that the ACMA must notify a person in writing to whom it has refused to give a General Assessor Accreditation or Specialist Assessor Accreditation, and to give reasons for refusal. It also provides that the ACMA may give General Assessor Accreditation or Specialist Assessor Accreditation if the person was an AMC Assessor, even if the person did not make an application under section 10.

Part 4—Procedures for withdrawing accreditation

Section 13 Simplified outline of this Part

Section 13 provides an outline of Part 4. Part 4 includes provisions about the procedures for the ACMA to withdraw a person's accreditation.

Section 14 Withdrawing accreditation

Under section 264A of the Act, the ACMA may withdraw a person's accreditation if it is satisfied that the person's accreditation is no longer in accordance with the instrument, or if it is satisfied that the person has contravened a condition of their 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 conducting and assessing examinations 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**), and the relevant condition relates to the conduct of examinations, the ACMA must have regard to the

person's compliance with guidelines, policies or procedures published by the ACMA that were relevant to the conduct of examinations, in the 2 years prior to the person's accreditation being withdrawn.

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

Section 15 provides an outline of Part 5. Part 5 includes the conditions that apply to both kinds of accreditation.

Section 16 Conditions that apply to particular kinds of accreditation

Subsection 16(1) provides that both kinds of accreditation are subject to the conditions in Schedule 1 to the instrument. Subsection 16(2) provides that a General Assessor Accreditation is also subject to the condition in Schedule 2 to the instrument.

Schedule 1—Conditions of General Assessor Accreditation and Specialist Assessor Accreditation

Clause 1 Definitions

This clause defines the meaning of the expression 'personal information' by reference to the *Privacy Act 1988 (Privacy Act)*.

Clause 2 Financial gain or reward, fees and charges

Subclause 2(1) prohibits an accredited person from using their accreditation to obtain a financial benefit. Subclause 2(2) prohibits an accredited person from charging fees or obtaining compensation for conducting or assessing an examination.

Clause 3 Working with children or vulnerable people

Subclause 3(1) requires an accredited person to have a current WWCVPCC at all times, unless subclause (3) applies to the person. The WWCVPCC must be current in each State or Territory where the person conducts or assesses, or intends to conduct or assess, amateur radio examinations.

Subclause 3(2) requires an accredited person to give the ACMA a copy of their WWCVPCC within 5 business days of a written request.

Subclause 3(3) provides that subclause 3(1) does not apply to an accredited person in relation to a State or Territory if:

- the ACMA is satisfied that either the person does not require a WWCVPCC in the State or Territory to work with children or vulnerable people, or both, or that the person was not eligible for a WWCVPCC for reasons other than the person's criminal record, the risk posed to children or vulnerable people by the person or the protection of children or vulnerable people; and
- the person has given the ACMA a new nationally coordinated criminal history check at the times specified in the Assessor Guidelines, and if the ACMA gives the person a written notice under subclause 3(5), at the time specified in the notice.

If subclause 3(1) does not apply to an accredited person, the person must not be convicted of an offence under a law of the Commonwealth, a State or a Territory where:

- the offence involves harm or the risk of harm of any kind (including physical, mental, emotional, sexual or financial harm) to a child or vulnerable person; or
- a reasonable person would, based on the nature of the offence, consider that the accredited person poses a risk to the health or welfare of a child or vulnerable person. An example of such an offence may be assault against a person other than a child or a vulnerable person.

Subclauses 3(6) and (7) provide that the ACMA may set out in the Assessor Guidelines when it is satisfied of a matter specified in paragraph (3)(a) or matters to have regard to in deciding whether a reasonable person would consider that, based on the nature of an offence, an accredited person poses a risk to the health or welfare of a child or a vulnerable person.

Clause 4 Conduct or assessment of examinations – Assessor Guidelines, policies and instructions

Subclause 4(1) requires an accredited person to conduct an examination in accordance with the ACMA’s Assessor Guidelines and other guidelines, and any instructions given by the ACMA to the person. Subclause 4(2) provides that where other guidelines apply to an accredited person, the ACMA must give that person a copy of the other guideline before its publication. However, subclause 4(3) provides that a failure by the ACMA to do so does not affect the requirement in subclause 4(1).

Subclause 4(4) provides that the ACMA may give an accredited person written instructions about the conduct of examinations. Subclause 4(5) provides that the decision to give a written instruction is a reviewable decision under section 285 of the Act (see paragraph 285(waa)).

Clause 5 Conduct of examinations – in person examinations

This clause prohibits an accredited person from conducting an examination in a private residence (for example, in the accredited person’s home).

Clause 6 Collection, use and disclosure of personal information

The collection, use and disclosure of personal information by accredited persons is necessary to ensure that examinations can properly be undertaken, and ensure that the results of examinations can be made known to the ACMA.

An accredited person when acting in their capacity as an accredited person, may not be subject to the Privacy Act (on the basis that their acts or practices may be exempt under section 7B of the Act, which exempts acts done, or practices engaged in, by an individual if done or engaged in other than in the course of a business carried on by the individual) and the requirements of the Australian Privacy Principles. This clause is intended to protect the personal information of those persons who take an examination conducted by an accredited person. It imposes some requirements that mirror the Australian Privacy Principles to ensure that accredited persons deal with personal information in a manner consistent with the Privacy Act. In other contexts where the Privacy Act does not apply (in particular, in relation to ‘small business operators’), the Office of the Australian Information Commissioner has recommended that, while such persons may not be required to comply with the Privacy Act, they should, as a matter of best practice, protect any personal information they hold, and should consider whether to opt-in to the Privacy Act, given the benefits that may result. More information can be obtained from the website of the Office of the Australian Information Commissioner at www.oaic.gov.au.

Subclause 6(1) specifies the personal information that an accredited person must collect from a person (**the attendee**) who is about to sit an examination. Subclause 6(2) requires the accredited person to explain to the attendee:

- the purpose for which the information is being collected and how it will be used;
- that the information will only be disclosed to the ACMA, or otherwise, if authorised or required by law;
- that the ACMA may use or disclose the information in accordance with, and for the purposes of, the Act, the *Australian Communications and Media Authority Act 2005*, and the Privacy Act, and otherwise as required or authorised by law.

Subclause 6(3) prohibits an accredited person from using the information collected for a purpose other than in connection with the conduct of an examination, unless the use or disclosure is required by law.

Subclause 6(4) compels an accredited person to take reasonable steps to keep personal information secure and protected while in their possession.

Clause 7 Record keeping requirements

Subclause 7(1) specifies the records that an accredited person must keep for each examination the accredited person conducts. Subclause 7(2) provides that the accredited person must give the ACMA the records so kept within a specified timeframe. The records must be given by a method approved by the ACMA.

Subclause 7(5) provides that the ACMA may give a notice to an accredited person requiring the accredited person to give records to the ACMA or to destroy them. Under subclause 7(6), the accredited person must comply with the notice.

Schedule 2—Conditions of General Assessor Accreditation

Clause 1 Definition

This clause explains the meaning of the expression ‘special examination’ when used in the Schedule.

Clause 2 Assessor not to conduct special examinations

Clause 2 prohibits a person holding a General Assessor Accreditation from conducting a special examination, which is an examination where the person being examined needs accommodations to be made in order to be examined.