



Radiocommunications Accreditation (Amateur Radio Examinations) Rules 2023

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

Dated: 7 December 2023

Adam Suckling
[signed]
Member

Brendan Byrne
[signed]
~~Member~~/General Manager

Australian Communications and Media Authority

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Part 1—Preliminary

1 Name

These are the *Radiocommunications Accreditation (Amateur Radio Examinations) Rules 2023*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 9, sections 11 to 16, Schedules 1 and 2, and anything in this instrument not elsewhere covered by this table	The start of the day after the day the instrument is registered	
2. Section 10	19 February 2024	19 February 2024

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

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

4 Definitions

In this instrument:

accredited person means a person who has either:

- (a) a General Assessor Accreditation; or
- (b) a Specialist Assessor Accreditation.

ACMA recognition certificate (Advanced) has the same meaning as in the Amateur Class Licence.

Act means the *Radiocommunications Act 1992*.

Amateur Class Licence means the *Radiocommunications (Amateur Stations) Class Licence 2023*.

Note: The *Radiocommunications (Amateur Stations) Class Licence 2023* may be accessed, free of charge, on the Federal Register of Legislation at www.legislation.gov.au.

amateur radio examination means an examination relating to the operation of radiocommunications devices under an amateur licence, or under the Amateur Class Licence.

Amateur Radio Operator's Certificate of Proficiency (Advanced) means a certificate of proficiency titled 'Amateur Radio Operator's Certificate of Proficiency (Advanced)'.

Note: No such certificates of proficiency can be issued after the commencement of the *Radiocommunications (Amateur Stations) Amendment Instrument 2023 (No. 1)*, which amends the *Radiocommunications (Qualified Operators) Determination 2016*. Both of these instruments are registered on the Federal Register of Legislation.

approved examination has the same meaning as in subsection 122(2) of the Act.

Assessor Guidelines means the *Accredited Assessor Guidelines - Amateur Radio Examinations*, published by the ACMA.

Note: The Assessor Guidelines are available, free of charge, on the ACMA's website, www.acma.gov.au.

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*.

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

List of Authorised Assessors means the list of persons who were authorised by the University of Tasmania, through its institute, the Australian Maritime College, to act for the University of Tasmania in conducting approved examinations, as existing on the date this section commenced.

Note: Part of the list (comprising those persons who consented to the publication of personal information) can be accessed, free of charge, on the Australian Maritime College's website at www.amc.edu.au or on the ACMA's website at: www.acma.gov.au. The full list can be viewed, free of charge, on prior appointment at any of the ACMA's offices.

nationally coordinated criminal history check means:

- (a) the criminal history checking process of that name undertaken by the Australian Crime Commission, the Australian Federal Police and the police forces of the States and Territories; or
- (b) any other equivalent checking process, however known, that is provided as a part of the function of the Australian Crime Commission specified in subparagraph 7A(fa)(iv) of the *Australian Crime Commission Act 2002*.

Note: The Australian Crime Commission is also known as the Australian Criminal Intelligence Commission. For more information, see its website at www.acic.gov.au.

Specialist Assessor Accreditation means the kind of accreditation specified in paragraph 7(b).

WWCVPPC (short for Working with Children or Vulnerable People Check Clearance) means a clearance or authorisation (however described), issued by or on behalf of a State or Territory, that a person who works, or seeks to work, with children, vulnerable people, or both, is required to obtain under a law of the State or Territory.

Example 1: An NDIS check or WWC check under the *Worker Screening Act 2020* (Vic).

Example 2: Registration under the *Registration to Work with Vulnerable People Act 2013* (Tas).

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

- (a) ACMA;
- (b) accreditation rules;
- (c) certificate of proficiency.

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 two kinds of accreditation, for the purposes of the Act, and the qualifications and other requirements required before a person can be given one of those kinds of accreditation.

7 Kinds of accreditation

Each of the following is a kind of accreditation:

- (a) General Assessor Accreditation;
- (b) Specialist Assessor Accreditation.

8 Qualifications and requirements for kinds of accreditation

Qualifications and requirements for General Assessor Accreditation

- (1) Subject to subsection (6), for a person to be given the General Assessor Accreditation, the person must hold a current WWCVPCC in the State or Territory where the person intends to conduct or assess amateur radio examinations, at the time the accreditation is given.
- (2) For a person to be given the General Assessor Accreditation, the person must:
 - (a) have one of the following qualifications:
 - (i) an Amateur Radio Operator's Certificate of Proficiency (Advanced); or
 - (ii) an ACMA recognition certificate (Advanced); or
 - (b) have qualifications the ACMA is satisfied are equivalent to a qualification in subparagraphs (a)(i) or (ii); or
 - (c) be a person named on the List of Authorised Assessors.

Note: Persons who have been authorised by the University of Tasmania, through its institute, the Australian Maritime College, to conduct approved examinations and who were on the List of Authorised Assessors on the date section 4 commenced may be given a kind of accreditation specified in this instrument.

Qualifications and requirements for Specialist Assessor Accreditation

- (3) Subject to subsection (6), for a person to be given the Specialist Assessor Accreditation, the person must hold a current WWCVPCC in the State or Territory where the person intends to conduct or assess amateur radio examinations, at the time the accreditation is given.
- (4) For a person to be given the Specialist Assessor Accreditation, the person must:
 - (a) have the qualifications specified in subsection (5); or
 - (b) be a person named on the List of Authorised Assessors.

Note: Persons who have been authorised by the University of Tasmania, through its institute, the Australian Maritime College, to conduct approved examinations and who were on the List of Authorised Assessors on the date section 4 commenced may be given a kind of accreditation specified in this instrument.

- (5) For paragraph (4)(a), the qualifications are:
- (a) a qualification granted by an Australian education organisation in:
 - (i) education or teaching; or
 - (ii) the assessment of vocation-based training; and
 - (b) any one of the following:
 - (i) an Amateur Radio Operator's Certificate of Proficiency (Advanced); or
 - (ii) an ACMA recognition certificate (Advanced); or
 - (iii) qualifications that the ACMA is satisfied are equivalent to a qualification in subparagraphs (b)(i) or (ii).

Qualifications and requirements – where WWCVPCC not available in particular circumstances

- (6) Subsections (1) and (3) do not apply to a person in relation to a State or Territory if both:
- (a) the ACMA is satisfied that either:
 - (i) there is no law of the State or Territory that would prevent the person from working with children, vulnerable people, or both, without a WWCVPCC; or
 - (ii) the person was not eligible to apply for a WWCVPCC in the State or Territory, for a reason other than a reason based on:
 - (A) the person's criminal record; or
 - (B) the risk posed by the person to children or vulnerable people; or
 - (C) the protection of children or vulnerable people; and
 - (b) the person has given the ACMA a nationally coordinated criminal history check that:
 - (i) is dated less than 1 month before:
 - (A) if the person applied for accreditation – the date the application was made; or
 - (B) otherwise – the date the person gave the ACMA the check; and
 - (ii) was given to the person by the Australian Federal Police, or the police force of a State or Territory.

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, in relation to the General Assessor Accreditation and the Specialist Assessor Accreditation.

10 Application

- (1) A person may apply for a General Assessor Accreditation or Specialist Assessor Accreditation in accordance with this section.

Note: A person may apply for both kinds of accreditation.

- (2) An application for accreditation under subsection (1) must be:
- (a) made in the form approved by the ACMA (if any); and
 - (b) made by the method approved by the ACMA (if any).
- (3) For the purposes of paragraph (2)(a), the ACMA may:
- (a) approve a form for each kind of accreditation;
 - (b) approve a form that requires the applicant to make a statement that it agrees to comply with the Assessor Guidelines, or any other guidelines, policies or procedures published by the ACMA that relate to the conduct or assessment of amateur radio examinations.

Note: Giving false or misleading information is a serious offence under the *Criminal Code*.

- (4) The ACMA may approve one or more forms for the purposes of paragraph (2)(b).

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) the person's experience in conducting an approved examination or other examinations of a similar kind;
 - (c) the person's qualifications;
 - (d) whether, in the 5 year period ending on the day before the person applied for accreditation, the ACMA had withdrawn accreditation from the person;
 - (e) whether the person was on the List of Authorised Assessors on the day section 4 commenced (*commencement day*);
 - (f) if the person was not on the List of Authorised Assessors on the commencement day – whether the person had been removed from that List before the commencement day;
 - (g) whether the person holds a current WWCVPCC;
 - (h) if the person has given the ACMA a nationally coordinated criminal history check – the contents of that check; and

- (i) any other matter the ACMA considers relevant.
- (2) The kinds of accreditation are:
 - (a) General Assessor Accreditation;
 - (b) Specialist Assessor Accreditation.

12 Decision on accreditation

- (1) If, after receiving an application from a person under section 10, the ACMA refuses to give a person a General Assessor Accreditation or Specialist Assessor Accreditation, the ACMA must, in writing:
 - (a) notify the person; and
 - (b) give the person the reasons for the refusal.
- (2) The ACMA may give a person a General Assessor Accreditation or Specialist Assessor Accreditation if the person was on the List of Authorised Assessors, whether or not the person made an application under section 10.

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, in relation to the General Assessor Accreditation and the Specialist Assessor Accreditation.

14 Withdrawing accreditation

- (1) This section applies if any of the following kinds of accreditation given to a person is in force:
 - (a) General Assessor Accreditation;
 - (b) Specialist Assessor 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 whether, in the 2 year period ending on the day before the ACMA withdraws the accreditation, the person has:
 - (a) not conducted or assessed an amateur radio examination; or
 - (b) on more than one occasion, incorrectly assessed a person who undertook an amateur radio examination.

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**), and the relevant condition relates to the conduct of amateur radio examinations, the ACMA must have regard to whether, in the 2 year period ending on the day before the ACMA withdraws the accreditation, the person has failed to comply, or act in accordance with, the Assessor Guidelines, or any other guidelines, policies or procedures published by the ACMA on its website that were relevant to the conduct of examinations.

Note: 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 that the ACMA considers relevant, including any act or omission of an accredited person that occurred before the start of the period mentioned in subsections (2) or (3).

Example: The ACMA may have regard to the contents of a nationally coordinated criminal history check for the person.

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 the General Assessor Accreditation and the Specialist Assessor Accreditation.

16 Conditions that apply to particular kinds of accreditation

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

Note: A person's accreditation may be subject to additional conditions, in accordance with paragraph 264(b) of the Act.

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

(subsection 16(1))

1 Definitions

In this Schedule, *personal information* has the same meaning as in the *Privacy Act 1988*.

2 Financial gain or reward, fees and charges

- (1) An accredited person must not use their accreditation to receive or obtain any financial gain or reward, including in relation to the conduct or assessment of an amateur radio examination.
- (2) An accredited person must not, in relation to a person who wishes to undertake an amateur radio examination, charge any fees or request any compensation for, or associated with, the conduct or assessment of the examination, including for:
 - (a) registering to attend the examination (if required);
 - (b) attempting or completing the examination;
 - (c) marking examination papers; or
 - (d) notifying the person of their results.

3 Working with children or vulnerable people

- (1) Subject to subclause (3), an accredited person must, at all times:
 - (a) hold a current WWCVPCC in each State or Territory where the person conducts or assesses, or intends to conduct or assess, amateur radio examinations; and
 - (b) comply with the requirements of each WWCVPCC held by the person, and the requirements of the State or Territory legislation under which the person holds a WWCVPCC.

Example 1: An accredited person would need to obtain an NDIS check or WWC check under the *Worker Screening Act 2020* (Vic) before conducting an amateur radio examination in Victoria.

Example 2: An accredited person would need to obtain registration under the *Registration to Work with Vulnerable People Act 2013* (Tas) before conducting an amateur radio examination in Tasmania.

- (2) If the ACMA requests, in writing, a copy of a WWCVPCC held by an accredited person, the person must give the ACMA a copy of the document within 5 business days of the request.
- (3) Subclause (1) does not apply to an accredited person in relation to a State or Territory if both:
 - (a) the ACMA is satisfied that either:
 - (i) there is no law of the State or Territory that would prevent the person from working with children, vulnerable people, or both, without a WWCVPCC; or
 - (ii) the person is not eligible to apply for a WWCVPCC in the State or Territory, for a reason other than a reason based on:
 - (A) the person's criminal record; or
 - (B) the risk posed by the person to children or vulnerable people; or
 - (C) the protection of children or vulnerable people; and

- (b) the person has given the ACMA a new nationally coordinated criminal history check at each of the following times:
 - (i) a time specified in the Assessor Guidelines for the giving of a new nationally coordinated criminal history check;
 - (ii) a time specified under subclause (5).
- (4) If subclause (1) does not apply to an accredited person because of subclause (3), the accredited person must not be convicted of an offence under a law of the Commonwealth, or a law of a State or Territory, where:
 - (a) the offence, or the conduct giving rise to the offence, involves harm, or the risk of harm, of any kind to a child or a vulnerable person; or
 - (b) if paragraph (a) does not apply in relation to the offence – a reasonable person would consider that, based on the nature of the offence or the conduct giving rise to the offence, the accredited person poses a risk to the health or welfare of a child or a vulnerable person.
- (5) The ACMA may, by written notice to an accredited person:
 - (a) specify a time by which the person must give the ACMA a new nationally coordinated criminal history check; and
 - (b) specify the earliest date on which the new nationally coordinated criminal history check must be conducted.
- (6) Without limiting paragraph (3)(a), the ACMA may set out in the Assessor Guidelines when it is satisfied of a matter specified in that paragraph (3)(a).
- (7) For the purposes of paragraph (4)(b), the ACMA may set out in the Assessor Guidelines 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.

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

- (1) An accredited person must conduct and assess amateur radio examinations in accordance with:
 - (a) the Assessor Guidelines;
 - (b) any other guidelines, policies or procedures published by the ACMA that are expressed to apply to the person or the examination; and
 - (c) any written instruction given to the person by the ACMA.
- (2) Before the ACMA publishes a guideline, policy or procedure (other than the Assessor Guidelines) that applies to an accredited person, the ACMA must give the person a copy of the guideline, policy or procedure.
- (3) The ACMA's failure to comply with subclause (2) does not affect the condition in subclause (1).
- (4) For the purposes of paragraph (1)(c), the ACMA may give an accredited person written instructions relating to the conduct or assessment of examinations.
- (5) A decision to give a written instruction under subsection (4) is a decision to which section 285 of the Act applies.

Note: An application may be made for reconsideration of a decision made under subsection (4) (see paragraph 285(waa) of the Act).

5 Conduct of examinations – in person examinations

An accredited person must not conduct an in person amateur radio examination in a private residence.

Note: An accredited person may conduct examinations in public venues such as community halls or amateur radio clubs.

6 Collection, use and disclosure of personal information

- (1) Before conducting an amateur radio examination, an accredited person must collect and record the following information from each person (*the attendee*) attending the examination (whether the attendee is attending in person or remotely):
 - (a) the attendee's name;
 - (b) the attendee's residential address;
 - (c) the attendee's email address and phone number.
- (2) Before collecting the information specified in subclause (1), the accredited person must inform the attendee that the information:
 - (a) is being collected for the purpose of recording the attendee's attendance at the examination, and for related purposes, including contacting the attendee about the assessment or results of the examination;
 - (b) will be used to assess the examination, notify the attendee of the results of the examination, and for communicating with the attendee;
 - (c) will only be disclosed to the ACMA, or otherwise, as required or authorised by law; and
 - (d) may be used or disclosed by the ACMA in accordance with, and for the purposes of, the Act, the *Australian Communications and Media Authority Act 2005* or the *Privacy Act 1988*, or otherwise as required or authorised by law.
- (3) An accredited person must not use or disclose any personal information collected from the attendee for any purpose that is not related to the conduct or assessment of amateur radio examinations, or any other thing that the person is required to do under this instrument, unless required by law.
- (4) An accredited person must take reasonable steps to ensure that all personal information the person collects and records under this clause or clause 7 is:
 - (a) stored securely;
 - (b) protected from misuse, interference and loss; and
 - (c) protected from unauthorised access, modification or disclosure;while the information is in their possession.

7 Record keeping requirements

Record keeping requirement

- (1) Subject to this clause, an accredited person must keep the following records in relation to each amateur radio examination that the person conducts:
 - (a) any written communication between the accredited person and a person wishing to undertake, or requesting to undertake, the examination;
 - (b) any personal information collected under clause 6;
 - (c) each examination paper attempted by a person undertaking an examination (whether or not the person completed or passed the examination);
 - (d) the notification of the result of an examination (whether successful or unsuccessful) to the person who undertook the examination.

Time within which records are to be given

- (2) An accredited person must give to the ACMA:
 - (a) all of the records (including any copies) the person is required to keep under paragraphs (1)(a), (b) and (c), within 15 business days of the date of the examination; and
 - (b) all of the records (including any copies) the person is required to keep under paragraph (1)(d), within 15 business days of the notification mentioned in that paragraph.

Method for giving records

- (3) An accredited person must give the records specified in subclause (1) to the ACMA by the method approved in writing by the ACMA.
- (4) The ACMA:
 - (a) must approve one or more methods for giving information or documents to the ACMA; and
 - (b) may approve the methods by specifying them in the Assessor Guidelines.

Notice for production or destruction of records

- (5) The ACMA may give an accredited person a notice requiring the person:
 - (a) to give to the ACMA one or more of the records specified in subclause (1) by a method specified in the notice; or
 - (b) to destroy one or more of the records specified in subclause (1), by a method (if any) specified in the notice.
- (6) An accredited person must comply with a notice given under subclause (5).

Schedule 2—Conditions of General Assessor Accreditation

(subsection 16(2))

1 Definition

In this Schedule, *special examination* means an amateur radio examination where the person conducting the examination needs to make adjustments to the conduct of the examination to accommodate a person who would otherwise be unable (because of a disability or otherwise) to undertake the examination.

2 Assessor not to conduct special examinations

A person who holds a General Assessor Accreditation must not conduct a special examination.