

# **Update to the 2020–21 annual work program in the FYSO 2020–24**

## Implementation of the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020*

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# Introduction

On 17 December 2020, the [Radiocommunications Legislation Amendment \(Reform and Modernisation\) Act 2020](#) (the Modernisation Act) received Royal assent, together with the [Radiocommunications \(Transmitter Licence Tax\) Amendment Act 2020](#) and the [Radiocommunications \(Receiver Licence Tax\) Amendment Act 2020](#).

The provisions of the Acts will come into force on 17 June 2021 to give users of spectrum time to adjust to the new regulatory framework.

The Modernisation Act is part of the government's response to the recommendations of the 2015 Spectrum Review. The Modernisation Act amends the *Radiocommunications Act 1992* (the Act) to:

- > add flexibility to the licensing framework, which will allow quicker release of spectrum so that changes in spectrum demand can be met faster
- > provide more certainty about key licence conditions that underpin investment certainty, such as licence duration and licence renewal terms
- > provide a more graduated set of compliance and enforcement powers to enable proportionate responses by the ACMA to address non-compliance
- > enable the ACMA to develop equipment rules that will regulate devices across modern supply chains, including recognition of online supply arrangements
- > allow for more external involvement in spectrum management by allowing the ACMA to accredit people and organisations to make decisions under spectrum management arrangements.

The ACMA is primarily responsible for developing and implementing the new spectrum management arrangements. Several legislative instruments must be in place before commencement of the Modernisation Act to ensure continuity of existing frameworks and the availability of new or amended functions and powers on commencement day. We intend to develop, consult on, and make these instruments in the period leading up to the commencement day. The instruments will take effect on the commencement day of the Modernisation Act.

Many of the new functions and powers available to the ACMA will be implemented by administrative decisions (for example, issuing an apparatus licence). In addition to the consultations on legislative instruments, we intend to release guidance papers on our high-level disposition toward key new discretions, such as licence terms, renewal, exemptions, and information-gathering powers.

This update to the FYSO 2020–21 annual work program reflects the key public-facing Modernisation Act implementation activities to be completed this financial year. Table 1 sets out our timeline.

Further information on spectrum reform, the development of the Act, and previous government consultation is available on the [Department of Infrastructure, Transport, Regional Development and Communications website](#).

# Implementation activities

## Annual work program

The Modernisation Act requires the ACMA to determine an annual work program each financial year. These provisions give legislative recognition to our current practice – in place for the past 11 years – of publishing a [five-year spectrum outlook](#), including an annual work program. We currently provide 6-monthly updates to stakeholders as a transparency measure, reporting on progress to meet the annual work program project priorities.

The 2021–25 FYSO will be the first annual work plan to be made in accordance with the new statutory provisions. We expect to consult on the draft 2021–25 FYSO in Q2 2021.

## Licensing and allocation reform

The Act will retain the current 3 forms of licensing under the Act: spectrum, apparatus and class licensing. It introduces additional flexibilities to tailor appropriate licensing and allocation processes, and bring spectrum to market more quickly.

The Modernisation Act provides the ACMA with additional decision-making power to:

- > make ‘unencumbered spectrum’ available for spectrum licensing (by making a marketing plan)
- > re-allocate spectrum ‘by issuing spectrum licences, apparatus licences, or both’
- > set allocation limits for the allocation of spectrum or apparatus licences (after consultation with the Australian Competition and Consumer Commission).

The ACMA will also be empowered to make decisions about licence duration, including deciding whether to issue:

- > a spectrum licence for up to 20 years (currently up to 15 years)
- > an apparatus licence for up to 20 years (currently up to 5 years).

The Modernisation Act will introduce renewal statements. These statements are intended to provide certainty for a licensee from when an initial licence is issued, about whether the licence will be eligible for renewal (at the discretion of the ACMA) and on the terms of the licence renewal, including whether a public interest test should apply. If the renewal period for a licence is 10 years or longer, the ACMA must be satisfied that it is in the public interest to renew the licence.

The amended Act introduces a consistent approach to the imposition of allocation limits for price-based allocation of spectrum licences and apparatus licences. It also enables consideration of enduring limits for administratively-issued apparatus licences, including the capacity to consider aggregate spectrum holdings when deciding whether or not to issue or renew an apparatus licence outside of section 106 price-based allocation of apparatus licences processes.

We will publish a guidance paper outlining our high-level disposition on the use of the new licensing and allocation powers, such as licence duration, renewal statements and public interest statements, competition considerations and new allocation tools.

## Equipment rules and exemptions

Currently, the Act allows the ACMA to make standards applying to devices and labelling notices applying to manufacturers and importers of devices to manage electromagnetic compatibility and interference, and protect health and safety. The Modernisation Act will allow the ACMA to make equipment rules that could broaden the range of parties in the equipment supply chain subject to compliance obligations, specifically recognising online supply. Our focus is to establish a new equipment rule that will retain the desirable features of the existing arrangements, including the continued regulation of the operation, possession, labelling and supply of non-standard devices, as well as a permit system for non-standard devices. Existing standards and labelling notices are transitioned as equipment rules.

The Modernisation Act gives the ACMA new exemption powers, principally intended to facilitate the development, testing and manufacturing of equipment (including equipment subject to an interim or permanent ban). These exemption provisions could allow us to facilitate domestic manufacturing of radiocommunications equipment, and research and development opportunities in the defence industry and technology sectors. We will commence consultation on our use of the exemption provisions before they start.

## Accreditation rules

The amended Act expands the range of functions where the ACMA can encourage industry involvement. The ACMA is provided with discretion to accredit persons for the performance of a broader range of functions. The current accredited persons scheme assists in the assignment of spectrum frequencies. We will develop 'accreditation rules' to specify procedures for accrediting people or withdrawing this accreditation, and setting out the kinds of accreditation that may be given.

Our focus for implementation will be to preserve the operation of the existing accredited persons scheme. We will need to consult on and make accreditation rules, including transitional accreditation rules. We will also need to consult on consequential changes that will be needed to the frequency assignment certificate determination.

## Machinery changes

The ACMA will update several class licences before the Modernisation Act commences, to change references to standards to references to equipment rules.

## Compliance and enforcement

The Modernisation Act introduces new information-gathering powers for the ACMA. These provisions will assist us to plan for spectrum use and conduct investigations. We plan to inform stakeholders through our website about these new powers.

**Table 1: Additional activities for 2020–21: Modernisation Act implementation**

Issue	Timeline
Release information paper on the ACMA's approach to radiocommunications licensing and allocation	March 2021
Consult on the new accreditation rules, transitional accreditation rules and consequential amendments to the Radiocommunications (Frequency Assignment Certificates) Determination 2014	March 2021

Issue	Timeline
Consult on consequential amendments required to class licences, which need references to <i>standards</i> updated to references to <i>equipment rules</i>	March 2021
Consult on the new equipment rules	March 2021
Consult on the ACMA's approach to the use of the exemptions power under the new section 302 of the <i>Radiocommunications Act 1992</i> .	May 2021