

The logo for Optus, consisting of the word "OPTUS" in a bold, teal, sans-serif font.

Submission in response to
ACMA Consultation Paper

**Accredited Persons
scheme**

Public Version

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INTRODUCTION

1. Optus welcomes the opportunity to respond to the Australian Communications and Media Authority (ACMA) consultation paper on the *Accredited Persons scheme*.
2. The Accredited Persons (AP) scheme has been in place since 1996 and oversees several specific activities relating to spectrum management that have been devolved by the ACMA and which can be undertaken by authorised, accredited persons.
3. Optus broadly supports the continued operation of the AP scheme, including the flexibility for the ACMA to accredit persons with either a General Licensing Accreditation or a Specific Licensing Accreditation limited only the issue of frequency assignment certificates (FAC) for apparatus licences and interference impact certificates (IIC) for spectrum licences.
4. APs undertake the vast majority of the technical assessment, coordination and assignment required for the issue of assigned apparatus licences. APs also conduct technical coordination and interference assessments that support device registrations required under spectrum licences.
5. The Consultation Paper specifically introduces four draft legislative instruments:
 - (a) The *Radiocommunications Accreditation (General) Rules 2021* (the General Accreditation Rules);
 - (b) The *Radiocommunications Accreditation (Transition) Rules 2021* (the Transition Rules);
 - (c) The *Radiocommunications (Conditions of Frequency Assignment Certificates – Apparatus Licences) Determination 2021* (the FAC Determination); and
 - (d) The *Radiocommunications (Conditions of Interference Impact Certificates) Determination 2021* (the IIC Determination).
6. The Consultation Paper also proposes two key changes to the AP scheme:
 - (a) Removal of the requirement for AP applicants to sign a Deed of Indemnity; and
 - (b) Introduction of a new ‘Specific Licensing Accreditation’ which would allow the ACMA to accredit a person to issue a frequency assignment certificate for a single, specified licence type.
7. Many of these proposals are in response to the amendments enabled by the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020* (the Modernisation Act) to modernise the legislative framework for spectrum management.
8. The Consultation Paper also seeks views on potential scope expansion of the AP scheme and opportunities for new roles for APs in spectrum management. Optus currently does not support the proposed expansion of the AP scheme at this stage.

DRAFT LEGISLATIVE INSTRUMENTS AND PROPOSED CHANGES TO THE AP SCHEME

9. Optus broadly supports the continued operation of the AP scheme, as set out in the four draft legislative instruments, including the two key proposed changes to the AP scheme:
 - (a) Optus supports the removal of the requirement for AP applicants to sign a Deed of Indemnity; and
 - (b) Optus supports the creation of a new Specific Licensing Accreditation to enable an AP to issue FACs for a single, specified licence type.

Removal of the requirement for AP applicants to sign a Deed of Indemnity

10. Optus supports the removal of the requirement for AP applicants to sign a Deed of Indemnity. Removal of this requirement may also encourage others to become APs.

Introduction of a Specific Licensing Accreditation

11. Optus supports the creation of a new Specific Licensing Accreditation for APs.
12. For example, Optus Mobile has observed that many of the APs are specialised in different types of licensing and that the APs will only provide services in licence types where they have experience. Optus Satellite also notes its experience with applying for Earth Station or Space licences suggests that these types of licences are quite complex in both regulatory and technical dimensions. To this end, enabling this new accreditation type may enable the pool of APs for different licence types to be expanded.
13. However, Optus is also cautious that enabling Specific Licensing Accreditation may not necessarily address the current gap in the specialisation of APs for certain licence types and given the only pathway for applying for any radio licence was to use an AP.
14. Specifically, there may be some cases where a direct allocation approach for licensing is more appropriate and this should be considered particularly where there is insufficient availability of APs to address certain licence types.
15. This issue remains of particular concern for Optus Satellite with the limited pool of APs capable of processing applications for Earth Station and Space licences. Given the regulatory and technical complexity of these licence types, Optus therefore considers that direct application for these licences to the ACMA should also be made available.
16. We further understand that under the draft Transition Rules, existing APs will be transitioned to the General Licensing Accreditation and will continue to be accredited to issue FACs and/or IICs for any licence type.

Draft legislative instruments

17. The four draft legislative instruments underpin the operation of the AP scheme and include:
 - (a) *The Radiocommunications Accreditation (General) Rules 2021* (the General Accreditation Rules);

- (b) *The Radiocommunications Accreditation (Transition) Rules 2021* (the Transition Rules);
- (c) *The Radiocommunications (Conditions of Frequency Assignment Certificates – Apparatus Licences) Determination 2021* (the FAC Determination); and
- (d) *The Radiocommunications (Conditions of Interference Impact Certificates) Determination 2021* (the IIC Determination).

18. Optus provides several comments below on these instruments.

Kinds of Accreditation

19. Optus supports the General Accreditation Rules allowing the ACMA to accredit persons with either:
- (a) a General Licensing Accreditation; or
 - (b) a Specific Licensing Accreditation.
20. Under the Transition Rules, existing AP accreditations will also be automatically transferred to a General Licensing Accreditation. This will allow APs to continue to issue FACs and/or IICs if they choose to do so. The Transition Rules also do not provide for transfer to the Specific Licensing Accreditation for any existing APs.

Procedures for withdrawing accreditation

21. The ACMA's enforcement for APs is currently very weak with the only penalty being to cancel an AP's accreditation. We understand this power has rarely been exercised.
22. Under new section 264A of the Act, the ACMA may withdraw a person's accreditation under certain circumstances:
- (a) The accreditation is no longer in accordance with the General Accreditation Rules; or
 - (b) A person has contravened a condition of the accreditation.
23. These provisions are set out in the General Accreditation Rules – Part 4; and stipulates a reliance on the review of the AP's experience in radiocommunications in the two-year period ending on the day before the ACMA withdraws the accreditation.
24. Therefore, in addition to the General Accreditation Rules, Optus considers there should be an option to downgrade an accreditation from General to Specific.

Record keeping requirements

25. Optus supports the conditions set out in the General Accreditation Rules – Schedule 1, Clause 7 which will require for APs to both:
- (a) Make a record requirement to maintain records for 5 years; and
 - (b) The causes for records to be made for both FACs and IICs.
26. In addition to the causes for records, Optus believes that any record made should include supporting information used by the AP not just a statement of opinion.

27. Under the General Accreditation Rules, the record keeping provisions require:
- (a) For FACs, the record information should include:
 - (i) *A record of the interference management criteria devised and used by the person in relation to the issue of the certificate; and*
 - (ii) *A record of the method used by the person to apply the criteria; and*
 - (iii) *A record of the rationale for the use of the criteria and the method.*
 - (b) However, for IICs, the record information should include:
 - (i) *Which of subsection 7(2), (3) or (4) of the IIC Determination applies in relation to the issues of the certificate; and*
 - (ii) *The reason the person considers that subsection applies in relation to the issue of the certificate.*
28. Given the IIC Determination relates to compliance with the s145 determination, Optus considers that in providing a record relating to IICs, this should be similar to the FAC requirements and include details on interference management criteria used, the method used to apply those criteria and the rationale for use of the criteria and method.
29. For example, where Guard space assumptions have been applied and to ensure any replicability of the analysis for a given record, Optus considers it would be suitable to include in the record, either:
- (a) Any parameters/dataset details used in an automated tool which can re-generate a report; or
 - (b) A separate manual report detailing the information used by the AP in reaching their conclusion.

REVIEW OF THE AP SCHEME

31. The Consultation Paper also seeks views on other aspects of the AP scheme that could be improved or expanded, including:
- (a) Potential new roles for APs in spectrum management;
 - (b) Opportunities to improve the efficiency of the accreditation process;
 - (c) Opportunities to improve the delivery of information and guidance to APs and potential applicants;
 - (d) Interest in allowing accreditation for companies, on the basis of the qualifications of specific employees;
 - (e) Opportunities to ensure that standards and requirements for the issues of FACs and IICs are met; and
 - (f) Opportunities for the ACMA to facilitate innovative or bespoke frequency assigning practices.
32. Optus does not support the expansion of the AP scheme.. Optus provides specific feedback on two of those issues below. This is not to say that the other potential changes of scope are not of concern, but additional information on the nature of the scope changes is needed for a more considered response to be given.

New Roles for APs in Spectrum Management

33. Optus does not support an expansion of APs roles into spectrum management
34. The skills required to perform the current activities undertaken by an AP and those of a spectrum manager are significantly different and Optus believes that they should remain separate.
35. Optus wishes to see the ACMA retain its role as the Australian Spectrum Manager and does not support the dilution of the ACMA's ability to independently manage spectrum for the benefit of all stakeholders.

Accreditation for Companies

36. Optus does not support accreditation for companies.
37. Accreditation is based on having sufficient skills and experience. A company can lose key people such that as an organisation it no longer meets the accreditation requirements. This means accreditation would still need to be based on the skills and experience of the person actually performing the AP work.
38. Firstly, there may be a significant conflict of interest risk when companies are involved in both registration and build activities. There can be significant financial incentives for vendors to deliver technologies on sites and they, in turn, can place pressure on APs to register devices. If an AP's employment and performance is measured against delivery of registrations, it will impact their ability to remain independent.
39. Second, Optus has also noticed that. not all APs have the tools or other resources to perform every task hence there is need to assess the individual AP's suitability to

perform the work. Optus therefore considers it prudent and prefers to grant approval to APs at the individual level with the appropriate skills and with whom we can directly manage our risks. They can then use their available resources directly and ensure that the work is completed under their guidance.

40. This concern is also highlighted in cases where specific arrangements have been considered and agreed to. For example, Optus has been using Guard space registrations in both the 2.3 GHz and 3.4 GHz Bands. We work closely with the small number of APs whom we have approved for use in these bands to reach a point where the AP and Optus are both comfortable with the level of risk associated with a specific Guard space registration. Since these types of registrations have become more prevalent it is important to maintain the individual's accountability for the registration decisions.

Conciliator Role for APs

41. Optus does not support APs undertaking a conciliator role.
42. This raises a potential conflict of interest for APs. The industry is relatively small and it is likely that an AP will be working for at least one of the parties involved in an interference dispute. It is necessary to have a conciliator role to be independent of both licensees to remove any perceived bias. It is also important for the conciliator to have the ability to access a greater pool of knowledge and expertise.
43. Optus is satisfied with the current arrangements whereby licensees work together to manage interference and escalate to ACMA if this fails. While the ACMA acknowledges that section 202 of the Act does specify that APs may act as a conciliator, Optus considers this role and activities of this type should be limited and not devolved to APs.
44. The ACMA needs to be an effective and appropriately resourced Spectrum Manager as this will better inform the ACMA policy development.