

Explanatory Statement

Issued by the authority of the Australian Communications Media Authority
(‘ACMA’)

Radiocommunications Act 1992

*Radiocommunications (Accreditation – Prescribed Certificates) Amendment
Principles 2005 (No. 1)*

Legislative Provisions

Section 263 of the Radiocommunications Act 1992 (the Act) provides that the Australian Communications and Media Authority (ACMA) may accredit persons to perform certain activities related to the use of the radiofrequency spectrum.

Subsection 266 (1) of the Act provides that the ACMA may, by written instrument, determine principles that:

- (a) govern the accreditation process; and
- (b) specify the matters for which the ACMA may accredit persons

Subsection 266 (2) of the Act provides that without limiting the matters with which the principles may deal, the principles must provide for:

- (a) the form of applications under section 263; and
- (b) procedures that must be followed in relation to deciding whether to accredit, or withdraw the accreditation of, persons; and
- (c) the kinds of accreditation; and
- (d) in respect of each kind of accreditation—the qualifications and other requirements required before a person can be given that kind of accreditation.

Subsection 266 (4) of the Act provides that principles are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Background

Section 69 of the Radiocommunications Act (the Act) requires registration with the ACMA of transmitters deployed under spectrum licences. Registering these devices on the ACMA’s public register records the fact that the devices are operating within their licence conditions, allows spectrum licensees to coordinate their devices and it enables speedy interference investigation and resolution by the ACMA if subsequent interference complaints are made. Accredited Persons (APs) play an important role in spectrum management, including device registration.

Under current arrangements for managing interference there are three ways by which Accredited Persons (APs) can apply to the ACMA to register a device under a spectrum licence:

- Option A.** By issuing a **sub-section 145(3)** certificate which states that the device will not cause an *unacceptable level of interference* as defined in the sub-section 145(4) Determination for the band; or

Option B. By stating that sufficient **internal guard space** has been allocated for the device (as defined in *Radiocommunications Advisory Guidelines (Registration of Devices under Spectrum Licences without an Interference Impact Certificate) 1998* made by the ACMA under section 262) to manage potential interference;
or

Option C. By stating that an **agreement** has been reached with adjacent licensees to accept increased levels of interference into their spectrum space.

The non certification registration options are a source of confusion and uncertainty among some APs as to the status of devices so registered.

The intention of the proposed changes to the ACMA device registration requirements is to remove this source of potential confusion and uncertainty by prescribing the issue of a certificate whenever an Accredited Person applies to the ACMA to register a device under **any** of the options for device registration. This change does not alter any of the technical requirements for interference management, but improves procedural consistency and certainty by allowing for three alternative conditions for the issue of a certificate under sub-section 145(3) instead of only one, as at present.

Under the proposed **new** arrangements an AP will be able to choose one of the following **certification** options when they apply to register devices:

1. Certify that the device will not cause an unacceptable level of interference based on the application of the ACMA interference management methodology as set out in the relevant sub-section 145(4) determination for the band.

OR in the absence of compliance with the interference methodology set out in the sub-section 145(4) determination.

2. Certify that sufficient *internal* guard space has been allocated (in accordance with the *Radiocommunications Advisory Guidelines (Registration of Devices under Spectrum Licences without an Interference Impact Certificate) 1998* made by the ACMA under section 262) to manage potential interference.

OR

3. Certify that sufficient *external* guard space has been determined through a written agreement between affected licensees (in accordance with the *Radiocommunications Advisory Guidelines (Registration of Devices under Spectrum Licences without an Interference Impact Certificate) 1998* made by the ACMA under section 262) to manage potential interference.

The amendments to the *Radiocommunications (Accreditation – Prescribed Certificates) Principles 2003* relate to the new procedures of device registration. Section 11 (Procedure for withdrawal of accreditation) and section 12 (Suspected breaches of conditions) are amended to accommodate of the new arrangement.

This determination commences on 1 January 2006.

Consultation

The proposed changes to device registration have been formulated in response to industry feedback and the Productivity Commission (PC) *Review of Radiocommunications* released by the Government in December 2002. After the Government's endorsement of the PC report the ACMA conducted an industry forum on spectrum licensing in which options for implementing improved device registration were canvassed.

In October 2003 the Radiocommunications Consultative Council (a high level joint industry/regulator body) examined the issue and suggested the ACMA undertake further industry consultation to determine the best way forward.

In December 2003 a public discussion paper on this topic was published by the ACMA putting forward the **two** proposals for change. These changes were –

- (a) certification for **all** registered devices; and
- (b) clarifying the advisory guidelines for use of guard space for interference management when registering devices under spectrum licensing.

Five industry submissions were received in response to the paper. Two of these argued that the proposed changes are unnecessary, while the other three supported the changes. As a result of subsequent discussion in which the intent and content of the proposed changes were clarified, the two who argued the changes were unnecessary withdrew their objections.

Details of the Principles

Section 1 - Title

Section 1 provides for how the amendment principle is to be cited.

Section 2 - Commencement

Section 2 sets the commencement date for the principle. The commencement date is 1 January 2006 to allow for further industry consultation.

Section 3 – Purpose

Section 3 sets out the purpose of the principles which is to amend the existing *Radiocommunications (Accreditation – Prescribed Certificates) Principles 2003* to reflect the new provisions for certification under device registration.

Schedule 1

Item [1] – Subsection 11 (3) (b) (ii)

This amendment inserts a new item into Schedule to add an additional consideration on which ACMA may decide to withdraw the accreditation of an accredited person. The new matters which may be considered are whether:

- (a) an unacceptable level of interference has been caused by the operation of devices for which the accredited person issued certificates and the nature and cause of such interference;
- (b) sufficient internal guard space was allocated for devices for which the accredited person had issued certificates; and
- (c) consent in writing to interference had been given in relation to devices for which the accredited person had issued a certificate.

Item [2] – Subsection 11(3) (b) (iii)

Amends subsection 11 (3) (b) (iii) to ensure that the existing consideration is retained for certificates issued prior to 1 January 2006.

Item [3] – Subsection 12(3) (a)

Amends subsection 12(3) (a) to ensure that the current method of examination applies only to certificates issued prior to 1 January 2006.

Item [4] – Subsection 12(3) (ab)

Inserts new grounds of examination for certificates issued after 1 January 2006. Specifically, the ACMA must examine whether an accredited person who has issued a certificate after 1 January 2006 has failed to:

- (a) correctly estimate the parameters that show whether an unacceptable level of interference exists according to the relevant subsection 145(4) determination;
- (b) ensure that sufficient internal guard space has been allocated in accordance with the relevant Guidelines; and
- (c) ensure that all relevant licences consented to the potential interference in writing.