

Legislative Instruments Act 2003

Section 26 – Explanatory Statement

Radiocommunications (Accreditation – Prescribed Certificates) Principles 2014, made under the Radiocommunications Act 1992

Issued by the Australian Communications and Media Authority

Purpose

In August 2014 the Australian Communications and Media Authority (the **ACMA**) made the *Radiocommunications (Accreditation – Prescribed Certificates) Principles 2014* (the **Instrument**). The Instrument revokes and replaces the *Radiocommunications (Accreditation – Prescribed Certificates) Principles 2003* (the **2003 Instrument**) without making any significant changes to the regulatory arrangements created by that 2003 Instrument.¹

This has occurred because the 2003 Instrument was due to “sunset” (i.e. automatically be repealed) on 1 April 2015 in accordance with Part 6 of the *Legislative Instruments Act 2003* (the **LIA**). Following review, and consultation as described below, the ACMA formed the view that the 2003 Instrument was operating effectively and efficiently and continued to form a necessary and useful part of the legislative framework. Accordingly, the ACMA has remade the 2003 Instrument by making the Instrument, without any significant changes, so that its on-going effect is preserved.

Legislative Provisions

Part 5.4 of the *Radiocommunications Act 1992* (the **Act**) empowers the ACMA to give accreditation to persons that apply for a particular kind of accreditation. In particular, section 266 of the Act provides that the ACMA may, by written instrument, determine principles that govern the process for accrediting persons to issue certificates under the Act, and specify the matters for which the ACMA may accredit persons.

The Instrument is made under section 266 and is a legislative instrument for the purposes of the LIA.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make a legislative instrument, the power shall be construed to include a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument. The Instrument revokes the 2003 Instrument using this power.

Background and Operation

Approximately 90% of radiocommunications certification work is performed by accredited persons. One of the benefits of the accreditation process is that it contributes to an efficient, market-based solution for frequency coordination and emission level management.

Under the Instrument, the kinds of accreditation the ACMA can give are:

¹ The 2003 Instrument was amended and updated by amendments made to it in 2006 and 2011.

- accreditation to issue frequency assignment certificates (FACs), issued under subsection 100(4A) of the Act, relating to the operation of radiocommunications transmitters and receivers under apparatus licensing arrangements; and /or
- accreditation to issue interference impact certificates issued under subsection 145(3) of the Act, relating to the registration of devices under spectrum licensing arrangements.

Accredited persons issue FACs in support of the apparatus licensing regime. Both accredited persons and ACMA staff issue certificates under subsection 145(3) of the Act for the registration of devices under spectrum licences. These arrangements have been successful, and largely unchanged, since 1997.

The Instrument is designed to maintain the current arrangements which are well understood by industry stakeholders, particularly accredited persons and persons who rely on certificates issued by them.

Consultation

Subsection 17(1) of the LIA requires that before the ACMA makes a legislative instrument it must be satisfied that any consultation that the ACMA considers is appropriate and that is reasonably practicable to undertake has been undertaken.

In this case the ACMA consulted publicly between 4 February 2014 and 14 March 2014 by means of a consultation paper published on its website. That paper explained the sunseting process and the ACMA's preliminary view that the existing arrangements should be saved from automatic repeal and remade without any significant changes. Interested parties were invited to comment. The ACMA received one submission in response to the consultation paper and took it into account when determining to make the Instrument.

Regulation Impact

Under the Guidance Note *Sunsetting Legislation* published by the Office of Best Practice Regulation (OBPR), streamlined regulatory assessment processes apply to the remaking of sunseting legislative instruments. As the ACMA has determined that the 2003 Instrument was fit for purpose, and should be remade without any significant changes, and has certified those matters to OBPR, no Regulation Impact Statement is required.

Documents Incorporated in this Instrument by Reference

The following documents are incorporated by reference in the Instrument:

- Procedural documents that meet the definition of any document published by the ACMA, setting out spectrum management objectives, or procedures to achieve those objectives, which are relevant to the Instrument. Procedural documents include:
 - Radiocommunications Assignment and Licensing Instructions
 - Policy Information Papers
 - Business Operating Procedures
 - Advisory Guidelines
- *Radiocommunications (Frequency Assignment Certificates) Determination 2014*

Procedural documents can be found on the ACMA's website at: <http://www.acma.gov.au/>.

Statement of Compatibility with Human Rights

As required under the *Human Rights (Parliamentary Scrutiny) Act 2011*, a Statement of Compatibility with Human Rights has been prepared by the ACMA and is attached as Attachment A.

NOTES ON THE INSTRUMENT

Section 1 Name of Principles

Section 1 provides that the name of the Instrument is the *Radiocommunications (Accreditation – Prescribed Certificates) Principles 2014*.

Section 2 Commencement

Section 2 provides that the Instrument commences on the day after it is registered on the Federal Register of Legislative Instruments.

Section 3 Revocation of previous Principles

Section 3 provides that the 2003 Instrument is revoked.

Section 4 Interpretation

Section 4 defines various terms which are used in the Instrument.

A key term is *procedural document*. A procedural document sets out spectrum management objectives or procedures to achieve those objectives. Section 10 of the Instrument provides that the ACMA must make relevant procedural documents available to accredited persons. The definition provides four examples of what is a procedural document and an accompanying note to the definition explains where those procedural documents can be found.

Section 5 Kinds of accreditation

Section 5 provides that the kinds of accreditation that the ACMA can give a person under section 263 are accreditation to issue:

- frequency assignment certificates under subsection 100(4A) of the Act; or
- certificates under subsection 145(3) of the Act; or
- both.

Section 6 Application for accreditation

Section 6 sets out the matters which an applicant for accreditation must set out in their application, such as their educational and work qualifications and history. The application must be accompanied by the relevant fee. It must also be accompanied by a completed copy of the relevant Deed of Indemnity or other undertaking that is applicable to the applicant. If the applicant is in government service, a Deed of Indemnity from the government body which employs them to provide that government service is required to be provided along with the application. However, the requirement to provide a Deed of Indemnity does not apply where the relevant government body is a Department of State, or is a listed entity within the meaning of the *Public Governance, Performance and Accountability Act 2013*. For applicants that are not in government services, section 7 of the Instrument provides that the ACMA must approve forms of indemnities and undertakings that are appropriate for such applicants.

Section 7 Approved forms of indemnities and undertakings

Section 7 requires the ACMA to approve one or more forms of Deeds of Indemnity, undertakings relating to insurance and undertakings relating to providing Deeds of Indemnity if the applicant enters government service in future. These are the Deeds of Indemnity or undertakings referred to in in section 6.

Section 8 Educational and work qualifications for accreditation

Section 8 provides that the ACMA must not give accreditation to an applicant unless the applicant has:

- tertiary qualifications (as specified in the section), a significant component of which must relate to radiocommunications; or
- qualifications, experience or training that in the ACMA's opinion are equivalent to such qualifications.

The applicant must also have experience in radiocommunications that is relevant to frequency assignment or interference assessment.

Section 9 Procedure for accreditation

Section 9 sets out the procedure for processing applications. The ACMA must have regard to efficient allocation and use of the spectrum, and any other matter it considers relevant. If the ACMA declines the application it must give written notice to the applicant and the decision may be subject to review under Part 5.6 of the Act. Successful applicants are notified of their accreditation and the conditions of applying to the accreditation under section 263 of the Act.

Section 10 Documents to be available to accredited persons

Section 10 requires the ACMA to make various documents available to accredited persons, such as various statutory instruments and procedural documents which may be relevant to the issue of certificates by accredited persons. Subsection 10(2) provides that the ACMA must give accredited persons access to such documents upon payment of any specified charges that may be set by an instrument under section 60 of the *Australian Communications and Media Authority Act 2005*. However, many of the documents mentioned in section 10 are available on the ACMA's website without charge.

Section 11 Procedure for withdrawal of accreditation

Under section 264 of the Act, the ACMA may withdraw an accredited person's accreditation if the ACMA is satisfied that:

- the accreditation is no longer in accordance with the principles set in the Instrument;
- the person has been incorrectly issuing certificates under the Act;
- the person has issued a certificate in breach of any of the applicable conditions mentioned in subsection 263(2A) of the Act; or
- if the person's application for accreditation included false or misleading information.

However, before withdrawing a person's accreditation, the ACMA must follow the procedure set out in section 265 of the Act. In addition, the Instrument sets out further details about the procedures the ACMA will follow in relation to any decision to withdraw a person's accreditation (as required by paragraph 266(2)(b)). The procedures specified ensure procedural fairness is afforded to a person whose accreditation may be withdrawn and require the ACMA to make specified inquiries relevant to the matter, and consider various technical matters, as set out in the section, before determining whether to withdraw any person's accreditation.

Section 12 Suspected breaches of conditions

Among the reasons for which an accreditation may be withdrawn is that the accredited person has breached a condition relating to the issue of certificates, such as a condition which is contained in the person's instrument of accreditation. Section 12 sets out various technical matters to which the ACMA must have regard when considering withdrawing accreditation on the basis that it suspect the accredited person has breached such a condition. Separate matters are specified for certificates issued under subsection 100(4A) of the Act and for certificates issued under subsection 145(3) of the Act. While the ACMA's power to decide that it is satisfied that an accredited person has breached a relevant condition of their accreditation is exercised by the ACMA under section 264 of the Act, this section aims to ensure that the ACMA has regard to particular matters when considering exercising that power.

Attachment A

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Radiocommunications (Accreditation – Prescribed Certificates) Principles 2014

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Radiocommunications (Accreditation – Prescribed Certificates) Principles 2014* (the **Instrument**) is made under section 266 of the *Radiocommunications Act 1992* (the **Act**). It determines the principles which govern the accreditation scheme which the ACMA establishes under Part 5.4 of the Act. Further details about the Instrument appear in the Explanatory Statement for the Instrument.

Human rights implications

The Instrument does not engage any of the applicable rights or freedoms.

Conclusion

The Instrument is compatible with human rights as it does not raise any human rights issues.

Australian Communications and Media Authority