



Radiocommunications (Accreditation — Prescribed Certificates) Principles 2014

The AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY makes this Determination under subsection 266 (1) of the *Radiocommunications Act 1992*.

Dated 25th August 2014

Chris Chapman
[signed]
Member

Richard Bean
[signed]
Member / ~~General Manager~~

Australian Communications and Media Authority

1 Name of Principles

These Principles are the *Radiocommunications (Accreditation — Prescribed Certificates) Principles 2014*.

Note These Principles apply in relation to the accreditation of a person to issue prescribed certificates.

2 Commencement

These Principles commence on the day after they are registered.

Note All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.comlaw.gov.au>.

3 Revocation of previous Principles

The *Radiocommunications (Accreditation — Prescribed Certificates) Principles 2003* (Federal Register of Legislative Instruments No.F2005B00216) are revoked.

4 Interpretation

(1) In these Principles:

accreditation means accreditation under subsection 263 (1) of the Act.

accredited person means a person to whom the ACMA has given an accreditation.

ACMA means the Australian Communications and Media Authority.

ACMA Act means the *Australian Communications and Media Authority Act 2005*.

Act means the *Radiocommunications Act 1992*.

applicant means an applicant for accreditation.

approved, for a Deed of Indemnity or an undertaking, means in a form approved in writing by the ACMA under section 7.

government body means:

- (a) the Commonwealth or a State or Territory;
- (b) a body corporate established for a public purpose by or under a law of the Commonwealth or a State or Territory; or
- (c) a body corporate:
 - (i) that is incorporated under a law of the Commonwealth or a State or Territory; and
 - (ii) in which the Commonwealth or a State or Territory has a controlling interest.

government service means employment in a government body, or service as a member of the Defence Force, that includes the function of issuing prescribed certificates.

indemnity-protectable person means an officer, employee, member, agent, subcontractor, volunteer or bailee of goods of the ACMA.

indemnity-protected person means an indemnity-protectable person indemnified by an approved Deed of Indemnity.

insurance policy means an insurance policy that:

- (a) is issued by a body corporate for which an authorisation under Part III of the *Insurance Act 1973* to carry on insurance business is in force; and
- (b) indemnifies an accredited person for any loss or damage up to \$2 Million as a result of the person's negligence when issuing a prescribed certificate, or otherwise acting as an accredited person.

ITU means the International Telecommunication Union.

prescribed certificate means:

- (a) a frequency assignment certificate issued under subsection 100 (4A) of the Act; or
- (b) a certificate issued under subsection 145 (3) of the Act.

procedural document means any document published by the ACMA setting out spectrum management objectives, or procedures to achieve those objectives, that are relevant to these Principles, including Radiocommunications Assignment and Licensing Instructions, Policy Information Papers, Business Operating Procedures and Advisory Guidelines.

Note 1 The procedural documents can be found on the ACMA's website: <http://www.acma.gov.au/>.

Note 2 For definitions of other expressions used in these Principles, see the Act and the *Radiocommunications Regulations 1993*.

- (2) A reference in these Principles to:
 - (a) another instrument made under the Act;
 - (b) an instrument made under the ACMA Act;
 - (c) a publication by the ITU; or
 - (d) another document published by the ACMA;
 is a reference to the instrument, publication or other document as in force or existing from time to time.

5 Kinds of accreditation

For paragraph 266 (2) (c) of the Act, the kinds of accreditation are:

- (a) accreditation to issue frequency assignment certificates under subsection 100 (4A) of the Act;
- (b) accreditation to issue certificates under subsection 145 (3) of the Act; and
- (c) accreditation to issue both frequency assignment certificates under subsection 100 (4A) of the Act and certificates under subsection 145 (3) of the Act.

6 Application for accreditation

- (1) An application for accreditation must include the following particulars of the applicant:
 - (a) full name and business or residential address;
 - (b) business or residential telephone number;
 - (c) date of birth;
 - (d) relevant educational qualifications; and
 - (e) relevant work history.
- (2) The application must also:
 - (a) include the name, address and telephone number of each of the applicant's referees for the application;
 - (b) specify the kind of certificates that the applicant proposes to issue if the accreditation is given;
 - (c) include a declaration, signed by the applicant, that the information in the application is not false or misleading;
 - (d) be accompanied by a completed copy of each approved Deed of Indemnity or undertaking that applies to the applicant; and
 - (e) be accompanied by the charge for the giving of an accreditation that is specified in the determination of charges under section 60 of the ACMA Act.

Note For the form of a Deed of Indemnity or an undertaking, see section 7.

- (3) Subject to subsection (3A), if the applicant is in government service, the application must include a completed approved Deed of Indemnity from the relevant government body that applies to the applicant.
- (3A) Subsection (3) does not apply if the relevant government body is a Department of State or a listed entity within the meaning given by section 8 of the *Public Governance, Performance and Accountability Act 2013*.
- (4) Despite section 25C of the *Acts Interpretation Act 1901*, an approved Deed of Indemnity or an undertaking must comply strictly with the form approved under section 7.

Note Section 25C of the *Acts Interpretation Act 1901* provides that, unless the contrary intention appears, strict compliance with a prescribed form is not required and substantial compliance is sufficient.

7 Approved forms of indemnities and undertakings

- (1) The ACMA must approve 1 or more forms of a Deed of Indemnity that an applicant is to give it, indemnifying the ACMA and indemnity-protectable persons in relation to accreditation matters.
- (2) The ACMA must approve a form of undertaking that an applicant is to give it, about holding a current insurance policy in relation to accreditation matters.

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- (3) The ACMA must approve a form of undertaking that an applicant is to give it, to the effect that, if an applicant enters government service in the future, and subsection 6(3A) does not apply to the government body:
 - (a) the applicant will obtain a completed approved Deed of Indemnity from the relevant government body in relation to accreditation matters for the government service; and
 - (b) the applicant will give the Deed of Indemnity to the ACMA.
 - (4) The forms of undertakings and Deeds of Indemnity approved by the ACMA under subsections (1), (2) and (3) must include a statement to the effect that any liability to indemnify the ACMA against liability or loss under the Deed of Indemnity given by the applicant (or a government body in relation to the applicant) will be reduced in proportion to any contribution to that liability or loss by the negligence of the ACMA or an indemnity-protected person.

8 Educational and work qualifications for accreditation

- (1) The ACMA must not give an accreditation to an applicant unless the applicant:
 - (a) has:
 - (i) an associate diploma granted by an Australian or New Zealand technical and further education institution:
 - (A) in electronic engineering; or
 - (B) in a related discipline;a significant component of which relates to radiocommunications; or
 - (ii) qualifications, experience or training that, in the ACMA's opinion, is equivalent to a qualification mentioned in subparagraph (i); and
 - (b) has had experience in radiocommunications that is relevant to frequency assignment or interference assessment, for example, experience as a frequency assigner, a radiocommunications network designer or a radiocommunications site manager.
- (2) For the purposes of considering whether an accredited person's accreditation is no longer in accordance with these principles under paragraph 264 (a) of the Act, the experience mentioned in paragraph (1) (b) includes experience in issuing prescribed certificates.

Note The ACMA may withdraw a person's accreditation if it is satisfied that the accreditation is no longer in accordance with these Principles. Subsection 266 (2A) provides that qualifications and other requirements provided for in these Principles may relate to matters arising after the time of accreditation.

9 Procedure for accreditation

- (1) As soon as practicable after an application for accreditation is received by the ACMA, the ACMA must confirm that:
 - (a) the application is in the form approved by the ACMA; and

- (b) the applicant's educational qualifications and work experience satisfy section 8; and
 - (c) the ACMA has been paid the charge specified in the determination of charges under section 60 of the ACMA Act for giving an accreditation.
- (2) In considering whether to give an accreditation to an applicant, and whether to specify, in the instrument of accreditation, any conditions relating to the issuing of prescribed certificates, the ACMA must have regard to:
- (a) the need for efficient allocation and use of the spectrum; and
 - (b) any other matter the ACMA considers relevant for the purposes of accreditation.
- (3) If the ACMA decides not to give an accreditation to an applicant, the ACMA must, as soon as practicable, give written notice to the applicant of the decision.

Note If the ACMA decides to give an accreditation to an applicant, under section 263 of the Act, the ACMA must give the applicant written notice of accreditation, specifying any conditions applying to the accreditation. A decision to refuse to give a person accreditation is reviewable under Part 5.6 of the Act.

10 Documents to be available to accredited persons

- (1) The ACMA must ensure that the following documents are available to accredited persons:
- (a) the spectrum plan under section 30 of the Act;
 - (b) any frequency band plan;
 - (c) relevant procedural documents;
 - (d) blank forms that may be used by the accredited person to issue prescribed certificates;
 - (e) any determination made under subsection 145 (4) or section 266A of the Act; and
 - (f) any other document available from the ACMA that, in the ACMA's opinion, is necessary for an accredited person to issue prescribed certificates.
- (2) On payment of the charge (if any) specified in the determination of charges under section 60 of the ACMA Act for giving a person a document mentioned in subsection (1), the ACMA must give that document to the accredited person.

Note Many of the documents available on the ACMA's website may be accessed without charge.

11 Procedure for withdrawal of accreditation

- (1) For the purposes of deciding whether to withdraw the person's accreditation, the ACMA must take all reasonable steps to inform itself about any of the matters mentioned in section 264 of the Act that are relevant to the withdrawal of accreditation from that person, as well as complying with section 265 of the Act.
- (2) For subsection (1), the ACMA may inform itself on any matter in any way it thinks fit.
- (3) The ACMA must not withdraw a person's accreditation under paragraph 264 (b) or (ba) of the Act unless it has:
 - (a) made all reasonable inquiries necessary to determine whether the person has exercised a reasonable standard of care when issuing prescribed certificates;
 - (b) considered:
 - (i) the results of those inquiries;
 - (ii) any representation made by the person (whether made in response to those inquiries or under paragraph 265 (1) (b) of the Act); and
 - (iii) whether, for certificates issued under subsection 145 (3) of the Act:
 - (A) an unacceptable level of interference, as determined under subsection 145 (4) of the Act, to the operation of radiocommunications has been caused by the operation of devices for which those certificates have been issued and the nature and extent, and the likely cause, of the interference;
 - (B) sufficient internal guard space was allocated for devices for which those certificates have been issued; and
 - (C) consent in writing to interference from devices for which those certificates have been issued was given by all licensees who, in the opinion of the accredited person, may be affected by the interference;

Note Additional information on the registration of radiocommunications devices using guard space or agreement is available in the *Registration of radiocommunications devices under spectrum licences* information paper, available on the ACMA's website.

 - (iv) if the person has issued more than 1 certificate, other than in accordance with the conditions of the person's accreditation — the circumstances in which such certificates were issued;
 - (v) whether an adverse effect on licensed radiocommunications has been caused by the operation of devices for which certificates were issued under subsection 100 (4A) of the Act;
 - (vi) whether the ACMA is satisfied that the person has breached a condition relating to the issuing of certificates; and
 - (vii) all other matters that, in the ACMA's opinion, are relevant.

Note Conditions relating to the issuing of prescribed certificates may be specified in an instrument of accreditation or in instruments determined under section 266A (1) of the Act.

12 Suspected breaches of conditions

- (1) This section sets out how, if the ACMA suspects that an accredited person has breached a condition relating to the issuing of prescribed certificates, it must satisfy itself whether a breach of a condition has happened.

Note Conditions relating to the issuing of prescribed certificates may be determined in an instrument of accreditation or in instruments made under section 266A of the Act.

- (2) For certificates issued under subsection 100 (4A) of the Act, the ACMA must:

(a) either:

- (i) if there are relevant procedural documents that specify the interference management criteria to be followed (whether or not the accredited person has issued certificates by reference to those documents):

(A) examine whether the certificates are consistent with the criteria; and

(B) assess whether the operation of devices for which a certificate was issued has had, in the ACMA's opinion, an adverse effect on the operation of licensed radiocommunications; or

- (ii) if there are no applicable relevant procedural documents, examine whether the application of interference management criteria developed by the accredited person, and use of the method developed by the accredited person for applying the criteria, has had, in the ACMA's opinion, an adverse effect on the operation of licensed radiocommunications; and

- (b) examine whether the accredited person has satisfied the conditions specified in Part 2 of the *Radiocommunications (Frequency Assignment Certificates) Determination 2014*.

- (3) For certificates issued under subsection 145 (3) of the Act:

(a) the ACMA must examine whether the accredited person has failed to:

(i) correctly estimate the parameters that show whether an unacceptable level of interference exists according to a determination made under subsection 145 (4) of the Act;

(ii) ensure that sufficient internal guard space has been allocated; or

(iii) ensure that all licensees who, in the opinion of the accredited person may be affected by interference, have consented to that interference in writing; and

Note Additional information on the registration of radiocommunications devices using guard space or agreement is available in the *Registration of radiocommunications devices under spectrum licences* information paper, available on the ACMA's website.

(b) if:

- (i) 20 or more certificates have been issued; and

- (ii) interference has occurred between radiocommunications services for which 1 or more of the certificates have been issued and other radiocommunications services;

the ACMA must:

- (iii) examine whether the incidence of such interference is disproportionate to the total number of certificates that have been issued; and
- (iv) assess whether, such interference is, in all the circumstances, unacceptable.