



Radiocommunications (Frequency Assignment Certificates) Determination 2014

The AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY makes this Determination under section 266A of the *Radiocommunications Act 1992*.

Dated 25th August 2014

Chris Chapman

[signed]

Member

Richard Bean

[signed]

Member / ~~General Manager~~

Australian Communications and Media Authority

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Part 1 Preliminary**1 Name of Determination**

This Determination is the *Radiocommunications (Frequency Assignment Certificates) Determination 2014*.

2 Commencement

This Determination commences on the day after it is 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 Determination

The *Radiocommunications (Frequency Assignment Certificates) Determination 2003* (Federal Register of Legislative Instruments No. F2005B00217) is revoked.

4 Interpretation

(1) In this Determination:

accredited person means a person to whom the ACMA has given an accreditation under section 263 of the Act.

ACMA means the Australian Communications and Media Authority.

Act means the *Radiocommunications Act 1992*.

approved Deed of Indemnity means a Deed of Indemnity approved under section 7 of the *Radiocommunications (Accreditation — Prescribed Certificates) Principles 2014*.

certificate means a frequency assignment certificate mentioned in subsection 100 (4A) of the Act.

frequency channel means a sub-band that is in a frequency band and has a particular centre frequency.

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) 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.

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

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 certificate or otherwise acting as an accredited person.

Note An application for accreditation must include an undertaking to have a policy of this kind: see section 6 of the *Radiocommunications (Accreditation — Prescribed Certificates) Principles 2014*.

ITU means the International Telecommunication Union.

procedural document means any document published by the ACMA setting out spectrum management objectives, or procedures to achieve those objectives, that are relevant to this Determination, 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 this Determination, see the Act and the *Radiocommunications Regulations 1993*.

- (2) A reference in this Determination to:
 - (a) another instrument made under the Act; or
 - (b) a publication by the ITU; or
 - (c) 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.

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Part 2 **General conditions relating to issue of certificates****5** **Conditions to be met before certificates are issued**

- (1) A certificate must be consistent with:
 - (a) the law, as set out in:
 - (i) the Act;
 - (ii) the spectrum plan in force under section 30 of the Act (subject to subsection (4)); and
 - (iii) the relevant frequency band plan (subject to subsection (4)); and
 - (b) to the extent that it is consistent with paragraph (a):
 - (i) any procedural document, specified in the frequency assignment certificate, that applies to the frequency or frequencies, or frequency channel, specified under paragraph (2) (a); or
 - (ii) if subparagraph (i) does not apply — the interference management criteria:
 - (A) devised and used by the accredited person; and
 - (B) recorded in accordance with Part 3.
- (2) The accredited person must believe, on reasonable grounds that the device is, at the time the certificate would be issued, a device for which the ACMA would issue an apparatus licence for operation of the device:
 - (a) on a frequency or frequencies, or on a frequency channel;
 - (b) at a constancy;
 - (c) at a location; and
 - (d) subject to technical conditions; specified in the certificate.
- (3) In deciding whether to issue a certificate, an accredited person must have regard to the following:
 - (a) whether there would be an adverse effect on licensed radiocommunications because of the proposed operation of radiocommunications devices that would be authorised under a licence for a device to which the certificate relates;
 - (b) any other matter that it is reasonable to have regard to in the circumstances (including the matters set out in this section);
 - (c) if there are no procedural documents that apply to the issue of the certificate:
 - (i) the relevant part of the ITU Radio Regulations; and
 - (ii) a publication by the ITU in the series known as ‘ITU-R Recommendations’.

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Note In considering whether a device would have an adverse effect on licensed radiocommunications, an accredited person should consider:

- (a) the interference protection criteria specified in procedural documents; or
 - (b) if there are no applicable procedural documents, the interference management criteria used by the accredited person and recorded under Part 3.
- (4) A certificate may be inconsistent with the spectrum plan in force under section 30 of the Act or the relevant frequency band plan only if:
- (a) the certificate is for an apparatus licence of a kind mentioned in paragraphs 104(1)(a), (b) of (c) of the Act; and
 - (b) the accredited person has consulted the ACMA before issuing the certificate.
- (5) If the accredited person believes that the device may fall within the special circumstances set out in paragraph 105(2)(b), 153P(2)(e) or 153P(3)(d) of the Act, the accredited person must consult the ACMA before issuing the certificate.
- (6) Subsection (7) applies to the operation of a device at frequencies that are within part of the spectrum:
- (a) that is designated under section 36 of the Act to be allocated by issuing spectrum licences; or
 - (b) for which a spectrum re-allocation declaration under section 153B of the Act is in force.
- (7) The accredited person may issue a certificate for the operation of a device at frequencies mentioned in subsection (6) only if:
- (a) an apparatus licence could be issued for the device under subsection 105 (2), 153P (2) or 153P (3) of the Act; and
 - (b) the accredited person believes, on reasonable grounds, that the device is, at the time when the certificate would be issued, a device for the operation of which the ACMA would issue an apparatus licence.

6 Certification in circumstances in which conditions are met

An accredited person who issues a certificate for the operation of a device must state in the certificate that:

- (a) the operation of the device, as specified in the certificate, will satisfy the conditions that are required to be satisfied under section 5 in relation to the issue of a certificate; and
- (b) they believe, on reasonable grounds, that the device is, at the time when the certificate would be issued, a device for the operation of which the ACMA would issue an apparatus licence.

7 Certificates not to include false or misleading statements

An accredited person must not issue a certificate that includes a statement that is false or misleading.

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Part 3 **Conditions relating to keeping of records****8** **Records to be kept**

- (1) In addition to complying with Part 2, an accredited person who issues a certificate must keep records, for the certificate, of:
 - (a) the interference management criteria used by the accredited person in issuing the certificate;
 - (b) the method used by the accredited person to apply the criteria; and
 - (c) a rationale for the use of the criteria and the method.
- (2) The accredited person must:
 - (a) keep the records for 5 years; and
 - (b) make the records available to the ACMA upon request.

Part 4 **Conditions relating to insurance, indemnity and information**

9 Keeping insurance policy

- (1) This section applies if an accredited person proposes to issue a certificate otherwise than in the course of government service.
- (2) The accredited person must be covered by an insurance policy that is current at least during the period that commences when the person first issues a certificate and ends on the earlier of:
 - (a) the date when the person ceases to be accredited; or
 - (b) the date which is 5 years after the date when the person last issues a certificate.

10 Deed of Indemnity

- (1) An accredited person may only issue a certificate if an applicable approved Deed of Indemnity relating to the issue of certificates by the accredited person is in force.
- (2) The Deed of Indemnity must either:
 - (a) have been given by the government body in which the accredited person serves if the certificate is to be issued in the course of government service; or
 - (b) have been given by the accredited person personally if the certificate is to be issued otherwise than in the course of government service.

Note For information about Deeds of Indemnity, see sections 6 and 7 of the *Radiocommunications (Accreditation — Prescribed Certificates) Principles 2014*.

11 Information in certificate (general)

An accredited person who issues a certificate must state in the certificate whether or not the certificate is issued in the course of government service.

12 Additional information in certificate

- (1) This section applies if an accredited person proposes to issue a certificate otherwise than in the course of government service.
- (2) For the first certificate the accredited person issues, the accredited person must attach to the certificate:
 - (a) a copy of the insurance policy covering the accredited person;
 - (b) a certificate of currency for the policy; or
 - (c) other evidence of the policy.

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- (3) For a later certificate the accredited person issues, the accredited person must state in the certificate the reference number and expiry date of the policy.
- (4) If the insurance policy covering the accredited person is changed or renewed, the accredited person must comply with subsection (2) when issuing the first certificate after the policy is changed or renewed.