



# **Radiocommunications (Accreditation — Prescribed Certificates) Principles 2003**

**as amended**

made under section 266 of the

*Radiocommunications Act 1992*

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This compilation was prepared on 18 July 2013  
taking into account amendments up to *Radiocommunications (Accreditation —  
Prescribed Certificates) Amendment Principles 2011 (No. 1)*

Prepared by the Australian Communications and Media Authority

**1 Name of Principles** [see Note 1]

These Principles are the *Radiocommunications (Accreditation — Prescribed Certificates) Principles 2003*.

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

**2 Commencement** [see Note 1]

These Principles commence on gazettal.

**3 Revocation of previous Principles**

The following Principles are revoked:

- *Radiocommunications (Accreditation — Frequency Assignment and Interference Impact Certificates) Principles No. 1 of 1996*
- *Radiocommunications (Accreditation — Frequency Assignment and Interference Impact Certificates) Principles No. 1 of 1996 Amendment Principles 1998*.

**4 Interpretation**

(1) In these Principles:

*ACA Act* means the *Australian Communications Authority Act 1997*.

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

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

*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 ACA under section 7.

*government body* means:

- (a) the Commonwealth or a State or Territory; or
- (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 ACA.

**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 \$2 000 000 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 ACA 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* 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; or
  - (b) an instrument made under the ACA Act; or
  - (c) a publication by the ITU; or
  - (d) another document published by the ACA;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; and
- (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;

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- (b) business or residential telephone number;
  - (c) date of birth;
  - (d) relevant educational qualifications;
  - (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; and
  - (b) specify the kind of certificates that the applicant proposes to issue if the accreditation is given; and
  - (c) include a declaration, signed by the applicant, that the information in the application is not false or misleading; and
  - (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 53 of the ACA 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 prescribed Agency within the meaning given by section 5 of the *Financial Management and Accountability Act 1997*.

*Note* For the form of a Deed of Indemnity, see section 7.

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

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- (4) The ACA must give to an approved applicant an undertaking that any liability to indemnify the ACA 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 ACA or an indemnity-protected person.

## **8 Educational and work qualifications for accreditation**

- (1) The ACA 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 ACA'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 existing after the time of accreditation.

## **9 Procedure for accreditation**

- (1) As soon as practicable after an application for accreditation is received by the ACA, the ACA must confirm that:
- (a) the application is in the form approved by the ACA; and
- (b) the applicant's educational qualifications and work experience satisfy section 8; and
- (c) the ACA has been paid the charge specified in the determination of charges under section 53 of the ACA 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 ACA must have regard to:
- (a) the need for efficient allocation and use of the spectrum; and

- (b) any other matter the ACA considers relevant for the purposes of accreditation.
- (3) If the ACA decides not to give an accreditation to an applicant, the ACA must, as soon as practicable, give written notice to the applicant of the decision.

*Note* If the ACA decides to give an accreditation to an applicant, under section 263 of the Act, the ACA 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 ACA 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;
  - (f) any other document available from the ACA that, in the ACA'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 53 of the ACA Act for giving a person a document mentioned in subsection (1), the ACA must give that document to the accredited person.

*Note* Many of the documents available on the ACA'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 ACA 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 ACA may inform itself on any matter in any way it thinks fit.
- (3) The ACA 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; and
  - (b) considered:

- (i) the results of those inquiries; and
- (ii) any representation made by the person (whether made in response to those inquiries or under paragraph 265 (1) (b) of the Act); and
- (ia) whether, for prescribed certificates issued under subsection 145 (3) of the Act, on or after 1 January 2006:
  - (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; or
  - (B) sufficient internal guard space was allocated for devices for which those certificates have been issued in accordance with the *Radiocommunications Advisory Guidelines (Registration of Devices under Spectrum Licences without an Interference Impact Certificate) 1998*; or
  - (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; and
- (iii) whether, for prescribed certificates issued under subsection 145 (3) of the Act before 1 January 2006, 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; and
- (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; and
- (v) whether an adverse effect on licensed radiocommunications has been caused by the operation of devices for which prescribed certificates were issued under subsection 100 (4A) of the Act; and
- (vi) whether the ACA is satisfied that the person has breached a condition relating to the issuing of certificates; and
- (vii) all other matters that, in the ACA's opinion, are relevant.

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

## 12 Suspected breaches of conditions

- (1) This section sets out how, if the ACA 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 specified in an instrument of accreditation or in principles determined under subsection 266 (1) of the Act.

- (2) For certificates issued under subsection 100 (4A) of the Act, the ACA 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 ACA'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 ACA'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 2003*.
- (3) For certificates issued under subsection 145 (3) of the Act:
- (a) for certificates issued before 1 January 2006 the ACMA must examine whether the accredited person has failed to 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; or
  - (ab) for certificates issued on or after 1 January 2006 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; or
    - (ii) ensure 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*; 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; or
  - (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 ACA 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.

**Table of Instruments** □**Notes to the *Radiocommunications (Accreditation — Prescribed Certificates) Principles 2003*****Note 1**

The *Radiocommunications (Accreditation — Prescribed Certificates) Principles 2003* (in force under section 266 of the *Radiocommunications Act 1992*) as shown in this compilation is amended as indicated in the Tables below.

Under the *Legislative Instruments Act 2003*, which came into force on 1 January 2005, it is a requirement for all non-exempt legislative instruments to be registered on the Federal Register of Legislative Instruments.

**Table of Instruments**

<b>Title</b>	<b>Date of notification in Gazette or FRLI registration</b>	<b>Date of commencement</b>	<b>Application, saving or transitional provisions</b>
<i>Radiocommunications (Accreditation — Prescribed Certificates) Principles 2003</i>	1 Oct 2003 (see Gazette 2003, No. GN39)	1 Oct 2003	
<i>Radiocommunications (Accreditation — Prescribed Certificates) Amendment Principles 2005 (No. 1)</i>	18 Oct 2005 (see F2005L03100)	1 Jan 2006	—
<i>Radiocommunications (Accreditation — Prescribed Certificates) Amendment Principles 2011 (No. 1)</i>	29 Jun 2011 (see F2011L01312)	30 Jun 2011	—

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

<b>Provision affected</b>	<b>How affected</b>
S. 6	am. 2011 No. 1
Note to s. 6 (3)	rep. 2011 No. 1
Note to s. 6 (3A)	ad. 2011 No. 1
S. 8	am. 2011 No. 1
Note to s. 8 (2)	ad. 2011 No. 1
S. 11.....	am. 2005 No. 1
S. 12.....	am. 2005 No. 1