

EXPLANATORY STATEMENT

Issued by the authority of the Australian Communications and Media Authority

Radiocommunications (Accreditation – Prescribed Certificates) Amendment Principles 2011 (No. 1)

Radiocommunications Act 1992

Purpose

The *Radiocommunications (Accreditation – Prescribed Certificates) Amendment Principles 2011 (No. 1)* (Amendment Principles) amend the *Radiocommunications (Accreditation – Prescribed Certificates) Principles 2003* (Principles). The Principles were made by the Australian Communications Authority, the predecessor to the Australian Communications and Media Authority (ACMA), to determine principles that govern the accreditation process and specify the matters for which the ACMA may accredit persons.

Legislative Provisions

Under section 266 of the *Radiocommunications Act 1992* (the Act) the ACMA may determine principles that govern the accreditation process and specify matters for which the ACMA may accredit persons. Among other things, the Principles currently set out rules for applications, qualifications and prerequisites, documents and approved forms, and the procedure for withdrawing accreditation.

Part 5.4 of the Act outlines the power of the ACMA to grant accreditation. Section 263 outlines matters pertaining to the issuing of accreditation, including charges and matters that should be contained in the written instrument. Section 264 lists reasons for which the ACMA may withdraw accreditation, and section 265 outlines the procedure.

Background

Approximately ninety percent of radiocommunications certification work is performed by accredited persons. One of the benefits of the accreditation process is that it contributes to a market-based solution for frequency coordination and emission level management.

The certificates that accredited persons may issue are:

- 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
- Interference Impact Certificates (IICs) and Guard Space Certificates, issued under subsection 145(3) of the Act, relating to the registration of devices under spectrum licensing arrangements.

Both accredited persons and ACMA staff issue FACs in support of the apparatus licensing regime. In contrast, only accredited persons issue IICs for the registration of devices under spectrum licences. This has been the situation since the first spectrum licences were issued in 1997.

Regulation Impact

The ACMA has considered whether a regulatory assessment process is required and formed the view the amendment would not give rise to a regulatory obligation. This view was formed in consultation with the Office of Best Practice and Regulation (OBPR) who advised that “the OBPR considers that these amendments will have minor and machinery impacts. Therefore no further analysis (in the form of a Regulation Impact Statement) is required.” The OBPR reference is ID 11843.

Consultation

The ACMA began to review the accredited persons scheme in 2005 when it commenced a public consultation process through the release of a discussion paper¹. Since then, the ACMA has developed mechanisms for ongoing consultation and communication with accredited persons in order to maintain a dialogue on issues relating to the operation of the scheme.

A second round of public consultation was undertaken by the ACMA between 7 December 2010 and 28 February 2011. Among other administrative changes, the consultation paper² outlined three proposed changes to the Principles. These proposed amendments were:

- Recognition of the qualifications of New Zealand Approved Radio Engineers and Approved Radio Certifiers as equivalent qualifications for accreditation. This means persons with these New Zealand qualifications would be eligible to apply for accreditation as an accredited person in Australia.
- Removal of the Deed of Indemnity for *Financial Management and Accountability Act 1997* (FMA Act) Agencies. The requirement for a Deed of Indemnity for individuals and organisations not governed by the FMA Act would continue.
- Withdrawal of the accreditation if an accredited person has been inactive for at least two years, in order to ensure that the skills of accredited persons are current. In such cases, APs would be given the opportunity to show cause why they should not have the accreditation withdrawn.

No comments were received during the public consultation period.

Commencement

The Amendment Principles commenced the day after they were registered on the Federal Register of Legislative Instruments.

¹ http://www.acma.gov.au/WEB/STANDARD/pc=PC_100058

² http://www.acma.gov.au/WEB/STANDARD/pc=PC_312378

Notes on Sections

Section 1 Name of Principles

This section names the instrument as the *Radiocommunications (Accreditation – Prescribed Certificates) Amendment Principles 2011 (No. 1)*.

Section 2 Commencement

This section provides that the Amendment Principles commenced the day after they were registered on the Federal Register of Legislative Instruments.

Section 3 Amendment of *Radiocommunications (Accreditation – Prescribed Certificates) Principles 2033*

This section gives effect to the Schedule, which amends the Principles.

Schedule 1 Variations

Items [1] and [2]

These items amend the requirement for a Deed of Indemnity by excluding applicants who are in government service at a government body that is a prescribed agency, within the meaning given by section 5 of the FMA Act, from the requirement to provide a Deed of Indemnity. Removing the indemnity requirement for FMA Act bodies flows from the establishment of the ACMA, in 2005, as part of the Commonwealth covered by the FMA Act. In essence this clause removes the need for the Commonwealth to indemnify itself.

Item [3]

This item makes a change consequential to that made by item [5].

Item [4]

This item enables the ACMA to recognise New Zealand educational qualifications for the purpose of accrediting a person.

Item [5]

Section 8 of the Principles sets out the educational and work qualifications that must be met before a person can be given accreditation. Paragraph (1)(b) includes as a qualification that the person:

has had experience in radiocommunications that is relevant to frequency assignment or interference assessment...

Subsection 266(2A) of the Act provides that such matters in the Principles may relate to matters existing or arising at, before or after the time of accreditation. Paragraph 264(a) of the Act provides that the ACMA may withdraw accreditation if satisfied that the accreditation is no longer in accordance with the Principles.

This item inserts a subsection into section 8, making it clear that the qualification referred to in paragraph 8(1)(b) of the Principles includes experience in issuing prescribed certificates. The role of an accredited person is to issue prescribed certificates; accordingly, the extent to which an accredited person issues prescribed certificates is central to the person's experience in radiocommunications that is relevant to frequency assignment or interference assessment. The effect of this paragraph is that the ACMA may consider currency of practice when considering whether a person's accreditation continues to be in accordance with the Principles, as permitted by subsection 266(2A) of the Act. Generally speaking, the ACMA expects to review the person's activity in the two years before it considers such a matter. Failure to issue a prescribed certificate as an accredited person within any two year period may lead to withdrawal of accreditation under section 264 of the Act.