

Accreditation

Supporting material for the Exposure Draft of the Radiocommunications Bill 2017

MAY 2017

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Purpose of the ACMA supporting material

The ACMA will be responsible for designing and developing new spectrum management arrangements in accordance with the Exposure Draft of the Radiocommunications Bill 2017 (the exposure draft of the Bill), should the Bill be enacted in its current form.

The ACMA's supporting material is intended to provide stakeholders with a greater understanding of how the ACMA envisages key aspects of the Bill may operate, should the Bill be enacted, in order to facilitate consideration of the exposure draft of the Bill.

The ACMA has a particular interest in the views of stakeholders that could inform its approach to transitioning to and implementing the reformed legislation. While the exposure draft of the Bill is available for consultation, the ACMA will join the Department of Communications and the Arts (DoCA) in its stakeholder engagement activities so that the ACMA can benefit from those discussions. However, stakeholders should direct submissions on the package to DoCA as it is the agency responsible for this process.

The ACMA intends to undertake further substantial stakeholder consultation as it designs and then settles on its approach to giving practical effect to the new legislative and policy framework, should the Bill be enacted in its current form.

All views expressed in the ACMA supporting material are preliminary observations only, and have been developed to assist stakeholders in considering and responding to the exposure draft of the Bill. **The supporting material cannot and does not fetter the Authority's discretion in the making of future decisions about the matters discussed in this material or any other matter.** The ACMA will assess each decision it makes under the *Radiocommunications Act 1992*, and under any future legislation, on its merits and in accordance with the requirements of any applicable legislation and administrative law.

No person should rely on statements made in the ACMA supporting material as an indication or explanation of future or present rights and obligations. Neither the ACMA nor the Commonwealth accepts any responsibility or liability for any damage, loss or expense incurred as a result of reliance on any part of the ACMA supporting material. Any person reading this supporting material is advised to also consult the exposure draft of the Bill and DoCA's explanatory materials.

Existing arrangements

Accredited persons scheme

Part 5.4 of the *Radiocommunications Act 1992* (the 1992 Act) provides for the accreditation of persons, such as non-government engineers, to perform specified functions in support of radiocommunications licensing activities. The accredited persons scheme commenced operation in 1997, with persons accredited to issue:

- > frequency assignment certificates (FACs), which are considered by the ACMA in support of its apparatus licensing activities (subsection 100(4A)); and
- > interference impact certificates (IICs), which are considered by the ACMA in support of its spectrum licensing activities (subsection 145(3)).

Accredited persons (APs) have supported the introduction and development of spectrum licensing by providing IICs in support of devices to be registered under spectrum licences. They have also increasingly supported the use of apparatus licences, with APs now issuing FACs for 90 per cent of all apparatus licence applications where frequency coordination is required.

The ACMA may accredit a person who applies in writing, subject to the application of the principles set out in the *Radiocommunications (Accreditation – Prescribed Certificates) Principles 2014* (the Principles). The Principles set out the:

- > application and accreditation process
- > required educational and work qualifications of accredited persons
- > procedures for withdrawal of accreditation and managing suspected breaches of conditions of issuing certificates.

APs must comply with the conditions set out in the:

- > *Radiocommunications (Frequency Assignment Certificates) Determination 2014* when issuing FACs; or
- > *Radiocommunications (subsection 145(3) Certificates) Determination 2012* when issuing IICs.

The accredited persons scheme has provided for:

- > An efficient market-based approach—the use of APs has created an open and competitive market for services that facilitates the issuing of licences and registration of devices by the ACMA. APs assist with the authorisation of all devices required to be authorised under spectrum licences and assisting the ACMA's assessment of 90 per cent of applications for apparatus licences requiring frequency assignments.
- > Quality assurance—under the Principles, it is a prerequisite that the APs must hold qualifications equivalent to an Associate Diploma (relating to radiofrequency communications) granted by an Australian or New Zealand TAFE institution in electronic engineering or a related discipline, and must also have work experience in radiofrequency assignment fields of employment.
- > Risk mitigation—APs are fully responsible for the work they undertake as APs in the preparation and issue of FACs and IICs. They are required to complete a Deed of Indemnity, indemnifying the ACMA and other persons in relation to accreditation matters, and to hold professional indemnity insurance.

As at December 2016, 57 APs were accredited by the ACMA.

Certificates of proficiency

Operators of ship stations and amateur stations must hold a relevant certificate of proficiency—which attests that the person is appropriately qualified to operate the station—as a condition of an apparatus licence authorising operation of such a station.

The ACMA has established arrangements where some regulatory functions are delegated to or otherwise performed by:

- > the Wireless Institute of Australia (WIA), relating to the qualification of operators of amateur stations (Amateur Radio Operators)
- > the Australian Maritime College (AMC), relating to the qualification of operators of ship stations (Marine Radio Operators).

Those regulatory functions include:

- > the conduct of examinations
- > the issue of certificates of proficiency
- > the provision of associated administrative services.

The terms and conditions under which the WIA and the AMC provide the delegated and non-delegated services are specified in instruments of delegation and deeds between each organisation and the Commonwealth of Australia represented by the Chair of the ACMA. Business rules, which set out the rules for the management, provision and conduct of the statutory functions and administrative services, are established under each deed.

Radiocommunications Bill 2017

The Radiocommunications Bill 2017 (the Bill), if passed, would enable expanded use of accreditation arrangements by the ACMA, including:

- > accreditation of companies to undertake frequency coordination activities, as well as individuals
- > expansion of accreditation arrangements to support other spectrum management activities.

The Bill would also provide for continuity with the existing arrangements by requiring:

- > an application for accreditation to be made in a form approved by the ACMA
- > decisions to accredit a person to be made under 'accreditation rules' made by the ACMA (equivalent to the Principles made under the 1992 Act)
- > accreditation to be subject to conditions as specified in the accreditation rules
- > the accreditation rules to set out procedures for the withdrawal of accreditation.

Additional accreditation opportunities

The process for accreditation is outlined under Part 12 of the Bill. The ACMA would have the ability to establish a role for accredited persons in relation to the following spectrum management functions:

- > Licence issue schemes—subclause 34(7)—the ACMA may determine a scheme relating to the issue of licences. Under subclause 34(7) the licence issue scheme may make provision in relation to a matter by conferring a power on a person who holds a specified kind of accreditation.
- > Register of Radiocommunications Licences—subclauses 96(3) and (4)—the ACMA may make register rules prescribing matters required or permitted by the Act in relation to the contents of the Register of Radiocommunications Licences. Clauses 91 to 95 set out what is required or permitted in the register rules. Under related subclauses 96(3) and 96(4) the register rules may also make provision in relation to matter by conferring a power on a person who holds a specified kind of accreditation.
- > Certificates of proficiency—clause 105—the ACMA may by legislative instrument, make certification rules prescribing matters required or permitted by the Act to be prescribed by the certification rules. Under clause 105 the certification rules may provide that an exam mentioned in subclause 104(3)(c) may be conducted by a person who holds an accreditation of a kind specified in the certification rules.
- > Equipment rules—Part 10 Division 2—the ACMA may, by legislative instrument, make rules relating to the operation and supply of equipment. Division 2 of Part 10 of the Bill sets out what the ACMA may include or do in making those rules. Under clause 127, equipment rules may make provision in relation to a matter by conferring a power to make a decision of an administrative character on a person who holds a specified kind of accreditation.

Legislative rules, which would be made by the minister, are able to prescribe matters 'necessary or convenient to be prescribed for carrying out or giving effect to' the Bill. Subclause 236(4) enables the minister to make provision in the legislative rules for a person who holds a specified kind of accreditation to make a decision of an administrative character.

Charging of fees

In making legislative rules, the minister may authorise accredited persons to charge fees in relation to their exercise of a power conferred by the legislative rules.

In making licence issue schemes, register rules or equipment rules, the ACMA may authorise accredited persons to charge fees in relation to their exercise of a power conferred by the licence issue scheme, register rules or equipment rules.

If the ACMA makes certification rules under clause 109, then clause 105 provides that the accredited person may charge fees in relation to an exam conducted by the person.

In all these cases, the fees charged by an accredited person must not be such as to amount to taxation.

Proposed approach

Accredited persons and other performers of regulatory functions such as the WIA and AMC have become significant contributors to the management and administration of radiocommunications licensing over the last 20 years. The role of APs will be a factor in the design of any new licensing and accreditation arrangements. The ACMA recognises the importance of minimising the regulatory impediments to the continued provision of services by APs, the WIA, the AMC, or other potential industry participants as new licensing and accreditation arrangements are implemented.

The ACMA will take an evidence-informed approach to implementing the Bill, if passed, consistent with the government's policies on best practice regulation and deregulation. In choosing the options with the greatest net benefit, the ACMA would gather the best available evidence, including by seeking the views of current and prospective spectrum users and other key stakeholders.

Accreditation of individuals

While the Bill provides increased scope for the accreditation of individuals and companies across a broader range of spectrum management functions, the ACMA expects its initial focus would be to ensure that accreditation rules (in conjunction with transitional arrangements) facilitate continuity of services supported by persons accredited under the 1992 Act, subject to those persons continuing to meet the requirements and obligations of APs.

Accreditation of companies

If it is feasible to do so in the time available, the ACMA expects to consider providing for the accreditation of companies when the accreditation rules are first made. There are, however, differences between determining whether a company has the capacity to perform (and continue to perform) a particular service and determining whether an individual is able to perform a service.

As such, the ACMA would need to consider any additional criteria that would need to be applied to companies seeking accreditation. For example, it may be appropriate for the ACMA to consider:

- > operating procedures, including record-keeping and performance evaluation
- > quality management systems, such as process controls and risk mitigation strategies.

Examinations

As mentioned above, the WIA and the AMC perform regulatory functions on behalf of the ACMA in relation to the qualification of particular operators, including issuing certificates of proficiency as delegates of the ACMA.

The Bill provides for exams to be conducted by the ACMA or a person who holds particular accreditation (subclause 104(3)(c)). The ACMA expects to consult with the WIA, AMC and other interested parties about implementation of accreditation arrangements and any consequential variations to the deed between each organisation and the Chair of the ACMA.

Expanded use of accreditation arrangements

The Bill, if passed, would give the ACMA the ability to establish roles for accredited persons (both individuals and companies) in additional spectrum management functions, such as those provided for by the equipment rules and the Register of Radiocommunications Licences.

Expanding accreditation arrangements would provide more opportunities for spectrum users to participate in spectrum management. This would be consistent with the final report of the Spectrum Review¹. The ACMA anticipates that the expansion of accreditation arrangements will be considered wherever the open and competitive provision of services by accredited persons is likely to result in sustainable support to spectrum users that is more efficient and flexible.

The ACMA will consult stakeholders about the potential to expand accreditation arrangements as it develops and implements arrangements under the Bill.

¹ The final report is available from <https://communications.govcms.gov.au/publications/spectrum-review-report>.

Implementation and transition

Broadly speaking, the ACMA would expect to the extent possible to continue the effect of existing arrangements under the 1992 Act that support APs over the transition period until such time as new arrangements are put in place.

This transition of the accredited persons scheme to the new legislative arrangements could occur in a number of ways, including by:

- > the accreditation rules replacing the accredited persons scheme commencing at the same time as the main provisions of the Bill²; or
- > the accredited persons scheme continuing in force after commencement of the main provisions of the Bill until replaced by new accreditation requirements.

Either of these options would require consultation with industry and stakeholders before new or continued accreditation arrangements could be put in place.

The scope of the accreditation rules is likely to increase over time, as user involvement in management of the spectrum increases.

² In its consultation paper *A proposed approach to transition from the 1992 Act to the Radiocommunications Bill*, the Department of Communications and the Arts (DoCA) has identified a number of functions including the accreditation arrangements as elements of the Bill that could operate from commencement. DoCA is seeking stakeholder views on which provisions/elements of the new legislation should start on the commencement date.

Related matters

The ACMA recognises that the accreditation rules would need to be developed in a way that is consistent with frequency coordination activities required under the licence issue schemes that are also provided for by the Radiocommunications Bill 2017.