

A Response to a Consultation Paper re the Accredited Persons Scheme

Prepared by

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Thank you for the opportunity to provide comment on proposed legislative changes and other aspects of the Accredited Persons Scheme.

The legislative instruments have already been drafted prior to this consultation, however the Consultation Paper also invites “... *general comments on how to improve the efficiency and effectiveness of the AP scheme*”. This response will therefore focus on those aspects of the scheme that might be improved, and we will leave it to the drafters of the regulations to accommodate those suggestions within the drafts if and as they see fit and necessary.

Whilst the AP scheme may be seen by some to be operating satisfactorily we strongly believe that there are substantial improvements that could be made even without regulatory change. But the advent of the *Reform and Modernisation Act* and the re-making of these Instruments now provide a timely impetus for such change.

The Deed of Indemnity

We strongly support the proposal to dispense with the Deed of Indemnity.

From the very outset of Accreditation some 25 years ago we have questioned the need for this Deed. We see it as an unreasonable burden and a dis-incentive for otherwise competent people to become accredited. Our archives contain a rich history of debate on this topic and we would be pleased to make that material available to you. However with the prospect of the Deed now being consigned to the dust bin of history none of that should be of further interest.

There is however one residual question; what will become of the Deeds that are already in existence? Will they expire automatically with the change in legislation, or will there need to be some formal acknowledgement that the Deeds are no longer in force. Does this matter need to be addressed in the drafting of the *Transitional Accreditation Rules*?

Specific Licensing Accreditation

Whilst we do not disagree with this proposal it is unclear to us as to what purpose specific accreditation will serve and whether it will be effective.

If the primary intent is to provide options for accreditation activities beyond those which currently exist, for example the delegation of aspects of management of the Amateur licensing regime, then the proposal would seem to facilitate such intentions.

However in previous submissions we have made suggestions that it may be beneficial to limit the extent of an individual's accreditation to those areas in which he/she is competent. Not all APs may

be competent in all facets of licensing, but this should not prevent an AP from being active within a limited scope of work. And the availability of specific licensing accreditation would seem to facilitate that option.

But specific accreditation will only be useful in that regard if there is a regime that seeks to ensure the competency of the AP. Why would a prospective AP seek to restrict his/her potential scope of business by applying for less than “General” accreditation? There needs to be more meaningful criteria for the granting and the maintenance of accreditation. Accreditation is essentially “qualification” based - but it needs to be “competency” based. There are many facets of this concept that might to be considered. Some of these are outlined under further headings below.

Competency based accreditation

The Act says that the ACMA, in deciding whether to issue an apparatus licence, may take account of a certificate issued by an accredited person. In reality the ACMA almost always relies on such a certificate, and relies on it absolutely. However it would seem that if the ACMA grants accreditation to an AP without reasonably ascertaining the competency of that person it would seem that the ACMA would be in a poor position in the event of a serious licensing problem. In our opinion there are many things that could be done differently, with or without legislative change, to assure competency.

Prerequisites for accreditation

Because there is no single recognised pathway for a prospective AP to acquire and demonstrate competency there needs to be a flexible approach taken by the ACMA to the granting of Accreditation. But there is a fine line between unreasonably restricting entry to new applicants and having effectively no competency criteria.

The Radiocommunications Accreditation (General) Rules 2021 as currently drafted provide considerable scope to the ACMA in granting accreditation, but the very general nature of these provisions may make it difficult for the ACMA to sustain a case for refusing to grant an accreditation. (Has an application ever been refused?) So the practical reality is that accreditation is available unless entitlement can be disproved by the ACMA. We believe there needs to be an obligation on the part of the applicant to positively demonstrate competency and capacity to undertake the work.

Accreditation in perpetuity

The current arrangements provide for accreditation in perpetuity unless accreditation is explicitly withdrawn. Whilst provisions do exist for withdrawal of accreditation, again they are of such general nature that an objection to a withdrawal of accreditation might readily be sustained. (And again, has accreditation ever been withdrawn without the agreement of the AP?)

The radiocommunications regulatory regime is a fast moving one. Accreditation given ten years ago provides no guarantee of competency today. Consider for example the complexity of the recently introduced AWL licensing and device registration.

Accreditation in perpetuity results in an ever increasing number of APs. This produces an ever increasing “auditing task” for the ACMA, if indeed the ACMA seeks to maintain a standard of AP

performance. It also produces an increasingly useless list of APs on the ACMA website from which prospective users of AP services must choose.

We suggest that, as a fundamental measure, the relevant Instrument should provide for automatic withdrawal of accreditation if the AP has not issued a certificate within (say) a two year period. At present there are some 51 APs listed on the ACMA website. Of those about 24 do not appear to have issued an FAC within the two years to 31 March 2021 (though it is possible that some have issued an IIC). A provision in the Instrument for automatic de-registration after a long period of inactivity would remove from the ACMA the burden of justification for the withdrawal of accreditation.

Whilst continuous activity will not guarantee competency of an AP it will go a long way to identifying those APs who have a vested interest in remaining competent.

Accreditation within firms

The assurance of competency might also be enhanced by re-considering the way in which accreditation is granted and managed for individuals who work within business entities that are not sole traders or otherwise one-person businesses.

The current Accreditation process is predicated on the accreditation of the individual. We supported this “personal” responsibility from the outset and continue to support it, the intention being to avoid a situation where a corporation could be accredited, with “nameless” unqualified employees then undertaking work in an uncontrolled manner.

This “personal” rationale also fitted the cottage industry view of Accreditation at its commencement, with many APs being one person enterprises, whether incorporated or otherwise. But with the maturing of accreditation as a business we suggest it might be appropriate to re-visit this approach. We support the retention of the concept of “personal” qualification to carry out this work if accreditation is to have any real meaning, but at the same time we need to recognise the changed nature of this “business”.

In the case of a corporation, the “Accreditation” might be held by a single responsible individual within that organisation – let’s call that person the Responsible Accredited Person (RAP).

The RAP would then have the option of nominating suitably qualified staff within the company as subordinate APs who might carry out the work and issue certificates. It would be the responsibility of the RAP to nominate the subordinate APs to the ACMA, to be responsible for their ongoing management and training, and to recommend the withdrawal of their accreditation when they leave the company or move to another position within the company where they are no longer active in this work.

In the case of a single person enterprise, that person would be the RAP, i.e. the status quo.

The ACMA would maintain a register of all APs, but only the RAPs (and the sole APs) would be listed publicly on the ACMA website, and only if the entity represented is seeking to undertake work for external clients. This arrangement would reduce the list of potential service provider APs thereby providing better visibility of options to those seeking AP assistance.

But most importantly this change would relocate the responsibility for quality assurance from the ACMA to the RAP. The ACMA would need only to audit the competency and facilities of one AP in the company (the RAP) and this would provide a more focused opportunity to audit the overall AP process. In the twelve months to March 2021 some 90% of all FACs have been issued by APs working within the eight most active businesses.

The use of alternative interference management criteria

It has always been the case that an FAC or an IIC can be issued relying on “ACMA procedural documents” or on the basis of alternative interference criteria devised by the AP. And this situation is maintained in the draft instruments.

Despite being a longstanding arrangement this situation leaves a number of questions unanswered. We believe there is the need for clarification of various aspects, and perhaps there is a need to incorporate some changes in the Instrument. Aspects of this are discussed in the following paragraphs.

The determination of harmful interference

The various procedural documents usually do not set out interference management criteria explicitly. Rather, RALIs tend to operate by implying successful co-ordination if defined co-ordination procedures can be completed successfully.

For example RALI LM8 provides frequency/distance tables that determine separation that must be maintained to achieve a successful co-ordination between services. But it also defines “target grade of service” figures that might conceivably be interpreted to arrive at alternative interference criteria. Likewise RALI FX3 establishes wanted/unwanted criteria but those criteria need to be applied within the context of other procedures in the RALI, such as the application of “correction curves”.

In the case of spectrum licensing unacceptable interference is deemed to exist if the requirements of the s145 determination are not met – irrespective of the reality of the situation.

In the absence of a clear and quantitative definition of harmful interference it is open to the AP to interpret interference criteria, and it is likely that different interpretations will result in different interference outcomes. And interference that might be “acceptable” to one service operator might not be acceptable to another.

Moreover if alternative interference criteria are used service operators have no way of knowing what level of interference they might be subject to. This situation often comes to light when we re-assess (under a procedural document) a prior co-ordination with a view to varying the licence, only to find that the original assignment no longer co-ordinates successfully under the procedural document because of a more recently licensed service. That situation could be caused by an error in the application of the procedural document in the licensing of the more recent service, or the application of alternative criteria. How then to move forward? Surely if the alternative coordination criterion is more lenient the licence should carry a condition stating that it does not receive the extent of protection otherwise available under a procedural document.

Are RALIs instructions or are they just guidelines?

If an alternative coordination method is used in lieu of a procedural document such as a RALI, what parts of the RALI (if any) must continue to be observed? For example, is it permissible under an alternative coordination method to certify the use of an antenna other than one proscribed in a relevant RALI. Presumably not, but where does the discretion start and stop?

Apart from interference management, procedural documents also seek to enforce spectrum efficient assignments. It is possible that an alternative co-ordination method might be used to demonstrate that harmful interference does not exist in a particular circumstance simply because of the absence of other services in the vicinity, without regard for spectrum efficiency.

The need for greater transparency of alternative methods

Ideally a perfect set of procedural documents would exist and that would eliminate the need for alternative coordination procedures. But because that ideal does not exist the ACMA has seen fit to divest some of its “rule-making” prerogative to the “rule-takers” i.e. to the APs the argument being that this opens the opportunity for innovation and improvement in rule-making.¹ But it also creates potential problems for control and management that need to be addressed.

The Draft Radiocommunications Accreditation (General) Rules 2021 set out obligations that must be met when alternative coordination procedures are applied. Specifically The AP must make and keep records of the interference management criteria used and make the records available to the ACMA upon request.

Certainly we support the requirement for such documentation, but is it sufficient that the document merely exists? (And is it ever audited?) The wording in the relevant Instrument does not even seem to require that alternative interference management criterion achieves any particular test of adequacy – it just needs to be documented. Surely there is a role for the ACMA to ensure that alternative criteria achieve an outcome equivalent to that of the procedural document.

We recommend that FACs that are issued under alternative interference management criteria be identified as such in the public register, in the same way that registrations under spectrum licensing are identified as being done under a regular IIC, under “Guard Space” or under an “Agreement”.

And we suggest that the documentation of alternative methods should be in the public domain and subject to public scrutiny. It might be argued that these alternative methods are proprietary and should be protected. However we would argue that the right of incumbent licensees to know the levels of interference to which their system might be subjected overrides the right of the AP to hold these methods in secret.

If indeed the object of alternative interference management criteria is to advance knowledge and achieve improvements in this area then it is in the interests of everyone for such material to be publicly available. Or is the purpose of alternative methods simply to provide a convenient alternative to licensing irrespective of merit.

In our opinion the rule-making should be left to the ACMA planners and the assignment work should be left to the APs. If the ACMA believes there is expertise out there within AP community that might

be leveraged by the planners in the development of RALIs etc. then perhaps there needs to be a more effective form of consultation with APs than we have at present.

ⁱ It is a curious twist that this situation has arisen. Reforms in spectrum management some 40 years ago saw the establishment of a “Planning” group within the spectrum management regime, the intent being to remove the “rule-making” function from the frequency assigners who worked within an “Operations” group, thereby establishing clear separation between the rule makers and the rule takers.