

Accreditation

prepared by

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Background

The concept of accreditation, whereby engineers external to the ACMA undertake the frequency co-ordination and assignment work required by the licensing process, is a concept that was put before the 1990 Parliamentary Inquiry into the management of the radio spectrum by Spectrum Engineering Australia.

The enabling legislation for Accreditation was the 1992 Act, and as noted by the Consultation Paper, a large majority of the frequency assignment work is now undertaken by Accredited Persons (APs). Whilst the then Spectrum Management Agency was initially reluctant to implement Accreditation (the first Certificate of Accreditation was not issued until May 1996) it is now generally acknowledged both by the ACMA and the radiocommunications industry that the process has been extremely successful, the greatest benefit being perhaps the savings in public resources resulting from the devolution of what had hitherto been the unnecessary provision of these engineering services by the Commonwealth .

As a company whose core business is the provision of “Accreditation” services we obviously support the proposed approach of the Consultation Paper, i.e. the continuation of this process.

That said however we believe that, with the benefit of some twenty years of experience of the Accreditation system, there are some refinements that might be made to overcome what we perceive to be some shortcomings that are resulting in our company having difficulty in encouraging a number of our otherwise well qualified engineers to apply for accreditation.

The Deed of Indemnity

It is a prerequisite for Accreditation that the prospective AP signs a Deed¹ indemnifying the Commonwealth against loss, damages, etc. resulting from his/her actions as an AP, “...irrespective of whether there was fault on the part of the person whose conduct gave rise to that liability, loss, damage, cost or expense”. The Deed does include a further Clause that may provide some relief to the AP in the event of contributorily fault by the ACMA, but the wording as it stands provides little comfort to a prospective (or any) AP.

If in fact a Deed of Indemnity is considered essential for the operation of Accreditation we ask that the current wording be re-examined to ensure it balances the needs of all parties. Contrast what appears to be the unbalanced wording of this Deed with the more considered provisions contained

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within the “Commonwealth Purchase Order Terms”², at paragraph C.C.9 - *Liability of the Supplier*. Obviously there are differences in the applicability of these two documents – I am not suggesting the latter can be a direct substitute for the former – but I am pointing to the better balance and more moderate wording of the latter.

The current Deed was drafted at a time when the then Spectrum Management Agency was hesitant about the Accreditation concept, and presumably saw little benefit in promoting it - the Deed was presented as a “take it or leave it” proposition for the AP. The situation now however is considerably different with the ACMA being heavily reliant on APs, and whilst new APs continue to sign the Deed we suggest they may be doing either reluctantly or unwittingly, simply because there is no other way forward. But it is not our practice to ask our staff to sign this Deed without drawing to their attention the potential personal liability it could incur.

Indemnity Insurance

It is a further requirement of the Accreditation process that the AP be covered by Professional Indemnity insurance. This is appropriate, and even without this obligation it would be reckless for a professional person to practice without insurance.

We are concerned however that the Deed that mandates insurance may, by its very wording, negate the benefit of that insurance in the event of a claim. We understand through discussion with our insurance broker that an indemnity, depending on the wording, has the potential to extend liability beyond that which is covered by the policy. We would therefore ask that the wording of the Deed be re-examined to ensure that it does not extend the liability of the AP beyond that which is normally covered by Professional Indemnity insurance.

A suggested refinement of the Accreditation framework

The current Accreditation process ostensibly places the responsibility for loss, damage etc. at the feet of the individual AP. Accreditation is held and the Deed is signed in a personal capacity, even though the AP may be covered by an insurance policy held by the employer.

Whilst this situation may be acceptable to the principals of businesses, who, with no other option might be willing to accept the liability involved, it can cause difficulties for employees.

We supported this “personal” responsibility from the outset, 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 the time, with many APs being a one person enterprise, whether incorporated or otherwise.

But with the maturation of this 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 relieve the employee of the personal financial and legal liability that might attach to accreditation, or at least be seen to

² <http://www.finance.gov.au/sites/default/files/Purchase%20OrderTerms%20v2.pdf>

attach. We therefore suggest a refinement to the framework as outlined in the following paragraphs.

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 sign the Deed of Indemnity on behalf of the corporate entity rather than in a personal capacity. The insured corporate entity would therefore become the direct respondent to claims arising from the activities of its employee APs.

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, as per the current processes. 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 have them removed from the ACMA listing 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 who could sign the Deed either personally or on behalf of the company if the business is incorporated.

The ACMA would maintain a register of all APs, but only the RAPs would be listed publicly on the ACMA website, and only if the entity represented by the RAP 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.

Quality assurance aspects

There is very little vetting undertaken by the ACMA in the granting of accreditation, and in recent times there appears to be very little ongoing auditing of the work of APs. Moreover, once accredited, there is no constraint on the type of work that an AP might undertake, irrespective of experience in a particular licensing sector. The consequence of this situation is the increasingly common appearance of faulty assignments in the database, which may or may not go un-corrected.

This proposed new arrangement would place the responsibility for the quality of the performance of the sub-ordinate APs directly upon the RAP in the first instance. Responsibility for faulty work by individual APs would be notified to the RAP by ACMA. A graded range of sanctions might exist, e.g. formal warnings by the ACMA, a direction from the ACMA to suspend or de-register a particular AP, with the ultimate sanction effectively being the loss of accreditation by the RAP.

These arrangements are likely to provide an incentive for higher quality of performance than might be achieved under the current regime. Under the proposed arrangements poor performance by an AP could result in the loss of his/her accreditation and the possible consequence of a demotion or even loss of employment. Persistent poor performance could eventually result in the RAP losing accreditation, and hence the business losing its ability to undertake this work.

In Summary

In summary we believe the proposals outlined above, which are based on the experiences of the past twenty years and which would not seem difficult to implement, are likely to increase the quality of work under the accreditation regime and encourage greater participation by competent people.