

DEED

Between

THE WIRELESS INSTITUTE OF AUSTRALIA (WIA)

and

COMMONWEALTH OF AUSTRALIA
represented by the Chief Executive of the
AUSTRALIAN COMMUNICATIONS AND MEDIA
AUTHORITY (ACMA)

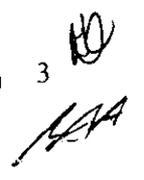
In relation to

Amateur Examinations, Amateur Certificates of Proficiency and
associated Administrative Services

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This Deed is made on

28 January 2009 ³ 

PARTIES

COMMONWEALTH OF AUSTRALIA ABN 55 386 169 386 represented by the Chief Executive of the Australian Communications and Media Authority (ACMA), a body corporate established under the *Australian Communications and Media Authority Act 2005* ('the Commonwealth')

and

THE WIRELESS INSTITUTE OF AUSTRALIA ACN 004 920 745, a company limited by guarantee, having its registered office at Bayswater, Victoria 3153 ('the WIA')

PURPOSE

Recitals:

- A. Section 119 of the *Radiocommunications Act 1992* ("the Act") allows ACMA to determine the need for qualified operators for any class of transmitter licences. The *Radiocommunications (Qualified Operators) Determination 2005* sets out that persons must be qualified operators to operate transmitters under transmitter licences that are Amateur Transmitter Licences.
- B. Section 121 of the Act provides, among other things, that ACMA may issue to an applicant a certificate of proficiency in writing certifying that the holder of the certificate is taken to be a qualified operator in relation to a specified class of Amateur Transmitter Licences. Under section 122 of the Act, ACMA can issue a certificate of proficiency if, among other things, ACMA is satisfied that the applicant has achieved or would probably achieve satisfactory results in examinations conducted by a body or organisation approved by ACMA.
- C. Subsection 122A(1) of the Act allows ACMA to delegate the power to issue a certificate of proficiency to a body or organisation approved by ACMA to conduct examinations for the purposes of section 122 of the Act.
- D. Subsection 122A(2) of the Act prohibits the body or organisation that has been delegated the power under subsection 122A(1) of the Act to issue a certificate of proficiency, from making a final decision refusing to issue a certificate of proficiency. If a decision is made not to issue the certificate, the application must be referred for a final decision to ACMA or a Division of ACMA.
- E. Concurrent with this Deed, ACMA has by separate instruments:
 - (a) approved, in writing, the WIA to conduct examinations as an approved organisation in accordance with subsection 122(2) of the Act;

- (b) delegated, in writing, to the WIA the power to issue a certificate of proficiency under subsection 122A(1) of the Act; and
- (c) determined that the WIA may charge fees for the provision of Statutory Functions on a Cost Recovery Basis under paragraph 298A(1)(a) of the Act.

F. In addition to the Statutory Functions, on commencement of this Deed, the WIA agrees to undertake the Administrative Services associated with the Statutory Functions in accordance with the Business Rules and within the framework of this Deed.

OPERATIVE PART

1. Definitions

1.1 Unless otherwise provided, terms in this Deed shall have the same meaning as provided in the *Radiocommunications Licence Conditions (Amateur Licence) Determination No. 1 of 1997*.

1.2 In this Deed, unless the contrary intention appears:

ACMA means the Australian Communications and Media Authority, a body corporate established under the *Australian Communications and Media Authority Act 2005*;

Act means the *Radiocommunications Act 1992*;

Administrative Services means the services set out in the Business Rules associated with the provision of the Statutory Functions;

Amateur Certificate of Proficiency (ACP) means:

- (a) Amateur Operator's Certificate of Proficiency (Advanced);
- (b) Amateur Operator's Certificate of Proficiency (Standard); and/or
- (c) Amateur Operator's Certificate of Proficiency (Foundation);

Amateur Syllabi means:

- (a) Amateur Operator's Certificate of Proficiency (Advanced) syllabus;
- (b) Amateur Operator's Certificate of Proficiency (Standard) syllabus; and/or
- (c) Amateur Operator's Certificate of Proficiency (Foundation) syllabus;

Amateur Transmitter Licence means a transmitter licence that authorises the holder to operate:

- (a) an amateur advanced station;
- (b) an amateur beacon station;
- (c) an amateur foundation station;
- (d) an amateur repeater station; or

(e) an amateur standard station;

Annual Performance Report means the compilation of Performance Reports under clause 10.1 which the WIA must give to ACMA;

Assessment has the same meaning as the term Examination;

Assessment Complaint means a written or oral communication to the WIA national office or to the WIA Nominated RTO from a candidate relating to a particular Assessment, after normal discussion with an Assessor and in accordance with the Assessment instructions, in which a person expresses dissatisfaction with the WIA's provision and conduct of an Examination;

Assessor means a person qualified by the WIA Nominated RTO and currently accredited and registered by the WIA as an Assessor and also includes a person appointed as a Nominated Assessor;

Authorised Auditor means any person or organisation (including an employee of that organisation) authorised in writing by ACMA to audit the WIA's ongoing compliance with this Deed and its financial records in relation to the Statutory Functions and Administrative Services;

Business Hours means the hours between 10.00 am and 4.00 pm at the local time of the WIA;

Business Rules means the business rules prepared by the WIA and approved by ACMA, as amended from time to time, for the management, provision and conduct of the Statutory Functions and Administrative Services. The Business Rules shall also include:

- (a) guidelines for conferring Recognition for Prior Learning;
- (b) guidelines on the conduct of Special Examinations; and
- (c) instructions on such other services and matters required to be performed by the WIA related to the Statutory Functions;

Charge means a charge imposed by the WIA for a service set out in this Deed;

Commencement Date means 2 February 2009 or such other date as may be agreed in writing by the Parties;

Complaint means a written or oral communication to the WIA, in which a person expresses dissatisfaction or grievance with the WIA's delivery of the Statutory Functions or Administrative Services, but does not include an Assessment Complaint;

Cost Recovery Basis means the methodology used to calculate a charge so that the charge is reasonably related to the expenses incurred or to be incurred by the WIA in relation to the matters to which the charge relates and shall not be such as to amount to taxation;

Database of Assessors means the database used to record, store and maintain details of assessors;

Database of Qualified Operators means the database used to record, store and maintain the following records associated with each application for an Amateur Certificate of Proficiency:

- (a) the applicant's name, address, telephone numbers, place and date of birth, height and distinguishing features;
- (b) the date of the application;
- (c) whether the application concerns an initial or a replacement issue of an Amateur Certificate of Proficiency;
- (d) the type of Amateur Certificate of Proficiency sought by the applicant;
- (e) in the case of a replacement issue, the place and date of the original examination for and the certificate number of the original Amateur Certificate of Proficiency (if known);
- (f) in the case of an application for an initial issue, whether the applicant passed or failed the Examination for the Amateur Certificate of Proficiency and the place and date of that Examination;
- (g) the date and certificate number of any Amateur Certificate of Proficiency issued in relation to the application; and
- (h) any actions or exemptions granted to the applicant in relation to Recognition for Prior Learning;

Deed means this Deed (in relation to Amateur Examinations, Amateur Certificates of Proficiency and associated Administrative Services), unless the contrary intention appears;

Default Event means an event described in clause 24;

Delegation means a delegation made, in writing, by ACMA under subsection 122A(1) of the Act to the WIA to exercise the power to issue Amateur Certificates of Proficiency under section 121 of the Act; including an approval, in writing, by ACMA under paragraph (b) of the definition of **approved examination** in subsection 122(2) of the Act for the WIA to conduct Examinations;

Examination means 'approved examination' under subsection 122(2) of the Act;

Information Privacy Principles means the principles referred to as such under the *Privacy Act 1988*;

Intellectual Property includes all copyright and neighbouring rights, all rights in relation to inventions (including patent rights), registered and unregistered trade marks (including service marks), confidential information (including trade secrets and know how), databases, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

Learning Facilitator means a person qualified by the WIA Nominated RTO and currently accredited and registered by the WIA as a Learning Facilitator;

Nominated Assessor means a person qualified by the WIA Nominated RTO and currently accredited and registered by the WIA as a Nominated Assessor;

Parties means the Commonwealth and the WIA;

Performance Report means the report which the WIA must give to ACMA under clause 10.1;

Personal Information means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

Qualified Operator means a person who holds an Amateur Certificate of Proficiency;

Recognition of Prior Learning (RPL) means the recognition and acknowledgement by the WIA of a candidate's relevant prior learning, training, qualifications and/or education, having regard to the currency of the same and the currency of its application;

Regulations means the *Radiocommunications Regulations 1993*;

Service Levels means the following timeframes:

- (a) issuing Amateur Certificates of Proficiency within 15 Working Days following receipt of a correctly completed application form from an applicant deemed to have met the requirements for the relevant level of proficiency;
- (b) conducting Examinations for the purposes of section 122 of the Act, at locations, frequency and costs and in accordance with the timeframes set out in the Business Rules, such Examinations being consistent with the aim of providing Qualified Operators with reasonable access to radiofrequency spectrum allocated to Amateur use;
- (c) providing the Administrative Services in accordance with the timeframes set out in the Business Rules;
- (d) responding to written and electronic communications relating to the Statutory Functions in accordance with the timeframes set out in the Business Rules; and
- (e) in relation to Complaints:
 - (i) acknowledging receipt of the Complaint within 10 Working Days of receiving the Complaint;
 - (ii) properly considering and resolving a Complaint within 40 Working Days of receiving the Complaint; and
 - (iii) referring a Complaint to ACMA if the Complaint can not be resolved within 40 Working Days of receipt;

Special Examination means an 'approved examination' provided for a candidate with a disability or the assessment of a candidate using telephone or video link or any other form of secure private electronic communication;

Statutory Functions means:

- (a) the issue of Amateur Certificates of Proficiency under section 121 of the Act;
- (b) the provision and conduct of Examinations as an approved body or organisation for the purposes of section 122 of the Act; and
- (c) the referral of applications for Amateur Certificates of Proficiency to ACMA under subsection 122A(2) of the Act, where the WIA has decided not to issue an Amateur Certificate of Proficiency, together with the WIA's reasons for that decision;

Termination Notice means a notice under clause 24.2 which has the effect of terminating this Deed;

Volunteers means:

- (a) persons who are registered from time to time as Assessors or Learning Facilitators;
- (b) persons who are members from time to time of the WIA's *Examination Service Committee*; and
- (c) the officers from time to time of the WIA as defined in the *Corporations Act 2001*;

but does not include other members of the WIA or other members of clubs affiliated to the WIA;

WIA Nominated RTO means the Registered Training Organisation registered in accordance with the Australian Quality Training Framework or other like organisation appointed by the WIA to qualify Assessors and Learning Facilitators and generally assist the WIA in the performance of its Statutory Functions;

Working Day means any day other than:

- (a) a Saturday, Sunday or public holiday (including public service holidays) for the whole of the Australian Capital Territory or the whole of or the part of the State or other Territory in which the WIA's principal office is located; and
- (b) a day between 20 December and 31 January (both inclusive) that is one of the WIA's designated shutdown days.

2. Interpretation

2.1 In this Deed, unless the contrary intention appears:

- (a) monetary references are references to Australian currency;
- (b) the clause headings are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- (c) a reference to a clause, subclause, paragraph or subparagraph is a reference to a clause, subclause, paragraph or subparagraph of this Deed, unless it is a reference to legislation;

- (d) a reference to a person includes a partnership and a body whether corporate or otherwise;
- (e) a reference to a body, a position or an authority whether statutory or not:
 - (i) which ceases to exist; or
 - (ii) whose powers or functions are transferred to another body, position or authority;
 is a reference to the body, position or authority which replaces it or which substantially succeeds to its powers or functions;
- (f) a reference to a financial year is to a financial year ending on 30 June;
- (g) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (h) words in the singular number include the plural and vice versa;
- (i) words importing a gender include any other gender;
- (j) a reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth as amended or replaced from time to time;
- (k) a reference to writing, or written, refers to any representation of words, figures or symbols capable of being rendered in a visible form; and
- (l) no provision of this Deed is to be construed adversely to a Party solely on the ground that the Party was responsible for the preparation of this Deed or that provision.

3. Scope of Deed

- 3.1 This Deed sets out the terms and conditions under which the WIA shall perform the Statutory Functions and Administrative Services.

4. Term

- 4.1 This Deed continues, subject to this Deed, for a period of 5 years from the Commencement Date.
- 4.2
 - (a) Where the WIA is not in breach of any of the terms or conditions of this Deed, the WIA may, at its option, renew this Deed for a further period of 5 years by giving not less than 6 months written notice prior to the expiration of this Deed.
 - (b) The renewal of this Deed will be on the same terms and conditions as this Deed with the exception of the deletion of this clause 4.2.

5. Provider's Obligations

- 5.1 The WIA must:
 - (a) provide suitably qualified and experienced staff or Volunteers to deliver the Statutory Functions and Administrative Services;

- (b) maintain financial viability, to ensure the ongoing provision of the Statutory Functions and Administrative Services;
 - (c) comply with reasonable directions given by ACMA relating to this Deed; and
 - (d) provide the Statutory Functions and Administrative Services in accordance with the Business Rules.
- 5.2 The WIA must within a reasonable time of a request provide ACMA with any information it reasonably requires concerning the WIA's performance of its obligations under this Deed.
- 5.3 The WIA must comply with the provisions of the Act in relation to decisions that it makes as a delegate of ACMA for the issue of Amateur Certificates of Proficiency, including:
- (a) Section 120 — which requires that applications for Amateur Certificates of Proficiency must be in a form approved by ACMA;
 - (b) Subsection 122(1) — which requires the WIA not to issue an Amateur Certificate of Proficiency unless:
 - (i) the WIA is satisfied that the applicant has reached the minimum age (if any) in relation to a class of Amateur Certificates of Proficiency; and
 - (ii) the WIA:
 - (A) is satisfied that the applicant has achieved satisfactory results in approved examinations or in examinations conducted under the Regulations; or
 - (B) is satisfied, upon reasonable grounds, that the applicant would probably achieve such results.

Reasonable grounds means that the applicant would probably achieve satisfactory results in an approved examination and the WIA has granted the applicant RPL in accordance with the guidelines set out in the Business Rules.
 - (c) Subsection 122(2) — which requires the WIA to deliver to applicants an approved examination as defined in subsection 122(2) of the Act for an Amateur Certificate of Proficiency that:
 - (i) is developed in accordance with the Amateur Syllabi;
 - (ii) suitably tests the level of knowledge of applicants sitting for the Examination;
 - (iii) is undertaken in an environment that mitigates against fraudulent activity; and
 - (iv) is provided at locations, frequency and costs and in accordance with the timeframes set out in the Business Rules, such Examinations being consistent with the aim of providing Qualified Operators with reasonable access to radiofrequency spectrum allocated to Amateur use; and
 - (d) Subsection 122A(1) — which requires the WIA to issue an Amateur Certificate of Proficiency under section 121 as the delegate of ACMA;

- (e) Subsection 122A(2) — which requires the WIA to refer applications to ACMA where it has decided not to issue an Amateur Certificate of Proficiency.

6. Provider's Entitlements

6.1 The WIA is entitled to:

- (a) represent to the public that it has been delegated by ACMA the power to conduct approved examinations, issue Amateur Certificates of Proficiency and has been approved to provide the Statutory Functions and Administrative Services;
- (b) use the words “delegate of the ACMA” after the name of the WIA on correspondence, advertising and business cards;
- (c) use the ACMA name in conjunction with the Statutory Functions and Administrative Services in the WIA’s offices and on its website for the purposes of identifying the WIA as a delegate of ACMA;
- (d) provide the Statutory Functions and Administrative Services;
- (e) in accordance with subsection 298A(1) of the Act, charge for the provision of Statutory Functions and Administrative Services; and
- (f) subject to ACMA’s prior written approval (except as provided for in paragraphs (a) and (b)), use the ACMA name on promotional material to indicate that the WIA is the delegate of ACMA for providing the Statutory Functions and Administrative Services;

but the WIA must not otherwise use the ACMA name.

7. Commonwealth's Obligations through ACMA

7.1 During the term of this Deed the Commonwealth shall ensure that ACMA:

- (a) complies with the Act in all respects in so far as it relates to the provisions of this Deed, including the exercise of ACMA’s power of Delegation to the WIA;
- (b) delegates the relevant functions and powers to the WIA so that it can provide the Statutory Functions and Administrative Services for the term of this Deed and that the Delegation is exclusive to the WIA (and the Commonwealth shall not enter into an agreement, contract or deed that allows any other body or organisation to provide the Statutory Functions or Administrative Services or any part thereof);
- (c) provides all relevant information to the WIA in relation to the matters referred to in this Deed so as to enable the WIA to properly and effectively carry out the Statutory Functions and deliver the Administrative Services;
- (d) provides the WIA with access to the Database of Qualified Operators maintained by ACMA in electronic form, and such other information and materials as the WIA may reasonably require in order to carry out the Statutory Functions and deliver the Administrative Services;
- (e) promptly advises the WIA of any relevant legislative changes which may affect the WIA in carrying out its obligations under this Deed; and

- (f) provides such assistance and advice as the WIA may reasonably require in order to manage the transition of the Statutory Functions and Administrative Services from ACMA to the WIA.

8. ACMA's Remaining Functions and Powers

- 8.1 The WIA acknowledges and agrees that ACMA may conduct examinations in any of the following circumstances:
 - (a) re-examination of Qualified Operators in accordance with section 123 of the Act; and
 - (b) during the period following failure of the WIA to comply with this Deed.
- 8.2 The WIA acknowledges and agrees that ACMA may issue Amateur Certificates of Proficiency in any of the following circumstances:
 - (a) where ACMA has made a decision to issue an Amateur Certificate of Proficiency under subsection 122A(2) of the Act;
 - (b) on re-examination of Qualified Operators in accordance with section 123 of the Act; and
 - (c) during the period following failure of the WIA to comply with this Deed.

9. Fees

- 9.1 The WIA is entitled to charge fees for the provision of Statutory Functions and Administrative Services on a Cost Recovery Basis only.
- 9.2 Charges on a Cost Recovery Basis must be approved in writing by ACMA as being reasonably related to the expenses incurred or to be incurred by the WIA in relation to the matters to which the charge relates.
- 9.3 The WIA shall, at the time it submits its first report(s) in accordance with clause 10.4 after the Commencement Date, submit a report to ACMA setting out its review of all Charges to assess their conformity to the Cost Recovery Basis.

10. Reporting to ACMA

- 10.1 The WIA must, one calendar month after 30 June of each year, provide an accurate Performance Report to ACMA which must include information about:
 - (a) the performance of the WIA against the Service Levels;
 - (b) the number of:
 - (i) applications made in the reporting period for Amateur Certificates of Proficiency;
 - (ii) examination papers marked and assessments conducted for Amateur Certificates of Proficiency in the reporting period; and
 - (iii) Amateur Certificates of Proficiency issued in the reporting period;

- (c) any Complaints and Assessment Complaints, including:
 - (i) the number of such complaints received by the WIA;
 - (ii) the source and nature of such complaints;
 - (iii) the response time of the WIA to the complainant;
 - (iv) if applicable, action taken to remedy the matter complained of;
 - (v) if applicable, the complainant's response to subparagraph (iv);
and
 - (vi) any other matter which the WIA reasonably considers it important to bring to ACMA's attention;
 - (d) the results of the WIA's random audits of Assessors; and
 - (e) statistical analysis of the nature of Complaints and other data concerning Complaints received during the financial year.
- 10.2 The WIA acknowledges and agrees that ACMA may provide copies of the Performance Report to members of the public.
- 10.3 The WIA must, upon ACMA's request, make the questions and answers in relation to Examinations on theory and regulations, as well as practice, available to ACMA. ACMA will not publish the questions and answers without the prior agreement of the WIA.
- 10.4 The WIA must, within 90 days after 31 December each year, give to ACMA its audited annual financial report and such additional information (if any) as is reasonably necessary to demonstrate:
- (a) the proportion of costs incurred by the WIA in execution of this Deed that are attributable to the Statutory Functions and Administrative Services, compared to all costs incurred by the WIA; and
 - (b) details of the revenue earned by the WIA from Charges imposed.

11. Negation of Employment, Partnership and Agency

- 11.1 The WIA is not by virtue of this Deed a partner or agent of ACMA or the Commonwealth, nor does the WIA have any power or authority to bind or represent ACMA or the Commonwealth other than as set out in clause 6 (Provider's Entitlements).
- 11.2 The WIA agrees not to represent itself and to ensure that its officers, employees, Volunteers, agents and subcontractors do not represent themselves, as being an officer, employee, partner or agent of ACMA or the Commonwealth, or as otherwise able to bind or represent ACMA or the Commonwealth other than as set out in clause 6 (Provider's Entitlements).

12. Audit

- 12.1 The WIA acknowledges and agrees that ACMA may:
- (a) not more than once per year; or
 - (b) if it has received a serious Complaint in writing and after consultation with the WIA;
- require an audit, to be conducted by an Authorised Auditor, of the WIA's:

- (c) compliance with this Deed; and
 - (d) financial records of the WIA in relation to the Statutory Functions and Administrative Services.
- 12.2 The WIA must:
- (a) allow the Authorised Auditor reasonable access on reasonable notice during Business Hours on any Working Day to the WIA's personnel, premises, equipment, systems, records and documentation for the purposes of auditing the WIA under clause 12.1; and
 - (b) cooperate fully with the Authorised Auditor and respond promptly to, and comply with, any reasonable request from the Authorised Auditor.
- 12.3 Within 10 Working Days after the WIA receives a written report of any audit findings from ACMA, the WIA must respond to and address any issues reasonably identified by ACMA that require a response from the WIA.
- 12.4 If as a result of a report under this clause 12, ACMA takes the view that compliance with this Deed requires the WIA to take certain actions, ACMA may direct in writing the WIA to take those actions to so comply and the WIA must take those actions within 10 Working Days of the direction.
- 12.5 The WIA must comply with any direction given by ACMA pursuant to clause 12.4.
- 12.6 The costs of all actions required under this clause 12 to be taken by the WIA to remedy the problems identified by an Authorised Auditor are to be borne by the WIA.
- 12.7 The WIA shall:
- (a) retain all completed examination papers and assessment records for practical examinations for a minimum period of twelve months; and
 - (b) make them available for ACMA to audit at any reasonable time during that period.
- 12.8 The WIA acknowledges and agrees that ACMA is to give the WIA not less than ten Working Days notice of any audit, stating the subject of the audit.

13. Communications

- 13.1 The Parties may communicate by posted letter, email, facsimile or telephone.
- 13.2 The Party receiving a communication in writing as described in clause 13.1, must, if requested to do so, confirm receipt of the material within 5 Working Days.

14. Complaints and Inquiries

- 14.1 If while this Deed remains in force the WIA receives a Complaint that includes an allegation of illegality or serious impropriety in or associated with the WIA's delivery of the Statutory Functions or Administrative Services not being a type of Complaint to which clause 14.6 applies the WIA shall promptly investigate the same and shall report the allegation and the results of its investigation to ACMA after which ACMA may further investigate the matter and shall report the results to the WIA.

- 14.2 The WIA must ensure that while this Deed remains in force, processes are in place under which:
- (a) a person can make an inquiry or Complaint about the operation or management of the Statutory Functions and Administrative Services by the WIA in relation to that person;
 - (b) an inquiry under paragraph (a) will be:
 - (i) acknowledged as being received within 10 Working Days of receipt; and
 - (ii) properly considered and answered by the WIA within 40 Working Days after it is received;
 - (c) a Complaint under paragraph (a), not being a Complaint to which clause 14.1 applies, will be:
 - (i) acknowledged as being received within 10 Working Days of receipt; and
 - (ii) properly considered by the WIA and the complainant will be advised of a decision concerning the Complaint within 40 Working Days after it is received; and
 - (d) for a Complaint under paragraph (a), not being a Complaint to which clause 14.1 applies:
 - (i) the WIA will give the complainant a written decision about the Complaint;
 - (ii) if the complainant is not satisfied with the decision, the complainant may apply for an independent review by a delegate of the WIA within 30 Working Days of notification of the decision;
 - (iii) the complainant will be advised about the outcome of the independent review within 30 Working Days after the application for review is received; and
 - (iv) if the complainant is dissatisfied with the WIA's review decision, the complainant may make application to ACMA for a final determination.
- 14.3 The processes under clause 14.2 must:
- (a) be clear, transparent and accountable;
 - (b) not affect the rights of a complainant to enter into legal proceedings; and
 - (c) include a requirement to keep a central record of all written and verbal Complaints received.
- 14.4 A review of any Complaint made under clause 14.2 must be conducted by a member of the WIA's staff or Volunteers who:
- (a) was not involved in the matter complained of; and
 - (b) is suitably qualified to deal with the matters raised by the complainant.
- 14.5 An Assessment Complaint shall be handled in accordance with the Business Rules.

- 14.6 In respect of Complaints alleging an interference with the privacy of an individual in respect of any Administrative Services performed under this Deed, the WIA must comply with clause 17.
- 14.7 The costs of all actions required under clause 17 to be taken by the WIA to resolve the Complaint are to be borne by the WIA.

15. On-line (Internet) Access

- 15.1 The WIA must provide limited public access to the Database of Assessors on-line by electronic means. Such access must include the following details about assessors:
- (a) their name and the date the person was appointed an Assessor; and may include, with the consent of the Assessor:
 - (b) their contact details.

16. Confidential Information

- 16.1 A Party (the First Party) must not, without the prior written approval of the other Party (the Second Party), disclose to any person other than the Second Party, any information marked confidential or expressed as being given in confidence to the First Party by the Second Party. In giving written approval the Second Party may impose such terms and conditions as it thinks fit.
- 16.2 This clause 16 will continue to have effect after the termination or expiration of this Deed.

17. Personal Information

- 17.1 The WIA:
- (a) agrees to abide by the *Privacy Act 1988*, including the Information Privacy Principles, as if it were an agency of the Commonwealth, in addition to its obligations to comply with the National Privacy Principles or an approved privacy code under that Act;
 - (b) must, in the course of providing Statutory Functions and Administrative Services, comply with the obligations set out in this clause 17 in light of its obligation under paragraph (a); and
 - (c) acknowledges that it is a 'contracted service provider' within the meaning of section 6 of the *Privacy Act 1988* and agrees in respect of the provision of the Statutory Functions and Administrative Services to only use or disclose Personal Information for the purposes of this Deed.
- 17.2 In addition to its obligations under clause 17.1, the WIA must ensure that any of its officers, employees, Volunteers, agents or subcontractors who require access to any Personal Information held in connection with this Deed:
- (a) are informed that they must not access, use, disclose or retain Personal Information except in performing their duties of employment or contractual obligations or their function as Volunteers or when acting pursuant to any requirements of or directions given by ACMA on behalf of the Commonwealth; and

- (b) are informed that failure to comply with this requirement:
 - (i) may be a criminal offence; and
 - (ii) may also lead the WIA to take disciplinary action against the officer, employee or Volunteer or legal action against the agent or subcontractor, as the case may be;

before they get access to that Personal Information.

- 17.3 The WIA must, in respect of any Personal Information held in connection with this Deed (including the provision of Statutory Functions and Administrative Services), immediately notify ACMA where the WIA becomes aware of a breach of clause 17.1 or 17.2.
- 17.4 The WIA must in respect of any Personal Information held in connection with this Deed cooperate with any reasonable requests or directions of ACMA on behalf of the Commonwealth arising directly from or in connection with the exercise of the functions of the Privacy Commissioner under the *Privacy Act 1988* or otherwise, including but not limited to the issuing of any guidelines concerning the handling of Personal Information or adherence to the Information Privacy Principles or the National Privacy Principles or an approved privacy code under that Act, and notify individuals whose Personal Information the WIA holds that Complaints about acts or practices of the WIA may be investigated by the Privacy Commissioner who has power to award compensation against the WIA in appropriate cases.
- 17.5 The WIA acknowledges that the publication or communication of any fact or document by a person which has come into their knowledge or into their possession or custody by virtue of the performance of this Deed, other than to a person to whom the WIA is authorised to publish or disclose the fact or document, may be an offence under section 70 of the *Crimes Act 1914*, the maximum penalty for which is 2 years imprisonment.
- 17.6 The WIA indemnifies ACMA and the Commonwealth in respect of any liability, loss or expense which is incurred and which arises out of or in connection with a breach of the obligations of the WIA or its officers, employees, Volunteers, agents or subcontractors under clause 17.1 or 17.2 except to the extent that the liability, loss or expense was caused by an act or omission of ACMA or the Commonwealth.
- 17.7 The Commonwealth indemnifies the WIA in respect of any liability, loss or expense which is incurred and which arises out of or in connection with a breach of the obligations of the WIA or its officers, employees, Volunteers, agents or subcontractors under clause 17.1 or 17.2 to the extent that the liability, loss or expense was caused by an act or omission of ACMA or the Commonwealth or its officers, employees, agents or contractors.
- 17.8 A Complaint alleging an interference with the privacy of an individual in respect of any services performed under this Deed must be handled by the WIA in accordance with the following procedures:
 - (a) where the WIA receives a Complaint alleging an interference with the privacy of an individual by the WIA or its officers, employees, Volunteers, agents or subcontractors, it shall immediately notify ACMA of the nature of the Complaint;
 - (b) after ACMA has been given notice in accordance with paragraph (a), the WIA must keep ACMA informed of all progress with the Complaint; and

- (c) at ACMA's request, the WIA must transfer the handling of the Complaint to ACMA.

- 17.9 The WIA agrees to ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Deed contains provisions to ensure that the subcontractor has the same awareness and obligations as the WIA has under this clause 17, including the requirement in relation to subcontracts.
- 17.10 This clause 17 will continue to have effect after the termination or expiration of this Deed.

18. Intellectual Property

- 18.1 On the Commencement Date of this Deed the Commonwealth shall ensure that ACMA grants the WIA access to the Database of Qualified Operators.
- 18.2 Intellectual Property in the Database of Qualified Operators remains vested in the Commonwealth at all times (including any adaptations, additions or other changes to the Database).
- 18.3 On the expiration or termination of this Deed or the expiry of the period of renewal of this Deed the WIA shall assign to the Commonwealth all Intellectual Property in:
 - (a) the Database of Qualified Operators (in the case where any such Intellectual Property does not already vest in the Commonwealth);
 - (b) any database or other records of the results of Examinations relating to identified candidates; and
 - (c) any other material created by the WIA in consultation with ACMA or the Commonwealth after the Commencement Date for the purposes of providing the Statutory Functions and Administrative Services specifically agreed and identified between the parties as being material to which this clause 18 applies.

19. Archives Act

- 19.1 The WIA agrees to comply with Part V and related provisions of the *Archives Act 1983* as if it were a Commonwealth agency in respect of all records held by the WIA in relation to the Statutory Functions and Administrative Services.
- 19.2 The WIA agrees to comply with any direction of ACMA on behalf of the Commonwealth for the purpose of transferring Commonwealth records to the Australian National Archives or providing the Australian National Archives with full and free access to those records.
- 19.3 This clause 19 will continue to have effect after the termination or expiration of this Deed.

20. Compliance with Laws

- 20.1 The WIA must in carrying out its obligations in connection with this Deed comply with the provisions of any relevant statutes, regulations, by-laws and requirements of any Commonwealth, State, Territory or local authority, including:
 - (a) the *Crimes Act 1914*;
 - (b) the *Age Discrimination Act 2004*;

- (c) the *Racial Discrimination Act 1975*;
- (d) the *Sex Discrimination Act 1984*;
- (e) the *Disability Discrimination Act 1992*;
- (f) the *Electronic Transactions Act 1999*; and
- (g) any other applicable legislation dealing with electronic transactions.

21. Compliance with Standards and Record Keeping

- 21.1 In carrying out its obligations under this Deed the WIA must comply with the Australian Standard on Records Management AS ISO 15489 (including requirements to keep administrative records safe, secure and filed in a logical order) and any other applicable Australian Standards notified to the WIA by ACMA.

22. Warranties

- 22.1 The WIA warrants that:
- (a) use by ACMA or the Commonwealth (including its officers, employees, agents and contractors) of any material created and then provided by the WIA to ACMA or the Commonwealth under this Deed will not infringe the Intellectual Property rights of any person; and
 - (b) the WIA will perform its responsibilities under this Deed in a manner that does not infringe the Intellectual Property rights of the Commonwealth (including ACMA) or any third party.
- 22.2 The WIA warrants and represents to the Commonwealth that:
- (a) the WIA's execution, delivery and performance of this Deed will not constitute:
 - (i) a violation of any judgment, order or decree;
 - (ii) a default under any contract by which it or any of its assets are bound; or
 - (iii) an event that would, with notice or lapse of time, or both, constitute such a default;
 - (b) the constituting documents of the WIA empower the WIA to enter into this Deed and to do all things which it can reasonably contemplate will be required by this Deed;
 - (c) all necessary approvals have been obtained by the WIA to render this Deed binding on, and legally enforceable against, the WIA in accordance with its terms;
 - (d) the WIA will immediately notify the Commonwealth of the occurrence of, or the pending or threatened occurrence of, an event of which it is aware that may cause or constitute a breach of any of the representations, warranties or covenants contained or made in connection with this Deed, including without limitation, any event that may result in a material adverse change in the business of the WIA or may affect the financial viability of the WIA's business;

- (e) it has disclosed to the Commonwealth prior to the execution of this Deed details of any litigation or proceeding whatsoever, actual or threatened, against the WIA that may have an adverse effect on the ability of the WIA to provide the Statutory Functions and Administrative Services and these disclosures are true and correct as at execution; and
- (f) any additional issues of the kind described in paragraph (e) that arise from time to time subsequent to the execution of this Deed will be disclosed by the WIA to the Commonwealth at all relevant times throughout the term of this Deed.

22.3 The Commonwealth warrants that:

- (a) ACMA has complied or will comply with the Act in exercising its power of Delegation to the WIA to issue Amateur Certificates of Proficiency on the terms of this Deed;
- (b) use by the WIA (including its officers, employees, Volunteers, agents and subcontractors) of any material created and provided by ACMA or the Commonwealth to the WIA under this Deed will not infringe the Intellectual Property rights of any person; and
- (c) ACMA has the power to delegate to the WIA the functions and powers to carry out the Statutory Functions and provide the Administrative Services upon the terms specified in this Deed.

23. Indemnity

23.1 The WIA indemnifies at all times and holds harmless ACMA and the Commonwealth (including its officers, employees, agents or contractors) from and against any loss or liability that may be or is incurred by ACMA or the Commonwealth as a result of a claim made or threatened by a third party where that loss or liability was caused by:

- (a) a breach of this Deed by the WIA and not due to any act or omission by ACMA or the Commonwealth;
- (b) a wilful, unlawful or negligent act or omission, in connection with this Deed by the WIA, its officers, employees, Volunteers, agents or subcontractors; or
- (c) an item provided by the WIA to Assessors, Qualified Operators and applicants or persons sitting Examinations for an Amateur Certificate of Proficiency that infringes the Intellectual Property rights of a third party.

23.2 The Commonwealth indemnifies at all times and holds harmless the WIA (including its officers, employees, Volunteers, agents or subcontractors) from and against any loss or liability that may be or is incurred by the WIA as a result of a claim made or threatened by a third party where that loss or liability was caused by:

- (a) a breach of this Deed and not due to any act or omission by the WIA;
- (b) a wilful, unlawful or negligent act or omission, in connection with this Deed by ACMA or the Commonwealth, its officers, employees, agents or contractors; or

- (c) an item provided by ACMA or the Commonwealth to the WIA that infringes the Intellectual Property rights of a third party.

23.3 Where a Party wishes to rely on an indemnity in this clause 23 it must give the other Party written notice as soon as practicable after suffering the loss or liability.

23.4 Each indemnity in this Deed is a continuing indemnity, separate and independent from the other obligations of the Parties, and survives termination or expiration and repudiation of this Deed.

24. Termination

24.1 Each of the following is a Default Event:

- (a) the WIA commits a breach of this Deed which is capable of being remedied but the breach continues for more than 14 Working Days after the WIA is given a notice by the Commonwealth requiring the breach to be remedied;
- (b) the WIA commits a breach of this Deed which cannot be remedied, which breach is, in the reasonable opinion of the Commonwealth, a serious breach of this Deed;
- (c) a summons or other process seeking orders which, if granted, would render the WIA an externally-administered body corporate or insolvent under administration, is filed and is not withdrawn within 28 Working Days; or
- (d) a conflict of interest arises in the performance of the WIA's obligations under this Deed which, in the reasonable opinion of the Commonwealth, significantly affects the interests of ACMA or the Commonwealth.

24.2 Without limiting clauses 24.3, 24.4 and 24.5 and without prejudice to any other right or remedy that the Commonwealth has, if any Default Event occurs the Commonwealth may terminate this Deed by giving 30 Working Days written notice to the WIA.

- 24.3 (a) If ACMA decides to revoke the WIA's Delegation due to a Default Event occurring, then:
- (i) the Commonwealth shall ensure that ACMA gives notice to the WIA of the revocation in addition to the notice by the Commonwealth in clause 24.2; and
 - (ii) this Deed is terminated and the revocation takes effect on the date 30 Working Days from the date of the notice given in accordance with clause 24.2.
- (b) If ACMA revokes the WIA's Delegation in accordance with a Ministerial Direction to do so or due to legislation that is inconsistent with the Delegation continuing, then this Deed is terminated from the date of revocation.

24.4 If:

- (a) the WIA's circumstances change and the WIA considers that this may affect its ability to provide the Statutory Functions and Administrative Services; or

- (b) the WIA wants to significantly change some aspect of the manner of its operations regarding the Statutory Functions and Administrative Services;

the WIA must notify the Commonwealth about the change and the Commonwealth must ensure that ACMA makes a decision in good faith about whether or not it remains appropriate for the WIA to remain a delegate under section 122A of the Act.

- 24.5. If ACMA advises the Commonwealth that it is not appropriate for the WIA to remain the delegate of ACMA under section 122A of the Act:
- (a) the Commonwealth must immediately request the WIA to provide ACMA with adequate reasons as to why the Delegation to the WIA should not be revoked; and
 - (b) if in the Commonwealth's reasonable opinion the WIA's response is unsatisfactory, the Commonwealth through ACMA must immediately notify the WIA in writing that the Delegation to the WIA is revoked to take effect from the date specified in the notice.

25. Consequences of Termination

- 25.1 If the WIA receives a Termination Notice under clause 24.2 then, from the date it receives the Termination Notice, the WIA must:
- (a) not accept any further applications for Amateur Certificates of Proficiency;
 - (b) continue to provide the other Statutory Functions and Administrative Services in accordance with this Deed until transfer under paragraph (c);
 - (c) co-operate with ACMA and any relevant third parties to achieve a seamless transfer to another provider of the Statutory Functions and Administrative Services of all records associated with the Statutory Functions and Administrative Services, including:
 - (i) the Database of Qualified Operators; and
 - (ii) the Database of Assessors; and
 - (d) apart from the versions of the databases transferred under paragraph (e) and unless ACMA otherwise directs, return all copies of the databases (including derivatives of it) to ACMA.
- 25.2 The Commonwealth through ACMA may give written directions to the WIA that reasonably relate to paragraphs 25(1)(b) to (f) on any matter arising out of the termination of this Deed and the WIA must comply with those directions.
- 25.3 If this Deed is terminated, the accrued rights of the Parties remain unaffected except to the extent that the Parties expressly agree otherwise.

26. Dispute Resolution

- 26.1 Subject to clause 26.5, before resorting to external dispute resolution mechanisms, the Parties shall attempt to settle by negotiation any dispute in relation to this Deed.

- 26.2 Subject to clause 26.5, if a dispute is not settled by the Parties within 21 Working Days of a Party first sending to the other Party written notice that they are in dispute, the dispute may be referred to mediation by either Party.
- 26.3 Subject to clause 26.5, a Party must not commence court proceedings in relation to a dispute unless the dispute has been referred to mediation and the dispute has not been settled within 6 months of the Parties commencing mediation or within such time as the Parties have agreed.
- 26.4 Notwithstanding the existence of a dispute, each Party shall continue to perform its obligations under this Deed.
- 26.5 A Party may commence court proceedings relating to any dispute arising from this Deed at any time where that Party seeks urgent interlocutory relief.

27. Variation of Deed

- 27.1 This Deed shall not be varied except by agreement in writing signed by the Commonwealth and the WIA.

28. Assignment

- 28.1 A Party may not assign in whole or in part any of its interests under this Deed without the prior written consent of the other Party which consent will not be unreasonably withheld.

29. Waiver

- 29.1 The failure of a Party to enforce any of its rights under this Deed shall in no way be interpreted as a waiver of its rights under this Deed.

30. Entire Agreement

- 30.1 This Deed constitutes the entire agreement and arrangement between the Parties and supersedes all prior representations, statements, understandings, agreements and arrangements relating to the subject matter, whether verbal or in writing, of this Deed.

31. Subcontracting

- 31.1 The WIA may not subcontract any part of the provision of the Statutory Functions and Administrative Services apart from:
- (a) providing communications and mailings to applicants for Amateur Certificates of Proficiency of information relevant to the Statutory Functions and Administrative Services; and
 - (b) maintenance of the Database of Assessors and the Database of Qualified Operators;
- without the prior written approval of the Commonwealth whose approval will not be unreasonably withheld.
- 31.2 If the Commonwealth consents to work being performed by a subcontractor the WIA:

- (a) is in no way relieved from performing its obligations under this Deed;
 - (b) must ensure that the subcontractor is aware of the provisions of this Deed relevant to the work to be performed by the subcontractor and is subject to the same requirements as the WIA in relation to matters of privacy and Personal Information; and
 - (c) must include a right of termination of the kind in clause 24.
- 31.3 The Commonwealth has the right to reasonably request withdrawal and replacement of any subcontractor.

32. Applicable Law and Jurisdiction

- 32.1 This Deed shall be subject to and construed in accordance with the laws in force in the state of Victoria.
- 32.2 The parties to this Deed submit to the jurisdiction of the Supreme Court of Victoria and the Federal Court of Australia.

33 Conflict of Interest

- 33.1 The WIA warrants that, to the best of its knowledge and after making diligent inquiries, at the date of execution of this Deed no conflict of interest exists or is likely to arise in the performance of its obligations under this Deed.
- 33.2 The WIA must promptly notify the Commonwealth through ACMA if a conflict of interest arises, or appears likely to arise, during the course of this Deed, and must take any action directed by ACMA to avoid or minimise such conflict.

34. Survival of Clauses

- 34.1 If this Deed is terminated for any reason those clauses that are necessary for the Parties to effectively exercise their rights, and discharge their obligations and responsibilities to each other so as to comply with clauses 16, 17, 19, 23 and 25 will survive the termination or expiration of this Deed.

35. Insurance

- 35.1 The WIA must, for so long as any obligations remain in connection with this Deed, effect and maintain the following insurance with an insurance company approved by the Commonwealth:
- (a) a broad form public liability policy to the value of at least \$10 million in respect of each claim; and
 - (b) professional indemnity insurance to the value of at least \$5 million in respect of each claim; and
 - (c) worker's compensation insurance in accordance with applicable legislation.
- 35.2 On request, the WIA must produce to ACMA a certificate evidencing that the WIA has effected and renewed a particular insurance policy, such as a certificate of currency.

36. Severability

- 36.1 Each provision of this Deed and each part of this Deed shall, unless the context otherwise necessarily requires it, be read and construed as a separate and severable provision or part.
- 36.2 If any provision or part thereof is void or otherwise unenforceable for any reason then that provision shall be read and construed as if the severed provision or part had never existed.

37. Notices

- 37.1 Any notice, advice, undertaking or agreement given under this Deed must be in writing.
- 37.2 The address for service of notice of each Party is as follows (unless otherwise advised by the relevant Party):

Address of the Commonwealth as represented by the Chief Executive of ACMA:

Australian Communications and Media Authority
 Purple Building,
 Benjamin Offices,
 Chan Street
 BELCONNEN ACT 2616
 Fax: (03) 9963 6970

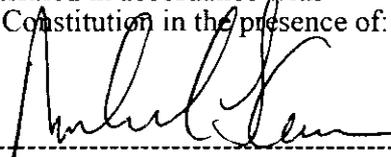
Address of Provider:

The Wireless Institute of Australia
 Unit 20, 11-13 Havelock Road
 BAYSWATER VIC 3153

- 37.3 A notice under this Deed is deemed to have been given:
- (a) if it is delivered by hand or registered post — on the date upon which it is delivered and a receipt obtained;
 - (b) if it is delivered by ordinary post – 4 Working Days after it is posted if not returned undelivered;
 - (c) if transmitted by facsimile transmission – on the first Working Day after the sender receives confirmation of a successful transmission; or
 - (d) if transmitted by email – on the first Working Day after the sender receives confirmation that the email has been received.
- 37.4 If delivery of a notice occurs on a day on which business is not normally conducted in the place of receipt, or it is received later than 4.00 pm local time, it will be deemed to be given on the next Working Day.

EXECUTED AS A DEED

THE COMMON SEAL of
THE WIRELESS INSTITUTE OF AUSTRALIA
is affixed in accordance with
its Constitution in the presence of:)
)
)

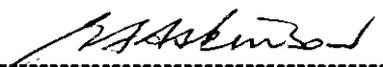


Director (signature)

MICHAEL OWEN

Name of Director
(print)

AAA 4/3



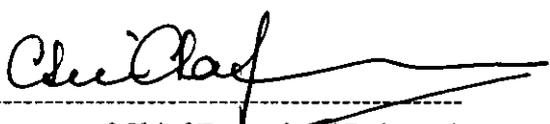
Secretary or ~~Director~~ (signature)

GEORGEY FRANCIS ATKINSON.

Name of Secretary or ~~Director~~
(print)

EA 1/30

Signed, sealed and delivered for and on behalf of the
COMMONWEALTH OF AUSTRALIA
as represented by the Chief Executive of the
Australian Communications and Media Authority
by:



(Signature of Chief Executive / ~~Delegate~~)

CHRIS CHAPMAN

(Print name of Chief Executive / ~~Delegate~~)

in the presence of:



(Signature of Witness)

GILES TANNER

(Print name of Witness)