

EXPLANATORY STATEMENT

Issued by authority of the Australian Communications and Media Authority

Radiocommunications Labelling (Electromagnetic Compatibility) Amendment Notice 2009 (No. 1)

Purpose

The purpose of the *Radiocommunications Labelling (Electromagnetic Compatibility) Amendment Notice 2009 (No. 1)* (the Amendment Notice) is to amend the *Radiocommunications Labelling (Electromagnetic Compatibility) Notice 2008* (the EMC Labelling Notice). The Amendment Notice amends the Labelling Notice in order to ensure an appropriate balance between the public policy objectives of regulation and minimising the administrative and financial burden on industry.

Legislative provisions

Subsection 182(1) of the *Radiocommunications Act 1992* (the Act) provides that the Australian Communications and Media Authority (the ACMA) may by notice require any person who manufactures or imports a device included in a specified class of devices to apply a label to the device to indicate whether the device complies with standards mandated by the ACMA under section 162 of the Act.

A notice made under section 182 of the Act is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The EMC Labelling Notice and the *Radiocommunications (Electromagnetic Compatibility) Standard 2008* (the EMC Standard) as made under section 162 of the Act, operate together to specify the Australian regulatory arrangements for electromagnetic compatibility (the EMC arrangements).

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make an instrument, that power shall, unless the contrary intention appears, be construed as including a power exercisable in a like manner and subject to like conditions, to amend that instrument.

Background

The ACMA has responsibility for the regulation of customer equipment, customer cabling and specified devices in Australia under the *Telecommunications Act 1997* and the Act. These regimes cover aspects of devices related to the telecommunications, radiocommunications and electromagnetic compatibility functions of the device.

Through the use of mandatory technical standards the EMC arrangements set out protection levels from unintended emissions of electromagnetic energy for the protection of radiocommunications services. The EMC arrangements also contribute to Australia's international trade arrangements through the adoption of internationally recognised standards.

By imposing requirements on suppliers of devices capable of incidental emissions, the EMC Labelling Notice manages the risk of interference to radiocommunications services.

Operation

The Amendment Notice amends the scope, threshold, labelling and record keeping requirements of the EMC Labelling Notice.

1. Scope of EMC regulation

The EMC Labelling Notice had previously excluded devices with a maximum power consumption level below 6nW.

The Amendment Notice narrows the scope of the Labelling Notice to exclude devices that have a power consumption of up to 1mW. This means that such devices do not have to meet the labelling and record keeping requirements as specified in the Labelling Notice. Narrowing the scope also has the effect of exempting such devices from the mandatory technical requirements under the EMC Standard.

While it is recognised that devices consuming 1mW do have the potential to cause interference, the risk is low and could be adequately managed via the interference provisions of the Act.

2. Threshold of compliance

The Amendment Notice changes the approach to defining low risk, medium risk and high risk devices. The effect of the changes is to relax the administrative burden (i.e. labelling and record keeping) on equipment suppliers commensurate with the risk of interference presented by certain categories of devices. The changes do not alter the existing requirement that devices must comply with mandatory EMC standards that are designed to protect the radiofrequency (RF) spectrum from harmful interference.

The Amendment Notice now defines a “medium risk” device as a device that contains certain minimum components. The definition of “high risk” device remains unchanged. All remaining devices will be captured under the “low risk” category.

Under the Amendment Notice, the definition of a medium risk device specifically excludes battery operated devices. As such, a device that fulfils the definition of a battery operated device – “a device that is not capable of being connected, directly or indirectly to an external power supply” – will now be classified as a low risk device. While suppliers of battery operated devices will be exempt from the requirement to label the device and hold a supplier’s declaration of conformity (DoC), suppliers **must** still ensure that the device complies with the applicable standard.

Recognising that certain battery operated devices may in particular circumstances present a “medium risk” of interference to the RF spectrum, the Amendment Notice contains a provision that will allow the ACMA to declare a particular battery operated device to be a medium risk device. This will then require the supplier of that device to label the device and comply with the requirement to keep test reports for the device.

3. Record Keeping

The Amendment Notice makes a number of changes to the record keeping requirements of suppliers as currently set out in the Labelling Notice. Suppliers of low risk devices are now no longer required to keep a supplier Declaration of Conformity (DoC). A supplier will only need a DoC if they choose to voluntarily label their device.

The Amendment Notice re-instates a provision that allows a local supplier to hold an overseas manufacturer’s declaration of conformity (MDoC). This provision had been previously allowed under the 1996 and 2001 EMC Labelling Notices. A local supplier using an overseas MDoC is still legally responsible for the device’s compliance with the applicable standard.

4. Radiocommunications transmitter exemption

The Amendment Notice removes the exemption for radiocommunications transmitters in Schedule 2 of the Labelling Notice. The reason for this is that the Labelling Notice only applies to devices subject to an applicable EMC technical standard. The ACMA’s list of EMC standards do not apply (as a result of the scope of the standards) to radiocommunications transmitters or the radiocommunications transmitter functionality of a composite device.

The removal of the radiocommunications transmitter exemption in Schedule 2 is therefore consistent with the policy intention of the original exemption which is to require devices with an optional radiocommunications transmitter functionality to meet applicable EMC technical standards (i.e. composite devices are to be assessed against the EMC technical standard with the radiocommunications transmitter component switched off).

To clarify the application of the EMC Labelling Notice for devices incorporating a radiocommunications transmitter, the Amendment Notice adds new sections 2.5 and 2.6. Section 2.5 makes clear that in composite devices, the parent device and the incorporated radiocommunications transmitter must comply with their respective applicable Labelling Notice. Section 2.6 specifies that during the assessment of the composite device, the incorporated transmitter must not be transmitting when the parent device is being assessed against the requirements of the EMC Labelling Notice.

5. Recognition of new industry code

The EMC Labelling Notice has provisions exempting suppliers of vehicles from the requirements of the EMC Labelling Notice and the EMC Standard where:

- the supplier is a member of the Federal Chamber of Automotive Industries (FCAI) or the Truck Industry Council (TIC); and
- the vehicle complies with all the requirements of the FCAI Voluntary Code of Practice for Electromagnetic Compatibility (EMC) of Motor Vehicles or the TIC Voluntary Code of Practice for Electromagnetic Compatibility (EMC).

The Amendment Notice adds recognition of another industry code of practice for EMC developed jointly by the Construction and Mining Equipment Industry Group (CMEIG) and the Tractor and Machinery Association (TMA).

Consultation

Section 17 of *Legislative Instruments Act 2003* (the LIA) requires the ACMA to be satisfied that any consultation it considers to be appropriate and that is reasonably practicable to undertake has been undertaken.

Industry has been consulted widely in the development of these changes to EMC Labelling Notice via two rounds of public consultation. Draft amendments were made available to all known parties with an interest in EMC regulation and also to the public more generally via the ACMA website.

The first round of consultation commenced on 2 March 2009 with the release of the *Consultation paper on EMC policy direction* and ran for a period of 4 weeks. The ACMA received 24 submissions.

In general, submissions received during the first round of consultation supported the proposed policy direction for changes to the EMC Labelling Notice. However, several submitters expressed concern over the proposed exemptions for battery operated devices and devices supplied in quantities less than 10 per annum. In response, the ACMA has clarified both the definition of battery operated devices and the application of the EMC regulatory arrangements for such devices. The proposal to exempt the labelling of devices supplied in quantities less than 10 has been discontinued.

The second round of consultation commenced on 1 September 2009 for a period of 4 weeks and was accompanied by a draft of the Amendment Notice. The ACMA received 11 submissions.

The majority of submissions received during the second round of consultation supported the draft Amendment Notice. Some submissions expressed concern over the proposal to introduce the concept of a 'technical evidence file' (as an alternative for the existing technical construction file). It was suggested that the technical evidence file concept was likely to lead to confusion within industry. In response, the ACMA has decided not to proceed with the concept of a technical evidence file.

Regulation impact

The ACMA obtained advice from its SES contact officer for the Government's regulation impact analysis arrangements that the Amendment Notice has no or low impact.

For those reasons under the self-assessment regime administered by the Office of Best Practice Regulation, the ACMA has determined that there is no need to produce a Business

Cost Calculator Report or to prepare a Regulation Impact Statement. The ACMA RIS exemption number is ACMA 094.

Documents Incorporated in this Instrument by Reference

The Amendment Notice incorporates into the Labelling Notice the Voluntary Code of Practice for Electromagnetic Compatibility (EMC) of Machinery' developed jointly by the Tractor and Machinery Association of Australia (TMA) and the Construction and Mining Equipment Industry Group (CMEIG). Copies of the CMEIG/TMA EMC code of practice are available from CMEIG (www.cmeig.com.au) and TMA (www.tractormachinery.com.au). Contact details for these organisations are available from the respective websites.

Attachment

Details of the Amendment Notice are in the Attachment.

NOTES ON SECTIONS

Section 1 Name of the Amendment Notice

Section 1 provides that the name of the Amendment Notice is *Radiocommunications Labelling (Electromagnetic Compatibility) Amendment Notice 2009 (No.1)*

Section 2 Commencement

Section 2 provides that the Amendment Notice commences on the day after it is registered on the Federal Register of Legislative Instruments (FRLI).

Section 3 Amendment of *Radiocommunications Labelling (Electromagnetic Compatibility) Notice 2008*

Section 3 provides that Schedule 1 of the Amendment Notice amends the *Radiocommunications Labelling (Electromagnetic Compatibility) Notice 2008*.

Schedule 1 - Amendments

Item [1] defines a battery-powered device. The concept of a battery-powered device is intended to include devices where the batteries are housed internally within the device. Devices are not classified as battery-powered if they are capable of connecting either directly or indirectly to a power source that is external to the device. Some examples of devices that will not fall within the definition of a battery-operated device include:

- USB devices (these connect to an external power source);
- portable MP3 players (most connect to an external power source for charging);
- automotive devices (these connect to the car battery which is an external power source);
- inverters (these connect to an external power source); and
- Ethernet powered devices.

A device where the battery is part of the device for normal operation, but removed for charging, such as many battery powered tools, would be classed as a battery operated device. The charger used to charge the battery would need to be assessed separately.

Item [2] defines a low risk device as a device that is neither a medium risk device nor a high risk device. It also provides that the definition of medium risk devices is given by section 1.6A of the Labelling Notice.

Item [3] updates the table in Section 1.5 of the Labelling Notice to reflect the changed arrangements for DoCs and to clarify the compliance records for variants.

Item [4] provides that the definition of a medium risk device is a device that contains one or more of the following:

- a) a switch mode power supply;
- b) a transistor switching circuit;
- c) a microprocessor;
- d) a commutator;
- e) a slip ring motor;
- f) an electronic device operating in a switching mode or a non-linear mode

While the definition of a medium risk device specifically excludes battery-powered devices, the ACMA may declare a particular battery-powered device as medium risk. This provision assists the ACMA to manage the RF spectrum in the event that a battery-powered device unexpectedly presents a medium risk of interference and sets out the criteria of when a particular device would present a medium risk and be included in a declaration. Any such

declaration will be published on the ACMA's website and be made with respect to a particular device, rather than a class of devices.

Item [5] omits the Note in section 1.7 of the Labelling Notice.

Item [6] New section 2.5 makes it clear that in the case where a parent device contains or incorporates a device that is covered by the *Radiocommunications Devices (Compliance Labelling) Notice 2003* (the Radiocommunications Labelling Notice), the parent device and the incorporated device must comply with their respective applicable Labelling Notice.

For example, if an electronic organiser has a Wi-Fi transmitter, the organiser must satisfy the requirements of the EMC Labelling Notice and the Wi-Fi transmitter must satisfy the requirement of the Radiocommunications Labelling Notice before a C-tick can be applied to the device.

New section 2.6 provides that where a device incorporates a radiocommunications transmitter, the transmitter must be switched off or placed in an idle state when assessed against the requirements of the EMC Labelling Notice.

Item [7] inserts a note to clarify that should a supplier choose to voluntarily label their device, they are required to comply with the labelling requirements as specified in section 4.2 of the Labelling Notice.

Item [8] amends existing subsection 3.2(3) to provide that if a supplier of a low risk device chooses not to label their device, they are still required to comply with the record keeping requirements of the Labelling Notice.

Item [9] amends existing section 4.3 to remove the current requirement that a declaration of conformity (DoC) be completed for all devices coming within the scope of the Labelling Notice.

Suppliers of low risk devices that choose not to label their device do not now have to complete a DoC.

However, new section 4.3A now provides that if a supplier of low risk devices voluntarily chooses to label the device, they are required to complete a DoC. New section 4.3A also provides that for low and medium risk devices that are manufactured overseas, a supplier may rely on an overseas manufacturer's declaration of conformity.

This provision had been available in previous versions of the EMC Labelling Notice and is reinstated by this Amendment Notice. The local supplier using the overseas manufacturer's declaration of conformity is still legally responsible for the device complying with the applicable technical standard.

Item [10] inserts a note at item 1 of Schedule 2 for consistency purposes to state that there is no item 1. The item that has been removed is the previous exemption for radiocommunications transmitters as such devices do not come within the scope of Labelling Notice. Devices coming within the scope of the Labelling Notice that contain or incorporate a radiocommunications transmitter are now managed under new sections 2.5 and 2.6 of the Labelling Notice.

Item [11] amends item 5 of Schedule 2 to allow devices that have a power consumption of up to 1mW to be exempted from having to comply with the EMC regulatory arrangements.

Item [12] changes item 13 of Schedule 2 to include recognition of the 'Voluntary Code of Practice for Electromagnetic Compatibility (EMC) of Machinery' developed jointly by the Tractor and Machinery Association of Australia (TMA) and the Construction and Mining Equipment Industry Group (CMEIG). Members of TMA and CMEIG who supply vehicles or machines that comply with all the requirements of this code of practice are exempt from the Labelling Notice.

If the vehicle or machine does not comply with all aspects of the code of practice, the exemption does not apply and therefore the vehicle or machine must comply with the Labelling Notice (including labelling and record keeping requirements).