EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Radiocommunications Devices (Compliance Labelling) Amendment Notice 2010 (No.1)

Purpose

The purpose of the *Radiocommunications Devices (Compliance Labelling) Amendment Notice 2010 (No.1)* (the Amendment Notice) is to amend the *Radiocommunications Devices (Compliance Labelling) Notice 2003* (the Labelling Notice). The Amendment Notice amends the Labelling Notice to expressly allow a compliance label to be displayed using the built-in display of a device and to improve the consistency between the Labelling Notice and various other notices made by the ACMA.

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 the standards mandated by the ACMA under section 162 of the Act (LIA).

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

The Labelling Notice and standards made under section 162 of the Act operate together to specify the Australian radiocommunications regulatory 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, electromagnetic energy and electromagnetic compatibility functions of the device.

The radiocommunications regulatory arrangements balance a supplier's requirement to provide evidence of compliance with the applicable technical standard against the interference potential of a device covered by that standard.

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

The Labelling Notice requires suppliers to apply a compliance label to the surface of specified devices to illustrate that the device complies with its requirements. Affixing a compliance label on a device is a prima facie demonstration of compliance with applicable technical standards.

Operation

The Amendment Notice amends the requirements of the Labelling Notice to expressly allow the use of an electronic compliance label.

While the Labelling Notice did not prohibit suppliers from using electronic labelling, suppliers were only permitted (upon written application to the ACMA) to label electronically if it was not practical or possible to label the surface of the device in the first instance. In addition suppliers that used electronic labelling were required to also label the device's packaging and documentation. Labelling of the packaging and documentation was not required if suppliers labelled the surface of the device.

The Amendment Notice amends the Labelling Notice so that suppliers can use electronic labelling as an equally available alternative to the traditional labelling of the surface of the device. Suppliers will no longer need to justify that it is not practical or possible to apply a label to the surface of the device before they display the label electronically.

Where a supplier chooses to label electronically, the Amendment Notice amends the Labelling Notice to require that the electronic label must be displayed on the device's built-in display. 'Built-in display' means an electronic display or screen that is integral to the device and does not include a display or screen that can be used independently of the device.

Suppliers must ensure that it is difficult to prevent the display of the electronic label when the method provided in the documentation for viewing the label is followed. Some examples of how the electronic label can be displayed include:

- During the device's power up sequence;
- Under the device's system information page; and
- Under the device's help menu.

It is not necessary that the label be displayed continuously (e.g. by means of an 'electronic watermark') on the device's display screen.

To align with the physical surface labelling arrangements, the Amendment Notice amends the Labelling Notice to remove the requirement for suppliers to also label the packaging or documentation if they choose to use electronic labelling. Suppliers using electronic labelling will though be required to set out in the documentation accompanying the device, how the electronic label can be displayed.

The Amendment Notice also amends the Labelling Notice to change the form of a supplier's declaration of conformity and various forms to refer to the latest forms posted on the ACMA website, rather than in the Labelling Notice itself.

The Amendment Notice now requires that where a supplier does not apply a compliance label to the surface of the device, the supplier must make and keep a record of the reason and also where the label was subsequently applied. This does not apply where the supplier labels electronically.

The Amendment Notice also makes a number of changes to the requirements for the compliance mark and compliance information including requirements for their location, durability and placement. These changes are made in order to improve consistency across the ACMA's various labelling notices.

The Amendment Notice now removes the requirement for the supplier to apply to the ACMA to seek permission to label alternatively. The removal of this obligation brings consistency across the ACMA's labelling notices.

Consultation

Section 17 of 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.

Stakeholders have been consulted widely in the development of these changes to the Labelling Notice via two rounds of public consultation. Copies of the discussion paper: *Proposed changes to labelling arrangements – Implementation of a consolidated regulatory compliance mark and electronic labelling* were sent to: peak industry bodies, members of the Customer Equipment and Cable Reference Panel (CECRP) and members of the Standards Australia TE3 committee. The discussion paper was also available to the general public on the ACMA website.

The first round of consultation commenced on 27 October 2009 and ran for a period of 7 weeks and 17 submissions were received.

The 14 submissions that commented on electronic labelling were supportive of the change to recognise its use as a primary option, noting the potential for a reduction in manufacturing complexity, distribution costs, disincentives to market entry and design restrictions. Several submitters, however, queried whether suppliers that used electronic labelling should be required to also label the packaging and / or user documentation. While the discussion paper sought comment on whether suppliers that used electronic labelling should be required to also label both the packing and /or documentation, it did not examine the possibility of not requiring labelling of the packaging and / or documentation. In response to the feedback, the ACMA undertook a second round of consultation that sought comment on the option of not labelling the packaging and documentation.

The remaining 3 submissions commented on the issue of a consolidated regulatory compliance mark and did not raise any issues in relation to electronic labelling.

The second round of consultation commenced on 27 January 2010 and ran for a period of 2 weeks. An email was sent to the 17 submitters that had responded to the first round of consultation requesting that they select one of the three proposed options for the labelling of the packaging and documentation.

Option 1 – Electronic label plus physical label on either the documentation or packaging.

Option 2 – Electronic label plus physical label on both documentation and packaging.

Option 3 – Electronic label only (with the option to also physically label).

The ACMA received 8 responses. Six respondents chose option 3 while two respondents chose option 1. In response, the ACMA has not included in Amendment Notice a requirement for suppliers to label the packaging or documentation where an electronic label is used. All issues raised in the submissions were considered by the ACMA and subsequently informed the content of the Amendment Notice.

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 137**.**

Attachment

Further details of the Amendment Notice are in the Attachment.

ATTACHMENT

NOTES ON SECTIONS

Section 1 Name of Notice

Section 1 provides that the name of the Amendment Notice is the *Radiocommunications Devices (Compliance Labelling) Amendment Notice 2010 (No.1)*

Section 2 Commencement

Section 2 provides that the Amendment Notice commences on 31 March 2010 or the day after it is registered on the Federal Register of Legislative Instruments (FRLI), whichever is the later.

Section 3 Amendment of *Radiocommunications Devices (Compliance Labelling) Notice 2003*

Section 3 provides that Schedule 1 of the Amendment Notice amends the *Radiocommunications Devices (Compliance Labelling) Notice 2003.*

Schedule 1 – Amendments

Item [1] inserts the definition of AS/NZS 4417.1 It is the ACMA's intention that a reference to this standard is a reference to this standard as in force from time to time.

Item [2] defines a built-in display. A built-in display is intended to only include devices that have a display or screen that is integral to the device. The definition does not cover screens or displays that can be used independently of the device. Some examples of devices that use displays or screens that are not integral to the device include personal computers, DVD players and portable hard disks. The DVD player in this example does not have a built-in display and requires the user to connect to a television to access its functions.

Item [3] amends the existing definition of a declaration of conformity to provide that a declaration must be in a form that is approved by the ACMA or contain all the required information as set out in the approved form. Suppliers have the option of using the approved forms on the ACMA website or may alternatively create their own forms that contain the minimum information mentioned on the approved forms. The definition has been amended as the declaration of conformity form has been removed from the Labelling Notice and will now be available on the ACMA website.

Item [4] updates the examples of medium risk devices to include DECT or PHS devices.

Item [5] effects a consequential amendment to subsection 9(1) arising from the changed arrangements for electronic labelling.

Item [6] updates the requirements for the location of the compliance label in subsections 9(5) and (6) to bring consistency of obligations across each of the ACMA's device and equipment labelling notices. It provides that the compliance label must be readily accessible by the user. It is not intended that users must use a specialised tool to access the compliance label. For example, a compliance label should not be placed where it is only accessible using a specific technician's screwdriver.

Subsection 9 (7) updates the requirements for the placement of the compliance information and compliance mark to bring consistency of obligations across each of the ACMA's labelling notices.

Subsection 9 (8) has been removed. Its removal means suppliers are no longer required to apply to the ACMA for permission to alternatively label a device.

Item [7] inserts new sections 9A-9C to update the requirements for the durability, placement and size of the compliance label. Suppliers are required to keep records detailing why it was not possible or practical to label the surface of the device and record where the compliance label was subsequently applied. The provision allowing alternative labelling is intended to be used only where there are physical or practical impediments to applying a label to the surface of a device and not as a general alternative to device labelling. There is no requirement for suppliers to apply to the ACMA for approval to alternatively label.

Physical impediments that may affect the capacity to apply a label may include that:

- the device is too small to affix a label; or
- the external surface of the device resists any adhesion or imprinting of the label; or
- the surface of the device is corrugated; or
- the surface is exposed to the elements that defeat the adhesion or durable properties of the label.

Examples of when it may not be practical to label the device include:

- the supplier cannot arrange for the device to be labelled at the point of manufacture and removing the packaging to affix the label affects the sale of the device; or
- where there is a technical or engineering difficulty that impedes the labelling of the device.

New section 9D expressly allows for the use of electronic labelling. It specifies that documentation accompanying the device must set out the method for displaying the compliance label. The compliance label must be applied to the device in a way that would make it difficult to prevent the display of the label when the method stated in the documentation accompanying the device is used.

Item [8] is a minor administrative update to the existing process of applying to use the compliance mark and supplier code number. The application forms will now be available on the ACMA website rather than in the Labelling Notice. This will simplify the process of updating the forms in future.

Item [9] is a minor change to remove outdated references to the Spectrum Management Agency and SMA appearing in subsection 11 (3).

Item [10] updates the requirements for the compliance records that a supplier must keep to include compliance records as a result of subsection 9C (3). This is a new obligation that requires suppliers to maintain records that detail why a compliance label was not applied to the surface of the device and where it was subsequently applied. This obligation does not apply to suppliers who have labelled electronically.

Item [11] removes the *Radiocommunications (Data Transmission Equipment Using Spread Spectrum Modulation Techniques) Standard 2003* for spread spectrum devices from the list of radiocommunications standards mandated by the ACMA. Spread spectrum devices are now covered under the *Radiocommunications (Short Range Devices) Standard 2004.*

Item [12] removes the Declaration of Conformity and Application to use the C-tick forms from the Labelling Notice. These forms will now be available on the ACMA website.