EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Radiocommunications (Compliance Labelling – Electromagnetic Radiation) Notice 2014

Purpose

The Australian Communications and Media Authority (the ACMA) has made the *Radiocommunications (Compliance Labelling – Electromagnetic Radiation) Notice 2014* (the Instrument). The Instrument replaces the *Radiocommunications (Compliance Labelling – Electromagnetic Radiation) Notice 2003* (the 2003 Labelling Notice) without making any significant changes to the regulatory arrangements created by the 2003 Labelling Notice.

The ACMA has made the Instrument as the 2003 Labelling Notice was due to "sunset" (i.e. be automatically repealed) on 1 October 2015, in accordance with Part 6 of the *Legislative Instruments Act 2003* (the LIA).

Legislative provisions

The ACMA made the Instrument under subsection 182(1) of the *Radiocommunications Act 1992* (the Act) which provides that the ACMA may, by notice published in the *Gazette*, 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 *Radiocommunications (Electromagnetic Radiation – Human Exposure) Standard 2014* (Human Exposure Standard), made 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 LIA.

Background

The 2003 Labelling Notice, made under subsection 182(1) of the Act, was due to be automatically repealed under section 50 of the LIA on 1 October 2015.

Following review, and consultation as outlined below, the ACMA formed the view that the 2003 Labelling Notice was operating effectively and efficiently, and continued to form a necessary and useful part of the legislative framework. Accordingly, the ACMA has remade the 2003 Labelling Notice by making the Instrument without any significant changes so that its ongoing effect is preserved.

Operation

The ACMA has responsibility for the regulation of customer equipment, customer cabling and specified devices in Australia under the Act and the *Telecommunications Act 1997*. These regimes cover aspects of devices related to the radiocommunications, electromagnetic energy (EME) (also known as electromagnetic radiation (EMR)), electromagnetic compatibility (EMC) and telecommunications functions of a device.

Through the use of mandatory technical standards, the EME arrangements set out protection levels that limit the exposure to EME from radiocommunications transmitters. By imposing requirements on manufacturers and importers (suppliers) of devices that are capable of producing EME, the regulatory arrangements are intended to protect the health and safety of people who operate, work on, use, or are likely to be affected by the operation of such devices.

The Instrument sets testing, labelling and record-keeping requirements for suppliers of specified radiocommunications transmitters. These transmitters are mobile and portable radiocommunications transmitters supplied with an integral antenna and operating on a frequency between 100 kHz and 300 GHz. These devices must comply with the Human Exposure Standard. The Human Exposure Standard specifies EME exposure limits for mobile and portable radiocommunications transmitters and the test method a supplier must follow to determine the specific absorption rate (SAR) for a device.

The Instrument imposes requirements on suppliers of the relevant devices to ensure such devices comply with the Human Exposure Standard and label their product with a compliance mark.

The Instrument and the Human Exposure Standard operate together to specify the Australian regulatory arrangements for EME for relevant devices under the Act.

Consultation

Subsection 17(1) of the LIA requires that, before the ACMA makes a legislative instrument, it must be satisfied that any consultation that the ACMA considers is appropriate and reasonably practicable to undertake, has been undertaken.

Between 20 March and 2 May 2014, the ACMA conducted a public consultation process and made a draft of the Instrument available on the ACMA website. A consultation paper was also published on the ACMA website and explained the sunsetting process and the ACMA's preliminary view that the existing arrangements should be continued and be remade without any significant changes. Interested parties were notified of the release of the consultation paper and invited to comment.

The ACMA received 22 submissions in response to the consultation paper and these were considered when making the Instrument.

Regulation impact

The Office of Best Practice Regulation (OBPR) has considered the matter and formed the opinion that making the Instrument is minor or machinery in nature. Accordingly, OBPR advised that no further analysis (in the form of a Regulation Impact Statement) was required. The OBPR exemption number is 16157.

Detailed description of the Instrument

Details of the Instrument are in Attachment A.

Documents Incorporated in this Instrument by Reference

The Instrument incorporates the following documents by reference, or otherwise refers to them:

- *Radiocommunications Act 1992*
- *Telecommunications Act 1997*
- *Business Names Registration Act 2011*
- *Corporations Act 2001*
- *Radiocommunications (Compliance Labelling—Electromagnetic Radiation) Notice 2003*

- *Radiocommunications (Electromagnetic Radiation – Human Exposure) Standard 2014*
- *Protected Symbols Determination 2013*
- *Radiation Protection Standard for Maximum Exposure Levels to Radiofrequency Fields—3 kHz to 300 GHz* (the ARPANSA Standard)
- *AS/NZS 4417.1 Regulatory compliance mark for electrical and electronic equipment – Use of the mark*

The Acts and legislative instruments mentioned above can be found on the Australian Government's ComLaw website (http://www.comlaw.gov.au/).

The ARPANSA Standard can be obtained from the Australian Radiation Protection and Nuclear Safety Agency website (http://www.arpansa.gov.au).

Copies of the standard mentioned above can be obtained from the SAI Global Limited website (http://www.saiglobal.com).

Statement of compatibility with human rights

In accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*, the ACMA has prepared a Statement of Compatibility with Human Rights (the Statement of Compatibility) to consider the human rights implications of the Instrument. The Statement of Compatibility prepared for the Instrument is provided in Attachment B.

Attachment A

Detailed description of the Instrument

Part 1 - Preliminary

Section 1 Name of Notice
Section 1 provides that the name of the Instrument is the *Radiocommunications (Compliance Labelling – Electromagnetic Radiation) Notice 2014.*

Section 2 Commencement
Section 2 provides that the Instrument commences on the later of the day after it is registered on the Federal Register of Legislative Instruments and the day on which it is published in the Gazette. Both of these events must occur before the Instrument commences.

Section 3 Revocation
Section 3 revokes the *Radiocommunications (Compliance Labelling – Electromagnetic Radiation) Notice 2003* (the 2003 Labelling Notice).

Section 4 Definitions
Section 4 defines terms used throughout the Instrument.

Section 4A Definition of a variant
Section 4A sets out a method to determine if a device is a variant of another device. A variant of a device is a device that is sufficiently similar to the first device such that the Human Exposure Standard operates in the same way to both devices. Part 2 of the Instrument (which sets out requirements that must be met before a label is applied to a device) does not apply in relation to a variant of a device if the EME of the variant would not exceed that of the first device.

Section 5 Category A devices
Section 5 defines 'Category A devices' which do not require testing for compliance with the applicable standard before placement on the market. Such devices are 'aware user devices' that are not required to evaluated under section 5.2 of Schedule 5 to the ARPANSA standard and 'non-aware user devices' that are not required to be evaluated under section 5.3 of Schedule 5 to the ARPANSA Standard.

Section 6 Transitional
Section 6 provides that if a supplier of a device complied with the 2003 Labelling Notice in relation to the device, the supplier is taken to comply with the Instrument in relation to that device. This arrangement ceases to apply 12 months after the commencement of the Instrument.

Section 7 Application of this Notice to devices
Section 7 specifies the scope of the Instrument. All mobile transmitters covered by the Human Exposure Standard that are manufactured in Australia, or imported for supply are subject to the labelling provisions in the Instrument. The Instrument does not apply to devices that are imported or manufactured otherwise than for supply in Australia or to Category B devices for which there is no applicable measurement method under the Human Exposure Standard.

Section 8 Relationship between this Notice and a labelling instrument made under the *Telecommunications Act 1997*
Section 8 has the effect that a compliance label can only be applied to a device that complies with both the requirements of the Instrument and the requirements of an applicable instrument made under the *Telecommunications Act 1997*.

Section 8A Relationship between this Notice and another labelling notice made under the *Radiocommunications Act 1992*

Section 8A has the effect that a compliance label can only be applied to a device that complies with both the requirements of the Instrument and the requirements of the *Radiocommunications Devices (Compliance Labelling) Notice 2003, the Radiocommunications (Labelling) Notice 2013 and the Radiocommunications (Electromagnetic Compatibility) Notice 2008*.

Part 2 – Requirements to be met before a label may be applied

Division 2.1 – Application of Part 2

Section 9 No application to variants of a device

Section 9 provides that, if all relevant requirements of Part 2 have been met in relation to a device, Part 2 does not apply to a variant of that device if the variant is not likely to expose the user to more EME than the original device.

Division 2.2 – Registration on national database and issue of supplier code numbers

Section 10 Use of RCM subject to registration on national database or issue of supplier code number

Section 10 requires a supplier to be registered on the national database prior to applying the RCM to a device.

If the ACMA has not designated a national database, a supplier may apply the RCM to a device if the supplier has been issued with a supplier code number. The national database the ACMA designated under the 2003 Labelling Notice continues to be the designated national database for the Instrument.

Section 10A Registration on national database

Section 10A sets out the requirements for supplier registration on the national database. The national database is an online database that requires suppliers to register certain details onto the database via the internet. For the ACMA's purposes, a supplier needs to include sufficient information on the national database to enable the ACMA to identify and contact the supplier. The national database contains prompts and/or fields for a supplier to insert the required information.

If any information that has been provided by a supplier on the national database changes, the supplier is required to update this information on the national database within 30 days of the change occurring. Suppliers that do not update changed information may be subject to pecuniary penalties.

Section 10B Use of C - Tick mark

Section 10B provides that a supplier must not apply the C-Tick mark to a device unless the supplier has been issued a supplier code number by the ACMA.

Section 10C Issue of supplier code number

As long as there is a designated national database, the ACMA will not be issuing any supplier code numbers. This means that no new manufacturers or importers will be able to be issued a supplier code number. However, in the event that the designation of a national database is revoked, section 10C allows for the prospect of the ACMA issuing supplier code numbers.

Section 11 Declaration of conformity

Section 11 provides that before a supplier of a device applies a compliance label to that device, the supplier must make a declaration of conformity stating that the device conforms with the Human Exposure Standard. However, where an importer (or the agent of an importer) of a device that complies with an applicable standard obtains a declaration of

conformity from the overseas manufacturer, subsection 11(2) states that the importer has met the requirements of subsection 11(1) for making a declaration of conformity.

Division 2.3 – Compliance levels

Section 12 Compliance levels
Section 12 requires a supplier, before applying a label to a device, to comply with the requirements of the specified compliance level for that device. This section also characterises three compliance levels for a device as 'compliance level 1', 'compliance level 2' and 'compliance level 3'. Compliance level 1 applies to category A devices, compliance level 2 applies to category B devices whose normal position of use is more than 20cm from the human body and compliance level 3 is for devices whose normal position of use is not more than 20 cm from the human body.

Section 13 Compliance level 1
Section 13 specifies the requirements of compliance level 1 that must be met by a supplier. The supplier must prepare a description of the device and make a declaration of conformity for the device.

Section 14 Compliance level 2
Section 14 specifies the requirements of compliance level 2 that must be met by a supplier. The supplier must comply with compliance level 1 and show the device complies with the applicable standard by obtaining a report of the results of an assessment under section 16.

Section 15 Compliance level 3
Section 15 specifies the requirements of compliance level 3 that must be met by a supplier. The supplier must comply with compliance level 1 and show that the device complies with the applicable standard by obtaining a report of the results of an assessment under section 16 from an accredited testing authority.

Division 2.4 – Assessment of devices

Section 16 Assessment
Section 16 outlines the information that the supplier must obtain from the person testing the device. The report establishing conformity with the Human Exposure Standard must address:

- the measurements or evaluation methods that were used;
- the results of the measurements or evaluations, including any measurement or evaluation data; and
- whether the results of the measurements or evaluations show that the device meets the applicable standard.

Part 3 – Form and placement of a compliance label

Section 17 Application of Part 3
Section 17 establishes that Part 3 of the Instrument applies to suppliers of devices that have complied with the compliance level under Part 2. The Part also applies to variants.

Section 18 Who must apply a compliance label to a device
Section 18 specifies the persons who must apply the compliance label to devices manufactured in Australia or devices manufactured outside Australia. For devices manufactured in Australia the person is the manufacturer, the agent of the manufacturer or another person authorised by the manufacturer or agent to apply labels on behalf of the manufacturer or agent. For devices manufactured overseas the label must be applied by the importer, the agent of the importer or by a person authorised by the importer or agent.

Section 19 What is a compliance label
Section 19 specifies that a compliance label must meet the requirements of section 19 and sections 19A to 19D. The compliance label must consist of the RCM or, if the label is applied before 1 March 2016, the RCM or the C-Tick mark. The section specifies the requirement that compliance labels be accessible and provides that a label is not accessible if it is necessary to use a specialised tool to gain access to it.

Section 19A Durability of compliance label
Section 19A specifies that the compliance label must be applied in a durable manner and must not be able to be easily removed or obliterated.

Section 19B Format of compliance label
Section 19B describes the required size of the compliance label and includes a note clarifying that a supplier may voluntarily apply its own supplier identification details to a device.

Section 19C Placement of compliance label
Section 19C allows a label to be placed on packaging if it is not possible or practical to apply the label directly to the device. It requires suppliers to keep records detailing why it is not possible or practical to label the surface of the device and record where on the packaging 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 ability 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 in such a way as to defeat the adhesive 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 supply of the device; or
- where there is a technical or engineering difficulty that impedes the labelling of the device.

Section 19D Electronic labelling
Section 19D 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.

Part 4 – Requirements to be met after labels applied

Division 4.1 – Keeping of records

Section 20 Compliance records
Section 20 defines ‘compliance record’ as being a record that must be kept under section 21.

Section 21 Keeping of records—general requirements
Section 21 lists the compliance records a supplier must keep for 5 years after the device has ceased to be supplied in Australia. These include the declaration of conformity and the description of the device. Subsection 21(2) requires an agent who keeps records on behalf of a supplier to also keep a copy of the agency agreement. Subsection 21(3) provides that a compliance record must be in English, may be a copy of the original record, and may be kept in electronic form.

Section 22 Records of testing for category B devices
Section 22 describes what records must be kept relating to the testing of a category B device for compliance with the applicable standard and lists the requirements for variants.

Division 4.2 – Availability of compliance records for inspection

Section 23 Where compliance records are to be available
Section 23 specifies that a supplier of a device must ensure that the compliance records for the device are available at the principal business address in Australia of the supplier.

Section 24 Provision of information to authorised officer
Section 24 provides that, upon a request from an authorised officer, the supplier must give the officer records about the device as specified in the request within the specified time periods. It also describes the circumstances in which an officer may take and copy records and requires a supplier to give the officer, upon request, a test report from an accredited laboratory showing that the device complies with the applicable standard if the officer believes the records kept by the supplier do not establish the compliance of the device. Section 187A of the Act makes it an offence not to comply with requirements in the Instrument that are to be met after a label has been applied.

Section 25 Testing of items by testing body
Section 25 provides that an authorised officer may request a supplier to supply up to three samples of a device to an accredited laboratory for testing to show whether the device complies with the applicable standard.

Section 25 also prescribes the time period for supplying samples, the provision of evidence that samples have been supplied, and who is responsible for paying for testing.

Schedule 1 Compliance marks
Schedule 1 includes the design of the RCM and C-Tick mark. Notes are inserted to show that the RCM and C-Tick mark are protected symbols for section 188A of the Act.

Attachment B

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Radiocommunications (Compliance Labelling – Electromagnetic Radiation) Notice 2014

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Radiocommunications (Compliance Labelling – Electromagnetic Radiation) Notice 2014* replaces the *Radiocommunications (Compliance Labelling – Electromagnetic Radiation) Notice 2003* made under subsection 182(1) of the *Radiocommunications Act 1992*. The Notice requires manufacturers and importers of particular radiocommunications devices to comply with particular requirements relating to compliance labelling both before and after supplying those devices.

Human rights implications

The Instrument does not engage any of the applicable rights or freedoms.

Conclusion

The Instrument is compatible with human rights as it does not raise any human rights issues.

Australian Communications and Media Authority