



Radiocommunications (Compliance Labelling—Electromagnetic Radiation) Notice 2014

Radiocommunications Act 1992

The AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY makes this Notice under subsection 182 of the *Radiocommunications Act 1992*.

Dated 30th June 2014

Chris Chapman
[signed]
Member

Richard Bean
[signed]
Member/~~General Manager~~

Australian Communications and Media Authority

Part 1—Preliminary

1 Name of Notice

This Notice is the *Radiocommunications (Compliance Labelling—Electromagnetic Radiation) Notice 2014*.

2 Commencement

This Notice commences on the later of:

- (a) the day after it is registered; and
- (b) the day on which it is published in the *Gazette*.

Note 1 All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.

Note 2 Both of these events must occur before this Notice commences.

3 Revocation

The *Radiocommunications (Compliance Labelling—Electromagnetic Radiation) Notice 2003* [F2005B00259] is revoked.

4 Definitions

(1) In this Notice:

ABN has the same meaning as in the *A New Tax System (Australian Business Number) Act 1999*.

accredited testing body means a laboratory that is described in subsection (2).

Act means the *Radiocommunications Act 1992*.

agent, of a manufacturer or importer, means a person who is authorised in writing by the manufacturer or importer to act in Australia as an agent of the manufacturer or importer for Division 7 of Part 4.1 of the Act.

applicable standard means the *Radiocommunications (Electromagnetic Radiation—Human Exposure) Standard 2014*, as in force from time to time.

ARPANSA standard means the *Radiation Protection Standard for Maximum Exposure Levels to Radiofrequency Fields—3 kHz to 300 GHz* published by the Australian Radiation Protection and Nuclear Safety Agency.

Note The ARPANSA standard may be obtained from the Australian Radiation Protection and Nuclear Safety Agency website <http://www.arpansa.gov.au>.

AS/NZS 4417.1 means the Australian/New Zealand Standard *Regulatory compliance mark for electrical and electronic equipment – Use of the mark* published by Standards Australia Limited.

Note The AS/NZS 4417.1 may be obtained from SAI Global Ltd through its website <http://www.saiglobal.com>

authorised officer means:

- (a) an inspector under subsection 267(1) of the Act; or
- (b) a person authorised in writing by the ACMA to act as an authorised officer for the purposes of this Notice.

aware user device means a hand-held or body-worn radiocommunications transmitter that operates on a push-to-talk basis and is intended for use as:

- (a) an ambulatory station; or
- (b) a land mobile system station; or
- (c) a maritime ship station; or
- (d) a citizens band radio station; or
- (e) an amateur station.

built-in display, for a device, means an electronic display or screen integral to the device, and does not include a display or screen that can be used independently of the device.

category A device has the meaning given by section 5.

category B device means a device that is not a category A device.

compliance label has the meaning given by subsection 19(1).

compliance mark means the C-Tick mark or the RCM.

compliance record has the meaning given by section 20.

C-Tick mark means the mark set out in Part 1 of Schedule 1.

declaration of conformity means a declaration that:

- (a) is in a form approved by the ACMA; or
- (b) contains the information required in that approved form, whether or not the declaration is accompanied by other material.

Note The ACMA makes approved forms available on its website at <http://www.acma.gov.au>.

description of the device means sufficient information for a person to determine whether the device is the same as a device for which a declaration of conformity, test report or assessment against the applicable standard was prepared.

Note The description of a device may include a photograph or sketch or other pictorial representation of the device illustrating its internal and external aspects (including printed circuit boards).

device means a mobile station to which the applicable standard applies.

human body means the head, neck and trunk but not the limbs.

mobile station means a transmitter that is established for use:

- (a) in motion, whether on land, on water or in the air; or
- (b) in a stationary position at unspecified points whether on land, on water or in the air.

Examples of a mobile station

- 1 A wireless modem operating in a laptop computer.
- 2 A hand-held cellular or PCS telephone with a radiating antenna in the handpiece.

NATA means the National Association of Testing Authorities, Australia (ACN 004 379 748).

national database means a database designated in writing by the ACMA for the purposes of Division 2.2.

Note A database may be designated by the ACMA for the purposes of Division 2.2 even if it forms part of another database or also serves purposes other than purposes provided for in this Notice.

non-aware user device means a device other than an aware user device.

normal position of use, of a device, means:

- (a) the position specified in the measurement method applicable to the device in section 9, 10 or 11 of the applicable standard; or
- (b) if paragraph (a) does not apply, the common use spatial orientation of the device with respect to the user; or
- (c) if paragraphs (a) and (b) do not apply, the spatial orientation of the device with respect to the user recommended by the manufacturer.

old standard means the *Radiocommunications (Electromagnetic Radiation – Human Exposure) Standard 2003*.

product identification code, for a device, means the written information used by the supplier of the device to identify the device.

RCM means the Regulatory Compliance Mark set out in Part 2 of Schedule 1.

Specific Absorption Rate, or **SAR**, means the rate at which RF energy is absorbed in body tissues, expressed as watts per kilogram ('W/kg').

supplier means:

- (a) in relation to an imported device—the importer or agent of the importer; and
- (b) in relation to a device manufactured in Australia—the manufacturer or the agent of the manufacturer.

supplier code number means a code number issued to a person:

- (a) in accordance with an instrument made by the ACMA under section 407 of the *Telecommunications Act 1997*; or
- (b) in accordance with a notice made by the ACMA under section 182 of the Act; or
- (c) by Standards Australia Limited under AS/NZS 4417.1.

variant has the meaning given by section 4A.

working day, in relation to a request, means a day other than:

- (a) a Saturday or a Sunday; or
 - (b) a day that is a public holiday in the place where the request is made.
- (2) An **accredited testing body** is a laboratory that is accredited by:
- (a) NATA; or
 - (b) an accreditation body of a foreign country, being a body with whom NATA has a mutual recognition arrangement or agreement;
- to conduct tests for SAR.

Note Category B devices whose normal position of use is not more than 20cm from the human body must have tests for SAR conducted only by an accredited testing body, see paragraphs 12(2)(c) and 15(b).

- (3) A reference in this Notice to a document with the prefix 'AS/NZS' is a reference to a document that is a joint Australian and New Zealand Standard approved for publication on behalf of the Standards organisations of those countries, as in force from time to time.
- (4) Reference may be made in this Notice to an Australian and New Zealand Standard by number alone without inclusion of the edition or year of publication of the standard.

Example

AS/NZS 4417.1:2012 may be referred to as AS/NZS 4417.1.

- (5) A term that is:
 - (a) used (but not defined) in this Notice; and
 - (b) defined in the Glossary of the ARPANSA standard;

has the meaning given by that Glossary.

4A Definition of *variant*

- (1) This section sets out when a device is a *variant* of another device.
- (2) If, in relation to a device (*the first device*), the applicable standard requires that a particular method be used for assessing whether the first device meets the applicable standard, then another device (*the second device*) is a *variant* of the first device if:
 - (a) the second device is not identical to the first device; and
 - (b) the method required by the applicable standard to be used for assessing whether the first device meets the applicable standard:
 - (i) is the same method required by the standard to be used for assessing whether the second device meets the standard; and
 - (ii) when used to assess whether the second device meets the standard, is used in the same manner as when used to assess whether the first device meets the standard.

5 Category A devices

- (1) A *category A device* is a device that meets the criteria in subsection (2) or (3).
- (2) The criteria in this subsection are that the device:
 - (a) is an aware user device; and
 - (b) is not required to be evaluated under section 5.2 of Schedule 5 to the ARPANSA standard.
- (3) The criteria in this subsection are that the device:
 - (a) is a non-aware user device; and
 - (b) is not required to be evaluated under section 5.3 of Schedule 5 to the ARPANSA standard.

6 Transitional

- (1) If:
 - (a) the applicable standard applies to a device;
 - (b) the device is taken to comply with the applicable standard because the device complies with the old standard; and
 - (c) the supplier of the device complied with the *Radiocommunications (Compliance Labelling—Electromagnetic Radiation) Notice 2003* in relation to the device;the supplier is taken to comply with this Notice in relation to that device.
- (2) Despite the revocation of the *Radiocommunications (Compliance Labelling—Electromagnetic Radiation) Notice 2003*, that notice applies to a device or supplier for the purposes of this section as if the notice had not been revoked.
- (3) Subsections (1) and (2) cease to apply 12 months after the commencement of this Notice.

7 Application of this Notice to devices

- (1) This Notice applies to a device if:
 - (a) the device is manufactured in Australia, or imported, for supply; and
 - (b) the applicable standard applies to it.
- (2) This Notice does not apply to a device that is imported or manufactured otherwise than for supply in Australia.
- (3) This Notice does not apply to a category B device for which there is no applicable measurement method under the applicable standard.

8 Relationship between this Notice and a labelling instrument made under the *Telecommunications Act 1997*

If a device to which this Notice applies is also customer equipment or customer cabling to which an instrument made under subsection 407(1) of the *Telecommunications Act 1997*, as in force from time to time, applies:

- (a) the requirements in this Notice are additional to the requirements under that instrument; and
- (b) Part 3 of this Notice does not apply in relation to the device; and
- (c) a reference in this Notice (except subsection 4(1)) to a compliance label includes a reference to a compliance label under that instrument.

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

If a device to which this Notice applies is also a device to which another notice made under subsection 182(1) of the Act, as in force from time to time, applies, the requirements in this Notice are additional to the requirements under that notice.

Note An effect of this section is that a compliance mark can only be applied to a device if it complies with the applicable requirements of this Notice and any other notice made under subsection 182(1) of the Act.

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

Division 2.1—Application of Part 2

9 No application to variants of a device

This Part does not apply in relation to a variant of a device if:

- (a) the relevant requirements of this Part have been met in relation to the device; and
- (b) the electromagnetic radiation exposure in relation to the variant is not likely to exceed that of the device.

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

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

- (1) Before a supplier applies a compliance label consisting of the RCM to a device, the supplier must:
 - (a) be registered on the national database; or
 - (b) if the ACMA has not designated in writing a national database for the purposes of this Division—have been issued a supplier code number.

Note Under section 187 of the Act, a supplier that fails to comply with requirements that must be met before a label has been applied to a device may be subject to a pecuniary penalty.

- (2) If the ACMA designated in writing a national database for the purposes of Division 2.2 of the *Radiocommunications (Compliance Labelling – Electromagnetic Radiation) Notice 2003*, that database is taken to have been designated in writing by the ACMA for the purposes of this Division.

10A Registration on national database

- (1) To be registered on the national database a supplier must, using a method which the database indicates is a method for including information on the database, provide:
 - (a) information identifying the supplier;
 - (b) the supplier's address in Australia; and
 - (c) the name and contact details of a representative of the supplier.
- (2) For paragraph (1)(a), information identifying a supplier consists of the supplier's ABN and 1 of the following pieces of information in relation to the supplier:
 - (a) if the supplier is a body corporate, the name of the body corporate;
 - (b) if the supplier is an individual, the name of the individual;
 - (c) a business name used by the supplier in connection with its business as a supplier and registered as a business name under the *Business Names Registration Act 2011*.
- (3) If the information provided by a supplier for inclusion in the national database subsequently changes, the supplier must, within 30 days after the change occurs, update the national database with the changed information using a method which the database indicates is a method for updating information on the database.
- (4) In this section:

representative of the supplier means:

 - (a) an employee of the supplier;
 - (b) an officer of the supplier; or
 - (c) a person authorised in writing for the purposes of this section by the supplier or an employee or officer of the supplier.

officer of the supplier means:

- (a) if the supplier is a corporation for the purposes of the *Corporations Act 2001*, an officer of a corporation as that term is defined in section 9 of the *Corporations Act 2001*; or
- (b) if the supplier is an entity that is neither an individual nor a corporation for the purposes of the *Corporations Act 2001*, an officer of that entity as defined in section 9 of the *Corporations Act 2001*.

Note 1 The requirement for a supplier to update the information provided by it for inclusion in the national database imposed under subsection 10A(3) is an ongoing requirement. Under section 187A of the Act, a supplier that fails to comply with a specific requirement that must be met after a label has been applied to a device may be subject to a pecuniary penalty.

Note 2 Information provided by a supplier for inclusion on the national database for the purposes of this Notice will be made publicly available.

10B Use of C-Tick mark

Before a supplier applies a compliance label consisting of the C-Tick mark to a device, the supplier must have been issued a supplier code number by the ACMA.

10C Issue of supplier code number

- (1) This section applies only if the ACMA has not designated in writing a national database for the purposes of this Division.
- (2) A supplier may apply in writing to the ACMA for a supplier code number.
- (3) The application must be in a form approved by the ACMA.

Note The ACMA makes approved forms available on its website at <http://www.acma.gov.au>.
- (4) Upon such application being made, the ACMA may issue to the supplier a supplier code number.

11 Declaration of conformity

- (1) Before a supplier of a device applies a label to the device as a compliance label, the supplier must make a declaration of conformity for the device.
- (2) Subsection (1) is taken to be satisfied by an importer of a device, or an agent of the importer, who applies a label to the device as a compliance label without making a declaration of conformity for the device if:
 - (a) the device complies with the applicable standard; and
 - (b) the device was manufactured outside Australia; and
 - (c) the manufacturer of the device made a declaration of conformity for the device before the label was applied to the device.
- (3) A reference to manufacturer in a declaration of conformity made in accordance with paragraph (2)(c) is taken to include a reference to a person who manufactures a device outside Australia.

- (4) A declaration of conformity made by a manufacturer that manufactures a device outside Australia in accordance with paragraph (2)(c) need not include:
- (a) an ABN; or
 - (b) an Australian Company Number (ACN); or
 - (c) an Australian Registered Body Number (ARBN).

Division 2.3—Compliance levels

12 Compliance levels

- (1) Before a supplier applies a compliance label to a device, the supplier must comply with the compliance level for the device.
- (2) The compliance level for a device is:
- (a) for a category A device—compliance level 1; and
 - (b) for a category B device for which the normal position of use is more than 20cm from the human body—compliance level 2; and
 - (c) for a category B device for which the normal position of use is not more than 20cm from the human body—compliance level 3.

13 Compliance level 1

To comply with compliance level 1, the supplier of a device must:

- (a) prepare a description of the device; and
- (b) make a declaration of conformity for the device in accordance with section 11.

Note Subsection 11(2) sets out the circumstances in which the requirement for a supplier of a device to make a declaration of conformity is taken to be satisfied by the overseas manufacturer of the device making the declaration.

14 Compliance level 2

To comply with compliance level 2, the supplier of a device must:

- (a) comply with compliance level 1; and
- (b) show conformity with the applicable standard by a report of the results of assessment under section 16.

15 Compliance level 3

To comply with compliance level 3, the supplier of a device must:

- (a) comply with compliance level 1; and
- (b) show conformity with the applicable standard by a report of the results of an assessment under section 16 by an accredited testing body.

Division 2.4—Assessment of devices

16 Assessment

If a device is assessed for conformity with the applicable standard, the supplier of the device must obtain from the person that assessed the device a report addressing:

- (a) the measurements or evaluation methods that were used; and
- (b) the results of the measurements or evaluations, including any measurement or evaluation data; and
- (c) 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

17 Application of Part 3

- (1) This Part applies to a device if the supplier for the device has complied with the compliance level for the device under Part 2.
- (2) This Part also applies to a variant of the device.

Note This Part does not apply to a device that is also customer equipment or customer cabling to which an instrument made under subsection 407(1) of the *Telecommunications Act 1997*, as in force from time to time, applies; see paragraph 8(b).

18 Who must apply a compliance label to a device

- (1) If a device is manufactured in Australia, a label must be applied to the device as a compliance label by 1 of the following persons:
 - (a) the manufacturer;
 - (b) an agent of the manufacturer;
 - (c) a person who is authorised by the manufacturer, or an agent of the manufacturer, to apply labels on behalf of the manufacturer or agent.

Note A compliance label is described in subsection 19(1).

- (2) If a device is manufactured outside Australia, a label must be applied to the device as a compliance label by 1 of the following persons:
 - (a) the importer;
 - (b) an agent of the importer;
 - (c) a person outside Australia who is authorised by the importer or agent to apply labels on behalf of the importer or agent.

19 What is a compliance label

- (1) A **compliance label** for a device is a label that meets the requirements of this section and sections 19A to 19D.
- (2) The label must consist of:
 - (a) the RCM; or

- (b) if the label is applied before 1 March 2016—either of the compliance marks.

Location of compliance label

- (3) Subject to sections 19C and 19D, the label must be placed on the device on a place that is accessible by the user.

Note Section 19C deals with situations where applying a label to the surface of a device is not possible or practical. Section 19D gives a supplier the option of labelling some types of device electronically.

- (4) A label is not accessible if it is necessary to use a specialised tool to gain access to it.

19A Durability of compliance label

- (1) A compliance label must be durable.
- (2) A compliance label must be applied to a device:
 - (a) permanently; or
 - (b) in a way that makes removal or obliteration difficult.

19B Format of compliance label

A compliance mark must be at least 3 mm high.

Note This Notice does not prevent a supplier from applying its own additional supplier identification details onto a device.

19C Placement of compliance label

- (1) If it is not possible to apply a compliance label to the surface of a device because of the size or physical nature of the device, or it is not practical to apply a compliance label to the surface of a device, the compliance label must be applied to:
 - (a) the external surface of the packaging used for the device; and
 - (b) the documentation (including any warranty or guarantee certificates) that accompanies the device when it is offered for supply.
- (2) The compliance label applied to the external surface of the packaging used for the device must:
 - (a) occupy an area that is greater than 1% of that external surface; and
 - (b) be clearly visible.
- (3) The supplier must make and keep a record of:
 - (a) the reasons why subsection (1) applies to the device; and
 - (b) where each compliance label is applied.

19D Electronic labelling

- (1) A supplier may apply a compliance label to a device using the built-in display of the device.

- (2) The supplier must ensure that the documentation that accompanies the device when it is offered for supply sets out a method for displaying the compliance label.
- (3) 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 set out in the documentation is used.
- (4) Subsection 19(3) and sections 19A and 19C do not apply to a label applied under this section.

Part 4—Requirements to be met after labels applied

Division 4.1—Keeping of records

20 Compliance records

A *compliance record* is a record that must be kept under section 21.

21 Keeping of records—general requirements

- (1) If a supplier of a device applies a label to the device as a compliance label, the supplier must keep, for 5 years after the device has ceased to be supplied in Australia:
 - (a) the declaration of conformity relating to the device; and
 - (b) the description of the device; and
 - (c) for a category B device—the records mentioned in section 22; and
 - (d) for a device to which a compliance label is not applied because of section 19C—the records mentioned in subsection 19C(3).
- (2) If an agent of a manufacturer or importer keeps records for the manufacturer or importer that must be kept under subsection (1), the agent must also keep a copy of its agency agreement with the manufacturer or importer for the same period as those records are kept.
- (3) A compliance record:
 - (a) must be in English; and
 - (b) may be a copy of an original record; and
 - (c) may be kept in electronic form.

22 Records of testing for category B devices

For paragraph 21(1)(c), the records are:

- (a) the report issued under section 16 showing that the device meets the applicable standard; and
- (b) for a variant—a statement by the supplier that:
 - (i) identifies the device and its variant; and
 - (ii) describes the differences between the device and its variant; and
 - (iii) provides a technical rationale for the conformity of the variant; and

- (iv) includes evidence that the electromagnetic radiation exposure in relation to the variant is not likely to exceed that of the device.

Division 4.2—Availability of compliance records for inspection

23 Where compliance records are to be available

If a supplier of a device applies a label to the device as a compliance label, the supplier must ensure that the compliance records for the device are available at the principal business address in Australia of the supplier.

24 Provision of information to authorised officer

- (1) If a supplier of a device applies a label to the device as a compliance label, an authorised officer may, in writing, require the supplier to give to the officer specified compliance records.
- (2) If the request is for a specified record, the supplier must produce the record within 10 working days after the day specified in the request.
- (3) If the request is for a specified circuit diagram or manual for the device, the supplier must produce the document within 30 working days after the day specified in the request.
- (4) After receiving the information from the supplier, the authorised officer must give the supplier a receipt for the information supplied.
- (5) The authorised officer:
 - (a) may make copies of the records; and
 - (b) must return the records given by the supplier as soon as practicable and, in any case, not more than 60 days after receiving the records.
- (6) If an authorised officer believes that the records kept by the supplier do not provide sufficient evidence that the device complies with the applicable standard, the officer may, in writing, require the supplier to give to the officer a test report from an accredited testing body showing that the device either complies or does not comply with the applicable standard.

25 Testing of items by testing body

- (1) If a supplier of a device applies a label to the device as a compliance label, an authorised officer may, in writing, require the supplier of a device to give up to 3 samples of the device to a laboratory accredited by NATA and specified by the officer, for testing whether the device complies with an applicable standard.
- (2) The supplier must comply with the request within 10 working days after the day specified in the request.
- (3) The supplier must attempt to obtain from the laboratory a receipt that specifies the samples have been received and the date when they were received.
- (4) On receiving a request from the ACMA, the supplier must:
 - (a) give the receipt to the ACMA; or

- (b) if the supplier is unable to obtain a receipt—satisfy the ACMA that the supplier made reasonable attempts to obtain a receipt.
- (5) The ACMA must make arrangements to ensure that the samples are returned to the supplier within a reasonable period after they have been tested.
- (6) If testing required under this section shows that the device does not comply with the standard, the supplier must meet the costs of the testing.
- (7) If testing required under this section shows that the device complies with the standard, the ACMA must meet the costs of the testing.
- (8) In this section:
device includes a variant of the device.

Schedule 1—Compliance marks

(subsection 4(1))

Part 1—The C-Tick mark



Note The C-Tick mark is a protected symbol for the purposes of section 188A of the Act, the design of which is set out in the *Protected Symbols Determination 2013*.

Part 2—The RCM



Note The RCM is a protected symbol for the purposes of section 188A of the Act, the design of which is set out in the *Protected Symbols Determination 2013*.