EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Radiocommunications (406 MHz Satellite Distress Beacons) Standard 2014
Radiocommunications Act 1992

Purpose

The Australian Communications and Media Authority (the **ACMA**) has made the *Radiocommunications (406 MHz Satellite Distress Beacons) Standard 2014* (the **2014 Standard**) to replace the *Radiocommunications (406 MHz Satellite Distress Beacons) Standard 2005* (the **2005 Standard**) without making any significant changes to the regulatory arrangements created by the 2005 Standard.
The ACMA has made the 2014 Standard as the 2005 Standard is due to be automatically repealed on 1 October 2015, in accordance with Part 6 of the *Legislative Instruments Act 2003* (the **LIA**).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 2014 Standard under subsection 162(1) of the *Radiocommunications Act 1992* (the **Act**). Subsection 162(1) provides that the ACMA may, by legislative instrument, make standards for the performance of, or maximum permitted level of radio emissions from, specified devices.

An instrument made under the Act may make provision for certain matters by applying, adopting or incorporating (with or without modifications) matter contained in any other instrument, as in force or existing from time to time (subsection 314A(2) of the Act). The 2014 Standard adopts, by reference, the two part technical standard made by Standards Australia and Standards New Zealand, *AS/NZS 4280.1:2003 406 MHz satellite distress beacons, Part 1: Marine emergency position-indicating radio beacons (EPIRB) (IEC 61097-2:2002, MOD)* (**AS/NZS 4280.1**) and *AS/NZS 4280.2:2003 406 MHz satellite distress beacons, Part 2: Personal locator beacons (PLBs)* **(AS/NZS 4280.2)** (collectively, **AS/NZS 4280**).

The 2014 Standard is a legislative instrument for the purposes of the LIA.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make a legislative instrument, the power shall be construed to include a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument. The 2014 Standard is made under subsection 162(1) of the Act and revokes the 2005 Standard.

Background

Radiocommunications standards made under subsection 162(1) of the Act (**section 162 standards**) form part of the regulatory framework under the Act for the management of radiocommunications spectrum in Australia.

In concert with the *Radiocommunications (Compliance Labelling – Devices) Notice 2014* (the **Radiocommunications Labelling Notice**) made under subsection 182(1) of the Act, section 162 standards regulate the supply of radiocommunications devices into Australia. Section 162 standards define performance and radio emission level requirements for specified radiocommunications devices.

The Radiocommunications Labelling Notice specifies testing, labelling and record keeping obligations for suppliers of those radiocommunications devices subject to an applicable section 162 standard.[1]

The purpose of section 162 standards is to manage the risk of interference to radiocommunications and radiocommunications devices, and to protect the health and safety of persons who operate, work on, use services supplied by means of, or are reasonably likely to be affected by the operation of, radiocommunications transmitters and receivers.

Subject to certain exemptions in Division 5 of Part 4.1 of the Act, it is an offence under section 160 to knowingly supply a non-standard device (that is, a device that does not comply with the requirements of a section 162 standard that applies to the device).

Following review and consultation, the ACMA formed the view that the 2005 Standard was operating effectively and efficiently, and continued to form a necessary and useful part of the legislative framework. The ACMA considers that there are no industry self-regulatory processes in place at this time that would serve to effectively offer the same safeguards as are offered by this standard in relation to the supply of radiocommunications equipment. Accordingly, the ACMA decided to make the 2014 Standard to replace the 2005 Standard without making any significant changes to the regulatory arrangements created by the latter Standard so that its ongoing effect is preserved.

Operation

The 2014 Standard applies to a radiocommunications device that is a 406 MHz satellite distress beacon incorporating a 121.5 MHz homing transmitter. A satellite distress beacon is a satellite emergency position indicating radio beacon, or a satellite personal locator beacon specially designed for distress alerting through the COSPAS-SARSAT satellite aided search and rescue system.

AS/NZS 4280.1 specifies the minimum performance requirements, technical characteristics and type-testing requirements of the satellite emergency position-indicating radio beacon used in the COSPAS-SARSAT satellite system. AS/NZS 4280.2 sets out the minimum requirements for personal locator beacons operating with a nominal frequency in the band 406.0 MHz to 406.1 MHz.

In defining the technical performance characteristics, the 2014 Standard adopts specified provisions of AS/NZS 4280.1 and AS/NZS 4280.2 as in force or existing from time to time and of any immediate replacement of AS/NZS 4280.1 or AS/NZS 4280.2 as in force or existing from time to time. The adopted performance requirements specified from AS/NZS 4280.1 and AS/NZS 4280.2 address maximum permissible output power, channel width, modulation types and operating frequencies.

The date by which an applicable device must comply with the specified provisions of AS/NZS 4280.1 and/or AS/NZS 4280.2 is set out in section 7. In summary, that date corresponds to the date of manufacture, importation or modification of the device or, if the device is part of a class of radiocommunications devices, the date the first device in that class was manufactured, imported or modified. Section 8 also deals with the situation where AS/NZS 4280.1 and/or 4280.2 is amended or replaced. In broad terms, section 8 provides for a 1 year transition period. If, during this period, a supplier manufactures, imports or modifies a device, the device may comply either with the relevant provisions of the standard as in force before the amendment or replacement, or as in force after the amendment or replacement.

[1] The *Radiocommunications (Compliance Labelling – Electromagnetic Radiation) Notice 2014* and the *Radiocommunications Labelling (Electromagnetic Compatibility) Notice 2008* may also affect the supply of devices that are radiocommunications transmitters.

Consultation

The ACMA has consulted with industry stakeholders and the general public on the making of the 2014 Standard to replace the 2005 Standard.

Subsection 163(1) of the Act requires that before the ACMA makes a standard the ACMA must, so far as is practicable, try to ensure that interested persons have had an adequate opportunity to comment on the proposed standard and that due consideration has been given to any representations made.

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 16 April 2014 and 6 June 2014, the ACMA conducted a public consultation process on the instruments that comprise the regulatory arrangements for supply of radiocommunications equipment. A consultation paper and draft instruments were made available on the ACMA website. The consultation paper explained the sunsetting (automatic repeal) process and the ACMA's preliminary view that the existing arrangements should be continued in the replacement standard without any significant changes. Interested parties were notified of the release of the discussion paper and invited to comment.

The ACMA received 4 submissions from industry participants in response to the consultation paper and all issues relevant to the making of a standard under section 162 of the Act were considered when making the 2014 Standard.

Regulation Impact

The Office of Best Practice Regulation (**OBPR**) has considered the matter and formed the opinion that making the 2014 Standard 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 ID 16649.

Detailed description of the 2014 Standard

Details of the 2014 Standard are in Attachment A.

Documents incorporated in the 2014 Standard by reference

The 2014 Standard incorporates the following documents by reference, or otherwise refers to them:

- the Act;
- the *Radiocommunications (Interpretation) Determination 2000* (the **Interpretation Determination**); and
- AS/NZS 4280.1 and AS/NZS 4280.2.

The Act and the Interpretation Determination can be found on the Australian Government's ComLaw website (http://www.comlaw.gov.au/).

Both AS/NZS 4280.1 and AS/NZS 4280.2 can be purchased on the Standards Australia website (www.standards.org.au).

Statement of compatibility with human rights

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires the rule maker in relation to a legislative instrument to which section 42 (disallowance) of the LIA applies to cause a statement of compatibility to be prepared in respect of that legislative instrument.

This statement has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The 2014 Standard, which requires suppliers of particular radiocommunications devices to comply with particular technical requirements before and after supplying those devices, 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*.

The ACMA has considered whether the 2014 Standard engages any applicable human rights or freedoms and has formed the view that it does not. The 2014 Standard is compatible with human rights as it does not raise any human rights issues.

Attachment A

Detailed description of the 2014 Standard

Section 1 Name of Standard

This section names the 2014 Standard as the *Radiocommunications (406 MHz Satellite Distress Beacons) Standard 2014.*

Section 2 Commencement

This section provides that the 2014 Standard commences on the day after it is registered on the Federal Register of Legislative Instruments.

Section 3 Revocation

This section revokes the previous standard, the *Radiocommunications (406 MHz Satellite Distress Beacons) Standard 2005*.

Section 4 Definitions

This section defines terms used throughout the 2014 Standard.

Some of the key defined terms are set out below:

- *121.5 MHz homing transmitter* is a transmitter, incorporated into a 406 MHz satellite distress beacon, that operates on a carrier frequency of 121.5 MHz.
- *406 MHz satellite distress beacon* is a radiocommunications device that is either a 406 MHz satellite emergency position indicating radio beacon (EPIRB) or a 406 MHz satellite personal locator beacon (PLB), which is:
    - capable of being operated on a carrier frequency in the frequency band 406.0 MHz to 406.1 MHz; and
    - which incorporates a 121.5 MHz homing transmitter, the emissions of which are intended to facilitate search and rescue operations.

  The terms *406 MHz satellite emergency position indicating radio beacon* and *406 MHz satellite personal locator beacon* are defined by reference to their use in either the maritime mobile-satellite service or land mobile-satellite service.
- *applicable device* is defined to mean a radiocommunications device to which the 2014 Standard applies, in accordance with subsection 5(1).
- *AS/NZS 4280.1*. This term is used to describe the referenced industry technical standard by using the title of the standard along with the year of publication. Through the operation of this definition, the 2014 Standard includes *AS/NZS 4280.1:2003 406 MHz satellite distress beacons, Part 1: Marine emergency position-indicating radio beacons (EPIRB) (IEC 61097-2:2002, MOD)* (as amended) and any immediate replacement of that standard (as amended).
- *AS/NZS 4280.2*. This term defines the referenced industry technical standard. Through the operation of this definition, the 2014 Standard includes *AS/NZS 4280.2:2003 406 MHz satellite distress beacons, Part 2: Personal locator beacons (PLBs)* (as amended) and any immediate replacement of that standard (as amended).
- *included in a class of radiocommunications devices, original modified device* and *original radiocommunications device* are terms defined in section 6 and used in sections 7 and 8 to achieve the objective that applicable devices which are of the same model and identical to each other, need only comply with AS/NZS 4280.1 and AS/NZS 4280.2 as in force at the date the first device of that particular model was manufactured, imported or created by means of modification of another device.
- *land mobile-satellite service* is defined as a mobile-satellite service in which mobile earth stations are located on land.
- *manufactured*, in relation to an applicable device, means manufactured in Australia.
- *maritime mobile-satellite service* is defined by incorporating the definition in the *Radiocommunications (Interpretation) Determination 2000.*

- *modified,* in relation to a device, means that the device has been modified or altered in a material respect in Australia (after the device was manufactured or imported) by, or on behalf of, the manufacturer or importer of the device. A modification is material if the modification made to the device would or could affect whether the device complies with any applicable technical standard that applied to the unmodified device.
- *relevant date* means the date specified in section 7 in relation to an applicable device.
- *significant event*. A significant event is an event determined by the Chair of the ACMA as such and notified on the ACMA website.

Section 5 Application

Section 5 sets out the types of device to which the 2014 Standard applies.

The 2014 Standard applies to a radiocommunications device that is a 406 MHz satellite distress beacon.

Subsection 5(2) provides that the 2014 Standard does not apply to certain radiocommunications devices that are used in connection with a significant event. The 2014 Standard does not apply to a radiocommunications device that:

- is imported into Australia solely for use in connection with a significant event;
- meets any applicable testing or inspection requirements prior to its use in Australia;
- complies with any applicable conditions or requirements for the use of the device in Australia;
- is used only at the location of the significant event; and
- is used in Australia only for the duration of the significant event.

Section 6 When is a device included in a class of radiocommunications devices?

Sections 6, 7 and 8 of the 2014 Standard work together to ensure that devices which are of the same model and identical to each other, need only comply with AS/NZS 4280.1 and/or 4280.2 (as required) as in force at the date the first device of that particular model was manufactured, imported or created by means of modification of another device. This is to address the situation when devices of the same model are manufactured or imported over an extended period of time and when, over an extended period of time, significant numbers of devices are created by means of modification of another device so that they become identical to each other. The following concepts are defined in section 6 in order to achieve this objective:

- 'included in a class of radiocommunications devices';
- 'original radiocommunications device'; and
- 'original modified device'.

The above concepts are important for the purpose of defining the 'relevant date' for an applicable device under section 7.

Under paragraph 6(1)(a), an applicable device, other than a modified device, is 'included in a class of radiocommunications devices' if the device is identical to each other device of the class (irrespective of when the devices were manufactured or imported) and has the same manufacturer or importer as each other device. Paragraph 6(1)(b) also provides that the 'original radiocommunications device', in relation to a class of radiocommunications devices, is the device of the class that was the first to be manufactured or imported.

Under paragraph 6(2)(a), a modified device is 'included in a class of radiocommunications devices' if the modification made to create the device is identical to the modification made to create each other device of the class (irrespective of when the devices were so modified); the device is, in all other respects, identical to each other device (irrespective of when the devices were manufactured or imported); and the device has the same manufacturer or importer as each other device. Paragraph

6(2)(b) further provides that the 'original modified device', in relation to the class, is the device of the class that was the first to be created by being so modified.

Section 7 Relevant date for an applicable device

Section 7 defines the 'relevant date' for an applicable device as follows:

- in the case of an applicable device (other than a modified device) that is included in a class of radiocommunications devices – the date the original radiocommunications device (being the first device of the class to be manufactured or imported) was manufactured or imported;
- in the case of a modified device that is included in a class of radiocommunications devices – the date the modification was made to create the original modified device of the class; or
- otherwise – the date the device was manufactured or imported.

Section 8 Standard for performance

Section 8 provides that the standard for performance for an applicable device is the standard set out in the provisions of AS/NZS 4280.1 and 4280.2 specified in Schedule 1, as in force or existing at the relevant date for the device (as defined in section 7). A particular device may be subject to only AS/NZS 4280.1, or only to AS/NZS 4280.2. However, in some cases, an applicable device may be subject to both of those technical standards. It is up to a supplier to ensure that, where required, applicable devices comply with the specified provisions of both technical standards.

Section 8 also allows for a transition period if and when AS/NZS 4280.1 and 4280.2 (the **old standards**) are, in relevant respects:

- amended (an **amending standard**);or
- replaced (a **replacement standard**).

During the 12 month period (the **transition period**) commencing on the date of introduction of the amending standard or replacement standard, both the old standards and an amending standard or a replacement standard are in effect. Where the relevant date for a device occurs during a transition period the supplier may choose between the old standards and an amending standard or a replacement standard as the applicable standard with which devices must comply. This recognises that relevant changes to an applicable standard may occur at a time disadvantageous to the manufacturer or importer (for example, where device development and testing has been predicated on the old standards rather than the amendment or replacement standard).

The section allows for multiple transition periods to occur sequentially with an overlap.

Section 9 Transitional arrangements – devices manufactured, imported or modified before commencement day

Section 9 implements transitional arrangements for an applicable device that complied with the 2005 Standard. Devices which complied with the 2005 Standard and that were supplied prior to the commencement of the 2014 Standard are, by virtue of the transitional arrangements in this section, deemed to comply with the 2014 Standard and can continue to be lawfully supplied.

Schedule 1 – Standard for performance (specified provisions of AS/NZS 4280.1 and AS/NZS 4280.2 and modification of specified provisions)

Clauses 1 and 3 of Schedule 1 specify the provisions of AS/NZS 4280.1 and 4280.2 with which an applicable device, to which one or both of those technical standards apply, must comply. Clauses 2 and 4 of Schedule 1 modify the application to an applicable device of provisions of AS/NZS 4280.1 and AS/NZS 4280.2 to which one or both of those technical standards apply, in the way described.