

## **EXPLANATORY STATEMENT**

**Prepared by the Australian Communications and Media Authority**

### ***Telecommunications (Labelling Notice for Customer Equipment and Customer Cabling) Instrument 2015***

#### **Purpose**

The *Telecommunications (Labelling Notice for Customer Equipment and Customer Cabling) Instrument 2015* (the 2015 Notice) sets out the regulatory arrangements in relation to labelling of specified customer equipment (CE) and customer cabling (CC) which has been manufactured in Australia or imported and which may be supplied and connected to a telecommunications network.

The 2015 Notice revokes and replaces the *Telecommunications Labelling (Customer Equipment and Cabling) Notice 2001* (the 2001 Labelling Notice) with some modifications to make the new arrangements simpler and clearer, to ensure that requirements are proportional to the risks associated with the supply of CE and CC, to reduce the administrative burden for industry and to facilitate the implementation of new technology in Australia.

#### **Legislative provisions**

Subsection 407(1) of the *Telecommunications Act 1997* (the Act) provides that the Australian Communications and Media Authority (the ACMA) may, by written instrument, require any person who is a manufacturer or importer (supplier) of specified CE or CC to apply a label to the item to indicate whether the item complies with the technical standards made by the ACMA under section 376 of the Act and specified in the instrument. Section 408 allows such an instrument to specify, among other things, that a supplier must meet certain requirements before and after applying such a label to an item.

An instrument made under section 407 of the Act is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (the LIA).

Subsection 33(3) of the *Acts Interpretation Act 1901* (the AIA) relevantly provides that where an Act confers a power to make a legislative instrument, the power shall be construed as including 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.

#### **Background**

The 2001 Labelling Notice was due to be automatically repealed (i.e., to sunset) under section 50 of the LIA on 1 April 2015. The approaching sunset day of the 2001 Labelling Notice triggered a review by the ACMA of the arrangements established by the 2001 Labelling Notice, and provided the ACMA with an opportunity to revisit the structure and address a number of operational and application issues that had developed over time.

Following the review, which included the consultation outlined below, the ACMA formed the view that the 2001 Labelling Notice continued to be an effective and efficient means of managing the risks associated with the supply and connection of CE and CC. Accordingly, the ACMA has made the 2015 Notice to replace the 2001 Labelling Notice, in terms which ensure that the effect of the regulatory arrangements for specified CE and CC is largely preserved.

#### **Operation**

The ACMA has responsibility for the technical regulation of CE, CC and specified radiocommunications devices in Australia under the Act and the *Radiocommunications Act 1992*. These regimes cover aspects of CE, CC and radiocommunications devices related to their

radiocommunications, electromagnetic energy, electromagnetic compatibility and telecommunications functions.

The principal elements of the telecommunications CE and CC regulatory arrangements in relation to labelling are:

- an instrument made by the ACMA under section 407 of the Act (namely, the 2015 Notice which has replaced the 2001 Labelling Notice);
- the technical standards made under section 376 of the Act (ACMA standards); and
- the provisions in the Act (including offence provisions) that apply to the supply and connection of CE or CC subject to an instrument made under section 407.

The Act, the 2015 Notice and the ACMA standards operate together to create the regulatory arrangements for the supply and connection of CE and CC. The objective of the arrangements is to manage both consumer risks (related to health and safety, and access to the emergency call service) and industry risks (related to network integrity and interoperability).

The 2015 Notice addresses these risks by imposing obligations on suppliers of specified CE and CC both before and after the CE and CC is supplied, including requirements in relation to labelling and record-keeping. These requirements for a supplier to label and to make and hold records is intended to provide confidence (to the ACMA, network operators and the public) that suppliers have taken appropriate steps to ensure that CE and CC complies with applicable technical requirements.

The 2015 Notice was made:

- to create a simpler and more easily understood instrument (thereby minimising the risk of non-compliance with, and improving the enforceability of, the 2015 Notice);
- to ensure that the requirements imposed on suppliers are proportional to the risks associated with the supply and connection of non-compliant CE and CC;
- to reduce the administrative burden for industry by streamlining record keeping obligations on suppliers and enabling them to rely on overseas compliance documentation to meet local compliance requirements; and
- to facilitate the implementation of new technology in Australia.

Though there are some structural differences between the 2015 Notice and the 2001 Labelling Notice, the overall regulatory obligations in relation to testing for compliance with technical standards, labelling and record keeping have been largely maintained.

The 2015 Notice contains transitional arrangements in relation to CE and CC that has been labelled in accordance with the 2001 Labelling Notice not later than two years after the commencement of the 2015 Notice.

If there are any changes to an industry standard that has been incorporated into an ACMA standard, the ACMA standard contains transitional provisions in relation to CE and CC that may be affected. Those transitional provisions will determine whether an item complies with the ACMA standard for the purposes of the 2015 Notice.

## **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.

The ACMA conducted a public consultation process in relation to the review of arrangements established by the 2001 Labelling Notice during the period 16 July 2014 to 19 September 2014. A consultation paper was published on the ACMA's website which described the sunseting process in respect of the 2001 Labelling Notice and the ACMA's view that the existing arrangements should be continued in terms of the draft version of the 2015 Notice (which was attached to that paper). Interested parties were notified of the release of the consultation paper and invited to comment.

The ACMA received eight submissions in response to the consultation paper and the issues raised in the submissions were considered by the ACMA and subsequently informed the content of the 2015 Notice.

## Regulation impact

The Office of Best Practice Regulation (OBPR) considered the matter and formed the opinion that the making of the 2015 Notice would not substantially change the existing arrangements and would not impose any substantial additional regulatory burden on businesses or the not-for-profit sector. Accordingly, OBPR advised that a Regulation Impact Statement was not required for the 2015 Notice. The OBPR exemption number is 16677.

## Detailed description of the 2015 Notice

Details of the 2015 Notice are in Attachment A.

## Documents incorporated in the 2015 Notice by reference

The 2015 Notice incorporates the following documents by reference:

- > *Telecommunications Act 1997*
- > *A New Tax System (Australian Business Number) Act 1999*
- > *Telecommunications Technical Standard (Analogue Interworking and Non-interference Requirements for Customer Equipment for Connection to the Public Switched Telephone Network – AS/CA S002) 2015*
- > *Telecommunications Technical Standard (Requirements for Customer Access Equipment for connection to a Telecommunications Network – AS/CA S003) 2015*
- > *Telecommunications Technical Standard (Voice performance requirements for Customer Equipment – AS/CA S004) 2015*
- > *Telecommunications Technical Standard (Requirements for customer cabling products – AS/CA S008) 2015*
- > *Telecommunications Technical Standard (Requirements for Customer Equipment with hierarchical digital interfaces – AS/ACIF S016) 2015*
- > *Telecommunications Technical Standard (Requirements for ISDN Basic Access Interface – AS/ACIF S031) 2015*
- > *Telecommunications Technical Standard (Requirements for ISDN Primary Rate Access Interface – AS/ACIF S038) 2015*
- > *Telecommunications Technical Standard (Requirements for DSL Customer Equipment for connection to the Public Switched Telephone Network – AS/ACIF S041) 2015*
- > *Telecommunications Technical Standard (Requirements for Connection to an Air Interface of a Telecommunications Network – AS/CA S042) 2015*
- > *Telecommunications Technical Standard (Requirements for Customer Equipment for connection to a metallic local loop interface of a Telecommunications Network – AS/CA S043) 2015*
- > *Telecommunications Technical Standard (Information Technology Equipment – Safety, Part 1: General Requirements – AS/NZS 60950.1:2011) 2011*
- > *Telecommunications Technical Standard (Surge Protective Devices for Telecommunication Applications – AS/NZS 4117) 2015*

The Acts and legislative instruments mentioned above are incorporated as in force from time to time (in accordance with section 14 of the LIA and section 10 of the AIA) and can be found on the Federal Register of Legislative instruments at <http://www.comlaw.gov.au>.

The 2015 Notice also incorporates the Rules of Procedures of the IECEEC Certification Body (CB) Scheme, which are contained in the publication *IECEE 02 – Scheme of the IECEE for Mutual Recognition of Test Certificates for Electrotechnical Equipment and Components (CB Scheme) – Rules of Procedure*, published by the International Electrotechnical Commission (the IECEE CB Rules of Procedure). The IECEE CB Rules of Procedure are incorporated as in force from time to time (as

permitted by section 589 of the Act) and can be found on the IECEE CB Scheme's website at <http://www.iecee.org/cbscheme/default.htm>.

### **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 for that purpose.

The 2015 Notice, which requires suppliers of particular CE and CC to comply with particular requirements before, and after, supplying those items, 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 2015 Notice engages any applicable human rights or freedoms and has formed the view that it does not. The 2015 Notice is compatible with human rights as it does not raise any human rights issues.

## **Attachment A**

### **Notes on provisions of the 2015 Notice**

#### **Part 1 – Preliminary**

##### **Section 1 Name of Instrument**

Section 1 provides that the name of the 2015 Notice is the *Telecommunications (Labelling Notice for Customer Equipment and Customer Cabling) Instrument 2015*.

##### **Section 2 Commencement**

Section 2 provides that the 2015 Notice commences on the day after it is registered on the Federal Register of Legislative Instruments.

##### **Section 3 Revocation**

Section 3 revokes the *Telecommunications Labelling (Customer Equipment and Customer Cabling) Notice 2001*.

#### **Part 2 – Interpretation**

##### **Section 4 Definitions and other interpretative provisions**

Subsection (1) defines the terms used in the 2015 Notice. Most of the terms defined in this section are the same as those set out in the 2001 Labelling Notice. The definitions of some important terms are described elsewhere in this explanatory statement.

Subsection (2) specifies the entity that is responsible for meeting the obligations imposed by the 2015 Notice in relation to an item that has been imported. For an item that has been imported and subsequently been modified, the obligation is imposed on the manufacturer of that modified the item. Otherwise the obligation is imposed on the importer of the item.

Subsection (3) confirms that the 2015 Notice does not apply to an entity who manufactures an item overseas. If an item is manufactured overseas, the entity who imports the item into Australia must comply with the 2015 Notice (subject to subsection (2)).

Subsection (4) defines a reference to “the date a modified item was made” as the date of making the modification which resulted in that item.

##### **Section 5 Class of items and obligations relating to certain compliance records**

Broadly speaking, the 2015 Notice requires all items of CE and CC to be labelled if there is an ACMA standard that applies to the item. Suppliers must meet particular obligations before and after applying a label to an item. However, it may be impractical for a supplier to be required to meet many of these obligations in relation to all items it manufactures or imports, particularly in cases where the items are identical (for example, items of a particular model). Section 5 contains a mechanism for allowing a supplier, in such cases, to comply with particular obligations only once. This mechanism will apply, in relation to a particular obligation, when an item is “included in a class of items” and the supplier has complied with that obligation in relation to another item of the class.

Subsection (1) sets out when an item (other than a modified item) is included in a class of items. An item is included in a class of items if the item is identical to each other item of the class and has the same supplier as each other item. So, for example, if a person imports 20,000 identical mobile telephones, those 20,000 mobile telephones form the one class of items, even if they were imported at different times.

In relation to a class of items, the first item to be manufactured in Australia or imported, as the case may be, is the “original item” of the class. In practice, the original item is the item on which a supplier will base its performance of compliance and record-keeping requirements.

Subsection (2) sets out when a modified item is included in a class of items. A modified item is included in a class of items if the modification is identical to the modification made to each other item of the class, the modified item is otherwise identical to each other item, and the modified item has the same supplier as each other item. Again, the first item to be modified is the “original modified item” of the class. In practice, the original modified item is the item on which a supplier will base its performance of compliance and record-keeping obligations.

Subsection (3) deems a supplier to have complied with a requirement mentioned in that subsection (including the requirement to complete a declaration of conformity (DoC)) for every item included in a class of items, if the supplier has complied with the requirement for another item of that class. So, for example, a person who imports 20,000 identical mobile telephones only needs to complete one DoC for one of those telephones. That DoC is taken to be the DoC for each item of that class. If a requirement is not mentioned in subsection (3), the supplier must comply with that requirement where applicable in relation to every item of the class. For example, the requirement to apply a label under section 9 of the 2015 Notice is not mentioned in the subsection and so, if that requirement applies, every item of the class must have a label applied to it.

## **Section 6 Declaration of conformity**

Section 6 specifies the components that a declaration must contain to be a DoC for the purposes of the 2015 Notice.

Paragraph 6(a) lists the persons who may make a DoC on behalf of a supplier.

Paragraph 6(b) lists the information and statements that must be included in a DoC for an item. This includes information necessary to identify the item, the ACMA standards that apply to the item, and the date the item (or original item, or original modified item, of the class) was manufactured or imported (or modified). The DoC also needs to include a statement to the effect that the declarant is reasonably satisfied that the item complies with each applicable ACMA standard and to contain details of the documents the declarant has had regard to in order to be so satisfied.

Paragraph 6(c) provides that the DoC must be signed and dated.

A note at the end of section 6 indicates that the *Criminal Code* imposes penalties for giving false or misleading information to the ACMA or producing false or misleading documents to the ACMA.

## **Part 3 – Application**

### **Section 7 Application of this Instrument**

Section 7 specifies the scope of the 2015 Notice.

Subsection (1) provides that the 2015 Notice applies to an item of CE or CC, other than an item mentioned in Schedule 2. (The 2015 Notice does not apply to any item mentioned in Schedule 2.)

Subsection (2) provides that Schedule 4 has effect which only applies to customer cabling and surge protectors.

In addition to the requirements of the 2015 Notice, an item may also be subject to the requirements of notices made under section 182 of the *Radiocommunications Act 1992* (such as the *Radiocommunications (Compliance Labelling – Devices) Notice 2014*, the *Radiocommunications (Compliance Labelling – Electromagnetic Radiation) Notice 2014* or the *Radiocommunications Labelling (Electromagnetic Compatibility) Notice 2008*).

## **Part 4 – Labelling requirements**

Part 4 sets out the labelling requirements for CE (other than surge protectors). Schedule 4 sets out the labelling requirements for CC and surge protectors.

Divisions 2 and 3 of Part 4 only apply where an item complies with each applicable technical standard in relation to the item. Divisions 4 and 5 only apply where an item does not comply with each applicable technical standard in relation to the item. Under the Act, such an item may still be supplied if it is labelled in accordance with the 2015 Notice, but there may be prohibitions on connecting the item to a telecommunications network or to a facility (see Division 7 of Part 21 of the Act, and in particular section 411).

### **Division 1 – Interpretation**

#### **Section 8      Applicable technical standards**

Subsection (1) sets out when an ACMA standard is an “applicable technical standard” for CE (other than surge protectors).

Subsection (2) provides that an ACMA standard is an applicable technical standard for an item if:

- the item is of a kind mentioned in column 1 of the table in Schedule 1;
- there is a corresponding ACMA standard mentioned in column 2 of the table;
- the ACMA standard was in force at the time the item was manufactured in Australia or imported; and
- the ACMA standard contains requirements that apply to the particular item.

### **Division 2 – Applying a compliance label**

#### **Section 9      Requirement to apply a compliance label**

Subsection (1) provides that section 9 applies to an item if there is one or more applicable technical standards in relation to an item and the item complies with each standard.

Subsection (2) requires the supplier to apply a compliance label to the item in accordance with Division 3 before supplying the item.

Subsection (3) specifies that if there is a reasonable likelihood that the item could be installed or operated in a manner which is inconsistent with an applicable technical standard and which would pose a public safety risk, the item must be supplied with documentation specifying how the item should be installed and operated in a manner which is consistent with the standard.

### **Division 3 – Form and application of a compliance label**

#### **Section 10     Form of a compliance label**

Subsection (1) provides that a compliance label must be in the form of the Regulatory Compliance Mark (RCM) no smaller than 3 mm in height. The RCM is a protected symbol for the purposes of section 417 of the Act.

Subsection (2) provides that, except as otherwise provided by the 2015 Notice, a compliance label must be durable and applied to an item permanently or in a way that makes it difficult to remove or obliterate.

#### **Section 11     Application of a compliance label**

Subsection (1) provides that a compliance label must be applied to an item by affixing the label to the surface of the item where the label is readily accessible to a person unless other requirements are met in circumstances where:

- it is impossible or impractical to affix the label to the surface of the item because of its size or physical nature; or



- the item has a built-in display that may be used to apply the label.

Subsection (2) provides that a compliance label is not readily accessible to a person if the person has to use a specialised tool to gain access to the label.

Subsection (3) provides that where it is impossible or impractical to affix a compliance label to the surface of an item because of its size or physical nature, it must be applied by affixing it to the external surface of the packaging used for an item in a way that is clearly visible and by incorporating it in the documentation accompanying the item when supplied.

It may not be possible to apply a compliance label directly to an item if, for example:

- the item is too small to have a label affixed to it;
- the external surface of the item resists any adhesion or imprinting of the label;
- the surface of the item is corrugated; or
- the surface of the item is exposed to the elements that would defeat the adhesion or durable properties of the label.

It also may not be practical to apply a compliance label directly to an item if, for example:

- it is not possible for the supplier to arrange for the item to be labelled in that way before it is packaged and removal of the packaging to label the item in that way would affect the supply of the item or the supplier's ability to supply the item<sup>1</sup>; or
- there is a technical or engineering difficulty that impedes having the label applied to the item directly.

Subsection (4) provides that, if a supplier applies a compliance label to an item in accordance with subsection (3), the supplier must prepare a written statement detailing why it is not possible or practical to apply the label directly to the surface of the item and setting out where each label has been applied on the external surface of the packaging used for the item and in the documentation that accompanies the item when supplied.

There is a note at the end of subsection (4) that refers to Note 2 to section 6 (see above).

There is no ability for suppliers to apply to the ACMA for approval to label an item in an alternative way.

## **Section 12 Electronic labelling of customer equipment**

Subsection (1) allows for the use of electronic labelling if an item has a built-in display which may be used to apply a compliance label. The compliance label may be electronically stored on the item and shown on the display when the item is activated. A supplier of such an item may use electronic labelling if it meets the requirements of section 12.

Subsection (2) specifies that the supplier must, when using electronic labelling, ensure that documentation accompanying the item when supplied sets out the method for displaying the compliance label.

Subsection (3) provides that the compliance label must be applied to the item in a way that would make it difficult to prevent the display of the label when the item is being used by a person.

Subsection (4) puts it beyond doubt that the durability and permanency requirements in subsection 10(2) do not apply to a compliance label where electronic labelling has been used.

## **Division 4 – Applying a non-compliance label and preparing a written statement**

Divisions 2 and 3 of Part 4 only apply where an item complies with each applicable technical standard. Divisions 4 and 5 apply where an item does *not* comply with one or more applicable

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<sup>1</sup> It is not sufficient that it would merely be more convenient to label the external surface of the packaging used for the item.

technical standards. Under the Act, such an item may still be supplied if it is labelled in accordance with the 2015 Notice, but there may be prohibitions on connecting the item to a telecommunications network (see Division 7 of Part 21 of the Act, and in particular section 411).

### **Section 13 Requirements to apply a non-compliance label and prepare a written statement**

Subsection (1) provides that section 13 applies to an item if there are one or more applicable technical standards in relation to an item and the item does not comply with each standard.

Subsection (2) provides that, if section 13 applies, the manufacturer or importer must, before supplying the item, apply a non-compliance label to the item and prepare a written statement in relation to the item, in accordance with Division 5.

## **Division 5 – Form and application of a non-compliance label and preparation of a written statement**

### **Section 14 Form of a non-compliance label**

Subsection (1) provides that a non-compliance label applied to an item must contain a statement to the effect that the item does not comply with each applicable technical standard in relation to the item.

Subsection (2) provides that such a statement must be in English and printed in a font size of at least 12 points.

Subsection (3) provides that a non-compliance label must be durable and applied to an item permanently or in a way that makes it difficult to remove or obliterate.

### **Section 15 Application of a non-compliance label**

Section 15 specifies that a non-compliance label must be affixed to, and clearly visible on, the external packaging and be incorporated in accompanying documentation that accompanies the item when supplied.

### **Section 16 Preparation of a written statement and obligation to keep the statement**

Subsection (1) provides that a written statement prepared under subsection 13(2) in relation to an item must identify the item, specify where each non-compliance label has been applied on the external surface of the packaging used for the item and in the documentation that accompanies the item when supplied, and include the wording of the statement of non-compliance on the label.

There is a note at the end of subsection (1) that refers to Note 2 to section 6 (see above).

Subsection (2) requires such a statement to be kept by the supplier:

- (a) if the item is not included in a class of items – for two years commencing from the time the item is supplied in Australia; or
- (b) if the item is included in a class of items – for the period commencing from the time the original item, or original modified item, of the class is supplied in Australia and ending two years after all items of the class cease to be supplied in Australia.

## **Part 5 – Declaration of conformity and record keeping requirements**

### **Division 1 – Application of this Part**

#### **Section 17 Application of Part 5**

Section 17 provides that Part 5 applies to an item to which section 9 applies (which is an item of CE other than a surge protector), and an item to which clause 4 of Schedule 4 applies (which is an item of CC or a surge protector). These are items to which compliance labels must be applied.

## **Division 2 – Registration on national database and issue of supplier code numbers**

### **Section 18 Registration on national database or issue of supplier code number before compliance label is applied**

Subsection (1) requires a supplier of an item to be registered within the meaning of subsection (2). In the case of an item to which section 9 applies, the supplier must be registered prior to applying a compliance label to the item. In the case of an item to which clause 4 of Schedule 4 applies, the supplier must be registered prior to supplying the item.

Subsection (2) defines “registered” for the purposes of subsection (1). Before 1 March 2016, a supplier is so registered if it is registered on the national database or has been issued with a supplier code number, but on or after 1 March 2016 the supplier must be registered on the national database (even if it has been issued with a supplier code number).<sup>2</sup>

Section 4 defines the “national database” as the Supplier and Equipment Registration Database maintained by the Electrical Regulatory Authorities Council, (which is available from <http://www.erac.gov.au>), or if the ACMA designates, in writing, another database for the purpose of the 2015 TLN – that other database.

### **Section 19 Registration on national database**

Section 19 sets out the requirements for registration on the national database.

Subsection (1) provides that, to be so registered, a supplier of an item must, using a method required by the national database manager, provide information that sets out the identity of the supplier, the address in Australia of the supplier and the name and contact details of a representative of the supplier. The ACMA requires such information to enable it to identify and contact suppliers where necessary.

Subsection (2) provides that information that sets out the identity of the supplier must consist of its ABN, (if it is a body corporate or individual) the name of the body corporate or individual and, if it uses a business name in connection with its business as a supplier and the business name is registered under the *Business Names Registration Act 2011*, that business name.

The national database is an online database. The national database manager requires suppliers to register certain details onto the database via the internet. The database contains prompts and fields to insert the required information.

Subsection (3) provides that, if any of the information that has been provided by a supplier on the national database subsequently changes, the supplier must update the database within 30 days after the change has occurred.

A note at the end of section 19 indicates that a supplier who does not meet the requirements to update information in accordance with that section may be guilty of an offence under section 415 of the Act.

## **Division 3 – Declaration of conformity**

### **Section 20 Declaration of conformity**

Subsection (1) provides that a supplier of an item must, before supplying the item, complete a DoC for the item in accordance with section 6.

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<sup>2</sup> Since 1 March 2013, supplier code numbers are no longer issued. Any supplier who has been issued with a supplier code number before that date is registered for the purposes of subsection (1) up to 1 March 2016. On or after that date, the supplier is not registered for those purposes unless it is registered on the national database.

As mentioned above, section 6 requires the DoC to include, among other things, a statement that the declarant is reasonably satisfied that, having regard to particular documents, the item complies with each applicable technical standard in relation to the item.

Subsection (2) specifies the circumstances in which a person can be reasonably satisfied that an item complies with a high risk applicable technical standard or with an applicable technical standard (other than a high risk applicable technical standard).<sup>3</sup>

Paragraph (2)(a) provides that a person can only be reasonably satisfied that an item complies with a high risk applicable technical standard if the person has had regard to a document or documents of a kind mentioned in subparagraph 20(2)(a)(i) containing information that indicates that the item, or (if the item is included in a class of items) an item of the class, complies with the standard. The kinds of documents mentioned for this purpose include an endorsed test report, a statement prepared by a certification body, an IECEE CB Test Report that is accompanied by other required documentation, and a certificate issued under a law of a State or Territory that deals the safety of electrical equipment.

Paragraph (2)(b) does not limit the kinds of documents to which a person may have regard in order to be reasonably satisfied that an item complies with an applicable technical standard that is not a high risk applicable technical standard. However, paragraph (2)(b) makes it clear that a person can be reasonably satisfied of the matter if the person has had regard to a statement prepared by a certification body or a test report containing information that indicates that the item (or if the item is included in a class of items, an item of the class) complies with the standard.

## **Division 4 – Additional requirements for modified items**

### **Section 21 Modified items**

Subsection (1) provides that the section applies to a modified item. A “modified item” is defined in section 4 as an item that has been modified, by or on behalf of the supplier of the item, after the item was manufactured or imported and, for the avoidance of doubt, is the item as modified.

Subsection (2) provides that a supplier of a modified item must, before supplying that item, prepare a written statement that:

- identifies the modified item and the modification which resulted in that item;
- indicates whether (and the reason why) the modification is or is not material; and
- (if the modification is not material) contains the current model number of the modified item and the current model number of the item in its unmodified form (the unmodified item).

The subsection also sets out who may sign the statement.

There is a note at the end of subsection (2) that refers to Note 2 to section 6 (see above).

Subsection (3) provides that if the modification is not material, and the supplier has completed a DoC for the unmodified item in accordance with subsection 20(1) and prepared a written statement for the modified item in accordance with subsection (2), the supplier is taken to have completed a DoC for the modified item (consisting of the first-mentioned DoC and the written statement). In this instance, the supplier does not have to complete another DoC for the modified item.

Subsection (4) defines when a modification is “material”. A modification is material if the modification could reasonably be expected to affect whether the modified item complies with any applicable technical standard in relation to the modified item.

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<sup>3</sup> As mentioned above, Schedule 1 and Schedule 4 specify which ACMA standards apply to particular kinds of CE and CC for the purposes of determining which of these standards are applicable technical standards. These Schedules also specify which of these standards are, for those kinds of CE and CC, high risk applicable technical standards.

## **Division 5 – Compliance records**

### **Section 22 Compliance records – general requirement**

Subsection (1) defines what are “compliance records” in relation to an item. An item’s compliance records include:

- certain documents required by the 2015 Notice (such as a DoC, particular written statements, a description of the item and a copy of any documentation that must accompany the item when supplied); and
- any agency agreement that relates to the keeping of such records in relation to the item (where the agent acts on behalf of the supplier).

If an item is a particular cabling item, and an entry for the item is listed on a register maintained by the supplier under subclause 10(1) of Schedule 4, the entry on the register is also a compliance record.

Subsection (2) provides that, for the purposes of the 2015 Notice, a compliance record may form part of another compliance record. If, for example, a DoC for an item contains a written statement prepared under subsection 11(4), the supplier would only need to keep the DoC to comply with the obligation to keep both of the compliance records.

### **Section 23 Compliance records – specific requirements**

Subsection (1) provides that compliance records in relation to an item must be kept by the supplier of the item in accordance with Division 5.

Subsection (2) provides that a compliance record must be in English and may be a certified copy of the original record.

Subsection (3) requires the supplier to ensure that a description of the item is prepared that contains:

- the current model number of the item and (if relevant) any related model numbers;
- one or more photographs of the internal and external aspects of the item;
- details of the version of the software installed (if applicable);
- sufficient information for a person to determine whether the item is an item, or (if the item is included in a class of items), whether the item is identical to another item of the class, in relation to which there is a DoC and related documents; and
- sufficient information to distinguish the item from any other item or (if the item is included in a class of items) another item not included in the class.

It is possible that a piece of information included in the description to provide sufficient information about one matter may be used to provide sufficient information about another matter.

Subsection (4) provides that, if any of the information included in the description subsequently changes or becomes incorrect, the manufacturer or importer must update or correct the description within 30 days after the information changes or becomes incorrect.

There is a note at the end of section 23 that refers to Note 2 to section 6 (see above).

### **Section 24 Compliance records – obligation to keep records**

Section 24 provides that a compliance record in relation to an item must be kept by the supplier:

- (a) if the item is not included in a class of items – for two years commencing from the time the item is supplied in Australia; or
- (b) if the item is included in a class of items – for the period commencing from the time the original item, or original modified item, of the class is supplied in Australia and ending two years after all items of the class cease to be supplied in Australia.

## **Part 6 – Inspection and auditing of compliance records**

### **Section 25 Availability of compliance records for inspection**

Section 25 provides that the manufacturer or importer of an item must ensure that the compliance records in relation to the item are available for inspection by the ACMA upon request.

### **Section 26 Authorised officer may require documents, material or information**

Subsection (1) provides that an authorised officer may, by written notice, require the supplier of an item to produce specified documents or material, or to give specified information, in relation to the item to the officer. An “authorised officer” is defined in section 4 as an inspector (who is appointed under the Act) or a person who is authorised, in writing by the ACMA, to be an authorised officer for the purposes of the 2015 Notice.

Subsection (2) provides that if a DoC is required by such notice, it must be produced within five working days after the day the notice is received.

Subsection (3) provides that any other document, material or information that is required by such a notice must be provided within 10 working days (or such longer period as is specified in writing by the authorised officer) after the day the notice is received.

Subsection (4) provides that an authorised officer may only specify a longer period if the supplier has requested in writing a longer period for compliance with the notice.

Subsection (5) requires an authorised officer to give the supplier a receipt for any documents, material or information provided in response to such a notice.

Subsection (6) provides that the authorised officer may make and retain copies of the whole or any part of any document or material received in response to such a notice.

Subsection (7) requires the authorised officer to return the original of any document or material received in response to such a notice to the manufacturer or importer as soon as practicable and in any event within 60 days after receiving the document or material.

### **Section 27 Authorised officer may require an endorsed test report or statement**

Subsection (1) provides that if an authorised officer believes that the items included, or claimed to be included, in a class of items do not comply with an applicable technical standard in relation to the items, then the authorised officer can, by written notice given to the supplier of the items, require the supplier to produce to the authorised officer an endorsed test report, or a written statement prepared by a certification body, stating whether a sample of three, or fewer than three, of the items comply with the applicable technical standard.

Subsection (2) provides that a supplier must comply with such a notice within 30 working days (or such longer period as is specified in writing by an authorised officer) after the day the notice is received.

Subsection (3) provides that the ACMA is not liable for any costs incurred by the supplier in complying with the notice.

## **Part 7 – Savings and transitional arrangements**

### **Division 1 – Transitional arrangements in relation to the previous Notice**

#### **Section 28 Item labelled in accordance with previous Notice no later than two years after commencement**

Subsection (1) provides that section 28 applies to an item that has been labelled in accordance with the 2001 Labelling Notice within two years after the commencement of the 2015 Notice.

Subsection (2) provides that the supplier of the item is taken to have met all the requirements of the 2015 Notice in relation to the application of the label. The item can be supplied at any time without being in breach of those requirements.

Subsection (3) provides that the supplier must comply with any other requirements contained in the 2015 Notice that apply in relation to the item or any other requirements contained in the 2001 Labelling Notice that would have applied in relation to the item had it not been revoked.

## **Division 2 – Transitional arrangements in relation to the use of the A-tick**

### **Section 29 Manufacturer or importer may use the A-tick instead of the RCM**

Section 29 provides that a supplier may use a compliance label in the form of the A-tick instead of the RCM, no smaller than 3 mm in height provided that the label is applied prior to 1 March 2016.

### **Schedule 1 – Applicable technical standards for customer equipment (other than surge protectors)**

The table in Schedule 1 specifies which ACMA standards apply to particular kinds of CE for the purposes of the 2015 Notice.

The table also specifies which of these standards are high risk standards.

Applicable technical standards that deal with matters related to health and safety are classified as high risk standards. Examples of high risk standards are those that address electrical and acoustic safety. Such standards have a clear safety remit.<sup>4</sup>

In the table, a reference to a part of an applicable technical standard that relates to an industry standard is taken to be a reference to the provisions of the applicable technical standard that require the item to comply with:

- if only part of the standard is mentioned - that part of the industry standard as in force at any time specified for the item, in the applicable technical standard or any corresponding part of a standard that replaces the industry standard; or
- otherwise - the industry standard as in force at any time specified, for the item, in the applicable technical standard or any standard that replaces the industry standard.

### **Table – Applicable technical standards**

The table is divided into items that specify the applicable technical standards for four different kinds of CE. The four different kinds of CE are as follows:

- CE that is proposed to be connected to a telecommunications network, other than CE that is proposed to be connected to a telecommunications network used to supply a public mobile telecommunications service and CE mentioned in the fourth bullet point below. This kind of CE includes analogue telephones and cordless telephone handsets and base units;
- CE that is proposed to be connected to a telecommunications network that is used to supply a public mobile telecommunications service and is proposed to be used to supply a standard telephone service. This kind of CE includes mobile telephones;
- CE that is proposed to be connected to a telecommunications network that is used to supply a public mobile telecommunications service, but is not proposed to be used to supply a

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<sup>4</sup> As noted above, the 2015 Notice requires a person completing a DoC for an item which must comply with such a standard to have had regard to the kinds of documents mentioned in paragraph 20(2)(a) in order to be reasonably satisfied that the item complies with the standard. The 2015 Notice does not limit the kinds of documents to which a person may have regard in completing a DoC for an item which must comply with an applicable technical standard that is not classified as a high risk standard.

standard telephone service. This kind of CE includes machine-to-machine communication devices;

- CE that is proposed to be connected to a telecommunications network that consists solely of satellite based facilities. This kind of CE includes satellite telephones.

## **Schedule 2 – Items to which this Instrument does not apply**

Schedule 2 provides a list of items to which the 2015 Notice does not apply. The list includes (among other things):

- items that are intended for use by Australian criminal law-enforcement agencies;
- items that are not intended for supply to the Australian market; and
- items that are manufactured or imported solely for incorporation into other items and that, before such incorporation, cannot be used to connect to a telecommunications network or to a facility of such a network.

## **Schedule 3 – Compliance marks**

Schedule 3 sets out the design of the RCM and A-Tick mark. The RCM and A-Tick mark are protected symbols for the purposes of section 417 of the Act.

## **Schedule 4 – Customer cabling and surge protectors**

Schedule 4 sets out the labelling requirements for CC and surge protectors (which are a form of CE).

Parts 2 and 3 of Schedule 4 only apply where an item complies with each applicable technical standard in relation to the item. Parts 4 and 5 of Schedule 4 only apply where an item does not comply with each applicable technical standard in relation to the item. Under the Act, such an item may still be supplied if it is labelled in accordance with the 2015 Notice, but there may be prohibitions on connecting the item to a telecommunications network or to a facility (see Division 7 of Part 21 of the Act, and in particular section 411).

### **Part 1 – Interpretation**

#### **Clause 1 – Applicable technical standards**

Subclause (1) sets out when an ACMA standard is an “applicable technical standard” for CC and surge protectors.

Subclause (2) provides that an ACMA standard is an applicable technical standard for an item if:

- the item is of a kind mentioned in column 1 of the table in clause 1 (being CC and surge protectors);
- there is a corresponding standard mentioned in column 2 of the table;
- the standard was in force at the time the item was manufactured in Australia or imported and the standard contains requirements that apply to the item.

#### **Clause 2 – Class of items to which a compliance label has, or has not, been applied**

Clause 2 defines a reference in Schedule 4 to a “class of items to which a compliance label has been applied” as a reference to a class of items in which each item that is included has applied to it a compliance label; and a reference in that Schedule to a “class of items to which a compliance label has not been applied” as a reference to a class of items in which each item that is included has not had applied to it a compliance label.



### **Clause 3 – Particular cabling item**

Clause 3 defines “particular cabling item” as an item that is CC or a surge protector where the item complies with the ACMA standard AS/CA S008-2015 and/or AS/NZS 4117-2015 and the installation of the item for connection to, or the connection of the item to, a telecommunications network or to a facility would be a type of cabling work for the purposes of Division 9 of Part 21 of the Act.

## **Part 2 – Applying a compliance label and preparing a written statement**

### **Clause 4 – Requirement to apply a compliance label and prepare a written statement**

Subclause (1) provides that clause 4 applies to an item if there are one or more applicable technical standards in relation to an item and the item complies with each standard.

Subclause (2) requires the supplier of an item to apply a compliance label to the item in accordance with clause 5 and subclause 6(1), and to prepare a written statement in accordance with subclause 6(2) before supplying the item, unless the supplier is exempt from compliance under clause 7 or 8.

## **Part 3 – Form and application of a compliance label and preparation of a written statement**

### **Clause 5 – Form of a compliance label**

Subclause (1) provides that a compliance label must be in the form of the RCM no smaller than 3 mm in height.

Subclause (2) provides that a compliance label must be durable and applied to an item permanently or in a way that makes it difficult to remove or obliterate.

### **Clause 6 – Application of a compliance label and preparation of a written statement**

Subclause (1) provides that a compliance label must be applied to an item by affixing it to the external surface of the packaging used for the item in a way that is clearly visible and by incorporating it in the documentation that accompanies the item when supplied.

Subclause (2) provides that a written statement prepared under subclause 4(2) in relation to an item must specify where each compliance label has been applied on the external surface of the packaging used for the item and in the documentation that accompanies the item when supplied.

### **Clause 7 – Exemption for items that meet other requirements**

Clause 7 provides that a supplier of an item is exempt from compliance with subclause 4(2) if certain details identifying the supplier and the item are displayed on the sheath of the item at regular intervals of not more than 2 metres. Such details include the company name, business name or trade mark of the supplier, and a part name or number, identification number or product name of the item.

In some cases, it may not be possible for a supplier of an item to meet those requirements for an exemption because of the physical characteristics of the item (for example, a surge protector may not have a sheath). If a supplier is unable to meet those requirements or the requirements for an exemption under clause 8, it must comply with subclause 4(2).

### **Clause 8 – Exemption for particular cabling items that meet other requirements**

Clause 8 provides that a supplier of an item is exempt from compliance with subclause 4(2) if the item is a “particular cabling item” and the supplier has complied with clauses 9 and 10.

#### **Clause 9 – Requirements to be met before supplying particular cabling items without a compliance label**

Subclause 9(1) provides that, for the purposes of clause 8, the supplier must give the ACMA a written notice that it intends to supply a particular cabling item without applying to the item a compliance label, and be registered within the meaning of subclause (2).

Subclause (2) defines “registered” for the purposes of subclause (1). As with CE, before 1 March 2016, a supplier is so registered if it is registered on the national database or has been issued with a supplier code number, but on or after 1 March 2016 the supplier must be registered on the national database.

Subclause (3) provides that a supplier is only required to give the ACMA one written notice under subclause (1) even if the supplier intends to supply more than one particular cabling item without applying to each a compliance label and irrespective of whether the items are included in a class of items or different classes of items.

Subclause (4) provides that such a notice must be in a form approved by the ACMA.

The supplier must also meet the requirements under clause 10 for an exemption under clause 8 from compliance with subclause 4(2).

#### **Clause 10 – Register of particular cabling items without a compliance label**

Subclause (1) provides that, for the purposes of clause 8, the supplier must establish on the internet a publicly available register of the particular cabling items to which a compliance label has not been applied and inform the ACMA in writing of the internet address of the register.

The register must state the name of the supplier and list each particular cabling item of the supplier to which a compliance label has not been applied or (if the item is included in a class of items to which a compliance label has not been applied) the class. Subclause (2) provides that the register must set out certain information in relation to each item or class of items so listed, including details which identify the supplier and the item or each item of the class. Such details include the company name, business name or trade mark of the supplier, and a part name or number, identification number or product name of the item or each item of the class. If the item or each item of the class has the capacity for multiple pairs of cables, the register must also specify the number of pairs.

Subclause (3) provides that the register may include additional information to help identify the item or class.

Subclause (4) provides that the register may list or include information about the item or class of items to which a compliance label has been applied, but only if the register clearly distinguishes those items from items to which a compliance label has not been applied.

Subclause (5) specifies that the register must ensure that any group of like items or classes is kept separate from any other group of like items or classes so that each group is distinguishable.

### **Part 4 – Applying a non-compliance label and preparing a written statement**

#### **Clause 11 – Requirement to apply a non-compliance label and prepare a written statement**

Subclause (1) provides that clause 11 applies to an item if there are one or more applicable technical standards, and the item does not comply with each standard.

Subclause (2) requires the supplier of the item to apply a non-compliance label to the item and to prepare a written statement in relation to the item, in accordance with Part 5, before supplying the item.

## **Part 5 – Form and application of a non-compliance label and preparation of a written statement**

### **Clause 12 – Form of a non-compliance label**

Subclause (1) provides that a non-compliance label applied to an item must contain a statement to the effect that the item does not comply with each applicable technical standard in relation to the item.

Subclause (2) provides that such a statement must be in English and printed in a font size of at least 12 points.

Subclause (3) provides that a non-compliance label must be durable and applied to an item permanently or in a way that makes it difficult to remove or obliterate.

### **Clause 13 – Application of a non-compliance label**

Clause 13 provides that a non-compliance label must be applied to an item by affixing it to the external surface of the packaging used for the item in a way that is clearly visible and by incorporating it in the documentation that accompanies the item when supplied.

### **Clause 14 – Preparation of a written statement and obligation to keep the statement**

Subclause (1) provides that a written statement prepared under clause 11 in relation to an item must identify the item, specify where each non-compliance label has been applied on the external surface of the packaging used for the item and in the documentation that accompanies the item when supplied, and include the wording of the statement of non-compliance on the label.

There is a note at the end of subclause (1) that refers to Note 2 to section 6 (see above).

Subclause (2) requires such a statement to be kept by the supplier:

- (a) if the item is not included in a class of items – for two years from the time the item is supplied;  
or
- (b) if the item is included in a class of items – for the period commencing from the time the original item, or original modified item, of the class is supplied in Australia and ending two years after all items of the class cease to be supplied in Australia.