

# EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Australian Communications and Media Authority Act 2005*

*Radiocommunications Act 1992*

***Radiocommunications (Consequential Amendments) Instrument 2017 (No. 1)***

## Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Consequential Amendments) Instrument 2017 (No. 1)* (**the instrument**) under:

- (a) subsection 60(1) of the *Australian Communications and Media Authority Act 2005* (**the ACMA Act**);
- (b) paragraph 107(1)(f), subsections 132(1) and 182(1) and section 262 of the *Radiocommunications Act 1992* (**the Radcomms Act**); and
- (c) subsection 33(3) of the *Acts Interpretation Act 1901* (**the AIA**).

### *Subsection 60(1) of the ACMA Act*

Subsection 60(1) of the ACMA Act relevantly provides that the ACMA may, by written instrument, make determinations fixing charges for services provided by the ACMA and any matter in relation to which expenses are incurred by the ACMA under the Act or the Radcomms Act. Subsection 60(2) provides that the charges must not be such as to amount to taxation.

The *Radiocommunications (Charges) Determination 2017* (**the Charges Determination**) specifies the charges payable to the ACMA for considering and processing applications for the issue and renewal of a range of licences as well as charges payable for services provided by the ACMA under the ACMA Act and the Radcomms Act. The instrument amends the Charges Determination.

### *Paragraph 107(1)(f) of the Radcomms Act*

Under paragraph 107(1)(f) of the Radcomms Act, the ACMA may determine licence conditions for the operation of a particular type of apparatus licence. The instrument amends three such determinations, being:

- the *Radiocommunications Licence Conditions (Major Coast Receive Licence) Determination 2015* (**the Major Coast Receive Licence Determination**);
- the *Radiocommunications Licence Conditions (Maritime Coast Licence) Determination 2015* (**the Maritime Coast Licence Determination**); and
- the *Radiocommunications Licence Conditions (Maritime Ship Licence) Determination 2015* (**the Maritime Ship Licence Determination**).

### *Subsection 132(1) of the Radcomms Act*

Under subsection 132(1) of the Radcomms Act, the ACMA may issue a class licence. The instrument amends a class licence, being the *Radiocommunications (Maritime Ship Station – 27 MHz and VHF) Class Licence 2015* (**the Maritime Ship Station Class Licence**).

### *Subsection 182(1) of the Radcomms Act*

Subsection 182(1) of the Radcomms Act provides that the ACMA may, by legislative instrument, give notice requiring any person who manufactures or imports a device included in a specified class of devices to apply a label to the device to indicate whether the device meets the requirements of the radiocommunications standards or the class licence specified in the notice. The instrument amends

Schedule 2 to the *Radiocommunications (Compliance Labelling – Devices) Notice 2014 (the RLN)* to update references to specified radiocommunications standards.

#### *Section 262 of the Radcomms Act*

Section 262 of the Radcomms Act provides that the ACMA may make written advisory guidelines about any aspect of radiocommunication or radio emissions. The instrument amends two such advisory guidelines, being the *Radiocommunications Advisory Guidelines (Managing Interference from Spectrum Licensed Transmitters – 1800 MHz Band) 2012 (the Spectrum Licensed Transmitters Advisory Guidelines)* and the *Radiocommunications Advisory Guidelines (Protection of Apparatus-licensed and Class-licensed Receivers – 2 GHz Band) 2015 (the Protection of Receivers Advisory Guidelines)*.

#### *Subsection 33(3) of the AIA*

Subsection 33(3) of 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.

#### **Purpose and operation of the instrument**

Under Part 4 of Chapter 3 of *Legislation Act 2003 (the LA)*, most legislative instruments ‘sunset’ (that is, they are automatically repealed) on 1 April or 1 October that first occurs 10 years after they are registered.

The ACMA has remade three radiocommunications standards (**the old standards**),<sup>1</sup> which were due to sunset on 1 October 2017 or 1 October 2018.

The new standards are:

- the *Radiocommunications (Digital Cordless Communications Devices – DECT Devices) Standard 2017 (the new DECT Standard)*;
- the *Radiocommunications (HF CB and Handphone Equipment) Standard 2017 (the new HF CB Standard)*; and
- the *Radiocommunications (Devices Used in the Inshore Boating Radio Services Band) Standard 2017 (the new Inshore Boating Standard)*.

The instrument makes consequential changes to the following legislative instruments that reference the old standards:

- the Charges Determination;
- the Major Coast Receive Licence Determination;
- the Maritime Coast Licence Determination;
- the Maritime Ship Licence Determination;
- the Maritime Ship Station Class Licence;
- the RLN;
- the Spectrum Licensed Transmitters Advisory Guidelines;
- the Protection of Receivers Advisory Guidelines.

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<sup>1</sup> The old standards are the *Radiocommunications (Devices Used in the Inshore Boating Radio Services Band) Standard 2008*, the *Radiocommunications (Digital Cordless Communications Devices – DECT Devices) Standard 2007* and the *Radiocommunications (HF CB and Handphone Equipment) Standard 2008*.

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The purpose of the instrument is to update each reference to an old standard, in those other legislative instruments, by replacing it with a reference to the relevant new standard.

The instrument also updates a reference to the *Radiocommunications (Cordless Communications Devices) Class Licence 2001*, in the Spectrum Licensed Transmitters Advisory Guidelines, by replacing it with a reference to the *Radiocommunications (Cordless Communications Devices) Class Licence 2014*. The former class licence was repealed and replaced by the latter class licence.

The instrument also amends the Spectrum Licensed Transmitters Advisory Guidelines and the Protection of Receivers Advisory Guidelines:

- to ensure that the relevant frequency band in which some cordless communications devices are authorised by the *Radiocommunications (Cordless Communications Devices) Class Licence 2014* to operate is correctly referenced as the 1880-1900 MHz band; and
- to make clear that some (but not all) cordless communications devices authorised by that class licence operate in the 1880-1900 MHz band.

A provision-by-provision description of the instrument is set out in the notes at **Attachment A**.

The instrument is a legislative instrument for the purposes of the LA.

### **Documents incorporated by reference**

The instrument does not incorporate any documents by reference. It amends other legislative instruments that reference old standards and a class licence that was repealed and replaced. The instrument updates each reference to an old instrument by replacing it with a reference to the relevant new instrument. Each new instrument is a legislative instrument registered on the Federal Register of Legislation (which may be accessed at [www.legislation.gov.au](http://www.legislation.gov.au)).

### **Consultation**

Before the instrument was made, the ACMA was satisfied that consultation was undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the LA.

The ACMA conducted a public consultation process in relation to the proposal to make the new standards during the period 11 April 2017 to 26 May 2017. The consultation paper that was released described the purpose of the instrument and the amendments that were proposed to be made by the instrument. Interested parties were notified of the release of the consultation paper and invited to comment. As the amendments were consequential in nature, the ACMA did not conduct a separate consultation process in relation to the making of the instrument.

The ACMA did not receive any submissions in response to the consultation paper.

## **Regulatory impact assessment**

A preliminary assessment of the proposal to make the instrument was conducted by the Office of Best Practice Regulation (**OBPR**), based on information provided by the ACMA, for the purposes of determining whether a Regulation Impact Statement (**RIS**) would be required. OBPR advised that a RIS would not be required because the instrument was not expected to have a regulatory impact on businesses, community organisations or individuals (OBPR reference number 21590).

## **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 LA applies to cause a statement of compatibility to be prepared in respect of that legislative instrument.

The statement of compatibility set out below has been prepared to meet that requirement.

## ***Overview of the instrument***

As noted above, the purpose of the instrument is to update each reference to an old standard, in the following legislative instruments, by replacing it with a reference to the relevant new standard:

- the Charges Determination;
- the Major Coast Receive Licence Determination;
- the Maritime Coast Licence Determination;
- the Maritime Ship Licence Determination;
- the Maritime Ship Station Class Licence;
- the RLN;
- the Spectrum Licensed Transmitters Advisory Guidelines;
- the Protection of Receivers Advisory Guidelines.

The instrument also updates a reference to the *Radiocommunications (Cordless Communications Devices) Class Licence 2001*, in the Spectrum Licensed Transmitters Advisory Guidelines, by replacing it with a reference to the *Radiocommunications (Cordless Communications Devices) Class Licence 2014*.

The instrument also amends the Spectrum Licensed Transmitters Advisory Guidelines and the Protection of Receivers Advisory Guidelines:

- to ensure that the relevant frequency band in which some cordless communications devices are authorised by the *Radiocommunications (Cordless Communications Devices) Class Licence 2014* to operate is correctly referenced as the 1880-1900 MHz band; and
- to make clear that some (but not all) cordless communications devices authorised by that class licence operate in the 1880-1900 MHz band.

## ***Human rights implications***

The ACMA has assessed whether the instrument is compatible with human rights, being the rights and freedoms recognised or declared by the international instruments listed in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* as they apply to Australia.

Having considered the likely impact of the instrument and the nature of the applicable rights and freedoms, the ACMA has formed the view that the instrument does not engage any of those rights or freedoms.

***Conclusion***

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

## **Notes to the *Radiocommunications (Consequential Amendments) Instrument 2017 (No. 1)***

### **Section 1 Name**

This section provides for the instrument to be cited as the *Radiocommunications (Consequential Amendments) Instrument 2017 (No. 1)*.

### **Section 2 Commencement**

This section provides for the instrument to commence in accordance with the table appearing in the section. The effect of the table is as follows:

- Sections 1 to 4 (and anything in the instrument not elsewhere covered by the table) commence on the day after the instrument is registered on the Federal Register of Legislation.
- Schedule 1 commences on the later of:
  - the day after the instrument is registered on the Federal Register of Legislation; and
  - the day on which the new Inshore Boating Standard commences.
- Schedule 2 commences on the later of:
  - the day after the instrument is registered on the Federal Register of Legislation; and
  - the day on which the new DECT Standard commences.
- Schedule 3 commences on the later of:
  - the day after the instrument is registered on the Federal Register of Legislation; and
  - the day on which the new HF CB Standard commences.

Both of the events mentioned above for a Schedule must occur before the Schedule commences.

### **Section 3 Authority**

This section identifies the provisions of the Acts that authorise the making of the instrument, namely:

- (a) subsection 60(1) of the ACMA Act; and
- (b) paragraph 107(1)(f), subsections 132(1) and 182(1) and section 262 of the Radcomms Act.

### **Section 4 Amendments**

This section provides that each instrument that is specified in a Schedule to the instrument is amended as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument has effect according to its terms.

#### **Schedule 1—Changes to references to *Radiocommunications (Devices Used in the Inshore Boating Radio Services Band) Standard 2008***

##### ***Radiocommunications (Charges) Determination 2017 (F2017L00328)***

#### **Item [1]**

Item [1] updates the reference to the *Radiocommunications (Devices Used in the Inshore Boating Radio Services Band) Standard 2008*, in the definition of AS 4367 in Part 1 of Schedule 2, by replacing it with a reference to the new Inshore Boating Standard. The general effect of this

amendment is that the charge specified in column 3 of Schedule 2 is payable in respect of the testing or retesting of a device for compliance with the new Inshore Boating Standard.

***Radiocommunications (Compliance Labelling – Devices) Notice 2014 (F2014L01236)***

**Item [2]**

Item [2] updates the reference to the *Radiocommunications (Devices Used in the Inshore Boating Radio Services Band) Standard 2008*, in table item 1 of Schedule 2, by replacing it with a reference to the new Inshore Boating Standard. The general effect of this amendment is that, before a supplier applies a compliance label to a device to which the new Inshore Boating Standard applies, the supplier must ensure that the device complies with that standard at the compliance level mentioned in column 3 of Schedule 2 for that standard.

***Radiocommunications Licence Conditions (Major Coast Receive Licence) Determination 2015 (F2015L01285)***

**Item [3]**

Item [3] updates the reference to the *Radiocommunications (Devices Used in the Inshore Boating Radio Services Band) Standard 2008*, in Part 1 of the Schedule, by replacing it with a reference to the new Inshore Boating Standard. The general effect of this amendment is that a major coast receive station must comply with the applicable requirements of the new Inshore Boating Standard.

***Radiocommunications Licence Conditions (Maritime Coast Licence) Determination 2015 (F2015L01283)***

**Item [4]**

Item [4] updates the reference to the *Radiocommunications (Devices Used in the Inshore Boating Radio Services Band) Standard 2008*, in table item 401 of Part 4 of Schedule 1, by replacing it with a reference to the new Inshore Boating Standard. The general effect of this amendment is that certain stations that include 27 MHz inshore boating radio service equipment must comply with the applicable requirements of the new Inshore Boating Standard.

***Radiocommunications Licence Conditions (Maritime Ship Licence) Determination 2015 (F2015L00288)***

**Item [5]**

Item [5] updates the reference to the *Radiocommunications (Devices Used in the Inshore Boating Radio Services Band) Standard 2008*, in Part 1 of Schedule 1, by replacing it with a reference to the new Inshore Boating Standard. The general effect of this amendment is that a ship station, transmitter or receiver must comply with the applicable requirements of the new Inshore Boating Standard.

***Radiocommunications (Maritime Ship Station – 27 MHz and VHF) Class Licence 2015 (F2015L01197)***

**Item [6]**

Item [6] updates the reference to the *Radiocommunications (Devices Used in the Inshore Boating Radio Services Band) Standard 2008*, in table item 1 of Part 1.1 of Schedule 1, by replacing it with a reference to the new Inshore Boating Standard. The general effect of this amendment is that each

device included in a maritime ship station must comply with the applicable requirements of the new Inshore Boating Standard.

**Schedule 2—Changes to references to *Radiocommunications (Digital Cordless Communications Devices – DECT Devices) Standard 2007* and other amendments**

***Radiocommunications Advisory Guidelines (Managing Interference from Spectrum Licensed Transmitters – 1800 MHz Band) 2012 (F2012L02048)***

**Item [1]**

Item [1] amends subsection 4.1(1) in Part 4 to update the reference to the *Radiocommunications (Cordless Communications Devices) Class Licence 2001* by replacing it with a reference to the *Radiocommunications (Cordless Communications Devices) Class Licence 2014*. The latter instrument repealed and replaced the former instrument.

Item [1] also amends subsection 4.1(1) in Part 4:

- to ensure that the relevant frequency band in which some cordless communications devices are authorised by the *Radiocommunications (Cordless Communications Devices) Class Licence 2014* to operate is correctly referenced as the 1880-1900 MHz band; and
- to make clear that some (but not all) cordless communications devices authorised by that class licence operate in the 1880-1900 MHz band.

**Item [2]**

Item [2] repeals paragraph 4.1(1)(a) in Part 4 (which refers to the *Radiocommunications (Digital Cordless Communications Devices – DECT Devices) Standard 2007*) and replaces it with a new paragraph which refers to the new DECT Standard. The general effect of this amendment is that cordless communications devices to which the new DECT Standard applies and which comply with that standard may operate in the 1880-1900 MHz band. (Such devices must also comply with the applicable conditions of the *Radiocommunications (Cordless Communications Devices) Class Licence 2014* in order to be authorised by that class licence to operate in the 1880-1900 MHz band.)

***Radiocommunications Advisory Guidelines (Protection of Apparatus-licensed and Class-licensed Receivers – 2 GHz Band) 2015 (F2015L00721)***

**Item [3]**

Item [3] amends subsection 4.1(1) in Part 4 to make clear that some (but not all) cordless communications devices authorised by the *Radiocommunications (Cordless Communications Devices) Class Licence 2014* operate in the 1880-1900 MHz band.

**Item [4]**

Item [4] amends subsection 4.1(1) in Part 4 to ensure that the relevant frequency band in which cordless communications devices are authorised by the *Radiocommunications (Cordless Communications Devices) Class Licence 2014* to operate is correctly referenced as the 1880-1900 MHz band.

**Item [5]**

Item [5] repeals paragraph 4.1(1)(a) in Part 4 (which refers to the *Radiocommunications (Digital Cordless Communications Devices – DECT Devices) Standard 2007*) and replaces it with a new paragraph which refers to the new DECT Standard. The general effect of this amendment is that cordless communications devices to which the new DECT Standard applies and which comply with that standard may operate in the 1880-1900 MHz band. (Such devices must also comply with the applicable conditions of the *Radiocommunications (Cordless Communications Devices) Class Licence 2014* in order to be authorised by that class licence to operate in the 1880-1900 MHz band.)

***Radiocommunications (Compliance Labelling – Devices) Notice 2014 (F2014L01236)*****Item [6]**

Item [6] updates the reference to the *Radiocommunications (Digital Cordless Communications Devices – DECT Devices) Standard 2007*, in table item 15 of Schedule 2, by replacing it with a reference to the new DECT Standard. The general effect of this amendment is that, before a supplier applies a compliance label to a device to which the new DECT Standard applies, the supplier must ensure that the device complies with that standard at the compliance level mentioned in column 3 of Schedule 2 for that standard.

**Schedule 3—Changes to references to *Radiocommunications (HF CB and Handphone Equipment) Standard 2008***

***Radiocommunications (Charges) Determination 2017 (F2017L00328)***

**Item [1]**

Item [1] updates the reference to the *Radiocommunications (HF CB and Handphone Equipment) Standard 2008*, in the definition of *AS/NZS 4355* in Part 1 of Schedule 2, by replacing it with a reference to the new HF CB Standard. The general effect of this amendment is that the charge specified in column 3 of Schedule 2 is payable in respect of the testing or retesting of a device for compliance with the new HF CB Standard.

***Radiocommunications (Compliance Labelling – Devices) Notice 2014 (F2014L01236)***

**Item [2]**

Item [2] updates the reference to the *Radiocommunications (HF CB and Handphone Equipment) Standard 2008*, in table item 2 of Schedule 2, by replacing it with a reference to the new HF CB Standard. The general effect of this amendment is that, before a supplier applies a compliance label to a device to which the new HF CB Standard applies, the supplier must ensure that the device complies with that standard at the compliance level mentioned in column 3 of Schedule 2 for that standard.