EXPLANATORY STATEMENT

Prepared by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications (Devices Used in the Inshore Boating Radio Services Band) Standard 2017

Radiocommunications (Digital Cordless Communications Devices – DECT Devices) Standard 2017

Radiocommunications (HF CB and Handphone Equipment) Standard 2017

Outline

The Australian Communications and Media Authority (**the ACMA**) has made the technical standards identified above (collectively, **the ACMA Standards**) under subsection 162(1) of the *Radiocommunications Act 1992* (**the Act**) and subsection 33(3) of the *Acts Interpretation Act 1901* (**the AIA**).

Subsection 162(1) of the Act provides that the ACMA may, by written instrument, make standards for the performance of specified devices or for the maximum permitted level of radio emissions from specified devices within specified parts of the spectrum.

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 instruments

Under subsection 162(1) of the Act, the ACMA makes standards (**section 162 standards**) for radiocommunications transmitters and receivers which reference one or more industry standards for technical performance matters (including test methods and limits) and in relation to the maximum permitted level of radio emissions. Once an industry standard is referenced by a standard made by the ACMA under subsection 162(1) of the Act, compliance with the standard becomes mandatory. Relevantly, 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).

In concert with the *Radiocommunications (Compliance Labelling – Devices) Notice 2014* (**the RLN**) 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.

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

The key purpose of the ACMA Standards is to manage the risk of interference to radiocommunications and radiocommunications devices.

Sunsetting radiocommunications standards

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3 of the *Legislation Act 2003* (**the LA**), most legislative instruments 'sunset' (that is, they are automatically repealed) on the 1 April or 1 October that first occurs 10 years after they are registered.

The ACMA has made the ACMA Standards to replace the following section 162 standards which were variously due to sunset on 1 October 2017 or 1 October 2018:

- the *Radiocommunications (Digital Cordless Communications Devices - DECT Devices) Standard 2007*;
- the *Radiocommunications (Devices Used in the Inshore Boating Radio Services Band) Standard 2008*; and
- the *Radiocommunications (HF CB and Handphone Equipment) Standard 2008*.[2]

Each one of the ACMA Standards repeals and replaces a section 162 standard dealing with the same (or substantially similar) subject matter. The ACMA Standards repeal and replace the following sunsetting section 162 standards (collectively, **the sunsetting standards**):

1. The *Radiocommunications (Devices Used in the Inshore Boating Radio Services Band) Standard 2008* (**the sunsetting Inshore Boating Standard**).

   The sunsetting Inshore Boating Standard previously set out the applicable performance and testing requirements for Inshore Boating Radio Service equipment for the purposes of the Australian radiocommunications compliance and labelling regime. The sunsetting Inshore Boating Standard had adopted, with modifications, the industry standard 'AS 4367:2007 *Radiocommunications equipment used in the inshore boating radio services band*', published by Standards Australia.

2. The *Radiocommunications (Digital Cordless Communications Devices – DECT Devices) Standard 2007* (**the sunsetting DECT Standard**).

   The sunsetting DECT Standard previously set out the applicable performance and testing requirements for Digital Enhanced Cordless Telecommunications (**DECT**)

[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.

[2] The *Radiocommunications (Digital Cordless Communications Devices - DECT Devices) Standard 2007* was due to sunset on 1 October 2017 and the *Radiocommunications (Devices Used in the Inshore Boating Radio Services Band) Standard 2008* and the *Radiocommunications (HF CB and Handphone Equipment) Standard 2008* were due to sunset on 1 October 2018.

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equipment for the purposes of the Australian radiocommunications compliance and labelling regime. The sunsetting DECT Standard had adopted, with modifications, the 'ETSI EN 301 406 *Digital Enhanced Cordless Telecommunications (DECT) Harmonised Standard covering the essential requirements of Article 3.2 of the Directive 2014/53/EU*', published by the European Telecommunications Standards Institute (**ETSI**).

3. The *Radiocommunications (HF CB and Handphone Equipment) Standard 2008* (**the sunsetting HF CB Standard**).

   The sunsetting HF CB Standard previously set out the applicable performance and testing requirements for High Frequency Citizen Band (**HF CB**) and Handphone equipment for the purposes of the Australian radiocommunications compliance and labelling regime. The sunsetting HF CB Standard had adopted, with modifications, the industry standard 'AS/NZS 4355:2006 (R2016) *Radiocommunications equipment used in the handphone and citizen band radio services operating at frequencies not exceeding 30 MHz*'.

The ACMA Standards do not substantially change the regulatory arrangements created by the sunsetting standards.

The ACMA has formed the view that the sunsetting standards were operating effectively and efficiently and, as such, continue to form a necessary and useful part of the legislative framework. Accordingly, the ACMA has made the ACMA Standards to replace the sunsetting standards prior to the date(s) on which they would be automatically repealed, so that the ongoing effect of each of those instruments is preserved.

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

The ACMA Standards are legislative instruments for the purposes of the LA.

Each one of the ACMA Standards adopts a specified industry standard as the standard with which devices of a specified description must comply. The table below identifies each ACMA Standard, the industry standard adopted by the ACMA Standard, and the radiocommunications devices which must comply with the ACMA Standard.

Column 1 - ACMA Standard	**Column 2 - Adopted Industry Standard**	**Column 3 - Applicable Devices**
Radiocommunications (Devices Used in the Inshore Boating Radio Services Band) Standard 2017 (**the Inshore Boating**	Australian Standard AS 4367:2007 (R2015- *Radiocommunications equipment used in the inshore boating radio services band* published by Standards Australia on 22	A radiocommunications device that: (a) is used in an inshore boating radio service and can operate on the 27 MHz maritime frequencies; or (b) was designed or intended to operate on a carrier frequency

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Column 1 - ACMA Standard	Column 2 - Adopted Industry Standard	Column 3 - Applicable Devices
Standard)	January 2007.	below 30 MHz specified for a service that is: (i) a substantially similar service to an inshore boating radio service; (ii) outside Australia; unless the device is an exempt item.
Radiocommunications (Digital Cordless Communications Devices – DECT Devices) Standard 2017 (**the DECT Standard**)	ETSI standard ETSI EN 301 406 V2.2.2 (2016-09) – *Digital Enhanced Cordless Telecommunications (DECT); Harmonised Standard covering the essential requirements of article 3.2 of the Directive 2014/53/EU* published by ETSI in September 2016.	A radiocommunications device that uses DECT technology unless: (a) the device was designed or intended to operate within one or more of the following frequency bands: (i) greater than 915 and less than or equal to 928 MHz; (ii) greater than 2400 and less than or equal to 2483.5 MHz; (iii) greater than 5725 and less than or equal to 5850 MHz; or (b) the device is an exempt item.
Radiocommunications (HF CB and Handphone Equipment) Standard 2017 (**the HF CB**	Australian/New Zealand AS/NZS 4355:2006 (R2016) – *Radiocommunications equipment used in the handphone and citizen*	A radiocommunications device that is handphone radio equipment[3] or HF CB radio equipment[4], unless the device is an exempt item.

[3] In the HF CB Standard, "handphone radio equipment" means a radiocommunications device that is:
(a) a handphone station that is designed to be carried personally and can operate on a carrier frequency specified in the *Radiocommunications (27 MHz Handphone Stations) Class Licence 2015*; or
(b) a station that was designed or intended:
(i) to be carried personally; and
(ii) to operate on a carrier frequency below 30 MHz specified for a service that is:
(A) substantially similar to a "regulated handphone service"; and
(B) outside Australia.

[4] In the HF CB Standard, "HF CB radio equipment" means a radiocommunications device that:
(a) is a HF CB station operating on a channel mentioned in Part 1 of Schedule 1 to the *Radiocommunications (Citizen Band Radio Stations) Class Licence 2015*; or
(b) was designed or intended to operate on a carrier frequency specified for a service that is:
(i) substantially similar to a "HF CB service"; and
(ii) outside Australia.

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Column 1 - ACMA Standard	Column 2 - Adopted Industry Standard	Column 3 - Applicable Devices
Standard)	*band radio services operating at frequencies not exceeding 30 MHz* jointly published by Standards Australia and Standards New Zealand on 22 September 2006.	

Documents incorporated by reference

The ACMA Standards incorporate the following documents by reference, or otherwise refer to them:

- the Act;
- the *Radiocommunications (27 MHz Handphone Stations) Class Licence 2015*;
- the *Radiocommunications (Citizen Band Radio Stations) Class Licence 2015*;
- the *Radiocommunications (Interpretation) Determination 2015* (**the Interpretation Determination**);
- the *Radiocommunications (Maritime Ship Station — 27 MHz and VHF) Class Licence 2015*;
- the *Radiocommunications (Short Range Devices) Standard 2014* (**the Short Range Devices Standard**); and
- the industry standards referred to in column 2 of the table above.

Under subsection 314A(2) of the Act, 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. The instrument adopts, by reference, the industry standards referred to in column 2 of the table above as in force from time to time.

The Act, the class licences, the Interpretation Determination and the Short Range Devices Standard can be found on the Australian Government's Federal Register of Legislation (http://www.legislation.gov.au).

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The adopted industry standards could, at the time of making the ACMA Standards, be obtained as follows:

- in the case of the industry standards adopted by the Inshore Boating Standard and the HF CB Standard – copies could be obtained from SAI Global Pty Limited's website at https://infostore.saiglobal.com/ for a fee or may be viewed at an office of the ACMA on prior request and subject to licensing conditions;
- in the case of the industry standard adopted by the DECT Standard – a copy could be obtained from ETSI's website at http://www.etsi.org/ free of charge.

Consultation

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

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.

The ACMA conducted a public consultation process in relation to the proposal to make the ACMA Standards during the period 11 April 2017 to 26 May 2017. A consultation paper and draft template standard 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 ACMA Standards without any significant changes. Interested parties were notified of the release of the consultation paper and invited to comment.

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

Regulation impact

A preliminary assessment of the proposal to make the ACMA Standards 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 ACMA Standards were expected to have a minor and machinery regulatory impact (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.

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

The ACMA considers that the ACMA Standards, which require suppliers of specified radiocommunications devices to comply with particular technical requirements and to meet maximum emission requirements (as applicable), do not engage any of the human rights or freedoms recognised or declared by the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The ACMA Standards are compatible with human rights and freedoms as they do not raise any human rights issues.

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Notes to the ACMA Standards

Each of the ACMA Standards follows the same template. The differences between those standards are largely confined to which industry standards are adopted and the types of radiocommunications devices to which the standards apply. Those differences are referred to in columns 2 and 3 of the table above.

A detailed description of the provisions which are common to each ACMA Standard are set out below.

Part 1 – Preliminary

Section 1 Name

This section states the name of the relevant ACMA Standard.

Section 2 Commencement

This section provides that the relevant ACMA Standard commences at the start of the day after it is registered on the Federal Register of Legislation.

Section 3 Authority

This section identifies the provision of the Act that authorises the making of the relevant ACMA Standard, namely subsection 162(1) of the Act.

Section 4 Repeal of the *Radiocommunications (Devices Used in the Inshore Boating Radio Services Band) Standard 2008, the Radiocommunications (Digital Cordless Communications Devices — DECT Devices) Standard 2007* or the *Radiocommunications (HF CB and Handphone Equipment) Standard 2008* (as applicable)

This section repeals the sunsetting standard which the relevant ACMA Standard has replaced.

Section 5 Background

Subsection 5(1) provides that the relevant ACMA Standard applies to the item described in section 12.

For the Inshore Boating Standard and the HF CB Standard, subsection 5(1) also provides, as is required by subsection 162(1) of the Act, that each standard is made for the performance of the devices specified in section 12 of each standard.

For the DECT Standard, subsection 5(1) also provides that the standard is made for:

- the performance of the devices specified in section 12 of the standard; and

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- the maximum permitted level of radio emissions from the devices specified in section 12 of the standard (other than radiocommunications from those devices in accordance with Chapter 3 of the Act) within specified parts of the spectrum.

Subsection 5(2) provides, pursuant to subsection 162(3) of the Act, that the relevant ACMA Standard consists of only such requirements as are necessary or convenient for the purpose of containing interference to radiocommunications.

Part 2 – Interpretation

Section 6 Definitions

This section defines the key terms used in the relevant ACMA Standard.

A number of other expressions used in the instrument are defined in the Act and the Interpretation Determination.

Section 7 References to other instruments

This section provides that unless the contrary intention appears:

- a reference to any other legislative instrument is a reference to that other legislative instrument as in force from time to time; and
- a reference to any other kind of instrument is a reference to that other instrument as in force from time to time.

Section 8 Class of items

This section defines key concepts necessary for interpreting the application of Part 3 of the relevant ACMA Standard.

The following concepts are defined in this section:

- 'included in a class of items';
- 'original item'; and
- 'original modified item'.

The above terms are important for the purpose of defining the time at which an item of radiocommunications equipment must comply with the adopted industry standard in order to meet the requirements of the relevant ACMA Standard.

Section 9 Date a modified item is created

This section provides that, in the relevant ACMA Standard, a reference to "the date a modified item is created" is a reference to the date of making of the modification which creates that item.

Section 10 Relevant date for an item

This section defines the 'relevant date' for an item as follows:

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- in the case of an item (other than a modified item) that is included in a class of items – the date the original item (being the item of the class that was the first to be manufactured in Australia or imported) was manufactured in Australia or imported;

- in the case of a modified item that is included in a class of items – the date the original modified item (being the item of the class that was the first to be created in Australia or imported) was created in Australia or imported; or

- in any case – the date the item was manufactured, or created, in Australia or imported.

Section 11 Transition period

This section defines the term "transition period". This transition period is a period that applies in a case where an industry standard, adopted by the relevant ACMA Standard, is amended or replaced.

Part 3 – Application and requirements

Section 12 Application

This section specifies the radiocommunications device to which the relevant ACMA Standard applies. Column 3 of the table above refers to the differences between the ACMA Standards in the types of radiocommunications devices to which those standards apply.

Section 13 Requirements

In the Inshore Boating Standard and the HF CB Standard, this section specifies that the item must meet the requirements of subsection 14(1), (2) or (3) in order to comply with the standard.

In the DECT Standard, this section provides that, in order to comply with the standard, an item must:

- operate:
    - only on frequencies greater than 1880 and less than or equal to 1900 MHz; and
    - with a radiated power of no more than 36 dBm EIRP; and
- meet the requirements of subsection 14(1), (2) or (3).

Section 14 Standard for items

This section specifies the requirements which items must meet in order to comply with subsection 14(1), (2), or (3). Different options for compliance with the industry standard are specified in this section. These different options are provided in recognition of the fact that, over time, the industry standard may be amended or replaced.

The DECT Standard and the Inshore Boating Standard modify the respective industry standards which they adopt. Section 14 of each of those standards adopts the same drafting.

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The HF CB Equipment Standard adopts the relevant industry standard without any modifications. As a consequence, section 14 of that standard is drafted differently to the equivalent provision in the DECT Standard and the Inshore Boating Standard.

The HF CB Equipment Standard

Under subsection 14(1) of the HF CB Equipment Standard, if a relevant date (see section 10) for an item does not occur during a transition period (see section 11), and the item complies with the adopted industry standard as in force at the relevant date (such as the date the item is manufactured in Australia or imported), the item meets the requirements of the subsection.

Subsection 14(2) of the HF CB Equipment Standard deals with the case where a relevant date for an item, such as the date the item is manufactured in Australia or imported, occurs during a transition period, which is triggered by the amendment or replacement of the adopted industry standard. The item may comply with:

- the adopted industry standard as in force immediately before its amendment or replacement (**the old standard**); or
- the adopted industry standard, or a replacement standard, as in force at the commencement of the transition period.

If the item does so comply, it meets the requirements of subsection 14(2). This recognises that changes to an adopted industry standard may occur at a time disadvantageous to the manufacturer or importer (e.g. where development and testing of the item has been predicated on the old standard rather than the adopted industry standard as amended or the replacement standard).

Subsection 14(3) of the HF CB Equipment Standard deals with the case where there are multiple transition periods that overlap. Where a relevant date for an item, such as the date the item is manufactured in Australia or imported, occurs during the period of overlap, the item may comply with:

- the old standard; or
- the adopted industry standard, or a replacement standard, as in force at the commencement of any one of the overlapping transition periods.

If the item does so comply, it meets the requirements of subsection 14(3).

The DECT Standard and the Inshore Boating Standard

Under subsection 14(1) of the DECT Standard and the Inshore Boating Standard, if a relevant date for an item does not occur during a transition period, and the item complies with the adopted industry standard as in force at the relevant date, such as the date the item is manufactured in Australia or imported (with the modifications specified in Schedule 1), the item meets the requirements of the subsection.

Subsection 14(2) of the DECT Standard and the Inshore Boating Standard each deal with the case where a relevant date for an item, such the date the item is manufactured in Australia or imported, occurs during a transition period, which is triggered by the amendment or replacement of the adopted industry standard. The item may comply with:

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- the adopted industry standard as in force immediately before its amendment or replacement (with the modifications specified in Schedule 1) (**the old standard**);
- the adopted industry standard, as in force at the commencement of the transition period (with the modifications specified in Schedule 1); or
- a replacement standard, as in force at the commencement of the transition period.

If the item does so comply, it meets the requirements of subsection 14(2).

Subsection 14(3) of the DECT Standard and the Inshore Boating Standard each deal with the case where there are multiple transition periods that overlap. Where a relevant date for an item, such as the date the item is manufactured in Australia or imported, occurs during the period of overlap, the item may comply with:

- the old standard;
- the adopted industry standard as in force at the commencement of any one of the overlapping transition periods (with the modifications specified in Schedule 1); or
- a replacement standard as in force at the commencement of any one of the overlapping transition periods.

If the item does so comply, it meets the requirements of subsection 14(3).

Part 4 – Savings and transitional arrangements

Section 15 Items for which the relevant date occurred before commencement day

This section specifies the transitional arrangements arising from the repeal of the sunsetting standard mentioned in section 4.

This section generally provides that if a relevant date for an item, such as the date the item was manufactured in Australia or imported, occurred before the commencement of the ACMA Standard and the item complies with the previous standard as in force immediately before the commencement of the ACMA Standard, the item is taken to comply with the ACMA Standard.

Schedule 1–Modifications of the industry standard (DECT Standard and Inshore Boating Standard only)

There is a Schedule to both the Inshore Boating Standard and the DECT Standard which describes the modifications to the adopted industry standard in each case.

In the case of the Inshore Boating Standard, the table in Schedule 1 provides that subclause 4.1 of the industry standard, relating to equipment markings, does not apply.

In the case of the DECT Standard, subparagraphs 13(a)(i) and (ii) of that standard prescribe additional requirements that an item must meet. In particular, an item must operate only on frequencies greater than 1880 and less than or equal to 1900 MHz and with radiated power of not more than 36 dBm EIRP. Schedule 1 modifies the industry standard by providing that a requirement in the industry standard which is inconsistent with the requirement specified in subparagraph 13(a)(i) or (ii) will not apply to the extent that it is inconsistent.

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