

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Australian Communications and Media Authority Act 2005

Radiocommunications Act 1992

Radiocommunications (Miscellaneous Provisions) Instrument 2017 (No. 1)

Authority

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

- (a) subsection 60(1) of the *Australian Communications and Media Authority Act 2005* (**the ACMA Act**); and
- (b) subsection 162(1), subsection 182(1) and section 262 of the *Radiocommunications Act 1992* (**the Radcomms Act**).

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.

Subsection 162(1) of the Radcomms Act

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. The instrument repeals one such standard, being the *Radiocommunications (Cordless Telephone) Standard 2008*.

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 one such notice, being the *Radiocommunications (Compliance Labelling – Devices) Notice 2014* (**the RLN**).

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 one such instrument, being the *Radiocommunications Advisory Guidelines (Managing Interference from Spectrum Licensed Transmitters — 1800 MHz Band) 2012* (**the Spectrum Licensed Transmitters Advisory Guidelines**).

Subsection 33(3) of the Acts Interpretation Act 1901

Subsection 33(3) of the *Acts Interpretation Act 1901* (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.

Standards made by the ACMA under section 162 of the Radcomms Act are subject to sunset. The ACMA made the following standards under that provision:

- the *Radiocommunications (Digital Cordless Communications Devices – PHS Devices) Standard 2007* (the **PHS Standard**); and
- the *Radiocommunications (Cordless Telephone) Standard 2008* (the **Cordless Telephone Standard**).

The PHS Standard and Cordless Telephone Standard relate to types of devices that the ACMA considers unlikely to be supplied in Australia in quantities large enough that the need for a mandatory standard is justified. Therefore, the ACMA:

- decided to allow the PHS Standard to be automatically repealed on its sunset date of 1 October 2017;
- has made the instrument to repeal the Cordless Telephone Standard prior to its sunset date of 1 April 2019.

Equipment that complies with the PHS Standard or the Cordless Telephone Standard will continue to be authorised by the *Radiocommunications (Cordless Communications Devices) Class Licence 2014*.

The instrument also makes consequential changes to the following legislative instruments that reference the PHS Standard or the Cordless Telephone Standard:

- the Charges Determination;
- the RLN;
- the Spectrum Licensed Transmitters Advisory Guidelines.

The instrument removes each reference to the PHS Standard and Cordless Telephone Standard in those other legislative instruments.

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 repeals the Cordless Telephone Standard and amends other legislative instruments that reference the PHS Standard or the Cordless Telephone Standard to remove those references.

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 instrument is made in reliance on the power in section 162 of the Act (amongst other powers). As noted above, 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 or revoke such instrument. Accordingly, subsection 163(1) of the Act is also relevant to the making of the instrument. That provision requires that before the ACMA makes a standard under section 162 of the Act, 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.

During the period 21 August to 11 September 2017, the ACMA conducted a public consultation process in relation to the proposal to allow the PHS Standard to sunset and to revoke the Cordless Telephone Standard. The consultation paper that was released explained that the PHS Standard and Cordless Telephone Standards no longer formed a necessary and useful part of the legislative framework. Interested parties were notified of the release of the consultation paper and invited to comment. The ACMA received one submission (which was from Communications Alliance (CA)) in response to the consultation paper. The submission from CA supported the ACMA's proposal.

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 repeal the Cordless Telephone Standard and to remove the references to the PHS Standard and Cordless Telephone Standard in the following legislative instruments:

- the Charges Determination;
- the RLN;
- the Spectrum Licensed Transmitters Advisory Guidelines.

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.

Attachment A

Notes to the *Radiocommunications (Miscellaneous Provisions) Instrument 2017 (No. 1)*

Section 1 Name

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

Section 2 Commencement

This section provides for the instrument to commence at the start of the day after it is registered on the Federal Register of Legislation.

Section 3 Authority

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

- (a) subsection 60(1) of the ACMA Act; and
- (b) subsection 162(1), subsection 182(1) and section 262 of the Radcomms Act.

Section 4 Repeal of the *Radiocommunications (Cordless Telephone) Standard 2008*

This section repeals the *Radiocommunications (Cordless Telephone) Standard 2008*.

Section 5 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.

Schedule 1—Removal of references to *Radiocommunications (Cordless Telephone) Standard 2008* and *Radiocommunications (Charges) Determination 2017 (F2017L00328)*

Item [1] Section 5, (Note)

Item [1] omits the words “cordless telephone service;” from the note following section 5.

Item [2] Schedule 2, Part 1 (definition of AS/NZS 4281)

Item [2] repeals the definition of AS/NZS 4281 in Schedule 2, Part 1 which is defined to mean the *Radiocommunications (Cordless Telephone) Standard 2008*.

Item [3] Schedule 2, Part 1 (table item 1.4)

Item [3] repeals the whole of table item 1.4 in Schedule 2, Part 1. That item specifies three separate charges for tests or retests for compliance with AS/NZS 4281.

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

Item [4] Schedule 2 (table item 3)

Item [4] removes table item 3 in Schedule 2 which includes an entry for the *Radiocommunications (Cordless Telephone) Standard 2008*.

Schedule 2—Removal of references to *Radiocommunications (Digital Cordless Communications Devices – PHS Devices) Standard 2007*

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

Item [1] Part 4, subsection 4.1(1)

Item [1] amends subsection 4.1(1) in Part 4 to remove all references to the *Radiocommunications (Digital Cordless Communications Devices – PHS Devices) Standard 2007*.

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

Item [2] Section 4 (definition of *medium-risk device* – example)

Item [2] amends the example following the definition of “medium-risk device” to remove the reference to a Personal Handyphone Service (PHS).

Item [3] Schedule 2 (table item 16)

Item [3] removes table item 16 in Schedule 2 which includes an entry for the *Radiocommunications (Digital Cordless Communications Devices – PHS Devices) Standard 2007*.