

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications (Compliance Labelling) Amendment Notice 2017 (No. 1)

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Compliance Labelling) Amendment Notice 2017 (No. 1)* (**the instrument**) under subsection 182(1) of the *Radiocommunications Act 1992* (**the Act**) and subsection 33(3) of the *Acts Interpretation Act 1901* (**the AIA**).

Subsection 182(1) of the 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. 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

The purpose of the instrument is to amend the *Radiocommunications (Compliance Labelling – Devices) Notice 2014* (**Radiocommunications Labelling Notice**) and the *Radiocommunications (Compliance Labelling – Electromagnetic Radiation) Notice 2014* (**EME Labelling Notice**) to exempt members of Construction & Mining Equipment Industry Group Inc (**CMEIG**), Tractor and Machinery Association of Australia (**TMA**) and the Federal Chamber of Automotive Industries (**FCAI**) from the requirement to label a device. The exemption only applies to a device supplied as part of a vehicle, or a device that can only be used when installed in a vehicle.

The exemption has been limited to members of CMEIG, TMA and the FCAI because each of those industry associations provide an information, education and compliance pathway to its members. This assists in satisfying the ACMA that any risks in granting an exemption are minimised and that the integrity of the labelling regime will be maintained.

Background

Regulatory arrangements for electromagnetic energy (**EME**), electromagnetic compatibility (**EMC**) and radiocommunications devices are intended to minimise health, safety and interference risks associated with the supply and operation of intentionally and non-intentionally emitting devices.

These regulatory requirements are set out in labelling notices made by the ACMA under section 182 of the Act. There are separate labelling notices for EME, EMC and radiocommunications devices, but each is comprised of the following fundamental requirements:

- devices must comply with applicable technical standards made under section 162 of the Act;
- suppliers must comply with record keeping obligations (e.g. declaration of conformity or test reports) imposed on the Australian manufacturer or importer of the device, or their authorised agent (collectively referred to as ‘suppliers’); and
- labelling of compliant devices (i.e. with the Regulatory Compliance Mark (**RCM**)).

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The initial process to apply a label to a new device is often complex and involves activities such as preparing or obtaining a drawing for each product type/batch and processing variations to accommodate unique labelling requirements.

There are circumstances in which it is neither practical nor cost-effective to require labelling. In such cases, the ACMA considers that exemptions from labelling requirements are appropriate. For example, it is neither practical nor cost-effective to label the individual parts or components of a vehicle after the vehicle is manufactured or imported. While labels are typically affixed or embossed onto devices at the point of manufacture, vehicles may also incorporate devices that require labelling after the vehicles are imported in order to meet Australian regulatory requirements. This would require disassembly of the vehicle to remove those devices for the purposes of applying a label.

At the time the instrument was made, members of the FCAI were already exempt from the labelling requirements of the Radiocommunications Labelling Notice where a device was imported or manufactured as part of a motor vehicle.

The ACMA considers that the inclusion of labelling exemptions in relation to members of CMEIG and TMA under both the Radiocommunications Labelling Notice and EME Labelling Notice, and the inclusion of a labelling exemption for members of the FCAI under the EME Labelling Notice will reduce the regulatory burden on industry while maintaining the integrity of the regulatory scheme.

The instrument has a positive effect on the members of these associations as they are not required to label relevant parts and components (i.e. radiocommunications transmitters) of vehicles. This is because, in many cases, it is often either impractical or unduly expensive to label the individual parts or components of a vehicle, whether included in the vehicle when it is supplied, or incorporated as part of a module that is intended to be installed into a vehicle.

However, the making of this instrument does not affect the overall integrity of the regulatory scheme, because members of CMEIG, TMA and the FCAI are still required to ensure that parts and components they supply comply with the applicable technical standards. They are also required to maintain compliance records and to make them available to the ACMA upon request.

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 *Legislation Act 2003 (the LA)*.

Documents incorporated by reference

Schedule 1 to the instrument amends the Radiocommunications Labelling Notice to incorporate the following legislative instrument:

- *Radiocommunications (Low Interference Potential Devices) Class Licence 2015 (Class Licence)*.

The Class Licence may be obtained from the Federal Register of Legislation (www.legislation.gov.au). The Class Licence is incorporated as in force from time to time, in accordance with subsection 314(2) of the Act.

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 instrument during the period 11 April 2017 to 26 May 2017. A consultation paper and draft instrument were made available on the ACMA website. CMEIG, TMA and the FCAI were notified of the release of

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the consultation paper and invited to comment. Other subscribers to the ACMA's *Compliance Labelling* mailing list were also notified of the consultation paper.

The ACMA received two submissions in response to the consultation paper. One submission raised issues about the meaning of the word 'vehicle'. As a result, the ACMA has revised the definition of 'vehicle' in the instrument. The other submission suggested that some form of notice should be affixed to vehicles (if not the devices within the vehicle) as a representation that the devices within the vehicle comply with a notice made under subsection 182(1). The ACMA has not included such a requirement at this time.

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 expected to have a minor and machinery regulatory impact (OBPR reference number 21765).

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

The purpose of the instrument is to amend the Radiocommunications Labelling Notice and the EME Labelling Notice to exempt members of CMEIG, TMA and the FCAI from the requirement to label certain devices.

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 (Compliance Labelling) Amendment Notice 2017 (No. 1)*

Section 1 Name

This section provides for the instrument to be cited as the *Radiocommunications (Compliance Labelling) Amendment Notice 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 provision of the Act that authorises the making of the instrument, namely subsection 182(1) of the Act.

Section 4 Amendments

This section provides that Schedule 1 and Schedule 2 amend the instruments specified in Schedules 1 and 2 as set out in the applicable items of those schedules.

Schedule 1 – Amendments to the *Radiocommunications (Compliance Labelling – Devices) Notice 2014*

Item 1 Section 2 (Note 1)

This item replaces Note 1 to section 2 of the Radiocommunications Labelling Notice to indicate that the instrument can be accessed on the Federal Register of Legislation (see www.legislation.gov.au).

Item 2 Subsection 4(1) (definition of *Class Licence*, including the note)

This item replaces the definition of *Class Licence* to mean the *Radiocommunications (Low Interference Potential Devices) Class Licence 2015 (Class Licence)* as in force from time to time. The Class Licence revoked and replaced the *Radiocommunications (Low Interference Potential Devices) Class Licence 2000*.

This item also adds a note to indicate that the Class Licence is registered on the Federal Register of Legislation (see www.legislation.gov.au).

Item 3 Subsection 4(1) (definition of *Federal Chamber of Automotive Industries*)

This item repeals the definition *Federal Chamber of Automotive Industries* and replaces it with a definition of *FCAI* to mean the Federal Chamber of Automotive Industries.

Item 4 Subsection 4(1) (definition of *low interference potential device*)

This item replaces the definition of *low interference potential device* to mean a radiocommunications device the operation of which is authorised by the Class Licence. This is a consequential change following the making of the Class Licence, which does not include a definition of low interference potential device in section 3A as appeared in the now revoked *Radiocommunications (Low Interference Potential Devices) Class Licence 2000*.

Item 5 Subsection 4(1) (definition of *wireless audio transmitter*)

This item makes consequential cross reference amendments following the change in definition of the term *Class Licence*.

Item 6 Subsection 4(1)

This item inserts definitions for *CMEIG*, *motor vehicle*, *TMA* and *vehicle* into the instrument.

The definition of *vehicle* is intended to cover any equipment that is capable of propelling itself on land, and only on land, whether it has wheels or caterpillar tracks. The definition of *motor vehicle* is intended to cover any vehicle that is designed or permitted for street use in Australia (such as a sedan or four-wheel drive car).

Item 7 Section 7 (Note)

Item 7 repeals the note to section 7 of the Radiocommunications Labelling Notice, and replaces it to remove references to specific notices made under section 182 of the Act.

Item 8 Subsection 8(3)

This item omits the wording “Federal Chamber of Automotive Industries” wherever it appears in subsection 8(3) and replaces it with “FCAI”. This change is consequential to the new *FCAI* definition substituted in item 3.

Item 9 Subsection 8(3) (note)

This item repeals the note in the section. A new note, to similar effect, appears after new subsections 8(4) to (7).

Item 10 At the end of section 8

This item inserts new subsections 8(4) to (7) to exempt members of the FCAI, CMEIG and TMA from the labelling requirements in subsections 8(1) and (2) of the Radiocommunications Labelling Notice.

The exemption in subsections 8(4) and (6) apply in circumstances where a device is *not* part of or installed *in* a motor vehicle or vehicle but the device can only be operated if it is installed in a motor vehicle sometime after the device is imported or manufactured, and it complies with each applicable standard. For example, a device that would fall within subsection 8(4) and 8(6) is a Bluetooth device. Subsection (4) applies to devices manufactured or imported by a member of the FCAI. Subsection (6) applies to devices manufactured or imported by a member of either CMEIG or TMA.

The exemption in subsection 8(5) applies in relation to members of CMEIG and TMA. It applies in circumstances where a device is either manufactured as part of a vehicle or imported as part of a vehicle, and the device complies with each applicable standard.

The exemptions only apply in relation to a high risk or medium risk device if the supplier complies with the requirements specified in subsection 12(2) and Part 4 in relation to the device.

Item 11 Subsection 12(2)

This item replaces subsection 12(2) of the Radiocommunications Labelling Notice. The subsection now states that, for the purposes of subsections 8(3), (4), (5) and (6), the supplier of a high-risk device or medium-risk device must ensure that the device complies with each applicable standard at the compliance level mentioned in column 3 of Schedule 2 for the standard. The change has been made

to ensure that suppliers who may benefit from an exemption in section 8 are still required to ensure that their devices comply with the applicable standards.

Item 12 Paragraph 18(b)

This item repeals the paragraph and replaces it to make it clear that Part 4 of the Radiocommunications Labelling Notice applies to high risk and medium-risk devices to which subsections 8(3), (4), (5) and (6) apply.

Schedule 2 – Amendments to the Radiocommunications (Compliance Labelling – Electromagnetic Radiation) Notice 2014

Item 1 Section 2 (Note 1)

This item replaces Note 1 to section 2 of the EME Labelling Notice to indicate that the instrument can be accessed on the Federal Register of Legislation (see www.legislation.gov.au).

Item 2 Subsection 4(1)

This item inserts definitions for *CMEIG*, *FCAI*, *motor vehicle*, *TMA* and *vehicle*.

The definition of *vehicle* is intended to cover any equipment that is capable of propelling itself on land, and only on land, whether it has wheels or caterpillar tracks. The definition of *motor vehicle* is intended to cover any vehicle that is designed or permitted for street use in Australia (such as a sedan or four-wheel drive car).

Item 3 After subsection 11(1)

This item inserts a new subsection (1A), requiring the supplier of a device that falls within subsection 18(3), (4), (5) or (6) to make a declaration of conformity for the device. The item has been inserted to make it clear that suppliers that may be exempt from the requirement to apply a label to a device are still required to make a declaration of conformity in relation to the device.

Item 4 After subsection 11(2)

This item inserts a new subsection (2A) to outline the circumstances where the requirement in subsection (1A) is taken to be satisfied, in relation to the importer of a device manufactured outside Australia.

Item 5 Subsection 11(3)

This item makes consequential cross-referencing amendments.

Item 6 Subsection 11(4)

This item makes consequential cross-referencing amendments.

Item 7 After subsection 12(1)

This item inserts a new subsection (1A) which provides that even if a supplier of a device is exempt from the labelling requirements of the EME Labelling Notice under subsections 18(3), (4), (5) or (6), the supplier is still required to ensure that the device complies with the compliance level for the device.

Item 8 At the end of section 18

This item inserts new subsections 18(3) to (7) to exempt members of the FCAI, CMEIG and TMA from the labelling requirements in subsections 18(1) and (2) of the EME Labelling Notice.

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The exemption in subsection 18(3) applies in relation to devices manufactured or imported by members of FCAI. It will apply in circumstances where a device:

- is either manufactured as part of a vehicle or installed after manufacture in a vehicle; or
- it is imported as part of a vehicle;

and the device is an integral part of the motor vehicle and the device complies with each applicable standard.

The exemptions in subsections 18(4) and (6) apply in circumstances where a device is not part of or installed in a motor vehicle or vehicle but the device can only be operated if it is installed in a motor vehicle or vehicle sometime after it is imported or manufactured, and it complies with each applicable standard. For example, a device that would fall within subsection 18(4) and 18(6) is a Bluetooth device. Subsection (4) applies to devices manufactured or imported by a member of the FCAI. Subsection (6) applies to devices manufactured or imported by a member of either CMEIG or TMA.

The exemption in subsection 18(5) applies in relation to device manufactured or imported by members of CMEIG or TMA. It will apply in circumstances where a device is either manufactured as part of a vehicle, or imported as part of a vehicle, and the device complies with each applicable standard.

Proposed new subsection (7) provides that the exemptions only apply if the supplier complies with subsection 11(1A), subsection 12(1A) and Part 4 in relation to the device.

Item 9 Division 4.1 (heading)

This item repeals the heading and substitutes it with a new heading: Division 4.1 – Application.

Item 10 Before section 20

This item inserts a new section 19E to provide that Part 4 applies to:

- a device, if a supplier of the device applies a label to the device as a compliance label; and
- a device for the purposes of subsection 18(3), (4), (5) or (6).

This amendment ensures that a supplier will be required to comply with Part 4 even if the supplier does not apply a compliance label to the device due to the exemptions in subsection 18(3), (4), (5) or (6).

This item also inserts a new heading: Division 4.1A – Keeping of records.

Item 11 Subsection 21(1)

This item makes a consequential change following the insertion of new section 19E.

Item 12 Section 23

This item makes a consequential change following the insertion of new section 19E.

Item 13 Subsection 24(1)

This item replaces the subsection. The changed wording of the subsection is a consequential change following the insertion of new section 19E.

Item 14 Subsection 25(1)

This item makes a consequential change following the insertion of new section 19E.

