

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications Labelling (Electromagnetic Compatibility) Notice 2017

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications Labelling (Electromagnetic Compatibility) Notice 2017* (**the Notice**) under section 182 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 Notice

The electromagnetic compatibility (**EMC**) regulatory arrangements, contained in the Notice and the *Radiocommunications (Electromagnetic Compatibility) Standard 2017* (**the EMC standard**) (made under subsection 162(1) of the Act), specify the maximum allowable level for unintended emissions of electromagnetic energy from electrical and electronic devices, vehicles and products with internal combustion engines. The arrangements also facilitate Australia's international trade arrangements with other countries that have EMC regulatory arrangements, through the adoption of internationally recognised standards.

The objective of the EMC regulatory arrangements is to minimise the risk of unintentional electromagnetic interference from devices which may affect the performance of other electrical devices or cause interference to radiocommunications.

The Notice is made under section 182 of the Act. It imposes compliance labelling and record-keeping requirements in relation to the supply of an extensive range of electrical and electronic devices, vehicles and products with internal combustion engines.

The Notice requires a supplier of a device (other than a low-risk device) subject to the EMC regulatory arrangements to apply a compliance label to the device before it can be supplied in Australia. Under section 186 of the Act, it may be an offence to supply the device without the label applied to it. Under sections 187 and 187A of the Act, it may be an offence to fail to comply with other requirements in the Notice.

Sunset provisions

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 Notice to repeal and replace the *Radiocommunications Labelling (Electromagnetic Compatibility) Notice 2008 (the 2008 Labelling Notice)* which is due to sunset on 1 April 2018.

The Notice does not substantially change the regulatory arrangements created by the 2008 Labelling Notice. The ACMA has formed the view that the 2008 Labelling Notice was operating effectively and efficiently and, as such, continues to form a necessary and useful part of the legislative framework. Accordingly, the ACMA has made the Notice to replace the 2008 Labelling Notice prior to the date on which it would be automatically repealed, so that the ongoing effect of the 2008 Labelling Notice is preserved.

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

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

Documents incorporated by reference

An instrument made under the Act may make provision for certain matters by applying, adopting or incorporating (with or without modifications) matters contained in any other instrument or writing, as in force or existing at a particular time or from time to time, even if the other instrument or writing does not yet exist when the first instrument is made (subsection 314A(2) of the Act).

All instruments and documents that are incorporated in the Notice by reference are incorporated as in force or in existence from time to time.

The Notice incorporates the following documents by reference, or otherwise refers to them:

- the *Australian Communications and Media Authority Act 2005*
- the Act;
- the LA;
- the *A New Tax System (Australian Business Number) Act 1999*;
- the *Business Names Registration Act 2011*;
- the *Corporations Act 2001*;
- the *Telecommunications Act 1997*;
- the *Associations Incorporation Act 2009* (NSW);
- the EMC Standard;
- the *Radiocommunications (Interpretation) Determination 2015*;
- the *Radiocommunications Labelling (Electromagnetic Compatibility) Notice 2008*;
- the *Telecommunications (Labelling Notice for Customer Equipment and Customer Cabling) Instrument 2015*;
- the *Radiocommunications Regulations 1993*;
- AS/NZS CISPR 11:2011 – the Australian/New Zealand Standard, Industrial scientific and medical (ISM) radio-frequency equipment – Electromagnetic disturbance characteristics – Limits and methods of measurement;
- the *Radiocommunications (EMC Standards) Notice 2015* of New Zealand;
- the *Radiocommunications (Radio Standards) Notice 2016* of New Zealand;
- the Official Journal of the European Union;
- the Construction & Mining Equipment Industry Group Inc (**CMEIG**)/Tractor and Machinery Association of Australia (**TMA**) code, Voluntary Code of Practice for Electromagnetic Compatibility (EMC) of Machinery;

- the Federal Chamber of Automotive Industries (FCAI) code, Voluntary Code of Practice for Electromagnetic Compatibility (EMC) of Motor Vehicles;
- the Truck Industry Council (TIC) code, Voluntary Code of Practice for Electromagnetic Compatibility (EMC); and
- the Supplier and Equipment Registration Database maintained by the Electrical Regulatory Authorities Council.

All Commonwealth Acts and legislative instruments mentioned can be found on the Australian Government's Federal Register of Legislation (<https://www.legislation.gov.au>). New South Wales legislation can be found on the official legislation website of the Government of New South Wales (<https://www.legislation.nsw.gov.au>).

AS/NZS CISPR 11:2011 created by Standards Australia could, at the time of making the Notice, be obtained for a fee from SAI Global Pty Limited's website at <https://infostore.saiglobal.com> or may be viewed at an office of the ACMA or the Australian Competition and Consumer Commission (ACCC) on prior request to the ACMA and subject to licensing conditions.

The *Radiocommunications (EMC Standards) Notice 2015* and the *Radiocommunications (Radio Standards) Notice 2016* are legislative instruments of New Zealand and, at the time of making the Notice, could be found on the New Zealand Gazette website (<https://gazette.govt.nz>).

The Official Journal of the European Union, at the time of making the Notice, was published on the European Union Law website (<http://eur-lex.europa.eu>).

The voluntary codes of practice, at the time of making the Notice, could be obtained as follows:

- the CMEIG/TMA code could be obtained from CMEIG's website (http://www.cmeig.com.au/documents/TMA-CMEIGCodeofpractice_1.pdf);
- the FCAI code could be obtained from the FCAI's website (<http://www.fc.ai.com.au/news/codes-of-practice>);
- the TIC code could be obtained from the TIC's website (<http://www.truck-industry-council.org/>).

The Supplier and Equipment Registration Database, at the time of making the Notice, could be accessed from the website of the Electrical Regulatory Authorities Council: <http://www.era.gov.au>.

Consultation

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

The ACMA conducted a public consultation process during the period 24 August to 29 September 2017 in relation to the proposal to make the Notice. A consultation paper and a draft of the Notice were made available on the ACMA website. The consultation paper explained the sunseting (automatic repeal) process and the ACMA's preliminary view that the existing arrangements should be continued in the Notice without any significant changes. Interested parties were notified of the release of the discussion paper and invited to comment.

The ACMA received four submissions from industry in response to the consultation paper.

In response to the submissions made during consultation, the following minor changes have been incorporated into the Notice to improve the clarity and simplify the application of the Notice for those industry participants that are subject to its requirements:

- renumbering Schedule 2 to remove the redundant item 1, and redrafting item 2 for clarification;
- redrafting the definition of a document with the prefix 'EN'.

Additional issues were raised during consultation that have not resulted in changes to the Notice, namely:

- allowing electronic labelling where devices do not have a built-in screen but connect to a screen, permitting suppliers to substitute conventional labels with links to webpages, and making compliance with certain requirements voluntary. The ACMA will consider these proposals in the future, as they require further consideration;
- reintroducing the requirement that a label applied to a device be accompanied by identification of the supplier of the device. The ACMA removed the requirement in 2013, and does not consider it necessary to be reintroduced;
- renaming the Notice. The name is consistent with Commonwealth practice.

Regulatory impact assessment

A preliminary assessment of the proposal to make the Notice 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 the Notice may have more than minor regulatory impacts, but that a RIS would not be required if the ACMA assessed the 2008 Labelling Notice to be operating effectively and efficiently (OBPR reference number 22316). Having conducted consultation as described above, the ACMA has assessed the 2008 Labelling Notice as operating effectively and efficiently.

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.

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

Overview of the Notice

As noted above, the purpose of the Notice is to repeal and replace the 2008 Labelling Notice because it was due to sunset on 1 April 2018, with no substantive changes to the operation and effect of the 2008 Notice.

The Notice imposes compliance labelling and record-keeping requirements for the supply of specified devices. The Notice requires a supplier of a device (other than a low-risk device) subject to the EMC regulatory arrangements to apply a compliance label to the device before it can be supplied in Australia. These requirements are designed to contain interference caused by devices to radiocommunications or to any uses or functions of other devices. Record-keeping requirements are also imposed on suppliers of devices who apply a label to the devices.

Human rights implications

The ACMA has assessed whether the Notice 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 Notice and the nature of the applicable rights and freedoms, the ACMA has formed the view that the Notice does not engage any of those rights or freedoms.

Conclusion

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

Notes to the *Radiocommunications Labelling (Electromagnetic Compatibility) Notice 2017*

Part 1—Preliminary

Section 1.1 Name of Notice

This section provides for the Notice to be cited as the *Radiocommunications Labelling (Electromagnetic Compatibility) Notice 2017*.

Section 1.2 Commencement

This section provides for the Notice to commence on the later of the start of the day after it is registered on the Federal Register of Legislation and the commencement of the EMC Standard. Both events must occur before the Notice commences.

The Federal Register of Legislation may be accessed at www.legislation.gov.au.

Section 1.3 Authority

This section identifies the provision of the Act that authorises the making of the Notice, namely section 182 of the Act.

Section 1.4 Repeal of the *Radiocommunications Labelling (Electromagnetic Compatibility) Notice 2008*

This section provides that the 2008 Labelling Notice (F2008L00262) is repealed.

Section 1.5 Interpretation

Subsection 1.5(1) defines a number of key terms that are used throughout the Notice. In particular, ***applicable standard*** is defined to mean an applicable industry standard (e.g. AS/NZS, CISPR, IEC, EN standard) that is referenced in the EMC Standard in relation to the device. The EMC Standard incorporates by reference a list of industry standards published on the web address <http://www.acma.gov.au/standards/emc> and sets out rules for determining which standard is an applicable industry standard that applies to a device. The EMC standard is made under section 162 of the Act and requires that devices comply with an applicable standard.

Note 1 to this subsection identifies a number of other expressions used in the Notice that are defined in the Act or the *Radiocommunications (Interpretation) Determination 2015*.

Subsection 1.5(2) provides that if:

- at the time a device (a relevant device) was manufactured or imported it was intended that the device would be installed as part of a combination of devices (**the combination**); and
- the combination would be placed at a location in such a way that moving the combination would require disassembly of the combination; and
- the combination will only function if the relevant device or other parts of the combination are not removed from it;

then the combination is a ***fixed installation*** from the time the combination was created and from the time the relevant device is manufactured or imported, the relevant device is ***included or to be included in a fixed installation***.

The intention that a device would be installed as part of a combination may be held by a supplier or someone else. If it was held by someone else, it must have been reasonable for the supplier to believe that the person intended to install the relevant device as part of the combination at the time the relevant device was manufactured or imported. It would generally not be reasonable for a supplier to believe that a person intended to install a device as part of a combination at the time the device was manufactured or imported if the device was one of many identical devices manufactured or imported by the supplier at the same time (i.e. if there was no special request to the supplier that the device be supplied for inclusion in the fixed installation).

Pursuant to item 11 of Schedule 2, the Notice does not apply to a device that is a fixed installation or is included or to be included in a fixed installation.

Subsection 1.5(3) provides that, subject to subsection (4), a class of devices that are all identical and have the same supplier, will be referred to as a ***kind of device***.

Subsection 1.5(4) provides that in the case where there are two devices (which would otherwise be regarded as being the same kind of device as a consequence of subsection (3)), and an applicable standard in respect of each of those devices was amended or replaced in the period between the importation and manufacture of the first device and the importation or manufacture of the second device, then the two devices will not be considered to be the same kind of device. This subsection ensures that new devices must be tested for compliance with updated compatibility requirements, where industry standards have changed.

Section 1.6 *Meaning of compliance records*

Section 1.6 specifies the ***compliance records*** which must be kept in relation to particular kinds of devices. The compliance records constitute the documentary evidence a supplier must hold in order to prove that a kind of device complied with the requirements of the Notice.

Depending on the kind of device, the compliance records include:

- a description of the device;
- the supplier's declaration of conformity;
- test reports or technical construction files demonstrating compliance;
- in the case where a label is placed on the packaging and documentation because of the size or physical nature of the device or it is not practical to apply a label to the surface of a device, records of the reason why that is the case and of where each label is applied; and
- any explanatory documentation required to use the device correctly.

The table also includes requirements for compliance records of variants of a device. A variant is a model that may have differences to the model for which the original compliance records were obtained. Variants can have changes in features which do not significantly affect the electromagnetic performance of the device. If the device is a variant, then the original device's test report or technical construction file must be included and in addition to the compliance records for an original device, the compliance records must include a description of why the variant complies with the relevant applicable standard.

Section 1.7 Meaning of *description of the device*

Section 1.7 specifies the minimum information required in the compliance records to accurately describe the device which is to be labelled. A description of a device must include model numbers, software or firmware versions and it may include photographs or diagrams of the device. The description of the device is important because it enables the ACMA to determine whether a particular device is the same as the device in relation to which a declaration of conformity, test report or technical construction file is kept by the supplier.

Section 1.8 Meaning of *medium risk device*

Subject to subsection (2), subsection 1.8(1) defines a ***medium risk device*** to be a device which is not a high risk device and which contains one or more of the following:

- (a) a switch mode power supply;
- (b) a transistor switching circuit;
- (c) a microprocessor;
- (d) a commutator;
- (e) a slip-ring motor;
- (f) an electronic device operating in a switching mode or a non-linear mode.

Subsection (2) provides that a battery-powered device is not a medium risk device unless the ACMA has so declared it in writing under subsection (3). Subsection (3) allows the ACMA to declare in writing, that a particular battery-powered device is a medium risk device if it has specific characteristics. These characteristics are:

- (a) the common operation of the device causes radio emissions; and
- (b) those radio emissions have caused, or are likely to cause, interference, disruption or disturbance to other devices or to radiocommunications services; and
- (c) the device is not a high risk device.

A declaration made under subsection (3) is a notifiable instrument for the purposes of the LA.

Section 1.9 Meaning of *device that complies with New Zealand labelling legislation*

Subsection 1.9 provides that a device that bears a New Zealand compliance mark in accordance with the New Zealand labelling legislation, is a ***device that complies with New Zealand labelling legislation***.

Australia and New Zealand have established close economic ties under the Trans-Tasman Mutual Recognition Agreement (**TTMRA**). Australia and New Zealand have a common suite of applicable standards and the same regulatory compliance mark for the EMC regulatory arrangements. To a large extent, Australian and New Zealand regulatory arrangements have been harmonised. Under the TTMRA, Australia recognises that devices labelled in accordance with the New Zealand arrangements are deemed to comply with the Australian arrangements. Sections 1.9 and 2.3 work together to implement exemptions for devices labelled under the New Zealand arrangements.

Section 1.10 Other interpretation matters

Section 1.10 provides the full names of several prefixes used in the titles of standards that are referenced in the Notice:

- (a) AS/NZS is a reference to a document that is a joint Australian and New Zealand Standard;
- (b) IEC is a reference to a document that is an International Electrotechnical Commission Standard;
- (c) CISPR is a reference to a document that is an International Special Committee on Radio Interference Standard;
- (d) EN is a reference to a document that has been made, published or adopted as a European Standard by:
 - (i) the European Committee for Standardization; or
 - (ii) the European Committee for Electrotechnical Standardization; or
 - (iii) the European Telecommunications Standards Institute.

Subsection (5) states that the Notice may refer to a standard without including the year of the referenced standard.

Section 1.11 References to other instruments

Section 314A of the Act relevantly provides that an instrument made under the Act may make provision in relation to a matter by incorporating matter contained in any other instrument or writing whatever as in force from time to time.

This section provides that in the Notice, 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 or writing is a reference to that other instrument or writing as in force from time to time or in existence from time to time.

References to applicable standards are, therefore, references to those standards as existing from time to time; this facilitates keeping the EMC regulatory arrangements up to date with current industry practices.

Section 10 of the AIA relevantly provides that a reference to an Act shall be construed as a reference to that Act as originally enacted and as amended from time to time. Subsection 13(1) of the LA provides that the AIA applies to a legislative instrument as if it were an Act and as if each provision of the legislative instrument were a section of an Act.

Part 2—Application of Notice

Section 2.1 Devices to which this Notice applies

Section 2.1 applies the Notice to devices imported into or manufactured in Australia that will be supplied in Australia and to which an applicable standard applies.

Applicable standards are those standards a device must comply with, as required by the EMC Standard. The Notice and the EMC Standard operate together to specify the Australian regulatory arrangements for EMC.

The term **supply** is defined in section 5 of the Act, and includes supply (and re-supply) by way of sale, exchange, lease, hire or hire-purchase.

Section 2.2 Devices to which this Notice does not apply—general

Section 2.2 specifies that the Notice does not apply to those devices mentioned in Schedule 2.

Section 2.3 Devices to which this Notice does not apply—New Zealand devices

This section works in conjunction with section 1.9 of the Notice. Section 2.3 specifies that devices imported into Australia from New Zealand for supply in Australia, and that comply with New Zealand labelling legislation, are not subject to the labelling requirements set out in Part 3, 4 and 5 of the Notice.

Devices supplied in New Zealand that have an exemption under New Zealand legislation do not necessarily have the same exemption when supplied into Australia. Consequently, the definition of a **device that complies with New Zealand labelling legislation** in section 1.9 provides that, to be such a device for the purpose of the Notice, the device must bear a compliance mark in accordance with the New Zealand labelling legislation. This applies whether or not the device is required to be labelled when supplied in New Zealand.

For example, New Zealand labelling legislation does not apply to devices supplied in quantities of less than 10. However, if the supplier of those devices proposes to supply those devices into Australia, they must be labelled, either in accordance with the New Zealand labelling legislation or with the Notice.

Section 2.4 Relationship between this Notice and a labelling instrument made under the Telecommunications Act 1997

Section 2.4 provides that if a device that is subject to the requirements of the Notice is also customer equipment or customer cabling to which an instrument made under subsection 407(1) of the *Telecommunications Act 1997* (**a Telecommunications Labelling Notice**) applies:

- the supplier of the device must comply with the requirements of both the Notice and the Telecommunications Labelling Notice; and
- Part 3 of the Notice (in relation to compliance labels) does not apply to the device; and
- except in the definition section, a reference in the Notice to a compliance label includes a reference to a compliance label under a Telecommunications Labelling Notice.

The regulatory compliance mark that (in particular circumstances) must be applied under a Telecommunication Labelling Notice is the same as the compliance mark under the Notice. As a consequence of this provision, a supplier does not need to apply the same compliance label twice. At the time the Notice was made, the *Telecommunications (Labelling Notice for Customer Equipment and Customer Cabling) Instrument 2015* was the relevant instrument made under subsection 407(1) of the *Telecommunications Act 1997*.

Section 2.5 Relationship between this Notice and another labelling notice made under the Act

Section 2.5 provides that, if a device that is subject to the requirements of the Notice also contains a device or incorporates a device to which another notice made under subsection 182(1) of the Act applies, the supplier must comply with the requirements of both the Notice and the other notice.

The note explains that an effect of section 2.5 is that a compliance mark can only be applied to a device if it complies with requirements of each notice made under subsection 182(1) of the Act that applies to the device.

Section 2.6 Devices incorporating a radiocommunications transmitter

Subsection 2.6(1) provides that if a device contains or incorporates a radiocommunications transmitter (as defined in subsection 7(2) of the Act), the transmitter must be switched off, or placed in an idle state, before the device is assessed for compliance against the requirements of the Notice.

Subsection 2.6(2) confirms that a radiocommunications transmitter that is contained within a larger “parent” device does not need to comply with the Notice.

Part 3—Form and placement of compliance labels

Section 3.1 Compliance labels

Subsection (1) provides that all devices, other than low risk devices, that comply with an applicable standard must bear a compliance label, consisting of the regulatory compliance mark (*RCM*).

Subsection (2) provides that the compliance label must be placed on the device in a place that is accessible by the user of the device.

Subsection (2) is subject to sections 3.6 and 3.6A of the Notice. Section 3.6 deals with situations where applying a label to the surface of a device is not possible or practicable. Section 3.6A gives a supplier the option of labelling some types of devices electronically.

Subsection (3) clarifies that a label is not considered accessible to the user if they need to use a specialised tool to gain access to the label.

Section 3.2 Compliance labels for low risk devices

Section 3.2 applies to low risk devices. A supplier of a low risk device may choose whether or not to apply a compliance label to the device.

Subsection (2) notes that, a low risk device must comply with an applicable standard, whether or not it has a compliance label applied to it.

Subsection (3) provides that, if a supplier chooses not to apply a compliance label, a low risk device will be taken to have a compliance label applied to it for the purposes of section 3.7, Part 4 (other than section 4.3A) and Part 5 of the Notice.

Consequently, the decision whether to apply a compliance label does not alter various of the supplier’s other obligations under the Notice, including the requirement to maintain compliance records.

Section 3.3 Who must apply a compliance label to a device?

Section 3.3 specifies the person who is responsible for ensuring a device is labelled.

Subsection (1) provides that in relation to a device that is manufactured in Australia, the responsibility for applying the compliance label lies with the manufacturer or the agent of the manufacturer.

Subsection (2) provides who is to apply or may authorise the application of a label where the device is manufactured outside of Australia. In that case, it is the responsibility of the importer or the agent of the importer to apply the label to the device.

Both subsections permit suppliers and agents to authorise other persons to apply a label to a device on behalf of the supplier.

The provisions relating to agents have been included to take account of the many commercial arrangements that provide for devices to be labelled by an agent of a manufacturer or importer.

Section 3.4 Durability of compliance label

Section 3.4 provides that a compliance label must be durable and applied permanently to the device in such a way that it makes removal or obliteration difficult.

This section does not apply to a supplier who chooses to apply a label electronically.

Section 3.5 Format of compliance label

Section 3.5 specifies the minimum size of the compliance mark is 3 mm high.

The note to this section explains that the Notice does not prevent a supplier from including its own additional supplier identification details on a device.

Section 3.6 Placement of compliance label

Subsection (1) allows for an alternative to labelling in accordance with subsection 3.1(2), where it is not possible to apply a compliance label to the surface of the device due to physical or practical impediments. In such a case, the compliance label must be applied to the external surface of the packaging used for the device, and to accompanying documentation that is supplied with the device.

Physical impediments that may affect the capacity to apply a label may include that:

- the device is too small to affix a label; or
- the external surface of the device resists any adhesion or imprinting of the label; or
- the surface of the device is corrugated; or
- the surface is exposed to the elements that defeat the adhesion or durable properties of the label.

Examples of when it may not be practical to label the device include:

- the supplier cannot arrange for the device to be labelled at the point of manufacture;
- where removing the packaging to affix the label affects the supply of (or the ability to supply) the device; or
- where there is a technical or engineering difficulty that impedes the labelling of the device.

Subsection (2) requires a compliance label that is applied to the external packaging used for the device to occupy an area that is greater than 1% of the packaging and to be clearly visible.

Subsection (3) requires a supplier to keep records detailing why it was not possible or practical to label the surface of the device, and to record where the compliance label was subsequently applied.

Subsection (4) provides that this section does not apply to a supplier who chooses to apply a label electronically.

Section 3.6A Electronic labelling

Section 3.6A allows for the use of electronic labelling, in some cases.

Subsection (1) allows a supplier to apply the compliance label using the built-in display of the device. If there is no built-in display, there is no prospect for electronic labelling.

Subsection (2) provides that a supplier must ensure the documentation accompanying the device must set out the method for displaying the compliance label.

Subsection (3) specifies that the compliance label must be applied to the device in a way that would make it difficult to prevent the display of the label when the method stated in the documentation accompanying the device is used. That is, there should be minimal risk of the label not being displayed on the built-in display.

Subsection (4) provides that subsection 3.1(2) and sections 3.4 and 3.6 (all relating to the application of a physical label) do not apply to a label applied electronically.

Section 3.7 Explanatory documentation to be supplied with a device

Section 3.7 requires a supplier to provide information with the labelled device to prevent an end user installing or operating the device in such a way that the device would not comply with the requirements in the applicable standard for the device.

This is necessary because it may be possible for a device to be compliant with an applicable standard when used or installed as designed, but used or installed in a different manner that would make the device non-compliant with the applicable standard. In this case, documentation must be supplied with the device detailing how to use or install the device in a way that complies with the applicable standard. This is an important issue for devices where compliance is highly dependent upon installation practices.

For example, a split system air-conditioner, featuring a variable speed drive and tested with a cable of 1.2 m from the control unit to the drive, may be non-compliant with an applicable standard if it is installed with a longer installation cable. The purpose of section 3.7 is to require the supplier of the air-conditioner to provide documentation stating that the device will only be compliant with the applicable standard if it is installed with a 1.2 m cable from the control unit to the drive. However, if the drive was, in fact, compliant regardless of the length of the cable, documentation under this section may not be necessary.

Part 4—Conditions for application of compliance label

Section 4.1 Application of Part 4

Subsection 4.1(1) states that, subject to subsection (2), Part 4 applies to a device to which an applicable standard applies.

Subsection 4.1(2) provides an exemption from sections 4.3, 4.4, 4.5 and 4.6 (relating to compliance levels) for a device that:

- is a variant of a device for which a compliance record already exists; and
- where the radiofrequency emission characteristics of the variant are not likely to exceed those of the original device.

The supplier of a variant must still comply with section 4.7 (relating to additional requirements for variants).

This provision recognises that changes to a device (for example, changes to colour, or to some design features) that have no effect on the electromagnetic performance of the device do not require additional compliance records to be obtained for the variants.

Section 4.2 Use of RCM subject to registration on national database

Section 4.2 requires a supplier to be registered on the national database prior to applying the compliance label to a device.

Section 4.2A Registration on national database

Section 4.2A sets out the requirements for supplier registration on the national database. In accordance with section 4.8, the national database is the Supplier and Equipment Registration Database maintained by the Electrical Regulatory Authorities Council. However, the ACMA may in the future identify a different database for the purposes of supplier registration under the Notice.

The national database requires a supplier to register certain details. Subsection 4.2A(1) provides that a supplier must provide information to identify it, its address and the name and contact details of a representative of the supplier.

Subsection 4.2A(2) provides that information that will identify a supplier consists of the supplier's ABN and either its name or a business name, registered under the *Business Names Registration Act 2011*, used in connection with the supplier's business as a supplier.

Subsection 4.2A(3) requires that, if the information that has been provided by a supplier on the national database changes, the supplier must update this information on the national database within 30 days of the change occurring.

Note 1 to this section explains that the requirement to update information in subsection 4.2A(3) is an ongoing requirement. A supplier that fails to update changed information may be subject to a penalty under section 187A of the Act.

Note 2 to this section explains that all information provided by a supplier for inclusion on the national database for the purposes of the Notice will be publicly available.

Section 4.3 Meeting compliance levels

Section 4.3 specifies the requirements that a supplier must meet before applying a label to a device. The supplier must prepare a description of the device, and meet the relevant compliance level for the device as set out in section 4.4, 4.5 or 4.6.

The EMC regulatory arrangements recognise that the risk of non-compliance is greater for certain devices. This has been incorporated into the Notice by specifying different documentary evidence requirements for proof of compliance, known as compliance levels. There are three compliance levels and they specify requirements for:

- compliance level 1 – a low risk device (section 4.4);
- compliance level 2 – a medium risk device (section 4.5); and
- compliance level 3 – a high risk device (section 4.6).

This ensures that all devices have an appropriate requirement for maintenance of documentary evidence of compliance. The specified documentary requirements are intended to be commensurate with the identified level of risk for a device.

Section 4.3A Declaration of conformity

Subsection 4.3A(1) provides that, if a supplier applies a compliance label, a declaration of conformity must be completed and signed in relation to the device.

Subsection 4.3A(2) provides that the supplier of a low or medium risk device that is manufactured overseas may rely on an overseas manufacturer's declaration of conformity. However, subsection 4.3A(3) notes that the local supplier using the overseas manufacturer's declaration of conformity is still responsible for whether the device complies with other obligations under the Notice and remains liable under Part 4.1 of the Act.

Subsection 4.3A(4) deals with the situation where a supplier manufactures or imports a number of devices which are the same kind of device. If a supplier applies a compliance label to a device (**the relevant device**), and before the compliance label was applied, the supplier had complied with subsection (1) in relation to another device (**the earlier device**), and the relevant device and the earlier device are the same kind of device, then the supplier is taken to have complied with subsection (1) in relation to the relevant device. Consequently, a supplier need only demonstrate compliance with subsection (1) in relation to one device out of a group of devices of the same kind.

Section 4.4 Compliance level 1 – low-risk device

Section 4.4 specifies that there are no additional requirements to those in section 4.3 for a low risk device that complies with an applicable standard.

Section 4.5 Compliance level 2 – medium risk device

Section 4.5 specifies additional requirements over those specified in section 4.3 for a medium risk device.

The additional requirements for a medium risk device are that a supplier must establish that the device complies with an applicable standard by having the device tested against an applicable standard and by obtaining:

- a test report from a testing body; or
- a technical construction file.

As defined in section 1.5, a test report and a technical construction file both include a report that includes a statement that, in the opinion of the body conducting the test, the device complies with the applicable standard.

Section 4.6 Compliance level 3 – high risk device

Section 4.6 sets out the additional requirements for a high risk device. These are that a supplier must establish that the device complies with an applicable standard by having the device tested against an applicable standard and by obtaining:

- an accredited test report from an accredited testing body; or
- a technical construction file.

As defined in section 1.5, a test report and a technical construction file both include a report that includes a statement that, in the opinion of the body that conducts the test, the device complies with the applicable standard.

The potential interference risk is highest for a high risk device. Therefore the supplier of a high risk device must have the highest level of documentary evidence of compliance with an applicable standard.

Section 4.7 Additional requirements for variants

Section 4.7 specifies additional evidentiary requirements for a device that is a variant of another device (**the original device**), and alternative requirements if the supplier intends to rely on the compliance records for the original device.

Subsection 4.7(2) provides that the supplier of a variant of a device must include a statement in the compliance records that:

- identifies the original device and the variant; and
- describes the differences between the original device and the variant; and
- provides a technical rationale for the conformity of the variant with each applicable standard that applies to the variant;
- includes a declaration of conformity for the variant under section 4.3A.

Subsection 4.7(3) provides that if the supplier of the variant has met the requirements of section 4.3 for the original device, the supplier need not assess the variant at a compliance level. However, the supplier must prepare a written statement for inclusion in the compliance documentation in accordance with subsection (2) and the supplier must have a copy of the compliance records for the original device.

For example, if the original device met the requirements for compliance level 2, and the supplier had technical documentation to show that the variant has no more emissions than the original device, and the variant is the same compliance level, the supplier does not need to keep separate compliance documentation for the variant (other than the written statement mentioned in subsection 4.7(2)). In this case the compliance documentation for the variant would be a copy of the compliance documentation for the original device, plus the written statement mentioned in subsection 4.7(2).

However, if the variant has a higher compliance level than the original device, it will need to be assessed at the higher compliance level.

Subsection 4.7(4) deals with the situation where a supplier manufactures or imports a number of variants which are the same kind of device. It provides that if a supplier applies a compliance label to a variant (**the relevant variant**), and before the compliance label was applied, the supplier had complied with subsection (2) in relation to another variant of the original device; and the two variants are the same, then the supplier is taken to have complied with subsection (2) in relation to the relevant variant.

Consequently, a supplier need only demonstrate compliance with subsection (2) in relation to one device out of a group of devices of the same kind.

Section 4.8 Transitional – national database

Section 4.8 provides transitional arrangements for designation purposes of the existing national database.

Subsection 4.8 (1) defines the *existing national database* as the Supplier and Equipment Registration Database maintained by the Electrical Regulatory Authorities Council. The existing national database was designated by the ACMA for the purposes of Part 4 of the 2008 Labelling Notice as the national database. Pursuant to subsection 4.8(2), the existing national database is taken to have been designated as the national database for the purposes of Part 4. This does not prevent the ACMA from designating another database as the national database in the future.

Part 5—Compliance records

Compliance records must contain all the information needed to identify a device for which a declaration of conformity has been signed and to demonstrate that a supplier has a level of confidence that a device complies with the mandatory requirements in a standard.

Section 5.1 Compliance records—general requirements

Section 5.1 sets out general requirements for compliance records (as defined in section 1.6).

Subsection 5.1(1) requires that compliance records must be in English. It also permits the supplier to use copies of an original record and provides that records may be kept in electronic form.

Subsection 5.1(2) requires the supplier to update the description of the device (as defined in section 1.7) in the compliance records, when necessary. The description of the device is important to enable a person to determine whether the labelled device is the same device for which the declaration of conformity was made and is relevant when the supplied device is a variant of the original device.

Subsection 5.1(3) provides that where an agent acts on behalf of a supplier in regard to its record keeping obligations under the Notice, the agent must also keep a copy of its agency agreement for the same period as the compliance records are kept. For example, where two suppliers supply the same kind of device, it is possible for the record-keeping obligations of one supplier to be met by entering into an agreement with the other supplier in regard to labelling and record keeping requirements. This is an agency agreement between the two suppliers.

Section 5.2 Keeping records

Subsection 5.2(1) requires that a supplier of a device to which a compliance label is applied must keep compliance records (as defined in section 1.6) for the device for 5 years after:

- if the device is not the same kind of device as another device, the device is first supplied in Australia; or
- if the device is the same kind of device as another device, the last date a device of that kind is first supplied in Australia.

Subsection 5.2(2) requires that a supplier of a low-risk device, who decides not to apply a compliance label to the device, must keep the compliance records for the device for 5 years after:

- if the device is not the same kind of device as another device, the device is first supplied in Australia; or

- if the device is the same kind of device as another device, the last date a device of that kind is first supplied in Australia.

The two different time periods recognises two different scenarios in which devices are manufactured or imported. Paragraphs 5.2(1)(a) and 5.2(2)(a) deal with the scenario where a particular, unique device is supplied. Paragraphs 5.2(1)(b) and 5.2(2)(b) deal with the scenario where an original device is supplied which is the same kind of device as a number of other devices which may be supplied at later dates. In the latter case, the relevant date for calculating the 5 years for which the compliance records must be kept is the last date when a device of that kind is first supplied in Australia.

Section 5.3 Availability of compliance records for inspection

An audit program of compliance documentation comprises an integral part of the assessment of the effectiveness of the EMC regulatory arrangements. Therefore, compliance records must be made available for inspection.

Section 5.3 requires a supplier to make the compliance records available for inspection. The supplier must ensure that the compliance records for the device are available for inspection within 10 working days of receiving a notice of intention to inspect the records from an authorised officer.

Section 5.4 Provision of information to authorised officer

Subsection 5.4(1) permits an authorised officer to request a supplier of a device to give specified compliance records to the officer. Subsection 5.4(2) provides that the supplier must do so within 10 working days after the date of the request. This allows an officer to request compliance records to verify that a device complies with an applicable standard during an investigation or audit.

Subsection 5.4(3) allows a supplier up to 30 working days where the specified document is a circuit diagram or manual in recognition that these documents may not necessarily constitute a readily available part of the compliance record.

Subsection 5.4(4) requires the authorised officer to provide a receipt to the supplier for any information acquired by that officer under subsection 5.4(1).

Subsection 5.4(5) requires the authorised officer to return any original documents acquired under subsection 5.4(1) to the supplier as soon as practicable and, in any case, not more than 60 days after receiving the document.

Section 5.5 Request for test reports from accredited testing body

If an authorised officer believes that the documentation provided in the compliance records does not provide sufficient evidence that the device complies with an applicable standard, the officer may, by written notice, require the supplier to have 3 or more samples of the device tested in Australia, by an accredited testing body to the applicable standard or a specified part of the applicable standard.

The supplier must provide to the authorised officer, within a period specified in the written notice, certified true copies of the accredited test report for each sample from the accredited testing body showing that the device complies with the applicable standard or the specified part of the applicable standard.

The testing conducted in accordance with the Notice under section 5.5 is at the supplier's expense.

Section 5.6 Evidence of compliance with applicable standard under section 5.5

When an authorised officer requests, in accordance with section 5.5, testing of the device to an applicable standard, the supplier must have a minimum of 3 samples tested. This section sets out that the device will be taken to comply with the applicable standard if 3 or 4 samples are tested and all of the samples tested complied with the applicable standards according to the test reports.

If one of the samples fails the test, the authorised officer may require the supplier to have additional samples tested until 80% of the samples tested pass.

Therefore:

- if 3 samples pass – no further testing is required.
- if 2 samples pass and one sample fails – the supplier would need to test 2 more samples and both must pass in order to achieve the 80% pass rate.

If more than one sample fails, and the authorised officer agrees to require the supplier to have additional samples tested, the supplier has the option to keep testing until they have achieved a pass rate of 80% over all the samples. The level of 80% of the samples passing is based on the criteria for international EMC standards where the significance of limits for devices shall be that at least 80% of mass produced equipment is compliant with at least 80% confidence. The provisions in this clause are consistent with international norms for EMC testing.

Part 6—Special requirements for supply of devices after changes to applicable standard or this Notice

Section 6.1 Devices labelled with a compliance label before this Notice

Subsection 6.1(1) specifies that section 6.1 will apply to a device if:

- the device complied with an applicable standard prior to the commencement of the Notice; and
- the label that was applied to the device shows that the device complied with the standard when it was first manufactured or imported; and
- the label complied with the 2008 Labelling Notice; and
- the label has not been removed.

Subsection 6.1(2) provides that for devices that meet the criteria described in subsection (1), the supplier is not required to demonstrate compliance with the applicable standard and is taken to have complied with Parts 3 and 4 of the Notice. Consequently, compliant devices that are already on the market will continue to be regarded as compliant despite the commencement of the Notice.

Section 6.2 Changes to an applicable standard

Subsection 6.2(1) specifies that section 6.2 will apply to a device if:

- the device complied with an applicable standard before the applicable standard was amended or replaced, and
- the label on the particular device shows that the device complied with the applicable standard on the day it was first manufactured or imported; and
- the label was applied in accordance with the Notice.

Subsection 6.2(2) provides that if an applicable standard is amended, the supplier is not required to demonstrate whether the device complied with the applicable standard as amended and is taken to have complied with Part 4 in relation to the applicable standard as amended.

Subsection 6.2(3) provides that if a new standard is made and it becomes an applicable standard, the supplier is not required to demonstrate whether the device complied with the new standard and is taken to have complied with Part 4 in relation to the new standard.

Consequently, devices which comply with an applicable standard that are already on the market will continue to be regarded as compliant despite amendments to, or a replacement of, the applicable standard. However, any devices manufactured or imported after the applicable standard was amended or replaced will have to comply with the standard as amended or as replaced (subject to sections 6.3 and 6.4).

In the note following subsection 6.2(2), suppliers are reminded that it is an ongoing requirement to update any information as necessary, in the national database. This requirement is imposed under subsection 4.2A(3) of the Notice. Under section 187A of the Act, a supplier that fails to comply with a specific requirement that must be met after a label has been applied to a device may commit an offence.

Section 6.3 Transitional—devices to which IEC, CISPR or AS/NZS standards apply

Sections 6.3 and 6.4 describe the transitional periods following amendment or replacement of applicable standards. When a standard is amended or replaced, there is a transition period of two years where a supplier may choose to comply with either the old standard or the new standard or amended standard. This addresses the situation where manufacturers may have spent considerable resources developing equipment to comply with an applicable standard only to see the standard replaced shortly before the device is presented to market.

During the transition period the supplier may choose to test against either the old standard or the new or amended standard, mitigating the effect of any change in standards. Once the transition period is over, any new devices must comply with the new or amended applicable standard.

Subsection 6.3(1) provides that the section applies to a device if any of the IEC, CISPR or AS/NZS standards apply to the device, and the old applicable standard is amended, or replaced by a new standard, before the day on which a device was first manufactured or imported and the amended standard or the new standard is an applicable standard for the device.

Subsection 6.3(2) provides that when an IEC, CISPR or AS/NZS standard is amended or replaced there is a transition period during which the supplier of a new device may choose which version of the applicable standard they wish to comply with. The transition period lasts 2 years from the date the old standard was amended or replaced.

Section 6.4 Transitional—devices to which EN standard applies

Subsection 6.4(1) provides that the section applies to a device if an EN standard (**old EN standard**) applies to the device, and the old EN standard is amended or replaced by a new standard before the day on which a device was first manufactured or imported and the amended standard or the new standard is an applicable standard for the device.

Subsection 6.4(2) provides that when an EN standard is amended or replaced there is a transition period where the supplier of a new device may choose which version of the EN standard they wish to comply with.

For devices to which the old EN standard applied, the transition period is the Official Journal period, which is defined to mean the period commencing on the day the old EN standard is amended or replaced and ending on the date of cessation of presumption of conformity for the old EN standard mentioned in the Official Journal of the European Union.

At the date of making the Notice, the Official Journal of the European Union was published on the European Union Law website <http://eur-lex.europa.eu>

Part 7—Requirements to be met after labels applied—devices imported from New Zealand

Section 7.1 Purpose of this Part

Australia and New Zealand have harmonised their EMC regulatory arrangements as part of the TTMRA. Section 7.1 provides that Part 7 provides ways for the ACMA to investigate devices that have been labelled under the New Zealand labelling legislation and imported into Australia.

Section 1.9 explains when a device complies with New Zealand labelling legislation.

Section 7.2 Provision of information to authorised officer

As the ACMA is the regulator responsible for the EMC regulatory arrangements within Australia, an authorised officer may wish to inspect the compliance records of a device imported from New Zealand.

Subsection 7.2(1) provides that an authorised officer may, in writing, require the importer of a device imported from New Zealand to provide the compliance records for the device showing it complies with the New Zealand labelling legislation. The supplier must provide this information within 10 working days.

Subsection 7.2(2) provides that if an authorised officer has concerns about the compliance of a device that is imported from New Zealand, the officer may request in writing, assistance from the New Zealand regulator (namely the Radio Spectrum Management (**RSM**) unit of the Ministry of Business, Innovation and Employment) to investigate whether the device complies with the New Zealand labelling legislation.

Subsection 7.2(3) provides that if the RSM states that the device does not comply with the New Zealand labelling legislation, or the RSM does not respond within 60 days of the request from the authorised officer, then the exemption from this Notice (in section 2.3) that usually applies to devices imported from New Zealand does not apply for the particular device.

This means the device imported from New Zealand will then need to comply with all the requirements in the Notice.

Schedule 1—Standards

Schedule 1 lists the EMC Standard as the standard within which an applicable industry standard is defined in relation to a device.

Schedule 2—Devices to which this Notice does not apply

Schedule 2 sets out the types of devices that are exempt from the scope of the Notice (referred to in section 2.2).

Among the exemptions in Schedule 2 are these:

1. Devices that contain one or more radiocommunications transmitters and which retain minimal or no functionality if all the radiocommunications transmitters are turned off will be exempt if they comply with another radio emissions standard. For example, a garage door remote does not have any functionality unless the internal radiocommunications transmitter is being activated when the button is pressed to open the garage. Such a device will have to comply with the *Radiocommunications (Short Range Devices) Standard 2014* and the *Radiocommunications (Electromagnetic Radiation – Human Exposure) Standard 2014* and, consequently, does not also need to comply with the Notice.

Note that a device which contains one or more radiocommunications transmitters and which does retain functionality if the transmitters are turned off (for example, a smart phone or a smart meter) must comply with the Notice. Section 2.6 of the Notice provides that such a device must be assessed for compliance with the transmitters turned off.

2. Devices that do not contain a radiocommunications transmitter and which are subject to other radio emissions standards, such as medical and therapeutic devices for which emission standards are mandated under the *Therapeutic Goods Act 1989*.
4. Devices used in military equipment or weapons systems of the Defence Force. This exemption would not cover general devices such as computers or office equipment imported or manufactured for the use of the Defence Force where the device is not part of military equipment or weapons systems.
6. Devices that are designed or adapted for conducting a test, measurement or study of electromagnetic phenomena in an educational, training or research establishment are exempt. This exemption would not cover devices that are supplied to the general public.
11. A device that is a fixed installation, or is included, or to be included, in a fixed installation. The term **fixed installation** is defined in subsection 1.5(2). This exemption is intended to apply to complex devices, which are often made upon special request, that need to be installed at a fixed location prior to operation. Testing of such installations is often impractical prior to installation, due to the size and complexity of the installed device. Though these installations are not subject to the requirements of the Notice, operation of such installations is still subject to the prohibitions in the Act against knowingly or recklessly causing interference.
13. A vehicle or machine that is supplied by a member of CMEIG, the FCAI, TMA or TIC where those vehicles or machines comply with the emission requirements contained in industry codes applicable to members of CMEIG, the FCAI, TMA or TIC.

15. Personal computers assembled in Australia, using components that are individually compliant and labelled in accordance with the Notice and, if a component is intended for connection to a telecommunications network, in accordance with the *Telecommunications (Labelling Notice for Customer Equipment and Customer Cabling) Instrument 2015*. Such a computer is exempt because the risk of the computer causing an interference problem is mitigated by its assembly from compliant subassemblies.

This exemption allows a person who assembles personal computers in Australia from compliant and labelled parts to supply such personal computers without the necessity to comply with the Notice.

Schedule 3—RCM

Schedule 3 sets out the form of the RCM symbol.

The RCM is a protected symbol for section 188A of the Act. The RCM is a trademark owned by Australian and New Zealand regulators.