**EXPLANATORY STATEMENT**

**Prepared by the Australian Communications and Media Authority**

***Radiocommunications Act 1992***

***Radiocommunications (VHF Radiotelephone Equipment – Maritime Mobile Service) Standard 2018***

**Authority**The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (VHF Radiotelephone Equipment – Maritime Mobile Service) Standard 2018* (the **ACMA standard**) under subsection 162(1) of the *Radiocommunications Act 1992* (**the Act**) and subsection 33(3) of the *Acts Interpretation Act 1901* (**the AIA**).

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

Subsection 33(3) of the AIA relevantly provides that where an Act confers a power to make a legislative instrument, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

**Purpose and operation of the instrument**

The ACMA standard applies to radiocommunications devices which are radiotelephone transmitters or receivers operating within maritime mobile service VHF frequencies.[[1]](#footnote-1) The ACMA standard sets the standard for performance and maximum permitted level of radio emissions for such radiocommunications devices by reference to three industry standards that set out technical performance matters (including test methods and limits). The ACMA standard repeals and replaces the *Radiocommunications (VHF Radiotelephone Equipment – Maritime Mobile Service) Standard 2014* (the **previous ACMA standard**) which previously applied to such devices.

Subject to certain exemptions in Divisions 4 and 5 of Part 4.1 of the Act, it is an offence under Division 2 of Part 4.1 of the Act to:

* knowingly supply a non-standard device;
* possess a non-standard device for the purpose of operation; or
* cause emissions by the operation of a non-standard device.

A non-standard device is a device that does not comply with the requirements of a section 162 standard that applies to the device.

In concert with the *Radiocommunications (Compliance Labelling – Devices) Notice 2014* (**the Compliance Labelling Notice**) made under subsection 182(1) of the Act, the ACMA standard regulates the supply of the specified radiocommunications devices into Australia. The ACMA standard defines performance and radio emission level requirements for specified radiocommunications devices, while the Compliance Labelling Notice specifies testing, labelling and record keeping obligations that apply to suppliers of radiocommunications devices which are subject to the ACMA standard.[[2]](#footnote-2)

The ACMA standard incorporates joint Australian and New Zealand industry standards (**Australian industry standards**) and specifies the devices to which each standard applies. Each Australian industry standard replicates corresponding industry standards set by the European Telecommunications Standards Institute (**ETSI Standards**). Accordingly, devices may comply with the ACMA standard by complying with either the relevant Australian industry standard or the equivalent ETSI Standard. The Australian industry standards and the equivalent incorporated ETSI Standards are listed below and are collectively referred to as **the industry standards**:

* + AS/NZS ETSI EN 301 025:2018 VHF radiotelephone equipment for general communications and associated equipment for Class "D" Digital Selective Calling (DSC) (**AS/NZS ETSI EN 301 025**) and ETSI EN 301 025VHF radiotelephone equipment for general communications and associated equipment for Class "D" Digital Selective Calling (DSC); Harmonised Standard covering the essential requirements of articles 3.2 and 3.3(g) of Directive 2014/53/EU (**ETSI EN 301 025**);
  + AS/NZS ETSI EN 301 178:2018 Portable Very High Frequency (VHF) radiotelephone equipment for the maritime mobile service operating in the VHF bands (for non-GMDSS applications only) (**AS/NZ ETSI EN 301 178)** and ETSI EN 301 178 Portable Very High Frequency (VHF) radiotelephone equipment for the maritime mobile service operating in the VHF bands (for non-GMDSS applications only); Harmonised Standard covering the essential requirements of article 3.2 of Directive 2014/53/EU (**ETSI EN 301 178**); and
  + AS/NZS ETSI EN 302 885:2018 Portable Very High Frequency (VHF) radiotelephone equipment for the maritime mobile service operating in the VHF bands with integrated handheld class H DSC (**AS/NZS ETSI EN 302 885**) and ETSI EN 302 885 Portable Very High Frequency (VHF) radiotelephone equipment for the maritime mobile service operating in the VHF bands with integrated handheld class H DSC; Harmonised Standard covering the essential requirements of articles 3.2 and 3.3(g) of Directive 2014/53/EU (**ETSI EN 302 885**).

In accordance with subsection 162(3) of the Act, the ACMA standard only mandates compliance with those requirements of the industry standards that are necessary or convenient for the purpose of containing interference to radiocommunications. Accordingly, compliance is required with the relevant applicable industry standards as modified by Schedule 1 to the ACMA Standard. A provision-by-provision description of the ACMA Standard is set out in the notes at **Attachment A**.

The ACMA Standard is a disallowable legislative instrument for the purposes of the *Legislation Act 2003* (**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 (subsection 314A(2) of the Act). The ACMA standard adopts, by reference, the following industry standards as in force or existing on the relevant date for an item. That is, the industry standards are incorporated into the ACMA standard as in force from time to time, but the standard applies in relation to a particular item as in force on a particular date (the relevant date for an item):

* AS/NZS ETSI EN 301 025;
* AS/NZS ETSI EN 301 178;
* AS/NZS ETSI EN 302 885;
* ETSI EN 301 025;
* ETSI EN 301 178; and
* ETSI EN 302 885.

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

* in the case of the Australian industry standards – copies could be obtained from SAI Global Pty Limited’s website at <https://infostore.saiglobal.com/> for a fee or may be viewed at an office of the ACMA on prior request and subject to licensing conditions;
* in the case of the ETSI standards– copies could be obtained from ETSI’s website at <http://www.etsi.org/> free of charge.

The ACMA standard also incorporates a reference to the ITU-R Recommendation M.493 Digital selective-calling system for use in the maritime mobile service, published by the International Telecommunication Union, as in force from time to time. The ITU-R Recommendation M.493 can be accessed on the International Telecommunication Union website ([www.itu.int](http://www.itu.int)).

The ACMA standard also incorporates the following Acts and legislative instruments by reference (including by the adoption of definitions), or otherwise refers to them:

* the AIA;
* the *Australian Communications and Media Authority Act 2005*;
* theLA;
* the *Radiocommunications (Interpretation) Determination 2015* (the **Interpretation Determination**); and
* the previous ACMA standard.

The Acts and legislative instruments listed above may be obtained from the Federal Register of Legislation (www.legislation.gov.au). The Acts are incorporated as in force, from time to time, in accordance with section 10 of the AIA and subsection 13(1) of the LA. The legislative instruments listed above are incorporated as in force, from time to time, in accordance with section 7 of the ACMA standard and subsection 14(1) of the LA.

**Consultation**

Before the ACMA standard 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.

Subsection 163(1) of the Act requires that before the ACMA makes a standard the ACMA must, so far as is practicable, try to ensure that interested persons have had an adequate opportunity to comment on the proposed standard and that due consideration has been given to any representations made.

The ACMA conducted a public consultation process in relation to the proposal to make the ACMA standard during the period 13 July 2018 to 24 August 2018. A draft standard was made available on the ACMA website. Interested parties were notified of the release of the draft standard and invited to comment.

The ACMA received one submission to the paper in relation to the ACMA standard. The submission expressed support for the draft ACMA standard. The submission also suggested that the ACMA standard should clarify that if an item is a limited coast station that is operated on land as part of the maritime mobile service, then the *Radiocommunications (Analogue Speech (Angle Modulated) Equipment) Standard 2014* may apply to that station. The suggestion was accepted, and a note was added to section 8 of the ACMA standard to that effect.

**Regulatory impact assessment**

A preliminary assessment of the proposal to make the ACMA standard was conducted by the Office of Best Practice Regulation (**OBPR**), based on information provided by the ACMA, for the purposes of determining whether a Regulation Impact Statement (**RIS**) would be required. OBPR advised that a RIS would not be required because the ACMA standard was expected to have a minor and machinery regulatory impact (OBPR reference number 23398).

**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 with human rights to be prepared in respect of that legislative instrument.

The statement of compatibility set out below has been prepared in accordance with that requirement.

***Overview of the instrument***

As noted above, the ACMA standard repeals and replaces the previous ACMA standard in order to adopt, by reference, current industry standards setting the performance requirements and emission limits for particular radiocommunications devices, namely radiotelephone transmitters and receivers that operate within maritime mobile service VHF frequencies.

The ACMA standard requires such devices to comply with technical requirements and to comply with maximum radio emissions as set out in industry standards incorporated into the ACMA standard. These requirements are designed to contain interference caused to radiocommunications.

***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 in 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 ACMA standard is compatible with human rights and freedoms as it does not raise any human rights issues.

**Attachment A**

**Notes to the *Radiocommunications (VHF Radiotelephone Equipment – Maritime Mobile Service) Standard 2018***

**Part 1 – Preliminary**

**Section 1 Name**

This section provides for the ACMA standard to be cited as the *Radiocommunications (VHF Radiotelephone Equipment – Maritime Mobile Service) Standard 2018.*

**Section 2 Commencement**

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

**Section 3 Authority**

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

**Section 4 Repeal of the *Radiocommunications (VHF Radiotelephone Equipment – Maritime Mobile Service) Standard 2014***

This section repeals the previous ACMA standard, the *Radiocommunications (VHF Radiotelephone Equipment – Maritime Mobile Service) Standard 2014* (Registration No. F2014L01246).

**Section 5 Background**

Subsection 5(1) provides that the ACMA standard applies to the radiocommunications devices described in section 13 and is made for performance of those devices.

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

**Part 2 – Interpretation   
  
Section 6 Definitions**

This section defines the key terms used in the ACMA standard.

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

**Section 7 References to other instruments**

This section provides that unless the contrary intention appears a reference to any other legislative instrument is a reference to that other legislative instrument as in force from time to time.

**Section 8 Applicable industry standard**

This section defines what constitutes an applicable industry standard for an item. Column 2 of the table lists the industry standard that is the applicable standard for the corresponding item listed in column 1 of the table.

**Section 9 Class of items**

This section defines key concepts necessary for interpreting the application of the ACMA standard.

The following concepts are defined in this section:

* whether an item is ‘included in a class of items’;
* ‘original item’ in relation to a class of items; and
* ‘original modified item’ in relation to a class of items.

The above terms are important for the purpose of determining the relevant date for an item, which is the date at which the item must comply with the applicable industry standard in order to meet the requirements of the ACMA standard (see section 11 and section 15 of the ACMA standard).

Under paragraph 9(1)(a), an item, other than a modified item, is ‘included in a class of items’ if the item is identical to each other item of the class (irrespective of when the items were manufactured or imported) and has the same manufacturer or importer as each other item.

Paragraph 9(1)(b) provides that the ‘original item’, in relation to a class, is the item of the class that was the first to be manufactured in Australia or imported.

Under paragraph 9(2)(a), a modified item is ‘included in a class of items’ if the modification made to create the item is identical to the modification made to create each other item in the class (irrespective of when the modifications were made), the modified item is, in all other aspects, identical to each other item (irrespective of when the items were manufactured or imported), and the modified item has the same manufacturer or importer as each other item.

Paragraph 9(2)(b) provides that the ‘original modified item’, in relation to the class, is the item in the class that was the first to be created in Australia or imported.

**Section 10 Date a modified item is created**

This section provides that, in the ACMA standard, a reference to ‘the date a modified item is created’ is a reference to the date of making of the modification which creates that item.

**Section 11 Relevant date for an item**

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

* in the case of an item (other than a modified item)
  + if the item is not included in a class of items – the date the item was manufactured in Australia or imported;
  + if the item is included in a class of items – the date the original item in the class was manufactured in Australia or imported;
* in the case of a modified item
  + if the modified item is not included in a class of items – the date the modified item was created in Australia or imported; or
  + if the modified item is included in a class of items – the date the original modified item in the class was created in Australia or imported.

**Section 12 Transition period**

### This section defines the term ‘transition period’. This transition period is a period of one year commencing on the day that an applicable industry standard is amended or replaced.

**Part 3 – Application and requirements**

**Section 13 Application**

This section specifies the types of radiocommunications devices to which the ACMA standard applies.

The ACMA standard applies to a radiocommunications device that is a radiotelephone transmitter and/or radiotelephone receiver that operates on one or more of the maritime mobile service VHF frequencies, unless the device is an exempt item. The terms ‘maritime mobile service VHF frequencies’ and ‘exempt items’ are terms defined in section 6 of the ACMA standard.

**Section 14 Requirements**

This section specifies that the item must meet the requirements of subsections 15(1), (2), (3) or (4) in relation to the applicable industry standard in order to comply with the ACMA standard.

**Section 15 Standard for items**

This section specifies the requirements which items must meet in order to comply with the ACMA standard. Different requirements apply depending on when the relevant date for the item occurs.

Under subsection 15(1) of the ACMA standard, if a relevant date (see section 11) for an item does not occur during a transition period, and the item complies with the applicable industry standard as in force at the relevant date (with the modifications specified in Schedule 1), the item meets the requirements of the subsection.

Subsection 15(2) deals with the case where a relevant date for an item occurs during a transition period (see section 12). In such cases the item may comply with:

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

If the item does so comply, it meets the requirements of subsection 15(2).

Subsection 15(3) deals with the case where there are multiple transition periods that overlap. When the relevant date for an item occurs during the period of overlap, the item may comply with:

* the applicable industry standard as in force immediately before the commencement of the earliest of those transition periods (with the modifications specified in Schedule 1); or
* the applicable industry standard, as in force at the commencement of any one of the overlapping transition periods (with the modifications specified in Schedule 1); or
* a replacement standard as in force at the commencement of the transition period for the replacement of that applicable industry standard.

If the item does so comply, it meets the requirements of subsection 15(3).

Subsection 15(4) deals with the situation where a relevant date for an item occurs after a transition period for the replacement of an applicable industry standard and the item complies with the replacement standard as in force at the commencement of the transition period, then the item meets the requirements of subsection 15(4) in relation to the applicable industry standard.

**Part 4 – Savings and transitional arrangements**

**Section 16 Items for which relevant date occurred before commencement day**

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

**Section 17 Items for which relevant date occurs during the ACMA transition period**

This section defines the ’ACMA transition period’ as the period of one year commencing on the commencement day of the ACMA standard.

This section provides that if a relevant date for an item occurs during the ACMA transition period and the item complies with the previous ACMA standard as in force immediately before the commencement of the ACMA standard, the item will be taken to comply with the ACMA standard.

**Schedule 1 - Modifications of applicable industry standards**

This Schedule describes the modifications to the applicable industry standards that are adopted by the ACMA standard. Each clause contains a table which outlines provision of the applicable industry standard which have been modified. Clause 1 specifies modifications of AS/NZS ETSI EN 301 025 and ETSI EN 301 025, clause 2 specifies modifications of AS/NZS ETSI EN 301 178 and ETSI EN 301 178 and clause 3 specifies modifications of AS/NZS ETSI EN 302 885 and ETSI EN 302 885.These modifications are necessary to ensure that the ACMA standard only incorporates requirements that are necessary or convenient for containing interference to radiocommunications, in accordance with subsection 162(3) of the Act.

1. “Maritime mobile service VHF frequencies” means the frequencies specified in the *Australian Radiofrequency Spectrum Plan 2017* that may be used for the purpose of maritime mobile services that exceed 30 MHz but do not exceed 300 MHz. [↑](#footnote-ref-1)
2. The *Radiocommunications (Compliance Labelling – Electromagnetic Radiation) Notice 2014* and the *Radiocommunications Labelling (Electromagnetic Compatibility) Notice 2017* may also affect the supply of devices that are radiocommunications transmitters. [↑](#footnote-ref-2)