

# EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Australian Communications and Media Authority Act 2005*

*Radiocommunications Act 1992*

***Radiocommunications Legislation (Consequential Amendments) Instrument 2018 (No. 1)***

## Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications Legislation (Consequential Amendments) Instrument 2018 (No. 1)* (**the instrument**) under:

- (a) subsection 60(1) of the *Australian Communications and Media Authority Act 2005* (**the ACMA Act**);
- (b) paragraph 107(1)(f) and subsections 132(1) and 182(1) of the *Radiocommunications Act 1992* (**the Radcomms Act**); and
- (c) subsection 33(3) of the *Acts Interpretation Act 1901* (**the AIA**).

### *Subsection 60(1) of the ACMA Act*

Subsection 60(1) of the ACMA Act relevantly provides that the ACMA may, by written instrument, make determinations fixing charges for services provided by the ACMA and any matter in relation to which expenses are incurred by the ACMA under various Acts, including the Radcomms Act.

The *Radiocommunications (Charges) Determination 2017* (**the Charges Determination**) is made under subsection 60(1) of the ACMA Act and specifies the charges payable to the ACMA for various services provided by the ACMA under the ACMA Act and the Radcomms Act, including charges for testing of radiocommunications devices against the requirements of standards made under section 162(1). The instrument amends the Charges Determination.

### *Paragraph 107(1)(f) of the Radcomms Act*

Under paragraph 107(1)(f) of the Radcomms Act, the ACMA may determine licence conditions for the operation of a particular type of apparatus licence. The instrument amends two such determinations, being:

- the *Radiocommunications Licence Conditions (Maritime Coast Licence) Determination 2015* (**the Maritime Coast Licence Determination**); and
- the *Radiocommunications Licence Conditions (Maritime Ship Licence) Determination 2015* (**the Maritime Ship Licence Determination**).

### *Subsection 132(1) of the Radcomms Act*

Under subsection 132(1) of the Radcomms Act, the ACMA may issue a class licence. The instrument amends two such class licences, being:

- the *Radiocommunications (Aircraft and Aeronautical Mobile Stations) Class Licence 2016* (**the Aircraft and Aeronautical Mobile Stations Class Licence**); and

- the *Radiocommunications (Maritime Ship Station – 27 MHz and VHF) Class Licence 2015 (the Maritime Ship Station Class Licence)*.

#### *Subsection 182(1) of the Radcomms Act*

Subsection 182(1) of the Radcomms Act provides that the ACMA may, by legislative instrument, give notice requiring any person who manufactures or imports a device included in a specified class of devices to apply a label to the device to indicate whether the device meets the requirements of the radiocommunications standards or the class licence specified in the notice. The instrument amends Schedule 2 to the *Radiocommunications (Compliance Labelling – Devices) Notice 2014 (the Compliance Labelling Notice)* to update the reference to a specified radiocommunications standard.

#### *Subsection 33(3) of the AIA*

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. Accordingly, each of the powers to make legislative instruments under subsection 60(1) of the ACMA Act and paragraph 107(1)(f), subsection 132(1) and subsection 182(1) of the Radcomms Act includes the power to vary those legislative instruments.

### **Purpose and operation of the instrument**

The ACMA has made the *Radiocommunications (VHF Radiotelephone Equipment – Maritime Mobile Service) Standard 2018 (the 2018 ACMA standard)*. The 2018 ACMA standard repeals and replaces the *Radiocommunications (VHF Radiotelephone Equipment – Maritime Mobile Service) Standard 2014 (the previous ACMA standard)*.

The instrument makes consequential changes to the following legislative instruments that reference the previous ACMA standards:

- the Aircraft and Aeronautical Mobile Stations Class Licence;
- the Charges Determination;
- the Compliance Labelling Notice;
- the Maritime Coast Licence Determination;
- the Maritime Ship Licence Determination; and
- the Maritime Ship Station Class Licence.

The purpose of the instrument is to update each reference to the previous ACMA standard, in those other legislative instruments, and, where appropriate, replacing it with a reference to the 2018 ACMA standard.

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

The instrument is a disallowable legislative instrument for the purposes of the *Legislation Act 2003 (the LA)*.

### **Documents incorporated by reference**

The instrument does not incorporate any documents by reference. It amends other legislative instruments that reference the previous ACMA standard that was repealed and replaced. The instrument updates each reference to the previous ACMA standard by replacing it with a reference to the 2018 ACMA standard. Each of those other a legislative instruments is registered on the Federal Register of Legislation (which may be accessed at [www.legislation.gov.au](http://www.legislation.gov.au)).

## 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 2018 ACMA standard during the period 13 July 2018 to 24 August 2018. A draft of the 2018 ACMA standard was made available on the ACMA website along with a description of the consequential amendments that were proposed to be made to each of the legislative instruments made by the ACMA that referenced the previous ACMA standard. Interested parties were notified of the release of the draft ACMA standard and invited to comment.

The consultation on the ACMA website described the purpose of the instrument and the consequential amendments that were proposed to be made as result of the proposed replacement of the previous ACMA standard. As the amendments were consequential in nature, the ACMA did not consult on a draft of the consequential amendments instrument or conduct a separate consultation process in relation to the making of the instrument.

There are additional statutory consultation requirements that apply for any variations to be made to class licences, specified in subsection 136(1) of the Radcomms Act.<sup>1</sup> Under that subsection, the ACMA is required to publish a written notice that states that it proposes to vary the class licence, sets out the subject matter of the variation, the class licence and the proposed variation and invites interested persons to make representations about the proposed variation within a specified period of not less than one month. The ACMA is also required to publish this notice on its website and in one or more forms that are readily accessible to the public (see subsection 136(2A)).

Notification of the proposed consultation was published in the Gazette on 19 July 2018<sup>2</sup> and on the ACMA's website, in accordance with the requirements of subsections 136(1) and (2A) of the Radcomms Act.

The ACMA received one submission in relation to the draft 2018 ACMA standard. There were no comments on the proposed consequential amendments, including in relation to the variation to the class licences.

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<sup>1</sup> Further consultation requirements may apply to proposed variations of class licences if the variation would affect spectrum allocated or to be re-allocated by issuing or re-issuing spectrum licences (see subsection 136(1A)). The consequential amendments to the two class licences made by the instrument do not affect such spectrum so subsection 136(1A) does not apply.

<sup>2</sup> <https://www.legislation.gov.au/Details/C2018G00575>

## **Regulatory impact assessment**

A preliminary assessment of the proposal to make the instrument was conducted by the Office of Best Practice Regulation (**OBPR**), based on information provided by the ACMA, for the purposes of determining whether a Regulation Impact Statement (**RIS**) would be required. OBPR advised that a RIS would not be required because the instrument was not expected to have a regulatory impact on businesses, community organisations or individuals (OBPR reference number 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 to meet that requirement.

## ***Overview of the instrument***

As noted above, the purpose of the instrument is to update each reference to the previous ACMA standard, in the following legislative instruments, by replacing it with a reference to the 2018 ACMA standard, where appropriate:

- the Aircraft and Aeronautical Mobile Stations Class Licence;
- the Charges Determination;
- the Compliance Labelling Notice;
- the Maritime Coast Licence Determination;
- the Maritime Ship Licence Determination; and
- the Maritime Ship Station Class Licence.

## ***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 (Consequential Amendments) Instrument 2018 (No. 1)***

### **Section 1 Name**

This section provides for the instrument to be cited as the *Radiocommunications (Consequential Amendments) Instrument 2018 (No. 1)*.

### **Section 2 Commencement**

This section provides that the instrument commences on the later of:

- the day after this instrument is registered on the Federal Register of Legislation; and
- the day on which the 2018 ACMA standard commences.

Both of the events mentioned above must occur before the instrument commences.

### **Section 3 Authority**

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

- (a) subsection 60(1) of the ACMA Act; and
- (b) paragraph 107(1)(f) and subsections 132(1) and 182(1) of the Radcomms Act.

### **Section 4 Amendments**

This section provides that each of the instruments that are specified in Schedule 1 to the instrument is amended as set out in the applicable items in the Schedule, and any other item in the Schedule has effect according to its terms.

#### **Schedule 1—Changes to references to the *Radiocommunications (VHF Radiotelephone Equipment – Maritime Mobile Service) Standard 2014* and other consequential amendments**

##### ***Radiocommunications (Aircraft and Aeronautical Mobile Stations) Class Licence 2016 (F2016L01294)***

###### **Item [1] Subparagraph 6(b)(iii)**

Item [1] updates the reference to the previous ACMA standard by replacing it with a reference to the 2018 ACMA standard.

##### ***Radiocommunications (Charges) Determination 2017 (F2017L00328)***

###### **Item [2] Schedule 2, Part 1, definition of AS/NZS 4415.1**

###### **Item [3] Schedule 2, Part 1, definition of AS/NZS 4415.2**

###### **Item [4] Schedule 2, Part 1, Note after definition of AS/NZS 4415.2**

The Charges Determination references the previous ACMA standard in relation to charges that the ACMA may recover for any testing of radiocommunications devices it performs against the previous ACMA standard. Under the transitional arrangements applicable for the 2018 ACMA standard, testing against the previous ACMA standard may still be relied upon to demonstrate compliance (see sections 16 and 17 of the 2018 ACMA standard). Therefore, items [2], [3], and [4] ensure that the references to the previous ACMA standard refer to that standard as in force immediately before its repeal.

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

**Item [5]            Schedule 2 (table item 12)**

Item [5] updates the reference to the previous ACMA standard in table item 12 of Schedule 2 to the Compliance Labelling Notice, by replacing it with a reference to the 2018 ACMA standard. The general effect of this amendment is that, before a supplier applies a compliance label to a device to which the new ACMA standard applies, the supplier must ensure that the device complies with that standard at the compliance level mentioned in column 3 of Schedule 2 for that standard.

***Radiocommunications Licence Conditions (Maritime Coast Licence) Determination 2015 (F2015L01283)***

**Item [6]            Section 2.3**

Item [6] omits the existing section and substitutes it with a new section named “Technical requirements – VHF IMM service equipment”. The new text is substantially the same but corrects an ambiguity in the original section which made it unclear whether a device was required to comply with a relevant standard that was in force on the date the device was manufactured or imported but that no longer ‘applies to the station’, due to its subsequent repeal. The new text clarifies that maritime coast stations that include very high frequency (VHF) international maritime mobile service equipment must comply with the requirements of the standard mentioned in Part 2 of Schedule 1 which was in force and applied to the station at the time the station was manufactured in Australia or imported.

**Item [7]            Schedule 1, Part 2, table, after item 201**

Item [7] inserts new item number [202] to reference the 2018 ACMA standard, thereby ensuring that stations must comply with the 2018 ACMA standard if that standard was in force and applied to the station at the date of its manufacture in Australia or importation.

***Radiocommunications Licence Conditions (Maritime Ship Licence) Determination 2015 (F2015L00288)***

**Item [8]            Schedule 1, Part 1**

Item [8] updates the reference to the previous ACMA standard in Part 1 of Schedule 1 by replacing it with a reference to the 2018 ACMA standard. The general effect of this amendment is that each device included in a maritime ship station must comply with the applicable requirements of the 2018 ACMA standard.

***Radiocommunications Licence Conditions (Maritime Ship Station – 27MHz and VHF) Class Licence 2015 (F2015L01197)***

**Item [9]            Schedule 1, Part 1.2 (table item 1)**

Item [9] updates the reference to the previous ACMA Standard in Part 1.2 of Schedule 1 by replacing it with a reference to the 2018 ACMA standard. The general effect of this amendment is that each device included in a maritime ship station must comply with the applicable requirements of the new ACMA standard.