

# EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Radiocommunications Act 1992*

## ***Radiocommunications Legislation (2018 Measures No. 1) Instrument 2018***

### **Authority**

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications Legislation (2018 Measures No. 1) Instrument 2018 (the instrument)* under subsections 162(1) and 182(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 empowers the ACMA to make, by legislative instrument, standards for the performance of specified devices.

Subsection 182(1) of the Act empowers the ACMA to give notice requiring persons who manufacture or import a device included in a specified class of devices to apply to each such device a label that indicates whether the device meets the requirements of the standards specified in the notice.

Subsection 33(3) of the AIA provides that where an Act confers a power to make a legislative instrument, the power shall be construed to include 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.

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

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

#### ***Radiocommunications (Short Range Devices) Standard 2014***

The instrument amends the *Radiocommunications (Short Range Devices) Standard 2014 (the Short Range Devices Standard)* to specify that the standard for performance of a low interference potential device is the standard listed in the *Radiocommunications (Low Interference Potential Devices) Class Licence 2015 (the LIPD Class Licence)*. If no standard is listed in the LIPD Class Licence, then the applicable standard is that which was in place prior to the making of the instrument, namely, Standards Australia AS/NZS 4268 (**the industry standard**).

The Short Range Devices Standard regulates the technical performance of applicable devices supplied to the Australian market. The LIPD Class Licence regulates the operation of specified low interference potential devices in relation to their use of the radiofrequency spectrum in Australia. Low interference potential devices include a variety of low-power radiocommunications devices such as garage door openers, bar code readers and wireless microphones.

For many types of devices, the industry standard duplicates information already contained in the LIPD Class Licence specifying the European or United States standard that applies to a particular device. While the industry standard is routinely updated by Standards Australia following a variation to the LIPD Class Licence, there is usually a delay in the order of six to twelve months. This delay may discourage the earlier importation and marketing of devices by suppliers and, as a consequence, delay the uptake of improved devices and services by consumers.

The instrument addresses the delay between variations to the LIPD Class Licence and consequential updates of the industry standard. Variations to standards specified in the LIPD Class Licence will now take effect immediately. New section 8A in the Short Range Devices Standard sets out new

arrangements for low interference potential devices. It specifies that the standard for performance for such devices is the standard listed in Column 4 of Schedule 1 to the LIPD Class Licence. If no standard is listed, then section 8 of the Short Range Devices Standard applies to the low interference potential device.

Subsections (3), (4) and (5) of section 8A mirror existing provisions in section 8 that establish a transition period. A low interference potential device is deemed to comply with an existing standard for a period of one year after the standard is amended or replaced.

Section 9A has the effect that a low interference potential device manufactured or imported prior to commencement of the instrument is compliant with the Short Range Devices Standard if it complied with the previous version of the Short Range Devices Standard that was in force on the date of manufacture or importation.

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

The instrument also amends the *Radiocommunications (Compliance Labelling – Devices) Notice 2014 (the Compliance Labelling Notice)*. This amendment is required as a consequence of the ACMA making the *Radiocommunications (Intelligent Transport Systems) Standard 2018 (the Intelligent Transport Systems Standard)*.

The Compliance Labelling Notice specifies the standards that must be met before a supplier may apply a compliance label to a device. The amendment includes the Intelligent Transport Systems Standard within compliance level 1 in Schedule 2 to the Notice. Compliance level 1 is the lowest level of compliance required of a supplier. It requires a supplier to:

- (a) hold documentation that unambiguously identifies the product; and
- (b) complete and sign a declaration of conformity for the device.

There is no requirement to hold a test report or require testing. Most devices used in intelligent transport systems will be manufactured overseas and will already have such documentation as a result of their supply to European or North American markets. The Intelligent Transport Systems Standard requires devices supplied to the Australian market to comply with the European Telecommunications Standards Institute Standard EN 302 571.

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

### **Documents incorporated by reference**

Under section 314A of the Act, 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.

The instrument incorporates by reference the LIPD Class Licence and the Intelligent Transport Systems Standard. Legislative instruments can be accessed, free of charge, on the Federal Register of Legislation ([www.legislation.gov.au](http://www.legislation.gov.au)).

### **Consultation**

Before the instrument was made, the ACMA was satisfied that:

- (a) in accordance with section 17 of the LA, consultation was undertaken to the extent appropriate and reasonably practicable; and

(b) in accordance with section 163 of the Act, interested persons have had adequate opportunity to make representations about the proposed amendment to the Short Range Devices Standard, and due consideration was given to any representations so made.

Between 4 July 2018 and 10 August 2018, the ACMA conducted a formal public consultation process in relation to the instrument.

The ACMA received two written submissions in response to the draft instrument, neither of which objected to the proposed amendments.

### **Regulatory impact assessment**

The Office of Best Practice Regulation (OBPR) has considered the matter and formed the opinion that the proposed variations are minor and machinery in nature. Accordingly, OBPR advised that a Regulation Impact Statement was not required. The OBPR reference ID number is 22710.

### **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**

The *Radiocommunications Legislation (2018 Measures No. 1) Instrument 2018 (the instrument)* amends the *Radiocommunications (Short Range Devices) Standard 2014* to specify that the standard for performance of a low interference potential device is the standard listed in the *Radiocommunications (Low Interference Potential Devices) Class Licence 2015 (the LIPD Class Licence)*. If no standard is listed in the LIPD Class Licence, then the applicable standard is that which was in place prior to the making of the instrument, namely, Standards Australia AS/NZS 4268 (**the industry standard**).

The instrument also amends the *Radiocommunications (Compliance Labelling – Devices) Notice 2014 (the Compliance Labelling Notice)*. This amendment is required as a consequence of the ACMA making the *Radiocommunications (Intelligent Transport Systems) Standard 2018 (the Intelligent Transport Systems Standard)*. The amendment includes the Intelligent Transport Systems Standard within compliance level 1 in Schedule 2 to the Compliance Labelling Notice.

### **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 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 Legislation (2018 Measures No. 1)*  
*Instrument 2018***

**Section 1 Name of instrument**

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

**Section 2 Commencement**

This section provides for the instrument to commence on the later of: (a) the day after it is registered on the Federal Register of Legislation; and (b) the commencement of the *Radiocommunications (Intelligent Transport Systems) Standard 2018*. Both of these events must occur before the commencement of the instrument.

**Section 3 Authority**

This section identifies the provisions of the Act that authorise the making of the instrument, namely subsections 162(1) and 182(1) of the *Radiocommunications Act 1992*.

**Section 4 Amendments**

This section provides that the amendments set out in the two Schedules to the instrument have effect.

**Schedule 1 *Radiocommunications (Short Range Devices) Standard 2014 [F2014L01253]***

**Item 1 Section 4, after the definition of *included in a class of radiocommunications devices***

This item defines *LIPD Class Licence* as the *Radiocommunications (Low Interference Potential Devices) Class Licence 2015*.

**Item 2 Section 4, definition of *low interference potential device***

This item replaces the full name of an instrument with the shortened form “LIPD Class Licence” as a consequence of defining this term at item 1.

**Item 3 Paragraph 5(1)(a)**

This item provides that the Short Range Devices Standard also applies to low interference potential devices. Prior to this amendment, low interference devices were included in the definition of a ‘short range device’.

**Item 4 Section 8, heading**

This item changes the name of section 8 to indicate that it applies to short range devices. This is a consequence of the amendment at item 6 that inserts a new section 8A.

**Item 5 Subsection 8(1)**

This item causes low interference devices to be excluded from the provisions of section 8, which specifies that the standard for applicable devices is set out in AS/NZS 4268.

**Item 6            After section 8**

This item inserts a new section 8A that deals with the standard for performance of low interference potential devices. This section provides that the standard for performance of a low interference potential device is the instrument specified for that device in Column 4 of Schedule 1 to the LIPD Class Licence. If no instrument is specified at that location, then section 8 of the Standard applies. The effect of these amendments is to establish the LIPD Class Licence as the primary source of information about applicable standards for low interference potential devices, rather than AS/NZS 4268.

The remaining provisions of section 8A (subsections 3, 4 and 5) deal with amendment or replacement of a standard specified in the LIPD Class Licence by establishing a one-year transition period for devices to comply with the amended or replaced standard. These provisions reproduce the existing provisions under section 8 dealing with the same circumstances.

**Item 7            After section 9**

This item inserts a new section 9A that establishes transitional arrangements for low interference potential devices that were manufactured, imported or modified before commencement of this amendment. If a device complied with the Standard as in force at the time of manufacture, importation or modification, then the device is taken to comply with the Standard. These provisions reproduce the existing provisions under section 9 dealing with the same circumstance.

**Schedule 2        *Radiocommunications (Compliance Labelling – Devices) Notice 2014*  
[F2014L01236]**

**Item 1            Schedule 2, after numbered item 15**

This item amends the table of applicable standards and compliance levels specified in Schedule 2 to the Compliance Labelling Notice by inserting a new item number, standard and compliance level into that table. The new standard is the *Radiocommunications (Intelligent Transport Systems) Standard 2018*.

This has the effect of giving notice that that standard applies for the purposes of section 182 of the Act.