

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Telecommunications Act 1997

Telecommunications (Mobile Equipment Air Interface) Technical Standard 2018

Authority

The Australian Communications and Media Authority (the **ACMA**) has made the *Telecommunications (Mobile Equipment Air Interface) Technical Standard 2018* (the **new Standard**) under subsection 376(1) of the *Telecommunications Act 1997* (the **Act**) and subsection 33(3) of the *Acts Interpretation Act 1901* (the **AIA**).

Subsection 376(1) of the Act provides that the ACMA may, by written instrument, make a technical standard relating to specified customer equipment or specified customer cabling.

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 new Standard

Technical standards made under section 376 of the Act are to consist only of such requirements as are necessary or convenient to achieve one or more of the objectives set out in subsection 376(2) of the Act. These objectives include:

- protecting the integrity of a telecommunications network or a facility;
- protecting the health and safety of persons who are reasonably likely to be affected by the operation of a telecommunications network or a facility;
- ensuring that customer equipment can be used to give access to an emergency call service; and
- ensuring, for the purposes of the supply of a standard telephone service or other carriage service, the interoperability of customer equipment with a telecommunications network.

Section 377 of the Act provides that, in making a technical standard under section 376, the ACMA may apply, adopt or incorporate (with or without modification) any matter contained in a standard proposed or approved by Standards Australia or by any other body or association, as in force or existing at a particular time or as in force or existing from time to time.

The *Telecommunications Technical Standard (Requirements for connection to an Air Interface of a Telecommunications Network – AS/CA S042) 2015* (the **2015 ACMA Standard**) adopted three industry standards published by Communications Alliance Limited (**Communications Alliance**) which deal with the general requirements and test methods for customer equipment for use in wireless connection (or air interface) to a telecommunications network.

The first of these industry standards, the Australian Standard AS/CA S042.1:2010 – *Requirements for connection to an air interface of a Telecommunications Network – Part 1: General (AS/CA S042.1:2010)*, sets out general requirements for mobile and satellite phones, including requirements for the dialling of emergency call services and acoustic safety.

The other two industry standards, the Australian Standard AS/ACIF S042.3:2005 – *Requirements for connection to an air interface of a Telecommunications Network – Part 3: GSM Customer Equipment (AS/ACIF S042.3:2005)* and the Australian Standard AS/CA S042.4:2010 – *Requirements for connection to an air interface of a Telecommunications Network – Part 4: IMT-2000 Customer Equipment (AS/CA S042.4:2010)*, set out requirements for particular customer equipment that are specific to the type of network used.

AS/ACIF S042.3:2005 sets out the requirements for customer equipment that uses Global System for Mobile Communications (GSM) (or 2G networks) (**GSM items**). AS/CA S042.4:2010 sets out the requirements for customer equipment that uses International Mobile Telecommunications (IMT) (or 3G/4G networks) (**IMT items**).

In 2015 and 2018, Communications Alliance revised and replaced AS/CA S042.1:2010 and AS/CA S042.4:2010 to address emerging wireless technology developments, including Voice over LTE (VoLTE) and Voice over Wi-Fi (VoWiFi) services, as well as other changes in technology (including 4G (LTE) mobile networks).

The latest technical requirements are set out in the Australian Standard AS/CA S042.1:2018 – *Requirements for connection to an air interface of a Telecommunications Network – Part 1: General (AS/CA S042.1:2018)* and the Australian Standard AS/CA S042.4:2018 – *Requirements for connection to an air interface of a Telecommunications Network – Part 4: IMT Customer Equipment (AS/CA S042.4:2018)*.

The ACMA has made the new Standard to repeal and replace the 2015 ACMA Standard to reflect the latest technical requirements for particular customer equipment.

The new Standard:

- applies to any item of customer equipment that is designed or intended for use in connection with a public mobile telecommunications service or a satellite service, or both, and is an addressable device;¹
- adopts AS/CA S042.1:2018 and AS/CA S042.4:2018 as in force at the times specified in the new Standard;
- generally requires an item to comply with each adopted industry standard, in relation to the item, as in force at one of the times specified for the item;
- provides an ACMA transition period for any amendment or a replacement of an adopted industry standard;²

¹ The term “addressable device” is defined in section 6 of the new Standard to mean a device that enables a carriage service provider to identify the device when used for two-way communications on a public mobile telecommunications service or a satellite service supplied by the carriage service provider.

- includes savings and transitional arrangements for items manufactured, imported or modified before the commencement of the new Standard and related items; and
- does not impose requirements in relation to any GSM item as that kind of customer equipment is no longer supplied in Australia.

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

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

Documents incorporated by reference

The new Standard incorporates the following Acts, legislative instruments and other documents by reference, or otherwise refers to them:

- the Act;
- the AIA;
- the LA;
- the 2015 ACMA Standard;
- AS/CA S042.1:2018;
- AS/CA S042.4:2018;
- Australian Standard AS/CA S042.1:2015 – *Requirements for connection to an air interface of a Telecommunications Network – Part 1: General* published by Communications Alliance (**AS/CA S042.1:2015**);
- Australian Standard AS/CA S042.4:2015 – *Requirements for connection to an air interface of a Telecommunications Network – Part 4: IMT Customer Equipment* published by Communications Alliance (**AS/CA S042.4:2015**).

The Acts referred to above 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 2015 ACMA Standard is incorporated as in force immediately before the commencement of the new Standard, in accordance with section 589 of the Act and subsection 14(1) of the LA. All Commonwealth Acts and legislative instruments are registered on the Federal Register of Legislation (<http://www.legislation.gov.au>).

The industry standards referred to above are incorporated as in force at the times specified in the new Standard, in accordance with sections 377 and 589 of the Act. (Those times include when an item is manufactured or modified in Australia or imported, and immediately before or at the commencement of an ACMA transition period.) Copies of the industry standards

² An ACMA transition period for any amendment or a replacement of an adopted industry standard is the same as any transition period determined by industry for that amendment or replacement or a period of two years commencing on the day the industry standard is amended or replaced. During an ACMA transition period, certain items may meet the requirements of the new Standard by complying with the adopted industry standard as in force immediately before the commencement of the transition period or the adopted industry standard (or a replacement standard) as in force at the commencement of the transition period.

could, at the time of making the new Standard, be obtained from Communications Alliance's website (<https://www.commsalliance.com.au>) free of charge.

Consultation

Before the new 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 378(1) of the Act requires that, before making a technical standard under section 376, the ACMA must, so far as is practicable, try to ensure that interested persons have had an adequate opportunity to make representations about the proposed standard and that due consideration has been given to any representations made. Subsection 378(5) of the Act provides that interested persons are not taken to have had an adequate opportunity unless there was a consultation period of at least 60 days.

The ACMA consulted with industry stakeholders and the general public during the period 29 June 2018 to 2 September 2018 on a proposal to make the new Standard, another technical standard, and consequential and other amendments to the *Telecommunications (Labelling Notice for Customer Equipment and Customer Cabling) Instrument 2015* (the **Labelling Notice**). Drafts of the technical standards, a marked-up version of the proposed amendments to the Labelling Notice and explanatory information, together with an invitation to comment, were published on the ACMA website. Interested parties were also notified of the consultation process and invited to comment.

The ACMA received one submission in response to the consultation. There were no specific comments in relation to the proposal to make the new Standard. The submission sought clarification of the ACMA's general approach to incorporating industry standards.³ A detailed response was provided to the person who made the submission.

Regulatory impact assessment

A preliminary assessment of the proposal to make the new 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 new Standard was expected to have a minor and machinery regulatory impact on businesses, community organisations or individuals (OBPR reference number 23591).

Statement of compatibility with human rights

³ The ACMA's general approach, in making a technical standard, is to incorporate an industry standard as in force at the time the technical standard is made and to incorporate any amendments to or a single replacement of the industry standard. If a replacement standard is made, the ACMA conducts a review of that new industry standard to ensure that it will continue to supply appropriate policy and regulatory outcomes. If the ACMA is satisfied of such matters, it remakes the technical standard which incorporates the new industry standard as in force at the time the technical standard is remade and incorporates any amendments to or a single replacement of that industry standard.

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 new Standard

As noted above, the new Standard repeals and replaces the 2015 ACMA Standard and adopts the industry standards AS/CA S042.1:2018 and AS/CA S042.4:2018 to reflect the latest technical requirements for particular customer equipment.

The new Standard applies to any item of customer equipment that is designed or intended for use in connection with a public mobile telecommunications service or a satellite service, or both, and is an addressable device.

The new Standard generally requires an item to comply with each adopted industry standard, in relation to the item, as in force at one of the times specified for the item.

Where a technical standard is an applicable technical standard (within the meaning of the Labelling Notice) in relation to an item, the item must be labelled before it is supplied to the Australian market indicating whether the item meets the requirement of the technical standard. The item cannot be connected to a telecommunications network or a facility unless the item complies with each applicable technical standard in relation to the item.

Human rights implications

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

Conclusion

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

Notes to the *Telecommunications (Mobile Equipment Air Interface) Technical Standard 2018*

Part 1–Preliminary

Section 1 Name

This section provides for the new Standard to be cited as the *Telecommunications (Mobile Equipment Air Interface) Technical Standard 2018*.

This section also provides that the new Standard may also be cited as the *Mobile Equipment Standard 2018*.

Section 2 Commencement

This section provides for the new Standard to commence at the start of the day after it is registered on the Federal Register of Legislation.

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

Section 3 Authority

This section identifies the provision of the Act that authorises the making of the new Standard, namely subsection 376(1) of the Act.

Section 4 Repeal of the *Telecommunications Technical Standard (Requirements for Connection to an Air Interface of a Telecommunications Network – AS/CA S042) 2015*

This section repeals the *Telecommunications Technical Standard (Requirements for Connection to an Air Interface of a Telecommunications Network – AS/CA S042) 2015* (F2015L00188).

Section 5 Background

Subsection 5(1) provides that the new Standard applies to particular customer equipment (referred to as an “item”), as provided by section 13.

Subsection 5(2) provides, in accordance with subsection 376(2) of the Act, that the new Standard only consists of such requirements as are necessary or convenient for:

- protecting the integrity of a telecommunications network or a facility;
 - protecting the health or safety of persons who:
 - operate;
 - work on;
 - use services supplied by means of; or
 - are otherwise reasonably likely to be affected by the operation of;
- a telecommunications network or a facility;

- ensuring that customer equipment can be used to give access to an emergency call service; and
- ensuring, for the purposes of the supply of a standard telephone service, the interoperability of customer equipment with a telecommunications network to which the equipment is, or is proposed to be, connected.

Part 2–Interpretation

Section 6 Definitions

This section defines a number of key terms used throughout the new Standard.

A number of other expressions used in the new Standard are defined in the Act (see the note at the end of this section).

Section 7 References to other legislative instruments

This section provides that in the new Standard, 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 the term “applicable industry standard” in relation to an item to which the new Standard applies. In all cases, AS/CA S042.1:2018 is an applicable industry standard in relation to an item. If an item is an IMT item, AS/CA S042.4:2018 is also an applicable industry standard in relation to the item (see section 6 for the definition of “IMT item”).

For example, if an item has 3G, 4G or 5G capability (that is, the item is an IMT item), AS/CA S042.1:2018 and AS/CA S042.4:2018 are applicable industry standards in relation to the item.

Section 9 ACMA transition period

This section defines the term “ACMA transition period”.

There is an ACMA transition period if an applicable industry standard is amended or replaced. In that event, the ACMA transition period is:

- in a case where industry has determined a transition period for the amendment or replacement of the applicable industry standard (see the notes to section 10) – a period that is the same as the transition period so determined; or
- in any other case – a period of two years commencing on the day the applicable industry standard is amended or replaced.

The intent of this section is to ensure that a manufacturer or importer of an item is allowed sufficient time to comply with any applicable requirements of the new Standard which may be affected by an amendment or a replacement of an applicable industry standard, and that

the time allowed is consistent with any transition period determined by industry in that regard.

Section 10 Industry transition period

This section defines the term “industry transition period”.

There is an industry transition period for an amendment or a replacement of an applicable industry standard if:

- industry has determined, in the instrument that amends or replaces the industry standard, arrangements to deal with any issues of a transitional nature that may arise as a result of the amendment or replacement of the industry standard;
- the arrangements are for a specified period commencing on the day the industry standard is amended or replaced (the **specified period**); and
- the arrangements have the effect of allowing a relevant item to comply with:
 - the industry standard as in force immediately before the commencement of the specified period; or
 - the industry standard, or the replacement standard, as in force at the commencement of the specified period.

In such a case, the industry transition period is the specified period (see the notes to section 9).

For the purposes of this section, a “relevant item” is an item that is manufactured or modified in Australia, or imported, during the specified period.

Section 11 Class of items

This section deals with following concepts:

- when an item is “included in a class of items”;
- when an item is an “original item” in relation to a class of items;
- when a modified item is “included in a class of items”;
- when an item is an “original modified item” in relation to a class of items.

These matters are significant in determining whether an item is compliant with the requirements of the new Standard. If an original item of a class of items is compliant with the requirements of the new Standard, all other items of the class will be treated as compliant with those requirements (irrespective of when the items were manufactured or imported or whether their compliance relates to an applicable industry standard that has since been amended or replaced).

Under paragraph 11(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. Under paragraph 11(1)(b), the “original item”, in relation to the class, is the item of the class that was the first to be manufactured in Australia or imported.

Under paragraph 11(2)(a), a modified item is “included in a class of items” if the modification which resulted in that item is identical to the modification which resulted in each other item of the class (irrespective of when the items were so modified); the modified item is, in all other respects, 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. Under paragraph 11(2)(b), the “original modified item”, in relation to the class, is the item of the class that was the first to be so modified in Australia or imported.

Section 12 Time a modified item is made

This section provides that a reference to “the time a modified item is made” is a reference to the time of making of the modification which results in that item.

This section makes it clear that the appropriate time for determining the applicable requirements of the new Standard for a modified item is not when the item was originally manufactured in its unmodified form, but when it was subsequently modified.

Part 3—Application and requirements

Section 13 Application of this technical standard

This section specifies the customer equipment to which the new Standard applies.

The new Standard applies to customer equipment that is designed or intended for use in connection with a public mobile telecommunications service or a satellite service, or both, and is an addressable device.

Section 14 Requirements

This section specifies the requirements which items must meet in order to comply with the new Standard.

Subsection 14(1) provides that an item (other than a modified item) must meet the requirements of at least one subsection of section 15 in relation to each applicable industry standard.

Subsection 14(2) provides that a modified item must meet the requirements of at least one subsection of section 16 in relation to each applicable industry standard.

Subsection 14(3) provides that neither subsection 14(1) or (2) applies to an item if, under section 17 (the savings and transitional arrangements), the item is taken to comply with the new Standard.

Section 15 Standard for items (other than modified items)

This section specifies the requirements which items (other than modified items) must meet in order to comply with the new Standard. (As noted above, items are not required to meet these requirements if, under section 17, they are taken to comply with the new Standard.)

An item is only required to meet the requirements of one of the subsections in relation to each applicable industry standard. The subsections cover the different cases in which an item may be manufactured in Australia or imported. Those cases include:

- where the item is manufactured in Australia or imported at a time an applicable industry standard is in force;
- where the item is manufactured in Australia or imported during or after an ACMA transition period for an amendment or a replacement of an applicable industry standard; and
- where the item is included in a class of items.

Each subsection requires an item to comply with an applicable industry standard, referred to in that subsection, which is incorporated as in force at a time that is appropriate for the item in the circumstances of the case. This recognises that, over time, an applicable industry standard may be amended or replaced and ensures that a manufacturer or importer of an item is allowed sufficient time to transition to any amended applicable industry standard or a replacement standard.

Under subsection 15(1), an item meets the requirements of the subsection in relation to an applicable industry standard if the item complies with the applicable industry standard as in force at the time the item is manufactured in Australia or imported.

Subsection 15(2) deals with a case where an item is manufactured in Australia or imported during an ACMA transition period for an amendment or a replacement of an applicable industry standard. In that case, the item meets the requirements of the subsection in relation to the applicable industry standard if the item complies with either:

- the applicable industry standard as in force immediately before the commencement of the transition period; or
- the applicable industry standard, or a replacement standard, as in force at the commencement of the transition period.

This recognises that changes to an applicable industry standard may occur at a time disadvantageous to a manufacturer or importer of an item (where, for example, development and testing of the item has been predicated on an applicable industry standard as in force before any amendment or a replacement of the applicable industry standard).

Subsection 15(3) deals with a case where there are overlapping ACMA transition periods in relation to an applicable technical standard and an item is manufactured in Australia or imported during the period of overlap. (An overlap could occur if an applicable industry standard is amended or replaced during an ACMA transition period for an earlier amendment of the applicable industry standard.) In that case, the item meets the requirements of the subsection if the item complies with any of the following:

- the applicable industry standard as in force immediately before the commencement of the earliest of those transition periods;
- the applicable industry standard as in force at the commencement of any one of those transition periods;

- a replacement standard as in force at the commencement of the ACMA transition period for that replacement of the applicable industry standard.

Subsection 15(4) deals with a case where an item is manufactured in Australia or imported after an ACMA transition period for the replacement of an applicable industry standard. In that case, the item meets the requirements of the subsection in relation to the applicable industry standard if the item complies with the replacement standard as in force at the commencement of the transition period.

Subsection 15(5) deals with a case where an item is included in a class of items. In that case, the item meets the requirements of the subsection in relation to an applicable industry standard if the original item of the class meets the requirements of another subsection of section 15 in relation to the applicable industry standard. This subsection ensures that if an original item of a class of items is compliant with those requirements, all other items of the class will also be treated as compliant with the requirements (irrespective of when the items were manufactured or imported or whether their compliance relates to an applicable industry standard that has since been amended or replaced).

Section 16 Standard for modified items

This section specifies the requirements which modified items must meet in order to comply with the new Standard. (As noted above, items are not required to meet these requirements if, under section 17, they are taken to comply with the new Standard.)

This section operates in a very similar way to section 15. Set out below are the key differences.

The requirements under section 16 refer to the time a modified item is made in Australia (see section 12) or imported, whereas the requirements under section 15 refer to the time an item is manufactured in Australia or imported.

Subsection 16(6) deals with a case where a modified item would have been included in a class of items but for the making of the modification which resulted in that item. In that case, the item meets the requirements of the subsection in relation to an applicable industry standard if:

- the original item, or (in the case of a class of modified items) the original modified item of the class:
 - complies with the applicable industry standard, or a replacement standard, as in force at a particular time mentioned in another subsection of section 16; and
 - otherwise meets the requirements of that subsection; and
- the modification is not material.

Subsection 16(7) provides that a modification is “material” if the modification could reasonably be expected to affect whether the modified item complies with the same standard with which the original item, or original modified item, of the class complies.

Part 4—Savings and transitional arrangements

Section 17 Items manufactured, imported or modified before commencement and other related items

This section provides savings and transitional arrangements for items manufactured, imported or modified before the commencement of the new Standard and other related items.

These arrangements cover items that had to comply with the 2015 ACMA Standard immediately before its repeal and, if any of those items is an original item or original modified item of a class of items, the other items of the class.

Subsection 17(1) defines the key terms used in this section.

The terms include:

- “AS/CA S042.1:2015”;
- “AS/CA S042.4:2015”; and
- “old technical standard” which is defined to mean the 2015 ACMA Standard as in force immediately before the commencement of the new Standard.

Other terms have the same meaning as in the 2015 ACMA Standard. They include “ACMA transition period”, “applicable Australian Standard”, “AS/CA S042.1:2010” and “AS/CA S042.4:2010”.

An applicable Australian Standard is an industry standard that was adopted by the 2015 ACMA Standard. They include AS/CA S042.1:2010 (in relation to all items) and AS/CA S042.4:2010 (in relation to IMT items). Those applicable Australian Standards were replaced by AS/CA S042.1:2015 and AS/CA S042.1:2015. There was an ACMA transition period for the replacement of each of those applicable Australian Standards which ended before the commencement of the new Standard.

Under subsection 17(2), an item (other than a modified item) is taken to comply with the new Standard if the item was manufactured in Australia or imported before the commencement of the new Standard and the item complies with the old technical standard.

Subsection 17(3) applies in a case where an item (other than a modified item) was manufactured in Australia or imported after an ACMA transition period for the replacement of any applicable Australian Standard in relation to the item but before the commencement of the new Standard. In that case, the item is taken to comply with the new Standard if:

- the item complies with the replacement standard, in relation to each applicable Australian Standard concerned, as in force at the time the item was manufactured in Australia or imported; and
- the item meets the requirements of the old technical standard in relation to each other applicable Australian standard (if any).

For example, if:

- an IMT item was manufactured in Australia or imported after the ACMA transition periods for the replacement of AS/CA S042.1:2010 and AS/CA S042.4:2010 but before the commencement of the new Standard; and
- the item complies with AS/CA S042.1:2015 and AS/CA S042.4:2015 as in force at the time the item was manufactured in Australia or imported;

the item is taken to comply with the new Standard.

This ensures that, even though the old technical standard did not adopt AS/CA S042.1:2015 or AS/CA S042.4:2015 as in force at the time the item was manufactured in Australia or imported, the item is still taken to be compliant with the new Standard.

Under subsection 17(4), an item (other than a modified item) is taken to comply with the new Standard if:

- the item is included in a class of items;
- the original item of the class was manufactured in Australia or imported before the commencement of the new Standard; and
- under subsection 17(2) or (3), the original item is taken to comply with the new Standard.

This ensures that if, under the savings and transitional arrangements, an original item of a class of items is taken to comply with the new Standard, all other items of the class will also be taken to comply with the new Standard (irrespective of when the items were manufactured or imported or whether their compliance relates to an applicable industry standard that has since been amended or replaced).

Subsections 17(5) to (7) apply in relation to modified items and operate in a very similar way to subsections 17(2) to (4). The key difference is that subsections 17(5) to (7) refer to the time a modified item is made in Australia (see section 12) or imported, whereas subsections 17(2) to (4) refer to the time an item is manufactured in Australia or imported.