

## EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Telecommunications Act 1997*

### ***Telecommunications (Labelling Notice for Customer Equipment and Customer Cabling) Amendment Instrument 2018 (No. 1)***

#### **Authority**

The Australian Communications and Media Authority (the **ACMA**) has made the *Telecommunications (Labelling Notice for Customer Equipment and Customer Cabling) Amendment Instrument 2018 (No. 1)* (the **Amendment Instrument**) under subsection 407(1) of the *Telecommunications Act 1997* (the **Act**) and subsection 33(3) of the *Acts Interpretation Act 1901*.

Subsection 407(1) of the Act provides that the ACMA may, by written instrument, require any person who is a manufacturer or importer of specified customer equipment or specified customer cabling to apply to the equipment or cabling a label indicating whether the equipment or cabling meets the requirements of the section 376 standards specified in the instrument.

Subsection 33(3) of the *Acts Interpretation Act 1901* 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 Amendment Instrument**

##### *Background*

The ACMA has responsibility for the technical regulation of customer equipment and customer cabling under the Act. The regulatory arrangements include:

- technical standards made by the ACMA under section 376 of the Act (**technical standards**);
- an instrument made by the ACMA under subsection 407(1) of the Act, namely the *Telecommunications (Labelling Notice for Customer Equipment and Customer Cabling) Instrument 2015* (the **Labelling Notice**); and
- the provisions in the Act (including offence provisions) which apply in relation to the supply and connection of customer equipment and customer cabling.

The technical standards apply to items of specified customer equipment or specified customer cabling and consist only of such requirements as are necessary or convenient to achieve one or more of the objectives specified 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.

A technical standard typically requires an item to comply with all or one or more parts of an adopted industry standard, for the item, as in force at one of the times specified for the item.<sup>1</sup>

A technical standard also typically repeals and replaces an earlier technical standard and contains savings and transitional provisions which apply principally to pre-existing items. Under those provisions, a pre-existing item is taken to comply with the technical standard if the item complies with the earlier technical standard, as in force immediately before its repeal. The technical standard, in that regard, “grandfathers” those pre-existing items so that they do not need to meet the requirements relating to any newly adopted industry standard.

The Labelling Notice applies to certain items of customer equipment and customer cabling. The Labelling Notice requires an item to be labelled indicating whether the item complies with each technical standard, for the item, specified in that instrument (**applicable technical standards**). The Labelling Notice also requires certain records to be kept in relation to an item. These labelling and record-keeping requirements in relation to an item must be met by the manufacturer or importer of the item.

An item must be labelled before the item is supplied to the Australian market and cannot be connected to a telecommunications network or a facility unless the item complies with each applicable technical standard in relation to the item.

The ACMA has made the following two technical standards in relation to certain items of customer equipment:

- the *Telecommunications (Customer Equipment Safety) Technical Standard 2018*;
- the *Telecommunications (Mobile Equipment Air Interface) Technical Standard 2018* (collectively, the **2018 technical standards**).

The *Telecommunications (Customer Equipment Safety) Technical Standard 2018* has repealed and replaced the *Telecommunications Technical Standard (Information Technology Equipment – Safety, Part 1: General Requirements – AS/NZS 60950.1:2011) 2011*. The *Telecommunications (Mobile Equipment Air Interface) Technical Standard 2018* has repealed and replaced the *Telecommunications Technical Standard (Requirements for Connection to an Air Interface of a Telecommunications Network – AS/CA S042) 2015*.

The *Telecommunications Technical Standard (Information Technology Equipment – Safety, Part 1: General Requirements – AS/NZS 60950.1:2011) 2011* and the *Telecommunications*

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<sup>1</sup> Section 377 of the Act provides that, in making a technical standard, 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, either as in force or existing at a particular time or as in force or existing from time to time. Also see section 589 of the Act. The ACMA’s general approach 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.

*Technical Standard (Requirements for Connection to an Air Interface of a Telecommunications Network – AS/CA S042) 2015* (collectively, the **2011 and 2015 technical standards**) adopted industry standards which have since been superseded by other industry standards. The 2018 technical standards have been made to adopt those other industry standards to reflect the latest technical requirements for the items to which they apply.

#### *Purpose and operation of the Amendment Instrument*

The Amendment Instrument has been made to update the references to the 2011 and 2015 technical standards to refer to the 2018 technical standards. Consequently, the 2011 and 2015 technical standards have ceased to be applicable technical standards, and the 2018 technical standards have become applicable technical standards, in relation to certain items of customer equipment.

The Amendment Instrument also provides for transitional arrangements to deal with changes in relation to applicable technical standards.

The transitional arrangements apply to an item if:

- a technical standard (the **old technical standard**) has been repealed and replaced by another technical standard (the **new technical standard**);
- on a particular date (the **effective date**) the old technical standard ceased to be an applicable technical standard, and the new technical standard became an applicable technical standard, in relation to an item;<sup>2</sup> and
- the item was not supplied before the effective date.

The transitional arrangements include provisions to ensure that:

- certain things done by a manufacturer or importer of the item in relation to the old technical standard, in accordance with the Labelling Notice as in force immediately before the effective date, are transitioned as if they had been done in relation to the new technical standard; and
- for the avoidance of doubt, the manufacturer or importer is taken to have met any requirement of the Labelling Notice to do such a thing in relation to the new technical standard.

These provisions are intended to avoid any duplication of effort which might otherwise arise from transitioning to a new technical standard that has become an applicable technical standard.

The transitional arrangements also include provisions to ensure that if an item's compliance with a new technical standard is reliant upon its compliance with an old technical standard, a person who makes a declaration of conformity for the item has had regard to documents of a

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<sup>2</sup> These changes are the result of an amendment to the Labelling Notice. The effective date is the date on which the amendment took effect.

kind that provide sufficient evidence for the person to be reasonably satisfied that the item complies with the old technical standard.

The Amendment Instrument also corrects an unintentional omission of “cabling-related customer equipment” from the scope of Schedule 4.

Cabling-related customer equipment is customer equipment that is a passive device, including any connecting hardware, used or intended for use, in connection with customer cabling, on the customer side of the boundary of a telecommunications network, but does not include:

- a product intended primarily for the distribution of AC mains supply;
- a product intended to be used for telecommunications earthing systems or telecommunications power distribution; or
- a surge protector.

The Amendment Instrument inserts a new definition of “cabling-related customer equipment” (as described above) in subsection 4(1), expands the scope of Schedule 4 to cover such equipment and makes some consequential changes. Consequently, the *Telecommunications Technical Standard (Requirements for customer cabling products – AS/CA S008) 2015* has become an applicable technical standard in relation to cabling-related customer equipment, and the manufacturer or importer of such equipment is subject to the labelling and other requirements of Schedule 4 (rather than Part 4), as originally intended.

The Amendment Instrument also removes an anomaly in the requirements that had to be met for a technical standard to be an “applicable technical standard” in relation to an item. It is no longer a requirement that the technical standard was in force at the time the item was manufactured in Australia or imported. That requirement precluded a technical standard from being an applicable technical standard in relation to any pre-existing items. However, a technical standard:

- typically contains savings and transitional provisions that apply principally to pre-existing items (as mentioned above); and
- is intended to be an applicable technical standard in relation to such an item if:
  - the item is of a kind mentioned in column 1 of the relevant table for the item (see section 8 and Schedule 1, and clause 1 of Schedule 4);
  - the technical standard is a corresponding applicable technical standard mentioned in column 2 of that table; and
  - the technical standard consists of or includes requirements that apply to the item.

The Amendment Instrument ensures that this intended outcome is achieved.

The Amendment Instrument also:

- removes one of the documentary requirements that had to be met by a person seeking to rely on sub-subparagraph 20(2)(a)(i)(C) for the person to be reasonably satisfied that an item complies with a high risk applicable technical standard; and
- provides greater detail about another one of those documentary requirements.

Consequently, such a person is required to have had regard to an IECEE CB Test Report that is accompanied by an IECEE CB Test Certificate containing certain compliance information,<sup>3</sup> but is no longer required to have had regard to a statement prepared by an Issuing and Recognizing NCB that operates in Australia or a recognised testing authority containing such information.

The Amendment Instrument also makes it clear that the IECEE CB test documentation must relate to the requirements of an IEC standard<sup>4</sup> for the item as well as any different requirements of the high risk applicable technical standard. This ensures that the documentation includes not only test results addressing the item's compliance with that international base standard, but also test results addressing the item's compliance with any Australian national differences reflected in the high risk applicable technical standard.

The ACMA considers that the IECEE CB test documentation containing the necessary information provides sufficient evidence for the person to be reasonably satisfied that the item complies with the high risk applicable technical standard. The documentation is based on independent testing and certification of the item against all relevant requirements, is issued in accordance with the IECEE CB Rules of Procedure<sup>5</sup> and indicates that the item (or if the item is included in a class of items, an item of the class) complies with all those requirements.

The Amendment Instrument also clarifies the operation of certain provisions, removes spent provisions and makes some minor formatting changes that reflect current drafting practice.

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

The Amendment Instrument is a disallowable legislative instrument for the purposes of the *Legislation Act 2003*.

### **Documents incorporated by reference**

The Amendment Instrument does not incorporate any documents by reference. However, it makes amendments which result in the Labelling Notice incorporating or otherwise referring to the following documents:

- the Act;
- the *Acts Interpretation Act 1901*;
- the *Legislation Act 2003*;
- the *Telecommunications (Customer Equipment Safety) Technical Standard 2018*;
- the *Telecommunications (Mobile Equipment Air Interface) Technical Standard 2018*;

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<sup>3</sup> This is information that indicates that the item (or if the item is included in a class of items, an item of the class) complies with the high risk applicable technical standard (see subparagraph 20(2)(a)(i) of the Labelling Notice).

<sup>4</sup> The Amendment Instrument inserts a new definition of "IEC standard" in subsection 4(1). The term is defined to mean an international standard published by the International Electrotechnical Commission.

<sup>5</sup> See the definition of "IECEE CB Rules of Procedure" in subsection 4(1) of the Labelling Notice.

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- the *Telecommunications Technical Standard (Requirements for customer cabling products – AS/CA S008) 2015*;
- the *Telecommunications Technical Standard (Surge Protective Devices for Telecommunications Applications – AS/NZS 4117) 2015*;
- AS/CA S042.1:2018 (within the meaning of the *Telecommunications (Mobile Equipment Air Interface) Technical Standard 2018*);
- AS/CA S042.1:2015 (within the meaning of the *Telecommunications (Mobile Equipment Air Interface) Technical Standard 2018*).

The Acts and legislative instruments mentioned above are registered on the Federal Register of Legislation (which may be accessed at [www.legislation.gov.au](http://www.legislation.gov.au)). The Acts are incorporated as in force from time to time, in accordance with section 10 of the *Acts Interpretation Act 1901* and subsection 13(1) of the *Legislation Act 2003*. The technical standards are incorporated as in force from time to time, in accordance with section 589 of the Act and subsection 14(1) of the *Legislation Act 2003*.

The Labelling Notice refers to AS/CA S042.1:2018 and AS/CA S042.1:2015 in the context of being industry standards adopted by the *Telecommunications (Mobile Equipment Air Interface) Technical Standard 2018*. That technical standard indicates how those industry standards may be obtained<sup>6</sup> and incorporates them as in force at the times mentioned in that standard, in accordance with sections 377 and 589 of the Act.<sup>7</sup>

## Consultation

Before the Amendment 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 *Legislation Act 2003*.

The ACMA conducted a public consultation process, during the period 29 June 2018 to 2 September 2018, for the proposal to make the 2018 technical standards and the amendments to the Labelling Notice. Drafts of the 2018 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's website. Interested parties were also notified of the consultation process and invited to comment.

The ACMA also conducted a separate public consultation process, during the period 19 October 2018 to 2 November 2018, for the proposed amendment to sub-subparagraph 20(2)(a)(i)(C) of the Labelling Notice to remove one of the documentary requirements. A marked-up version of the proposed amendment and explanatory information, together with an invitation to comment, were published on the ACMA's website.

<sup>6</sup> A copy of each industry standard could, at the time of making the technical standard, be obtained from the Communications Alliance Ltd's website at [www.commsalliance.com.au](http://www.commsalliance.com.au) free of charge.

<sup>7</sup> Sections 377 and 589 of the Act indicate a contrary intention to the rule in subsection 14(2) of the *Legislation Act 2003* which relevantly provides that a legislative instrument may not make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.

The ACMA received one submission following the first consultation process which relevantly:

- sought clarification and simplification of the proposed transitional arrangements to deal with changes in relation to applicable technical standards;
- raised a matter in relation to the proposed removal of one of the requirements that had to be met for a technical standard to be an “applicable technical standard” in relation to an item; and
- suggested changes in relation to certain proposed terms and other references.

The ACMA made changes to clarify and simplify the transitional arrangements where possible and to adopt some of the suggested changes in relation to certain terms and other references where appropriate. A detailed response was provided to the person who made the submission.

The ACMA received eight submissions following the second consultation process which generally supported the proposed amendment to sub-subparagraph 20(2)(a)(i)(C). A couple of those submissions also suggested a further change to ensure that the IECEE CB test documentation mentioned in that sub-subparagraph includes test results addressing an item’s compliance with all relevant requirements. The ACMA made a further change in line with those submissions.

### **Regulatory impact assessment**

A preliminary assessment of the proposal to make the 2018 technical standards and amendments to the Labelling 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 a RIS would not be required because each instrument proposed to be made 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**

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 *Legislation Act 2003* 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 Amendment Instrument***

The Amendment Instrument amends the Labelling Notice to:

- update references to the 2011 and 2015 technical standards, which have been repealed and replaced by the 2018 technical standards, to refer to the 2018 technical standards;
- provide for transitional arrangements to deal with changes in relation to applicable technical standards;

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- correct an unintentional omission of “cabling-related customer equipment” from the scope of Schedule 4;
- remove an anomaly in the requirements that had to be met for a technical standard to be an “applicable technical standard” in relation to an item;
- remove an unnecessary documentary requirement that had to be met by a person seeking to rely on sub-subparagraph 20(2)(a)(i)(C) for the person to be reasonably satisfied that an item complies with a high risk applicable technical standard;
- provide greater detail about another one of those documentary requirements; and
- clarify the operation of certain provisions, remove spent provisions and make some minor formatting changes that reflect current drafting practice.

These amendments ensure that the Labelling Notice is kept up to date, allows for an efficient transition to any new technical standard that has become an applicable technical standard, applies in a way which is clear and achieves the intended outcomes, and does not contain any unnecessary requirements or provisions.

### ***Human rights implications***

The ACMA has assessed whether the Amendment 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 Amendment Instrument and the nature of the applicable rights and freedoms, the ACMA has formed the view that the Amendment 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 *Telecommunications (Labelling Notice for Customer Equipment and Customer Cabling) Amendment Instrument 2018 (No. 1)***

**Section 1 Name**

This section provides for the Amendment Instrument to be cited as the *Telecommunications (Labelling Notice for Customer Equipment and Customer Cabling) Amendment Instrument 2018 (No. 1)*.

**Section 2 Commencement**

This section provides for the commencement of the Amendment Instrument, as set out in the table. Each provision of the Amendment Instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

The first item of the table provides that sections 1 to 4 commence on the day after the Amendment Instrument is registered on the Federal Register of Legislation.

The second item of the table provides that Schedule 1, Part 1 commences on the later of:

- (a) the day after the Amendment Instrument is registered on the Federal Register of Legislation; and
- (b) the day on which the *Telecommunications (Customer Equipment Safety) Technical Standard 2018* commences.

However, the provisions do not commence at all if the event mentioned in paragraph (b) in the second item does not occur.

The third item of the table provides that Schedule 1, Part 2 commences on the later of:

- (a) the day after the Amendment Instrument is registered on the Federal Register of Legislation; and
- (b) the day on which the *Telecommunications (Mobile Equipment Air Interface) Technical Standard 2018* commences.

However, the provisions do not commence at all if the event mentioned in paragraph (b) in the third item does not occur.

The fourth item of the table provides that Schedule 1, Part 3 commences on the day after the Amendment Instrument is registered on the Federal Register of Legislation.

The Federal Register of Legislation may be accessed at [www.legislation.gov.au](http://www.legislation.gov.au).

**Section 3 Authority**

This section identifies the provision of the Act that authorises the making of the Amendment Instrument, namely subsection 407(1) of the Act.

## **Section 4      Schedule 1**

This section provides that the instrument that is specified in Schedule 1 to the Amendment Instrument is amended as set out in the applicable items in that Schedule.

### **Schedule 1—Amendments**

#### **Part 1—Amendments relating to the *Telecommunications (Customer Equipment Safety) Technical Standard 2018***

##### ***Telecommunications (Labelling Notice for Customer Equipment and Customer Cabling) Instrument 2015 (F2015L00190)***

#### **Item [1] – Subsection 20(2) (note 1)**

This item amends note 1 to subsection 20(2) to replace the reference to AS/NZS 60950.1-2011 with a reference to the *Telecommunications (Customer Equipment Safety) Technical Standard 2018*. This reflects the changes in applicable technical standards which result from other amendments made by this Part.

(The *Telecommunications (Customer Equipment Safety) Technical Standard 2018* may also be cited as the *Customer Equipment Safety Standard 2018*.)

#### **Item [2] – Schedule 1 (table item 1, column 2)**

This item amends table item 1, column 2 in Schedule 1 to replace the reference to AS/NZS 60950.1-2011 with a reference to the *Customer Equipment Safety Standard 2018*. This results in the following changes in applicable technical standards in relation to items of a kind mentioned in table item 1, column 1:

- AS/NZS 60950.1-2011 (which has been repealed and replaced by the *Customer Equipment Safety Standard 2018*) ceases to be an applicable technical standard;
- the *Customer Equipment Safety Standard 2018* becomes an applicable technical standard.

#### **Item [3] – Schedule 1 (table item 1, column 3)**

This item amends table item 1, column 3 in Schedule 1 to replace the reference to the *Telecommunications Technical Standard (Information Technology Equipment – Safety, Part 1: General Requirements – AS/NZS 60950.1:2011) 2011* with a reference to the *Telecommunications (Customer Equipment Safety) Technical Standard 2018*. This reflects the changes in applicable technical standards which result from the amendment made by item [2].

#### **Item [4] – Schedule 1 (table item 1, column 4)**

This item amends table item 1, column 4 in Schedule 1 to replace the reference to AS/NZS 60950.1-2011 with a reference to the *Customer Equipment Safety Standard 2018*. This results in the following changes in high risk standards in relation to items of a kind mentioned in table item 1, column 1:

- all of AS/NZS 60950.1-2011 ceases to be a high risk standard;
- all of the *Customer Equipment Safety Standard 2018* becomes a high risk standard.

**Item [5] – Schedule 1 (table item 2, column 2)**

This item amends table item 2, column 2 in Schedule 1 to replace the reference to AS/NZS 60950.1-2011 with a reference to the *Customer Equipment Safety Standard 2018*. This results in the following changes in applicable technical standards in relation to items of a kind mentioned in table item 2, column 1:

- AS/NZS 60950.1-2011 (which has been repealed and replaced by the *Customer Equipment Safety Standard 2018*) ceases to be an applicable technical standard;
- the *Customer Equipment Safety Standard 2018* becomes an applicable technical standard.

**Item [6] – Schedule 1 (table item 2, column 3)**

This item amends table item 2, column 3 in Schedule 1 to replace the reference to the *Telecommunications Technical Standard (Information Technology Equipment – Safety, Part 1: General Requirements – AS/NZS 60950.1:2011) 2011* with a reference to the *Telecommunications (Customer Equipment Safety) Technical Standard 2018*. This reflects the changes in applicable technical standards which result from the amendment made by item [5].

**Item [7] – Schedule 1 (table item 2, column 4)**

This item amends table item 2, column 4 in Schedule 1 to replace the reference to AS/NZS 60950.1-2011 with a reference to the *Customer Equipment Safety Standard 2018*. This results in the following changes in high risk standards in relation to items of a kind mentioned in table item 2, column 1:

- all of AS/NZS 60950.1-2011 ceases to be a high risk standard;
- all of the *Customer Equipment Safety Standard 2018* becomes a high risk standard.

**Item [8] – Schedule 1 (table item 3, column 2)**

This item amends table item 3, column 2 in Schedule 1 to replace the reference to AS/NZS 60950.1-2011 with a reference to the *Customer Equipment Safety Standard 2018*. This results in the following changes in applicable technical standards in relation to items of a kind mentioned in table item 3, column 1:

- AS/NZS 60950.1-2011 (which has been repealed and replaced by the *Customer Equipment Safety Standard 2018*) ceases to be an applicable technical standard;
- the *Customer Equipment Safety Standard 2018* becomes an applicable technical standard.

**Item [9] – Schedule 1 (table item 3, column 3)**

This item amends table item 3, column 3 in Schedule 1 to replace the reference to the *Telecommunications Technical Standard (Information Technology Equipment – Safety, Part*

*1: General Requirements – AS/NZS 60950.1:2011) 2011* with a reference to the *Telecommunications (Customer Equipment Safety) Technical Standard 2018*. This reflects the changes in applicable technical standards which result from the amendment made by item [8].

**Item [10] – Schedule 1 (table item 3, column 4)**

This item amends table item 3, column 4 in Schedule 1 to replace the reference to AS/NZS 60950.1-2011 with a reference to the *Customer Equipment Safety Standard 2018*. This results in the following changes in high risk standards in relation to items of a kind mentioned in table item 3, column 1:

- all of AS/NZS 60950.1-2011 ceases to be a high risk standard;
- all of the *Customer Equipment Safety Standard 2018* becomes a high risk standard.

**Item [11] – Schedule 1 (table item 4, column 2)**

This item amends table item 4, column 2 in Schedule 1 to replace the reference to AS/NZS 60950.1-2011 with a reference to the *Customer Equipment Safety Standard 2018*. This results in the following changes in applicable technical standards in relation to items of a kind mentioned in table item 4, column 1:

- AS/NZS 60950.1-2011 (which has been repealed and replaced by the *Customer Equipment Safety Standard 2018*) ceases to be an applicable technical standard;
- the *Customer Equipment Safety Standard 2018* becomes an applicable technical standard.

**Item [12] – Schedule 1 (table item 4, column 3)**

This item amends table item 4, column 3 in Schedule 1 to replace the reference to the *Telecommunications Technical Standard (Information Technology Equipment – Safety, Part 1: General Requirements – AS/NZS 60950.1:2011) 2011* with a reference to the *Telecommunications (Customer Equipment Safety) Technical Standard 2018*. This reflects the changes in applicable technical standards which result from the amendment made by item [11].

**Item [13] – Schedule 1 (table item 4, column 4)**

This item amends table item 4, column 4 in Schedule 1 to replace the reference to AS/NZS 60950.1-2011 with a reference to the *Customer Equipment Safety Standard 2018*. This results in the following changes in high risk standards in relation to items of a kind mentioned in table item 4, column 1:

- all of AS/NZS 60950.1-2011 ceases to be a high risk standard;
- all of the *Customer Equipment Safety Standard 2018* becomes a high risk standard.

**Part 2—Amendments relating to the *Telecommunications (Mobile Equipment Air Interface) Technical Standard 2018***

***Telecommunications (Labelling Notice for Customer Equipment and Customer Cabling) Instrument 2015 (F2015L00190)***

**Item [14] – Subsection 4(1) (note to the definition of *high risk applicable technical standard*)**

This item amends the note to the definition of *high risk applicable technical standard* in subsection 4(1) to replace the second sentence with a new sentence that reflects the changes in applicable technical standards and high risk standards which result from the amendments made by items [15] and [17].

The new sentence is an updated example to illustrate that if only a part of an applicable technical standard in relation to an item is specified to be a high risk standard, that part is a high risk applicable technical standard, and the remainder is not such a standard, in relation to the item.

The updated example is that the part of the *Telecommunications (Mobile Equipment Air Interface) Technical Standard 2018* that relates to AS/CA S042.1:2018 (within the meaning of that technical standard) is a high risk applicable standard, and the remainder is not such a standard, in relation to an item to which that part applies.

**Item [15] – Schedule 1 (table item 2, column 2)**

This item amends table item 2, column 2 in Schedule 1 to replace the reference to AS/CA S042-2015 with a reference to the *Mobile Equipment Standard 2018*. This results in the following changes in applicable technical standards in relation to items of a kind mentioned in table item 2, column 1:

- AS/CA S042-2015 (which has been repealed and replaced by the *Mobile Equipment Standard 2018*) ceases to be an applicable technical standard; and
- the *Mobile Equipment Standard 2018* becomes an applicable technical standard.

(The *Mobile Equipment Standard 2018* may also be cited as the *Telecommunications (Mobile Equipment Air Interface) Technical Standard 2018*.)

**Item [16] – Schedule 1 (table item 2, column 3)**

This item amends table item 2, column 3 in Schedule 1 to replace the reference to the *Telecommunications Technical Standard (Requirements for Connection to an Air Interface of a Telecommunications Network – AS/CA S042) 2015* with a reference to the *Telecommunications (Mobile Equipment Air Interface) Technical Standard 2018*. This reflects the changes in applicable technical standards which result from the amendment made by item [15].

#### **Item [17] – Schedule 1 (table item 2, column 4)**

This item amends table item 2, column 4 in Schedule 1 which results in the following changes in high risk standards in relation to items of a kind mentioned in table item 2, column 1:

- the part of AS/CA S042-2015 that relates to AS/CA S042.1:2010 (within the meaning of AS/CA S042-2015) ceases to be a high risk standard;
- the part of the *Mobile Equipment Standard 2018* that relates to AS/CA S042.1:2018 (within the meaning of that technical standard) becomes a high risk standard but only for an item to which that part applies;
- the part of the *Mobile Equipment Standard 2018* that relates to AS/CA S042.1:2015 (within the meaning of that technical standard) becomes a high risk standard but only for an item to which that part applies.

#### **Item [18] – Schedule 1 (table item 3, column 2)**

This item amends table item 3, column 2 to replace the reference to AS/CA S042-2015 with a reference to the *Mobile Equipment Standard 2018*. This results in the following changes in applicable technical standards in relation to items of a kind mentioned in table item 3, column 1:

- AS/CA S042-2015 (which has been repealed and replaced by the *Mobile Equipment Standard 2018*) ceases to be an applicable technical standard;
- the *Mobile Equipment Standard 2018* becomes an applicable technical standard.

#### **Item [19] – Schedule 1 (table item 3, column 3)**

This item amends table item 3, column 3 in Schedule 1 to replace the reference to the *Telecommunications Technical Standard (Requirements for Connection to an Air Interface of a Telecommunications Network – AS/CA S042) 2015* with a reference to the *Telecommunications (Mobile Equipment Air Interface) Technical Standard 2018*. This reflects the changes in applicable technical standards which result from the amendment made by item [18].

#### **Item [20] – Schedule 1 (table item 4, column 2)**

This item amends table item 4, column 2 in Schedule 1 to replace the reference to AS/CA S042-2015 with a reference to the *Mobile Equipment Standard 2018*. This results in the following changes in applicable technical standards in relation to items of a kind mentioned in table item 4, column 1:

- AS/CA S042-2015 (which has been repealed and replaced by the *Mobile Equipment Standard 2018*) ceases to be an applicable technical standard;
- the *Mobile Equipment Standard 2018* becomes an applicable technical standard.

### **Item [21] – Schedule 1 (table item 4, column 3)**

This item amends table item 4, column 3 in Schedule 1 to replace the reference to the *Telecommunications Technical Standard (Requirements for Connection to an Air Interface of a Telecommunications Network – AS/CA S042) 2015* with a reference to the *Telecommunications (Mobile Equipment Air Interface) Technical Standard 2018*. This reflects the changes in applicable technical standards which result from the amendment made by item [20].

### **Part 3—Other amendments**

#### ***Telecommunications (Labelling Notice for Customer Equipment and Customer Cabling) Instrument 2015 (F2015L00190)***

### **Item [22] – Subsection 4(1) (definition of *applicable technical standard*)**

This item repeals the definition of “applicable technical standard” in subsection 4(1) and replaces it with a new definition to reflect the expansion of the scope of Schedule 4 to cover cabling-related customer equipment. That change in the scope of Schedule 4 results from other amendments made by this Part.

The new definition provides that “applicable technical standard” has the meaning given by:

- in the case of customer equipment (other than surge protectors or cabling-related customer equipment) – section 8; or
- in the case of customer cabling, surge protectors and cabling-related customer equipment – clause 1 of Schedule 4.

### **Item [23] – Subsection 4(1) (definition of *built-in display*)**

This item amends the definition of “built-in display” in subsection 4(1) to make it clear that the term does not apply in relation to cabling-related customer equipment.

The amended definition provides that “built-in display”, in relation to an item that is customer equipment (other than a surge protector or cabling-related customer equipment), means an electronic display or screen integral to the item, and does not include a display or screen that can be used independently of the item.

### **Item [24] – Subsection 4(1)**

This item inserts a new definition of “cabling-related customer equipment” in subsection 4(1).

The term is defined to mean customer equipment that is a passive device, including any connecting hardware, used or intended for use, in connection with customer cabling, on the customer side of the boundary of a telecommunications network (see item [30]), but does not include:

- a product intended primarily for the distribution of AC mains supply;
- a product intended to be used for telecommunications earthing systems or telecommunications power distribution; or

- a surge protector.

This item also adds a note at the end of the new definition that refers the reader to the example following the table in clause 1 of Schedule 4, which is a non-exhaustive list of some items that are cabling-related customer equipment (see item [45]).

The term “cabling-related customer equipment” is used in a few locations in the Labelling Notice as a result of other amendments made by this Part. Those amendments correct an unintentional omission of “cabling-related customer equipment” from the scope of Schedule 4 and make some consequential changes. Consequently, the *Telecommunications Technical Standard (Requirements for customer cabling products – AS/CA S008) 2015* has become an applicable technical standard in relation to cabling-related customer equipment, and the manufacturer or importer of such equipment is subject to the labelling and other requirements of Schedule 4 (rather than Part 4), as originally intended.

**Item [25] – Subsection 4(1) (definition of *high risk applicable technical standard*)**

This item repeals the definition of “high risk applicable technical standard” (not including the note (see item [14])) in subsection 4(1) and replaces it with a new definition to reflect the expansion in the scope of Schedule 4 to cover cabling-related customer equipment. That change in the scope of Schedule 4 results from other amendments made by this Part.

The new definition provides that “high risk applicable technical standard”, in relation to an item, means an applicable technical standard, or a part of an applicable technical standard, in relation to the item that is specified to be a high risk standard in:

- if the item is customer equipment (other than a surge protector or cabling-related customer equipment) – column 4 of the table in Schedule 1; or
- if the item is customer cabling, a surge protector or cabling-related customer equipment – column 4 of the table in clause 1 of Schedule 4.

**Item [26] – Subsection 4(1)**

This item inserts a new definition of “IEC standard” in subsection 4(1) because of one of the amendments made by item [36] to refer to that term.

The term is defined to mean an international standard published by the International Electrotechnical Commission.

**Item [27] – Subsection 4(1) (definition of *item*)**

This item repeals the definition of “item” (including the notes) in subsection 4(1) and replaces it with a new definition to ensure that Schedule 4 covers, and Part 4 and Schedule 1 exclude, cabling-related customer equipment.

The new definition provides that “item” means:

- in Part 4 and Schedule 1 – a thing that is customer equipment (other than a surge protector or cabling-related customer equipment), and includes a modified item;

- in Schedule 4 – a thing that is customer cabling, a surge protector or cabling-related customer equipment, and includes a modified item; or
- in any other case – a thing that is customer equipment or customer cabling, and includes a modified item.

This item also adds a note at the end of the new definition indicating that subsection 7(1) provides that the Labelling Notice does not apply to certain items. The note is in the same terms as the old note 1 at the end of the repealed definition.

This item does not add a note in the same terms as the old note 2 at the end of the repealed definition which indicated that “customer cabling” may also cover things such as sockets or plugs. This is to avoid confusion with the new definition of “cabling-related customer equipment” which also covers certain sockets or plugs.

**Item [28] – Subsection 4(1) (definition of *recognised testing authority*)**

This item repeals the definition of “recognised testing authority” in subsection 4(1). This definition is no longer necessary because of the amendment made by item [36].

**Item [29] – Subsection 4(1) (note to the definition of *technical standard*)**

This item repeals the note to the definition of “technical standard” in subsection 4(1) and replaces it with a new note to make it clear that a technical standard is a legislative instrument that may incorporate all or one or more parts of an industry standard as in force at the times mentioned in that technical standard.

**Item [30] – Subsection 4(1) (note at the end)**

This item repeals the note at the end of subsection 4(1) and replaces it with a new note:

- to update the name of the *Legislation Act 2003*;
- to include a reference to the expression “boundary of a telecommunications network” as it appears in the new definition of “cabling-related customer equipment” and has the same meaning as in section 22 of the Act; and
- to make some minor formatting changes that reflect current drafting practice.

**Item [31] – At the end of section 4**

This item adds a new subsection 4(5) to make it clear that in the Labelling 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 is a reference to that other instrument as in force from time to time.

### **Item [32] – Subsection 7(2) (note 1)**

This item amends note 1 to subsection 7(2) to reflect the expansion of the scope of Schedule 4 to cover cabling-related customer equipment. That change in the scope of Schedule 4 results from other amendments made by this Part.

The amended note indicates that Schedule 4 applies to customer cabling, surge protectors and cabling-related customer equipment.

### **Item [33] – Subsection 8(1) (note)**

This item repeals the note to subsection 8(1) and replaces it with a new note to reflect the narrowing of the scope of section 8 to exclude cabling-related customer equipment.

The new note indicates that section 8 deals with applicable technical standards for customer equipment (other than surge protectors or cabling-related customer equipment) and clause 1 of Schedule 4 deals with applicable technical standards for customer cabling, surge protectors and cabling-related customer equipment.

### **Item [34] – Paragraph 8(2)(b)**

This item repeals paragraph 8(2)(b) and replaces it with a new paragraph to remove an anomaly in the requirements that had to be met for a technical standard to be an “applicable technical standard” in relation to an item of a kind mentioned in column 1 of the table in Schedule 1.

It is a requirement of the new paragraph 8(2)(b) that the technical standard is a corresponding applicable technical standard mentioned in column 2 of that table.

It is no longer a requirement that the technical standard was in force at the time the item was manufactured in Australia or imported. That requirement precluded a technical standard from being an applicable technical standard in relation to any pre-existing items. However, a technical standard:

- typically contains savings and transitional provisions that apply principally to pre-existing items (as mentioned above); and
- is intended to be an applicable technical standard in relation to such an item if:
  - the item is of a kind mentioned in column 1 of the table in Schedule 1;
  - the technical standard is a corresponding applicable technical standard mentioned in column 2 of that table; and
  - the technical standard consists of or includes requirements that apply to the item.

The amendment made by this item ensures that this intended outcome is achieved.

### **Item [35] – Subsection 18(2)**

This item repeals subsection 18(2) and replaces it with a new subsection to remove a spent provision that applied before 1 March 2016 dealing with when a manufacturer or importer of an item was “registered” for the purposes of subsection 18(1).

The new subsection 18(2) provides that, for the purposes of subsection 18(1), a manufacturer or importer of an item is “registered” only if the manufacturer or importer is registered on the national database.

#### **Item [36] – Sub-subparagraph 20(2)(a)(i)(C)**

This item amends sub-subparagraph 20(2)(a)(i)(C):

- to remove one of the documentary requirements that had to be met by a person seeking to rely on that sub-subparagraph for the person to be reasonably satisfied that an item complies with a high risk applicable technical standard; and
- to provide greater detail about another one of those documentary requirements.

Under the amended sub-subparagraph 20(2)(a)(i)(C), such a person is required to have had regard to an IECEE CB Test Report that is accompanied by an IECEE CB Test Certificate containing certain compliance information,<sup>8</sup> but is no longer required to have had regard to a statement prepared by an Issuing and Recognizing NCB that operates in Australia or a recognised testing authority containing such information.

It is also made clear that the IECEE CB test documentation must relate to the requirements of an IEC standard (see item [26]) for the item as well as any different requirements of the high risk applicable technical standard. This ensures that the documentation includes not only test results addressing the item’s compliance with that international base standard, but also test results addressing the item’s compliance with any Australian national differences reflected in the high risk applicable technical standard.

The ACMA considers that the IECEE CB test documentation containing the necessary information provides sufficient evidence for the person to be reasonably satisfied that the item complies with the high risk applicable technical standard. The documentation is based on independent testing and certification of the item against all relevant requirements, is issued in accordance with the IECEE CB Rules of Procedure<sup>9</sup> and indicates that the item (or if the item is included in a class of items, an item of the class) complies with all those requirements.

#### **Item [37] – At the end of Part 7**

This item adds a new Division 3 (containing a new section 30) which provides for transitional arrangements to deal with changes in relation to applicable technical standards.

A new subsection 30(1) sets out the scope of the transitional arrangements. These arrangements apply to an item if:

- a technical standard (the *old technical standard*) has been repealed and replaced by another technical standard (the *new technical standard*);

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<sup>8</sup> See footnote 3.

<sup>9</sup> See footnote 5.

- on a particular date (the *effective date*) the old technical standard ceased to be an applicable technical standard, and the new technical standard became an applicable technical standard, in relation to the item;<sup>10</sup> and
- the item was not supplied before the effective date.

A new subsection 30(2) provides that if, before the effective date, the manufacturer or importer of the item did any of the following things in relation to the old technical standard, in accordance with the Labelling Notice as in force immediately before the effective date:

- prepared a compliance record, or any other documentation, for the item;
- applied a label to the item;
- met the requirements for an exemption from compliance with subsection 4(2) of Schedule 4;

then on and after the effective date:

- the thing done has effect as if it had been done in relation to the new technical standard; and
- for the avoidance of doubt, the manufacturer or importer is taken to have met any requirement of the Labelling Notice to do such a thing in relation to the new technical standard.

Subsection 30(2) is intended to avoid any duplication of effort which might otherwise arise from transitioning to a new technical standard that has become an applicable technical standard.

An example follows subsection 30(2) to illustrate how the subsection operates. The example indicates that if, before the effective date, the manufacturer or importer had properly completed a declaration of conformity for the item in relation to the old technical standard, then on and after the effective date the manufacturer or importer does not need to complete a declaration of conformity for the item in relation to the new technical standard.

A new subsection 30(3) provides that, for the avoidance of doubt, if:

- a declaration of conformity for the item was not completed before the effective date;
- the new technical standard contains a provision to the effect that the item is taken to comply with that standard if the item complies with the old technical standard as in force immediately before the commencement of the new technical standard; and
- the manufacturer or importer seeks to rely on that provision;

the manufacturer or importer must, before supplying the item, ensure that a person who makes a declaration of conformity for the item is reasonably satisfied that the item complies with that old technical standard.

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<sup>10</sup> See footnote 2.

A new subsection 30(4) provides that, for the purposes of determining whether a person is reasonably satisfied that the item complies with the old technical standard mentioned in paragraph 30(3)(b), subsection 20(2) applies as if:

- references to an applicable technical standard were references to that old technical standard; and
- references to a high risk applicable technical standard were references to that old technical standard (or the part of it) that was, immediately before the commencement of the new technical standard, a high risk applicable technical standard in relation to the item (if at all).

This ensures that a person who makes a declaration of conformity for the item has had regard to documents of a kind that provide sufficient evidence for the person to be reasonably satisfied that the item complies with the old technical standard.

An example follows subsection 30(4) to illustrate how the subsection operates. The example indicates that if, before the effective date, the old technical standard was a high risk applicable technical standard in relation to the item, a person can only be reasonably satisfied that the item complies with the old technical standard if there is a document of a kind mentioned in sub-subparagraph 20(2)(a)(i)(A), (B), (C) or (D) containing information that indicates that the item (or if the item is included in a class of items, an item of the class) complies with the old technical standard.

#### **Item [38] – Schedule 1 (heading)**

This item amends the heading of Schedule 1 to reflect the narrowing of the scope of that Schedule to exclude cabling-related customer equipment. That change in the scope of Schedule 1 results from other amendments made by this Part.

The amended heading is “Schedule 1–Applicable technical standards for customer equipment (other than surge protectors or cabling-related customer equipment)”.

#### **Item [39] – Schedule 1 (sentence after heading)**

This item repeals paragraphs (a) and (b) of the sentence after the heading to Schedule 1 and replaces them with new paragraphs to clarify the meaning of any reference to a part of an applicable technical standard that relates to an industry standard mentioned in column 4 of the table, particularly in a case where the industry standard is replaced by another standard.

The amendment makes it clear that any such reference, in that case, is taken to be a reference to the provisions of the applicable technical standard that have the effect of requiring the item to comply with:

- if only a part of the industry standard is mentioned in column 4 of the table – any corresponding part of the standard that replaces the industry standard as in force at any time specified, for the item, in the applicable technical standard; or
- otherwise – the standard that replaces the industry standard as in force at any time specified, for the item, in the applicable technical standard.

**Item [40] – Schedule 1 (table, heading to column 1)**

This item amends the heading to column 1 of the table in Schedule 1 to reflect the narrowing of the scope of that Schedule to exclude cabling-related customer equipment. That change in the scope of Schedule 1 results from other amendments made by this Part.

The amended heading is “*Column 1 Customer equipment (other than surge protectors or cabling-related customer equipment)*”.

**Item [41] – Schedule 1 (examples 1 to 3 following table)**

This item repeals examples 1 to 3 following the table in Schedule 1 and replaces them with new examples to make minor formatting changes that reflect current drafting practice.

**Item [42] – Schedule 4 (heading)**

This item amends the heading to Schedule 4 to reflect the expansion of the scope of the Schedule to cover cabling-related customer equipment. That change in the scope of Schedule 4 results from other amendments made by this Part.

The amended heading is “Schedule 4—Customer cabling, surge protectors and cabling-related customer equipment”.

**Item [43] – Subclause 1(1) of Schedule 4 (note)**

This item repeals the note to subclause 1(1) of Schedule 4 and replaces it with a new note to reflect that clause 1 covers, and section 8 excludes, cabling-related customer equipment. Those changes in the scope of clause 1 and of section 8 result from other amendments made by this Part.

The new note indicates that clause 1 deals with applicable technical standards for customer cabling, surge protectors and cabling-related customer equipment and section 8 deals with applicable technical standards (other than surge protectors and cabling-related customer equipment).

**Item [44] – Paragraph 1(2)(b) of Schedule 4**

This item repeals paragraph 1(2)(b) of Schedule 4 and replaces it with a new paragraph to remove an anomaly in the requirements that had to be met for a technical standard to be an “applicable technical standard” in relation to an item of a kind mentioned in column 1 of the table in clause 1.

It is a requirement of the new paragraph 1(2)(b) that the technical standard is a corresponding applicable technical standard mentioned in column 2 of that table. It is no longer a requirement that the technical standard was in force at the time the item was manufactured in Australia or imported.

That requirement precluded a technical standard from being an applicable technical standard in relation to any pre-existing items. However, a technical standard:

- typically contains savings and transitional provisions that apply principally to pre-existing items (as mentioned above); and
- is intended to be an applicable technical standard in relation to such an item if:
  - the item is of a kind mentioned in column 1 of the table in clause 1;
  - the technical standard is a corresponding applicable technical standard mentioned in column 2 of that table; and
  - the technical standard consists of or includes requirements that apply to the item.

The amendment made by this item ensures that this intended outcome is achieved.

#### **Item [45] – Clause 1 of Schedule 4 (table)**

This item repeals the table (not including the note) in clause 1 of Schedule 4 and replaces it with a new table to expand it to cover cabling-related customer equipment, and to clarify its application in relation to customer cabling and surge protectors.

The new table deals with applicable technical standards for customer cabling, surge protectors and cabling-related customer equipment.

Item 1 of the new table clarifies that the applicable technical standard for customer cabling is the *Telecommunications Technical Standard (Requirements for customer cabling products – AS/CA S008) 2015*. Item 1 of the new table also provides that the applicable technical standard for cabling-related customer equipment is that technical standard.

Item 2 of the new table clarifies that the applicable technical standard for surge protectors is the *Telecommunications Technical Standard (Surge Protective Devices for Telecommunications Applications – AS/NZS 4117) 2015*.

There is a new example following the table, which is a non-exhaustive list of some of the items that are cabling-related customer equipment covered by item 1. They include:

- cable enclosures;
- patch panels;
- insulation displacement connectors and other similar termination modules (such as those used at a main distribution frame);
- conduit for the protection of customer cabling; and
- telecommunications wall sockets.

#### **Item [46] – Clause 3 of Schedule 4**

This item amends clause 3 of Schedule 4 which defines “particular cabling item” to reflect the expansion of the scope of that Schedule to cover cabling-related customer equipment. That change in the scope of Schedule 4 results from other amendments made by this Part.

The amended clause 3 provides that, in Schedule 4, “particular cabling item” means an item that is customer cabling, a surge protector or cabling-related customer equipment where the requirements in paragraphs (a) and (b) of that clause are met.

#### **Item [47] – Subclause 9(2) of Schedule 4**

This item repeals subclause 9(2) of Schedule 4 and replaces it with a new subclause to remove a spent provision that applied before 1 March 2016 dealing with when a manufacturer or importer of an item was “registered” for the purposes of subclause 9(1).

The new subclause 9(2) provides that, for the purposes of subclause 9(1), a manufacturer or importer of an item is “registered” only if the manufacturer or importer is registered on the national database.