EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications (Short Range Devices) Amendment Standard 2021 (No.1)

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Short Range Devices) Amendment Standard 2021 (No.1)* (**the instrument**) under subsection 162(1) of the *Radiocommunications Act 1992* (**the Act**) and subsection 33(3) of the *Acts Interpretation Act 1901* (**the AIA**).

Subsection 162(1) of the Act empowers the ACMA to make, by legislative instrument, standards for the performance of specified devices and the maximum permitted level of radio emissions from devices.

Subsection 33(3) of the AIA 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.

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

Purpose and operation of the instrument

The instrument amends the *Radiocommunications (Short Range Devices) Standard 2014* (**the SRD Standard**) to specify the standard for performance of an applicable device is either:

(a) if operation of the device is authorised by the *Radiocommunications (Low Interference Potential Devices) Class Licence 2015* (**the LIPD Class Licence**) – particular conditions of operation for the device included in the LIPD Class Licence, and some other requirements; or
(b) if operation of the device is authorised by the *Radiocommunications (Radio-controlled Models) Class Licence 2015* (**the Radio-controlled Class Licence**) – particular conditions of operation for the device included in the Radio-controlled Class Licence, and some other requirements.

The instrument also amends the SRD Standard to incorporate the testing methods that are identified in the following Australian and international standards:

(a) *AS/NZS 4268:2017 Radio equipment and systems – Short range devices – Limits and methods of measurement* (**AS/NZS 4268**), published by Standards Australia;

(b) EN 300 220-1 – *Short Range Devices (SRD) operating in the frequency range 25 MHz to 1 000 MHz; Part 1: Technical characteristics and methods of measurements* (**EN 300 220-1**), published by the European Telecommunications Standards Institute (**ETSI**);

(c) EN 300 330 – *Short Range Devices (SRD); Radio equipment in the frequency range 9 kHz to 25 MHz and inductive loop systems in the frequency range 9 kHz to 30 MHz; Harmonised Standard covering the essential requirements of article 3.2 of Directive 2014/53/EU* (**EN 300 330**), published by ETSI;

(d) EN 300 440 – *Short Range Devices (SRD); Radio equipment to be used in the 1 GHz to 40 GHz frequency range; Harmonised Standard for access to radio spectrum* (**EN 300 440**), published by ETSI;

(e) EN 305 550-1 – *Electromagnetic compatibility and Radio spectrum Matters (ERM); Short Range Devices (SRD); Radio equipment to be used in the 40 GHz to 246 GHz frequency range; Part 1: Technical characteristics and test methods* (**EN 305 550-1**), published by ETSI; or

(f) the United States' Federal Communications Commission (**FCC**) Rules Title 47 (Telecommunications) Part 15–Radio Frequency Devices (**FCC rules**), published by the FCC.

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

Documents incorporated by reference

Under section 314A of the Act, an instrument made under the Act may make provision for certain matters by applying, adopting, or incorporating (with or without modifications) matters contained in any other instrument or writing, as in force or existing at a particular time or from time to time, even if the other instrument or writing does not yet exist when the first instrument is made.

The instrument amends the SRD Standard so that it incorporates by reference the following legislative instruments as in force from time to time:

- the LIPD Class Licence; and
- the Radio-controlled Class Licence.

The LIPD Class Licence and Radio-controlled Class Licence can be accessed, free of charge, from the Federal Register of Legislation: http://www.legislation.gov.au.

The instrument also amends the SRD Standard so that it incorporates by reference the following instruments, as in force or existing from time to time:

- AS/NZS 4268;
- EN 300 220-1;
- EN 300 330;
- EN 300 440;
- EN 305 550-1;
- the FCC rules; and
- the Radio Regulations, published by the International Telecommunication Union (**ITU**).

These instruments may be accessed as follows:

- AS/NZS 4268 can be obtained, for a fee, from Standards Australia: http://www.standards.org.au, or can otherwise be made available for viewing on prior request at an ACMA office, subject to licensing conditions;
- copies of instruments published by ETSI are available, free of charge, from the ETSI website: http://www.etsi.org;
- copies of the FCC rules are available, free of charge, from the following website: http://www.ecfr.gov;
- the Radio Regulations are available, free of charge, from the ITU's website: www.itu.int.

Consultation

Before the instrument was made, the ACMA was satisfied that consultation was undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the LA.

Subsection 163(1) of the Act requires that before the ACMA makes or varies a standard 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 so made.

The ACMA conducted a public consultation process in relation to the proposal to amend the SRD Standard during the period 6 November 2020 to 18 December 2020. A draft amendment instrument and a consultation paper were made available on the ACMA website for a period of six weeks. Potential interested parties were notified of the release of the draft instrument and invited to comment.

The ACMA received two submissions during the consultation period, both supporting the proposed amendments to the SRD Standard. As a result of these submissions, the ACMA made some additional changes to the draft instrument to include references to spurious emission and bandwidth requirements for devices.

Regulatory impact assessment

A preliminary assessment of the proposal to make the instrument was conducted by the Office of Best Practice Regulation (**OBPR**), based on information provided by the ACMA, for the purposes of determining whether a Regulation Impact Statement (**RIS**) would be required. OBPR advised that a RIS would not be required because the proposed regulatory change is minor or machinery in nature (OBPR reference number 42959).

Statement of compatibility with human rights

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires the rule-maker in relation to a legislative instrument to which section 42 (disallowance) of the LA applies to cause a statement of compatibility to be prepared in respect of that legislative instrument.

The statement of compatibility set out below has been prepared to meet that requirement.

Overview of the instrument

The *Radiocommunications (Short Range Devices) Amendment Standard 2021 (No.1)* (**the instrument**) amends the SRD Standard to specify the standard for performance of an applicable device is either:

- if operation of the device is authorised by the *Radiocommunications (Low Interference Potential Devices) Class Licence 2015* (**the LIPD Class Licence**) – particular conditions of operation for the device included in the LIPD Class Licence; or
- if operation of the device is authorised by the *Radiocommunications (Radio-controlled Models) Class Licence 2015* (**the Radio-controlled Class Licence**) – particular conditions of operation for the device included in the Radio-controlled Class Licence.

The instrument also amends the SRD Standard to update the reference to AS/NZS 4268 to the latest edition and include references to international instruments, for the purposes of testing compliance with the standards for performance. Referencing the international instruments in the SRD Standard allows the use of the test methods, spurious emission limits and bandwidth requirements contained within those instruments.

Human rights implications

The ACMA has assessed whether the instrument is compatible with human rights, being the rights and freedoms recognised or declared by the international instruments listed in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* as they apply to Australia.

Having considered the likely impact of the instrument and the nature of the applicable rights and freedoms, the ACMA has formed the view that the instrument does not engage any of those rights or freedoms.

Conclusion

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

Attachment A

Notes to the *Radiocommunications (Short Range Devices) Amendment Standard 2021 (No.1)*

Section 1 Name

This section provides for the instrument to be cited as the *Radiocommunications (Short Range Devices) Amendment Standard 2021 (No.1)*.

Section 2 Commencement

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

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

Section 3 Authority

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

Section 4 Amendments

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

Schedule 1 Amendments

***Radiocommunications (Short Range Devices) Standard 2015 (F2014L01253*)**

Item 1 Section 4, definition of *AS/NZS 4268*

This item repeals the definition, substituting it with:

(a) a reference to the latest edition of AS/NZS 4268 that has been published by Standards Australia; or
(b) if a later standard published by Standards Australia is expressed to replace the standard mentioned in paragraph (a) – the later standard.

Item 2 Section 4

This item inserts the definitions of three new terms in the SRD Standard – ***EIRP***, ***ETSI*** and ***FCC***.

- ***EIRP***, in relation to a radiocommunications device, means the Equivalent Isotropically Radiated Power of the device
- ***ETSI*** means the European Telecommunications Standards Institute; and
- ***FCC*** means the United States of America Federal Communications Commission.

Item 3 Section 4, definition of *low interference potential device*

This item repeals and substitutes the definition of a ***low interference potential device*** to be a transmitter that is of a type mentioned in column 1 of an item in Schedule 1 to the LIPD Class Licence.

Item 4 Section 4

This item inserts a new definition for the Radio-controlled Class Licence.

Item 5 Section 4, definition of *short range device*

This item repeals and substitutes paragraphs (b) and (c) of, and the note to, the ***short range device*** definition. The change ensures that the definition does not rely on AS/NZS 4268 for effect: whether something is a short range device will depend instead on the LIPD Class Licence and the Radio-controlled Class Licence.

Item 6 Section 4

This item inserts a new definition, ***spurious emission,*** meaning the definition given by the Radio Regulations published by the ITU.

The definition of spurious emission given by the Radio Regulations is:

> ***spurious emission:*** Emission on a frequency or frequencies which are outside the necessary bandwidth and the level of which may be reduced without affecting the corresponding transmission of information. Spurious emissions include harmonic emissions, parasitic emissions, intermodulation products and frequency conversion products, but exclude out-of-band emissions.

Item 7 Section 4, definition of *wireless audio transmitter*

This item repeals and substitutes the definition of a wireless audio transmitter to define the term by reference to specified items in Schedule 1 to the LIPD Class Licence.

Item 8 After section 4

This item inserts a new section 4A in the SRD Standard that provides that, unless the contrary intention appears:

- a reference to a legislative instrument is a reference to that legislative instrument as in force from time to time; and
- a reference to any other kind of instrument or writing is a reference to that other instrument or writing as in force or existing from time to time.

Item 9 Paragraph 5(1)(a)

The SRD Standard applies to a radiocommunications device that is a short range device. Short range devices are now defined to include low interference potential devices by virtue of the amendment at item 5. Therefore, the additional reference to low interference potential devices is not required in this paragraph.

Item 10 Section 7

This item makes it clear that the term ‘relevant date’ is a defined term.

Item 11 Section 8

This item repeals the current section 8 in the SRD Standard and substitutes with a revised section, that specifies the standard for performance of an applicable device.

The performance standard for a low interference potential device that is mentioned in column 1 of an item in Schedule 1 to the LIPD Class Licence consists of:

- the operating conditions specified in columns 2 to 4 of that item, as in force on the relevant date for the device; and
- any spurious emission limit specified in the relevant 'testing methods' instrument for the device (see below).

The performance standard for a radio controlled model consists of:

- the operating conditions specified in section 7 of the Radio controlled Class Licence;
- an emission bandwidth of 10 kHz; and
- a spurious emission limit of 50 μW.

In order to determine whether a radiocommunications device meets a performance standard, it needs to be tested. Subsection (2) specifies that the testing methods that may be used to determine compliance with the performance standards in subsection (1), are those specified in any of the following standards:

(a) AS/NZS 4268; or
(b) EN 300 220-1; or
(c) EN 300 330; or
(d) EN 300 440; or
(e) EN 305 550-1; or
(f) FCC Rules Title 47 (Telecommunications) Part 15–Radio Frequency Devices.

Subsection (3) provides that if a manufacturer or importer of a low interference potential device uses a testing method identified in one of these instruments to test compliance with the performance standards, and the instrument document also specifies a spurious emission limit for the device, then the device must comply with that specified limit.

Subsection (4) provides that, if for a low interference potential device, the LIPD Class Licence specifies an instrument that provides for any of the of the following performance parameters:

(a) an operating frequency band;
(b) a maximum EIRP, or
(c) any other limitations;

and those performance parameters are different or inconsistent (as applicable) with any operational conditions specified in the LIPD Class Licence for the device, then those operational conditions specified in the LIPD Class Licence take precedence for the purposes of the standard for performance in subsection (1).

Item 12 Section 8A

This item repeals the section, which previously dealt with low interference potential devices (now covered by the new section 8).

Item 13 Paragraph 9A(a)

This item makes a consequential amendment because section 8A has been repealed.