EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications Equipment (General) Amendment Rules 2021 (No. 1)

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications Equipment (General) Amendment Rules 2021 (No. 1)* (**the instrument**) under subsection 156(1) of the *Radiocommunications Act 1992* (**the Act**) and subsection 33(3) of the *Acts Interpretation Act 1901* (**the AIA**).

Subsection 156(1) of the Act provides that the ACMA may, by legislative instrument, make rules relating to equipment (**equipment rules**).

Subsection 156(3) prescribes that equipment rules must be directed towards achieving any or all of the objectives listed in that subsection, including protecting the health or safety of individuals from any adverse effect likely to be attributable to radio emissions resulting from a reasonably foreseeable use (including a misuse) of radiocommunications transmitters.

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 instrument

The ACMA regulates human exposure to radiofrequency electromagnetic energy (**EME**) emissions from equipment (such as mobile telephone handsets) through several legislative instruments.

Before the commencement of Part 1 of Schedule 4 to the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020* (**the Reform Act**) on 17 June 2021, Part 4.1 of the Act empowered the ACMA to regulate human exposure to EME emissions through two instruments:

- the *Radiocommunications (Compliance Labelling - Electromagnetic Radiation) Notice 2014* (**the EME Labelling Notice**); and
- the *Radiocommunications (Electromagnetic Radiation – Human Exposure) Standard 2014* (**the Exposure Standard**).

Before 17 June 2021, Part 4.1 of the Act set out offences that applied in relation to the operation, possession or supply of devices that did not comply with the Exposure Standard, and in relation to the supply of devices that did not comply with the EME Labelling Notice.

Since 17 June 2021, the Exposure Standard and the EME Labelling Notice have had effect as if they had been made as equipment rules under subsection 156(1) of the Act. The ACMA made the *Radiocommunications Equipment (General) Rules 2021* (**the General Equipment Rules**) under subsection 156(1), which also commenced on 17 June 2021. At the time they were made, the General Equipment Rules imposed obligations and prohibitions in relation to the operation, possession and supply of equipment that did not comply with the Exposure Standard, and in relation to the supply of equipment that did not comply with the EME Labelling Notice.

The Exposure Standard required certain radiocommunications equipment to comply with the exposure limits for the general public specified in a standard published by the Australian Radiation Protection

and Nuclear Safety Agency (**ARPANSA**), being the Radiation Protection Standard for Maximum Exposure levels to Radiofrequency Fields – 3 kHz to 300 GHz (2002) (**the previous ARPANSA Standard**).

ARPANSA published a new standard in February 2021, being the Radiation Protection Standard for Limiting Exposure to Radiofrequency Fields – 100 kHz to 300 GHz (2021) (**the new ARPANSA Standard**). The new ARPANSA Standard replaces the previous ARPANSA Standard.

The instrument amends the General Equipment Rules to:

- include provisions that replace, and simplify, the requirements of the EME Labelling Notice and Exposure Standard; and
- update the content of the ACMA's EME regulation in the General Equipment Rules to adopt the new ARPANSA Standard.

The new provisions that replace and simplify the requirements of the EME Labelling Notice and Exposure Standard:

- remove references to two international standards that set out measurement methods or assessment methods for working out whether equipment complies with the requirements of the new ARPANSA Standard. These international standards have been withdrawn, and the new provisions refer instead to a new consolidated international standard;
- add three additional international standards that set out alternative measurement methods or assessment methods for working out whether equipment complies with the requirements of the new ARPANSA Standard.

The EME Labelling Notice and the Exposure Standard are repealed by the *Radiocommunications (Electromagnetic Energy) Amendment Instrument 2021 (No. 1)*.

Section 160 of the Act provides that it is an offence, and subject to a civil penalty, for a person to engage in conduct that is prohibited by the General Equipment Rules, or to engage in conduct that contravenes an obligation imposed by the General Equipment Rules. (Contravention of some prohibitions or obligations may only be subject to a civil penalty, and not an offence: see subsections 160(9) and (10) of the Act.)

Parliament has prescribed that the maximum penalty for an offence, and the maximum civil penalty, is in each case 500 penalty units, or $111,000 based on the current penalty unit amount of $222.

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

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

The General Equipment Rules are subject to the sunsetting provisions of the LA.

Documents incorporated by reference

Section 314A of the Act provides that an instrument under the Act may make provision in relation to a matter by applying, adopting or incorporating (with or without modifications) matters contained in any Act or any other instrument or writing as in force or existing at a particular time or from time to time.

The instrument amends the General Equipment Rules to incorporate by reference the following Commonwealth Acts as in force from time to time:

- the *A New Tax System (Australian Business Number) Act 1999*;
- the Act;
- the *Business Names Registration Act 2011*;
- the *Corporations Act 2001*;
- the *Law Enforcement Integrity Commissioner Act 2006*.

The instrument incorporates by reference the following Commonwealth legislative instruments:

- the EME Labelling Notice; and
- the Exposure Standard.

The instrument inserts a transitional provision into the General Equipment Rules (clause 15 of Schedule 3) that applies in relation to a device to which a label has been applied, in accordance with the EME Labelling Notice. This provision incorporates the EME Labelling Notice as in force both immediately before the commencement of the instrument, and at the time a person applied a label to the device. The instrument also inserts a transitional provision (clause 5 of Schedule 4) that applies in relation to a device that was manufactured or imported before the commencement of the instrument, or within one year after the commencement of the instrument. This provision incorporates the Exposure Standard as in force immediately before the commencement of the instrument.

The Acts and legislative instruments listed above can be accessed, free of charge, from the Federal Register of Legislation: http://www.legislation.gov.au.

The instrument amends the General Equipment Rules to refer to the *Associations Incorporation Act 2009* (NSW), as in force from time to time. This Act can be accessed, free of charge, from the New South Wales legislation website: http://www.legislation.nsw.gov.au.

The instrument also amends the General Equipment Rules to incorporate by reference the following documents, as existing from time to time:

- the new ARPANSA Standard, and any standard published by ARPANSA as a replacement of the new ARPANSA Standard;
- *RPS S-1 Advisory Note: Compliance of mobile or portable transmitting equipment (100kHz to 300 GHz)* (**the RPS S-1 Advisory Note**) published by ARPANSA, and any other document published by ARPANSA expressed to replace the RPS S-1 Advisory Note.

The ARPANSA Standard and the RPS S-1 Advisory Note are available, free of charge, from the ARPANSA website (https://www.arpansa.gov.au).

The instrument also amends the General Equipment Rules to incorporate by reference the following documents, as existing from time to time:

- AS/NZS 2772.2:2016 Radiofrequency fields, Part 2: Principles and methods of measurement and computation – 3 kHz to 300 GHz (**AS.NZS 2772.2**), published by Standards Australia, or any document expressed to replace that document;
- EN 62209-1:2016 Measurement procedure for the assessment of specific absorption rate of human exposure to radio frequency fields from hand-held and body-mounted wireless communication devices – Part 1: Devices used next to the ear (frequency range of 300 MHz to 6 GHz) (**EN 62209-1**), published by the European Committee for Electrotechnical Standardization, or any document expressed to replace that document;

- EN 62209-2:2010 Human exposure to radio frequency fields from hand-held and body-mounted wireless communication devices – Human models, instrumentation and procedures – Part 2: Procedure to determine the specific absorption rate (SAR) for wireless communication devices used in close proximity to the human body (frequency range of 30 MHz to 6 GHz) (**EN 62209-2**), published by the European Committee for Electrotechnical Standardization, or any document expressed to replace that document;
- IEC/IEEE 62209-3:2019 Measurement procedure for the assessment of specific absorption rate of human exposure to radio frequency fields from hand-held and body-mounted wireless communication devices – Part 3: Vector measurement-based systems (Frequency range of 600 MHz to 6 GHz) (**IEC 62209-3**), published by the International Electrotechnical Commission, or any document expressed to replace that document;
- IEC/IEEE 62209-1528:2020 – Measurement procedure for the assessment of specific absorption rate of human exposure to radio frequency fields from hand-held and body-mounted wireless communication devices – Part 1528: Human models, instrumentation, and procedures (Frequency range of 4 MHz to 10 GHz) (**IEC/IEEE 62209-1528**), published by the International Electrotechnical Commission, or any document expressed to replace that document;
- IEC TR 63170:2018 Measurement procedure for the evaluation of power density related to human exposure to radio frequency fields from wireless communication devices operating between 6 GHz and 100 GHz (**IEC TR 63170**), published by the International Electrotechnical Commission, or any document expressed to replace that document;
- IEEE C95.3:2021 – IEEE Recommended Practice for Measurements and Computations of Electric, Magnetic, and Electromagnetic Fields with Respect to Human Exposure to Such Fields, 0 Hz to 300 GHz (**IEEE C95.3**), published by the Institute of Electrical and Electronics Engineers (**IEEE**), or any document expressed to replace that document;
- SA TR IEC 63170:2020 Measurement procedure for the evaluation of power density related to human exposure to radio frequency fields from wireless communication devices operating between 6 GHz and 100 GHz (**SA TR IEC 63170**), published by Standards Australia, or any document expressed to replace that document.

IEEE C95.3 can be obtained, for a fee, from the IEEE website: https://standards.ieee.org. The remaining documents (AS/NZS 2772.2, EN 62209-1, EN 62209-2, IEC 62209-3, IEC/IEEE 62209-1528, IEC TR 63170, and SA TR IEC 63170) may be obtained, for a fee, from a Standards Australia distributor listed on the Standards Australia website: www.standards.org.au. Each of these documents is also available to be viewed, on prior request and subject to licensing conditions, at an ACMA office.

The instrument also amends the General Equipment Rules to refer to the *Criminal Code*. The *Criminal Code* is not, however, incorporated by reference.

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 156(4) of the Act requires the ACMA to consult with ARPANSA before making equipment rules directed towards protecting the health or safety of individuals from any adverse effects attributable to radio emissions resulting from a reasonably foreseeable use (including a misuse) of radiocommunications transmitters. The ACMA consulted with ARPANSA on a draft of the instrument in accordance with this requirement, and ARPANSA did not raise any concerns in its response.

The ACMA conducted a public consultation process in relation to a proposal to make the instrument during the period 21 July 2021 to 23 August 2021. A draft of the instrument and consultation paper containing explanatory information were made available on the ACMA's website. Interested parties were notified of the release of the draft instrument and invited to comment.

In addition to ARPANSA's response, the ACMA received a further seven submissions to the consultation, and these were considered when making the instrument. The majority of submissions expressed support for the proposed instrument.

Two submissions identified a provision that inadvertently prevented EN 62209-2 from being used to work out whether devices in close proximity to the human head comply with the requirements in the new ARPANSA Standard. This was contrary to the scope of EN 62209-2, and the instrument was changed to allow EN62209-2 to be used in this manner.

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 is not required (OBPR reference 43118).

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 disallowable legislative instrument (section 42 of the LA) to prepare a statement of compatibility with human rights for that legislative instrument.

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

Overview of the instrument

The ACMA regulates human exposure to radiofrequency EME emissions from equipment (such as mobile telephone handsets) through several legislative instruments.

Before the commencement of Part 1 of Schedule 4 to the Reform Act, Part 4.1 of the Act empowered the ACMA to regulate human exposure to EME emissions through two instruments:

- the EME Labelling Notice; and
- the Exposure Standard.

Since 17 June 2021, the Exposure Standard and the EME Labelling Notice have effect as if they had been made as equipment rules under subsection 156(1) of the Act. The ACMA made the General Equipment Rules under subsection 156(1), which also commenced on 17 June 2021. At the time they were made, the General Equipment Rules imposed obligations and prohibitions in relation to the operation, possession and supply of equipment that did not comply with the Exposure Standard, and in relation to the supply of equipment that did not comply with the EME Labelling Notice.

The Exposure Standard required certain radiocommunications equipment to comply with the exposure limits for the general public specified in the previous ARPANSA Standard. ARPANSA published the new APRANSA Standard in February 2021, to replace the previous ARPANSA Standard.

The instrument amends the General Equipment Rules to:

- include provisions that replace, and simplify, the requirements of the EME Labelling Notice and Exposure Standard; and

- update the content of the ACMA's EME regulation to adopt the new ARPANSA Standard.

The new provisions that replace and simplify the requirements of the EME Labelling Notice and Exposure Standard:

- remove references to two international standards that set out measurement methods or assessment methods for working out whether equipment complies with the requirements of the new ARPANSA Standard. These international standards have been withdrawn, and the new provisions refer instead to a new consolidated international standard;
- add three additional international standards that set out alternative measurement methods or assessment methods for working out whether equipment complies with the requirements of the new ARPANSA Standard.

The EME Labelling Notice and the Exposure Standard are repealed by the *Radiocommunications (Electromagnetic Energy) Amendment Instrument 2021 (No. 1)*.

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 Equipment (General) Amendment Rules 2021 (No. 1)*

Section 1 Name

This section provides for the instrument to be cited as the *Radiocommunications Equipment (General) Amendment Rules 2021 (No. 1)*.

Section 2 Commencement

This section provides for the instrument 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 free of charge at www.legislation.gov.au.

Section 3 Authority

This section identifies the provision of the Act that authorises the making of the instrument, namely subsection 156(1) of the Act.

Section 4 Amendments

This section provides that the instrument identified in Schedule 1 is amended as detailed in the applicable items in that Schedule.

Schedule 1 – Amendments

Radiocommunications Equipment (General) Rules 2021 **(F2021L00661)**

Item 1 Subsection 4(1)

Item 1 inserts the definitions four new terms into the General Equipment Rules: ***ABN, ACN, ARBN*** and ***ARPANSA***.

- ***ABN*** has the meaning given by section 41 of the *A New Tax System (Australian Business Number) Act 1999*.
- ***ACN*** has the meaning given by section 9 of the *Corporations Act 2001*.
- ***ARBN*** has the meaning given by section 9 of the *Corporations Act 2001*.
- ***ARPANSA*** means the Australian Radiation Protection and Nuclear Safety Agency.

Item 2 Subsection 4(1) (definition of *EME labelling notice*, including the note)

Item 2 repeals the definition of ***EME labelling notice***, including the note.

Item 3 Subsection 4(1) (definition of *EME standard*, including the note)

Item 3 replaces the definition of ***EME standard***, including the note, referring instead to clause 3 of new Schedule 4 to the General Equipment Rules.

Item 4 Subsection 4(1)

Item 4 inserts the definitions of two new terms in the General Equipment Rules: ***national database*** and ***RCM***.

Item 5 Subsection 4(1) (note 1, after paragraph (j))

Item 5 inserts a reference to a 'member of a visiting force', which is defined in section 5 of the Act.

Item 6 Paragraph 6(d)

Item 6 repeals paragraph 6(d), which refers to the repealed EME Labelling Notice.

Item 7 Section 18

Item 7 is a consequential change that repeals the original text of this section that referred to the Exposure Standard. Item 7 inserts new text to reflect that the provisions replacing the Exposure Standard are now part of the General Equipment Rules, through Part 2 of Schedule 4.

Item 8 Subsection 25(5) (heading)

Item 8 omits the heading *EME labelling notice* and inserts the heading *EME labelling requirements*.

Item 9 Paragraph 25(5)(b)

Subsection 25(5) of the General Equipment Rules imposes a prohibition on supplying a device manufactured in Australia. Item 9 amends the prohibition, so that it applies if Part 2 of Schedule 3 requires the manufacturer of the device to apply a label to the device in a particular form, rather than the repealed EME Labelling Notice. New Schedule 3 to the General Equipment Rules contains a number of requirements in relation to the labelling of devices.

Item 10 Subsection 25(5)

Item 10 makes a consequential change as a result of the addition of Schedule 3 to the General Equipment Rules.

Item 11 Paragraph 25(6)(b)

Subsection 25(6) of the General Equipment Rules imposes a prohibition on supplying a device imported into Australia. Item 11 amends the prohibition, so that it applies if Part 2 of Schedule 3 requires the importer of the device to apply a label to the device in a particular form, rather than the repealed EME Labelling Notice. New Schedule 3 to the General Equipment Rules contains a number of requirements in relation to the labelling of devices.

Item 12 Subsection 25(6)

Item 12 makes a consequential change as a result of the addition of Schedule 3 to the General Equipment Rules.

Item 13 Subsection 25(6) (note)

Item 13 repeals a note which refers to the repealed EME Labelling Notice.

Item 14 Subsection 27(3) (heading)

Item 14 omits the heading *EME labelling notice*, and inserts the heading *EME labelling requirements*.

Item 15 Subsection 27(3)

Item 15 replaces the prohibition in subsection 27(3), so that a person must not apply a label to a device unless all the requirements of Part 3 of Schedule 3 have been met.

Item 16 After subsection 28(2)

Section 28 of the General Equipment Rules limits the application of the prohibitions in section 27. Item 16 inserts new subsection 28(3), which provides that section 27 does not apply if a person has a permit to supply the device. Part 7 of the General Equipment Rules sets out the ACMA's permit powers for devices which do not comply with an applicable standard, or the supply of unlabelled devices.

Item 16 also inserts a new section 28A, which replaces some requirements of the repealed EME Labelling Notice. Subsection 28A(1) provides that if Part 2 of Schedule 3 requires the manufacturer or importer of equipment to label devices that comply with any applicable standards, then they must comply with each requirement in Part 4 or Part 5 of Schedule 3 that applies, after a label is applied to the device. New Schedule 3 to the General Equipment Rules contains a number of requirements in relation to the labelling of devices.

Section 157 of the Act provides that equipment rules may only be made to the extent that they are support by particular provisions of the Constitution. New subsection 28A(2) limits the application of the obligation in subsection 28A(1) to particular circumstances that are supported by those provisions of the Constitution.

New subsection 28A(3) provides that subsection 28A(1) does not apply if an exemption applies.

New subsection 28A(4) provides that subsection 28A(1) does not apply if a person has a relevant permit to supply the device.

Item 17 Paragraph 29(1)(b)

Item 17 makes a change consequential on the change in item 18.

Item 18 Paragraph 29(1)(c)

Item 18 repeals the reference to the repealed EME Labelling Notice.

Item 19 Subsection 29(1) (note)

Item 19 makes a minor change to an example of obligations to be met after a label has been applied to a device.

Item 20 Subsection 29(6)

Item 20 repeals subsection 29(6), as a consequence of the inclusion of section 28A.

Item 21 Paragraph 48(d)

Item 21 provides that new section 53 and new subsection 54(1) set out new exemptions in relation to the obligations and prohibitions imposed by the General Equipment Rules.

Item 22 After section 52

Item 22 provides for the addition of two new exemptions (section 53 and 54) and the addition of new Part 9.

New exemptions

New section 53 provides for an exemption from the prohibitions in Part 4 of the General Equipment Rules, which relate to the new standard for EME emissions (**new EME standard**) prescribed by new

Schedule 4 to the General Equipment Rules, where the device is used by certain entities. The entities are those defence, national security and emergency organisations specified in section 27 of the Act.

New section 54 provides for an exemption from the prohibitions in subsections 25(5), 25(6) and 27(3), and the obligation in subsection 28A(1), of the General Equipment Rules, in relation to a device if:

- the device is manufactured in Australia as part of a motor vehicle, or installed in Australia in a motor vehicle, or imported as part of a motor vehicle, by a member of the Federal Chamber of Automotive Industries (**FCAI**) or Construction & Mining Equipment Industry Group (**CMEIG**) or Tractor and Machinery Association of Australia (**TMA**) and is an integral part of the motor vehicle; or
- the device is manufactured or imported by a member of FCAI or CMEIG or TMA and can only be operated if it is installed in a motor vehicle.

New section 54 provides that the manufacturer or importer of the device must still comply with Part 3 and either Part 4 or Part 5 of Schedule 3 to the General Equipment Rules, even though the device is unlabelled.

The exemption in section 54 only applies to the labelling requirements. The device must still comply with the new EME standard.

The ACMA had previously made an exemption in the EME Labelling Notice for members of the FCAI, CMEIG and TMA in 2017, following consideration of each industry association's process for providing information, education and a compliance pathway to its members. Similar exemptions exist in Schedule 2 to the *Radiocommunications Labelling (Electromagnetic Compatibility) Notice 2017* and Part 2 of the *Radiocommunications (Compliance Labelling – Devices) Notice 2014*. Maintaining a labelling exemption for members of FCAI, CMEIG and TMA is appropriate because membership of the organisation requires compliance with that associations' codes of practice, and because a device must still comply with the new EME standard.

New Part 9

New Part 9 sets out provisions for a national database, which is relevant to labelling requirements in new Schedule 3 to the General Equipment Rules.

New section 55 provides for an outline of Part 9.

New section 56 states the object of Part 9, which is to establish a national database of persons who manufacture and import equipment. The database allows relevant regulatory bodies to identify and contact manufacturers and importers.

New subsection 57(1) provides that the ACMA may designate a database as the national database by a notifiable instrument.

New subsection 57(2) provides that if the ACMA has not designated a database as the national database under subsection 57(1), then the database that was the national database for the purpose of the EME Labelling Notice is taken to be the national database. As the ACMA has not yet designated a database under subsection 57(1), this means the Electrical Equipment Safety System Registration Database (**EESS Registration Database**) is the national database for the purposes of the General Equipment Rules. The EESS Registration Database is maintained at the direction of the Electrical Regulatory Authorities Council (**ERAC**), which is the peak body of electrical safety regulators in Australia and New Zealand. Information about the EESS Registration Database is available from the EESS website: https://www.eess.gov.au.

New subsection 57(3) provides that if, before the commencement of the instrument, a person was registered on the EESS Registration Database, then the person is taken to be registered on the national database.

New subsection 58(1) sets out the required information a person must provide to be registered on the national database.

New subsection 58(2) provides that if any information that has been provided by a person on the national database changes, then the person is required to update this information on the national database within 30 days of the change occurring.

New subsection 58(3) provides that the person must use a method indicated by the database for providing information referred to in subsections (1) and (2).

If the person has not provided all the required information for registration on the EESS Registration Database, the person may not be registered on the EESS Registration Database.

New subsection 58(4) provides for definitions used in section 58.

The EESS Registration Database may include personal information within the meaning of the *Privacy Act 1988*. Where the ACMA collects such personal information, the ACMA is obliged to comply with the Australian Privacy Principles set out in Schedule 1 to the *Privacy Act 1988*. The ACMA has published a privacy notice for information stored on the EESS Database; a copy of that notice can be found on the ACMA's website: https://www.acma.gov.au/privacy-information-national-database.

Where members of ERAC collect such personal information, each will be governed by privacy legislation applicable in its jurisdiction. ERAC has also published a privacy policy on its website: https://www.erac.gov.au/privacy-policy. A separate privacy statement has also been published in relation to the EESS on its website: https://www.eess.gov.au/about/privacy-statement.

Item 23 After Schedule 1

Item 23 provides for the addition of new Schedules 2, 3 and 4 to the General Equipment Rules.

New Schedule 2

New Schedule 2 provides for the design of the RCM mark. This is the label that must be applied to some devices before they are supplied. The RCM was previously set out in the EME Labelling Notice, and is unchanged.

New Schedule 3

New Schedule 3 provides for the labelling requirements for equipment in relation to human exposure to EME. It largely replaces, and simplifies, the requirements that were contained in the EME Labelling Notice.

Part 1 of new Schedule 3 sets out preliminary matters for new Schedule 3.

Clause 1 provides that the purpose of new Schedule 3 is to:

- protect the health or safety of individuals from any adverse effect likely to be attributable to radio emissions resulting from a reasonably foreseeable use (including a misuse) of radiocommunications transmitters; and
- ensure that persons operating the equipment have access to information about the equipment.

Clause 2 provides for the interpretation of the terms used in new Schedule 3.

An ***accredited testing body*** in relation to a standard that is prescribed by equipment rules, means a laboratory that is accredited by the National Association of Testing Authorities, Australia (**NATA**) to conduct testing against that standard, or accredited by a body that has entered into a mutual recognition arrangement with the International Laboratory Accreditation Cooperation (**ILAC**) to conduct testing against that standard or a standard or requirement that is equivalent to that standard. In some cases, Schedule 3 may require a person to obtain a test report from an accredited testing body before applying a label to a device, to demonstrate that the device complies with any applicable standards. 'Accreditation' in this case does not refer to accreditation under Part 5.4 of the Act.

NATA is recognised by the Australian Government as Australia's leading accreditation body for laboratories, inspection bodies, and related services through a Memorandum of Understanding. It is also recognised as the national compliance monitoring authority for facilities performing activities in accordance with the Organisation for Economic Co-operation and Development Principle of Good Laboratory Practice. NATA offers accreditation for a broad range of Australian and international standards, across different industry groups and professions. Its accreditation provides an independent benchmark for technical competence and is supported by technical advisory committees. NATA represents Australia in ILAC through participation in its committees. More information about NATA can be obtained from its website (https://www.nata.gov.au), and the Memorandum of Understanding is available from the website of the Department of Industry, Science, Energy and Resources (https://www.industry.gov.au).

ILAC is the principal international forum for laboratory accreditation bodies. The primary aim of ILAC is to facilitate trade by promoting the acceptance of test and calibration results from accredited facilities across national borders. This includes mutual recognition agreements and arrangements between national accreditation bodies. ILAC independently evaluates conformity assessment bodies against recognised standards to carry out specific activities to ensure their impartiality and competence.

Another key term is ***variant***. A device (**the second device**) is a ***variant*** of another device (**the first device**):

- if the same person who manufactured or imported the first device also manufactured or imported the second device; and
- the second device is not identical to the first device; and
- both the devices have the same measurement method or assessment method; and
- both the devices comply with the EME standard in the same or substantially similar manner.

Some requirements of new Schedule 3 may apply differently to a second device that is a variant of another device.

If the document titled 'RPS S-1 Advisory Note: Compliance of mobile or portable transmitting equipment (100 kHz to 300 GHz) (**RPS S-1 Advisory Note**), published by ARPANSA, provides that the evaluation of a device for compliance with the ARPANSA Standard is not required, then the device is a ***low risk device***.

A device is a ***medium risk device*** if it is not a low risk device and if it is normally used more than 20 centimetres from the human body. Any device that is not a low risk device or a medium risk device is a ***high risk device***. Some requirements of new Schedule 3 may apply differently, depending on whether a device is a low risk device, a medium risk device or a high risk device.

New subclause 2(4) provides that if a person manufactures or imports devices that are identical to each other, then if they comply with the requirements in new Schedule 3 for one of the identical

devices, they are taken to have complied with those requirements for all the devices that are identical to that device. The person must comply with each requirement from the time the person was first obliged to comply with the requirement in relation to one of the identical devices, and ending at the time the person was last obliged to comply with the requirement in relation to one of the identical devices.

New subclause 2(5) provides that if a person manufactures or imports a device that is a variant of a first device, and the person complies with the requirements in new Schedule 3 for the first device, the person is taken to comply with the requirements for the variant, so long as certain conditions are met.

Part 2 of new Schedule 3 sets out requirements to apply a label to a device.

Clause 3 imposes the requirement to apply a label to a device. This clause has the effect that if an EME standard is prescribed for an applicable device by new Schedule 4 to the General Equipment Rules, then for the purposes of subsections 25(5), 25(6), 27(3) and 28A(1) of the General Equipment Rules, the manufacturer or importer of the device must apply a label to the device in accordance with Part 2 of Schedule 3. Supply of such a device without a label may breach one or more of those provisions.

Clause 4 provides that an agent or authorised person may apply a label to a device on behalf of the manufacturer or importer.

Clause 5 provides for the general requirements for the label, and for applying the label to the device:

- the label must be the RCM, or a QR code or similar thing if the relevant link is to information on a website which displays the RCM prominently;
- the label must be applied to the surface of the device in a place accessible to the user without the use of any specialised equipment;
- the label must be durable;
- the label must be applied permanently and not be able to be easily removed or obliterated;
- the label must be at least 3mm high.

Applying the label to packaging, rather than the surface of the device, can be used where, because of the size or physical nature of a device it is impossible or impractical to apply the label to the surface. In this case, the label must also be included in the documentation that accompanies the device when it is supplied, including any warranty or guarantee certificate. If the label is applied to the packaging:

- the label must occupy an area that is greater than 1% of the external surface of the packaging;
- the label must be clearly visible;
- the label must be durable;
- the label must be applied permanently and not be able to be easily removed or obliterated and be at least 3mm high.

Clause 6 provides for electronic labelling in devices that have a ‘built-in display’, which can be used in substitute to applying the label to the surface of the device. In this case, the documentation accompanying the device must set out instructions for displaying the RCM on the built-in display, and it must be difficult or impossible to prevent the RCM from being displayed on the built-in display when a person follows the instructions for displaying the RCM on the built-in display.

Part 3 of new Schedule 3 sets out the requirements that need to be met before applying the label to a device.

Clause 7 provides that, for the purpose of the prohibition in subsection 27(3), each of clauses 8 to 12 sets out a requirement to be met by a person before a label is applied to the device. If a person applies a label to a device without complying with one or more of clauses 8 to 12, the person may be in breach of the prohibition in subsection 27(3).

Clause 8 provides that a person must be registered on the national database before applying a label to the device.

Clause 9 has the effect that the manufacturer or importer of the device must make a declaration of conformity before applying a label to the device. In general, a declaration of conformity for a device:

- must either be in the form approved by the ACMA or contain all the information required in that form;
- if the person making the declaration of conformity is a body corporate, must contain one or more of the following:
    - their ABN; or
    - their ACN; or
    - their ARBN; and
- must declare that the device complies with the EME standard;
- if the declaration is for a medium risk device or high risk device, must set out the measurement methods or assessment methods used to measure or assess whether the device complies with the EME standard, in accordance with Part 3 of Schedule 4.

Subclause 9(4) provides for the ACMA to approve a form for the declaration of conformity.

Subclause 9(5) has the effect that if a form is not approved under subclause 9(4) then the form approved for a declaration of conformity for the purposes of the EME Labelling Notice is to be used. At the time the instrument was made, ACMA Form C02 had been approved for the purposes of the EME Labelling Notice, and was available from the ACMA's website (https://www.acma.gov.au).

Clause 10 provides that, if the device is a low risk device, a person must prepare a description of the device that complies with subclause 13(1) before applying a label to the device.

Clause 11 provides that, if the device is a medium risk device, before applying a label to the device a person must:

- prepare a description of the device that complies with subclause 13(1); and
- obtain a test report for the device that complies with subclause 13(2).

Clause 12 provides that, if the device is a high risk device, before applying a label to the device a person must:

- prepare a description of the device that complies with subclause 13(1); and
- obtain test report for the device from an accredited testing body that complies with subclause 13(2).

Clause 13 provides for the requirements for the description and test report for a device.

A description of a device must have sufficient information to determine if the device described is the same as the device for which the declaration of conformity is made, or as the device identified in the test report, if a test report is required.

A test report must:

- identify the device;
- state whether the device complies with the EME standard;
- describe the methods used to test whether the device complies with the EME standard and state whether the methods comply with Part 3 of new Schedule 4;
- state the results of that test including any measurement or evaluation data obtained;
- if measurement methods or assessment methods used have specific test report requirements, comply with those requirements.

Part 4 of new Schedule 3 sets out the requirements that need to be met after applying a label to the device.

For the purpose of subsection 28A(1), clause 14 provides for the general requirements for creating and keeping records after a label is applied to the device. Failure to comply with these requirements after applying a label to a device may breach the obligation in subsection 28A(1).

The person who applied a label to the device (**labeller**) must keep all of the following records (**compliance records**):

- a declaration of conformity for the device made in accordance with clause 9;
- a description of the device prepared in accordance with Part 3 of Schedule 3;
- if the device is a medium or high risk device – a test report obtained in accordance with Part 3 of Schedule 3;
- if the label is applied to the packaging of the device, a written record of why the label has been applied to the packaging and where on the packaging the label is applied;
- if a labeller arranges for an agent to keep records on their behalf, a record of the agency agreement between the labeller and the agent;
- if the device is a variant of another device (**the first device**) then the labeller must create a written record that:
    - identifies the first device; and
    - identifies the variant; and
    - describes the difference between them; and
    - provides a technical rational for why the variant complies with the new EME standard; and
    - includes evidence that the EME emissions from the variant are not likely to exceed those of the first device; and
    - is not false or misleading in a material particular.

A compliance record must be kept from the day it is created to 5 years after the device is first supplied to a person. A compliance record must be in English.

Part 5 of new Schedule 3 sets out a transitional provision that ensures that a person who did an act that complied with the EME Labelling Notice, as in force at the time the person applied a label to a device, does not need to repeat that act. The person must continue to comply with Part 4 of the EME Labelling Notice (which set out requirements to be met after a label was applied to a device), as if the EME Labelling Notice had not been repealed.

New Schedule 4

New Schedule 4 prescribes the new EME standard for equipment in relation to human exposure to EME. It largely replaces, and simplifies, the requirements that were contained in the Exposure Standard.

Part 1 of new Schedule 4 sets out preliminary matters for Schedule 4.

Clause 1 provides that the object of new Schedule 4 is to protect the health or safety of individuals from any adverse effect likely to be attributable to radio emissions resulting from a reasonably foreseeable use (including a misuse) of radiocommunications transmitters.

Clause 2 provides for the interpretation of the terms used in new Schedule 4.

Subclause 2(2) provides that a term that is used, but not defined, in clause 2 of Schedule 4 and is defined in the Glossary of the new ARPANSA Standard has the same meaning in new Schedule 4 as given by that Glossary.

Part 2 of new Schedule 4 prescribes the new EME standard, to be met by equipment in relation to EME. The operation, possession or supply of a device that does not comply with the new EME standard may breach a prohibition in Part 4 of the General Equipment Rules. The application of a label to a device that does not comply with the new EME standard may breach a requirement in new Schedule 3, and consequently may be a breach of a prohibition in Part 5 of the General Equipment Rules.

Clause 3 prescribes the new EME standard for each device that:

- is a mobile station (as defined in the *Radiocommunications (Interpretation) Determination 2015*); and
- is capable of operating on a frequency between 100 kHz to 300 GHz (inclusive); and
- has an integral antenna (as defined in clause 2 of new Schedule 4); and
- is not intended to be used as an emergency location beacon (as defined in the *Radiocommunications (Interpretation) Determination 2015*).

Subclauses 3(2) and 3(4) have the effect that the application of the new EME standard for an applicable device depends on:

- how far it is used from the human body;
- whether a measurement method or assessment method (as set out in the table in clause 4) is applicable for the device; and
- whether the applicable device will be used only by an 'Aware User' (as defined in the new ARPANSA Standard).

For devices that are used 20 centimetres or less from the human body, for which a measurement method is applicable, then the new EME standard is as follows:

- if the device is used by an Aware User, or is reasonably likely only to be used by an Aware User, the EME from the device must comply with the basic restrictions for occupational exposure set out in the new ARPANSA Standard;
- in any other case, the EME from the device must comply with the basic restrictions for general public exposure set out in the new ARPANSA Standard.

For devices that are used more than 20 centimetres from the human body, for which an assessment method is applicable, then the new EME standard is as follows:

- if the device is used by an Aware User, or is reasonably likely only to be used by an Aware User, the EME from the device must comply with the reference levels for occupational exposure set out in the new ARPANSA Standard;
- in any other case, the EME from the device must comply with the reference levels for general public exposure set out in the new ARPANSA Standard.

If neither a measurement method nor an assessment method is specified for a device in Part 3 of new Schedule 4, no standard is prescribed for the device in relation to EME.

Part 3 of new Schedule 4 sets out how a person must assess whether the EME from a device complies with the new EME standard.

The table in Part 3 of Schedule 4 provides measurement and assessment methods for determining compliance with the new EME standard, based on how the device will be used and its frequency range of operation.

If more than one measurement or assessment method is specified for an applicable device, then any of those methods may be used to demonstrate compliance.

Part 4 of new Schedule 4 sets out a transitional provision that ensures that a device that is manufactured or imported, or altered or modified in a material respect no later than 12 months after the commencement of the instrument and that complied with the Exposure Standard as in force before the commencement of the instrument is taken to comply with the new EME standard.