

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Telecommunications Act 1997

Telecommunications Legislation Amendment and Repeal (2022 Measures No. 1) Instrument 2022

Authority

The Australian Communications and Media Authority (the **ACMA**) has made the *Telecommunications Legislation Amendment and Repeal (2022 Measures No. 1) Instrument 2022* (the **instrument**) under subsections 376(1) and 407(1) of the *Telecommunications Act 1997* (the **Act**) and subsection 33(3) of the *Acts Interpretations Act 1901* (the **AIA**).

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

Background

The ACMA is responsible for the technical regulation of telecommunications customer equipment and customer cabling under Part 21 of the Act.

The regulatory arrangements include:

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

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. Those 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, in relation to the item, as in force or existing at one of the times specified for the item.

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

Under Australia's regulatory arrangements for the supply and connection of customer equipment and customer cabling, it is possible that a manufacturer or importer may be required to comply with the labelling arrangements under the Act and the *Radiocommunications Act 1992* (the **Radiocommunications Act**).

The labelling arrangements under the Radiocommunications Act allow for the use of QR codes as a form of label, whereas the arrangements under the Act do not without the amendments being made by the instrument to the Telecommunications Labelling Notice. In order to align and achieve consistency between these labelling requirements, the instrument amends the Telecommunications Labelling Notice to enable the use of a QR code, or similar thing, as an alternative form of compliance label.

The instrument also makes amendments to the Telecommunications Labelling Notice to remove outdated references to supplier code numbers and the national database manager; to update the definition of national database; to make minor changes to the requirements for registration on the national database; and to clarify and otherwise improve the drafting of some provisions.

The instrument also repeals the following three technical standards:

- the *Telecommunications Technical Standard (Requirements for ISDN Basic Access Interface – AS/ACIF S031) 2015*;
- the *Telecommunications Technical Standard (Requirements for ISDN Primary Rate Access Interface – AS/ACIF S038) 2015*;
- the *Telecommunications Technical Standard (Surge Protective Devices for Telecommunication Applications – AS/NZS 4117) 2015* (the **Surge Protective Devices Standard**).

Until their repeal, the first two technical standards referred to above have applied to items of customer equipment that is designed or intended for connection to an Integrated Services Digital Network (ISDN) and required such items to comply with adopted industry standards. As ISDN services are being phased out and have been disconnected or are due to be disconnected shortly, the items will no longer be supplied in Australia. Consequently, the ACMA considers that the technical standards are no longer necessary.

Until its repeal, the Surge Protective Devices Standard applied to surge protectors and required such items to comply with an adopted industry standard. That industry standard has been withdrawn and has not been replaced by another industry standard. Consequently, the ACMA considers that the technical standard is no longer necessary.

The instrument makes consequential changes to the Telecommunications Labelling Notice to remove the references to the technical standards that have been repealed so that they cease to be applicable technical standards in relation to the items concerned.

The instrument also makes consequential changes to the Telecommunications Labelling Notice relating to the making of the *Telecommunications (Mobile Equipment Air Interface) Technical Standard 2022* (the **Mobile Equipment Standard 2022**) which has repealed and replaced the *Telecommunications (Mobile Equipment Air Interface) Technical Standard 2018* (the **Mobile Equipment Standard 2018**). The Mobile Equipment Standard 2022 applies to any item of customer equipment that is designed or intended for use in connection with a public mobile telecommunications service or a satellite service (or both), and is an addressable device¹, and adopts industry standards relating to items of such equipment. The instrument amends the Telecommunications Labelling Notice to update the references to the Mobile Equipment Standard 2018 so that it ceases to be an applicable technical standard, and so that the Mobile Equipment Standard 2022 becomes an applicable technical standard, in relation to the items concerned.

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**).

Documents incorporated by reference

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

- the Act;
- the *Business Names Registration Act 2011*;
- the *Corporations Act 2001*;
- the instrument;
- the Radiocommunications Act;
- the Mobile Equipment Standard 2022;
- the *Telecommunications Technical Standard (Requirements for customer cabling products – AS/CA S008) 2015*;
- AS/CA S042.1:2022 (within the meaning of the Mobile Equipment Standard 2022);
- AS/CA S042.1:2020 (within the meaning of the Mobile Equipment Standard 2022).

The Acts and legislative instruments mentioned above are registered on the Federal Register of Legislation (which may be accessed at www.legislation.gov.au). The Acts are incorporated as in force from time to time, in accordance with section 10 of the AIA and subsection 13(1) of the LA. The 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 LA.

The Telecommunications Labelling Notice refers to AS/CA S042.1:2022 and AS/CA S042.1:2020 in the context of being industry standards adopted by the Mobile Equipment Standard 2022.² The Mobile Equipment Standard 2022 indicates how those industry standards may be obtained and incorporates

¹ A device that enables a carriage service provider to identify the device when used for two-way communications on a public mobile telecommunications service or a satellite service that it provides.

² A copy of each industry standard could, at the time of making the Mobile Equipment Standard 2022, be obtained free of charge from the Communications Alliance Ltd's website at www.commsalliance.com.au.

them as in force at the times mentioned in that technical standard, in accordance with sections 377 and 589 of the Act.

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

The ACMA conducted 2 separate public consultation processes. The first consultation process was conducted during the period 17 June 2022 to 19 August 2022 in relation to the proposal to amend the Telecommunications Labelling Notice, repeal the 3 technical standards, and make consequential amendments to the Telecommunications Labelling Notice (except to the extent that those amendments concerned the then draft Mobile Equipment Standard 2022). A draft instrument and consultation paper containing explanatory information were made available on the ACMA website during that period. Interested parties were notified of the release of the draft instrument and invited to comment.

The ACMA received 6 submissions in response to that consultation and considered those before making the instrument. The submissions expressed support for the proposed instrument. The ACMA responded to three persons who made submissions to clarify the application of the instrument.

The second consultation process was conducted during the period 8 July 2022 to 12 September 2022 in relation to the proposal to make the Mobile Equipment Standard 2022 and consequential amendments to the Telecommunications Labelling Notice. The draft instruments and a consultation paper containing explanatory information were made available on the ACMA website during that period. Interested parties were notified of the release of the draft instruments and invited to comment.

The ACMA received 5 submissions in response to that consultation and considered those before making the Mobile Equipment Standard 2022 and consequential amendments to the Telecommunications Labelling Notice. The majority of submissions expressed support for the proposed instruments. The ACMA responded to two persons who made submissions to clarify the application of the industry standards being incorporated by reference.

Regulatory impact assessment

Preliminary assessments of the proposal to make the instrument were 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 as it considered the proposal to be unlikely to have more than a minor regulatory impact (OBPR reference numbers OBPR22-02221 and OBPR22-02187).

Statement of compatibility with human rights

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

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

Overview of the instrument

As noted above, the instrument has been made to:

- amend the Telecommunications Labelling Notice to enable the use of a QR code, or similar thing, as an alternative form of compliance label; to remove outdated references to supplier code numbers and the national database manager; to update the definition of national database; to make minor changes to the requirements for registration on the national database; and to clarify and otherwise improve the drafting of some provisions;
- repeal the following technical standards which the ACMA considers are no longer necessary:
 - *Telecommunications Technical Standard (Requirements for ISDN Basic Access Interface – AS/ACIF S031) 2015*;
 - *Telecommunications Technical Standard (Requirements for ISDN Primary Rate Access Interface – AS/ACIF S038) 2015*;
 - the Surge Protective Devices Standard; and
- make consequential changes to the Telecommunications Labelling Notice relating to the repeal of those technical standards and the making of the Mobile Equipment Standard 2022.

These changes align and achieve consistency between telecommunications and radiocommunications labelling requirements by allowing the use of a QR code, or similar thing, as an alternative form of compliance label; and ensure that technical standards only remain in force for so long as they are necessary and that the provisions of the Telecommunications Labelling Notice are kept up to date, clear and achieve intended outcomes.

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.

Notes to the *Telecommunications Legislation Amendment and Repeal (2022 Measures No. 1) Instrument 2022*

Section 1 Name

This section provides for the instrument to be cited as the *Telecommunications Legislation Amendment and Repeal (2022 Measures No. 1) Instrument 2022* (the **instrument**).

Section 2 Commencement

This section provides for:

- sections 1 to 4 and Schedules 1 and 2 to commence at the start of the day after the day the instrument is registered on the Federal Register of Legislation; and
- Schedule 3 to commence immediately after the commencement of the *Telecommunications (Mobile Equipment Air Interface) Technical Standard 2022*.

The *Telecommunications (Mobile Equipment Air Interface) Technical Standard 2022* commences at the start of 22 December 2022.

Section 3 Authority

This section identifies the provisions of the *Telecommunications Act 1997* (the **Act**) that authorise the making of the instrument, namely subsections 376(1) and 407(1) of the Act.

Section 4 Schedules

This section provides that each instrument that is specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument has effect according to its terms.

Schedule 1—Miscellaneous Amendments

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

Item 1 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 remove the references to surge protectors. This is a consequential change relating to the amendment made by item 41.

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

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

Item 2 Subsection 4(1) (definition of *built in-display*)

This item amends the definition of “built in-display” in subsection 4(1) to remove the reference to a surge protector. This is a consequential change relating to the amendment made by item 41.

The amended definition provides that “built in-display”, in relation to an item that is customer equipment (other than 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 3 Subsection 4(1) (paragraphs (a) to (c) of the definition of *cabling-related customer equipment*)

This item amends the definition of “cabling-related customer equipment” in subsection 4(1) to remove the reference to a surge protector. This is a consequential change relating to the amendment made by item 41.

The amended definition provides that “cabling-related customer equipment” means 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; or
- a product intended to be used for telecommunications earthing systems or telecommunications power distribution.

Item 4 Subsection 4(1)

This item inserts a new definition of “corporation” in subsection 4(1).

The term is defined to have the meaning given by section 57A of the *Corporations Act 2001*.

Item 5 Subsection 4(1) (paragraphs (a) and (b) of the definition of *high risk applicable technical standard*)

This item amends the definition of “high risk applicable technical standard” in subsection 4(1) to remove the references to a surge protector. This is a consequential change relating to the amendment made by item 41.

The amended 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 cabling-related customer equipment) – column 4 of the table in Schedule 1; or
- if the item is customer cabling or cabling-related customer equipment – column 4 of the table in clause 1 of Schedule 4.

Item 6 Subsection 4(1) (paragraphs (a) and (b) of the definition of *item*)

This item amends the definition of “item” in subsection 4(1) to remove the references to a surge protector. This is a consequential change relating to the amendment made by item 41.

The amended definition provides that “item” means:

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

Item 7 Subsection 4(1) (definition of *national database*)

This item repeals the definition of “national database” in subsection 4(1) and replaces it with a new definition to remove the reference to the Supplier and Equipment Registration Database maintained by the Electrical Regulatory Authorities Council (**ERAC**). The ACMA has designated in writing another database for the purposes of the *Telecommunications (Labelling Notice for Customer Equipment and Customer Cabling) Instrument 2015* (the **Telecommunications Labelling Notice**), namely the Electrical Equipment Safety System (**EESS**) Registration Database.

The new definition provides that “national database” means a database designated in writing by the ACMA for the purposes of the Telecommunications Labelling Notice.

There is also a note that indicates that a database may be designated by the ACMA for the purposes of the Telecommunications Labelling Notice even if it forms part of another database or also serves purposes other than purposes of that instrument.

Item 8 Subsection 4(1) (definition of *national database manager*)

This item repeals the definition of “national database manager” in subsection 4(1). This definition is no longer necessary as a result of the amendment made by item 28.

Item 9 Subsection 4(1) (definition of *officer of the manufacturer or importer*)

This item repeals the definition of “officer of the manufacturer or importer” in subsection 4(1). This definition is no longer necessary as a result of the amendment made by item 10.

Item 10 Subsection 4(1) (definition of *representative of the manufacturer or importer*)

This item repeals the definition of “representative of the manufacturer or importer” in subsection 4(1) and replaces it with a new definition to include paragraphs that deal with a case where the manufacturer or importer is a corporation and a case where the manufacturer or importer is an entity that is neither an individual nor a corporation.

The new definition provides that “representative of the manufacturer or importer” means:

- an employee of the manufacturer or importer;
- if the manufacturer or importer is a corporation – an officer of the corporation, within the meaning of section 9 of the *Corporations Act 2001*;
- if the manufacturer or importer is an entity that is neither an individual nor a corporation – an officer of the entity, within the meaning of section 9 of the *Corporations Act 2001*; or
- another person authorised in writing for the purposes of the Telecommunications Labelling Notice by:
 - the manufacturer or importer;
 - an employee of the manufacturer or importer; or
 - an officer of the manufacturer or importer.

Item 11 Subsection 4(1) (definition of *supplier code number*)

This item repeals the definition of “supplier code number” in subsection 4(1). This definition is no longer necessary because it relates to a spent provision that applied before 1 March 2016, and has since been repealed, dealing with when a manufacturer or importer of an item was “registered” for the purposes of subsection 18(1) of, or subclause 9(1) of Schedule 4 to, the Telecommunications Labelling Notice.

Before 1 March 2016, a manufacturer or importer of an item was “registered” for those purposes if the manufacturer or importer was registered on the national database or had been issued with a supplier code number. On or after 1 March 2016, a manufacturer or importer of an item is “registered” for those purposes only if the manufacturer or importer is registered on the national database.

Item 12 Subsection 4(1) (definition of *surge protector*)

This item repeals the definition of “surge protector” in subsection 4(1). This definition is no longer necessary as a result of the amendment made by item 41.

Item 13 Subparagraph 5(3)(a)(iv)

This item repeals subparagraph 5(3)(a)(iv) and replaces it with a new subparagraph to update the reference to paragraph 4(2)(b) of Schedule 4 (which has been repealed) to refer to the new subclause 6(3) of Schedule 4. This is a consequential change relating to the amendments made by items 45 and 48.

Those amendments concern the requirement to prepare a written statement for an item in Schedule 4 of the Telecommunications Labelling Notice when a compliance label has been affixed to the external surface of the packaging used for the item and incorporated in the documentation that accompanies

the item when supplied. Before the commencement of the amendments, the requirement was in paragraph 4(2)(b). After commencement, the requirement is in subclause 6(3).

The new subparagraph 5(3)(a)(iv) and the new subclause 6(4) of Schedule 4 (see the notes on item 48 below) work together to ensure that if a manufacturer or importer of a class of items has prepared a written statement for an item of the class (before commencement) in accordance with paragraph 4(2)(b) or (after commencement) in accordance with subclause 6(3), the manufacturer or importer is not required to prepare such a statement for any other item of the class.

Item 14 Subparagraph 6(a)(i)

This item amends subparagraph 6(a)(i) to remove the words “for the purposes of the *Corporations Act 2001*” used to describe a corporation. These words are no longer necessary as a result of the amendment made by item 4.

Item 15 Sub-subparagraph 6(a)(iii)(A)

This item amends sub-subparagraph 6(a)(iii)(A) to make a minor change to the words used to describe an officer of an entity to refer to an officer of the entity within the meaning of the *Corporations Act 2001*, rather than an officer of the entity for the purposes of the *Corporations Act 2001*.

Item 16 Subsection 7(2) (notes 1 and 2)

This item repeals notes 1 and 2 to subsection 7(2) and replaces them with new notes.

The old note 1 was replaced to remove the reference to surge protectors. This is a consequential change relating to the amendment made by item 41.

The old note 2 was replaced to update the reference to a notice under section 182 of the *Radiocommunications Act 1992* (which has been repealed) to refer to the equipment rules made under subsection 156(1) of the *Radiocommunications Act 1992*. This reflects the effect of items 43 and 44 of Schedule 4 to the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020* which saved two notices under section 182, namely the *Radiocommunications (Compliance Labelling Devices) Notice 2014* and the *Radiocommunications Labelling (Electromagnetic Compatibility) Notice 2017* (with modifications), as equipment rules made under subsection 156(1) of the *Radiocommunications Act 1992*.

Item 17 Subsection 8(1) (note)

This item amends the note to subsection 8(1) to remove the references to surge protectors. This is a consequential change relating the amendment made by item 41.

Item 18 At the end of subsection 9(2)

This item adds a new note at the end of subsection 9(2) to outline how the requirement to apply a compliance label to an item may be met.

Generally, the requirement may be met by affixing the label to the surface of the item. However, in some cases the requirement may be met in other ways.

If it is impossible or impracticable to affix the label to the surface of the item because of the size or physical nature of the item, the requirement may be met by affixing the label to the external surface of the packaging used for the item and incorporating the label in the documentation that accompanies the item when supplied.

If the item has a built-in display, the requirement may be met by using the built-in display to show the label.

Item 19 Section 10

This item repeals section 10 and replaces it with a new section to include a QR code, or similar thing, as an alternative form of compliance label and to enable a requirement relating to the application of a compliance label³ to be moved to the new section 11 (see the notes on item 20 below).

The new section 10 provides that a compliance label must be:

- in the form of the RCM, or a QR code or similar thing if the relevant link is to information on a website which displays the RCM prominently; and
- durable and at least 3 mm high.

Item 20 Section 11

This item repeals section 11 and replaces it with a new section to set out all the requirements relating to the application of a compliance label.

The new section 11 provides that:

- a compliance label must be applied permanently or in a way that makes removal or obliteration difficult; and
- subject to two exceptions⁴, a compliance label must be affixed to the surface of an item in a place that is readily accessible to a person.

A compliance label is not affixed to the surface of an item in a place that is readily accessible to a person if it is necessary to remove a panel, cover or some other thing to see the label.

The new section 11 also provides that, if it is impossible or impractical to affix a compliance label to the surface of an item because of the size or physical nature of the item, the compliance label must:

- be affixed to the external surface of the packaging used for the item;
- occupy an area that is greater than 1% of that external surface;
- be clearly visible on that external surface; and
- be incorporated in the documentation, including any warranty or guarantee certificate, that accompanies the item when supplied.

In addition, the manufacturer or importer of the item must, before supplying the item, prepare a written statement specifying why it is not possible or practical to affix the compliance label to the surface of the item and where each compliance label has been applied on the external surface of the packaging used for the item and in the documentation that accompanies the item when supplied.

There are also two notes. One note indicates that a reference to an “item” in Division 3 of Part 4 is a reference to an item to which section 9 applies. The other note refers to Note 2 to section 6 which indicates that the *Criminal Code* imposes penalties for giving false or misleading information to the

³ That is, the requirement that ensures that a compliance label is applied permanently or in a way that makes removal or obliteration difficult.

⁴ One exception relates to a case where it is impossible or impractical to affix a compliance label to the surface of an item because of the size or physical nature of the item. The other exception relates to a case where an item has a built-in display that may be used to display a compliance label.

ACMA or producing false or misleading documents to the ACMA, and that the ACMA may require documents to be produced to it under the Telecommunications Labelling Notice or under the Act.

Item 21 Subsection 12(4)

This item amends subsection 12(4) to update the reference to subsection 10(2) (which has been repealed) to refer to the new paragraph 10(2)(a) and the new subsection 11(1). This is a consequential change relating to the amendments made by items 19 and 20.

Item 22 At the end of subsection 13(2)

This item adds a new note at the end of subsection 13(2) to outline how the requirement to apply a non-compliance label to an item is met.

The requirement is met by affixing the label to the external surface of the packaging used for the item and incorporating the label in the documentation that accompanies the item when supplied.

Item 23 Subsection 14(3)

This item repeals subsection 14(3) and replaces it with a new subsection to enable a requirement relating to the application of a non-compliance label⁵ to be moved to the new section 15 (see the notes on item 24 below).

The new subsection 14(3) provides that a non-compliance label must be durable.

Item 24 Section 15

This item repeals section 15 and replaces it with a new section to set out all the requirements relating to the application of a non-compliance label.

The new section 15 provides that a non-compliance label must be:

- applied permanently or in a way that makes removal or obliteration difficult;
- affixed to the external surface of the packaging used for an item;
- clearly visible on that external surface; and
- incorporated in the documentation that accompanies the item when supplied.

Item 25 Subparagraph 16(1)(b)(i)

This item repeals subparagraph 16(1)(b)(i) and replaces it with a new subparagraph to update the reference to paragraph 15(c) (which has been repealed) to refer to new paragraph 15(2)(c). This is a consequential change relating to the amendment made by item 24.

Item 26 Division 2 of Part 5 (heading)

This item amends the heading of Division 2 of Part 5 to remove the words “and issue of supplier code numbers”. These words are no longer necessary (see the notes on item 11 above).

Item 27 Section 18 (heading)

⁵ That is, the requirement that ensures that a non-compliance label is applied permanently or in a way that makes removal or obliteration difficult.

This item amends the heading of section 18 to remove the words “or issue of supplier code number”. These words are no longer necessary (see the notes on item 11 above).

Item 28 Section 19

This item repeals section 19 and replaces it with a new section to include some minor changes in relation to the information a manufacturer or importer of an item (the *person*) must provide to the national database for registration.

The old section 19 required the person to provide to the national database the name and contact details of a representative of the manufacturer or importer. The new section 19 only requires the person to provide those details if that person is not an individual.

The old section 19 required the person to provide to the national database the ABN of the person and one of the following:

- if the person is a body corporate or an individual – the name of the body corporate or individual;
- if the person uses a business name in connection with its business as a manufacturer or importer and the business name is registered under the *Business Names Registration Act 2011* – the business name.

The new section 19 is in similar terms except if the person is a body corporate and chooses to provide the name of the body corporate, it must also provide the ACN of the body corporate.

The old section 19 required the information to be provided to the national database using a method required by the national database manager. The new section 19 no longer imposes such a requirement.

The ACMA has designated in writing the EESS Registration Database for the purposes of the Telecommunications Labelling Notice. The EESS Registration Database is maintained at the direction of 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>.

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 personal information stored on the EESS Registration 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 subject to 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 29 Subparagraph 21(2)(e)(i)

This item amends subparagraph 21(2)(e)(i) to remove the words “for the purposes of the *Corporations Act 2001*” used to describe a corporation. These words are no longer necessary as a result of the amendment made by item 4.

Item 30 Sub-subparagraph 21(2)(e)(iii)(A)

This item amends sub-subparagraph 21(2)(e)(iii)(A) to make a minor change to the words used to describe an officer of an entity to refer to an officer of the entity within the meaning of the *Corporations Act 2001*, rather than an officer of the entity for the purposes of the *Corporations Act 2001*.

Item 31 Paragraph 22(1)(a)

This item repeals paragraph 22(1)(a) and replaces it with a new paragraph to update the reference to paragraph 4(2)(b) of Schedule 4 (which has been repealed) to refer to the new subclause 6(3) of Schedule 4. This is a consequential change relating to the amendments made by items 45 and 48.

The new paragraph 22(1)(a) and the new subclause 6(4) of Schedule 4 (see the notes on item 48 below) work together to ensure that a written statement for an item prepared by the manufacturer or importer of the item (before commencement) in accordance with paragraph 4(2)(b) or (after commencement) in accordance with subclause 6(3) is a compliance record within the meaning of the Telecommunications Labelling Notice.

Item 32 Schedule 1 (heading)

This item amends the heading to Schedule 1 to remove the reference to surge protectors. This is a consequential change relating to the amendment made by item 41.

Item 33 Schedule 1 (table, heading to column 1)

This item amends the heading to Column 1 of the table to remove the references to surge protectors. This is a consequential change relating to the amendment made by item 41.

Item 34 Schedule 1 (cell at table item 1, column 2 referring to “AS/ACIF S031-2015”)

This item repeals the cell at table item 1, column 2 in Schedule 1 referring to “AS/ACIF S031-2015”. As a result, that technical standard (which has been repealed by item 1 of Schedule 2) ceases to be an applicable technical standard in relation to items of a kind mentioned in table item 1, column 1.

Item 35 Schedule 1 (cell at table item 1, column 3 referring to “Telecommunications Technical Standard (Requirements for ISDN Basic Access Interface – AS/ACIF S031) 2015”)

This item repeals the cell at table item 1, column 3 in Schedule 1 referring to “Telecommunications Technical Standard (Requirements for ISDN Basic Access Interface – AS/ACIF S031) 2015”. This is a consequential change relating to the amendment made by item 34.

Item 36 Schedule 1 (cell at table item 1, column 2 referring to “AS/ACIF S038-2015”)

This item repeals the cell at table item 1, column 2 in Schedule 1 referring to “AS/ACIF S038-2015”. As a result, that technical standard (which has been repealed by item 1 of Schedule 2) ceases to be an applicable technical standard in relation to items of a kind mentioned in table item 1, column 1.

Item 37 Schedule 1 (cell at table item 1, column 3 referring to “Telecommunications Technical Standard (Requirements for ISDN Primary Access Interface – AS/ACIF S038) 2015”)

This item repeals the cell at table item 1, column 3 in Schedule 1 referring to the “Telecommunications Technical Standard (Requirements for ISDN Primary Access Interface – AS/ACIF S038) 2015”. This is a consequential change relating to the amendment made by item 36.

Item 38 Schedule 4 (heading)

This item amends the heading to Schedule 4 to remove the reference to surge protectors. This is a consequential change relating to the amendment made by item 41.

Item 39 Subclause 1(1) of Schedule 4 (note)

This item repeals the note to subclause 1(1) of Schedule 4 to remove the references to surge protectors. This is a consequential change relating to the amendment made by item 41.

Item 40 Clause 1 of Schedule 4 (table, heading to column 1)

This item amends the heading to column 1 of the table in clause 1 of Schedule 4 to remove the reference to surge protectors. This is a consequential change relating to the amendment made by item 41.

Item 41 Clause 1 of Schedule 4 (table item 2)

This item repeals table item 2 in clause 1 of Schedule 4 so that the *Telecommunications Technical Standard (Surge Protective Devices for Telecommunication Applications – AS/NZS 4117 2015) 2015 (AS/NZS 4117-2015)* (which has been repealed by item 1 of Schedule 2) ceases to be an applicable technical standard in relation to surge protectors.

Item 42 Clause 3 of Schedule 4

This item repeals clause 3 of Schedule 4 and replaces it with a new clause to remove the references to a surge protector and AS/NZS 4117-2015. This is a consequential change relating to the amendment made by item 41.

The new clause 3 provides that in Schedule 4, “particular cabling item” means an item that is customer cabling or cabling-related customer equipment where:

- the item complies with the technical standard AS/CA S008-2015; and
- the installation of the item for connection to, or the connection of the item to, a telecommunications network or to a facility would be a type of cabling work for the purposes of Division 9 of Part 21 of the Act.

Item 43 Part 2 of Schedule 4 (heading)

This item amends the heading to Part 2 of Schedule 4 to remove the words “and preparing a written statement”. The remaining words (which are “Part 2 – Applying a compliance label”) are considered sufficient as the requirement to prepare a written statement relates to the application of a compliance label.

Item 44 Clause 4 of Schedule 4 (heading)

This item amends the heading to clause 4 of Schedule 4 to remove the words “and prepare a written statement”. The remaining words (which are “Requirement to apply a compliance label”) are considered sufficient as the requirement to prepare a written statement relates to the application of a compliance label.

Item 45 Subclause 4(2) of Schedule 4

This item repeals subclause 4(2) of Schedule 4 and replaces it with a new subclause to remove the reference to the requirement to prepare a written statement for an item (see the notes on item 48 below).

The new subclause 4(2) provides that the manufacturer or importer of an item must, before supplying the item, apply a compliance label to the item in accordance with Part 3, unless the manufacturer or importer is exempt from compliance with that subclause under clause 7 or 8 of Schedule 4.

There is also a note that outlines how the requirement to apply a compliance label to an item may be met.

The requirement may be met by affixing the label to the surface of the item.

Alternatively, the requirement may be met by affixing the label to the external surface of the packaging used for the item (even if it is possible or practicable to affix the label to the surface of the item) and incorporating the label in the documentation that accompanies the item when supplied.

Item 46 Part 3 of Schedule 4 (heading)

This item amends the heading to Part 3 of Schedule 4 to remove the words “and preparation of a written statement”. The remaining words (which are “Part 3 – Form and application of a compliance label”) are considered sufficient as the requirement to prepare a written statement relates to the application of a compliance label.

Item 47 Clause 5 of Schedule 4

This item repeals clause 5 of Schedule 4 and replaces it with a new clause to include a QR code, or similar thing, as an alternative form of compliance label and to enable a requirement relating to the application of a compliance label⁶ to be moved to the new clause 6 of Schedule 4 (see the notes on item 48 below).

The new clause 5 provides that a compliance label must be:

- in the form of the RCM, or a QR code or similar thing if the relevant link it to information on a website which displays the RCM prominently; and
- durable and at least 3 mm high.

There are also two notes. One note indicates that a reference to an “item” in Part 3 of Schedule 4 is a reference to an item to which clause 4 of Schedule 4 applies. The other note indicates that clause 5 of Schedule 4 does not apply to a manufacturer or importer if, under clause 7 or 8 of Schedule 4, the manufacturer or importer is exempt from compliance with subclause 4(2) of Schedule 4.

Item 48 Clause 6 of Schedule 4

This item repeals clause 6 of Schedule 4 and replaces it with a new clause to set out all the requirements relating to the application of a compliance label and to expressly allow a compliance label to be affixed to the surface of an item.

The new subclause 6(1) provides that the compliance label must be applied permanently or in a way that makes removal or obliteration difficult.

⁶ That is, the requirement that ensures that a compliance label is applied permanently or in a way that makes removal or obliteration difficult.

The new subclause 6(2) provides that the compliance label must be:

- affixed to the surface of an item in a place that is readily accessible to a person; or
- both affixed to the external surface of the packaging used for the item in a place that is clearly visible on that external surface and incorporated in the documentation, including any warranty or guarantee certificate, that accompanies the item when supplied.

A compliance label is not affixed to the surface of an item in a place that is readily accessible to a person if it is necessary to remove a panel, cover or some other thing to see the label.

The new subclause 6(3) provides that if the compliance label has been affixed to the external surface of the packaging used for an item and incorporated in the documentation that accompanies the item when supplied, the manufacturer or importer of the item must, before supplying the item, prepare a written statement specifying where each compliance label has been applied on the external surface of the packaging and in the documentation.

There are also two notes to subclause 6(3). One note refers to Note 2 of section 6 which indicates that the *Criminal Code* imposes penalties for giving false or misleading information to the ACMA or producing false or misleading documents to the ACMA, and that the ACMA may require documents to be produced to it under the Telecommunications Labelling Notice or under the Act. The other note indicates that clause 6 does not apply to a manufacturer or importer if, under clause 7 or 8 of Schedule 4, the manufacturer or importer is exempt from compliance with subclause 4(2) of Schedule 4.

The new subclause 6(4) ensures that if before commencement, a manufacturer or an importer of an item was required to prepare a written statement for the item in accordance with paragraph 4(2)(b) as in force immediately before commencement, then after commencement:

- that requirement is taken to be a requirement to prepare a written statement for the item in accordance with subclause 6(3); and
- any written statement prepared for the item in accordance with paragraph 4(2)(b) as in force immediately before commencement is taken to be a written statement prepared for the item in accordance with subclause 6(3).

While this provision applies in relation to pre-existing things, it operates prospectively for the benefit of manufacturers or importers of items who were required to prepare, and have prepared, written statements (before commencement) in accordance with paragraph 4(2)(b). A written statement so prepared for an item can continue to be treated as a compliance record within the meaning of the Telecommunications Labelling Notice. Furthermore, the manufacturer or importer of the item does not need to prepare a written statement for the item or, if the item is included in a class of items, any other item of the class, in accordance with subclause 6(3). This is intended to avoid any duplication of effort which might otherwise arise from transitioning to the new clause 6.

Item 49 At the end of subclause 11(2) of Schedule 4

This item adds a new note at the end of subclause 11(2) of Schedule 4 to outline how the requirement to apply a non-compliance label to an item is met.

The requirement is met by affixing the label to the external surface of the packaging used for the item and incorporating the label in the documentation that accompanies the item when supplied.

Item 50 Subclause 12(3) of Schedule 4

This item repeals subclause 12(3) of Schedule 4 and replaces it with a new subclause to enable a requirement relating to the application of non-compliance label⁷ to be moved to the new subclause 13 of Schedule 4 (see the notes on item 51 below).

The new subclause 12(3) provides that a non-compliance label must be durable.

Item 51 Clause 13 of Schedule 4

This item repeals clause 13 of Schedule 4 and replaces it with a new clause to set out all the requirements relating to the application of a non-compliance label.

The new clause 13 provides that a non-compliance label must be:

- applied permanently or in a way that makes removal or obliteration difficult;
- affixed to the external surface of the packaging used for an item;
- clearly visible on that external surface; and
- incorporated in the documentation that accompanies the item when supplied.

Item 52 Subparagraph 14(1)(b)(i) of Schedule 4

This item repeals subparagraph 14(1)(b)(i) of Schedule 4 and replaces it with a new subparagraph to update the reference to paragraph 13(c) of Schedule 4 (which has been repealed) to refer to the new paragraph 13(2)(c) of Schedule 4. This is a consequential change relating to the amendments made by item 51.

⁷ That is, the requirement that ensures that a non-compliance label is applied permanently or in a way that makes removal or obliteration difficult.

Schedule 2—Repeals

Item 1 Repeal of technical standards

This item repeals the following technical standards:

- *Telecommunications Technical Standard (Requirements for ISDN Basic Access Interface – AS/ACIF S031) 2015* (F2015L00180 AS/ACIF S031 2015);
- *Telecommunications Technical Standard (Requirements for ISDN Primary Rate Access Interface – AS/ACIF S038) 2015* (F2015L00185 AS/ACIF S038 2015);
- *Telecommunications Technical Standard (Surge Protective Devices for Telecommunication Applications – AS/NZS 4117) 2015* (F2015L00189 AS/NZS 4117 2015).

Until their repeal, the first two technical standards referred to above applied to items of customer equipment that were designed or intended for connection to an Integrated Services Digital Network (ISDN) and required such items to comply with adopted industry standards. As ISDN services are being phased out and have been disconnected or are due to be disconnected shortly, the items will no longer be supplied in Australia. Consequently, the ACMA considers that the technical standards are no longer necessary.

Until its repeal, the Surge Protective Devices Standard applied to surge protectors and required such items to comply with an adopted industry standard. That industry standard has been withdrawn and has not been replaced by another industry standard. Consequently, the ACMA considers that the technical standard is no longer necessary.

Schedule 3—Amendments relating to the *Telecommunications (Mobile Equipment Air Interface) Technical Standard 2022*

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

Item 1 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 resulting from the amendments made by items 2 and 4.

The new sentence contains 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 2022* that relates to AS/CA S042.1:2022 (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 2 Schedule 1 (table item 2, column 2)

This item amends table item 2, column 2 in Schedule 1 to update the reference to the *Mobile Equipment Standard 2018* (which has been repealed) to refer to the *Mobile Equipment Standard 2022*. This results in the following changes in applicable technical standards in relation to items of a kind mentioned in table item 2, column 1:

- the *Mobile Equipment Standard 2018* ceases to be an applicable technical standard; and
- the *Mobile Equipment Standard 2022* becomes an applicable technical standard.

Item 3 Schedule 1 (table item 2, column 3)

This item amends table item 2, column 3 in Schedule 1 to update the reference to the *Telecommunications (Mobile Equipment Air Interface) Technical Standard 2018* (which has been repealed) to refer to the *Telecommunications (Mobile Equipment Air Interface) Technical Standard 2022*. This is a consequential change relating to the amendment made by item 2.

Item 4 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 the *Mobile Equipment Standard 2018* that relates to AS/CA S042.1:2018 (within the meaning of that technical standard (which has been repealed)) ceases to be a high risk standard 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 (which has been repealed)) ceases to be a high risk standard for an item to which that part applies;
- the part of the *Mobile Equipment Standard 2022* that relates to AS/CA S042.1:2022 (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 2022* that relates to AS/CA S042.1:2020 (within the meaning of that technical standard) becomes a high risk standard but only for an item to which that part applies.

Item 5 Schedule 1 (table item 3, column 2)

This item amends table item 3, column 2 in Schedule 1 to update the reference to the *Mobile Equipment Standard 2018* (which has been repealed) to refer to the *Mobile Equipment Standard 2022*. This results in the following changes in applicable technical standards in relation to items of a kind mentioned in table item 3, column 1:

- the *Mobile Equipment Standard 2018* ceases to be an applicable technical standard;
- the *Mobile Equipment Standard 2022* becomes an applicable technical standard.

Item 6 Schedule 1 (table item 3, column 3)

This item amends table item 3, column 3 in Schedule 1 to update the reference to the *Telecommunications (Mobile Equipment Air Interface) Technical Standard 2018* (which has been repealed) to refer to the *Telecommunications (Mobile Equipment Air Interface) Technical Standard 2022*. This is a consequential change relating to the amendment made by item 5.

Item 7 Schedule 1 (table item 4, column 2)

This item amends table item 4, column 2 in Schedule 1 to update the reference to the *Mobile Equipment Standard 2018* (which has been repealed) to refer to the *Mobile Equipment Standard 2022*. This results in the following changes in applicable technical standards in relation to items of a kind mentioned in table item 4, column 1:

- the *Mobile Equipment Standard 2018* ceases to be an applicable technical standard;
- the *Mobile Equipment Standard 2022* becomes an applicable technical standard.

Item 8 Schedule 1 (table item 4, column 3)

This item amends table item 4, column 3 in Schedule 1 to update the reference to the *Telecommunications (Mobile Equipment Air Interface) Technical Standard 2018* (which has been repealed) to refer to the *Telecommunications (Mobile Equipment Air Interface) Technical Standard 2022*. This is a consequential change relating to the amendment made by item 7.