

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications Act 1992 and Telecommunications Act 1997

Communications Legislation (Protected Symbols) Determination 2023

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Communications Legislation (Protected Symbols) Determination 2023* (**the instrument**) under subsections 165(9) and 166(2) of the *Radiocommunications Act 1992* (**the Radiocommunications Act**), subsection 417(7) and subparagraph 417(8)(b)(i) of the *Telecommunications Act 1997* (**the Telecommunications Act**) and subsection 33(3) of the *Acts Interpretation Act 1901* (**the AIA**).

Subsections 165(1), (3) and (5) of the Radiocommunications Act prohibit the use or application of a protected symbol in certain circumstances. Subsection 165(8) of the Radiocommunications Act provides that subsection 165(1), (3) and (5) do not apply to a person who uses or applies a protected symbol for a purpose of a kind specified in a determination under subsection 165(9). Subsection 165(9) of the Radiocommunications Act provides that the ACMA may, by legislative instrument, determine one or more specified kinds of purpose for which a protected symbol may be used or applied. Subsection 166(2) of the Radiocommunications Act provides that the ACMA may, by legislative instrument, determine one or more designs for a protected symbol for the purposes of that Act.

Section 417 of the Telecommunications Act prohibits the use or application of a protected symbol in certain circumstances. Subsection 417(7) of the Telecommunications Act provides that section 417 does not apply to a person who uses or applies a protected symbol for a purpose of a kind specified in a written determination made by the ACMA. Subparagraph 417(8)(b)(i) of the Telecommunications Act provides that a reference in section 417 to a protected symbol is a reference to a symbol whose design is set out in a written determination made by the ACMA.

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 has responsibility for the regulation of equipment under the Radiocommunications Act, and the regulation of customer equipment and customer cabling under the Telecommunications Act. These regulatory regimes address aspects of the radiocommunication functions, electromagnetic energy (**EME**) and electromagnetic compatibility (**EMC**) of equipment, and the telecommunication functions of customer equipment and customer cabling.

Suppliers of certain equipment must comply with the applicable radiocommunications standards¹ or telecommunications technical standards², maintain records, and apply a label, consisting of a

¹ A radiocommunications standard is a standard for equipment prescribed by equipment rules made under section 156 of the Radiocommunications Act.

² A telecommunications technical standard is a standard made under subsection 376(1) of the Telecommunications Act.

compliance mark, (**compliance label**) to that equipment. These requirements are imposed by the following three legislative instruments that comprise the ACMA's equipment supply framework:

- the *Radiocommunications Equipment (General) Rules 2021* (**the General Equipment Rules**);
- the *Radiocommunications Labelling (Electromagnetic Compatibility) Notice 2017* (**the EMC Labelling Notice**);
- the *Telecommunications Labelling (Customer Equipment and Customer Cabling) Notice 2015* (**the Telecommunications Labelling Notice**).

Additionally, there are provisions within this framework that require the application of a non-compliance label to an item of customer equipment or customer cabling to indicate non-compliance by the item with the applicable telecommunications technical standards.

In the General Equipment Rules:

- Schedules 3 and 4 contain provisions directed towards 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;
- Schedules 3 and 5 contain provisions directed towards containing interference to radiocommunications; and
- Schedule 3 also contains provisions directed towards ensuring that persons who operate equipment have access to information about the equipment.

The EMC Labelling Notice contains provisions directed towards ensuring the EMC of equipment, and that persons who operate equipment have access to information about the equipment.

The Telecommunications Labelling Notice imposes requirements on suppliers of customer equipment and customer cabling to manage issues including protecting the health and safety of users of the telecommunications network, protecting the integrity and interoperability of the telecommunications network, and ensuring access to emergency call services.

The ACMA's equipment supply framework generally requires suppliers, among other things, to apply a label to the surface of specified equipment to illustrate that:

- in the case of a non-compliant item of customer equipment or customer cabling, the item does not comply with the applicable telecommunications technical standards; or
- in all other cases, the equipment complies with the applicable radiocommunications standards or telecommunications technical standards.

Applying a compliance label to equipment is an assertion that the equipment meets the requirements of those applicable standards. A compliance label also provides retailers with assurance that the equipment to which the label is applied is suitable for market placement. The labelling requirements imposed on suppliers are also intended to indicate to retailers and consumers whether items of customer equipment or customer cabling do not meet the requirements of the applicable standards.

The General Equipment Rules prohibit the supply of equipment that is required to be labelled, under the General Equipment Rules or under the EMC Labelling Notice, but is not labelled (see Part 5). It is an offence, and subject to a civil penalty, to contravene a prohibition in the General Equipment Rules (section 160 of the Radiocommunications Act). The maximum penalty for the offence, and the maximum civil penalty, is 500 penalty units (\$137,500, based on the value of a penalty unit at the time the instrument was made).

Under section 413 of the Telecommunications Act, it is an offence for the manufacturer or importer of customer equipment or customer cabling to supply the equipment or cabling, if the equipment or cabling was required to be labelled, under the Telecommunications Labelling Notice, but is not labelled. The maximum penalty is 100 penalty units (\$27,500).

Compliance marks

Three compliance marks have previously been specified for the purposes of the ACMA's equipment supply framework:

1. the A-Tick mark, used for customer equipment and customer cabling;
2. the C-Tick mark, used for radiocommunications equipment (including the EME and EMC of such equipment); and
3. the Regulatory Compliance Mark (**the RCM**), used for customer equipment and customer cabling; and radiocommunications equipment (including the EME and EMC of such equipment).

Prior to 2013, the A-Tick and C-Tick were specified in the *Telecommunications (A-Tick Mark) Determination 2000* and the *Radiocommunications (C-Tick Mark) Determination 1998*, respectively. In 2013, the A-Tick and C-Tick were consolidated into a single compliance mark, the RCM, and all three compliance marks were specified in the *Protected Symbols Determination 2013 (the Protected Symbols Determination)*. A three-year transition period ended in February 2016 and suppliers are now only permitted to use the RCM to indicate compliance with applicable standards for equipment labelled and supplied after that time.

The RCM is also used to indicate compliance with electrical equipment safety requirements under Australian State and Territory legislation.

The basis for the instrument

The instrument repeals the Protected Symbols Determination. The instrument specifies the RCM as the only protected symbol to demonstrate compliance with applicable standards within the ACMA's equipment supply framework for radiocommunications equipment (including EME and EMC standards), and customer equipment and customer cabling. The instrument also specifies the permissible purposes for which the RCM may be used or applied.

In relation to equipment regulated under the Radiocommunications Act, the continued use of the A-Tick and C-Tick compliance marks by suppliers for stock that was labelled before the end of February 2016 is permitted by transitional provisions in Schedule 3 to the General Equipment Rules. However, the A-Tick and C-Tick are no longer protected symbols for the purposes of the Radiocommunications Act.

Although the Telecommunications Labelling Notice does not require or permit the application of the C-Tick mark to customer equipment or customer cabling, paragraph 417(8)(a) of the Telecommunications Act provides that the C-Tick remains a protected symbol for the purposes of the Telecommunications Act.

Under section 165 of the Radiocommunications Act, the use or application of a protected symbol, or a symbol so closely resembling a protected symbol as likely to be mistaken for it, in certain circumstances is subject to a civil penalty of 50 penalty units (\$13,750). The civil penalty provision does not apply to the use or application of a protected symbol for the purposes of the ACMA's equipment supply framework, or for a purpose specified in the instrument.

Under section 417 of the Telecommunications Act, the use or application of a protected symbol, or a symbol so closely resembling a protected symbol as likely to be mistaken for it, in certain circumstances is an offence. The maximum penalty specified for the offence is 30 penalty units (\$8,250). The offence does not apply to the use or application of a protected symbol for the purposes of the ACMA's equipment supply framework, or for a purpose specified in the instrument.

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 instrument is subject to the sunset provisions of the LA.

Documents incorporated by reference

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

Section 589 of the Telecommunications Act provides that an instrument under the Telecommunications Act may make provision in relation to a matter by applying, adopting or incorporating (with or without modifications) matter contained in any Act or any other instrument or writing as in force or existing at a particular time or as in force or existing from time to time.

The instrument incorporates the Radiocommunications Act, the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020* and the Telecommunications Act, as in force from time to time.

The instrument incorporates the Protected Symbols Determination. The Protected Symbols Determination is incorporated for the purpose of ensuring that persons who used or applied the RCM in accordance with the Protected Symbols Determination before the instrument commenced will not be placed in contravention of the instrument as a result of the repeal of the Protected Symbols Determination. Accordingly, the Protected Symbols Determination is incorporated as in force at each time a person used or applied the RCM before the instrument commenced.

The instrument also refers to the following Acts without incorporating them by reference:

- the AIA;
- the LA.

Each of these Acts and legislative instruments is available, free of charge, from the Federal Register of Legislation (<http://www.legislation.gov.au>).

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.

A public consultation process was conducted during the period 10 November 2022 to 15 December 2022 in relation to the proposed making of the instrument and other proposed changes to radiocommunications equipment regulation. A draft of the instrument 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 instrument and invited to comment.

The ACMA received 11 submissions to the broader consultation, and these were considered when making the instrument. Whilst five of the submissions provided no comment on the making of the

instrument, the remaining six submissions commented in support of the proposal to make the instrument but did not elaborate further.

Regulatory impact assessment

A preliminary assessment of the proposal to make the instrument was conducted by the Office of Impact Analysis (**OIA**), formerly 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. OIA advised that in lieu of a RIS a self-assessment is to be undertaken to certify that the instrument is operating efficiently and effectively (OIA reference OBPR22-03412). The ACMA has certified that the Protected Symbols Determination was operating efficiently and effectively.

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

The instrument repeals the Protected Symbols Determination. The instrument determines the design of the RCM as a protected symbol and specifies the RCM as the only protected symbol to demonstrate compliance with applicable standards within the ACMA's equipment supply framework for radiocommunications equipment (including EME and EMC standards), and customer equipment and customer cabling. The instrument also specifies the permissible purposes for which the RCM may be used or applied.

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 *Communications Legislation (Protected Symbols) Determination 2023*

Section 1 Name

This section provides for the instrument to be cited as the *Communications Legislation (Protected Symbols) Determination 2023*.

Section 2 Commencement

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

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

Section 3 Authority

This section identifies the provisions of the Radiocommunications Act and the Telecommunications Act that authorise the making of the instrument, namely, subsections 165(9) and 166(2) of the Radiocommunications Act and subsection 417(7) and subparagraph 417(8)(b)(i) of the Telecommunications Act.

Section 4 Repeal

This section provides that the Protected Symbols Determination is repealed.

Section 5 Interpretation

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

A number of other expressions used in the instrument are defined in the Radiocommunications Act or the Telecommunications Act.

Section 6 References to other instruments

This section provides that in the instrument, unless the contrary intention appears:

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

Section 7 Protected symbol

This section provides that the design of the RCM, as set out in Schedule 3, is determined for the purposes of paragraph 166(1)(a) of the Radiocommunications Act and subparagraph 417(8)(b)(i) of the Telecommunications Act.

This means that the RCM is a protected symbol:

- to indicate compliance by equipment with applicable radiocommunications standards for the purposes of the Radiocommunications Act; and
- to indicate compliance by customer equipment or customer cabling with applicable telecommunications technical standards for the purposes of the Telecommunications Act.

Section 8 Permitted purposes

Radiocommunications

Section 165 of the Radiocommunications Act prohibits the use or application of a protected symbol in certain circumstances. Subsection 165(8) of the Radiocommunications Act provides that the prohibitions on the use or application of a protected symbol do not apply if the symbol is used or applied for a purpose of a kind specified in a determination under subsection 165(9).

Subsection 8(1) of the instrument provides that, for the purposes of subsection 165(8) of the Radiocommunications Act, each of the purposes specified in Schedule 1 is determined unless the purpose is excluded by subsection 8(2).

Subsection 8(2) provides that a purpose specified in Schedule 1 is excluded if:

- (a) the purpose refers to a radiocommunications standard and to equipment; and
- (b) no equipment rules require any person to apply a label to that equipment to indicate compliance by the equipment with the radiocommunications standard.

Telecommunications

Section 417 of the Telecommunications Act prohibits the use or application of a protected symbol in certain circumstances. Subsection 417(7) of the Telecommunications Act provides that the prohibitions on the use or application of a protected symbol do not apply if the symbol is used or applied for a purpose of a kind specified in a written determination made by the ACMA.

Subsection 8(3) of the instrument provides that, for the purposes of subsection 417(7) of the Telecommunications Act, each of the purposes specified in Schedule 2 is determined unless the purpose is excluded by subsection 8(4).

Subsection 8(4) provides that a purpose specified in Schedule 2 is excluded if:

- (a) the purpose refers to a telecommunications technical standard and to customer equipment or customer cabling; and
- (b) no instrument made under section 407 of the Telecommunications Act requires any person to apply a label to that equipment or cabling to indicate compliance by the equipment or cabling with the telecommunications technical standard.

Section 9 Transitional

Section 9 provides transitional arrangements for a person who first used or applied a protected symbol before the commencement of the instrument.

If:

- that use or application of the symbol was for a purpose specified in Schedule 1 to the Protected Symbols Determination, as in force at the time of that use or application;
- the symbol continues to be a protected symbol after the commencement of the instrument;

the continued use or application of that protected symbol for that purpose after the commencement of the instrument is taken to be for a purpose specified in the instrument. This ensures that no person who used or applied the RCM before the commencement of the instrument consistently with the Protected Symbols Determination is disadvantaged because of the repeal of the Protected Symbols Determination.

Schedule 1 Permitted purposes for the *Radiocommunications Act 1992*

Schedule 1 to the instrument sets out permitted purposes for using or applying a protected symbol for the Radiocommunications Act.

Item 1 provides that a permissible purpose is to show that equipment complies with a radiocommunications standard, other than as covered by paragraph 165(7)(a) of the Radiocommunications Act. Paragraph 165(7)(a) of the Radiocommunications Act has the effect that the prohibitions on use or application of a protected symbol in section 165 of the Radiocommunications Act do not apply where a person is required to label equipment in accordance with equipment rules made under section 156 of the Radiocommunications Act. Also see subsection 417(6A) of the Telecommunications Act which has a similar effect in relation to the use or application of a protected symbol for the purposes of labelling equipment in accordance with equipment rules made under the Radiocommunications Act.

Item 2 provides that a permissible purpose is to show that a person provides services to assist others to ensure that equipment complies with a radiocommunications standard. This would extend to the use of a protected symbol in the person's advertising material.

Item 3 provides that a permissible purpose is use of a protected symbol in relation to information or comment about a radiocommunications standard.

Item 4 provides that a permissible purpose is to show that a person holds an accreditation of a specified kind under the Radiocommunications Act, and that the person may exercise powers under equipment rules, conferred on persons who hold such an accreditation, in relation to a radiocommunications standard. At the time the instrument was made, no kind of accreditation exists to allow a person to exercise powers under equipment rules.

Item 5 provides that a permissible purpose is to show that a person satisfies conditions specified in equipment rules, and that the person may exercise powers under equipment rules, conferred on persons who satisfy such conditions, in relation to a radiocommunications standard. At the time the instrument was made, the General Equipment Rules:

- conferred powers on the National Association of Testing Authorities, Australia, to identify the bodies that are appropriate to conduct testing against particular standards (**accredited testing bodies**); and
- conferred powers on accredited testing bodies to give test reports about the compliance of equipment with particular standards, for the purposes of Schedule 3 to the General Equipment Rules.

Item 6 provides that a permissible purpose is to show that a person may exercise a power under equipment rules not otherwise specified in the table in Schedule 1 to the instrument in relation to a radiocommunications standard.

Item 7 provides that a permissible purpose is to supply a copy of a protected symbol to a person entitled to use or apply it. For example, a person may manufacture adhesive versions of a protected symbol for application to packaging.

Item 8 provides that a permissible purpose is to show that a person supplies copies of a protected symbol to a person entitled to use or apply it, or to show that the person supplies copies of radiocommunications standards.

Item 9 provides that a permissible purpose is to show that a person supplies equipment that complies with a radiocommunications standard.

Item 10 provides that a permissible purpose is to publicise compliance with a radiocommunications standard.

Item 11 provides that a permissible purpose is to comply with a law of a State or Territory in relation to electrical safety.

Schedule 2 Permitted purposes for the *Telecommunications Act 1997*

Schedule 2 to the instrument sets out permitted purposes for using or applying a protected symbol for the Telecommunications Act.

Item 1 provides that a permissible purpose is to show that customer equipment or customer cabling complies with a telecommunications technical standard, other than as referred to in subsection 417(6) of the Telecommunications Act. Subsection 417(6) of the Telecommunications Act has the effect that the prohibitions on use or application of a protected symbol in section 417 of the Telecommunications Act do not apply where a supplier is required to label customer equipment or customer cabling in accordance with an instrument made under section 407 of the Telecommunications Act. Also see paragraph 165(7)(b) of the Radiocommunications Act which has a similar effect in relation to the use or application of a protected symbol for the purposes of labelling customer equipment or customer cabling in accordance with section 407 of the Telecommunications Act.

Item 2 provides that a permissible purpose is to show that a person provides services to assist others to ensure that customer equipment or customer cabling complies with a telecommunications technical standard. This would extend to the use of a protected symbol in the person's advertising material.

Item 3 provides that a permissible purpose is use of a protected symbol in relation to information or comment about a telecommunications technical standard.

Item 4 provides that a permissible purpose is to show that a person or association is an accreditation body, and that the person or association may determine that a specified person is a recognised testing authority or that a specified person or association is a competent body. See section 409 of the Telecommunications Act for the powers of accreditation bodies.

Item 5 provides that a permissible purpose is to show that a person is a recognised testing authority, and that the person may test customer equipment or customer cabling for compliance with a telecommunications technical standard. The Telecommunications Labelling Notice or another instrument made under section 407 of the Telecommunications Act may require that, before a person applies a label to customer equipment or customer cabling, the equipment or cabling must have been tested by a recognised testing authority for compliance with the standards specified in that instrument (paragraph 408(5)(b) of the Telecommunications Act).

Item 6 provides that a permissible purpose is to show that a person or association is a competent body, and that the person or association may provide services in relation to compliance with telecommunications technical standards and instruments made under section 407 of the Telecommunications Act. The Telecommunications Labelling Notice or another instrument made under section 407 of the Telecommunications Act may require that, before a person applies a label to customer equipment or cabling, the person must have obtained a written statement from a competent body certifying that reasonable efforts have been made to avoid a contravention of a specified telecommunications technical standard (paragraph 408(5)(d) of the Telecommunications Act).

Item 7 provides that a permissible purpose is to supply a copy of a protected symbol to a person entitled to use or apply it. For example, a person may manufacture adhesive versions of a protected symbol for application to packaging.

Item 8 provides that a permissible purpose is to show that a person supplies copies of a protected symbol to a person entitled to use or apply it, or to show that the person supplies copies of telecommunications technical standards.

Item 9 provides that a permissible purpose is to show that a person supplies customer equipment or customer cabling that complies with a telecommunications technical standard.

Item 10 provides that a permissible purpose is to publicise compliance with a telecommunications technical standard.

Item 11 provides that a permissible purpose is to comply with a law of a State or Territory in relation to electrical safety.

Schedule 3 RCM

Schedule 3 to the instrument sets out the design of the RCM.