

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Telecommunications Act 1997

Telecommunications Legislation Amendment (Significant Event) Instrument (No. 1) 2023

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Telecommunications Legislation Amendment (Significant Event) Instrument (No. 1) 2023* (**the instrument**) under subsections 407(1) and 419(1) of the *Telecommunications Act 1997* (**the Act**) and subsection 33(3) of the *Acts Interpretation Act 1901* (**the AIA**).

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 that indicates whether the equipment or cabling meets the requirements of the standards made under section 376 of the Act (**technical standards**) specified in that written instrument. Subsection 407(2) of the Act provides that an instrument under subsection 407(1) of the Act is a legislative instrument.

Subsection 419(1) of the Act provides that the ACMA may, by legislative instrument, declare that a specified kind of cabling work is a type of cabling work for the purposes of Division 9 of Part 21 of the Act.

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

- an instrument made by the ACMA under subsection 407(1) of the Act, namely the *Telecommunications (Labelling Notice for Customer Equipment and Customer Cabling) Instrument 2015* (**the Telecommunications Labelling Notice**); and
- an instrument made by the ACMA under subsection 419(1) of the Act, namely the *Telecommunications (Types of Cabling Work) Declaration 2013* (**the Declaration**).

Both the Telecommunications Labelling Notice and the Declaration provide a definition of the term ‘significant event’. Before the commencement of the instrument, the term was defined as an event at a specified location or locations approved by the Chair of the ACMA and notified on the ACMA website at www.acma.gov.au.

The Telecommunications Labelling Notice applies to items of specified customer equipment and specified customer cabling. The Telecommunications Labelling Notice requires manufacturers or importers of items of the equipment or cabling to apply a label to each item, to indicate the item’s compliance or non-compliance with any applicable technical standards. The Telecommunications Labelling Notice also requires certain records to be kept in relation to an item so labelled. Subject to some exceptions, it is an offence to connect customer equipment or customer cabling that is required to be so labelled to a telecommunications network or a facility unless it is so labelled (section 411 of

the Act). The maximum penalty for this offence is 120 penalty units (\$33,000 based on the value of a penalty unit at the time the instrument was made).

The Telecommunications Labelling Notice does not apply to items of customer equipment or customer cabling listed in Schedule 2, including an item that is imported into Australia for connection to a telecommunications network or to a facility of such a network in relation to a significant event in circumstances where the manager of the network or facility has given written consent to the connection for the duration of the event.

The Declaration declares that specified kinds of cabling work are types of cabling work for the purposes of Division 9 of Part 21 of the Act. Those kinds of cabling work specified in the Declaration must be performed in compliance with the requirements of Division 9 of Part 21 of the Act, including subsection 421(3) which provides that a person who is subject to the cabling provider rules, namely the *Telecommunications Cabling Provider Rules 2014* (**the Provider Rules**), must comply with those rules. It is an offence for a person who is subject to the Provider Rules to perform a kind of cabling work specified in the Declaration otherwise than in accordance with those rules (subsection 421(4) of the Act). The maximum penalty for this offence is 100 penalty units (\$27,500).

Cabling work specified in Schedule 1 to the Declaration is not a type of cabling work for the purposes of Division 9 of Part 21 of the Act, and does not need to be performed in compliance with the Provider Rules. Cabling work specified in Schedule 1 to the Declaration includes cabling work that involves the installation or maintenance of customer cabling that:

- (a) is for use in relation to broadcasting content for the duration of a significant event; and
- (b) is connected, or is for connection to, a telecommunications network in accordance with the written consent of the manager of the network; and
- (c) will be completely removed from the various locations of the significant event at the end of the significant event.

The basis for the instrument

The instrument amends the Telecommunications Labelling Notice and the Declaration to replace the definition of ‘significant event’ with a new definition that covers an event declared by the ACMA under subsection 54A(2) of the *Radiocommunications Equipment (General) Rules 2021* (**the General Equipment Rules**). Subsection 54A(2) of the General Equipment Rules provides that the ACMA may make a notifiable instrument that declares a specified event to be a significant event, and specifies the period and location of the significant event. Subsection 54A(5) of the General Equipment Rules also provides that the ACMA must publish on the ACMA website certain details of a significant event that has been declared. In the ACMA’s experience, events that are significant events for the purposes of the General Equipment Rules have also been significant events for the purposes of the Telecommunications Labelling Notice and the Declaration. Previous significant events have included the Formula One Australian Grand Prix and the Australian MotoGP events.

The new definition of ‘significant event’ also covers an event if that event was a significant event (within the meaning of the Telecommunications Labelling Notice or the Declaration as in force immediately before the commencement of the instrument) and the whole or a part of the event occurs after that commencement. Such an event continues to be a significant event within the meaning the Telecommunications Labelling Notice or the Declaration.

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). Each of the Telecommunications Labelling Notice and the Declaration is subject to the sunset provisions of the LA.

Documents incorporated by reference

Section 589 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) 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 amends the Telecommunications Labelling Notice and the Declaration to incorporate or otherwise refer to subsection 54A(2) of the General Equipment Rules as in force from time to time. The instrument also amends the Telecommunications Labelling Notice to incorporate or otherwise refer to the definition of ‘significant event’ in subsection 4(1) of that notice as in force immediately before the commencement of the instrument, and amends the Declaration to incorporate or otherwise refer to the definition of ‘significant event’ in section 4 of the Declaration as in force immediately before the commencement of the instrument.

The General Equipment Rules, the Telecommunications Labelling Notice and the Declaration are available, free of charge, from the Federal Register of Legislation at 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 before making the instrument. Three of the submissions provided no comment on the proposal to make the instrument, and four submissions commented in support of the proposal but did not elaborate further.

Of the remaining four submissions, one supported the proposal and suggested establishing a means for stakeholders to subscribe to specific updates via the ACMA website to receive an email when new notifiable instruments declaring significant events are made. The ACMA will consider implementing this suggestion.

The remaining three submissions supported the proposal to make the instrument and recommended the ACMA continue its current practice of publishing details of forthcoming significant events on the ACMA website, in addition to publishing the notifiable instruments declaring those events. The ACMA accepted this recommendation and has included provisions in the General Equipment Rules requiring the ACMA to publish such details on the ACMA website.

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 a RIS would not be required for the instrument as it

considered the proposal to be unlikely to have a more than minor regulatory impact (OIA reference OBPR22-03412).

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 amends the Telecommunications Labelling Notice and the Declaration to replace the definition of ‘significant event’ with a new definition that covers an event declared by the ACMA under subsection 54A(2) of the General Equipment Rules. Subsection 54A(2) of the General Equipment Rules provides that the ACMA may make a notifiable instrument that declares a specified event to be a significant event, and specifies the period and location of the significant event. The General Equipment Rules also provide that the ACMA must publish on the ACMA website certain details of a significant event that has been declared. In the ACMA’s experience, events that are significant events for the purposes of the General Equipment Rules have also been significant events for the purposes of the Telecommunications Labelling Notice and the Declaration. Previous significant events have included the Formula One Australian Grand Prix and the Australian MotoGP events.

The new definition of ‘significant event’ also covers an event if that event was a significant event (within the meaning of the Telecommunications Labelling Notice or the Declaration as in force immediately before the commencement of the instrument) and the whole or a part of the event occurs after that commencement. Such an event continues to be a significant event within the meaning of the Telecommunications Labelling Notice or the Declaration.

Customer equipment and customer cabling imported into Australia for connection to a telecommunications network or to a facility of such a network for a significant event in certain circumstances do not have to comply with certain requirements set out in the Telecommunications Labelling Notice. Cabling work performed for a significant event in certain circumstances is not a type of cabling work for the purposes of Division 9 of Part 21 of the Act, and does not have to comply with certain requirements set out in the Provider Rules.

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
(Significant Event) Instrument (No. 1) 2023***

Section 1 Name

This section provides for the instrument to be cited as the *Telecommunications Legislation Amendment (Significant Event) Instrument (No. 1) 2023*.

Section 2 Commencement

This section provides for the instrument to commence on 2 March 2023. The instrument is available 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 Act that authorise the making of the instrument, namely subsections 407(1) and 419(1) of the Act.

Section 4 Schedule

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

Schedule 1—Amendments

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

Item 1 Subsection 4(1) (definition of *significant event*)

Item 1 repeals the definition of a ‘significant event’ and replaces it with a new definition that covers an event declared by the ACMA under subsection 54A(2) of the General Equipment Rules. Subsection 54A(2) of the General Equipment Rules provides that the ACMA may make a notifiable instrument that declares a specified event to be a significant event and specifies the period and location of the significant event. The General Equipment Rules also provide that the ACMA must publish on the ACMA website certain details of a significant event that has been declared.

The new definition of ‘significant event’ also covers an event if that event was a significant event (within the meaning of the Telecommunications Labelling Notice as in force immediately before the commencement of the instrument) and the whole or a part of the event occurs after that commencement. Such an event continues to be a significant event within the meaning of the Telecommunications Labelling Notice.

Telecommunications (Types of Cabling Work) Declaration 2013

Item 2 Section 4 (definition of *Chair*)

Item 2 repeals the definition of ‘Chair’ as this term is no longer used in the Declaration.

Item 3 Section 4 (definition of *significant event*)

Item 3 repeals the definition of a ‘significant event’ and replaces it with a new definition that covers an event declared by the ACMA under subsection 54A(2) of the General Equipment Rules. Subsection 54A(2) of the General Equipment Rules provides that the ACMA may make a notifiable instrument that declares a specified event to be a significant event and specifies the period and location of the significant event. The General Equipment Rules also provide that the ACMA must publish on the ACMA website certain details of a significant event that has been declared.

The new definition of ‘significant event’ also covers an event if that event was a significant event (within the meaning of the Declaration as in force immediately before the commencement of the instrument) and the whole or a part of the event occurs after that commencement. Such an event continues to be a significant event within the meaning of the Declaration.