

# EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Radiocommunications Act 1992*

## ***Radiocommunications (Labelling) Determination 2023***

### **Authority**

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Labelling) Determination 2023* (**the instrument**) under subsection 300(1) of the *Radiocommunications Act 1992* (**the Act**) and subsection 33(3) of the *Acts Interpretation Act 1901* (**AIA**).

Subsection 300(1) of the Act provides that the ACMA may make a determination in writing, requiring any person who operates a radiocommunications transmitter under a licence to apply to that transmitter a label setting out the information specified in the determination.

Subsection 33(3) of the AIA provides that where an Act confers a power to make a legislative instrument, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

### **Purpose and operation of the instrument**

The instrument repeals and replaces the *Radiocommunications (Labelling) Determination 2013* (**2013 instrument**) which was due to sunset on 1 October 2023.

The instrument imposes a requirement on operators of specified types of radiocommunications transmitters (namely, high powered transmitters that are not broadcasting stations and not operated under PTS licences) located at communal sites, to label the transmitters, in accordance with section 300 of the Act.

The main purpose of transmitter labelling is to assist the ACMA in its compliance and investigation functions under the Act. The required labels assist the ACMA to determine the owner of the transmitter and its operating frequency. They are also a representation that the transmitter is operated under a licence and therefore required to operate under relevant technical frameworks and licence conditions, including those related to safety considerations.

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

The instrument incorporates the 2013 instrument. The 2013 instrument imposed a requirement on operators of certain radiocommunications transmitters to label the transmitters, in accordance with section 300 of the Act. Accordingly, the instrument includes a transitional provision that provides that, if a person applied a label to a radiocommunications transmitter in accordance with the 2013 instrument, as in force at the time the label was applied, the person is taken to comply with the requirements of the instrument.

The following Acts are referred to in the instrument, but are not incorporated by reference:

- the Act;
- the *Acts Interpretation Act 1901*;
- the *Australian Communications and Media Authority Act 2005*;
- the LA;
- the *Radiocommunications (Register of Radiocommunications Licences) Determination 2017*.

These Commonwealth Acts and instruments are available, free of charge, from the Federal Register of Legislation ([www.legislation.gov.au](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.

In April 2023, the ACMA released a consultation paper to the public outlining the reasons for continuing the substance of the 2013 instrument, as well as the proposed changes to the 2013 instrument. Consultation was open for six weeks.

No submissions were received.

### **Regulatory impact assessment**

A preliminary assessment of the proposal to make the instrument was conducted by the Office of Impact Analysis (**OIA**), based on information provided by the ACMA, for the purposes of determining whether a Regulation Impact Statement (**RIS**) would be required. OIA advised that a RIS would not be required because the instrument is expected to only have minor or machinery impacts (OIA reference number OIA23-05137).

### **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 sets out the rules for labelling specified radiocommunications transmitters, in accordance with section 300 of the Act. The instrument revoked the 2013 instrument, which was due to sunset on 1 October 2023.

The rules for labelling include a requirement for operators to affix a label to high power, fixed radiocommunications transmitters, which are operated under a transmitter licence at a communal location with other radiocommunications transmitters. The instrument sets out the information that must be provided on the label and establishes transitional provisions. The requirement does not apply to a transmitter that is a broadcasting station, or to a transmitter operated under a PTS licence (for public telecommunications service purposes).

The instrument replicates the substance of the 2013 instrument, introducing only minor, administrative changes.

### ***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 *Radiocommunications (Labelling) Determination 2023*

### **Section 1 Name**

This section provides for the instrument to be cited as the *Radiocommunications (Labelling) 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](http://www.legislation.gov.au).

### **Section 3 Authority**

This section identifies the provision of the Act that authorises the making of the instrument, namely subsection 300(1) of the Act.

### **Section 4 Repeal**

This section provides that the *Radiocommunications (Labelling) Determination 2013* [F2013L00821] is repealed.

### **Section 5 Interpretation**

This section defines key terms used in the instrument. A number of other expressions used in this instrument are defined in the Act or the *Radiocommunications (Interpretation) Determination 2015*.

### **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 or writing is a reference to that other instrument or writing as in force, or existing, from time to time.

### **Section 7 Relevant transmitter**

This section defines a relevant transmitter for the purposes of the instrument. These are high power transmitters (other than broadcasting stations) operated under a transmitter licence other than a PTS licence, which are located at a communal site.

### **Section 8 Applying a label to a relevant transmitter**

This section requires a person who operates a relevant transmitter to apply a label to that transmitter, and specifies the form of the label and the information that must be set out on the label.

### **Section 9 Transitional**

This section provides that where a person applied a label to a relevant transmitter prior to the commencement date of the instrument, and the label and application to the transmitter complied with the 2013 instrument as in force at the time the label was applied, and the label has not been removed, then the person is taken to have complied with section 8.