EXPLANATORY STATEMENT
Issued by the Australian Communications and Media Authority

Telecommunications Labelling (Customer Equipment and Customer Cabling)
Amendment Notice 2008 (No. 1)

Purpose
The Telecommunications Labelling (Customer Equipment and Customer Cabling) Amendment Notice 2008 (No. 1) (the Amendment Notice) amends the Telecommunications Labelling (Customer Equipment and Customer Cabling) Notice 2001 (the Labelling Notice) to:
- reactivate a standard that has expired; and
- remove a reference to a standard that was originally inserted in error.

Legislative Provisions
Section 407 of the Telecommunications Act 1997 (the Act) provides that the Australian Communications and Media Authority (ACMA) may make a written instrument (the Labelling Notice) requiring any person who is a manufacturer or an importer or authorised agent (collectively referred to as “suppliers”) of customer equipment (CE) or customer cabling (CC), to apply a label to specified items of CE and/or CC.

The application of a label indicates whether the item meets the requirements of the standards made under section 376 of the Act, as specified in the Labelling Notice.

The predecessor to ACMA, the Australian Communications Authority (ACA), made the Labelling Notice in 2001. In accordance with the Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005, the Labelling Notice is taken to continue to have effect as if references to the ACA were references to the ACMA.

Background
The telecommunications regulatory arrangements for CE and CC require that each supplier apply a compliance label to specified CE and CC prior to supply to the market. The label indicates whether the CE or CC complies with the relevant technical standards made under section 376 of the Act and as specified in the Labelling Notice in accordance with section 407 of the Act.

Subsection 376(1) of the Act allows the ACMA to make a technical standard relating to specified CE and CC prior to supply to the market. The Act further provides that in making a technical standard, ACMA may apply, adopt or incorporate any matter contained in a standard proposed or approved by any other body or association.

Once standards made under section 376 of the Act are listed in the Labelling Notice they are given regulatory effect under section 407 of the Act which makes compliance to these standards mandatory under its labelling and compliance requirements.

Subsection 376(2) provides that mandatory requirements in technical standards made under section 376 of the Act are to consist only of such requirements as are necessary or convenient for:
- protecting the integrity of a telecommunications network or facility;
- protecting the health and safety of persons who are likely to be affected by the operation of the network or facility to which the equipment or cabling is connected;
- ensuring equipment can be used to give access to an emergency call service;
- ensuring interoperability of equipment with a network facility used to provided the standard telephone service; or
- achieving an objective specified in the regulations (no regulations have been made to date).

The Labelling Notice makes use of commencement and expiry dates to determine when a standard has regulatory effect, and therefore must be complied with by a supplier of CE or
CC, and when it is no longer required because it has been replaced by an amended or new standard.

The Labelling Notice also allows for the parallel operation of ‘old’ and ‘replacement’ standards, in the event that an existing (old) standard is replaced by an amended or, newly created, standard. This parallel operation, known to industry participants as the overlap period, allows suppliers of CE and CC to continue to use the ‘old’ standards for the duration of the overlap period, assisting industry in the transition from one standard to the next. The overlap period is only implemented where the changes do not substantively affect integrity of the network, safety of users or access to emergency services.

In December 2005, ACMA made a new standard, by adopting AS/NZS 60950.1-2003, and gave it regulatory effect by listing it in the Labelling Notice in April 2006. At that time it also determined that the old standard, AS/NZS 60950-2000, listed in the Labelling Notice would expire on 31 December 2006. This allowed for an overlap period between the two standards to allow suppliers to transition between the old and the new standards. Prior to the old standard expiring, industry identified that the new standard had a shortcoming and would not be suitable for set top boxes (STBs) with telecommunications network ports.

The shortcoming in the new (now the current) standard (AS/NZS 60950.1-2003) has been addressed by a Standards Australia Working Committee (TE-001) which has agreed to amend the standard and has drafted an amendment for publication. Despite this, the drafted amendment to the current standard has incurred delays of over 12 months and has not yet been published. In the meantime, the old standard (AS/NZS 60950-2000) that did not have this shortcoming has expired. To address this problem, ACMA decided to make an Amendment Notice which reinstates the previous standard in the Labelling Notice until the proposed amendment to the current standard is available and ready for inclusion in the Labelling Notice.

Operation

The Amendment Notice will extend the expiry dates of the old standard and its subsequent amendments, so as to specifically allow for the continued supply and connection to a telecommunications network of STBs with telecommunications ports until the current AS/NZS standard is amended to permit this.

The reinstating of the old standard will be made applicable only to STBs. This ensures there are no unintended consequences as a result of extending its life to all telecommunications devices. The reinstating (for STBs only) will also be made retrospective to the time of its original expiry date of 31 December 2006. This will allow for the use of test reports that may have been produced during the development of new models of STBs over the last 13 months and will continue to allow testing to this standard until the new expiry date of 31 December 2008. It is expected that the proposed amendment to the current standard will be available for ACMA to mandate within this time frame.

Although the reinstating of the old standard will be retrospective, it is limited only to STBs. Without reinstating the old standard, suppliers will not be able to supply STBs with telecommunications network ports under the current telecommunications legislative arrangements. For this reason it is considered that neither suppliers of STBs nor indeed any other persons will be disadvantaged or prejudiced in any way by the retrospective application of the previous standard. In fact, suppliers of STBs will be assisted by these changes which compensate for the unexpected delays in industry’s standards making processes. In light of the above, subsection 12(2) of the Legislative Instruments Act 2003 does not prevent the retrospective application of the old standard (in relation to STBs).

Suppliers of devices other than STBs have been testing to the current technical standard since it became available and will not be disadvantaged by the allowance of a small market segment for STBs to continue to test to the previous standard until the proposed amendment to the current standard is published later this year.

An additional change introduced by the Amendment Notice involves the deletion of a reference to a standard that was inserted in error in a particular category of equipment (A25 – MobileSat terminal) used in the provision of Satellite Services.

Regulation Impact
ACMA obtained advice from its Senior Executive Service contact officer for the Government’s regulation impact analysis arrangements that the Amendment Notice has low impact on industry. For those reasons under the self-assessment regime administered by the Office of Best Practice Regulation, ACMA has determined that there is no need to produce a Business Cost Calculator report or to prepare a Regulation Impact Statement. The ACMA exemption reference number is ACMA 041.

As the application of the reinstated standard in the Labelling Notice expires on 31 December 2008, STB suppliers will be provided with an overlap period in which they will be able to select to comply with either the existing standard (once its amendment is published and made by ACMA) or the reactivated standard.

Consultation

TELECOMMUNICATIONS TECHNICAL STANDARD AS/NZS 60950

Major industry stakeholders were consulted, including industry members represented on Standards Australia Working Committee TE-001, on the proposed amendment to the Labelling Notice to reinstate the old standard.

TELECOMMUNICATIONS TECHNICAL STANDARD FOR MOBILESAT TERMINALS

The only affected industry stakeholder, OPTUS, was consulted on the removal of a reference to a standard that was inserted in error in this category of equipment in the Labelling Notice. ACMA also informed industry and consumer groups about this matter through the Communications Alliance Customer Equipment and Cabling Reference Panel (CECRP).

Description of the provisions of the Amendment Notice

Details of the Notice are in Attachment 1.
NOTES ON THE INSTRUMENT

Section 1 – Name of the Notice
This section provides that the name of the Notice is the Telecommunications Labelling (Customer Equipment and Customer Cabling) Amendment Notice 2008 (No. 1).

Section 2 - Commencement
This section provides that the Amendment Notice commences on 31 December 2006 for set top boxes and on the day after it is registered for all items other than set top boxes.

Section 3 – Amendment of Telecommunications Labelling (Customer Equipment and Customer Cabling) Notice 2001
This section provides that Schedule 1 amends the Telecommunications Labelling (Customer Equipment and Customer Cabling) Notice 2001.

SCHEDULE 1—AMENDMENTS

Item [1] - Schedule 1, Part 1, Table 1.1, Column 1, AS/NZS60950
This item substitutes a new table reference at AS/NZS60950 which extends the expiry dates against the entries for AS/NZS 60950-2000 and AS/NZS 60950-2000 (Incorporating Amendment No.1) for set top boxes only.

Item [2] - Schedule 1, Part 2, Table 1.2, Column 1, A25
This item substitutes a new table reference at A25 which removes mention of standard ACA TS028 and its compliance level which was originally inserted in error.