

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Radiocommunications Devices (Compliance Labelling) Amendment Notice 2013 (No. 1)

Purpose

The purpose of the *Radiocommunications Devices (Compliance Labelling) Amendment Notice 2013 (No. 1)* (the Amendment Notice) is to amend the *Radiocommunications Devices (Compliance Labelling) Notice 2003* (the Radiocommunications Labelling Notice). The Amendment Notice amends the Radiocommunications Labelling Notice to specify the Regulatory Compliance Mark (RCM) as the compliance mark to indicate compliance with the radiocommunications regulatory requirements and to phase out use of the C-Tick mark as the compliance mark.

Legislative provisions

Subsection 182(1) of the *Radiocommunications Act 1992* (the Act) provides that the Australian Communications and Media Authority (the ACMA) may by notice require any person who manufactures or imports a device included in a specified class of devices to apply a label to the device to indicate whether the device complies with standards mandated by the ACMA under section 162 of the Act.

A notice made under section 182 of the Act is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Radiocommunications Labelling Notice and standards made under section 162 of the Act operate together to specify the Australian regulatory arrangements for radiocommunications devices.

Background

The ACMA has responsibility for the regulation of customer equipment, customer cabling and specified devices in Australia under the Act and the *Telecommunications Act 1997*. These regimes cover aspects of devices related to the radiocommunications, electromagnetic energy (EME), electromagnetic compatibility (EMC) and telecommunications functions of the device.

By imposing requirements on suppliers of radiocommunications devices, the Radiocommunications Labelling Notice manages the risk of interference to radiocommunications services.

The Radiocommunications Labelling Notice requires suppliers to apply a compliance label to the surface of specified devices to illustrate that the device complies with the technical requirements of the Radiocommunications Labelling Notice. A compliance label under the current Radiocommunications Labelling Notice consists of compliance information (generally information to identify a supplier) and a compliance mark, being either the C-Tick mark or the RCM.

Affixing a compliance label on a device is a prima facie demonstration of compliance with applicable technical standards. Compliance labels also provide retailers with assurance that the devices labelled with the mark are suitable for market placement. The labelling requirements imposed on suppliers (as well as manufacturers, importers and their agents) are intended to limit the supply of non-compliant devices to the market.

There are currently three compliance marks that can be applied to compliance labels to indicate compliance with the ACMA labelling arrangements:

1. the A-Tick mark, used for telecommunications customer equipment and customer cabling;
2. the C-Tick mark, used for radiocommunications emissions, EMC and EME; and
3. the RCM, used for radiocommunications, EMC and EME.

The rules about using these marks to indicate compliance with applicable technical standards are set out in the Radiocommunications Labelling Notice as well as the:

- the *Telecommunications Labelling (Customer Equipment and Customer Cabling) Notice 2001*;
- *Radiocommunications Labelling (Electromagnetic Compatibility) Notice 2008*; and
- the *Radiocommunications (Compliance Labelling – Electromagnetic Radiation) Notice 2003*,

(together, the ACMA Labelling Notices).

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

The existence of separate compliance labels reflects the historical distinction between different sectors of the communications and IT industry. As these previously discrete industries converge, single items of equipment are increasingly subject to overlapping technical regulatory requirements related to radiocommunications, EMC, EME and telecommunications. Devices that have historically been of narrow regulatory interest may now be subject to multiple regulatory arrangements, including different labelling arrangements.

The existence of multiple (and mandatory) regulatory labels, which apply in respect of particular technical requirements, is inconsistent with the evolution of the communications and IT technical and commercial environment. It also increases regulatory and compliance costs for industry.

The ACMA Labelling Notices have been amended to specify the RCM as the regulatory compliance mark to be applied to compliance labels to illustrate compliance with applicable regulatory requirements.

The implementation of a consolidated regulatory compliance label will lessen industry administrative burdens by reducing the complexity of regulatory arrangements and consequently the time required by industry to comprehend and abide by those arrangements. Less complex labelling arrangements also increase the likelihood of compliance and therefore improve regulatory outcomes.

Operation

The Amendment Notice amends the Radiocommunications Labelling Notice to specify that compliance labels will no longer require compliance information and, from 1 March 2016, only the RCM will be required and permitted to be applied to the compliance label to indicate compliance with the radiocommunications regulatory requirements. Suppliers that have been issued with a supplier code number under the Radiocommunications Labelling Notice will still be able to apply either the RCM or the C-Tick mark to a device until 1 March 2016. The use of the RCM will not change any other regulatory requirements applying to devices.

The Amendment Notice also amends the Radiocommunications Labelling Notice to require suppliers to register on a national database. This replaces the requirement for suppliers to register with the ACMA using a paper-based registration process. Under the revised arrangements, suppliers will register using the internet based on-line registration database, referred to as the national database. Use of an online national database will reduce compliance costs for industry.

It is intended that the national database will facilitate industry self regulation. Members of the public, retailers and other suppliers will be able to access information contained on the national database to independently identify suppliers of particular devices.

The use of the national database will assist the ACMA to monitor and enforce compliance with the radiocommunications arrangements and other regulatory requirements. In particular, it will enable the ACMA to easily identify and contact a supplier (to facilitate investigations and assist the ACMA to respond to complaints). It will also enable the ACMA to monitor supplier locations and behaviours and to target compliance programs for particular groups of suppliers.

Consultation

The ACMA conducted two rounds of public consultation regarding the changes to the Radiocommunications Labelling Notice. The ACMA also held follow up discussions with, and delivered presentations to, industry representatives.

A discussion paper, 'Proposed changes to labelling arrangements – Implementation of a consolidated regulatory compliance mark and electronic labelling', was released for public consultation on 27 October 2009. The discussion paper sought comment on (among other things) issues relating to the implementation of a consolidated compliance mark for products/devices. The discussion paper was available to the general public on the ACMA website, publicised through an email subscription alert and sent via email to relevant stakeholders. The first round of consultation ran for a period of 7 weeks. The ACMA received 17 submissions in response to the discussion paper.

The submissions indicated broad support from suppliers, industry groups and consultants for a consolidated mark. There was no opposition to the proposal. A number of respondents noted the need to fine-tune the arrangements to ensure that the new system was not unnecessarily complex or costly. In particular, respondents sought assurance that devices already labelled in accordance with the existing requirements would not need to be relabelled and suppliers would not incur additional registration fees. All issues raised in the submissions were considered by the ACMA and subsequently informed the further development of the proposal and the content of the Amendment Notice.

On 26 June 2011, a draft version of the Amendment Notice was released for public consultation together with a consultation paper, 'Consolidated compliance mark - Proposed implementation arrangements', outlining the implementation arrangements. In addition, the ACMA sought comment on the following draft instruments:

- the *Telecommunications Labelling (Customer Equipment and Customer Cabling) Amendment Notice 2011 (No. 2)*;
- *Radiocommunications Labelling (Electromagnetic Compatibility) Amendment Notice 2011 (No. 1)*; and
- the *Radiocommunications (Compliance Labelling – Electromagnetic Radiation) Amendment Notice 2011 (No. 1)*.

The consultation paper and draft instruments were available to the general public on the ACMA website, publicised through an email subscription alert and sent via email to relevant stakeholders. The second round of consultation ran for a period of 7 weeks. An ACMA stakeholder committee, the Technical Working Group (TWG) met during the public consultation period to discuss the proposal.

The ACMA received 27 responses in response to the consultation paper and draft instruments. Submissions received during the public consultation showed continued broad support from suppliers, industry groups and consultants for the consolidation of compliance marks. All issues raised in the submissions were considered by the ACMA and subsequently informed the content of the Amendment Notice. The only significant change made in response to stakeholder feedback was the removal of the requirement for the inclusion of supplier identification on the compliance label.

Regulation impact

On the basis of the information provided in a Preliminary Assessment, the Office of Best Practice Regulation considers that the amendments that will be required to implement the consolidated compliance mark will have minor impacts. Therefore no further analysis (in the form of a Regulation Impact Statement (RIS)) is required. The ACMA RIS exemption number is 12655.

Detailed description of the Instrument

Further details of the Amendment Notice are set out in Attachment A.

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 *Legislative Instruments Act 2003* applies to cause a statement of compatibility to be prepared in respect of that legislative instrument. This statement is Attachment B.

Attachment A

NOTES ON SECTIONS

Section 1 Name of Notice

Section 1 provides that the name of the Amendment Notice is the *Radiocommunications Devices (Compliance Labelling) Amendment Notice 2013 (No. 1)*

Section 2 Commencement

Section 2 provides that the Amendment Notice commences on 1 March 2013 or the day on which it is published in the Gazette, whichever is the last to occur.

Section 3 Amendment of *Radiocommunications Devices (Compliance Labelling) Notice 2003*

Section 3 provides that Schedule 1 of the Amendment Notice amends the *Radiocommunications Devices (Compliance Labelling) Notice 2003*.

Schedule 1 – Amendments

Item [1] amends the reference in the definition of applicable standard from Schedule 3 to Schedule 2.

Item [2] inserts the definition of the national database. The national database will be a database designated in writing by the ACMA.

There is also a note clarifying that the national database may form part of another database or serve a purpose other than to register suppliers in accordance with the requirements of the Radiocommunications Labelling Notice. The national database will be an online electronic database and it is intended that suppliers will register and update their information through the national database's web-based interface.

It is also intended that the ACMA will designate the national register established under the *Electrical Safety and Other Legislation Amendment Act 2011 (Qld)* as the national database. If that national register is the designated national database, the database will be jointly used by the ACMA and by some members of the Electrical Regulatory Authorities Council (ERAC) and will include supplier registration requirements to meet the ACMA and State and Territory Electrical Equipment Safety System (EESS) regulatory requirements.

Item [3] amends the definition of RCM to remove the note which described that the RCM was reproduced in the Radiocommunications Labelling Notice from the Appendix to AS/NZS 4417.1. This is because AS/NZS 4417.1 has been amended to limit the scope of the document to articulate the technical requirements necessary to apply the RCM in relation to electrical equipment safety. In any event, the RCM continues to be reproduced in Schedule 1 of the Radiocommunications Labelling Notice.

Item [4] amends section 6 to remove the note. As the RCM will become, from 1 March 2016, the single compliance mark to indicate compliance with the requirements of the Radiocommunications Labelling Notice and the *Telecommunications Labelling (Customer Equipment and Customer Cabling) Notice 2001*, the explanatory note referring to the A-Tick mark and C-Tick mark is not required.

Item [5] amends the note after section 7 to substitute 'compliance mark' for 'C-Tick mark'. The note provides that a compliance mark can only be applied to a device that complies with

both the requirements of the Radiocommunications Labelling Notice and the requirements of the *Radiocommunications (Compliance Labelling – Electromagnetic Radiation) Labelling Notice 2003*, as applicable.

Item [6] substitutes section 9 to specify that a compliance label is a label that meets the requirements of section 9 and sections 9A to 9D. The compliance label must consist of the RCM or, if the label is applied before 1 March 2016, the RCM or the C-Tick mark. The compliance label is no longer required to include compliance information. The amendment retains the requirement that compliance labels be accessible and provides that a label is not accessible if it is necessary to use a specialised tool to gain access to it.

Item [7] substitutes section 9B to remove reference to compliance information and to insert a note clarifying that a supplier may voluntarily apply its own supplier identification details to a device.

Item [8] amends subsection 9D(4) to replace the reference to subsection 9(5) with subsection 9(3).

Item [9] substitutes a new heading to Division 3.2 of Part 3.

Item [10] inserts a new section 11 to require a supplier to be registered on the national database prior to applying the RCM to a device. Paragraph 11(b) provides that if the ACMA has not designated a national database, a supplier may apply the RCM to a device if the supplier has been issued with a supplier code number.

Item [10] also inserts a new section 11A which sets out the requirements for supplier registration on the national database. The national database will be an online database that will require suppliers to register certain details onto the database via the internet. For the ACMA's purposes, a supplier will need to include enough information on the national database to enable the ACMA to identify and contact the supplier. The national database will contain prompts and/or fields for a supplier to insert the required information.

If any information that has been provided by a supplier on the national database changes, the Radiocommunications Labelling Notice will require the supplier to update this information on the national database within 30 days of the change occurring. Suppliers that do not update changed information may be subject to pecuniary penalties.

Item [10] also inserts a note to make it clear that all information provided by a supplier onto the national database for the purposes of the Radiocommunications Labelling Notice will be publicly available.

Item [10] also inserts a new section 11B which provides that a supplier must not apply the C-Tick mark to a device unless the supplier has been issued a supplier code number by the ACMA.

Item [10] also inserts a new section 11C which sets out the process for a supplier to obtain a supplier code number if the ACMA has designated a national database. A supplier must apply in writing on an approved form to the ACMA for a supplier code number. The ACMA will cease issuing supplier code numbers after it has designated a national database.

The effect of section 11 is that suppliers who have been issued with a supplier code number have until 1 March 2016 (i.e. 3 years from 1 March 2013) to register on the national database (and begin using the RCM) regardless of when the national database is designated.

Items [11] and [12] amend the references from Schedule 3 to references to Schedule 2.

Items [13] and [14] amend the notes at Schedule 1 to state that the C-Tick mark and the RCM are protected symbols for section 188A of the Radiocommunications Act. The RCM has been made a protected symbol by the *Protected Symbols Determination 2013* made under section 188A of the Act and section 417 of the *Telecommunications Act 1997*.

Item [15] omits Schedule 2 as it is no longer required.

Item [16] amends Schedule 3 to become a new Schedule 2.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

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This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

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Human rights implications

The Amendment Notice does not engage any of the applicable rights or freedoms.

Conclusion

The Amendment Notice is compatible with human rights as it does not raise any human rights issues.

Australian Communications and Media Authority