

## EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

### ***Telecommunications Labelling (Customer Equipment and Customer Cabling) Amendment Notice 2013 (No. 1)***

#### **Purpose**

The purpose of the *Telecommunications Labelling (Customer Equipment and Customer Cabling) Amendment Notice 2013 (No. 1)* (the Amendment Notice) is to amend the *Telecommunications Labelling (Customer Equipment and Customer Cabling) Notice 2001* (the Telecommunications Labelling Notice). The Amendment Notice amends the Telecommunications Labelling Notice to specify the Regulatory Compliance Mark (RCM) as the compliance mark to indicate compliance with the telecommunications regulatory requirements and to phase out use of the A-Tick mark as the compliance mark.

#### **Legislative provisions**

Subsection 407(1) of the *Telecommunications Act 1997* (the Act) provides that the Australian Communications and Media Authority (the ACMA) may by written instrument require any person who is a manufacturer or importer of specified customer equipment or customer cabling to apply to the equipment or cabling a label to indicate whether the equipment or cabling complies with the standards made by the ACMA under section 376 of the Act.

A notice made under section 407 of the Act is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Telecommunications Labelling Notice and standards made under section 376 of the Act operate together to specify the relevant technical regulatory arrangements applying in Australia for telecommunications customer equipment and customer cabling products.

#### **Background**

The ACMA has responsibility for the regulation of customer equipment, customer cabling and specified items in Australia under the Act and the *Radiocommunications Act 1992*. These regimes cover aspects of items related to the radiocommunications, electromagnetic energy (EME), electromagnetic compatibility (EMC) and telecommunications functions of an item.

The telecommunications regulatory arrangements aim to ensure that customer equipment and customer cabling meet mandatory technical standards and are appropriately labelled prior to connection to a telecommunications network. By imposing requirements on suppliers of customer equipment and customer cabling, the Telecommunications Labelling Notice manages issues that include 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 Telecommunications Labelling Notice requires suppliers to apply a compliance label to specified customer equipment and customer cabling to illustrate that they comply with mandatory requirements. A compliance label under the current Telecommunications Labelling Notice consists of a compliance mark, being the A-Tick mark, as well as other information to identify a supplier.

Affixing a compliance label on customer equipment or customer cabling is a prima facie demonstration of compliance with applicable technical standards. Compliance labels also provide retailers with assurance that the items 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 items 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 Telecommunications Labelling Notice as well as the:

- *the Radiocommunications Labelling (Electromagnetic Compatibility) Notice 2008;*
- *the Radiocommunications Devices (Compliance Labelling) Notice 2003;* 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. Items 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 Telecommunications Labelling Notice to specify that from 1 March 2016, only the RCM will be required and permitted to be applied to the compliance label to indicate compliance with the telecommunications regulatory requirements. The additional information identifying a supplier will no longer be required to be included on a compliance label. Suppliers that have been issued with a supplier code number

under the Telecommunications Labelling Notice will be able to apply either the RCM or the A-Tick mark to an item until 1 March 2016. The use of the RCM will not change any other regulatory requirements applying to items.

The Amendment Notice also amends the Telecommunications 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 an internet based on-line registration 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 database to independently identify suppliers of particular items.

The use of the national database will assist the ACMA to monitor and enforce compliance with the telecommunications 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 Telecommunications 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/items. 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 items 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:

- *Radiocommunications Labelling (Electromagnetic Compatibility) Amendment Notice 2011 (No. 1)*;
- the *Radiocommunications Devices (Compliance Labelling) Amendment Notice 2011 (No. 3)*; 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) also 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 *Telecommunications Labelling (Customer Equipment and Customer Cabling) Amendment Notice 2013 (No. 1)*.

#### **Section 2      Commencement**

Section 2 provides that the Amendment Notice commences on 1 March 2013.

#### **Section 3      Amendment of *Telecommunications Labelling (Customer Equipment and Customer Cabling) Notice 2001***

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

#### **Schedule 1 – Amendments**

**Item [1]** inserts a definition for A-Tick mark. The A-Tick mark is reproduced in Part 2 of Schedule 3 to the Telecommunications Labelling Notice.

**Item [2]** amends the definition of applicable standard to remove the word 'only'. This amendment improves the clarity of the definition.

**Item [3]** substitutes the definition of compliance mark to mean either the A-Tick mark or the RCM.

**Item [4]** omits the definition of label.

**Item [5]** 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 Telecommunications 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 [6]** omits the definition of non-compliance label as the term will no longer be used in the Telecommunications Labelling Notice.

**Item [7]** omits the definition of product identification code as the term will no longer be used in the Telecommunications Labelling Notice.

**Item [8]** inserts the definition of RCM. The RCM is reproduced in Part 1 of Schedule 3 to the Telecommunications Labelling Notice.

**Item [9]** substitutes the definition of supplier code number to mean a supplier code number issued in accordance with a notice by the ACMA under section 407 of the Act, section 182 of

the *Radiocommunications Act 1992* or a number issued by Standards Australia International Limited under AS/NZS 4417. The amended definition of supplier code number is now the same as in the *Radiocommunications Devices (Compliance Labelling) Notice 2003*, the *Radiocommunications (Compliance Labelling – Electromagnetic Radiation) Notice 2003* and the *Radiocommunications Labelling (Electromagnetic Compatibility) Notice 2008*.

**Item [10]** makes consequential amendments to subsection 1.5 (7) to reflect changed subsection numbers following the amendments to section 3.6.

**Item [11]** substitutes paragraph 2A.2 (a) to provide that a supplier is not required to apply a compliance label to an exempt device where the supplier (in addition to the other requirements listed in section 2A.2) complies with the requirements set out in section 2A.3.

**Item [12]** substitutes subsection 2A.3 to require a supplier, before supplying an exempt item without a compliance label, to give the ACMA written notice that it will be supplying an exempt item without a compliance label. The notice must be in a form approved by the ACMA. Approved forms are available on the ACMA website.

A supplier will only be required to give the ACMA the notice before the first occasion that the supplier intends to supply an exempt item. A supplier will not be required to give the ACMA a second notice if it subsequently supplies a different exempt item without a compliance label.

In addition to giving the ACMA notice about the supply of an exempt item without a compliance label, the supplier must also be registered on the national database (or if a national database has not been designated by the ACMA – have a supplier code number issued by the ACMA).

Subsections (4) and (5) set out transitional arrangements for suppliers who, before the commencement of the Amendment Notice, have given the ACMA a notice under paragraph 2A.3(1)(a) of the *Telecommunications Labelling (Customer Equipment and Customer Cabling) Notice 2001* as in force immediately before the commencement of the Amendment Notice. Under the new subsections (4) and (5), those suppliers will be taken to have complied with the requirements set out in the new subsection (1).

**Item [13]** amends subsection 2A.4 (1) which deals with the supply of an exempt item without a compliance label. It clarifies that the requirements of the section must be complied with before a supplier supplies the item.

**Item [14]** inserts new subsections 2A.4 (6) and (7) to set out transitional arrangements for suppliers who, before the commencement of the Amendment Notice, established a publicly available register and told the ACMA the internet address for that register, in accordance with section 2A.4 of the *Telecommunications Labelling (Customer Equipment and Customer Cabling) Notice 2001* as in force immediately before the commencement of the Amendment Notice. Under the new subsections (6) and (7), those suppliers will be taken to have complied with the requirements set out in subsection 2A.4 (1).

**Items [15] and [16]** amend the simplified outline of Part 3 to reflect the changes which have been made to Part 3 by the Amendment Notice.

**Item [17]** amends subsection 3.1 (2) to specify that a compliance label consists of the RCM or, if the label is applied before 1 March 2016, the RCM or the A-Tick mark.

**Item [18]** omits subsection 3.1 (3). A compliance label will no longer be required to include compliance information so this subsection is no longer required.

**Items [19] and [20]** amend references from ‘compliance label’ to ‘label’ in subsections 3.1(4) and (4A) and renumber those subsections as 3.1(3) and (4).

**Item [21]** makes consequential amendments to subsection 3.1(5) to reflect changed subsection numbers following the deletion of subsection 3.1(3) (at item [18]).

**Item [22]** amends subsection 3.2 to remove the requirement for a non-compliance label. This item also requires items that do not meet the requirements of an applicable standard, or that have not been tested against each applicable standard, to bear the statements set out in Parts 1 and 2 of Schedule 9. Subsections 3.2(2) and 3.2(3) set out the formatting and printing requirements for those statements. The note to section 3.2 confirms that where an item referred to in subsection 3.2(1) is also an item that is subject to, and meets the requirements of, a Labelling Notice made under section 182 of the *Radiocommunications Act 1992*, the RCM must be applied to the item in accordance with that notice.

**Item [23]** inserts the word ‘compliance’ before ‘label’ wherever it occurs in sections 3.3 and 3.4 for consistency in terminology.

**Item [24]** amends sections 3.5 and 3.6 to remove any references and requirements relating to compliance information. A note has also been inserted after section 3.5 to clarify that a supplier may voluntarily apply its own supplier identification details to an item.

Section 3.6 has also been amended to substitute the use of the term ‘label’ with the term ‘compliance label’.

**Item [25]** inserts the word ‘compliance’ before ‘label’ in subsection 3.6A(1).

**Item [26]** amends subsection 3.6A(4) to reflect changes made to the subsection numbers in section 3.6.

**Item [27]** amends the first dot point of the simplified outline of Part 4 to reflect the new national database arrangements.

**Item [28]** substitutes section 4.2 with a new Division 4.1A. The new section 4.2 will require a supplier to be registered on the national database prior to applying the compliance label to an item.

Paragraph 4.2 (b) provides that if the ACMA has not designated a national database, a supplier may apply the RCM to an item only if the supplier has been issued with a supplier code number.

The new subsection 4.2A 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 Telecommunications 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 [28] also inserts a note to section 4.2A to make it clear that all information provided by a supplier onto the national database for the purposes of the Telecommunications Labelling Notice will be publicly available.

The new section 4.2B provides that a supplier must not apply the A-Tick mark to an item unless the supplier has been issued a supplier code number by the ACMA.

The new section 4.2C sets out the process for a supplier to obtain a supplier code number if the ACMA has not 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 subsection 4.2 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 [29] and [30]** insert the word 'compliance' before 'label' as it occurs in paragraph 6.1(3)(c) and at item 8 (b) (i) of Schedule 2 for consistency in terminology.

**Item [31]** amends subsection 7.2(2) to remove the requirement for suppliers to apply a 'non-compliance label' to items to which section 7.2 applies.

**Item [32]** substitutes a new Schedule 3 to include the design of the RCM and A-Tick mark. Notes have been inserted to show that the RCM and the A-Tick mark are protected symbols for section 417 of the Act. The RCM has been made a protected symbol by the *Protected Symbols Determination 2013* made under section 188A of the *Radiocommunications Act 1992* and section 417 of the Act.

**Item [33]** amends the heading in Schedule 9 to remove the reference to a non-compliance label.



## Attachment B

### **Statement of Compatibility with Human Rights**

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

#### ***Telecommunications Labelling (Customer Equipment and Customer Cabling) Amendment Notice 2013 (No.1)***

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**

The purpose of the *Telecommunications Labelling (Customer Equipment and Customer Cabling) Amendment Notice 2013 (No.1)* (the Amendment Notice) is to amend the *Telecommunications Labelling (Customer Equipment and Customer Cabling) Notice 2001* (the Telecommunications Labelling Notice). The Amendment Notice amends the Telecommunications Labelling Notice to specify the Regulatory Compliance Mark (RCM) as the compliance mark to indicate compliance with relevant telecommunications regulatory requirements and to phase out the use of the A-Tick mark as the compliance mark.

#### **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**