**EXPLANATORY STATEMENT**

Issued by the Australian Communications and Media Authority

***Radiocommunications (Short Range Devices) Amendment Standard 2013 (No. 1)***

***Radiocommunications Act 1992***

**Purpose**

The *Radiocommunications (Short Range Devices) Amendment Standard 2013 (No.1)* (**the Amendment Standard)** amends the *Radiocommunications (Short Range Devices) Standard 2004* **(the ACMA Standard)**.

The ACMA Standard adopts the mandatory requirements in the industry standard made by Standards Australia and Standards New Zealand **(SA and SNZ)**, *AS/NZS 4268 Radio equipment and systems – Short range devices – Limits and Methods of measurement* **(the AS/NZS Standard)***.* The AS/NZS Standard was amended by AS/NZS 4268:2012 **(the AS/NZS Amendment)** which was published by SA and SNZ in July 2012.

The purpose of the Amendment Standard is to amend the ACMA Standard so that it adopts the AS/NZS Standard as amended by the AS/NZS Amendment.

**Legislative Provisions**

The ACMA Standard is made under section 162 of the *Radiocommunications Act 1992* (**the Act)**. Subsection 162(1) allows the Australian Communications and Media Authority (**the ACMA**) to make a standard, by written instrument, relating to the performance of specified devices or the maximum permitted level of radio emissions from devices within specified parts of the spectrum.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make a legislative instrument, the power shall be construed to include 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. The Amendment Standard is made under section 162 of the Act and amends the ACMA Standard.

Standards made under section 162 of the Act are to consist only of such requirements as are necessary or convenient for the matters set out in subsection 162(3) of the Act. The requirements contained in the ACMA Standard and the amendments in the Amendment Standard are necessary and convenient to meet the objectives set out in paragraphs 162(3)(a) to (f) of the Act.

The Amendment Standard is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (**the LI Act**)*.*

**Background**

Paragraph 162(1)(a) of the Act allows the ACMA to make, by written instrument, standards for the performance of specified devices. A standard may be of general application or limited as provided by the standard. Section 5 of the ACMA Standard provides that the standard applies to a radiocommunications device that is a short range device (as defined in section 4) including a low interference potential device and a radio controlled model (and that is not a device mentioned in subsection 5(2)).

Section 6 of the ACMA Standard provides that for the purposes of paragraph 162(1)(a) of the Act, the standard for performance is the standard set out in the AS/NZS Standard, other than the provisions of the AS/NZS Standard listed in paragraphs 6(a) to (f). The objective of the AS/NZS Standard is to specify the minimum performance requirements and methods of measurement for short range devices supplied for use under the ACMA’s radiocommunications regulatory arrangements.

The ACMA Standard currently requires compliance with all sections of the AS/NZS Standard except the clauses that relate to New Zealand. The current ACMA Standard does this by excluding the clauses by number in section 6 (paragraphs 6(a) to (f)). The AS/NZS Amendment includes a general clause (8.2.1.1) on transmitter spurious emissions which then caused other subsequent clauses to be renumbered.

With these renumbered clauses, the clause numbers previously referenced as exclusions in the ACMA Standard are now incorrect and do not accurately reflect the intended New Zealand requirements. The AS/NZS Amendment made no substantive amendments to the standards applicable to short range devices used in Australia.

Consequently, an amendment to the ACMA Standard is required to ensure that the correct standards for performance are specified. The Amendment Standard also contains other minor amendments to the ACMA Standard to define certain terms used in section 5 of the ACMA Standard.

**Operation**

The Amendment Standard amends the ACMA Standard by substituting section 6. The new section 6 provides that the standard for performance of short range devices is the AS/NZS Standard excluding all requirements that apply only to short range devices supplied for use under the New Zealand radiocommunications licence issued under the *Radiocommunications Regulations (General User Radio Licence for Short Range Devices) Notice*.

**Consultation**

Subsection 163(1) of the Act requires that before the ACMA makes a standard the ACMA must, so far as is practicable, try to ensure that interested parties have had an adequate opportunity to comment on the proposed standard and that due consideration has been given to any comments made. This provision also applies when the ACMA is amending a standard made under section 162.

The ACMA conducted a public consultation process in relation to the Amendment Standard. The consultation period was between 21 January 2013 and 1 February 2013. A draft Amendment Standard and consultation paper was open for public comment for 10 working days. A copy of the draft Amendment Standard was made available on the ACMA website during the consultation. Additionally, key stakeholders received an email notification of the consultation process.

Prior to making the AS/NZS Amendment, a public consultation process on the proposed amendments to the AS/NZS Standard was conducted.

No adverse comments were received on the draft Amendment Standard. Only one comment was received during the consultation period. This comment was in regard to the implementation of the change rather than the proposed change.

**Regulation Impact**

The Office of Best Practice Regulation (**OBPR**) has considered the matter and formed the opinion that the amendments proposed in the Amendment Standard will have only a minor and machinery impact and do not impose any substantial additional regulatory burden on manufacturers or importers of short range devices or on the economy. Accordingly, OBPR advised that a regulatory impact statement was not required. The OBPR exemption number is ID 14464.

**Documents Incorporated in this Instrument by Reference**

The following documents are incorporated by reference:

* The Australian and New Zealand standard with ‘AS/NZS 4268’ in its title - *AS/NZS 4268 Radio equipment and systems – Short range devices – Limits and Methods of measurement* -published by Standards Australiais incorporated, as in force from time to time. Copies of the AS/NZS 4268 can be obtained from Standards Australia at [www.standards.org.au](http://www.standards.org.au).
* The *Radiocommunications (Low Interference Potential Devices) Class Licence 2000* as in force from time to time.
* The *Radiocommunications (Radio-controlled Models) Class Licence 2002* as in force from time to time.

**Notes on the Amendment Standard**

The provisions of the Amendment Standard are described in **Attachment 1**.

**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 in **Attachment 2**.

**Attachment 1**

**Notes on the Amendment Standard**

**Section 1 Name of Standard**

Section 1 provides that the name of the instrument is the *Radiocommunications (Short Range Devices) Amendment Standard 2013 (No. 1).*

**Section 2 Commencement**

Section 2 provides that the standard commences on the day after it is registered on the Federal Register of Legislative Instruments.

**Section 3 Amendment**

Section 3 provides that Schedule 1 amends the *Radiocommunications (Short Range Devices) Standard 2004* (**ACMA Standard**)*.*

 **Schedule 1 Amendments**

Items [1], [2] and [4] of Schedule 1 amend section 4 of the ACMA Standard to insert definitions of the following terms - ‘ACMA’, ‘Chair’, ‘low interference potential device’ and ‘radio controlled model’. These terms appear in section 5 of the ACMA Standard but have not been defined.

Item [3] of Schedule 1 omits the definition of ‘former Standards’ from section 4 of the ACMA Standard. This definition is redundant as the term ‘former Standards’ does not appear in the ACMA Standard.

Item [5] of Schedule 1 substitutes section 6 of the ACMA Standard.

The new section 6 has the effect that for the purposes of paragraph 162(1)(a) of the Act, the standard for performance for short range devices is as set out in *AS/NZS 4268 Radio equipment and systems – Short range devices – Limits and Methods of measurement*, excluding any requirements that only apply to short range devices supplied for use under the New Zealand instrument, *Radiocommunications Regulations (General User Radio Licence for Short Range Devices) Notice.*

The effect of section 6 of the ACMA Standard remains the same. The difference between the old and new provisions is that section 6 no longer lists the specific clauses of AS/NZS 4268 that apply only to New Zealand devices.

**Attachment 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**

The legislative instrument amends the *Radiocommunications (Short Range Devices) Standard 2004* **(the ACMA Standard)**made under subsection 162(1) of the *Radiocommunications Act 1992.* The ACMA Standard refers to the industry standard AS/NZS 4268 Radio equipment and systems - Short range devices - Limits and methods of measurement (**the AS/NZS Industry Standard**). The AS/NZS Standard was amended by Standards Australia and Standards New Zealand on 18 July 2012. The legislative instrument amends the ACMA Standard to reflect changes made to the AS/NZS Industry Standard.

**Human rights implications**

This legislative instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

**Australian Communications and Media Authority**