

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Radiocommunications (Labelling) Determination 2013

Purpose

The *Radiocommunications (Labelling) Determination 2013* (the **Labelling Determination**) revokes and replaces the *Radiocommunications (Labelling) Determination 1997* (the **1997 Determination**).

The purpose of the Labelling Determination is to set out the requirements for the labelling of radiocommunications transmitters operated under apparatus licences. Unlike the 1997 Determination, the Labelling Determination does not include a requirement for the labelling of radiocommunications transmitters operated under spectrum licences.

Legislative Provisions

The Labelling Determination is made under subsection 300(1) of the *Radiocommunications Act 1992* (the **Act**). Subsection 300(1) allows the Australian Communications and Media Authority (the **ACMA**) to 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 300(3) provides that the label must be in the form specified by the determination. Under subsection 300(4), a person required by a determination to apply a label to a radiocommunications transmitter must comply with the determination.

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

Background

The main purpose of labelling transmitters is to assist the ACMA in its compliance and investigation functions under the Act. The label establishes ownership of a given transmitter and provides a visual indication that the transmitter is licensed and compliant with the relevant technical framework and conditions of the licence. It also provides a mechanism for resolving interference. For example, where there is interference in a particular area, the label helps to identify the details of the transmitter, such as its operating frequency. This assists the ACMA to determine whether that transmitter may be contributing to the interference. The Labelling Determination imposes a requirement on apparatus licence holders to label specified types of radiocommunications transmitters (high power transmitters) located at communal sites.

The labelling of spectrum licensed radiocommunications transmitters is no longer a requirement of the Labelling Determination. Instead, spectrum licence holders will be required (as a condition of their licence) to keep certain records in relation to transmitters operated under their licence, and to provide the ACMA with a copy of the records when requested. The information contained in the records will allow the ACMA to conduct its compliance checking and interference management processes which were previously reliant on the transmitter being labelled in accordance with the 1997 Determination.

Operation

The Labelling Determination requires that apparatus licensees that operate a high power transmitter at a communal site must affix a label to the transmitter. A 'high power transmitter' is defined to mean a fixed radiocommunications transmitter which operates with an equivalent isotropically radiated power greater than 2 Watts. 'Communal site' has the same meaning as in the *Radiocommunications (Interpretation) Determination 2000*:

communal site means a place used by transmitters operating within 200 metres of each other, for which more than 2 fixed transmitter frequencies are assigned within one of the following frequency bands:

- (a) 30 megahertz to 300 megahertz band;
- (b) 300 megahertz to 3000 megahertz band;
- (c) 3 gigahertz to 30 gigahertz band;
- (d) 30 gigahertz to 300 gigahertz band.

The Labelling Determination requires that the label on a transmitter must contain:

- the registration number of the transmitter (as specified in the Register of Radiocommunications Licences maintained by the ACMA under Part 3.5 of the Act); and
- the statement 'Do not remove'.

The information on the label must be in print of a contrasting colour to the background of the label.

Consultation

The ACMA has consulted widely about its plans to make the Labelling Determination. It released a consultation paper, as a result of a review of the 1997 Determination, in relation to the provisions relating to the requirement for spectrum licence holders to label their transmitters at communal sites. The review was conducted in anticipation of forthcoming spectrum allocations and processes to re-allocate or re-issue expiring spectrum licences.

Two submissions were received in response to the paper. The submissions supported the ACMA's proposal to remove the requirement for spectrum licensed transmitters located at communal sites to be labelled.

Details from this consultation process including the submissions received are available on the ACMA's website at www.acma.gov.au.

Documents incorporated by reference

None.

Detailed Description of the Instrument

Details of the instrument 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 LI Act

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

Regulatory Impact

The ACMA consulted with the Office of Best Practice Regulation (the **OBPR**) on the requirement for a Regulation Impact Statement (**RIS**) for this legislative instrument. The OBPR advised that the Labelling Determination did not warrant the preparation of a RIS because it is likely to only have minor or machinery impacts. Reference number: OBPR ID 2013/14670

ATTACHMENT A

DETAILS OF THE *RADIOCOMMUNICATIONS (LABELLING) DETERMINATION 2013*

Section 1 Name of Determination

This section provides that the Determination is to be cited as the *Radiocommunications (Labelling) Determination 2013* (the Labelling Determination).

Section 2 – Commencement

This section provides that the Labelling Determination commences on the day after it is registered on the Federal Register of Legislative Instruments.

Section 3 – Revocation

This section provides that the *Radiocommunications (Labelling) Determination 1997* (the 1997 Determination) is revoked.

Section 4 – Purpose

This section sets out the purpose of the Labelling Determination which is to impose requirements for the labelling of specified radiocommunications transmitters operated under apparatus licences. The note to the section outlines the effect of subsection 300(4) of the Act, which is that a person who is required to comply with the Labelling Determination must do so or be liable to a penalty of 100 penalty units.

Section 5 – Interpretation

This section provides definitions for the terms used in the Labelling Determination, including 'fixed transmitter' and 'high power transmitter'. Subsection 5(2) provides that unless the contrary intention appears, terms used in the Labelling Determination that are defined in the *Radiocommunications (Interpretation) Determination 2000* have the meaning given by that instrument.

Section 6 – Labelling of transmitters located at communal sites

This section states that licensees operating high power fixed radiocommunications transmitters (other than a transmitter operated under a PTS licence and a transmitter that is a broadcasting station):

- (a) under an apparatus licence; and
- (b) which are located at communal sites

are required to affix a label to the transmitters:

- (c) identifying the registration number of the transmitter that is assigned by the ACMA when the transmitter is registered in accordance with Part 3.5 of the Act; and
- (d) the statement 'Do not remove'.

The term 'broadcasting station' in this section has the same meaning as in the Act (see the Note to subsection 5(1)).

Subsection 6(3) requires that the information on the label must be in print of a contrasting colour to the background of the label. This requirement is intended to ensure that the information on the label is easily readable.

Section 7 – Transitional Provision

This section provides that if a person operates a transmitter to which section 6 applies, and a label was affixed to that transmitter immediately before the commencement of the Labelling Determination in accordance with the 1997 Determination, the person is not required to affix a label to that transmitter in accordance with subsection 6(2) of the Labelling Determination. The purpose of this provision is to not require apparatus licensees who have already labelled their transmitters in accordance with the 1997 Determination to re-label them once the Labelling Determination commences.

ATTACHMENT B

Statement of Compatibility with Human Rights

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

Radiocommunications (Labelling) Determination 2013

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 *Radiocommunications (Labelling) Determination 2013* (**the Labelling Determination**), made under subsection 300(1) of the *Radiocommunications Act 1992* (the Act), replaces the *Radiocommunications (Labelling) Determination 1997*.

Subsection 300(1) allows the Australian Communications and Media Authority (**the ACMA**) to 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.

The Labelling Determination requires an apparatus licensee to affix a label to high power fixed radiocommunications transmitters which are operated under their licence and located at a communal site unless an exemption provided in subsection 6(1) of the Labelling Determination applies.

The Labelling Determination is a legislative instrument that is subject to disallowance under section 42 of the *Legislative Instruments Act 2003*.

Human Rights Implications

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

Conclusion

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