EXPLANATORY STATEMENT

Radiocommunications Devices (Short Range Devices) Amendment Standard 2013 (No. 2), made under the Radiocommunications Act 1992

Issued by the Australian Communications and Media Authority

Purpose

The Radiocommunications (Short Range Devices) Amendment Standard 2013 (No.2) (the **Amendment Standard**) amends the Radiocommunications (Short Range Devices) Standard 2004 (the **ACMA Standard**) to reduce the period within which a specified short range device (a wireless audio transmitter that is capable of being operated within the 694 - 820 MHz frequency range) must meet the requirements of the underlying technical standard, that is, the AS/NZS 4268 Radio equipment and systems – Short range devices – Limits and methods of measurement (the **AS/NZS 4268 Standard**), as amended.

Legislative Provisions

The Australian Communications and Media Authority (the **ACMA**) made the Amendment Standard under subsection 162(1) of the *Radiocommunications Act* 1992 (the **Act**) which provides that the ACMA may, by written instrument, make standards for the performance of specified devices.

An instrument made under the Act may make provision for certain matters by applying, adopting or incorporating (with or without modification) matter contained in an instrument, in force from time to time, made by another person or body in Australia (subsection 314A(2) of the Act).

The Amendment Standard adopts by reference the technical standard made by Standards Australia and Standards New Zealand, the AS/NZS 4268 Standard.

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

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 subsection 162(1) of the Act and amends the ACMA Standard.

Background

Wireless audio transmitters, which are short range devices, are authorised by the *Radiocommunications (Low Interference Potential Devices) Class Licence 2000* (the **LIPD Class Licence**) to operate in the 520 - 820 MHz frequency range.

As part of the process of realising the digital dividend, wireless audio transmitters capable of being operated in the digital dividend frequencies (694 - 820 MHz) have to be cleared from those frequencies by the end of 2014. Examples of wireless audio transmitters include wireless microphones, in-ear monitoring systems and public announcement systems.

After 31 December 2014, wireless audio transmitters authorised for use under the LIPD Class Licence will not be permitted to operate in the 694 - 820 MHz frequency range as a result of amendments to the LIPD Class Licence made by the ACMA on 1 May 2013.

The standard for performance for such devices, including the permitted operating frequencies for wireless audio transmitters, is set out in the AS/NZS 4268 Standard. Standards Australia has indicated that it proposes to revise the AS/NZS 4268 Standard as it applies to wireless audio transmitters to reflect changes in the LIPD Class Licence to the permitted operating frequencies for those devices.

In June 2013, Standards Australia released proposed amendments to the AS/NZS 4268 Standard for comment. One of the proposed amendments to the AS/NZS 4268 Standard is to exclude the 694 - 820 MHz frequency range from the range of frequencies permitted for wireless audio transmitter use.

Under subsection 162(1) of the Act, the ACMA has amended the ACMA Standard which incorporates the AS/NZS 4268 Standard to make consequential changes reflecting the proposed amendments to the AS/NZS 4268 Standard.

Operation

Currently under section 7 of the ACMA Standard, a short range device that is manufactured, imported, altered or modified within 1 year of the AS/NZS 4268 Standard being amended or replaced is deemed to meet the requirements of the AS/NZS 4268 Standard as in force immediately before the amendment or replacement.

A consequence of this would be that even after the AS/NZS 4268 Standard is amended so that the standard for performance reflects the revised permitted operating frequencies for wireless audio transmitters after 31 December 2014 (that is, the 520 - 694 MHz frequency range), devices imported or manufactured within one year of that amendment would be deemed to be compliant with the 'old' standard for performance (which permitted operation in the 520 - 820 MHz range), notwithstanding that the devices would not be permitted to operate in the upper part of that frequency range (694 - 820 MHz frequency range) under the 'new' AS/NZS 4268 Standard as amended.

The Amendment Standard addresses this issue in a number of ways.

The Amendment Standard provides that once the AS/NZS 4268 Standard is amended, a wireless audio transmitter that is manufactured, imported, altered or modified after the AS/NZS 4268 Standard is amended but before 1 January 2014, and that is capable of being operated within the 694 - 820 MHz frequency range, will be taken to meet the standard of performance if it meets the requirements of the AS/NZS 4268 Standard as in force immediately before the amendment, that is, operation in the 520 to 820 MHz frequency range. As the amendment to the AS/NZS 4268 Standard is expected to be published no later than 1 October 2013, the effect is to provide a 3 month transitional period for wireless audio transmitters that are capable of being operated in the 694 - 820 MHz frequency range during which those devices will be deemed to comply with the new standard for performance.

A wireless audio transmitter imported into or manufactured in Australia on or after 1 January 2014 that is capable of being operated in the 694 – 820 MHz frequency range, must meet the requirements of the amended AS/NZS 4268 Standard, that is, operation in the 520 - 694 MHz frequency range. A wireless audio transmitter imported into or manufactured in Australia on or after 1 January 2014 would meet the requirements of the amended AS/NZS 4268 Standard AS/NZS 4268 Standard after that date only if it was altered or modified so that it was no longer capable of being operated in the 694 - 820 MHz frequency range.

It is anticipated that the amendment to the ACMA Standard together with an associated amendment to the *Radiocommunications Devices (Compliance Labelling) Notice 2003* will, in practice, limit the availability in the Australian market of wireless audio transmitters that are not licensed to operate in the 694 - 820 MHz frequency range after 31 December 2014.

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 proposing to amend a standard made under subsection 162(1).

Between 11 June 2013 and 9 July 2013, the ACMA conducted a public consultation process and made available on the ACMA website a consultation paper that explained the proposed amendments. Interested parties were notified of the release of the consultation paper and invited to comment. The ACMA also issued a media release publicising the release of the consultation paper, and hosted a webinar to explain and discuss the proposed changes to the transitional period for wireless audio transmitters. The proposed amendments to the AS/NZS 4268 Standard referenced in the Amendment Standard were consulted on for a period of 9 weeks by Standards Australia.

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 are minor in nature. Accordingly, OBPR advised that no further analysis (in the form of a Regulation Impact Statement) was required. The OBPR exemption number is ID 15026.

Documents incorporated in this Amendment Standard 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 Australia, as in force from time to time, is incorporated by reference into the Amendment Standard. Copies of the AS/NZS 4268 can be obtained from Standards Australia at www.standards.org.au.

Statement of Compatibility with Human Rights

As required under the *Human Rights (Parliamentary Scrutiny) Act 2011* a human rights compatibility statement has been prepared by the ACMA and appears at Attachment A.

NOTES ON THE AMENDMENT STANDARD

Section 1 Name of Standard

Section 1 provides that the name of the Amendment Standard is the *Radiocommunications (Short Range Devices) Amendment Standard 2013 (No.2).*

Section 2 Commencement

Section 2 provides that the Amendment 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 to the Amendment Standard amends the *Radiocommunications* (*Short Range Devices*) *Standard 2004* (the **ACMA Standard**).

Schedule 1 Amendments

Item 1

Item 1 inserts a number of new definitions into section 4 of the ACMA Standard:

- The term 'relevant AS/NZS 4268 amendment' is designed to capture an amendment to, or replacement of, the AS/NZS 4268 Standard so that the permitted operating frequency band mentioned in row 22A of column 3 of table 1 of the AS /NZS 4268 Standard as it applies to wireless audio transmitters (a new defined term see item 3) does not include the 694 820 MHz frequency range.
- The term 'relevant wireless audio transmitter' is defined as a wireless audio transmitter that is also a short range device, within the amended definition of that term (see item 2) to ensure that such devices are included as one of the types of devices to which the ACMA Standard applies. The term 'wireless audio transmitter' is also defined (see item 3).

Item 2

Item 2 substitutes the definition of 'short range device' in the ACMA Standard.

The new definition expands on the previous definition of 'short range device' to include the permitted operating frequencies of short range devices both before and after an amendment to the AS/NZS 4268 Standard by Standards Australia. This will ensure that a wireless audio transmitter of a type mentioned in column 2 of table 1 or column 2 of table 2 of the AS/NZS 4268 Standard is a 'short range device' to which the ACMA Standard applies, notwithstanding an amendment to the AS/NZS 4268 Standard to limit the range of permitted operating frequencies for short range devices.

Item 3

Item 3 inserts a new definition into the ACMA Standard of 'wireless audio transmitter'. A 'wireless audio transmitter' is a radiocommunications device that is of a type mentioned in row 22A of column 2 of table 1 of the AS/NZS 4268 Standard. Row 22A of column 2 of table 1 of the AS/NZS 4268 Standard refers to wireless audio transmitters that operate at less than 100mW.

A note to item 3 gives a non-exhaustive list of examples of devices that are 'wireless audio transmitters'.

Item 4

Item 4 substitutes section 7 in the ACMA Standard.

Subsections 7(1) and (2) are essentially unchanged from the previous subsections 7(1) and 7(2). Depending on whether a short range device (other than a relevant wireless audio transmitter to which subsections 7(2) and 7(3) applies) was manufactured, imported, altered or modified within 1 year of the standard for performance being amended or replaced, or more than 1 year of the standard being amended or replaced, the device is or is not be taken to meet the amended or 'new' standard for performance, the AS/NZS 4268 Standard, for those devices.

Subsection 7(3) provides that a wireless audio transmitter capable of being operated in the 694 - 820 MHz frequency range, that is manufactured, imported, altered or modified after the AS/NZS 4268 Standard is amended or replaced but before 1 January 2014, and that meets the AS/NZS 4268 Standard as is force before amendment or replacement, is taken to meet the standard for performance.

Subsection 7(4) provides that devices capable of being operated in the 694 - 820 MHz frequency range which are manufactured, imported, altered or modified after 1 January 2014, must meet the standard for performance in the AS/NZS 4268 Standard as amended or replaced.

The note to subsection 7(4) explains that to meet the standard for performance, devices to which subsection 7(4) applies would need to be altered or modified so that they are no longer capable of being operated in the digital dividend frequencies (694 - 820 MHz).

Statement of Compatibility with Human Rights

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

Radiocommunications (Short Range Devices) Amendment Standard 2013 (No.2)

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 (Short Range Devices) Amendment Standard 2013 (No.2) (the **Acmandment Standard**) amends the Radiocommunications (Short Range Devices) Standard 2004 (the **ACMA Standard**) made under subsection 162(1) of the Radiocommunications Act 1992. The Amendment Standard incorporates as the standard for performance of short range devices, the industry standard AS/NZS 4268 Radio equipment and systems - Short range devices - Limits and methods of measurement (the **AS/NZS 4268 Standard**), made by Standards Australia. The Amendment Standard reduces the period within which a wireless audio transmitter (a type of short range device), which operates in the 694 – 820 MHz frequency range, may be deemed to comply with the AS/NZS 4268 Standard, if and when that Standard is amended.

Human rights implications

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

Conclusion

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

Australian Communications and Media Authority