

EXPLANATORY STATEMENT

Radiocommunications Devices (Compliance Labelling) Amendment Notice 2013 (No. 2) **made under the *Radiocommunications Act 1992***

Issued by the Australian Communications and Media Authority

Purpose

The *Radiocommunications Devices (Compliance Labelling) Amendment Notice 2013 (No. 2)* (the **Amendment Notice**) amends the *Radiocommunications Devices (Compliance Labelling) Notice 2003* (the **Radiocommunications Labelling Notice**) to specify an additional labelling requirement for wireless audio transmitters that are capable of being operated in the 694 – 820 MHz frequency range.

Legislative provisions

The Australian Communications and Media Authority (the **ACMA**) made the Amendment Notice under section 182 of the *Radiocommunications Act 1992* (the **Act**). Subsection 182(1) of the Act provides that the ACMA may, by notice published in the *Gazette*, 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 meets the requirements of the standards specified in the notice or, if the device is a radiocommunications device, whether the device complies with the class licence specified in the notice.

The Radiocommunications Labelling Notice is made under section 182 of the Act and specifies that devices that are manufactured in, or imported into Australia for supply, and to which an applicable standard applies, are devices to which a label must be applied.

The *Radiocommunications (Short Range Devices) Standard 2004* (the **ACMA Standard**), made by the ACMA under section 162 of the Act, applies to short range devices (as defined in section 4 of that Standard), including wireless audio transmitters. Wireless audio transmitters that are manufactured in, or imported into Australia for supply, are therefore within the class of devices specified for the purposes of the Radiocommunications Labelling Notice.

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

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 Notice is made under section 182 of the Act and amends the Radiocommunications Labelling Notice.

Background

Wireless audio transmitters are short range devices that are authorised by the *Radiocommunications (Low Interference Potential Devices) Class Licence 2000* (the **LIPD Class Licence**) to operate in specified segments of the radiofrequency spectrum. Examples of wireless audio transmitters include wireless microphones, in-ear monitoring systems and public announcement systems. The LIPD Class Licence currently authorises wireless audio transmitters to operate in the 520 – 820 MHz frequency range.

As part of the process begun in 2010 of realising the digital dividend, wireless audio transmitters capable of being operated in the digital dividend frequencies (694-820MHz) have to be cleared from those frequencies by 31 December 2014.

On 1 May 2013 the ACMA amended the LIPD Class Licence to specify that the use of the 520 – 820 MHz frequency range by wireless audio transmitters will not be permitted after 31 December 2014. From 1 January 2015, wireless audio transmitters will only be permitted to operate in the frequency range of 520 – 694 MHz.

The ACMA has also amended the ACMA Standard so that a wireless audio transmitter that can be operated by a user in the 694 – 820 MHz frequency range, that is imported into, or manufactured in, or altered or modified in Australia after 1 January 2014, will have to meet the amended or 'new' technical standard made by Standards Australia and Standards New Zealand, the AS/NZS 4268 Standard (which will prescribe 520-694 MHz as the permitted frequency range for the operation of relevant wireless audio transmitters).

It is expected that amendments by Standards Australia to the AS/NZS 4268 Standard which will exclude the digital dividend frequencies for wireless audio transmitter use will be published no later than 1 October 2013.

Operation

The Radiocommunications Labelling Notice requires suppliers (that is, manufacturers, importers or their agents) to apply a compliance label to a device which shows that the device complies with an applicable standard and with the technical requirements of the Radiocommunications Labelling Notice. A compliance label under the current Radiocommunications Labelling Notice consists of the Regulatory Compliance Mark (**RCM**) or the C-Tick mark with supplier information if labelling of the device is occurring under transitional arrangements.

The Amendment Notice amends the Radiocommunications Labelling Notice to require suppliers of wireless audio transmitters that are capable of operating in the digital dividend frequencies to meet an additional labelling requirement in addition to their existing compliance labelling requirements.

The additional labelling requirement is a consumer awareness measure. It requires suppliers to apply to a wireless audio transmitter capable of being operated in the 694 - 820 MHz frequency range a notice to alert purchasers to the fact that, in order to comply with the LIPD Class Licence, the devices cannot be operated in the 694 - 820 MHz frequency range after 31 December 2014. The Amendment Notice specifies the format in which the additional labelling requirement is to be provided.

The additional labelling requirement may be met by affixing the label in a prominent position to the container, covering, package, case, box or other thing in or with which the device is supplied. The statement specified in subsection 9E(2) must be in bold type and at least 5mm high.

The existing compliance labelling requirements in the Radiocommunications Labelling Notice regarding the form and placement of the RCM or C-Tick mark remain unchanged. Suppliers of wireless audio transmitters can continue to affix the RCM or C-Tick mark as they have done previously provided that they also meet the additional labelling requirement by affixing the label with the required information to the container, covering, package, case, box or other thing in or with which the wireless audio transmitter is supplied.

Consultation

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 which are referenced by the amendments to the ACMA Standard were consulted on for a period of 9 weeks by Standards Australia.

Following the close of consultation, the ACMA had further discussions with representatives of suppliers of wireless audio transmitters to explain the proposed changes.

Regulation impact

The Office of Best Practice Regulation (**OBPR**) has considered the matter and formed the opinion that the amendments proposed in the Amendment Notice 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.

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 NOTICE

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.2)*.

Section 2 Commencement

Section 2 provides that the Amendment Notice commences on the day after it is registered on the Federal Register of Legislative Instruments 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 to the Amendment Notice amends the *Radiocommunications Devices (Compliance Labelling) Notice 2003*.

Schedule 1 – Amendments

Item 1

Item 1 inserts a definition of the term 'Class Licence'. The 'Class Licence' referred to throughout the Amendment Notice is the *Radiocommunications (Low Interference Potential Devices) Class Licence 2000*.

Item 2

Item 2 inserts a definition of 'low interference potential device'. 'Low interference potential device' has the same meaning as in section 3A of the Class Licence.

Item 3

Item 3 inserts a definition for 'wireless audio transmitter'. A 'wireless audio transmitter' is a low interference potential device that is of type mentioned at item 22A of Schedule 1 to the Class Licence and that is capable of being operated in the 694 - 820 MHz frequency range.

Item 4

Item 4 inserts a note after subsection 9(2) to clarify that the new section 9E imposes a requirement on a supplier who supplies a wireless audio transmitter to ensure that a separate label, in addition to a compliance label described in section 9, is applied to the device at the time the device is supplied.

Item 5

Item 5 inserts a new 'Part 2A – Additional labelling requirement for wireless audio transmitters' and section 9E which imposes an additional labelling requirement for suppliers of wireless audio transmitters. Subsection 9E(1) stipulates that a supplier who supplies a wireless audio transmitter will have to ensure that a label is applied to the device at the time the device is supplied.

Subsection 9E(2) states that the label must include a written statement in bold type size no less than 5mm high about the device's compliance with the ACMA class licence it operates under and the permitted operating frequencies under that class licence for the device before and after 31 December 2014.

Subsection 9E(3) sets out the circumstances in which a label is taken to have been 'applied' so that if a supplier uses such a method, the label will be taken to be applied to the device and, accordingly, compliant with the obligation under subsection 9E(1) to apply the label to the device.

There are two notes after section 9E.

Note 1 gives a non-exhaustive list of examples of devices to which the requirements of section 9E apply.

Note 2 clarifies that a label applied under section 9E is not required to contain an RCM or a compliance mark.

Attachment A

Statement of Compatibility with Human Rights

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

Radiocommunications Devices (Compliance Labelling) Amendment Notice 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 purpose of the *Radiocommunications Devices (Compliance Labelling) Amendment Notice 2013 (No.2)* (the **Amendment Notice**) is to amend the *Radiocommunications Devices (Compliance Labelling) Notice 2003* to require that an additional label be applied to wireless audio transmitters that can operate in the 694- 820 MHz frequency range (the digital dividend frequencies). The additional label is a consumer awareness measure designed to alert users of wireless audio transmitters that the permitted operating frequency band for such devices will change after 31 December 2014.

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