

Equipment rules

Supporting material for the Exposure Draft of the Radiocommunications Bill 2017

MAY 2017

Canberra

Red Building
Benjamin Offices
Chan Street
Belconnen ACT

PO Box 78
Belconnen ACT 2616

T +61 2 6219 5555
F +61 2 6219 5353

Melbourne

Level 32
Melbourne Central Tower
360 Elizabeth Street
Melbourne VIC

PO Box 13112
Law Courts
Melbourne VIC 8010

T +61 3 9963 6800
F +61 3 9963 6899

Sydney

Level 5
The Bay Centre
65 Pirrama Road
Pyrmont NSW

PO Box Q500
Queen Victoria Building
NSW 1230

T +61 2 9334 7700 or 1800 226 667
F +61 2 9334 7799

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Written enquiries may be sent to:

Manager, Editorial and Design
PO Box 13112
Law Courts
Melbourne VIC 8010
Email: candinfo@acma.gov.au

Contents

Purpose of the ACMA supporting material	1
Existing arrangements	2
Technical standards	2
Other provisions relating to supply and operation	2
Changes to supply models	3
Radiocommunications Bill 2017	5
Proposed approach of equipment rules	5
Responsible supplier	6
Technical standards	6
Record-keeping requirements	7
Relationship between equipment rules and spectrum authorisations	7
EME requirements	7
Consolidation of requirements	7
Implementation and transition	9
Transition	9
Related matters	11

Purpose of the ACMA supporting material

The ACMA will be responsible for designing and developing new spectrum management arrangements in accordance with the Exposure Draft of the Radiocommunications Bill 2017 (the exposure draft of the Bill), should the Bill be enacted in its current form.

The ACMA's supporting material is intended to provide stakeholders with a greater understanding of how the ACMA envisages key aspects of the Bill may operate, should the Bill be enacted, in order to facilitate consideration of the exposure draft of the Bill.

The ACMA has a particular interest in the views of stakeholders that could inform its approach to transitioning to and implementing the reformed legislation. While the exposure draft of the Bill is available for consultation, the ACMA will join the Department of Communications and the Arts (DoCA) in its stakeholder engagement activities so that the ACMA can benefit from those discussions. However, stakeholders should direct submissions on the package to DoCA as it is the agency responsible for this process.

The ACMA intends to undertake further substantial stakeholder consultation as it designs and then settles on its approach to giving practical effect to the new legislative and policy framework, should the Bill be enacted in its current form.

All views expressed in the ACMA supporting material are preliminary observations only, and have been developed to assist stakeholders in considering and responding to the exposure draft of the Bill. **The supporting material cannot and does not fetter the Authority's discretion in the making of future decisions about the matters discussed in this material or any other matter.** The ACMA will assess each decision it makes under the *Radiocommunications Act 1992*, and under any future legislation, on its merits and in accordance with the requirements of any applicable legislation and administrative law.

No person should rely on statements made in the ACMA supporting material as an indication or explanation of future or present rights and obligations. Neither the ACMA nor the Commonwealth accepts any responsibility or liability for any damage, loss or expense incurred as a result of reliance on any part of the ACMA supporting material. Any person reading this supporting material is advised to also consult the exposure draft of the Bill and DoCA's explanatory materials.

Existing arrangements

The ACMA has implemented the device supply arrangements in the *Radiocommunications Act 1992* (the 1992 Act) by making:

- > technical standards under section 162
- > labelling notices under section 182.

Among other things, the labelling notices require the Australian importer or manufacturer of a device, or that person's authorised agent, to register on the national supplier database and hold certain documentation demonstrating compliance in relation to the device.

The arrangements under the 1992 Act are grouped into three categories:

- > Electromagnetic energy (EME) requirements manage the health and safety risk of exposure to the electromagnetic energy emitted by radiocommunications devices.
- > Electromagnetic compatibility (EMC) requirements manage the risk of interference to radiocommunications services from non-intentionally emitting devices (for example, electrical goods).
- > Radiocommunications devices requirements impose frequency and power emission requirements on radiocommunications devices to minimise the risk of interference. Typically, these requirements apply to devices authorised by a class licence that are not individually coordinated and operate in frequency ranges shared with a large number of other class-licensed devices.

Each of the categories requires compliance with technical standards, labelling and record-keeping requirements.

Technical standards

Technical standards made by the ACMA under section 162 refer directly to industry standards. The incorporated industry standards are typically AS/NZS standards. These AS/NZS standards may in turn reference international standards.

Technical standards for radiocommunications transmitters also support the regulation of class-licensed devices by specifying technical requirements that reflect those in the relevant class licence.

For example, the Radiocommunications (Low Interference Potential Devices) Class Licence 2015 (LIPD Class Licence) requires a person operating a device under the class licence to comply with each applicable standard for the device, subject to limited exceptions. The main applicable standard for low interference potential devices is the Radiocommunications (Short Range Devices) Standard 2014 (the SRD standard). The SRD standard adopts AS/NZS 4268, which contains technical parameters that align with the requirements specified in the LIPD Class Licence. This supports the supply and operation of a large number of devices under the LIPD Class Licence, while minimising the risk of interference between those devices or with other services.

Other provisions relating to supply and operation

The 1992 Act also includes provisions in relation to:

- > the supply, possession and operation of 'non-standard devices' (that is, devices that do not comply with an applicable standard) (sections 157, 158 and 160)

- > the supply of devices that are required to bear a compliance label (sections 182 and 186).

Broadly speaking, sections 157 and 158 provide that the operation and possession, respectively, of a non-standard device is an offence. A person does not contravene sections 157 and 158 if a permit has been issued under section 167. Section 160 provides that the supply of a non-standard device is an offence. A person does not contravene section 160 if supplying a non-standard device in accordance with a permission under section 174. A non-standard device is one that does not comply with one or more applicable technical standards.

Section 182 allows the ACMA to make labelling notices¹ requiring a supplier to apply a label to a device that indicates that the device meets the requirements of specified applicable standards. If the device is a radiocommunications device, the label may also indicate that the device complies with the specified class licence. Section 186 makes it an offence for a person who manufactured or imported a device, who knows that a label is required to be applied to the device, to supply the device unless a label has been so applied.

Section 301 also provides for the supply of specified radiocommunications devices to be limited to licensees who are authorised by their licence to operate such a device, or to a person authorised by such a licensee. Mobile phone repeaters are the only devices subject to supply arrangements established under section 301.

In addition, EME requirements for fixed transmitters are contained in the Radiocommunications Licence Conditions (Apparatus Licence) Determination 2015 made under paragraph 107(1)(f) of the 1992 Act and the Radiocommunications Licence Conditions (Temporary Community Broadcasting Licence) Determination 2015 made under paragraph 108A(1)(e) of the 1992 Act.

Changes to supply models

The device supply arrangements under the 1992 Act are premised on a linear supply chain model. This model assumes that the roles of the parties in the supply chain are distinct and easily understood. That is:

- > Australian manufacturer → exclusive local distributor → retailer → customer (end-user)
- > overseas manufacturer → importer/exclusive local distributor → retailer → customer (end-user).

In the case of importation, the supply arrangements assume that the local importer or distributor of a product, or that person's authorised agent, is the appropriate person to hold the necessary compliance documentation for the product.

Modern supply chains can be more complex and diffuse. The person with the regulatory obligation to hold compliance records for a device may be difficult to identify. Identifying the party responsible for compliance is further complicated where individual devices are installed into larger systems or installations. These systems may be constructed from multiple individual items (for example, an array of LED lights, a local area Wi-Fi network).

¹ Radiocommunications (Compliance Labelling – Devices) Notice 2014, Radiocommunications Labelling (Electromagnetic Compatibility) Notice 2008, Radiocommunications (Compliance Labelling – Electromagnetic Radiation) Notice 2014.

Modern supply models may include:

- > grey import: overseas manufacturer → multiple local distributors/importers → retailer → retail customer
- > drop shipping: overseas manufacturer → customer purchasing via on-line retailer (where on-line retailer does not physically handle goods and customer has no direct relationship with overseas manufacturer or distributor/importer)
- > direct import: overseas supplier → local retail customer
- > online market: internet market (for example, eBay, Ali Baba, Gumtree) → local business → retail customer.

Radiocommunications Bill 2017

Part 10 of the Exposure Draft of the Radiocommunications Bill 2017 (the Bill) proposes to authorise the ACMA to make rules relating to equipment ('equipment rules'). The rules must be directed toward one or more of the objectives listed in clause 121 of the Bill. The objectives include containing interference through the management of EMC and the operation of radiocommunications transmitters, and establishing arrangements to manage risks to the health and safety of persons resulting from a reasonably foreseeable use of radiocommunications transmitters. The equipment rules made under the Bill may allow regulatory obligations to be met by a broader range of participants, rather than just the Australian manufacturer or importer, which will provide more flexibility to establish arrangements that are appropriate for modern supply chains.

Proposed approach of equipment rules

The ACMA will take an evidence-informed approach to implementing the Bill, if passed, consistent with the government's policies on best practice regulation and deregulation. In choosing the options with the greatest net benefit, the ACMA would gather the best available evidence including by seeking the views of current and prospective spectrum users and other key stakeholders.

The ACMA anticipates that any equipment rules it may make would include four main parts:

- > general requirements, including labelling and supplier registration
- > EME standards, and record-keeping requirements for mobile/portable equipment and fixed transmitters
- > EMC standards and record-keeping requirements
- > radiocommunications transmitter standards and record-keeping requirements.

In broad terms, the ACMA expects that the equipment rules would:

- > define the scope of the equipment to which each part applies, and the person responsible for ensuring the equipment complies with relevant requirements
- > differentiate between different categories of in-scope equipment according to the risk profile of the equipment
- > reference or adopt industry standards and specify the compliance documentation that can be used by the responsible entity to demonstrate compliance with those applicable standards.

It is expected that Part 10 of the Bill, if passed, will enable the ACMA to make equipment rules that preserve the fundamental elements of the 1992 Act equipment regulation arrangements, including:

- > the requirement that certain equipment display a compliance label (the Regulatory Compliance Mark or RCM), the use of which attests to compliance of the equipment with applicable standard/s and/or other requirements
- > record keeping obligations, labelling and supplier obligations imposed on a person ('the responsible entity') in relation to equipment
- > prohibitions or restrictions imposed on persons supplying a non-standard device, or a device that is required to be labelled under the equipment rules and does not bear the compliance label

- > restrictions on the supply of certain equipment so that that equipment can only be legally supplied to the holder of the appropriate licence under the Bill, or a person authorised in writing by the licensee.

The ACMA may also consider making equipment rules that:

- > accommodate a wider range of arrangements for compliance responsibility
- > simplify the regulatory arrangements for supply, including:
 - > direct adoption of international standards
 - > greater scope for recognition of overseas compliance documentation
 - > removal of delays between amendments to spectrum authorisations and changes to relevant industry technical standards
- > consolidate regulatory requirements into a single regulatory instrument.

Responsible supplier

Under the 1992 Act device supply arrangements, the Australian manufacturer or importer of a product is responsible for record-keeping and labelling obligations that apply to the product. The importer or manufacturer may authorise an Australian-based agent to carry out the compliance requirements on its behalf. In such instances, a written agency agreement must exist between the agent (in Australia) and the supplier. The agreement must identify the agent as the person responsible for the compliance arrangements on behalf of the supplier. However, an importer or manufacturer, or an agent of the importer or manufacturer may also authorise another person to apply labels, and maintain compliance documentation, on their behalf.

The Bill, if passed, would allow the ACMA flexibility in identifying responsibility for device compliance. Record-keeping obligations could be tailored to, and imposed on, the appropriate person in the supply chain, while still providing certainty to industry.

In recognition of modern supply models, the ACMA expects to consider if there is scope for the equipment rules to allow an overseas manufacturer to authorise an Australian agent to assume compliance obligations on behalf of multiple importers of specified products. This would allow a person to operate as an 'agent-at-large' for particular equipment.

The Bill may also enable the ACMA to impose record-keeping or information production obligations on persons other than 'importers' and 'manufacturers'. For example, the equipment rules could impose obligations on a person arranging for the import of a product from a supplier to an end-user in Australia. Record-keeping obligations on a person other than the importer or manufacturer would be subject to normal checks and balances that apply to legislative instruments, including best practice regulation requirements published by the Office of Best Practice Regulation.

Technical standards

Consistent with government policy, the ACMA would consider making equipment rules that prescribe international standards directly wherever possible. The ACMA would generally adopt or refer to Australian standards only where necessary (typically because of Australian or region-specific spectrum arrangements). The ACMA expects to look to expert Australian technical committees for advice on the appropriate standard to prescribe. Where appropriate, the ACMA may consider a flexible approach to demonstrating compliance by reference to international standards. The ACMA expects that the equipment rules will cater for the operation of international agreements, such as mutual recognition agreements.

The ACMA expects to consider whether it is possible and practical to adapt the existing approach for prescribing industry EMC standards in relation to other industry technical standards in the equipment rules. Under the approach already in place for EMC standards, suppliers are referred directly to industry standards listed on the ACMA website. If this approach were to be implemented more generally in the equipment rules, the ACMA would no longer make separate technical standards that reference or adopt industry standards. The equipment rules would refer directly to the industry standard, rather than through a separate instrument. This could allow the ACMA to improve the transparency between ACMA regulatory requirements and underlying industry standards.

Record-keeping requirements

The Bill would provide the ACMA with the flexibility to recognise overseas compliance documentation through the equipment rules. This may allow the ACMA to list overseas compliance documentation that can be used to demonstrate compliance with a particular national or international standard referenced in the equipment rules.

Relationship between equipment rules and spectrum authorisations

The ACMA expects to consider adopting a more transparent relationship between the technical parameters relevant to the supply of devices, including industry standards, and the relevant spectrum authorisation. Where feasible, this approach could provide benefits to suppliers and users by allowing automatic updates to supply requirements after changes to spectrum authorisations. This could reduce delay costs by shortening the time to market for devices operated under spectrum authorisations.²

EME requirements

The Bill provides the opportunity to consolidate EME arrangements for mobile/portable end-user equipment and fixed location transmitters. This approach may simplify industry EME compliance requirements by including supply requirements and operational conditions in a single legislative instrument. This approach might entail the equipment rules replacing the:

- > Radiocommunications (Compliance Labelling – Electromagnetic Radiation) Notice 2014
- > Radiocommunications (Electromagnetic Radiation – Human Exposure) Standard 2014
- > EME conditions specified in the Radiocommunications Licence Conditions (Apparatus Licence) Determination 2015 and the Radiocommunications Licence Conditions (Temporary Community Broadcasting Licence) Determination 2015.

The Bill proposes a requirement that the ACMA consult with the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) prior to making equipment rules about EME.

Consolidation of requirements

The draft Bill would allow the following legislative provisions and activities to be consolidated in the equipment rules:

- > technical standards made under section 162 of the 1992 Act

² Refer to the *Radiocommunications Bill 2017: a platform for the future* information paper for an explanation of spectrum authorisations.

- > labelling and record-keeping obligations contained in instruments made under section 182, and supporting provisions
- > restrictions on the persons to whom certain devices can be supplied (section 301)
- > restrictions on the supply, possession or operation of a non-standard device (sections 157–160)
- > EME technical and record-keeping obligations in relation to the operation of fixed radiocommunications transmitters that are now specified in the Radiocommunications Licence Conditions (Apparatus Licence) Determination 2015 and certain class licences.

Implementation and transition

Through a process of active regulatory development and stakeholder engagement following the release of the Bill, the ACMA aims to be well-prepared to seek comment on the specifics of the new arrangements if the Bill is passed by Parliament. The ACMA will consider adopting the following indicative timeframe for developing the equipment rules:

- > Following the release of the Bill: Engage with stakeholders on the approach for equipment rules.
- > If the Bill is passed by Parliament and becomes law: Release draft equipment rules for public comment.
- > During the period between the Bill becoming law and the commencement of the main provisions of the Bill: Finalise equipment rules.
- > Upon commencement of the main provisions of the Bill: Equipment rules to commence as soon as practicable.

The timeframe for implementation of the equipment rules will need to be aligned with the timeframe for transition of certain class licences to spectrum authorisations. The development of the equipment rules will also be consistent with any relevant outcomes from the review of the ACMA.

Once the equipment rules have been finalised, the ACMA expects to continue its stakeholder engagement through the development of an information, education and awareness campaign to allow industry to prepare for the commencement of the equipment rules. Timelines and transition periods for the equipment rules will need to match and align with the transition of other subordinate legislation, including spectrum authorisations.

Transition

The ACMA's preference is for a seamless transition to the new equipment rules that does not impose any unnecessary administrative or financial burden on suppliers, takes account of supply lead-times, recognises the linkages between supply and licensing arrangements and provides certainty for industry.

If the equipment rules commence on the same day as the main provisions of the Bill, the likely transitional arrangements would be:

- > equipment already labelled in accordance with the 1992 Act supply arrangements will not be required to be re-labelled or re-assessed for compliance with the provisions of the equipment rules
- > equipment not already labelled when the equipment rules commence will need to be labelled in accordance with the equipment rules
- > equipment that is operated in accordance with an applicable section 162 standard that applied to the equipment at the time of its importation or manufacture, will be taken to comply with the provisions of the equipment rules requiring compliance with relevant technical standards or other requirements.

If the equipment rules commence after the main provisions of the Bill, it is likely that equipment labelled between the commencement of the main provisions of the Bill and commencement of the equipment rules would need to be labelled in accordance with the 1992 Act and relevant instruments.

The ACMA expects that suppliers will seek to move to the new arrangements as soon as it is practicable to do so. However, a transition period may be required, during which suppliers are able to choose to comply with either the 1992 Act equipment regulation arrangements or the equipment rules. During the development of the equipment rules, the ACMA would consult with stakeholders about the need for transitional arrangements. Equipment supplied under the 1992 Act equipment regulation arrangements should not require re-labelling or re-testing.

Related matters

Certain equipment that is within the scope of the equipment rules will also be subject to the Telecommunications (Labelling Notice for Customer Equipment and Customer Cabling) Instrument 2015 (the TLN) made under section 407 of the *Telecommunications Act 1997*. In conjunction with technical standards made by the ACMA under section 376 of the Telecommunications Act, the general effect of the TLN is to impose equivalent regulatory obligations on the same parties as those imposed under the 1992 Act device supply arrangements. The ACMA recognises the importance to industry of common regulatory approaches and obligations for both radiocommunications and telecommunications equipment. This will be a key consideration for the ACMA as it develops equipment rules under the Bill.