

Explanatory Statement

Radiocommunications (Compliance Labelling – Incidental Emissions) Notice 2001

Legislative Provisions

The Australian Communications Authority (ACA) may by notice under section 182 of the *Radiocommunications Act 1992* (the Act), require manufacturers and importers of specified devices to attach a label to these devices and maintain records for these devices to show compliance with standards mandated by the ACA under section 162 of the Act.

It is an offence under section 186 and section 187 of the Act for a manufacturer or importer to supply an unlabelled device or label a device without satisfying the requirements of a notice made under section 182. Maximum penalty for both offences is 100 penalty units.

Background

To deal with the problem of electromagnetic interference to radiocommunications, telecommunications or broadcasting service, the ACA's predecessor, the Spectrum Management Agency, introduced in 1996 the Electromagnetic Compatibility (EMC) scheme. The purpose of the scheme is to minimise electromagnetic emissions from electrical and electronic products which would otherwise disrupt communications. Effective communications contribute significantly to the operations of industry, commerce, safety services and the well being of the community at large.

Instruments made under section 162 and section 182 of the Act underpin the EMC scheme. A section 162 instrument mandates standards to be applied to the EMC scheme whilst a section 182 instrument sets requirements for manufacturers and importers to label products subject to standards with a compliance mark and hold specified compliance records.

The ACA ensures the integrity of the scheme by conducting post-market audits of compliance records, and where necessary, by having samples of products tested against standards.

In early 2000, the ACA conducted an industry-based review of its EMC scheme for the following purposes:

- improve arrangements currently required of industry to meet product compliance against EMC standards;
- progress implementation of the Trans-Tasman Mutual Recognition Arrangement (TTMRA) on EMC between the ACA and New Zealand regulatory authority.

The TTMRA is an agreement between the Governments of Australia and New Zealand to develop an integrated trans-Tasman economy that allows goods to be traded freely between Australia and New Zealand. The TTMRA specifically identifies EMC as a program for trans-Tasman cooperation.

A number of recommendations came out of the review for adoption into the scheme.

The *Radiocommunications (Compliance Labelling – Incidental Emissions) Notice 2001* replaces the *Radiocommunications (Compliance Labelling – Incidental Emissions) Notice 1998* that previously underpinned the scheme and brings in new requirements recommended from the EMC review that harmonises arrangements between Australia and New Zealand.

Notes on the Instrument

Part 1 - Preliminary

Section 1 - Name of Notice

Section 1 sets out the name of this Notice.

Section 2 - Commencement

Section 2 sets out the date of commencement of this Notice.

Section 3 - Definitions

Section 3 defines the terms used in this Notice.

Section 4 – Revocation

Section 4 revokes instruments *Radiocommunications (Compliance Labelling – Incidental Emissions) Notice 1998* and *Radiocommunications (Compliance Labelling – Incidental Emissions) Amendment Notice 2000 (No. 1)* made on 21 December 1998 and 11 August 2000 respectively.

Section 5 – Application of this Notice to devices

Section 5 specifies the scope of this Notice.

Section 6 - Application of this Notice in addition to the Telecommunications Labelling (Customer Equipment and Customer Cabling) Notice 2001

Section 6 specifies that if a device is also to be labelled in accordance with the *Telecommunications Labelling (Customer Equipment and Customer Cabling) Notice 2001*, as in force from time to time, the device needs to comply and be labelled with the compliance label as required by that Notice. By applying a compliance label under that Notice, the label also signifies that the requirements in this Notice have also been met.

Part 2 - Form and placement of a compliance label

Section 7 - Who must apply a compliance label to a device

Section 7 specifies the persons who must apply the label to devices manufactured in Australia or devices manufactured outside Australia. Subsection 7(3) exempts low risk devices from the compliance label requirements.

Section 8 - What is a compliance label

Section 8 specifies the form of the compliance label and how it should be applied to the device. Subsection 8(5) outlines the requirements where it is not possible to apply the label to the external surface of a device, and in such situations, subsection 8(6) allows alternative labelling arrangements on the proviso that, under subsection 8(7), approval had been sought and granted by the ACA.

Part 3 - Requirements to be met before a label may be applied

Division 3.1 – Application of Part 3

Section 9 – No application to variants of a device

Section 9 states that the requirements of Part 3 do not apply to a variant of a device in situations where the requirements of Part 3 have been met by the original device and that the radiofrequency emission characteristic of the variant device is not likely to exceed those of the original device.

Division 3.2 – Permission to use regulatory marks and issue supplier code numbers

Section 10 – Notification

Section 10 outlines the requirement to use the compliance mark, known as the ‘C-tick’, that includes an application for permission to obtain approval from the ACA, set out in Schedule 4, and be issued with a supplier code number. Subsection 10(3) allows the use of another compliance mark, known as the Regulatory Compliance Mark (RCM), where a supplier has notified the ACA in accordance with Australian/New Zealand Standard (AS/NZS) 4417.1.

Where a supplier has previously been issued with a supplier code number and permission to use a mark has been granted under the *Telecommunications Labelling (Customer Equipment and Customer Cabling) Notice 2001* or the *Radiocommunications Devices (Compliance and Labelling) Notice 1996*, subsection 10(4) exempts the supplier from the requirements of section 10.

Section 11 – Declaration of conformity

Section 11 specifies that before a supplier of device applies a compliance label to that device, the supplier must make a declaration of conformity for the device. However, where an importer of a device that complies with an applicable standard obtains a declaration of conformity from the overseas manufacturer, subsection 11(2) states that the importer has met the requirements of subsection 11(1) of making a declaration of conformity.

Division 3.3 – Compliance levels

Section 12 - Compliance Level

Section 12 defines the various compliance levels and specifies that before a compliance label is applied to a device, the supplier of this device must comply with the compliance level for the device.

Section 13 – Compliance level 1

Section 13 specifies the requirements of compliance level 1 that must be met by a supplier.

Section 14 – Compliance level 2

Section 14 specifies the requirements of compliance level 2 that must be met by a supplier.

Section 15 – Compliance level 3

Section 15 specifies the requirements of compliance level 3 that must be met by a supplier.

Division 3.4 – Testing of devices

Section 16 outlines the information that a testing body must include in a test report.

Division 3.5 – Technical assessments of devices

Section 17 – Technical assessment

Section 17 specifies that the requirements of Division 5 apply if the supplier of a device applies for a technical assessment by a competent body.

Section 18 – Making an application for technical assessment

Section 18 sets out the information to be contained in an application for a technical assessment by a competent body.

Section 19 – Decision of competent body

Section 19 outlines the processes a competent body will undertake to inform an applicant of its decision in the technical assessment of a device.

Part 4 - Requirements to be met after labels are applied

Division 4.1 - Keeping of records

Section 20 – Compliance records – general requirements

Section 20 lists the general requirements for compliance records.

Section 21 – Keeping of records

Section 21 specifies the compliance records to be kept by suppliers of labelled devices and also that these records must be kept for 5 years after the device has ceased to be supplied in Australia. Paragraph 21(2) also requires agents to keep a copy of their agency agreements for the same period as the records for labelled devices.

Section 22 – Records showing compliance under section 16 – testing

Section 22 sets out records to be kept where a device's compliance is shown under paragraph 21(1)(c).

Section 23 – Records showing compliance under Division 5 of Part 3 – technical assessment

Section 23 sets out records to be kept where a device's compliance is shown under paragraph 21(1)(d)

Division 4.2 - Availability of compliance records for inspection

Section 24 – Where compliance records are to be available

Section 24 specifies that a supplier of a device must ensure that the compliance records for the device are available at the principal business address in Australia of the supplier.

Section 25 – Provision of information to authorised officer

Section 25 requires a supplier of a labelled device to provide specified compliance records to an authorised officer when requested by the officer in writing. The requested supplier has 10 working days to produce the specified compliance records. However if the written request is in respect to a specified circuit diagram, manual, or a copy of these documents, the supplier must produce the documents within 30 days after the day specified in the request.

Under subsections 25(4) and 25(5), an authorised officer who receives requested documents must issue a receipt for these documents and then must return the documents to the supplier as soon as practicable and not more than 60 days after receiving the documents.

If an authorised officer believes that the records kept by the supplier do not provide sufficient evidence that a device complies with applicable standards, the officer under subsection 25(6) may issue a written request for the supplier to provide a test report from an accredited testing body or a report from a competent body.

Section 26 – Testing of items by testing body

Under section 26, an authorised officer may, in writing, request a supplier of a device to provide within 10 working days up to 3 samples to a specified accredited laboratory for purposes of testing against applicable standards. The supplier must also attempt to obtain a receipt from the laboratory that shows that the samples have been received and provide the ACA with the receipt or satisfy the ACA that reasonable attempts were made to obtain a receipt. The section also requires the ACA to make arrangements to ensure that the samples are returned to the supplier within a reasonable period after they have been tested.

Part 5 – Requirements to be met after labels applied – devices imported from New Zealand

Section 27 – Purpose of Part 5

Section 27 explains that the purpose of Part 5 is to provide ways for the ACA to work out whether a device imported into Australia from New Zealand complies with the New Zealand labelling legislation.

Section 28 – Application of Part 5

Section 28 limits the application of Part 5 to devices that are imported into Australia from New Zealand.

Section 29 – Importer taken to have labelled device

Under section 29, an importer of a device labelled in New Zealand is taken to have labelled the device under Part 2 of the *Radiocommunications (Compliance Labelling – Incidental Emissions) Notice 2001*.

Section 30 – Provision of information to authorised officer.

Section 30 requires a supplier of a device labelled under the New Zealand labelling legislation to provide specified New Zealand records to an authorised officer when requested in writing to show that the device meets the New Zealand requirements. The requested supplier has 10 working days to produce the specified compliance records. However if the written request is in respect to a specified circuit diagram, manual, or a copy of these documents, the supplier must produce the documents within 30 days after the day specified in the request.

Under subsections 30(4) and 30(5), an authorised officer who receives requested documents must issue a receipt for these documents and then must return the documents to the importer as soon as practicable and not more than 60 days after receiving the documents.

If an authorised officer believes that the records kept by the importer do not provide sufficient evidence that a device complies with New Zealand labelling legislation, the officer under subsection 30(6) may issue a written request for the importer to provide a test report from an accredited testing body or a report from a competent body on the products performance.

Section 31 – Testing of items by testing body

Under section 31, an authorised officer may, in writing, request an importer of a device sourced from New Zealand to provide within 10 working days up to 3 samples to a specified accredited laboratory for purposes of testing against applicable standards. The importer must also attempt to obtain a receipt from the laboratory that shows that the samples have been received and provide the ACA with the receipt or satisfy the ACA that reasonable attempts were made to obtain a receipt. The section also requires the ACA to make arrangements to ensure that the samples are returned to the importer within a reasonable period after they have been tested.

Schedule 1 – Labels

Part 1 – The Labels

Part 1 specifies the form of the compliance label.

Part 2 – The Marks

Part 2 specifies the shape of the C-tick mark and the Regulatory Compliance Mark (RCM).

Schedule 2 – Standards

Schedule 3 lists the standard referenced in subsection 3(1).

Schedule 3 – Notification and Application to use C-Tick Mark

Schedule 3 is the form, referenced in subsection 10(2), to make application to the ACA to use the C-tick mark and be issued with a supplier code number.

Schedule 4 – Supplier’s Declaration of Conformity

Schedule 4 is the form of the declaration of conformity referenced in subsection 3(1).