

**COMMUNICATIONS
ALLIANCE LTD**



AUSTRALIAN COMMUNICATIONS AND MEDIA
AUTHORITY

REMAKING TELCO STANDARDS AND CHANGES TO
THE LABELLING NOTICE

COMMUNICATIONS ALLIANCE SUBMISSION
31 AUGUST 2018

TABLE OF CONTENTS

EXECUTIVE SUMMARY	3
1 INTRODUCTION	4
2 PROPOSED CHANGES TO TECHNICAL REGULATION	4
3 AN HISTORICAL PERSPECTIVE	4
4 WHY THE CHANGE?	5
5 MARKET IMPACTS	5
6 SPECIFIC COMMENTS ON THE DRAFT INSTRUMENTS	6
7 CONCLUSION	8

EXECUTIVE SUMMARY

Communications Alliance is pleased to have the opportunity to make a submission on the review by the Australian Communications and Media Authority (ACMA) into the remaking telecommunications standards and changes to the labelling notice.

Communications Alliance, as a Standards Development Organisation (SDO), promotes the timely development of industry Standards for use by the Australian telecommunications industry. This submission in part questions the proposed approach by the ACMA – i.e. to return to a time where regulatory instruments are regularly revised to reference industry Standards. Industry is concerned that this will introduce delays in making Standards available to industry and new telecommunications devices available to the public.

The remainder of the submission provides comments on the three draft instruments released by the ACMA as a part of the consultation.

About Communications Alliance

Communications Alliance is the primary telecommunications industry body in Australia. Its membership is drawn from a wide cross-section of the communications industry, including carriers, carriage and internet service providers, content providers, equipment vendors, IT companies, consultants and business groups.

Its vision is to provide a unified voice for the telecommunications industry and to lead it into the next generation of converging networks, technologies and services. The prime mission of Communications Alliance is to promote the growth of the Australian communications industry and the protection of consumer interests by fostering the highest standards of business ethics and behaviour through industry self-governance. For more details about Communications Alliance, see <http://www.commsalliance.com.au>.

1 Introduction

Communications Alliance welcomes the opportunity to provide comment on the following three draft Instruments released for consultation by the ACMA:

- Draft Telecommunications (Labelling Notice for Customer Equipment and Customer Cabling) Instrument 2018¹
- Draft Telecommunications (Mobile Equipment Air Interface) Technical Standard 2018
- Draft Telecommunications (Customer Equipment Safety) Technical Standard 2018

2 Proposed changes to technical regulation

The release of the Draft *Telecommunications (Labelling Notice for Customer Equipment and Customer Cabling) Instrument 2018* (Draft TLN) caught the industry by surprise by reintroducing the need to revise regulatory instruments to call up AS/CA Standards. Industry has been of the understanding that the registration of the *Telecommunications (Labelling Notice for Customer Equipment and Customer Cabling) Instrument 2015* (TLN 2015) on 17 February 2015, along with several supporting ACMA Technical Standards, new or revised AS/CA Standards become applicable on the date of their publication.

The ACMA *Review of the telecommunications equipment regulatory arrangements* Consultation Paper in 2014², subsequent correspondence received by Communications Alliance and ongoing discussion with Communications Alliance after TLN 2015 was registered, provided the basis of industry's understanding.

At that time Communications Alliance and the industry commended the ACMA on this initiative, acknowledging the reduction of time for Standards to be made available to industry and reducing the administrative burden for both the industry and the Regulator in technical regulation and standardisation.

Returning to the previous ACMA process of developing a corresponding Instrument every time Communications Alliance publishes a Standard is, we feel, a retrograde step.

This submission provides the context with a short historical perspective of the benefits of the changes to technical regulation implemented in 2015 and the impost that the changes being proposed with the release of the draft instruments will produce.

3 An historical perspective

The telecommunications industry, which includes equipment suppliers, test laboratories and telecommunications carriers, relies on the availability of current and relevant Australian Standards to be able to deploy the latest telecommunications devices into the market.

Australian customer equipment and cabling Standards, designated as AS/CA Standards, are developed by Communications Alliance, as an accredited Standards Development Organisation (SDO). The standardisation process can be resource intensive and complex and any impact in making Standards available to industry is concerning.

¹ In this submission, a reference to the '*Draft Telecommunications (Labelling Notice for Customer Equipment and Customer Cabling) Instrument 2018*' is a reference to the revision-marked version of the *Telecommunications (Labelling Notice for Customer Equipment and Customer Cabling) Instrument 2015*' by the ACMA as part of the consultation.

² Review of the telecommunications equipment regulatory arrangements Consultation Paper JULY 2014, Page 25

Prior to the TLN 2015, Communications Alliance submitted an AS/CA Standard to the ACMA for making under the *Telecommunications Labelling (Customer Equipment and Customer Cabling) Notice 2001*. The regulatory process entailed legal drafting and ACMA Authority approval which took a nominal eight weeks but has been known, depending on the ACMA resources and availability of the Authority, to take up to a year until the regulatory processes were acquitted and industry could then access the applicable Standard.

With the advent of the TLN 2015 and the associated regulatory instruments (the ACMA Technical Standards), industry looked forward to a regulatory process that allowed Standards to be updated from time-to-time and to be automatically become applicable when they were published, avoiding the extra time to develop the regulatory instruments. One aspect of this change recognised the valuable role of the ACMA on Communications Alliance committees, providing necessary regulatory guidance.

4 Why the change?

With the release of these draft ACMA Instruments and recent conversations with the ACMA, it now appears that the ACMA and the industry have diverging positions with respect to the outcomes of the TLN 2015 and associated regulatory instruments.

Rather than allowing revised Standards to become applicable on publication from time-to-time, we understand that the ACMA's position is that regulations allow for only one revision within a two-year period after the TLN 2015 and associated regulatory instruments were registered.

The draft instruments appear to be following a similar approach - in allowing a Standard to be revised once (or be amended) without the need for the regulatory instruments to be revised. With every subsequent revision of a Standard, the regulatory instruments would then need to be amended. If this is indeed the case, we believe it is a sub-optimal outcome.

If the ACMA is able to demonstrate any regulatory failings that have occurred as a result of automatic applicability, that would be appreciated. Communications Alliance is unaware of any occasion where the ACMA has identified a need for a Standard to be revised during the past twenty years, when industry has been managing customer equipment Standards.

Under Part 4 of the ACMA Act, the ACMA has the power to make, vary or revoke legislative instruments. In this environment of evidence-base regulation and the government imperative for red-tape reduction and improved efficiencies, Communications Alliance questions what is driving the apparent change of attitude. If it is being driven by legal necessities and a perceived need for 'due process', then Communications Alliance suggests that the ACMA should reevaluate how these changes are in any way facilitating the achievement of regulatory objectives. Communications Alliance suggests that the ACMA reconsiders its approach as a matter of priority.

5 Market impacts

Communications Alliance wishes to draw to the ACMA's attention the impact that these proposed changes will have on the industry and on consumers.

The immediate effect being experienced, is the confusion that has been caused with the publishing of AS/CA S042.1:2018 **Requirements for connection to an air interface of a Telecommunications Network— Part 1: General and Part 4: IMT Customer Equipment** on 12 April 2018. We have been made aware of industry members who have been immediately impacted, with delayed business plans for the release of devices that were based on the

February 2018 publication. This in turn has had an impact on consumers in having timely access to the latest telecommunications devices.

The longer-term impact is, as previously mentioned, seems likely to be unnecessary delays to the introduction of products to the market, without any perceived regulatory benefits.

Communications Alliance seeks clarification whether the ACMA is going to develop a Regulatory Impact Statement (RIS) on the proposed changes to these instruments, and if so, we would be interested to contribute to the RIS.

Communications Alliance would also draw to the ACMA's attention the potential ramifications to the regulatory processes arising from this approach:

- increased demand for resources in developing and amending technical instruments and most likely the TLN, every time (or every other time) a new/revised Standard is published.
- an increasingly divergent approach in how regulatory objectives are being implemented with other ACMA labelling notices (radiocommunications, electromagnetic compatibility - EMC).
- potential confusion for industry in the naming of this instruments with dates in the titles which differ from the dates of the industry Standards that are being referred to. This has already been made readily apparent back in 2015 with the revised package of Technical Standards that were released with the TLN 2015.

Finally, Communications Alliance would also strongly caution the ACMA to avoid considering such an approach in relation to other existing arrangements such as the EMC regime. We would be at odds to identify any rational explanation to change the approach of making available a list of applicable EMC Standards on the ACMA website. Any movement down this path would be met with great concern.

6 Specific comments on the draft instruments

Notwithstanding the early comments and observations, Communications Alliance wishes to provide the following comments on the drafts instruments.

Draft Telecommunications (Labelling Notice for Customer Equipment and Customer Cabling) Instrument 2018

Relocating provisions to Technical Standards

- the statement that 'a Technical Standard that was in force at the time the item was manufactured in Australia or imported' has been removed from the TLN and relocated in the draft Technical Standards.
- although understanding that this is a legal issue which relates to different sections of the Telecommunications Act (*s406 Application of Labels vs s376 ACMA's power to make technical standards*), by removing provisions from the TLN, such as the one noted above, there is a flow on effect, by introducing a gap in the ACMA Technical Standards that have not been updated.

Terminology

cabling-related customer equipment

- using the term 'equipment' (in the introduced term 'cabling-related customer equipment') to describe cabling components is confusing. Industry practice is for:
 - 'customer equipment' to refer to active equipment
 - 'cabling products' to refer to passive equipment
- it is understood that the rationale behind this is that cabling product, which subject to the requirements of AS/CA S008 **Requirements for customer cabling products**, has inadvertently not been called up under TLN to date.
- the proposed approach is to incorporate 'cabling product' under the definition of customer equipment by introducing this new definition.
- it is suggested to align any change of terminology with industry accepted terms. It is noted that AS/CA S008 is under revision concurrently with the release of the draft ACMA instruments and one of the activities is in making the terminology consistent within our Standards.

use of brands

- the use of brand names should be avoided in legislation. The name 'Krone' in Schedule 4, for example, should be replaced with a more generic term such as 'insulation displacement connector'.

high risk applicable technical standard

- seeking confirmation that the change to the 'high risk applicable technical standard' definition is for clarification purposes only.
- this is one example of legal drafting being applied to these instruments that is unfortunately reducing the utility of the instruments and making them less intuitive to industry.

consistency

- terminology to be made consistent, for example, 'manufactured in Australia' vs 'made in Australia'.

Part 7 - Division 3 – transitional arrangements

- it is understood that this section relates to documentary evidence obligations and what is required when there are changes to a Standard, for example, whether a new DoC is required or not.
- this is another example of legal drafting and has introduced considerable confusion within industry in comprehending these obligations. Industry remains unclear as to their obligations relating to transitional arrangements.
- note the use of the terms 'transition time' in the draft TLN versus the term 'transition period' used in the draft Technical Standards. It is suggested that 'transition time' be changed to 'effective date' in the draft TLN.

Draft Telecommunications (Mobile Equipment Air Interface) Technical Standard 2018

- no specific comments

Draft Telecommunications (Customer Equipment Safety) Technical Standard 2018

- understand that Standards Australia will be commencing a project to adopt IEC 62368-1 Edition 3 as a new version AS/NZS 62368.1 **Audio/video, information and**

communication technology equipment - Part 1: Safety requirements, anticipated within the next 12 months.

- clarification is sought in how the technical regulation will be applied to this Standard revision.

7 Conclusion

Thank you in advance for your consideration of the issues raised herein. Communications Alliance recommends that the ACMA reconsider its technical regulatory approach in how to make industry Standards applicable Standards under the *Telecommunications Act 1997*, based upon the successful regulatory outcomes to date and the lack of evidence suggesting any failure of technical regulation in recent years.

We understand that that an Explanatory Statement will be drafted after the Instruments are finalised and we note that industry relies on this Statement to assist with our understanding of the legislation.

In understanding the limitations imposed on the ACMA in releasing further public consultation drafts, Communications Alliance would like to offer to review the final draft changes to the instruments as a 'sanity check' to assist the ACMA once the formal consultation has been completed.



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