

**COMMUNICATIONS
ALLIANCE LTD**



AUSTRALIAN COMMUNICATIONS AND MEDIA
AUTHORITY

PROPOSED CHANGES TO
RADIOCOMMUNICATIONS EQUIPMENT
REGULATION

COMMUNICATIONS ALLIANCE SUBMISSION
15 DECEMBER 2022

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Introduction

Communications Alliance welcomes the opportunity to provide this submission in response to the ACMA consultation on the proposed changes to radiocommunications equipment regulation. We welcome this update to the *Radiocommunications Equipment (General) Rules 2021* (the Equipment Rules) and note that it forms part of a staged program to review the ACMA's telecommunications and radiocommunications equipment regulation, following the passage of the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020*, which amended the *Radiocommunications Act 1992*.

About Communications Alliance

Communications Alliance is the primary communications 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, platform providers, equipment vendors, IT companies, consultants and business groups.

Its vision is to be the most influential association in Australian communications, co-operatively initiating programs that promote sustainable industry development, innovation and growth, while generating positive outcomes for customers and society.

The prime mission of Communications Alliance is to create a co-operative stakeholder environment that allows the industry to take the lead on initiatives which grow the Australian communications industry, enhance the connectivity of all Australians and foster the highest standards of business behaviour.

For more details about Communications Alliance, see <http://www.commsalliance.com.au>.

1 General comments

Communications Alliance broadly agrees with the approach being proposed by the ACMA on the range of proposed changes to radiocommunications equipment regulation. We would like to take the opportunity to raise a number of issues for the ACMA's further consideration, with the goal of improving the readability and understanding of the updated regulations.

As a general observation, in having the text of the radiocommunications legislation and associated regulations being drafted primarily by the legal department, the information in the Equipment Rules is becoming more and more legalistic and increasingly more difficult for industry to understand and apply.

The Office of Parliamentary Counsel (OPC) is active in encouraging the use of plain language in legislation and in developing and using plain language techniques. The Plain English Manual¹ outlines some of the techniques that the OPC employs which could be gainfully employed in the drafting of radiocommunications legislation and regulations.

We are concerned that those whose roles is to draft legislation and regulations can suffer from *regulatory drafting myopia*, constructing legally binding requirements which do not reflect a practical understanding of the technical and operational realities of the affected stakeholders. This can result in industry members shying away from familiarising themselves with the instruments, and either not becoming adequately versed with the rules or worse, misinterpreting the rules.

Communications Alliance appreciates the need for clear and unambiguous drafting as helping to limit the potential for misinterpretation of legislation and regulations. At the same time, from a compliance perspective, regulations must also be written in a manner that reflects the technical and operational realities of the subject matter and is capable of being implemented as intended.

This is further complicated for those external parties that seek to understand these arrangements, such as our regional neighbours that do not use English as their native language. Even English speakers who do not have a legal background are challenged by the legal construct of the arrangements. Although not subject to the proposed changes within this consultation, a case in point is well demonstrated in the initial text of Section 6 on obligations and prohibitions:

6 Effect of obligations and prohibitions on other obligations and prohibitions

Unless the contrary intention appears, no obligation or prohibition in this instrument limits, or is limited by:

- (a) any other obligation or prohibition in this instrument;
- (b) any obligation or prohibition in the compliance labelling notice;
- (c) any obligation or prohibition in the EMC labelling notice;
- (e) any provision of an instrument made under subsection 407(1) of the *Telecommunications Act 1997*.

Example: In relation to a single device, a person may be subject to a provision in each of Part 2, Part 3, Part 4 and Part 5 of this instrument, a provision in the compliance labelling notice, and a provision in the EMC labelling notice.

¹ Office of Parliamentary Counsel Plain English Manual <https://www.opc.gov.au/publications/plain-english-manual>.

The concern here is twofold: firstly, understanding the meaning of the text, and secondly, to understand for what purpose this section is addressing. This has clearly been written for the regulator to enforce its powers and not for the reader to address its obligations. With the increasing necessity for industry to become familiar and apply the Equipment Rules, as has become apparent with the proposed changes being brought about by this consultation, there is a growing need for guidance/explanatory material to accompany the Equipment Rules.

2 Referencing standards within the Equipment Rules

To expand further on the need for clarity and readability in the Equipment Rules, Communications Alliance would like to draw attention to how referenced Standards are handled within these Rules. For example, Communications Alliance notes that there is inconsistent phrasing used to identify the instrument or standard applicable at a particular point in time. The language used appears intended to provide a degree of flexibility for the Rules to adapt as relevant standards are amended. However, Communications Alliance considers that the current approach unnecessarily leaves room for misinterpretation.

With the consolidation of a number of documents, Communications Alliance can see that the ACMA has made sure that, from a legal point of view, the Standards have been correctly referenced. Noting the varying drafting styles that are now being collocated within a single document, differences in how the requirements have been drafted become apparent. The following underlined examples from the draft Equipment Rules demonstrate this:

Section 1. Part 1. Section 5 References to other instruments <p>‘In this instrument, unless the contrary intention appears: (a) a reference to any other legislative instrument is a reference to that other legislative instrument <u>as in force from time to time</u>; and’</p>
Schedule 4. Section 2. Interpretation <p>‘ARPANSA standard means the <i>Radiation Protection Standard for Limiting Exposure to Radiofrequency Fields – 100 kHz to 300 GHz (2021)</i>, <u>or any standard published as a replacement of that standard by ARPANSA.</u>’</p> <p>‘AS/NZS 2772.2 means:</p> <ul style="list-style-type: none">(a) the document titled ‘AS/NZS 2772.2:2016 Radiofrequency fields, Part 2: Principles and methods of measurement and computation – 3 kHz to 300 GHz’, published by Standards Australia; or(b) <u>if a later document published by Standards Australia is expressed to replace the document mentioned in paragraph (a) – the later document.</u>’
Schedule 4. Part 3. Table Standards listed without version identification in their designations.
Schedule 5. Part 2. Table Standards listed without version identification in their designations.
Schedule 5. Part 3. Analogue Speech (Angle Modulated) Equipment Standard 7 AS/NZS 4295 In this Schedule, <u>AS/NZS 4295</u> means <u>AS/NZS 4295:2015</u> ‘Analogue speech (angle modulated) equipment operating in land mobile and fixed services bands in the frequency range 29.7 MHz to 1 GHz’, published by Standards Australia and Standards New Zealand.

Note: AS/NZS 4295 may be obtained, for a fee, from a Standards Australia distributor listed on the Standards Australia website at www.standards.org.au. AS/NZS 4295 is also available to be viewed, on prior request, at an ACMA office, subject to licensing conditions.

8 ETSI EN 300 086

In this Schedule, ***ETSI EN 300 086*** means ***ETSI EN 300 086 V2.1.2 (2016-08)*** ‘Land Mobile Service; Radio equipment with an internal or external RF connector intended primarily for analogue speech; Harmonised Standard covering the essential requirements of article 3.2 of the Directive 2014/53/EU’, published by the European Telecommunications Standards Institute.

Note: ETSI EN 300 086 is available, free of charge, from the website of the European Telecommunications Standards Institute at www.etsi.org.

Schedule 5. Part 15—Short Range Equipment Standard

54 Additional definitions for Short Range Equipment Standard

In this Schedule:

AS/NZS 4268 means:

- (a) AS/NZS 4268:2017 ‘Radio equipment and systems – Short range devices – Limits and methods of measurement’, published by Standards Australia and Standards New Zealand; or
- (b) if a later document published by Standards Australia and Standards New Zealand replaces that document – the later document.

Note: AS/NZS 4268 may be obtained, for a fee, from a Standards Australia distributor listed on the Standards Australia website at www.standards.org.au. AS/NZS 4268 is also available to be viewed, on prior request, at an ACMA office, subject to licensing conditions.

ETSI EN 300 220-1 means:

- (a) ETSI EN 300 220-1 V3.1.1 (2017-2) ‘Short Range Devices (SRD) operating in the frequency range 25 MHz to 1 000 MHz; Part 1: Technical characteristics and methods of measurements’, published by the European Telecommunications Standards Institute; or
- (b) if a later document published by the European Telecommunications Standard Institute replaces that document – the later document.

Note: ETSI EN 300 220-1 is available, free of charge, from the website of the European Telecommunications Standards Institute at www.etsi.org.

The second last example above (Schedule 5 Part 3) is typical of all the technology focused Parts (Parts 3 to 14) in the Equipment Rules. These examples highlight the various methods used to identify and reference applicable Standards. If different drafting constructions are used unnecessarily in the Equipment Rules, then the reader may be led to consider what are the differences being implied in each case.

Having explicitly versioned references is, in our opinion, the most unambiguous and preferred mechanism. Failing that, and acknowledging the regulatory administrative overhead that this introduces, regulations and supporting materials need to be drafted in a manner that leads the reader directly and unambiguously to the appropriate applicable referenced Standard.

One possible solution would be for the ACMA to publish on its website an informative list of current applicable Standards and their calling instruments to simplify the search for suppliers and test laboratories. A list of expired standards would also be useful, so long as it is separated for clarity from the currently applicable list. The legal instruments will always take

precedence of course, but a table with a summary list would be very helpful and save considerable time.

Communications Alliance suggests that further consideration be given to align, where appropriate, the styles in designating applicable Standards. Although this exercise may appear minor in nature, having the reader identify the correct Standard for compliance purposes goes straight to the heart of the regulations.

The drafting technique of making the latest versions of referenced documents the applicable documents with the qualification 'as in force from time to time' is, although legally sound, making the readability and application of the Rules subject to error. This drafting style lends the Equipment Rules to be accompanied by supporting documentation to ensure that the correct applicable documents can be easily and unambiguously sourced and applied.

On a related issue, clarity might be needed concerning the applicability of undated Standards references, in the situation where an undated Standard is later updated. When would the updated Standard become an applicable Standard, as there needs to be a reasonable implementation timetable. It is noted that the phrase 'as in force from time to time' means as soon as the Standard is updated, it is in force with no transition, which is unworkable for suppliers and the supply chain.

3 The Official Journal of the European Union

Communications Alliance suggests following the precedent that has already been adopted by the ACMA in the mandated Electromagnetic Compatibility (EMC) standards² in using the *Official Journal of the European Union* (the OJEU). It states in the EMC standard under the section 'Before you start':

'The expiry date of a standard refers to the date the ACMA no longer recognises the standard as an applicable standard for a device. With [Standards Australia](#), the expiry date of these standards occurs two years after the replacement standard is published. For example, when an existing standard is superseded by a newer version, in addition to the newer version, the existing standard will continue to be recognised as an applicable standard for a further two years after the publication date of the newer standard. After two years, however, only the newer version of the standard is recognised. Suppliers should refer to Standards Australia website for relevant publication dates. For EN, IEC and CISPR standards, unless stated otherwise, the expiry date of a standard is taken to be the expiry date published in the [Official Journal of the European Union](#) (OJEU).'

In this example, for the referenced international Standards, the expiry dates of the Standards are tied to the OJEU. In adopting EN Standards, Communications Alliance feels that the version of the EN Standard would benefit from aligning with the versions applicable under the OJEU, where this would be appropriate under our legislation. Tying our applicable Standards under the Equipment Rules to the OJEU ensures harmonisation with other overseas regimes, noting that most products are imported from overseas, and that suppliers can then use the European Reports that they have under the Radio Equipment Directive (RED).

² ACMA-mandated Electromagnetic Compatibility (EMC) standards
February 2020 <https://www.acma.gov.au/publications/2019-06/rules/acma-mandated-emc-standard>

The above approach would be appropriate for products being imported from the European Union, or from regimes that also recognise the OJEC, but consideration would need to be given to other major economies' harmonised adoptions and implementations for products that fall outside of these arrangements.

4 Specific comments on Part 15 — Short Range Equipment Standard

Communications Alliance understands the requirements in the Short Range Equipment Standard have not changed as a result of the proposed incorporation of the content of the Standard into the Equipment Rules.

Nevertheless, we would like to draw to the ACMA's attention an unintended consequence of the shift of regulatory requirements from industry Standards to being located in regulatory instruments. This is demonstrated by the recent amendment to AS/NZS 4268:2017 *Radio equipment and systems - Short range devices - Limits and methods of measurement*, which was published in November 2022, replacing Table 1 of that Standard with the current compilation of the ACMA *Radiocommunications (Low Interference Potential Devices) Class Licence 2015* (the LIPD Class Licence). The amendment is not explicitly referenced in the Equipment Rules. While on the surface, this appears to be a minor change, it has major consequences to test laboratories, to ensure that they are using the correct documents in relation to the compliance requirements for short-range devices. Although a minor editorial change, this has a major impact for industry.

Our members are often challenged by suppliers asking to demonstrate what is the applicable version of a Standard/amendment, as a result of misinterpreting the regulatory instruments.

In practice, Communications Alliance understands that, currently, it is not unusual for industry members to refer to AS/NZS 4268 and the LIPD and pay little heed to the Short Range Equipment Standard, and by inference to the Equipment Rules.

Now that technical requirements are increasingly being incorporated into the regulations, in this example the LIPD, industry needs to become more accustomed to factor in the substantive changes being introduced via regulatory documents. There is a behavioural issue that cannot be ignored and needs to be addressed. Although familiarising oneself with regulatory instruments may appear to be self-evident to those within the regulatory sphere, without the necessary supporting guidance, industry will waste time, resources and money to come up to speed with these changes resulting from this shift of documented requirements and obligations.

To facilitate this change, the ACMA needs to consider appropriate mechanisms to inform and educate the industry, such as explicit statements/explanations in the LIPD (or other instruments as appropriate), guidance materials or FAQs. This will be to support and complement the information currently being provided on the ACMA website. There are a number of questions that often arise where further clarification, such as via an online FAQ on the ACMA website, would go a long way to alleviate confusion within the industry. For example, a question that comes up often relates to the confusion surrounding the applicable Standard is the Standard at the time of importation of the device and not at the time of testing the device.

One possible solution would be for the ACMA to publish on its website an informative list of current applicable Standards and their calling instruments to simplify the search for suppliers and test laboratories. A list of expired standards would also be useful, so long as it is separated for clarity from the currently applicable list. The legal instruments will always take

precedence of course, but a table with a summary list would be very helpful and save considerable time.

In relation to the current list of applicable Standards, it has been pointed out by one of our members that there are no Standards that would be applicable to LIPD transmitter classes 63AA and 63AB *Radio Local Area Network transmitters* operating in the 5925 – 6425 MHz frequency range as listed in Schedule 1 of the LIPD Class Licence. The devices under these two LIPD transmitter classes are a popular emerging technology for Wi-Fi applications. Currently there is draft ETSI standard EN 303 687³ which is used in Europe and is to be published in January 2023. Communications Alliance recommends for EN 303 687 to be listed as an applicable standard in Schedule 5 Part 15 of the Short Range Equipment Standard.

Finally, in relation to short range equipment, the Standards that must be used are listed in the draft Equipment Rules but in the LIPD Class Licence, specific equipment Standards that certain equipment must comply with are listed Column 4, e.g. indoor wireless audio transmitters, medical telemetry and telecommand transmitters some RFID transmitters and frequency hopping transmitters. It is the understanding of Communications Alliance, following discussions with the ACMA, that a test report against a Standard mentioned in Column 4 of the LIPD Class Licence can be used as proof of compliance with the Short-Range Equipment Standard. As this is not clear in the draft Equipment Rules, Communications Alliance recommends that this clarification be added to the Equipment Rules.

5 Significant events

The ACMA proposes to make changes in relation to the declaration of a significant event. The changes will allow the power to be delegated to an ACMA member of staff, and Communications Alliance has no objection to this change.

As it stands, the legislated ability for the Chair of the ACMA to declare a significant event resides in the definitions section (clause 4(1)) of the *Telecommunications (Labelling Notice for Customer Equipment and Customer Cabling) Instrument 2015*,⁴ which reads:

significant event means an event at a location or locations specified in a notice approved by the Chair of the ACMA and published on the ACMA's website at <http://www.acma.gov.au>.

Importantly, this means that under current requirements, all significant events must be published on the ACMA's website to qualify as a significant event. Communications Alliance notes that details of significant events are published on the ACMA's website under *Current and future significant events*⁵, and that slightly above that on the same webpage, the ACMA provides guidance on *What counts as a significant event*⁶.

We observe the proposed new clause 54A of the General Equipment Rules no longer requires the ACMA to publish details of current and future significant events. Rather, clause 54A(2) of the General Equipment Rules requires the ACMA to make a notifiable instrument pertaining to the significant event. While we appreciate notifiable instruments must be published on the federal register of legislation (i.e., details of the significant event

³ ETSI EN 303 687 V1.0.0 (2022-04) 6 GHz WAS/RLAN; Harmonised Standard for access to radio spectrum. Available from the ETSI TC Broadband Radio Access Networks (BRAN) work program [website](https://www.etsi.org/standards-store).

⁴ Telecommunications (Labelling Notice for Customer Equipment and Customer Cabling) Instrument 2015 (F2015L00190). Available at <https://www.legislation.gov.au/Details/F2018C00904>

⁵ Current and future significant events <https://www.acma.gov.au/step-1-check-rules-follow#current-and-future-events>.

⁶ What counts as a significant event. <https://www.acma.gov.au/step-1-check-rules-follow#significant-events>.

are 'published'), due to the large volume of notifiable instruments published on the federal register (approximately 300 per year), we consider there is a risk that the publication of the notifiable instrument could be missed by interested stakeholders. Communications Alliance recommends that in addition to the declaration being a notifiable instrument, the ACMA continues its current practice of publishing details of forthcoming significant events on its website.

Communications Alliance also recommends capability is developed in the ACMA's website for interested stakeholders to subscribe to updates to that website, so they can receive notification by email when new notifiable instruments declaring significant events are created.

Finally, we note that the description of what counts as a significant event on the ACMA's website currently explains that '*The chair of the ACMA considers whether your event:*'. We recommend this should be amended to '*The chair of the ACMA or a delegate considers ...*' in line with the changes proposed in this consultation.

Responses to questions in the Consultation Paper

The following are responses to the questions in the consultation paper.

Question 1

Do you have comments on the proposal to incorporate the content of the ACMA's 13 radiocommunications mandatory technical standards and the RLN into the General Equipment Rules?

Communications Alliance agrees to the proposed approach of incorporating the requirements of the radiocommunications technical standards and the provisions of the *Radiocommunications (Compliance Labelling – Devices) Notice 2014* into the Equipment Rules.

Generally, having a single regulatory document will make the compliance processes easier for industry members to manage as there are no apparent disadvantages with the proposed approach and indeed there is likely some benefit to administrative efficiency in having all relevant requirements under one set of Rules.

Communications Alliance wishes to make the following observation though. Those in industry who read the various Acts, legislation and regulations on a regular basis will not have any difficulty in adapting to the new format, but there may be difficulty for some suppliers who are familiar with the smaller technology-focused Standards in adapting to the new format. The ACMA needs to take into account the many stakeholders that are subject to these regulations to ensure that, in addition to streamlining the regulatory administrative overhead, the ensuing documentation is written well and is intelligible for all readers.

The proposed new format of the regulations adds further emphasis on having the regulatory documentation, including legislation, regulation and guidance material developed in a coherent, cohesive and a comprehensive package. The ACMA may like to also consider the need for an educational component to support the introduction of these changes.

It should be note that although equipment suppliers can employ other means, such as employing consultants or contacting the ACMA directly, in order to gain an understanding of the radiocommunications compliance arrangements, the benefits of the approach being presented in our response will be improved equipment compliance and a reduction in queries for the ACMA to manage.

Question 2

Do you have thoughts on the proposal to repeal the Radiocommunications (121.5 MHz and 243.0 MHz Emergency Position Indicating Radio Beacons) Standard 2014?

Communications Alliance supports the proposal.

Question 3

Do you have any issues with the proposed adoption of the European Telecommunications Standards Institute standards specified in Appendix A?

Communications Alliance supports the proposed approach of adopting the ETSI Standards that are specified in Appendix A of the consultation paper.

It is important though that the designations of the referenced Standards, both ETSI and other Standards within the Equipment Rules, are consistent with common industry practices and usage.

Communications Alliance notes that in Appendix A of the consultation paper, the year is used in the designation for the ETSI documents (e.g. ETSI EN 300 086:2016) instead of the widely accepted version numbering (Vx.x.x). This would be confusing for users familiar with the ETSI documents, especially in carrying out web searches. This may be an artifact of the consultation paper itself but it is important that this approach of designating ETSI documents is not carried through to any legislation or regulations. This appears to be correctly implemented in the draft Equipment Rules.

Refer to the earlier section on *Referencing standards within the Equipment Rules* in this submission for issue concerning identifying applicable Standards.

Question 4

Do you have comments on the proposed remaking of the Protected Symbols Determination 2013, including the removal of reference to the C-Tick and A-Tick?

Communications Alliance supports the proposal to remove the reference to the C-Tick and A-Tick and the remaking of the Determination.

Question 5

Do you have thoughts on the proposed replacement of the interim EME Technical Report IEC TR 63170 in the General Equipment Rules with IEC/IEEE 63195-1 and IEC/IEEE 63195-2?

Communications Alliance supports the proposal to update the reference to the applicable Standard to IEC/IEEE 63195-1 and IEC/IEEE 63195-2, which were published on 11 May 2022.

Communications Alliance would also suggest that at the time the EN versions of IEC/IEEE 63195-1 and IEC/IEEE 63195-2 become available in the future, they should be listed as applicable Standards. This would also align with the existing approach adopted by the ACMA in referencing the sub 6 GHz EN Standards EN 62209-1 and EN 62209-2, as the ACMA currently lists both the EN and IEC versions.

Question 6

Do you have any issues with the proposed amendments to the significant event provisions to allow delegated ACMA staff to declare a significant event?

Communications Alliance supports the proposal to delegate ACMA staff to declare significant events. This is seen as a logical evolution to these provisions as it would allow for the opportunity for smaller events to be seen as significant, such as large trade shows and sporting events, in addition to the major events such as the G20 or the Grand Prix. See also our comments in section 5 of this submission about maintaining the list of forthcoming events on the ACMA's website.





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