Radiocommunications equipment rules

Consultation paper

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Executive summary

The Australian Communications and Media Authority (the ACMA) makes standards for the performance of radiocommunications devices and maximum permitted levels of radio emissions of devices under the *Radiocommunications Act 1992* (the Act). The Act imposes obligations and prohibitions in relation to the manufacture or importation of such devices and the operation, possession or supply of such devices.

The Act will be amended by the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020*[[1]](#footnote-2)(the Modernisation Act) to modernise the legislative framework for spectrum management.

This paper outlines the key equipment related amendments to the Act and seeks stakeholder feedback on proposed new equipment rules. These proposed new equipment rules are designed to ensure the existing standards and labelling requirements, saved under the transitional and consequential provisions of the Act, remain enforceable.

The proposed new equipment rules are designed to provide certainty to the equipment supply industry and, as far as possible, provide a seamless transition to the new arrangements. They give effect to 4 objectives:

ensuring the application of sanctions for possession, operation or supply of devices that do not comply with mandated standards

enabling the ACMA to provide permits for the use, possession and supply of non-standard devices

ensuring the continuation of prohibitions and obligations in relation to labelling equipment that complies with standards

enabling the maintenance of existing limitations on the supply of mobile phone repeaters, to ensure that such devices may only be supplied to persons licensed to operate such devices.

# Issues for comment

This consultation paper does not ask specific questions. However, we are seeking feedback on the proposed new equipment rules at Attachment A to this paper.

We also welcome comments from interested stakeholders on the issues raised in this consultation paper, or any other issues relevant to equipment rules under the Act.

We are consulting on other changes to instruments associated with changes to the Radiocommunications Act. These include changes to class licences as part of implementation of the Modernisation Act to reflect the new equipment rules.

# Introduction

## Background

Equipment capable of causing radio emissions supplied to the Australian market may cause harm when operated. Potential harms include:

interference to radiocommunications services due to the operation of radiocommunications equipment that uses incorrect frequencies or inappropriate emission levels

interference to radiocommunications services caused by equipment, other than radiocommunications equipment, generating high levels of radio emissions

risks to health and safety due to the level of radio emissions from radiocommunications equipment.

Amendments to the Radiocommunications Act made by the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020* [[2]](#footnote-3)(the Modernisation Act) will have the effect of repealing the existing Part 4.1 – Standards and other technical regulation of the Act and inserting a new Part 4.1 – Equipment. The amendments will also repeal section 301 of the Act and allow for the supply of specified kinds of equipment to be regulated under equipment rules to be made under the new Part 4.1.

These amendments are expected to commence on 17 June 2021, 6 months after the Modernisation Act received Royal Assent.

The transitional provisions save existing standards and labelling notices**,** made under sections 162 and 182 of the Act respectively, as equipment rulesaremade under the newprovisions of the Act. However, we consider it necessary to make equipment rules to:

ensure the continuation of prohibitions in relation to the possession, operation and supply of devices that do not comply with standards

enable the ACMA to allow the use, possession or supply of non-standard devices by the issuing of permits where it is appropriate to do so

ensure the continuation of prohibitions and obligations in relation to labelling equipment that complies with standards

ensure the continuation of existing limitations on the supply of mobile phone repeaters, to ensure that such devices may only be supplied to persons licensed to operate them.

# Effect on existing arrangements

## Legislative instruments which remain in force

There are currently 16 standards made by the ACMA under section 162 of the Act that identify required technical characteristics for equipment, and methods for assessing the compliance of equipment with those characteristics. The standards incorporate industry standards, such as those published by Standards Australia, in whole or in part.

There are also 3 labelling notices made under section 182 of the Act, which place obligations on people who manufacture or import devices to ensure that they are compliant with applicable standards before they are labelled.

Provisions in the Modernisation Act have the effect that these legislative standards and labelling notices will remain in force under the Act, as amended, as if they were equipment rules made under the new Part 4.1 of the Act.

## Existing arrangements that do not survive commencement of the equipment-related amendments to the Act

The ACMA will be able to continue to use existing powers under sections 162 and 182 of the Act to make and amend standards and labelling notices until the commencement of the equipment-related amendments to the Act. After that time, the ACMA will no longer be able to use those powers.

Additionally, a number of the ACMA’s existing powers in relation to non-standard devices and to limitations on the supply of devices will not be available to it after the commencement of the equipment-related amendments to the Act.

### Non-standard device arrangements

Currently, subject to some exceptions, the Act prohibits the following activities related to non-standard devices:

causing radio emissions to be made by a transmitter that the person knows is a non-standard transmitter (section 157)

possessing a non-standard device for the purpose of operation, if the person knows the device is a non-standard device (section 158)

supplying a device that the person knows is a non-standard device (section 160).

The ACMA currently has several related powers to issue permits or permissions, which have the effect of making activities related to non-standard devices lawful. Under subsection 167(2) of the Act, the ACMA may issue a permit to a person authorising the person to possess a specified non-standard device. A permit may also allow a person to cause such a device to make radio emissions.

Section 174 of the Act provides that a person does not contravene section 160 by supplying a non-standard device in accordance with the ACMA’s written permission.

These powers will not be available to the ACMA after the commencement of the equipment related amendments to the Act unless they are incorporated into equipment rules.

### Limitations on the supply of certain devices

In addition, section 301 of the Act prohibits the supply of an ‘eligible radiocommunications device’ to a person unless the person has shown the supplier the licence authorising operation of the device and the supplier records specified particulars relating to the supply.

‘Eligible radiocommunications device’ means a radiocommunications device included in a class of radiocommunications devices specified in the *Radiocommunications Regulations 1993* (the Regulations) made under the Act. There is currently only one class of eligible radiocommunications device specified in the Regulations, which is cellular mobile repeaters. Section 301 will be repealed by the amendments to the Act.

# New arrangements – equipment rules

Amendments to the Act will repeal the existing Part 4.1 of the Act (sections 155–191 inclusive) relating to standards and other technical regulation and replace it with a new Part 4.1 relating to equipment. The existing provisions containing obligations and prohibitions in relation to non-standard devices will be removed and the provisions relating to labelling notices and standards will be replaced with equipment rules. Labelling notices and standards in force immediately before the amendments commence will be preserved as if they were equipment rules made under the new provisions.

The amendments include new and revised definitions, such as new definitions of the terms ‘equipment’ and ‘offer to supply’, and revised definitions of the terms ‘label’and ‘permit’.

Rather than the labelling notices and standards that we are used to, the new arrangements allow the ACMA to make equipment rules. The equipment rules may prescribe standards for equipment. These standards may require equipment to have particular design features. Unlike the current arrangements, the ACMA will not be making legislative standards under section 162 the Act. Rather, the ACMA may make enforceable equipment rules which incorporate industry standards.

The equipment rules provisions provide greater flexibility and more options for the ACMA in addressing requirements relating to equipment. In contrast to the previous arrangements, the persons on whom obligations and prohibitions in equipment rules may be imposed are not limited to manufacturers or importers of equipment. This provides additional flexibility for the ACMA to place obligations on the most appropriate person in the supply chain.

The equipment rules expand the range of obligations and prohibitions that the ACMA may impose in relation to equipment, by enabling the ACMA to make rules that place obligations on people who offer equipment for supply. An obligation or prohibition may relate to:

1. the operation of equipment
2. the supply of equipment
3. offers to supply equipment
4. the possession of equipment, or
5. the import of equipment.

Amendments to the Act will also provide the ACMA with the powers to impose interim or permanent bans on equipment and to require a supplier to recall equipment.

The objectives for equipment rules are very similar to the objectives relating to standards and other technical regulation under section 155 of the Act. Equipment rules must be directed towards achieving any or all of the following objectives:

1. ensuring the electromagnetic compatibility of equipment
2. containing interference to radiocommunications
3. containing interference to any uses or functions of equipment
4. establishing for the uses or functions of equipment an adequate level of immunity from electromagnetic disturbances caused by the use of other equipment
5. protecting the health of safety of individuals from any adverse effect likely to be attributable to radio emissions resulting from a reasonably foreseeable use (including a misuse) of radiocommunications transmitters
6. ensuring that persons who operate equipment have access to information about the equipment
7. ensuring that radiocommunications transmitters are not supplied to persons intending to operate those transmitters unless those persons are authorised by or under the Act to operate those transmitters
8. ensuring that designated radiocommunications receivers are not supplied to persons intending to operate those receivers unless those persons are authorised by or under the Act to operate those receivers
9. an objective specified in the legislative rules
10. an objective that is incidental or ancillary to any of the above objectives.

The ACMA may make equipment rules, imposing obligations[[3]](#footnote-4) in relation to equipment to, among other things:

1. ensure that quality assurance programs in relation to equipment are conducted
2. ensure that tests in relation to equipment are conducted
3. ensure that labels are applied to equipment
4. ensure that records are kept or retained
5. ensure that a thing specified in the legislative rules is done.

## Transition to – and implementation of – the new arrangements

Labelling notices in force prior to the commencement of the amendments to the Act are to continue in effect as if they were made as equipment rules under subsection 156(1) of the Act under transitional provisions in the Modernisation Act. The saved labelling notices are the:

[Radiocommunications (Compliance Labelling – Devices) Notice 2014](https://www.legislation.gov.au/Details/F2019C00052)

[Radiocommunications Labelling (Electromagnetic Compatibility) Notice 2017](https://www.legislation.gov.au/Details/F2018L00028)

[Radiocommunications (Compliance Labelling – Electromagnetic Radiation) Notice 2014](https://www.legislation.gov.au/Details/F2017C01073).

If a labelling notice places obligations or prohibitions on a person (such as the manufacturer or importer of equipment), the person must comply with that obligation or prohibition. Failure to comply is, with some exceptions, an offence and is also subject to a civil penalty under the new section 160.

The transitional provisions of new section 300A will maintain the obligation for manufacturers and importers to comply with the requirements in the labelling notices that must be met after a label has been applied, such as retention of records, where the label was applied before the commencement of the relevant provisions of the Modernisation Act.

New section 300B will preserve the ability for an inspector to require a person who has been required to retain records under the labelling notices to produce those records.

The main offence and civil penalty provisions for equipment rules (section 160) apply when a person breaches a prohibition or requirement imposed by the equipment rules. The saved labelling notices place obligations on people and therefore non-compliance with those obligations remains enforceable under section 160. However, some specific prohibitions and obligations relating to labelling are contained in the current Part 4.1 of the Act and will not be included in the Act as amended. These prohibitions and obligations will not be enforceable under section 160, without additional equipment rules being made.

In addition, the saved standards do not directly place obligations or prohibitions on a person and therefore will not be enforceable under new section 160 without additional equipment rules being made.

The ACMA is proposing new equipment rules that prohibit a person from operating, possessing or supplying equipment that does not comply with a saved standard, unless the person has a permit to do so or is otherwise exempt.

The new equipment rules will also include prohibitions and obligations in relation to the supply of equipment that is labelled, and in relation to the supply of equipment that is unlabelled, in order to maintain the current regulatory arrangements.

These equipment rules would largely replicate the existing prohibitions and obligations in current Part 4.1 of the Act, in relation to standards and labelling notices (for more information, see below).

### Permits for non-standard equipment

The amendments to the Act will remove the existing permit related provisions from the Act. Instead, new section 159 expressly allows for equipment rules to make provision for the ACMA to issue such permits.

The transition provisions for the amendments to the Act retain any permits that have been issued under subsection 167(2) of the Act and are in force immediately before the commencement of the amendments. These existing permits remain in force until the date of expiry specified in the permit.

### Limitations on the supply of certain devices

The amendments to the Act repeal section 301 of the Act. However, new section 159 allows for the equipment rules to prohibit a person supplying or offering to supply a specified kind of equipment unless the person satisfies one or more specified conditions.

New section 300C will have a requirement that if a person supplied a radiocommunications device in the 2-year period ending at the commencement of the amendments, and that person was required by the repealed section 301 to retain documents relating to the supply of the device, that person must retain the documents for at least 2 years after the supply of the device.

# Proposed new equipment rules

The amendments to the Act provide more flexibility and options for the ACMA to manage the supply and use of communications equipment. The new equipment rules proposed in this paper are the first stage of the ACMA’s planned implementation of equipment rules. The ACMA will consider opportunities to streamline and improve the regulation of equipment as any approaches to do so are received from industry participants, or in any event as existing instruments begin to sunset from 2023.

While the transition provisions retain key portions of the existing equipment arrangements, the focus of the proposed new equipment rules is to continue some desirable features of the existing arrangements that would otherwise end on commencement of the amendments.

A key feature of the existing arrangements is the prohibitions relating to non-standard devices, and the supply of unlabelled equipment. To keep these prohibitions after commencement, the ACMA will need to incorporate the requirements into equipment rules.

The ACMA also considers it appropriate to retain the restriction on the supply of cellular mobile repeaters to ensure this equipment is only supplied to people who have a licence to operate the repeater.

The ACMA is proposing to make new equipment rules under section 159 of the Act which will commence at the same time as Part 1 of Schedule 4 to the Modernisation Act. These equipment rules will:

require persons manufacturing or importing specified equipment to apply labels to such equipment in accordance with the saved labelling notices

prohibit the possession, operation or supply of equipment that does not comply with the requirements of the applicable saved standards, unless the person has a permit that allows possession, operation, or supply of such equipment

prohibit the supply of certain equipment without a label that certifies that the equipment meets applicable standards, set out in equipment rules

prohibit the supply of cellular mobile repeaters to a person unless the person has a licence authorising the operation of such equipment.

The effect of these new equipment rules in conjunction with the transition provisions in the Modernisation Act is that the following requirements continue:

the requirement for persons in Australia who manufacture or import specified equipment to ensure the equipment complies with mandatory technical standards before the equipment can be supplied to the market

the requirements for manufacturers and importers to label their equipment, to retain compliance records, and to obtain reports or records that the equipment complies with applicable standards

the prohibition on possession, operation or supply of specified equipment that does not comply with the mandatory technical standards, unless the person has a permit that allows possession, operation, or supply of such equipment, or is otherwise exempt

the prohibition on the supply of cellular mobile repeaters to persons who do not have a licence authorising the operation of the cellular mobile repeater.

In addition, existing permits issued under the previous subsection 167(2) will remain in force under the new rules until the permit’s current expiry date. The draft equipment rules will contain a regime for giving new permits.

Unlike permits issued under section 167(2) of the Act, any existing permissions issued under section 174 of the Act do not remain in force under the Modernisation Act. However, the draft equipment rules will provide a transition arrangement for existing permissions.

Draft Radiocommunications Equipment (General) Rules 2021 are located in the key documents section of the website for this consultation.

# Invitation to comment

## Making a submission

The ACMA invites comments on the issues set out in this consultation paper.

[Online submissions](https://www.acma.gov.au/have-your-say) can be made by uploading a document. Submissions in PDF, Microsoft Word or Rich Text Format are preferred.

Submissions by post can be sent to:

The Manager

Technical Regulation & Carrier Infrastructure Section

Australian Communications and Media Authority

PO Box 13112 Law Courts

Melbourne VIC 8010

The closing date for submissions is **COB, Friday 9 April 2021**.

Consultation enquiries can be emailed to [techreg@acma.gov.au](mailto:techreg@acma.gov.au).

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Information on the *Privacy Act 1988,* how to access or correct personal information, how to make a privacy complaint and how we will deal with the complaint, is available in our [privacy policy](https://www.acma.gov.au/privacy-policy).

# Attachments

Please refer to the proposed draft Radiocommunications Equipment (General) Rules 2021 in the key documents section of the website for this consultation. We have also created a diagram showing the key changes to radiocommunications equipment rules, which can also be found in the key documents section of the website.

1. <https://www.legislation.gov.au/Details/C2020A00151>. [↑](#footnote-ref-2)
2. <https://www.legislation.gov.au/Details/C2020A00151>. [↑](#footnote-ref-3)
3. See section 159 of the Modernisation Act for full details of the obligations that may be imposed. [↑](#footnote-ref-4)