

**COMMUNICATIONS
ALLIANCE LTD**



**AUSTRALIAN COMMUNICATIONS AND MEDIA
AUTHORITY**

**Equipment rules—concepts and design
considerations for equipment rules under the
Exposure Draft of the Radiocommunications Bill
2017**

COMMUNICATIONS ALLIANCE SUBMISSION

MARCH 2018

TABLE OF CONTENTS

INTRODUCTION	2
GENERAL COMMENTS	4
RESPONSES TO SPECIFIC QUESTIONS	5

INTRODUCTION

Communications Alliance welcomes the opportunity to provide this submission in response to the *Equipment rules—concepts and design considerations for equipment rules under the Exposure Draft of the Radiocommunications Bill* Consultation Paper by the Australian Communications and Media Authority (ACMA).

Executive Summary

Communications Alliance acknowledges that the changes in the market environment and variety of equipment supply channels creates room for improvement of the current arrangements for the regulation of electromagnetic compatibility and radio communications equipment. We welcome, therefore, the review initiated by the ACMA.

Communications Alliance understands that the ACMA appears to favour a principles-based approach to regulate radio communications equipment which is modelled on the arrangements in use by the European Union (EU). While our industry acknowledges that the EU approach may have some potential benefits, Communications Alliance urges the ACMA to proceed with great caution and due diligence when considering the adoption of this fundamental change to its regulatory approach.

The current Standards-based compliance regime for electromagnetic compatibility and radiocommunication devices has proven to be effective, with the possible exception of addressing the problem of who can take responsibility for compliance given the increased variety of supply channels as mentioned above. To the extent that the ACMA deems it necessary to make changes, it ought to carefully examine the existing arrangements to ensure that any future regime capitalises to the greatest extent possible on the well-working elements of the current Standards-based system currently in place in Australia.

It is important to understand that it is the underpinning of the current arrangements through the rigorous processes and procedures of accredited Standards-developing organisations that provides both the regulator and the industry with the transparency, inclusivity and consistency that is required to develop clear and workable compliance requirements. Nevertheless, industry accepts that it may be worth exploring (through a consultative process) the option of including arrangements that would allow additional bodies to develop Standards, subject to clearly defined rules and criteria.

Communications Alliance infers from the Consultation Paper that the ACMA may seek to reduce the number of compliance levels. While doing so may seem appealing, *prima facie*, we would like to point out that the current three-tiered compliance arrangements are considered necessary by industry and are working well. Any change to these arrangements may introduce unintended consequences and constitute an unnecessary impost on industry.

With regards to the transition from a Class Licence regime to a regime of Spectrum Authorisations, we note that there are many operational aspects of devices that need to be addressed under a Spectrum Authorisation regime to ensure that the outcome is workable. Industry members have raised concerns that the Spectrum Licence Holder might be left to manage the spread of devices that may impact on the use of the licensed spectrum. This would already be difficult at present and become a nearly impossible task with the proliferation of the IoT and the explosion of devices associated with it.

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>.

General comments

Communications Alliance welcomes the opportunity to respond to the ACMA *Equipment rules—concepts and design considerations for equipment rules under the Exposure Draft of the Radiocommunications Bill 2017* Consultation Paper.

Communications Alliance commends the ACMA's consideration of the technical regulation of radiocommunications equipment. With the changes and emerging developments within the communications environment, a review is warranted, keeping in mind that the outcome of any review needs to ensure the following principles are met:

- the safety of radiocommunications equipment is not compromised
- the continuity of existing applicable Standards
- avoidance of undue regulatory and financial impost on industry

It is recognised that one of the more significant proposals in the Consultation Paper is for the equipment rules regulation to follow a principles-based approach. Communications Alliance notes that there are many aspects of such fundamental change to the regulatory approach to be teased out. The current role of the ACMA under the radiocommunications regime need to be assessed to ensure that any changes to responsibilities, particularly in light of consideration for greater industry self-regulation, is not abrogated. Caution is recommended.

Communications Alliance appreciates that the ACMA has taken into account the review of the European Union R&TTE Directive (1999/5/EC) and the subsequent replacement with the Radio Equipment Directive (RED) 2014/53/EU¹. In general, the principles for product compliance in the RED are very similar to the R&TTE Directive. There are, however, some major changes for manufacturers. In particular, 'intended use' has been changed to 'reasonably foreseeable conditions' and manufacturers are now required to undertake a risk assessment to determine how the device it is likely to be used as opposed to a manufacturer specifying an 'intended use'. This has some similarities to the proposed requirement in paragraph 121 (3) (e) of the Exposure Draft Radiocommunications Bill 2017 that equipment rules be directed at protecting the health and 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. We encourage the ACMA to consider these developments in the European regulations and, to the extent possible, align the Australian equipment rules with international requirements.

The industry does not support a return to earlier approaches; for example the use of connection permits under the *Telecommunications Act*. There are many reasons why Australia moved away from such a model and industry - in particular the Carriers and industry bodies - are not resourced for and have no interest in such an approach.

One of the major unknowns in the radiocommunications environment is the aggregate effects of many ubiquitous devices in the future, as a part of the IoT. We suggest that the ACMA should keep a watching brief on this, conduct pre-emptive studies in this area and perhaps hold a Workshop to respond to industry concerns.

¹ DIRECTIVE [2014/53/EU](#) OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment and repealing Directive 1999/5/EC.

Responses to specific questions

The following table provides responses from our members on the specific questions posed in the Consultation Paper.

Electromagnetic compatibility

Issues for comment	Response
Scope	
The EMC regulatory arrangements apply to an extensive range of equipment. Is it appropriate for the new equipment rules to apply to the same range of equipment?	Communications Alliance has not identified any reasons to change the applicability of the arrangements.
Is there equipment that should be considered exempt from the EMC regulatory arrangements under the equipment rules?	Communications Alliance has not identified any reasons to change the current exemptions. It is noted that the control of electromagnetic interference will be even more important into the future as the growth in IoT devices multiplies exponentially.
If certain equipment is exempted from the EMC regulatory arrangements, are the general interference provisions in the Bill sufficient to manage any interference that does occur?	Communications Alliance would welcome more information from the ACMA on the proposed general interference provisions in the Bill before it can provide comments. Communications Alliance would also appreciate clarification from the ACMA on whether the mandatory provisions for interference management features, e.g. Dynamic Frequency Selection (DFS) and Listen Before Talk (LBT), currently listed in the ACMA Class Licences will be replicated in the proposed general interference provisions in the Bill.
Prescriptive or principles-based regulation	
Would the adoption of a principles-based approach to some or all aspects of the equipment rules be a more effective or efficient way of meeting the objectives of the equipment rules?	Communications Alliance is curious in how a principle-based approach will be put into practice under Australian legislation. Based on the ACMA's proposed approach in the Paper, in that Standards would not be mandatory, what would be the alternative pathways for a supplier to demonstrate compliance? If a principles-based regulatory approach was to be contemplated, careful consideration of appropriate compliance pathways needs to be worked through, together with clear and practical examples and with an aim to avoid any unintended consequences or unnecessary imposts on suppliers. Communications Alliance considers that the ACMA's proposed equipment principles need to be more detailed and as drafted are not sufficient as they do not provide clear guidance to equipment designers; nor do they support the investigation and resolution of sources of interference. For example, equipment

	<p>vendors may take a stance that no one else has complained and avoid their obligations - there needs to be quantified minimum specifications.</p>
<p>If a principles-based approach is adopted, should the ACMA identify or prescribe the standards that can be used for purposes of assessing whether the requirements of the equipment rules have been met?</p>	<p>Communications Alliance believes that Standards should be identified by the ACMA.</p> <p>In a principles-based approach, the EMC Standard listing on the ACMA website could essentially act as the Official Journal of the European Union does in the European model.</p>
<p>Alternatively, if a principles-based approach is adopted, should the ACMA identify or prescribe the Standards Development Organisations (such as AS/NZS, IEC or CISPR) whose standards would be accepted for the purposes of compliance with the equipment rules?</p>	<p>Communications Alliance recommends that the ACMA should identify the SDOs in the first instance where they exist. The opportunity should remain however, to allow for consideration of other international associations or fora, where Standards under an SDO are not available. Domestically, there may be organisations, such as in the rail or automotive industries, whose Standards may need to be considered.</p> <p>In such instances, necessary steps, including industry consultation, should be taken to consider the suitability, transparency and inclusiveness of processes and other factors such as unwarranted commercial interests that may play a factor in the standards development.</p> <p>On a separate but related issue, Communications Alliance has become aware of contention within industry in allowing compliance under certain circumstances with an international Standard. In particular, concern has been raised in adopting an international Standard where an Australian Standard which includes Australian deviations already exists. Australian variations to an international Standard need to be supported by the ACMA's compliance regime as these national variations have been developed after due consideration by the technical experts. Unless there is a justifiable reason for allowing compliance only with the international Standard, this allows the potential for the national variations to be bypassed. If this is the case, this raises the question as to why these national Standards have been developed in the first place.</p> <p>Our expectation is that a device should comply with an existing Australian Standard, where there are Australian deviations. If the Australian Standard is identical to an international Standard, then compliance to either Standard would be acceptable.</p> <p>In the case where there is no applicable Australian Standard, then an international Standard can be used.</p>
<p>Compliance levels</p>	
<p>Is it appropriate to continue to have three compliance levels?</p>	<p>Communications Alliance believes that there are valid reasons for maintaining the three compliance levels and that they are appropriate. Our members are</p>

	<p>unaware of anything that is 'broken' in attributing risk against three compliance levels.</p> <p>Communications Alliance does not support a concept of 'unregulated devices' and considers that there are good reasons for the three levels of proof based on risk. For example, IoT devices (that are very cheap and expected to be deployed in large quantities) will over time risk becoming rogue devices and it could be impossible to get these devices out of the ecosystem. This concept is also in direct conflict with the proposal for Spectrum Authorisations as it could render spectrum bands unusable.</p> <p>It is noted that high risk equipment requires an accredited test report (at Compliance Level 3). The majority of devices are medium risk and require a test report (at Compliance Level 2).</p> <p>If the levels are reduced to two levels, then there would be one of two outcomes; either low and medium become the new low risk category, i.e. raise present Low Risk devices to Medium Risk requirements or lower the Medium Risk devices to Low Risk requirements.</p> <p>Communications Alliance suggests that the compliance level model as used by the TLN is not suited to the other Labelling Notices. There are many low risk devices under the other Labelling Notices and this would impose an unnecessary burden upon the industry.</p> <p>Currently, under the EMC Labelling Notice for example, a Regulatory Compliance Mark (RCM) or Declaration of Conformity is not required for low risk equipment unless the RCM is applied, then a Declaration of Conformity is required.</p> <p>It appears from the ACMA consultation paper that the ACMA is considering removing the low risk category. One question arises in that to define a low risk device, operating at a low power level, the need for technical standards cannot be avoided. How would a supplier demonstrate that the device is operating at less than 1 mW without testing?</p> <p>Communications Alliance observes that in the future, it is expected that with the advent of IoT, the noise floor will increase with the proliferation of devices. It would appear unwise to change the low risk compliance level at this point in time.</p>
<p>Could the number of compliance levels be reduced without compromising the integrity and effectiveness of the equipment rules?</p>	<p>Communications Alliance does not believe that the Compliance Levels can be reduced, for the reasons stated above.</p>
<p>For example, would it be appropriate to have low-risk and high-risk categories of</p>	<p>Currently High Risk is only applicable to ISM equipment and Communications Alliance recommends that this is the way that it should remain. The majority of</p>

equipment with the overall scope the same as under the 1992 Act?	equipment is Medium Risk. Moving them to High Risk would require them to have an accredited test report. This is an unnecessary additional cost and burden.
Alternatively, would it be appropriate to have only medium risk and high risk categories with no regulatory requirements for low risk equipment?	Communications Alliance believes not. There needs to be something in place that requires what are presently regarded as Low Risk devices to meet certain electromagnetic interference criteria, as stated above. At the moment, Low Risk devices are still required to comply with the relevant applicable Standard. This should remain the case, even though there is no requirement to sign a Declaration of Conformity if no label is applied.
In either case (or under any other approaches), what would be the basis for distinguishing between the levels?	Communications Alliance believes that the present distinctions are appropriate.
What are the documentary evidence requirements that would be appropriate to each compliance level?	If the same compliance levels are kept, then no reason has been identified by Communications Alliance to change the documentary evidence. It is observed that in Australia, there are regulatory arrangements for electromagnetic interference and not for immunity. This has worked for Australia and there is no reason identified to change.

Radiocommunications devices

Scope	
Should the scope of the equipment rules as they apply to radiocommunications devices be limited to those devices whose operation is authorised under a spectrum authorisation in accordance with the exposure draft of the Bill?	<p>It appears from reading s100 of the exposure draft of the <i>Radiocommunications Bill</i> (p91) that Spectrum Authorisations can be granted inside Spectrum Licenced frequencies and areas and it is not just as a replacement for Class Licences in pre-defined 'commons-like' spectrum blocks. The exposure draft seems to support the longer term ACMA objective of high amounts of spectrum sharing which reduces the protection and rights of a Spectrum Licence in practical terms. Coupled with the lack of clarity of the ACMA's proposed Equipment Principles, it will be left to the Spectrum Licence holder to try to manage the spread of devices that prevent use of the licenced spectrum without the means to achieve this.</p> <p>The transition of devices from a Class Licence to a Spectrum Authorisation regime needs to be conducted to ensure continuity in Class Licence conditions, such as the period of the Class Licence and the applicable Standards.</p> <p>All the aspects of the operation of devices currently under a Class Licence need to be addressed under a Spectrum Authorisation.</p> <p>Many of the billions of IoT devices expected to enter the marketplace in the foreseeable future will either be</p>

	<p>Wi-Fi or some other form of radio transmitting type device. In order to keep the airways as useable as possible, we need to maintain some control over use of the spectrum. Very few, if any, of these devices would need to be covered by what is now a Spectrum Licence.</p> <p>Typical Class Licence requirements should suffice, i.e. such as limiting operating frequency, transmit signal power level and spurious emissions should be all that is needed for most of these devices and can be controlled in a similar means as they are at the moment, i.e. Class Licence or similar arrangement.</p> <p>Communications Alliance would welcome more information from the ACMA on the proposed general interference provisions in the Bill. Communications Alliance would also appreciate clarification from the ACMA on whether the mandatory provisions for interference management features, e.g. DFS and LBT, currently listed in the ACMA Class Licences will be replicated in the proposed general interference provisions in the Bill.</p>
Prescriptive or principles-based regulation	
<p>Would adoption of a principles-based approach to some or all aspects of the equipment rules be a more effective or efficient way of meeting the objectives of the equipment rules?</p>	<p>See the response for EMC regulation above.</p> <p>It would be difficult to set general objectives for radio type devices because the output power that can be tolerated by any particular frequency band varies, depending upon the type of use for that frequency band and the type and number of devices using the band. The current arrangement, i.e. the Radiocommunications Labelling Notice (RLN) and the requirement to comply with specific standards seems to work well.</p>
<p>If a principles-based approach is adopted, should the ACMA identify or prescribe the standards that can be used for purposes of assessing whether the requirements of the equipment rules have been met?</p>	<p>See the response for EMC regulation above.</p>
<p>Alternatively, if a principles-based approach is adopted, should the ACMA identify or prescribe the standards development organisations (such as AS/NZS, IEC or ETSI) whose standards would be accepted for the purposes of compliance with the equipment rules?</p>	<p>Communications Alliance recommends that the ACMA identify the SDOs in the first instance where they exist. The opportunity should remain however, to allow for consideration of other international associations or fora (e.g. 3GPP, GSMA) where Standards under an SDO are not available.</p>

Compliance levels	
Is it still appropriate to have three compliance levels?	<p>See the response for EMC regulation above.</p> <p>Communications Alliance has not identified any reason to change the existing compliance levels. They are sufficient and are not causing any problems.</p> <p>We do not support a concept of 'unregulated devices' and consider that there are good reasons for the three levels of proof based on risk. As discussed under the EMC section, IoT devices will over time risk becoming rogue devices and it could be impossible to get these devices out of the ecosystem. This concept is also in direct conflict with the proposal for Spectrum Authorisations as it could render spectrum bands unusable.</p> <p>Compliance Level 1 is still required in the EU and retaining this level should not place any unnecessary burden on suppliers.</p>
What would be the basis for distinguishing between the compliance levels?	This should be the same basis as used under present arrangements for distinguishing between the three compliance levels.
What are the documentary evidence requirements that would be appropriate to each compliance level?	Communications Alliance is comfortable with the current documentary evidence requirements.

Electromagnetic energy

Do you have suggestions on improvements to the EME arrangements for incorporation into the EME equipment rules?	<p>Communications Alliance has noted the proposed approach in the consultation paper which appears not to suggest any significant changes.</p> <p>A question is asked as to whether portable/mobile devices and fixed transmitters are being proposed to be addressed together.</p>
---	---

Other comments

Do you have suggestions on improvements to the existing equipment regulation arrangements that should be considered for incorporation into the equipment rules?	
Responsible Supplier (page 14, paragraph 6)	<p>The present EMC regulations apply to a device that is imported for supply. They do not apply to those importers who have imported a device for their own internal use and have no intention of supplying it in the Australian market. This excludes many devices purchased from overseas by an end-user for their own use.</p> <p>Will such devices still be excluded under the new regulations?</p>
Grey Import (page 15, 1 st bullet point)	As described is not 'grey importing unless some of the importers do not individually assume responsibility for compliance of the device (i.e. if all the importers each took responsibility for compliance of the

	product they import then the regulatory requirements have been complied with.
Supply Chain – Problem (page 15, paragraph 3)	<p>Another supply chain model causing frustration is where an overseas manufacturer/supplier has a local office and would like to take responsibility for compliance of their product supplied in Australia in order to relieve their Australian based customers (importers of their product).</p> <p>However, typically they do not import their product, i.e. the local office arranges a direct ship to their Australian customers. As such, their customers are legally the importer. The only possible approaches at the moment is either for:</p> <ol style="list-style-type: none">1. the local office to act as 'Agent' for each of their customers and therefore requiring an 'Agent Agreement' to be established between them and each of their customers (not attractive as not their core business); or2. the overseas manufacturer/supplier and their local office enter into a business contract with a local Australian company offering 'Agent' services and then that entity entering into an 'Agent' agreement with each and every importer of product supplied by the overseas manufacturer/supplier <p>This model seems to be recognised in paragraph 4 on page 15 in the example given but does not clearly suggest the obvious solution is the 'agent-at-large' model referred to in the paragraph above (i.e. paragraph 3 of page 15).</p>



Published by:
**COMMUNICATIONS
ALLIANCE LTD**

Level 12
75 Miller Street
North Sydney
NSW 2060 Australia

PO Box 444
Milsons Point
NSW 1565

T 61 2 9959 9111
F 61 2 9954 6136
E info@commsalliance.com.au
www.commsalliance.com.au
ABN 56 078 026 507