

**COMMUNICATIONS
ALLIANCE LTD**



AUSTRALIAN COMMUNICATIONS AND MEDIA
AUTHORITY

REVIEW OF THE TELECOMMUNICATIONS
EQUIPMENT REGULATORY ARRANGEMENTS

COMMUNICATIONS ALLIANCE SUBMISSION
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TABLE OF CONTENTS

EXECUTIVE SUMMARY	3
1 GENERAL COMMENTS	6
2 SPECIFIC COMMENTS	9
3 THE DRAFT TLN	14

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 telecommunications equipment regulatory arrangements.

Communications Alliance welcomes this review and supports the ACMA's objective to reduce unnecessary regulation by improving the readability and clarity of the Instrument and streamlining its application.

In considering the *Review of the telecommunications equipment regulatory arrangements Consultation Paper* and the *Telecommunications (Labelling Notice for Customer Equipment and Customer Cabling) Instrument 2014 Consultation Draft* (the draft TLN), there is a general consensus among our members that the TLN would benefit from a revision, but that the revision needs to be carried out in a staged and measured approach.

Noting the 1 April 2015 target to remake the TLN, Communications Alliance suggests that the TLN be remade addressing the immediately identifiable issues, as a precursor to a full review over a timeframe of approximately 12 months, during which both the regulator and the industry can have the opportunity to test and become more familiar with the more fundamental structural changes being proposed by the Consultation Paper. This would avoid the risk of a newly remade TLN needing to be effectively trialled during its first years, with consequent amendments creating uncertainty and additional compliance challenges within industry.

The members of Communications Alliance have not had sufficient time and resources to commit to a thorough analysis of the impact that all the proposed changes will have on the compliance processes. With the benefit of a staged approach, any additional issues which have not been identified to date may become evident after further study. A progressive and iterative approach will enable immediately identifiable issues to be addressed, accompanied by a round of 'housekeeping' to remove redundant or antiquated legislation while maintaining stable, enforceable arrangements and providing industry with a pathway to collaboratively explore further changes.

The ACMA is increasingly and appropriately looking to industry for expert input into the application of technical regulation. Sufficient technical and commercial rigour needs to be dedicated to this review to achieve confidence that the objectives of technical regulation are being reflected via any changes to the TLN.

Communications Alliance supports a number of changes that have been raised in the Consultation Paper but has identified the following issues which we believe need further thought before any fundamental structural changes are undertaken:

- 1) The NBN Mixed Technology Model (MTM) will see services deployed using DSL access technologies into the foreseeable future and will need to be continued to be carefully managed under the Communications Alliance interference Standard and Codes requirements.
- 2) Most international and regional standards are still interface based. It is believed that regulating by functionality using standards based on interface type may potentially present challenges (or unintended relaxations in compliance obligations) for global suppliers with either little benefit or potentially adverse consequences for consumers.
- 3) A fundamental difference in technical compliance arrangements for telecommunications equipment compared with other compliance arrangements, such as for EMC. Although Australia can readily piggyback on the European regulatory

requirements for EMC by referencing CISPR Standards, there are difficulties in treating the telecommunications framework in the same manner as there are specific and unique requirements that need to be addressed for telecommunications equipment. It is noted that there is now much greater harmonisation with overseas requirements for newer technology Customer Equipment used in Australia, however mandatory national differences do exist in many areas, particularly with voice telephony.

At this point in time Communications Alliance believes that the best approach for technical regulation for the Australian environment is to maintain the three compliance levels and regulate on the basis of customer equipment interfaces, as we suspect that there will be difficulties in marrying up the present interface-based Standards with a categorisation based on functionality.

Communications Alliance conditionally supports Option 3 in the Consultation Paper, with the timeframe for the review to be re-evaluated to allow for a more measured and consultative engagement with industry members to ensure the best regulatory outcome.

The following items could be considered for attention in the immediate review:

- the removal of the out-of-date ACMA Standards (Attachment B of the draft TLN) which totals fifty standards
- remake ACMA standards as proposed so that they automatically pick up amendments and revisions to existing standards called up by the TLN
- a reduction in the period that compliance records must be kept after a product ceases to be supplied, i.e. from 5 years to 2 years as proposed in the draft 2014 TLN, Clause 21 (1)(b) – see Clause 5.2 (2) in the current TLN
- a review of Schedule 1 Part 2 'Items to which applicable standards apply' and Schedules 6 and 8 with the intention to rationalise Categories A, B, C and D
- a new proposal supporting the objective of reducing record-keeping obligations by allowing the provision of user document warning documentation (e.g. warnings etc.) to be able to be met by providing this material on websites

As the ACMA implements changes to the technical regulatory framework, Communications Alliance suggests that the ACMA will need to consider a greater emphasis on its educational role to keep the communications industry informed. In addition, one of the continuing challenges faced by the ACMA, Communications Alliance and other institutions is fielding technical queries. We note that the technical expertise exists within the industry, for example in test laboratories and industry-specific consultancies, that these institutions can leverage upon to address these queries. These are resources which are available for equipment manufacturers and suppliers to turn to, to seek an understanding the compliance arrangements.

Taking in account the recommendations above, Communications Alliance remains of the opinion that although the TLN structure has essentially not changed since 2001, it remains robust and is considered to be the preferred approach for the immediate future. It continues to offer the industry and the community stability and an effective tool for equipment compliance.

Communications Alliance would be happy to meet with the ACMA to explore any of the issues raised in this submission and would welcome the opportunity to seek clarification on some of the specific issues raised in the Consultation Paper.

Communications Alliance also understands that individual organisations may be providing separate submissions to the ACMA in response to the consultation paper.

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 General comments

Communications Alliance acknowledges the underlying drivers that have led the ACMA to consider the review of the TLN including the changes in technology and functionality and the changes in the supply market since the initial construct of the TLN was developed in 2001. Having said that, we have some reservations with the approach being proposed and some of the underlying constructs and assumptions that have been made. A number of areas of concern have been identified in the proposed direction being presented by the ACMA as documented in the draft TLN and the accompanying Consultation Paper.

1.1 Is it time for change?

The suite of customer equipment Standards that support equipment connected to services provided over copper access have been developed over many years, under the compliance arrangements in Schedule 1 of the TLN that mirror these interface Standards. The level of service reliability that the industry and consumers have come to expect reflect this maturity. These arrangements underpin the objectives of the ACMA Heads of Power in s376 of the Telecommunications Act, in summary, to protect network integrity, the health and safety of persons, access to the emergency call service and interoperability of the STS.

These Heads of Power have also been recently amended in light of the introduction of the National Broadband Network (NBN). These powers now include, for the purpose of supplying an NBN (or other similar superfast network), the interoperability of Customer Equipment and for customer cabling to meet particular performance requirements or design features.

Communications Alliance understands that one of the drivers of change was the anticipated migration of services to the Fibre-To-The-Premises (FTTP) where the PSTN interface was to be migrated to the UNI-V port of the NBN Co-supplied fibre connected Network Termination Unit (NTU). Now with the current Multi-Technology-Mix (MTM) network design which will employ FTTP, FTTN, FTTB and HFC network topologies, the supply of copper-connected CE is likely to come via a variety of channels.

The MTM network design will also see services deployed using DSL access technologies into the foreseeable future and will need to be continued to be managed under the interference arrangements of Communications Alliance Customer Equipment Standards and the C559 ULLS Network Deployment Code.

This suggests that in light of the evolving circumstances, the regulatory arrangements need to remain robust and we would argue that it would be premature to introduce any substantive change to the compliance arrangements that may introduce greater uncertainty at this point in time.

Communications Alliance observes that with the repealing of the TLN on 1 April 2015, the ACMA and the industry have been placed in a situation under an artificial time constraint to bring the TLN up to date. Communications Alliance is aware that additional pressures may be felt within the current regulatory environment where the Government has instigated its red-tape reduction initiative. Nevertheless, Communications Alliance is mindful that due diligence needs to be undertaken in verifying that any proposed changes to the technical regulatory framework supports the current supply and the anticipated supply of product to the Australian market.

1.2 Scope of change

One of the difficulties that the industry is facing with the proposed approach is a clear understanding of the impact of the redrafting of the existing arrangements in the TLN. Due to the magnitude of the redrafting, Communications Alliance is concerned that there potentially will be unintended consequences which may not have become apparent to date in our review.

Communications Alliance is concerned that the ACMA appears to be the primary advocate in proposing the level of change to the arrangements as outlined in the Consultation Paper. Although we agree that some areas of the TLN would benefit from an update, the need for the level of the proposed changes has not been clearly demonstrated.

Communications Alliance understands that another driver of change is the need to address the difficulty that smaller suppliers have in comprehending and meeting their obligations under the TLN, as has come to the attention of the Department of Communications and the ACMA. Although recognising this is a valid concern, we are aware that the greater proportion of industry is comfortable with the present arrangements. Any review of the TLN needs to strike a balance in accommodating the needs of all the suppliers in the industry.

1.3 Rationalising legislation

Communications Alliance understands that a part of the rationalisation of the requirements in the TLN is by way of removing duplication with obligations contained in the *Telecommunications Act* (the *Act*). The industry would benefit from a clearer understanding of which requirements have been deemed to be covered by the *Act* and to what extent that they are a direct replacement of if there are any consequences in do so.

This raises another point relating to perceptions arising from change to regulatory obligations. The unfamiliarity of industry members with primary and subordinate legislation, whether it be the *Act*, or other Instruments such as Labelling Notices and Technical Standards, may potentially lead some suppliers (typically the smaller suppliers who may be less familiar with the Australian technical regulatory environment) with either mixed messages or messages that may be misinterpreted. There is concern there may be greater confusion or misunderstanding (whether unintentional or not) that in relying on legislation that is less familiar with some parts of the industry, the benefit of this exercise to improve the technical regulation framework will be lost.

Communications Alliance suggests that further guidance and understanding is required for the industry and suggests that, as an example, the ACMA considers providing a 'walk through' of the *Act* to clarify what elements have been removed from the TLN and are being covered by other legislation.

1.4 Industry expertise

There is a growing diversity of organisations that are involved in the communications sector. These organisations, both traditional and the new entrants, look upon the regulator and the compliance-related organisations, as represented through national and overseas test laboratories and industry-specific consultancies, to provide the necessary information and guidance to be able to supply product to the Australian market.

Communications Alliance observes that a sufficient level of technical and commercial rigour and dedicated resources will be needed to ensure that the objectives of technical regulation are reflected in the drafting of the revised TLN to meet the needs of this sector. Communications Alliance is aware that with staffing changes within the ACMA Technical

Regulation section over the last few years, the regulator has less in-house technical expertise to draw on and therefore is looking more and more towards industry to assist with technical inquiries and to ensure all the technical aspects of any proposed changes to regulations have been adequately addressed.

Communications Alliance would be happy to meet with the ACMA to discuss this further.

1.5 Readability

Communications Alliance observes that the Consultation Paper states one of the intentions of the proposed changes is to simplify the content and structure of the instrument to increase readability.

In reading the draft TLN, it appears that this goal has not been achieved. Overall, the instrument still does not provide the desired clarity to the reader. Communications Alliance observes that there still is a penchant to defer to the use of legalistic terms as 'having had regard to' and 'material' (as in modification is or is not material) which does not assist in the readability.

2 Specific comments

2.1 Application of regulatory costs associated with the TLN

The consultation paper states that one of the regulatory costs associated with the new TLN is the 'testing and certifications of CE'. A component that should also be recognised as part of this point is the resource or contracting cost in relation to the assessment performed to satisfy the person signing the DoC that the device complies

In addition, in section 2.4.2, it states that the 'complexity of the 2001 TLN may lead suppliers to incur additional regulatory costs'. The proposed new TLN appears to be more difficult to understand due to the 'readability' problem.

2.2 Options for reform and longer term changes

The Consultation Paper provides an option for industry-controlled/developed arrangements (Option 2) for governing the supply of Customer Equipment and Customer Cabling to the market, citing Communications Alliance as an example. The paper suggests that the ACMA is interested in exploring long-term changes to the arrangements for the supply of Customer Equipment and Customer Cabling which would also include legislative changes.

Communications Alliance agrees with the conclusion provided in the Consultation Paper that this option is not optimal at this stage but would go further to suggest that any fundamental changes to technical regulation at this point in time may be considered premature before further investigation is undertaken. Communications Alliance suggests that this regulatory reform has overstepped its intended objective as proposed in the Consultation Paper and that it requires further consideration.

Having said that, Communications Alliance would conditionally support Option 3 as proposed in the Consultation Paper with the timeframe for the review re-evaluated to allow for a more measured and consultative engagement with industry members to ensure the best regulatory outcome.

2.3 Scope and application

Communications Alliance would like to see further clarity on what customer equipment is intended to be captured under the revised TLN. If the intention is not to specify equipment interfaces, is there a danger of unintentionally capturing equipment that compliance is not required under the current regulatory arrangements, such as Ethernet or Wi-Fi interfaces, devices that use IP TV services or digital radios. If this was the case, the cost imposed to industry would be substantial, with little or no demonstrable benefit, as there are few or no concerns with the provision of services over those devices/interfaces.

The current arrangements generally provide for a distinction between communications equipment connected through traditional telecommunications interfaces that can present hazardous voltages (such as PSTN and DSL) and equipment that are connected via Ethernet or are traditionally not considered within the scope of technical regulation (e.g. audiovideo and broadcast equipment). As telecommunications services such as VoIP are becoming more prevalent on a wider cross-section of domestic and commercial equipment, Communications Alliance is interested in getting a greater understanding of what equipment is intended to be captured under technical regulation.

2.4 Categorisation of CE

In considering the proposed approach to overhaul the categorisation methodology for Customer Equipment and Cabling in the TLN, Communications Alliance observes that there are challenges with either approach to categorise customer equipment, whether by interface or by function. Although there is merit in entertaining a simplified 'functional' structure as proposed in the draft TLN, it is recognised that there will be always be examples of customer equipment that do not fit neatly within the categories or either structure.

The suite of customer equipment Standards that support equipment to services provided over copper access have had a long pedigree from the days of Telecom Australia, the ACA, ACIF and Communications Alliance. These interface-based Standards have been developed and have matured over many years, under the compliance arrangements in Schedule 1 of the TLN that mirror these interface Standards.

The fundamental shift from interface-based compliance arrangements to one that is functionality-based, as proposed in the draft TLN, is untested and we anticipate that in transition from one structure to the other, there will be many areas that have not had the opportunity to be fully considered and in which have not been taken to account.

2.5 Carrier permission and record keeping

Communications Alliance understands that it is the ACMA's point of view that carrier permission does not belong in the TLN as it is not the role of the TLN to specify the commercial operations of the carriers. Nevertheless, readers may be left with the misunderstanding that current and future PMTS Customer Equipment on the market that's not covered by an ACMA Technical Standard would not need to get carrier's permission to connect to their networks, nor would they have to comply with any standards (other than safety).

This goes back to the earlier point relating to misperceptions arising from changes to regulatory obligations. Removal of obligations that rely on other legislation/mechanisms may lead some suppliers to misinterpret their obligations under the Australia regulatory framework.

2.6 Risks

Communications Alliance believes that the approach being proposed to designate Standards into high risk and 'other than' high risk has merit in design but may be flawed in application.

As discussed earlier, the current compliance arrangements have been built upon sound engineering considerations.

Communications Alliance observes that vendors must comply with applicable Standards as listed in the current TLN, acknowledging that the three Compliance Levels (1, 2 and 3) are in reality levels of compliance demonstration. These levels are based upon the level of risk for non-compliance against the ACMA Heads of Power, namely the safety of personnel, network integrity, interoperability and emergency access.

Suppliers are obligated to demonstrate compliance on an increasing level of independent attestation for equipment that may adversely affect the Heads of Power. Communications Alliance would argue that by in effect 'devaluing' the risk of a number of the current Standards, this may have unintentional consequences resulting in the supply of equipment that may have a high level of non-compliance in areas that will directly impact the ACMA Heads of Power.

The following example are provided for consideration.

- 1) Management of interference and the impact on integrity and interoperability

AS/CA S002 *Analogue interworking and non-interference requirements for Customer Equipment for connection to the Public Switched Telephone Network*

AS/CA S043 *Requirements for Customer Equipment for connection to a metallic local loop interface of a Telecommunications Network*

These Standards provide the necessary requirements for devices connected to metallic cable pairs whether it be external or internal cabling to limit the interference between services to ensure the integrity and interoperability of services provided by service providers.

Non-compliance with these Standards can impact on basic telecommunications services including emergency call access while a DSL based service may be made inoperable causing loss of service including its voice service (if used).

The Standards are listed under the current regulatory arrangements as compliance level 3. This is considered to be appropriate as the testing is complex and requires specialised equipment. If non-accredited testing was carried out, the opportunity for inaccurate results due to lack of proper equipment and expertise would be considered high. The draft TLN proposed for these Standards to be low risk.

- 2) ICT equipment safety

AS/NZS 60950.1 *Information technology equipment - Safety - General requirements*

If the intention is for the safety Standard to apply as a high-risk Standard to all devices no matter how indirectly they are connected to the network, this would be considered to be a major and unnecessary impost on industry with through increased compliance costs. Examples of equipment that would be captured include:

- televisions with Ethernet connections via a modem/router
- Wi-Fi devices that communicate back to a modem/router as they are indirectly connected/interoperating through the network for internet connectivity
- handheld battery operated equipment

It appears that this overreach in application would capture all networked products, many of which have no metallic connection to the public network. The argument centres around how the term 'connects' is defined (as it remains undefined in the Act) and how the regulations deal with the distinction between equipment that is 'directly' and 'indirectly' connected to the network. This issues is also raised in the specific comments regarding Schedule 1 later on in this submission.

If this was limited to CE to which other Item 1 applicable standards apply, that may limit the scope to an acceptable level. Another approach may be to limit the application of the safety Standard as a high risk Standard to customer equipment that is only connected to the copper access network (or more generically galvanically connected). The application of the safety Standard requires careful consideration.

3) Emergency access

One example of the potential impact the ability for a user to be able to dial emergency services is highlighted by the proposed change in the compliance classification is with AC/CA S003.1 **Requirements for Customer Access Equipment for connection to a Telecommunications Network — Part 1: General**. This Standard specifies requirements for Customer Switching Systems (CSS) to prevent this type of equipment in restricting access to '000'. The draft TLN proposes that this Standard to be classified as low risk.

4) Wireless terminals

A distinction between mobile and fixed wireless terminals needs to be taken into consideration under the compliance arrangements. Devices such as mobile handsets and fixed cellular terminals have different risk profiles and the risk classification needs to be commensurate with the type of device.

2.7 Notes to the Schedule

The Consultation Paper (Page 26 - section 3.5.3) states 'Provisions that qualify an ACMA standard are now proposed to be contained in the relevant ACMA standard.' Most manufacturers and importers are unaware of ACMA standards, noting that this lack of visibility was originally by design. Familiarity stops with the industry standards that the ACMA standards call up, such as those developed by Communications Alliance and Standards Australia. It is considered to be unlikely that this will change to any great degree.

2.8 Changes to industry standards

A two year default phase-in period for new/revised standards is discussed in section 3.6.2 of the Consultation Paper. The existing TLN addresses this in Table 1.1, column 3 of Schedule 1. There is no reference to the two year default phase-in period for new/revised standards in the draft TLN. We anticipate that the absence of this information in the draft TLN will cause confusion. This information needs to be made more visible as manufacturers and importers need to know what the phase-in period is and what are the applicable Standards at any point in time.

2.9 Compliance issues

Clarification is sought on 'Alternative means of compliance' approach in the Consultation Paper (in Section 3.4.2) where it states 'a supplier can rely on Australian or overseas compliance documentation. The presumption is that this means an overseas test report to the relevant applicable standards rather than test reports to overseas standards. This would benefit from further clarity.

Communications Alliance expects that referencing international Standards will make it exceptionally difficult for auditors to confirm that the equipment being audited meets the necessary compliance criteria and for suppliers to work out what is required to demonstrate compliance. These arrangements may be considered to be suitable under the EMC Labelling Notice but there is doubt whether these can be successfully translated into the telecoms environment because of the difficulties the reader would have in assigning the interface-based standards with a function-based regulation.

2.10 Agents

The Telecommunications Act 1997, Part 21, Division 7, Section 406A Application of Division to agent of manufacturer or importer describes how an Agent can be used.

406A Application of Division to agent of manufacturer or importer

For the purposes of this Act and to avoid doubt, a reference in this Division to a manufacturer or importer of customer equipment or customer cabling includes a reference to a person who is authorised in writing by such a manufacturer or importer to act in Australia as an agent of the manufacturer or importer (as the case may be) for the purposes of this Division.

Although agents are adequately covered in the *Act*, Part 21, Division 7, Section 406A, it should be clear in the TLN that an agent can act on behalf of a manufacturer or importer in relation to Division 7 (i.e. compliance, record keeping and labelling etc). The majority of manufacturers and importers would not look at the *Act*. They would rely on the TLN to tell them what they need to do in the same way that it is likely that they know nothing about the actual ACMA Standards. They are typically only familiar with the industry Standards.

Communications Alliance suggests the following areas for consideration when addressing agent obligations:

- it would be preferable to have 'Agent' and 'Supplier' defined in the TLN
- Section 6(a) should include verbiage for Agent signing a DoC
- Section 8(2) does not make it clear that an agent can apply or authorise the application of the compliance label
- in Section 16(1)(c), it is presumed the word 'representative' is supposed to mean an 'agent' however it is not clear here or in the *Act* that where a manufacturer or importer is using an agent it is the agent that must register on the EESS, not the manufacturer or importer
- the only mention of the word 'agent' is in Section 19(2)(d) and it is in relation to the need for an Agent to keep a copy of the agency agreement in the Compliance Folder if an agent of the manufacturer or import keeps the compliance records

Communications Alliance also seeks further clarity on how industry members are to set up agreements with suppliers of equipment for parallel importing.

3 The draft TLN

The comments that follow have been provided by members in their review of the draft TLN. They have been included in this Communications Alliance submission to provide an indication of issues that have been identified to date. Due to time constraints, these comments may only be representative of the issues that may become evident after further study.

We reiterate that we feel that it would be highly premature to introduce any substantive change to the compliance arrangements at this point in time and that these comments could be used as input as a part of an extended review of technical regulation. Some of these comments may be suitable for inclusion in the immediate review.

Section 5 - Class of items and time for compliance with an applicable technical standard

An example where the drafting has resulted in requirements that, although may be logically correct, are less clear to the reader. The section contains many circular expressions which are confusing to follow and would benefit from a substantive rewrite to aid in the readability.

Section 6(a)(i) Declaration of conformity - corporation

This new declaration must be made by a Director or Secretary of the Corporation. For larger corporations this can be very difficult to get, and is usually delegated to the company's product compliance manager to sign for the company instead.

Section 6(b)(viii) Declaration of conformity – declarant statement

Redundant. Covered by signing the DoC.

Section 6(b)(v) Declaration of conformity – date of importation

No added value in providing the date of importation. The only relevant date is the date the DoC was signed, as the equipment cannot be supplied prior to this date anyway. It is irrelevant if any units of the equipment had been imported prior to the date the DoC was signed.

The DoC is usually signed well before the items to be sold are imported, and often before full production can begin (because they're not going to manufacture full production lots before the certification is complete). It is unclear here what date is required, impractical to track it and does not appear to be relevant.

Unclear whether an agent of the company can sign a DoC on behalf of the company where an agreement exists.

Section 6(b)(i) Declaration of conformity – item description

Excessive to have to require the complete contents of the compliance folder per s20(3) in the DoC, but s6 does require that.

The date of manufacture or import is irrelevant as by default, an item cannot be supplied before a DoC is signed. As such, the key date is not the date of manufacture or importation. It is the date the DoC is signed. (see section 6(b)(v))

Section 6(b)(ix) Declaration of conformity - documentation

Redundant as it covered under 6(b) (iv) and 6(c)

Section 8 (b)(x)(A) Requirement to apply a compliance label

Unnecessary. This is the very purpose of the DoC as required by the Act and regulation so there is no need to state it on the DoC itself.

Section 9 and Schedule 4 - Applicable technical standards

There are two definitions for 'applicable technical standard' which may lead to potential confusion; one for customer equipment (other than surge protectors) located in Section 9 and the second for customer cabling and surge protectors located in Schedule 4. Suggest that the name in Schedule 4 be changed to 'applicable technical (cabling) Standard'

Section 12(4)(a) Application of compliance labels

This is the same wording as the existing TLN however it has always required clarification, i.e., is it 1% of the total external area of the packing or is it 1% of the area of the particular side or part of the packaging the compliance mark is placed on?

Section 17(2)(a)(i) Declaration of conformity

The draft TLN in 'Division 3 - Declaration of conformity', under section 17(2)(a)(i) specifies three options in relation to what is required for a person to be satisfied that an item complies with a high risk applicable technical standard. These options being:

- A. an endorsed test report;
- B. an IECEE CB test report that is accompanied by an IECEE CB Test Certificate; or
- C. a statement prepared by a certification body

Concerning item 'B' above, as we understand it, item B is supposed to be allowing what is presently allowed via Schedule 7 of the current TLN as an alternative to an RTA test report for demonstrating AS/NZS 60950.1 compliance. There are however, three things missing. Item B in the draft TLN should also include:

- the option of using an 'electrical safety Certificate of Approval, or Certificate of Suitability, given by an electrical safety authority of a State of Territory in Australia' to demonstrate compliance with AS/NZS 60950.1 (NOTE: This option could not be used to satisfy compliance with any high risk standards other than AS/NZS 60950.1);
- as identified by item (iii) for AS/NZS 60950.1 in Schedule 7, the words 'a statement by the Australian Issuing and Recognising National Certification Body, or a recognised testing authority that the CE complies with the applicable standard'; and (NOTE: This option could not be used to satisfy compliance with any high risk standards other than AS/NZS 60950.1)
- as identified by the NOTE in the item for AS/NZS 60950.1 in Schedule 7, the words 'The IECEE CB test report is a test report to IEC 60950-1 standard with Australian differences'

Concerning item 'C' above, given item 'B' applies to the CB report etc., the present wording of 'C' is confusing. While we understand it to mean, as one of three options to satisfy compliance, a written statement from a local CB, because it follows on directly from item B

concerning the CB reports etc. one may tend to read it as a mistake in that it relates to 'a statement by the Australian Issuing and Recognising National Certification Body, or a recognised testing authority that the CE complies with the applicable standard' as was supposed to be included in 'B'. This is not the intent and we believe 'C' should be clarified so that it clearly means a stand-alone statement from a local CB, i.e. not based upon a CB test report, stating compliance with the high risk applicable technical standard.

Section 17 Declaration of conformity - documentary evidence

Under 'Risk Management and compliance levels' of the Consultation Paper (Page 22 section 3.4.2) it states that 'The DoC for an item to which these ACMA standards apply can be based on ANY documentary evidence.....'. The new TLN however requires a test report or a statement from a certification body, even for low risk items so ANY documentary evidence is not correct. See new TLN, section 17 (2) (b).

Section 17(2)(b)(i) Declaration of conformity – certification bodies

Now lower risk products to have to go to a certification body in all cases. It does not permit the use of a compliant test report. This is much more onerous and expensive than the present process for lower risk products and more onerous than high risk products.

Section 18(2)(f)(i) Modified items - corporations

This declaration must be made by a Director or Secretary of the Corporation. For larger corporations this can be very difficult to get, and is usually delegated to the company's product compliance manager to sign for the company instead.

Section 18(2)(d) Modified items – applicable Standards

The only change in relation to which applicable standards should be applied would be that later versions of the original applicable standards might be applicable rather than the version applicable when the original DoC was signed.

If any different applicable standards applied as a result of the modification then it should not be treated as a modified product. It should be treated as a totally new product.

Section 19(2)(d) Compliance records – general requirement

Requires all documentation supplied with the equipment to be retained in the compliance folder. This is not required now and most of the documentation is not relevant to compliance in any case. Only the user documentation that may affect compliance should be required to be kept.

Section 21(1)(b) Compliance records – obligation to keep records

Agree with the change that this is a change from 5 years to 2 years.

Section 23(3) Authorised officer may require documents, material or information

The time to provide information to an auditor has been reduced from 10 days to 5 days. This is considered to be insufficient notice and onerous for some importers, especially for large organisations where records may be stored overseas.

Section 24(2) Authorised officer may require an endorsed test report or statement

The existing TLN allows 30 days. 10 days, as required by the proposed TLN is unreasonable. 10 days to arrange and complete testing of any product is unrealistic.

Section 25 Item supplied not later than two years after commencement

Clarity is sought on the application of this obligation. Members have provided varying interpretations with respect this obligation. For example, does this infer that equipment is only grandfathered that was/is compliant and supplied under the previous TLN that is offered for SUPPLY? After two years, that equipment can no longer be supplied under this clause even if there is major stockholding in local warehousing.

Grandfathering needs to permit all previously approved products to continue to be marketed without limit as per the existing regulations

Section 26 Item supplied later than two years after commencement

Clarity is sought on the application of this obligation. Members have provided varying interpretations with respect this obligation. For example, does this infer that products are only grandfathered that were physically labelled prior to the new regulations commencing? It does not allow products to continue to be labelled beyond the transition period, thus killing off entire product lines after two years. The products would have to be recertified and re-declared under this new instrument just to continue to be marketed.

Despite these transitional provisions, new products that are in-scope of the new regulation will be caught up immediately with zero transition time because they did not need to comply with the previous regulations.

Grandfathering needs to permit all previously approved products to continue to be marketed without limit as per the existing regulations.

Another issue that has been identified is that we believe there is no provision for first supplying a product during the phase-in according to the existing TLN and being able to continue to label and supply that device after the phase-in. Section 26 in draft TLN only allows items that were labelled prior to the commencement of new TLN. It does not allow any item that were labelled during the phase-in.

Schedule 1 Applicable technical standards for customer equipment (other than surge protectors)

General comment

There is no definition for 'Connects' or 'connection' or 'connect' or 'connected' anywhere in this instrument. There was no definition in the existing TLN either however the implications for CE in the proposed draft TLN are of a vastly wider application given past and present interpretations about direct-connection versus indirect connection. This needs to be resolved before this TLN can go forward in its current form.

Item 1 Customer equipment that connects to a telecommunications network, other than:

- (a) customer equipment that connects to a telecommunications network used to provide a public mobile telecommunications service; and**
- (b) customer equipment that is mentioned in item 3 of this table**

Item 1 (a) and (b)

Note as typographical correction to the above title: should be 'Customer equipment'.

AS/ACIF S004-2013: Telecommunications Technical Standard (Voice frequency performance requirements for Customer Equipment) 2013

It is not required under Items 2 or 3, so why is it a 'high risk' standard here.

Item 2 Customer equipment that connects to a telecommunications network used to provide a public mobile telecommunications service

Nil.

Item 3 Customer equipment that connects to a telecommunications network that consists solely of satellite-based facilities

The AS/ACIF S042.3 GSM Standard and the AS/CA S042.4 IMT-2000 Standard are erroneously listed under the item for Customer equipment that connects to a telecommunications network that consists solely of satellite-based facilities.



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