

## **Regulatory Impact Statement**

### **Radiocommunications Regulations 2001 Amendments**

#### **Agency Disclosure Statement**

This Regulatory Impact Statement has been prepared by the Ministry of Business, Innovation and Employment.

It analyses proposals to improve the ability of the Ministry's compliance team to deal with interference to radiocommunications from electrical equipment, and the import of prohibited and non-compliant equipment. It also analyses a proposed rationalisation of associated infringement offences.

These proposals have been developed through the regulatory scanning process, based on input from the Ministry's compliance team, and are relatively minor in nature. The overarching purpose of the amendments is to make the Regulations more consistent in the requirements they place on different actions, the services they protect and the fees they apply to similar infringements. While they expand the Ministry's powers in some areas, the number of affected persons will be small and the changes are necessary to ensure New Zealand's radiocommunications compliance regime remains effective.

This analysis does not identify any other viable options for resolving the issues in question and notes that the proposed changes could be implemented within the Ministry's current compliance programme. While interdepartmental consultation has been undertaken, industry consultation has not been deemed necessary due to the minor and technical nature of these changes.

None of the proposed changes will likely have effects that the government has said will require a particularly strong case before regulation is considered.



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## **Status quo and problem definition**

- The radiocommunications legislative framework consists of the Radiocommunications Act 1989 (the Act) and the Radiocommunications Regulations 2001 (the Regulations).

### Interfering and prohibited equipment – importation

- The Regulations provide for the control of the installation, use, sale, distribution, or manufacture of interfering equipment. Interfering equipment is defined as any electrical equipment that is reasonably likely to cause interference to radiocommunications, and excludes any radio transmitter that is operating under licence. It therefore includes both unlicensed radio transmitters and electrical equipment that radiates unintended electromagnetic interference (EMI).
- All electrical equipment generates some level of EMI, depending on its design and power consumption. Unintentional transmitters are required to comply with international electromagnetic compatibility (EMC) standards prescribed under the Regulations.
- Some types of interfering equipment have been specifically declared to be prohibited equipment. This equipment has the potential to cause significant interference to radiocommunications services in New Zealand, such as cellular networks and emergency services radio equipment. Under the Regulations the installation, use, sale, distribution or manufacture (but not import) of such equipment is an infringement offence.
- The advent of internet shopping has made it increasingly simple to import radiocommunications equipment and other electronics that are unsatisfactory for use in New Zealand. This is due to the fact that there are differences between the internationally allocated frequency bands used some other countries, notably the United States, and New Zealand. Despite the existing regulatory requirements on the use and sale of interfering equipment, importers can and do import products that can cause harmful interference to New Zealand services, and subsequently either use them or sell them in the domestic market.
- The extent and significance the interference depends on the particular equipment involved, but can prevent the effective operation of important services such as emergency services, cellular networks and broadcasting services. While it is not possible to quantify these impacts, they certainly include risks of economic loss and to human safety. For example, despite being declared prohibited equipment, radio jammers are frequently imported into New Zealand. Not only do they have the potential to impact on the operations of commercial operations such as cellular networks, their potential to block emergency services radio systems also pose a significant risk to human safety.
- In 2010 Parliament amended the Act through a Statutes Amendment Bill to widen the Offence provisions to include the import of prohibited equipment. As such, the import of prohibited equipment can now be prosecuted under the Act. In addition, the Regulation making powers concerning supply of interfering equipment were updated to include "importation for supply".
- The Regulations have not yet been updated to reflect these changes. Firstly, they do not include an infringement offence for the import of prohibited equipment, which would be much less costly and simpler than a prosecution.
- An example of where this has been problematic is the import of Garmin dog tracking collars. Over the past year the Ministry's compliance team has identified over 130 instances of these collars being imported. As these collars are designed for the American market, they operate on frequencies that in New Zealand have been licenced for search and rescue, and forestry operations. The Ministry has declared these collars to be prohibited equipment and as such they were seized by the Ministry's compliance team after being imported.

- In many cases the collars had not yet been used, so the Ministry could not issue the importers with the appropriate infringement offence. Rather than prosecute each instance under the Act, the Ministry instead destroyed the collars. The issuing of infringement offences would have been more administratively straightforward, while the inclusion of importation in the Regulations would have provided a clearer message to the public that the import of this equipment is an offence.
- In addition, while the Regulations prescribe conditions and requirements for installers, users, sellers and manufacturers of interfering equipment, they do not prescribe requirements and conditions for importers. The Ministry currently has no ability to impose additional conditions on the import of interfering equipment; require an importer to provide proof of compliance; or compel an importer to cease the import of non-compliant equipment.
- In effect this means that the Ministry cannot impose these conditions, or apply the related infringement offences, in situations where a person has imported interfering equipment, but has not yet used, sold or distributed it. It is difficult to quantify the impact of this, for the very reason that such a situation currently falls outside of the compliance team's remit. There is, however, certainly a risk to radiocommunication services that this potentially non-compliant imported equipment will be used in the future.

#### Interfering equipment – interference with radiocommunications

- Under Regulation 35, the Ministry currently has the ability to require that the operation of interfering equipment be ceased or modified, if it is causing harmful interference to a radiocommunications service, provided that this service's signal strength is higher than a gazetted minimum field strength (MFS). Usually in this situation the interfering equipment is either faulty or incorrectly installed, as the prescribed standards for interfering equipment minimise the risk of harmful interference.
- In practice the MFS requirement means that someone cannot complain about interference to a service where it has only a very weak signal strength. However, for many services it is not possible to determine a suitable MFS, and therefore MFSs have only been gazetted for analogue broadcasting services. This means that radio inspectors cannot use this regulation to protect any other services.
- This situation imposes significant costs on radiocommunications operators in New Zealand. For example, if a cellular network is being interfered with by a piece of faulty consumer electronics, radio inspectors have only a very limited ability to deal with this. If the model of equipment meets all of the necessary standards, then the particular faulty example of the equipment must be tested to prove that it does not meet the standards.
- In the past year approximately 50 of the 180 commercial radio service complaints received by the Ministry would have been more effectively dealt with under Regulation 35, if an MFS had been prescribed for the service. Instead the Ministry often relies on the operators of interfering equipment to modify its operation when asked, although they have no regulatory power to require this. If the operator of the equipment refuses, the Ministry's only recourse is to require that the equipment be subjected to a costly and time-consuming testing process. In reality, at this point the affected radiocommunications operator often decides to resolve the interference by replacing the faulty equipment of the other party at its own expense.

### Infringement offences

- The Regulations prescribe infringement offences relating to interfering equipment, prohibited equipment, and improper labelling and record keeping. The Act limits the maximum fee amount to \$2000. There are two levels of fees prescribed by the Regulations, with differing amounts for individuals and body corporates. Some are set at \$250 for individuals and \$1250 for body corporates, while others are \$350 and \$1700 respectively. There is no obvious rationale behind which level of fee applies to a particular offence.
- Some of the infringement offences require the Ministry to prove that the person or body corporate in question knew that they were providing false information. This is inconsistent with Ministry of Justice guidelines for infringement offences as it moves beyond a straightforward issue of fact. Infringement offences should only involve absolute liability offences where there is not requirement to prove the offender's state of mind.

### **Objectives**

- To minimise the risk of harmful interference to radiocommunications infrastructure in New Zealand from equipment that has been imported into the country by enabling effective compliance action.
- To ensure that all radiocommunications services can be effectively protected from faulty or improperly installed interfering equipment.
- To ensure that the infringement offence regime is proportionate and appropriate.

### **Regulatory impact analysis**

#### Interfering and prohibited equipment – importation

- We propose placing, where practicable, the same requirements and penalties on importers of interfering equipment as are already in place for installers, users, sellers, distributors and manufacturers. This will help ensure that interfering equipment imported into New Zealand meets the necessary international standards. The import of non-compliant or prohibited interfering equipment will become an infringement offence.
- These requirements and penalties, such as having to provide information proving compliance with a prescribed standard, already apply to importers once they use, sell or distribute the equipment. This amendment therefore does not impose any additional regulatory burden on importers, rather it allows for these requirements to be imposed as soon as the Ministry becomes aware of the equipment.
- It is important to note that the import of prohibited equipment is already an offence under the Act and can be prosecuted as such. These changes add a more straightforward infringement option for the compliance team. The compliance team considers that an infringement offence would be a more effective and visible deterrent. It would allow mean that the import of prohibited equipment can be treated in the same way as its use, sale, installation or manufacture. These offences comply with the Ministry of Justice's guidelines for infringement offences, as they are comparatively minor and involve straightforward issues of fact. We do not envisage these changes resulting in any increase in enforcement costs.
- As these changes effectively amount to rectifying omissions in the Regulations, there are no alternate options that would resolve the problems discussed. Parliament has already recognised the equivalent omissions in the Act and has amended in accordingly.



- The adding of import controls to the Regulations will make them more consistent with the Act and allow the Ministry to control the use of interfering and prohibited equipment in a more efficient and cost effective manner. The proposed changes are the only effective way of resolving these issues and will have little impact on those complying with existing regulations.

#### Interfering equipment – interference with radiocommunications

- We propose modifying Regulation 35 so that the MFS requirement only applies to services for which it has been gazetted. In order to ensure that Ministry inspectors do not apply this regulation inappropriately and that the operator of the interfering equipment has some recourse, the inspector will be required to evaluate the receiving installation and wanted signal in accordance with any applicable International Telecommunication Union (ITU) recommendations.
- The proposed change would allow radio inspectors to more effectively protect a wider range of licenced services from electromagnetic interference. The amended regulation will likely impose costs on an operator of interfering equipment if it is actually found to be causing harmful interference (the likely scenario being that they will need to have their faulty equipment repaired). However, it is their responsibility to ensure that they are not causing interference through the use of faulty or improperly installed equipment. These costs may not actually exceed their current obligation to prove their equipment meets a prescribed standard through testing.
- The proposed change includes safeguards limiting its use. Firstly, the radio inspector would be required to determine that the interfering equipment is causing "harmful interference", defined by the Act as interference that:

endangers the functioning of a radionavigation service, or other safety services,  
or seriously degrades, obstructs, or repeatedly interrupts radiocommunications

Although this is a qualitative determination, the operator of the interfering equipment could challenge an infringement notice on the basis that this requirement had not been met.

- It is also proposed that radio inspectors will be required to determine that the receiving installation and wanted signal is consistent with any applicable ITU recommendations. This will prevent the regulation from being used to protect either services with very low signal strengths, or low quality receivers that might be susceptible to low level electromagnetic interference.
- While it is not possible to prescribe appropriate limits that would apply to every situation in which this regulation would be used, the ITU issues widely accepted recommendations that would apply in many situations. It is preferable to rely on ITU recommendations, where minimum field strengths are unavailable, than to continue to leave radiocommunications services without effective and efficient protection from interfering equipment. Again, the operator the interfering equipment could challenge an infringement notice on the basis that this requirement had not been met.
- In addition, those services which have gazetted minimum field strengths would continue to need to meet this signal strength level before this regulation could be applied.
- While conceivably the Ministry could instead gazette minimum field strengths for all affected services, we do not consider this to be a practicable alternative. For a number of important services there are no internationally accepted minimum field strengths and establishing figures for each service would be a protracted and very expensive process

beyond the means of the Ministry. In addition setting MFS for services operating in management rights (tradable spectrum property rights) would be exceedingly controversial as it would be seen to be applying limits to the extent of these private property rights.

#### Infringement offences

- We propose adjusting the level of fee that applies to each infringement offence, in order to more consistently correspond to the seriousness of the infringement. The lower \$250 / \$1250 level would only apply to a lesser offence involving failure by a licensee or rightholder to inform the Registrar of a name or address change. All other infringement offences would change to the \$350 / \$1700 level. These infringements involve:
  - the installation, use, sale, import, distribution or manufacture of non-compliant, recalled or prohibited equipment,
  - the misrepresentation of interfering equipment, or
  - the use of a radio transmitter otherwise than in accordance with a licence.
- These offences are similar in significance and therefore it would be appropriate for them to incur the same infringement fee.
- The economic and fiscal impact of these changes will be small. While some of those committing infringement offences would incur the higher fee level of \$350/\$1700 rather than \$250/\$1250, these values have remained unchanged since 2001 and the change is approximately in line with inflation since that time. All infringement fees will remain below the \$2000 maximum amount prescribed in the Act. Only a small number of these infringement offences are issued every year. As of 1 May 2012 the compliance team had issued a total of 56 infringement offences since 1 July 2011.
- It is also proposed to remove the requirement for the Ministry to show knowledge of falsehood from any infringement offences. In some situations where an offence has obviously been committed mistakenly the Ministry's compliance team will need to use their discretion about whether to issue an infringement notice. However, proving intentions is fraught with difficulty and the Ministry of Justice recommends against trying to determine intention in infringement level offences. The Ministry is satisfied that the amended offences are sufficiently minor and limited in nature to remain as infringement offences. The Ministry of Justice agrees with the need for these amendments.
- The Ministry considers that these changes to infringement offences will make them a more effective deterrent and thereby reduce the risk of harmful interference to radiocommunications services.
- No other options have been identified that would result in an appropriate and proportional infringement fee regime.

#### **Consultation**

- The New Zealand Customs Service, the Ministry of Justice and Treasury have been consulted on these proposals. No consultation has been undertaken with industry due to the minor and technical nature of these amendments.

## **Implementation**

- The proposed changes could be implemented within the Ministry's current compliance programme and no transitional arrangements are required. The amendments would come into force 28 days after appearing in the New Zealand Gazette. They would also be publicised through the Radio Spectrum Management website and the monthly Radio Spectrum electronic newsletter to stakeholders.

## **Monitoring, evaluation and review**

- The Ministry will continue to assess the effectiveness of the Regulations based on feedback from radio spectrum compliance officers.

