

Telecommunications Amendment Regulations 2002 (No. 3) 2002 No. 297

EXPLANATORY STATEMENT

Statutory Rules 2002 No. 297

Issued by the authority of the Minister for Communications, Information Technology and the Arts

Telecommunications Act 1997

Telecommunications Amendment Regulations 2002 (No. 3)

Section 594 of the *Telecommunications Act 1997* (the Act) provides for the Governor-General to make regulations under the Act. Section 99 of the Act enables the Australian Communications Authority (ACA) to make service provider determinations to set out rules that apply to carriage service providers and/or content service providers in relation to the supply of specified carriage services and/or specified content services. The ACA must not make a service provider determination unless the determination relates to a matter specified in the regulations or in section 346 of the Act (which is not relevant for present purposes).

The purpose of the accompanying regulations is to allow the ACA to make a service provider determination setting out rules:

- (a) regulating premium services using a number with a prefix beginning with 190, such as 'chat lines' and 'psychic lines'; and
- (b) regulating the supply of international services using a number that includes an international access code, to address concerns about the practice of 'Internet dumping'.

The accompanying regulations will allow the ACA to address concerns that telephone customers and/or members of their family are not always fully aware of the high cost of 190 or 0011 services or the number of calls made by household members to such services. Customers can therefore be asked to pay very high and unexpected telephone bills. The accompanying regulations will also allow the ACA to address concerns about the supply of sexually explicit material via 190 or international services as a consequence of 'Internet dumping'.

Internet dumping is associated with the use of Internet dialler software, which is sometimes used to transfer a consumer from their current Internet service provider (ISP), which they have usually accessed using an untimed local call, to a premium rate 190 number or an international number. The 190 or international number supplies Internet content to the user's computer and the user's telephone company then charges the customer for the time the computer remains connected to the expensive call. The Government is concerned that sometimes Internet diallers are used to transfer users from their ISP to a premium rate number without their knowledge or consent - this is called 'Internet dumping'.

Details of the accompanying regulations appear in the Attachment.

The accompanying regulations commence upon gazettal.

ATTACHMENT

DETAILS OF THE TELECOMMUNICATIONS AMENDMENT REGULATIONS 2002 (NO. 3)

Regulation 1 - Name of Regulations

Regulation 1 provides that the name of the accompanying regulations is the *Telecommunications Amendment Regulations 2002 (No. 3)*.

Regulation 2 - Commencement

Regulation 2 provides that the accompanying regulations commence on their publication in the Commonwealth of Australia *Gazette*.

Regulation 3 - Amendment of *Telecommunications Regulations 2001*

Regulation 3 provides that Schedule 1 to the accompanying regulations amends the *Telecommunications Regulations 2001*.

Schedule 1 Amendments

Item 1 - After Division 3.2

Item 1 of Schedule 1 to the accompanying regulations inserts a new Division 3.3 in Part 3 of the *Telecommunications Regulations 2001* dealing with premium services. New Division 3.3 will contain a new regulation 3.12 which will allow the ACA to make a service provider determination setting out rules that will apply to service providers in relation to the supply of certain 'premium services'.

For the purposes of regulation 3.12, a 'premium service' is defined in subregulation 3.12(1) to mean:

- (a) a carriage service or content service using a number with a prefix starting with '190' - such as a 'chat line', 'competition line' or 'psychic line';
- (b) a carriage service used to supply a content service or another service by way of a voice call, including a call that involves a recorded or synthetic voice, using a number that includes an international access code - such as an international 'chat line' or 'competition line';
- (c) another carriage service or content service determined in a disallowable instrument made by the Minister (see subregulation 3.12(2)).

The terms 'carriage service' and 'content service' will have the same meaning as in the Act (see the definition of 'this Act' in s. 7 of the Act).

Section 7 of the Act defines 'carriage service' to mean a service for carrying communications by means of guided and/or unguided electromagnetic energy. The reference to communications by means of 'guided electromagnetic energy' will include communications by means of a wire, cable, waveguide or other physical medium used, or for use, as a continuous artificial guide for or in connection with the carrying of the communication. The reference to communications by means of 'unguided electromagnetic energy' covers communications by means of radiocommunication.

The term 'content service' is defined in section 15 of the Act as:

- a broadcasting service (as defined in the *Broadcasting Services Act 1992*);
- an on-line service (including those for information and entertainment); and
- a service specified in a determination made by the Minister.

An 'on-line service' is not defined. It is intended that reliance be placed on the general concept of an 'on-line service' as that term is understood within the telecommunications industry.

Subregulation 3.12(3) sets out the matters that the ACA's service provider determination for premium services may deal with. These include:

- the terms on which the services are offered or supplied;
- the limitation of the liability of a customer in respect of the supply of such services - this could, for example, enable service provider rules to impose a cap on, or eliminate, a customer's liability to pay for very high and unexpected telephone bills in certain circumstances;
- the obligation of a service provider to notify customers about matters relating to premium services - this could, for example, include service provider rules requiring notification of customers whose current liability to pay for premium services is greater than a specified amount;
- the advertising of premium services (including Internet advertising of sexually explicit material) - this could be similar to the advertising rules proposed in relation to telephone sex services;
- restrictions on access or the barring of calls to particular numbers used in the supply of premium services - this could include service provider rules to help address concerns about the practice of 'Internet dumping';
- the establishment of a registration scheme for service providers that are involved in the supply of premium services - such a registration scheme could be similar to the one proposed in relation to telephone sex services;
- the obligations of carriage service providers in supplying premium services;
- the prohibition or restriction of the imposition or collection of charges relating to the supply of carriage services or other services used in the supply of premium services - this could allow the making of a service provider rule similar to that contained in subsection 158B(4) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* in relation to carriage service providers that engage in 'unacceptable conduct' in relation to a telephone sex service;
- a matter relating to the supply of premium services used to access an Internet service - this could enable service provider rules to deal with Internet dumping when a person using the Internet clicks onto an advertisement and is transferred to a premium 190 service, or an international number, that supplies downloaded images to that person;
- any other matter that the ACA considers necessary or convenient to protect the interests of customers and other consumers in relation to the supply of premium services or to give effect to a matter specified in paragraphs (a) to (1) of regulation 3.12(3).

Subregulation 3.12(4) allows the ACA's service provider determination to provide a 'due diligence' defence similar to that contained in subsection 158B(7) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* in relation to telephone sex services. That is, the ACA's service provider determination may provide that a requirement in the determination does not apply to a carriage service provider if the provider establishes that it did not know it was contravening a service provider rule in the determination and that it could not, with reasonable diligence, have ascertained that it was contravening that rule.

Item 2 - Paragraph 5.1(b)

Item 2 replaces paragraph 5.1(b) of the *Telecommunications Regulations 2001* (which refers to the former Queensland Crime Commission established by section 11 of the repealed *Crime Commission Act 1997 of Queensland*) with a new paragraph 5.1(b) referring to the new Crime and Misconduct Commission established by the *Crime and Misconduct Act 2001* of Queensland.

Under Part 13 of the Act, telecommunications carriers and certain other persons are required to protect the confidentiality of information. Disclosure or use of protected information is authorised in limited circumstances, for example, in cases where the disclosure is reasonably necessary for the enforcement of the criminal law (section 282 of the Act). Subsection 282(3) authorises a person to disclose information or a document if an authorised officer of a criminal law-enforcement agency has certified that the disclosure is reasonably necessary for the enforcement of the criminal law.

Under paragraph (g) of the definition of 'criminal law-enforcement agency' in subsection 282(10) of the Act, a criminal law-enforcement agency includes 'a prescribed authority established by or under a law of the Commonwealth, a State or a Territory'.

Regulation 5.1 (b) currently provides that for the purposes of paragraph (g) of the definition of 'criminal law-enforcement agency', the Queensland Crime Commission is a prescribed authority. In 2001 the Queensland Parliament passed the *Crime and Misconduct Act 2001*. Section 220 of that Act provides that the bodies corporate known as the Criminal Justice Commission established under the repealed *Criminal Justice Act 1989* (Qld) and the Queensland Crime Commission established under the repealed *Crime Commission Act 1997* (Qld) are merged into a single body corporate and continued in existence under the *Crime and Misconduct Act 2001* (Qld) under the name 'Crime and Misconduct Commission'. Accordingly, the purpose of item 2 of the accompanying regulations is to change the reference to the Queensland Crime Commission in regulation 5.1 (b) to a reference to the Crime and Misconduct Commission.