

Regulation Impact Statement

Restricted Access System Declaration 2007

Introduction

Background

New content regulatory framework

1. On 20 July 2007 the *Communications Legislation Amendment (Content Services) Act 2007* (Content Services Act) received Royal Assent and inserts a new Schedule 7 into the *Broadcasting Services Act 1992* (Broadcasting Services Act).
2. Schedule 7 consolidates the regulation of most content services delivered via carriage services under the Broadcasting Services Act. It will extend the current regulatory framework established under Schedule 5 of the Broadcasting Services Act to a broad range of content services delivered via convergent devices including internet, mobile phone, live streamed content and live voice content.
3. ACMA is required by section 14 of Schedule 7 to make a new restricted access system declaration which will apply to four categories of content services which have an Australian connection. Clause 2 of Schedule 7 identifies these services as; a hosting service, a live content service, a links service and a commercial service. An Australian connection is where the content is hosted in Australia or in case of a live service where the content is provided from Australia.
4. Under clause 20 of Schedule 7 a range of content is prohibited content. In simple terms, particular content (excluding eligible electronic publications) will be prohibited content in each of the following circumstances:
 - the content has been classified RC or X18+;
 - the content has been classified R18+ and access to the content is not subject to a restricted access system;
 - the content has been classified MA15+ and **access to the content is not subject to a restricted access system** and access to the content is provided by a means of a mobile premium service;
 - the content has been classified MA15+ and **access to the content is not subject to a restricted access system** and each of the following is satisfied:
 - a) the content is provided by means of a content service that operates on a commercial basis;
 - b) the content service is not a news or current affairs service or an ancillary subscription television service; and
 - c) the content does not wholly consist of text and/or one or more still visual images.
5. For convenience the specific MA15+ content described above will be referred to as commercial MA15+ content.

Current regulatory environment

6. Schedule 5 to the Broadcasting Services Act regulates internet content in Australia and prohibits internet content that is classified or likely to be classified by the Classification Board as RC or X18 for all purposes. Internet content hosted in Australia which is classified or likely to be classified by the Classification Board as R18+ is also prohibited unless it is subject to a restricted access system. The *Restricted Access Systems Declaration 1999 (No.1)* made under clause 4(1) of Schedule 5 currently sets out the minimum system requirements for a restricted access system for access to internet content classified or likely to be classified as R18+. The obligations for provision of a restricted access system falls on internet content hosts in Australia.
7. Mobile phone content supplied by premium rate SMS and MMS or on a mobile portal is regulated under the *Telecommunications Service Provider (Mobile Premium Services) Determination 2005 (No.1)* (the Determination) under subsection 99(1) of the *Telecommunications Act 1997*. The Determination requires that a content service provider or mobile carriage service provider must not supply content classified as MA15+ or R18+ by way of a premium SMS or MMS service otherwise than on a number with the prefix 195 or 196. A mobile carriage service provider must not supply MA15+ or R18+ content to a customer unless the customer has requested access and has been verified as at least 18 years old.
8. Telephone sex services are a type of audio service either recorded or an interactive service intended to provide sexual gratification for the caller. It is conceptually different from the other content regulation in Australia as it does not provide consumer reference information such as the classification categories of the national classification scheme. Telephone sex services are regulated under Part 9A of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and require that telephone sex services must not be supplied on a number other than the premium rate number prefix 1901. Access to this prefix is upon application to a telecommunications carriage service provider where the applicant's age is verified and a personal identification number (PIN) is allocated to restrict access to the services.
9. Live streamed content over the internet which is distinguished from internet (stored) content is currently not regulated under either the *Telecommunications Act 1997* or the *Broadcasting Services Act 1992*. The former Minister for Communications, Information Technology and the Arts noted in July 2006 that legislation would be introduced into Parliament to ensure that appropriate content safeguards would be imposed on all non broadcasting commercial content services including live services.

Impact on current regulatory environment

10. The *Communications Legislation Amendment (Content Services) Act 2007* repeals the regulation of content provisions under Schedule 5 of the Broadcasting Services Act including the *Restricted Access Systems Declaration 1999 (No.1)*, and most of Part 9A of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*. The interim arrangements for regulating mobile phone content pending the commencement of Schedule 7 under the *Telecommunications Service Provider (Mobile Premium Services) Determination 2005* will also be repealed. All of these services and the unregulated live streamed content via the internet are to be regulated under Schedule 7 of the Broadcasting Services Act.
11. Schedule 7 also requires ACMA to establish a unified restricted access system declaration to replace the different types of restricted access arrangements and to uniformly restrict access to R18+ content and commercial MA15+ content which has an Australian connection. ACMA is proposing a new restricted access system declaration which will be technology neutral but which incorporates the platform specific differences for internet content, live streamed, live voice content and mobile phone content and minimises the financial impact on current business models. ACMA is required to have the required restricted access system declaration in place by 20 January 2008.
12. The purpose of the restricted access arrangements introduced by Schedule 7 and the RAS Declaration is to ensure that:
 - access is limited to persons 15 years and over, in the case of commercial MA15+ content;
 - access is limited to persons 18 years and over in the case of R18+ content; and
 - the methods used for limiting this access meet a minimum standard.
13. Schedule 7 to the Broadcasting Services Act and the new RAS Declaration, will replace the existing restricted access arrangements for internet content in place under Schedule 5, the existing arrangements for mobile premium services content in place under the Determination and the restricted access arrangements for telephone sex services under Part 9A of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*. The RAS Declaration will also be supported by new Industry Codes of Practice and ACMA must ensure that a RAS Declaration is in force at all times after the commencement of Schedule 7 which is 20 January 2008.

Problem Identification

14. The increasing bandwidth available over mobile communications networks and the advanced technical features of convergent devices, such as 3G mobile phones and hand held computers provides new opportunities for mobile carriage service providers. Consumers can now access broadcasting, internet and telephone content on a single mobile device.

15. These convergent content services can bring substantial benefits including improved services for consumers and new business opportunities for carriage service providers and content service providers. Convergent content services include media rich audio-visual services delivered over new platforms (mobile internet access, online games, retransmitted broadcasting content, mobile chat rooms, and mobile content portals).
16. While convergent content services offer a broad range of new services to consumers there is with the new delivery platforms, the potential for offensive or harmful content to be accessed by children.
17. Existing arrangements for content regulation in Australia have been based on certain assumptions about how content is accessed and viewed. For example, that broadcasting content was watched on a large bulky device in the lounge room, enabling easy parental supervision; internet content on a desktop computer and telephone sex services via the home telephone. Until recently mobile phones which may be less amenable to parental supervision, were unable to provide access to audio-visual material.
18. Convergent content services undercut these assumptions. A consumer with a single convergent communications device could access a premium voice service, a telephone sex service, a premium mobile service (text or audio-visual content) and internet content. The platform specific nature of the current arrangements for content regulation means that there are differences in the regulation of each of these services.
19. Regulation restricting access by minors to restricted content applies to electronic media including computer games, movies, television, the internet, telephone sex services and mobile premium services. However, there is currently no legislation in either the telecommunications or broadcasting spheres which regulates live streamed content over the internet.
20. The current multiple platform specific regulation of content has given rise to uncertainty about the extent to which convergent content services are already regulated and concern about the potential inconsistent regulatory treatment of essentially the same content.
21. The new regulatory framework under Schedule 7 will impose obligations on content providers that supply content services to ensure that the content is provided in a manner which is not likely to result in children being exposed to material that is inappropriate for their age and would be likely to offend a reasonable adult.

Objective

22. The regulation of access to content via a restricted access system declaration is intended to:

- require providers of convergent content services to respect community standards and to establish measures that protect children from exposure to content that would be inappropriate or harmful to them. In doing so, the framework will be consistent with content regulation over other media in Australia;
- provide a regulatory framework that has sufficient flexibility to accommodate changing technological developments and market structures in the communications sector;
- not impose unnecessary financial and administrative burdens on industry and encourage the development of communications technologies and their take up in Australia; and
- harmonise the regulation of existing communications content and reduce the complexity encountered by consumers, industry and regulators.

Options

23. Section 14 of Schedule 7 to the Broadcasting Services Act requires ACMA to make a new 'restricted access system declaration' which will apply to all content services regulated by the new regime imposed by Schedule 7. As the Government has already decided on a single regulatory option of implementing a restricted access system, ACMA does not have the option of not making a restricted access system declaration.
24. The ACMA considered the following two approaches in complying with the requirements under section 14 of Schedule 7 to the Broadcasting Services Act:
- (1) make a new restricted access system declaration which would apply the current restricted access system under Schedule 5 of the Broadcasting Services Act; or
 - (2) make a new restricted access system declaration which incorporates the existing restricted access arrangements under various legislative regimes for the different content services.

Option 1 - Applying the existing restricted access system declaration

25. The restricted access system under this option would allow access to commercial MA15+ content for persons aged 15 years or older and access to R18+ content for persons aged 18 years or older. The system requires that a consumer complete an application form which can be provided to the restricted access system in either an electronic format or in hard copy. An acceptable application provided electronically would require the applicant's name, a declaration that the applicant is 15 years or older or 18 years or older and either credit card details or a digital signature. Where an application is lodged in hard copy, an acceptable application would require the applicant's name, a declaration that the applicant is 15 years or older or 18 years or older and either credit card details or other evidence that the applicant is 15 years or older or 18 years and older. An acceptable form of evidence of age could include a passport, birth certificate, driver's licence or senior's card.

26. After receipt of an application, the restricted access system will verify the applicant's age from the evidence of age supplied by the applicant and where the applicant has been verified as either 15 years or older or 18 years or older will allocate the applicant a personal identification number (PIN) or password to access the appropriate classification of content. To gain access to commercial MA15+ or R18+ content subject to the restricted access system, the applicant must input in full the issued PIN or password. A registered user should not encounter internet content that is likely to be classified commercial MA15+ content or R18+ content until the entered PIN or password has been verified. The personal information retained by the restricted access system must be retained in accordance with the *Privacy Act 1988*.

Option 2 – Make a new restricted access system declaration

27. Under option 2 the restricted access system would provide separate arrangements for access to commercial MA15+ content and R18+ content. For access to the former, the applicant must submit a declaration that they are 15 years or older and at the time they submit their declaration they must be warned about the nature of MA15+ content and have access to information about how access to MA15+ content can be controlled. After the system verifies that a valid declaration has been made, the applicant must be provided with a PIN or some other means of limiting access by other persons to the MA15+ content. A person who has not made a declaration must not be able to access commercial MA15+ content and the system must be able to remove the customer's access to commercial MA15+ content where it has granted access in contravention of these requirements.

28. For access to R18+ content, the restricted access system requires that an applicant make an application in either electronic format or hard copy. At the time of making an application, warnings must be provided as to the nature of R18+ content and safety information must be available about how to control access to R18+ content. An application must be accompanied by evidence that the applicant is 18 years or older. The restricted access system will verify the applicant's age from the evidence of age provided by the applicant. While specific types of evidence of age are not specified in option 2 the restricted access system will need to apply the evidence that it accepts as proof of age to a risk analysis. The risk analysis is intended to apply only to the types of evidence of age accepted by the system to assess the risk that the applicant could be a person other than the person it purports to identify or a person younger than the age the evidence attributes to the person it identifies. Where the applicant has been verified as aged 18 years or older the system must provide them with a PIN or some other means of limiting access by other persons to R18+ content.

29. The system must not provide access to R18+ content unless the PIN or other means has been used to access R18+ content. The system must also retain a record of how an applicant's age was verified and this record must be retained in accordance with the *Privacy Act 1988* for 2 years. The system must also undertake a periodic review of the effectiveness of the risk analysis and age verification procedures.

30. Where a person has previously made an application for either commercial MA15+ content or R18+ content and has been granted access to the appropriate classification of content, they will not be required to undergo this process each and every time they wish to access content at the same authorised classification.

Impact Analysis

31. It is not clear from discussions with industry members or from the submissions received as part of the public consultation process the actual number of industry members and what type of content services they provide. Equally, we are uncertain as to how many of the industry members listed intended to provide access to commercial MA15+ and/or R18+ content. Available membership information indicates that there are approximately 400 internet (stored) content providers, 5 mobile portal content providers, 33 premium SMS/MMS content providers, 50 premium rate content providers, and 2 telephone sex service providers. We are aware that there are a number of live streamed content providers currently operating in Australia but no information is available as to their actual numbers.

Impact of adoption of Option 1 - Applying the existing restricted access system declaration

Disparity of level of age verification

32. ACMA sought to apply the same age verification approach for commercial MA15+ and R18+ content in the instrument that it went out to public consultation with, and received almost unanimous rejection of this approach to commercial MA15+ content. Submissions from industry and the public noted that there are a number of difficulties which would make it impractical to apply this approach to internet content classified as MA15+ and to both live content and mobile phone content. The existing approach is currently applicable to internet content classified as R18+. Persons aged 18 years or older have access to credit cards, driver's licences, passports, birth certificates and various Government agency cards. Content classified MA15+ is suitable for access by children aged 15 to 17 years. They do not have an entitlement to credit cards or other such documentation making it difficult for them to pay for the content or verify their age. Importantly, the age verification requirements for children accessing internet content under the declaration would be at a higher threshold than applicable to 15 to 17 year olds who are able to access MA15+ content films at the cinema or video store or even viewing films on television.

Age verification for each new service

33. The current declaration does not take into account the ongoing commercial relationship between a mobile carriage service provider and its customer. Mobile carriage service providers currently require that a customer provide evidence of age and age verification is completed before issuing them with a mobile phone account whether a post paid or prepaid account. Once a customer has requested access to age restricted content they are provided with access. Where a customer requests services, they are in the unique position of being able to verify that the applicant is the customer and have information to enable it to cross check information provided in any request for additional services. The current

declaration does not take account of this fact and would require customers to provide evidence of age even where the mobile carriage service provider has the information. This obligation would be a source of annoyance and inconvenience to customers particularly when they may have applied for access to content the following day after they took out a mobile phone service.

PIN or Passwords

34. The current declaration process requires that the restricted access system provide an approved applicant with either a personal identification number (PIN) or a password which would provide a means of preventing other persons from access to the content. Submissions from industry members advised that there needed to be more options for restricting access to content in addition to PINs and passwords. While the current declaration may suit internet content providers and telephone sex service providers it does not take into account the operation of mobile carriage service providers who have adopted a model of one off age verification without the need for PIN or passwords. Mobile carriage service providers would need to develop new systems to meet this obligation.

Credit card usage

35. Providers of mobile content would be unable to adopt this process as they do not use credit cards for payment of mobile content services. Content providers have an arrangement with the mobile carriage service provider for payment for content either via a charge being included on a post paid mobile phone account or via a deduction from the prepaid mobile phone credits. They would either need to develop systems which could accept credit card validation despite not accepting payment via this method or develop a system which would accept other documentation. While the latter is possible for a person 18 years and older there remains the same problem for persons aged 15 to 17 years who do not have credit cards or limited access to other identity documents.

Reduced access to content

36. The current restricted access system declaration applies only to internet content which is classified R18+. It was made in 1999 and is limited in terms of the technology platform that it was intended for and the nature of the relationship between the content provider and the customer. Its heavy reliance upon credit cards or other documentation which are not readily available to persons aged 15 to 17 years would effectively deny such persons access to content they have a legal entitlement to view. Industry has voiced concern during the public consultation process that such a process is disproportionate to age verification requirements when compared to restrictions on access to similar content at the cinema and video shops or when watching television. The result would likely be a reduction in the availability of such content being hosted in Australia.

Record of children

37. Submissions received from the public consultation process expressed concern that the age verification process under option 1 required the making and retention of a record of a child's personal information as part of the process for granting access to commercial MA15+ content. It considered that this requirement was inappropriate particularly where no such obligation was required to access to commercial MA15+ content at cinemas or to view MA15+ films broadcast on

television. Option 2 does not require any record being made of a child's personal information to grant access to commercial MA15+ content.

Impact of adoption of option 2 – Make a new restricted access system declaration

Comparative standard of age verification

38. The simplified arrangements for verification of age and access to commercial MA15+ content under option 2 have taken into account the views of industry and consumers about difficulty that persons aged between 15 and 17 years have in obtaining evidence of their age. The making of a declaration as to their age supported by a warning about the nature of the content and means of controlling access together with the ability to remove access provides a comparable standard to access to MA15+ content at cinemas, video stores and watching such content on television.

Age verification for each new service

39. During the consultation process it became apparent that the proposed restricted access system model under option 1 would require a customer to undergo the age verification process for each new service they wished to access. This process if forced upon the content providers would be a source of frustration to mobile phone customers who are able to access mobile portal and premium SMS/MMS services once they have applied for access to MA15+ and/or R18+ content. Option 2 incorporates a provision which allows for access to commercial MA15+ content and R18+ content once a customer has been verified as 15 years or older or 18 years or older. This provision will address the issue for mobile phones and other types of premium services.

PIN or Passwords

40. The new restricted access system provides a greater range of options to content providers in terms of meeting their obligation to provide their customers with a means of limiting access by others to content. It states that a PIN or other means is acceptable provided it does limit access by others. Content providers will be able to continue with their current approach without the need to implement a costly PIN or password process which may not be compatible with their business model. Additionally, this more flexible approach will allow for the adoption of newer more cost effective technologies as they become available.

Risk analysis

41. The restricted access system for option 2 does not identify the specific types of evidence of age that could be accepted by the system for access to R18+ content. However, it does require that a system develop a risk analysis for the types of age verification documents that they would accept. The risk analysis is intended to make the system consider the risk that the evidence they accept may be for a person other than the person it purports to identify or to a person younger than the age the evidence attributes to the person it identifies. It was argued in at least one submission that industry should be able to rely upon the evidence of age it receives on face value. However, industry does not operate on this basis. For example, it requires validation of a credit card or debit card before providing goods or services. In the same way it also verifies a customer's identity before making changes to a customer's account.

Impact on industry

42. Compliance costs on industry for development of options 1 or 2 are included below in the tables below under the option headings.

Option 1

The costs associated with building a restricted access system required by option 1 from the ground up are estimated per business as shown in the table below:

Role	Number of personnel	Hourly Rate	Hour/Day	Number of Days	Estimated Price
Project Management	1	\$200.00	8	150	\$240,000.00
Planning	3	\$175.00	8	15	\$63,000.00
Development	5	\$150.00	12	90	\$810,000.00
Testing	3	\$80.00	8	15	\$28,800.00
Certification/Endorsement	1	\$120.00	8	15	\$14,400.00
Deployment	2	\$100.00	8	7	\$11,200.00
Total					\$1,167,400.00

43. Other costs which would need to be factored in are rent of the premises for the duration of the development, infrastructure, travel costs, training, support, fringe benefits, cost of equipment and insurance. These areas are likely to multiply the final cost to 4 times the figure shown in the above table. An educated estimate for such an application would be in the range of \$4.5 to \$5 million.

Option 2

44. For both option 1 and 2, a very similar architecture can be used. However the lesser access obligations for commercial MA15+ content in option 2 would mean a reduced amount of infrastructure and development required to maintain logs and processing cycles and therefore the amount of time, money and effort required in the development of a new system for age verification for option 2 would be significantly less. The following table shows the breakdown of estimated costs involved per business :

Role	Number of personnel	Hourly Rate	Hour/Day	Number of Days	Estimated Price
------	---------------------	-------------	----------	----------------	-----------------

Project Management	1	\$200.00	8	60	\$96,000.00
Planning	3	\$175.00	8	7	\$29,400.00
Development	5	\$150.00	12	15	\$135,000.00
Testing	3	\$80.00	8	10	\$19,200.00
Certification/Endorsement	1	\$120.00	8	10	\$9,600.00
Deployment	2	\$100.00	8	7	\$11,200.00
Total					\$300,400.00

45. Once again, other costs which would need to be factored in are rent of the premises for development for the period of development, infrastructure, travel costs, training, support, fringe benefits, cost of tools and insurance. However, these areas are likely to multiply the final cost to 3 times the figure shown in the above table. An educated estimate for such an application would be of the order of \$1 million.

Practical implications on each industry sector for adoption of options 1 and 2 on the current business models

Option 1

46. Option 1 provides a less flexible approach to restricting access to content because it would apply a model developed for the requirements of the internet. If this model was applied to each of the sectors of the content industry they would need to discontinue their existing model and replace it with the internet model. The only sector which would experience nil cost for access to R18+ content would be the internet content sector which is operating this model. However, it would have to apply this approach to commercial MA15+ content but would be able to have reduced costs through adapting its current process for R18+ content to commercial MA15+ content. Mobile portal, premium SMS/MMS, premium rate, telephone sex and live streamed content providers would need to include the following process:

- Must receive an application in either electronic or hard copy format;
- electronic lodgement of an application must include the applicant's name, a declaration that the applicant is 15 years or older for MA15+ or 18 years or older for R18+ content and either credit card details or a digital signature; or
- hard copy lodgement of an application must include the applicant's name, a declaration that the applicant is 15 years or older for MA15+ content and 18 years or older for R18+ content and either credit card details or evidence of age such as a passport or birth certificate;
- the restricted access system will verify the applicant's age from the proof of age documentation supplied;
- where the applicant has been verified as at least 15 years for MA15+ content or older or 18 years or older for R18+ content the system will allocate a personal identification number (PIN) or password to the applicant;
- the applicant must input in full the issued PIN or password before gaining access to restricted content. A registered user should not encounter content that is likely to be classified MA15+ or R18+ until the entered PIN or password has been verified;

- the restricted access system must retain a record of applicant and how the applicant's age was verified. The personal information retained by the restricted access system is required to be retained in accordance with the Privacy Act 1988; and
- an applicant's access is to be removed if provided in breach of these requirements.

Option 2

47. Option 2 provides flexibility for the range of different types of content providers to continue using their existing platform specific restriction of access arrangements with minimal modification. Detailed below is a breakdown by type of content service provider of the impact of option 2 on their business models.

Internet (stored) content providers

48. Internet (stored) content providers providing access to R18+ content in Australia are currently required to have in place a restricted access system. It is intended that they will be able to utilise their existing restricted access arrangement but would need to:

- undertake a risk analysis to assess the risk of evidence of age it accepts from an applicant for R18+ content (such as credit cards) being provided by an applicant that could be a person other than the person it purports to identify or a person younger than the age that the evidence attributes to the person it identifies;
- place warnings as to the nature of the content at the point where proof of age is submitted and provide safety information about how access to R18+ content can be controlled. This could be a link to existing information on content filters; and
- conduct a periodic internal review of their risk analysis and procedures to verify age.

49. A new obligation for regulation of internet content is the regulation of commercial MA15+ content. Where internet content providers wish to provide access to commercial MA15+ content they would need to:

- provide for an applicant to make a declaration on the website that they are 15 years or older;
- place warnings as to the nature of the content at the point where the declaration is made and provide safety information about how access to MA15+ content can be controlled. This could be a link to existing information on content filters; and
- be able to remove access where access has been provided to a person under 15 years of age.

50. There is expected to be minimal cost for existing providers of R18+ content via the internet which is currently operating behind a restricted access system. There will be some cost for provision of commercial MA15+ content.

Mobile portal content providers

51. Mobile carriage service providers currently provide access to MA15+ and R18+ via their mobile content portal. Mobile carriage service providers must not provide access to age restricted content unless they have received a request for access to age restricted content, have verified that the customer is at least 18 years of age and have verified that the person making the request is the account holder. They currently remove an account holder's access to portal content where required, conduct periodic audits of their age verification processes and keep records of how they verified a customer's age. New obligations to be placed on them would include:

- undertake a risk analysis to assess the risk of evidence of age it accepts from an applicant for R18+ content (such as drivers' licence) that the applicant could be a person other than the person it purports to identify or a person younger than the age that the evidence attributes to the person it identifies; and
- place warnings as to the nature of the content at the point where proof of age is submitted and provide safety information about how access to R18+ content can be controlled on mobile phones. This could be a link to existing information on the portal.

52. Where mobile portal content providers wish to provide access to commercial MA15+ content to persons aged 15 years or older they would need to:

- provide for an applicant to make a declaration on the portal that they are 15 years or older; and
- place warnings as to the nature of the content at the point where the declaration is made and provide safety information about how access to MA15+ content can be controlled. This could be a link to existing information on the portal.

53. It is expected that there will be minimal cost incurred by mobile carriage service providers currently providing access to commercial MA15+ content and/or R18+ content as they will be able to apply their existing age verification and access control methods to their portal content. They will have the option of making commercial MA15+ content available to persons 15 years and older via their portal which was not previously possible but will need to include the new declaration requirements which will include minimal cost.

Premium rate SMS/MMS content providers

54. Providers of premium SMS and MMS mobile content currently assess their content services to ensure that MA15+ and R18+ content cannot be accessed via premium rate SMS and MMS except on numbers with the prefix 195 or 196. They are not required to have in place a restricted access system which would verify the age of users of their premium SMS or MMS services. Age verification is currently the responsibility of mobile carriage service providers who have customer information and have default barred the 195 and 196 prefixes pending an application and verification of the age of their customers. Mobile carriage service providers have contracts with providers of premium rate SMS/MMS content

setting out the commercial arrangements for granting access to their network and customers.

55. Advice from several mobile carriage service providers is that they are not proposing to change the current arrangements which would mean that premium SMS and MMS content providers would not need to establish their own restricted access system despite having an obligation under Schedule 7 to ensure access to commercial MA15+ and R18+ content is restricted.

Premium rate content providers

56. Providers of premium rate content voice and fax services operating on numbers with the prefix 1900 and 1902 are regulated by the TISSC Code of Practice which is an industry code that does not permit content which would be unsuitable for minors i.e. persons under 18 years. A representative from TISSC advised that it was unaware of any commercial services which would be likely to be classified as MA15+ operating on these number prefixes.

57. If commercial MA15+ content was to be provided, content providers would need to:

- provide for an applicant to make a declaration that they are 15 years or older;
- include warnings as to the nature of the content at the point where the declaration is made and provide safety information about how access to MA15+ content can be controlled. This could be a link to existing information; and
- be able to remove access where access has been provided to a person under 15 years of age.

If commercial MA15+ content were to be provided on premium rate numbers with the prefixes 1900 and 1902, it is expected that the cost of incorporating these requirements would be minimal as they currently provide warnings about the cost of services and advice about the appropriate age for accessing content.

Telephone sex service providers

58. Recorded and live content service providers providing telephone sex services are currently subject to a restricted access system under Part 9A of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*. Telephone sex services are only permitted to operate on the 1901 prefix and access is restricted to persons 18 years or older once the age of the applicant has been verified by the account holder's carriage service provider. With the repealing of these provisions telephone sex services will be assessed using the classification criteria applied to internet and mobile content. If a telephone sex service is assessed as R18+ the content provider will need to:

- undertake a risk analysis to assess the risk of the evidence of age it accepts from an applicant (such as a drivers' licence) being provided by an applicant that could be a person other than the person it purports to identify

or a person younger than the age that the evidence attributes to the person it identifies;

- place warnings as to the nature of the content at the point where proof of age is submitted and provide safety information about how access to R18+ content can be controlled. This could be a reference to existing information on how access could be removed; and
- conduct a periodic internal review of their risk analysis and procedures to verify age.

59. Advice from the primary carriage service provider responsible for managing access to telephone sex services is that it is not proposing to change the current arrangements which would mean that telephone sex service providers would not need to establish their own restricted access system despite having an obligation under Schedule 7 to ensure that commercial MA15+ and R18+ content is restricted. The obligations under Schedule 7 relating to telephone sex services will not commence until 20 July 2008.

Live streamed content providers

60. Commercially offered live streamed audio and/or visual content as opposed to stored content over the internet is currently not regulated. Schedule 7 to the Broadcasting Services Act will require that providers of such services who wish to provide access to R18+ content and commercial MA15+ content will need to establish a restricted access system with age verification.

61. Where live streamed content providers wish to provide access to commercial content assessed as MA15+ via the internet they would need to:

- provide for an applicant to make a declaration on the website that they are 15 years or older;
- place warnings as to the nature of the content at the point where the declaration is made and provide safety information about how access to MA15+ content can be controlled. This could be a link to existing information on content filters on the website; and
- be able to remove access where access has been provided to a person under 15 years of age.

62. Where live streamed content providers wish to provide access to content assessed as R18+ they will need to:

- be able to receive an application for access to the content and to receive evidence to verify the applicant's age;
- undertake a risk analysis to assess the risk of evidence of age it accepts from an applicant for R18+ content (such as credit cards) being provided by an applicant that could be a person other than the person it purports to identify or a person younger than the age that the evidence attributes to the person it identifies;
- place warnings as to the nature of the content at the point where proof of age is submitted and provide safety information about how access to R18+ content can be controlled. This could be a link to existing information on content filters on the website;

- conduct a periodic internal review of their risk analysis and procedures to verify age and
 - must keep a record of how an applicant's age was verified for a period of 2 years.
63. Commercially offered live streamed audio visual content over the internet is currently not regulated. Schedule 7 will require that providers of such services who wish to provide access to R18+ content and commercial MA15+ content will need to establish a restricted access system with age verification. There is expected to be minimal cost for establishing the restricted access arrangements for MA15+ content but higher cost for restricting access to R18+ content. These costs may be reduced by the synergies offered where streamed content is available from a website providing stored internet content that is either commercial MA15+ or R18+.
64. A summary of the costs and benefits for options 1 and 2 for each type of content service is provided in Table 2 at pages 22-24.

Cumulative regulative burden on business

65. The introduction of Schedule 7 to the Broadcasting Services Act has brought together for the first time the range of internet and mobile phone content services under the Broadcasting Services Act. Content providers will now only need to consider Schedule 7 rather than a range of separate legislative schemes each intended to regulate a single type of service. Option 1 would impose a greater level of regulatory burden on the range of content providers as they would need to effectively discontinue with their existing practices and establish a completely new restricted access system. Option 2 significantly reduces the regulatory burden by allowing the continuation of existing practices. Option 2 unlike option 1 also reduces the regulatory burden by applying a similar level of access restriction to commercial MA15+ content adopted via other media. Industry submissions advise that greater regulatory burden as set out in option 1 in relation to access to commercial MA15+ content, would likely result in decline in such content being hosted in Australia and the hosting of such content offshore where a lesser regulatory regime applies.
66. For option 1 and option 2 there is no change to the ongoing compliance cost from the current regulatory arrangements. Content providers are required to take down content or remove access to content where the content is either not behind a restricted access system or where access has been gained in breach of the restricted access system requirements.

Impact on business competition

67. The restricted access system declaration could potentially affect the number and range of businesses in the content industry by changing the ability of business to provide a good or service. The declaration could require changes to current business practices as outlined in the impact analysis but these are expected to have minimal impact given the adoption of the feedback from the consultation process and the resulting changes to the initial proposed restricted access declaration.

Option 1 would be likely therefore to have a greater impact than option 2. Live streamed content via the internet is currently not regulated so it will experience a change to its business practices in the event content providers wish to provide access to commercial MA15+ content and/or R18+ content where it is provided from Australia. Option 2 would have significantly less impact than option 1 particularly in relation to commercial MA15+ content.

68. The new restricted access declaration could however, potentially increase the ability of businesses to provide access to commercial MA15+ content since it will remove the current restriction on mobile carriage service providers not to provide access to MA15+ content unless the person is 18 years of age or older. Commercial MA15+ content could be provided by premium SMS or MMS or via a mobile content portal under the changed environment to be available to persons 15 to 17 years of age. Option 1 with its requirement for age verification documentation would unlike option 2 not increase the potential for access to commercial MA15+ content.
69. Industry will also benefit from consistent treatment of the same content across different technological platforms, including internet, and mobile phone. They will no longer need to have a detailed understanding and be able to apply three different regulatory instruments to content depending upon how the content was delivered to the customer. They will also have a greater level of certainty about how new convergent services will be regulated.
70. The separate requirements for restriction of access under option 2 for commercial MA15+ content and R18+ content may be an additional cost for content providers but the cost will be minimised by a restricted access system declaration which will incorporate existing restricted access arrangements to help minimise the cost to industry. As this cost is a cost of providing content services, content providers are likely to pass this cost on to their customers who will directly benefit from greater access to commercial MA15+ content services and the protection for children from harmful and inappropriate content. The lower cost of implementing option 2 compared to option 1 could lead to nil or minimal cost being imposed on customers.

Impact on Consumers

71. Consumers will be impacted by the creation and removal of restrictions on access to commercial MA15+ and R18+ content. Live streamed content via the internet which was previously unregulated will be regulated to prevent minors from access to content which is considered unsuitable for their age. This will bring live content into line with existing content classification restrictions and ensure a greater level of consistency in treatment of content across delivery platforms.
72. Consumers aged 15 to 17 years will be able to access premium mobile commercial MA15+ content which they were prevented from accessing due to a requirement that the applicant be 18 years of age. They will now be able to access this content as they would with similarly classified television, cinema and DVD content.

73. The declaration requirements for the provision of information including content warnings and advice of the means of restricting access to content via filters or other mechanisms will promote information dissemination to consumers. Parents will be able to receive information expressed in a consistent way about the classification of content provided on different platforms and will not need to understand the differences between three separate platform based instruments regulating content services.
74. Consumers will have some of the complexity surrounding content products and services removed as they will benefit from a single online complaints channel within ACMA dealing with complaints about content whether they are about internet content, live streamed content, telephone sex content or mobile phone content. They will also be able to complain about live streamed content via the internet which is currently not regulated. Complaints about content products and services will now be assessed against the one set of Classification Guidelines.

Consultation

75. The ACMA decided to consult as widely as possible and issued a media release inviting comment on the proposed restricted access systems declaration. A consultation paper and draft Restricted Access System Declaration 2007 was posted on the ACMA website on 26 October 2007. A period of three weeks was provided for public and industry comment. 33 stakeholders were emailed a copy of the consultation paper and draft declaration and were invited to comment on the proposed declaration. Ongoing discussions with stakeholders were also undertaken and the feedback was incorporated into the final proposal.
76. ACMA received 26 submissions commenting on the draft Restricted Access Systems Declaration 2007 from a broad range of stakeholders which are listed in the table below:

Telecommunications carriage service providers	Content service providers (& related parties)	Consumer Groups	Regulatory Bodies
<ul style="list-style-type: none"> • Australian Mobile Telecommunications Association • Telstra Corporation Limited • Optus • Vodafone Australia Limited • Hutchison Telecoms Hutchison 3G Australia 	<ul style="list-style-type: none"> • Internet Industry Association • Australian Interactive Media Industry Association • Australian Visual Software Distributors Association Ltd • Australian Subscription Television and Radio Association • The Independent Australian Radio Broadcasters Association. • Australian 	<ul style="list-style-type: none"> • New South Wales Council for Civil Liberties Inc • Consumers Telecommunications Network • Australian Privacy Foundation • Lisa Seddon citizen • Dr Karen Vered Flinders University 	<ul style="list-style-type: none"> • Australian Competition and Consumer Commission.

	Federation Against Copyright Theft <ul style="list-style-type: none"> • Internet Society of Australia • Newgency • Together online • PBL Media Pty Limited • Daily Mail and General Trust Plc • Free TV Australia Limited • Google Australia Pty Limited • Commercial Radio Australia Ltd • DMG Radio (Australia) Pty Ltd 		
--	--	--	--

77. The telecommunication carriage service provider’s position, collectively expressed via the Australian Mobile Telecommunications Association submission considers that the restricted access systems declaration ignores the millions of dollars invested by mobile carriage service providers already made and procedures developed around access restrictions under the current determination. The proposed access control system required to prevent access by unauthorised persons to the age restricted content is highly prescriptive and process oriented and goes well beyond existing requirements. It is concerned that where an applicant has previously provided evidence of age such as when they enter into a mobile phone service contract they must supply the evidence a second time when subsequently applying for access to age restricted content. The requirement for a risk analysis to be undertaken for each type of evidence used to verify an applicant’s age and the various ways in which this evidence is received and the quality assurance measures are also beyond the existing restricted access requirements for mobile phone content.

78. The internet content industry position, collectively expressed via the Internet Industry Association submission believes that the proposed model for restricting access to commercial MA15+ content with an Australian connection is unworkable and will result in low levels of compliance and cause relocation of services offshore. Australian content providers it believes will be at a comparative disadvantage to overseas competitors by the establishment of barriers which are out of step with global norms for this category of content. For example any requirement for customer identifiers or PIN access would cripple online business models for content, the provision of which is legal offline. The majority of commercial MA15+ content available on the internet is located offshore. The restricted access systems declaration will not apply to this content.

79. The ACCC supported the requirement that the provision of access to commercial MA15+ and R18+ content should rely on an ‘opt in’ requirement and a requirement that an applicant provide evidence of age. Any system that a provider was to put in place would need to be sufficiently robust to ensure that it would be difficult for people under age to access the content or pretend to be someone older.

80. Consumer groups expressed concern that records would need to be kept for children aged between 15 and 17 years who had applied to access commercial MA15+ content. It was noted that access to other types of commercial MA15+ content available at cinemas and video stores did not require personal information about children to be retained by providers of the content. Children aged between 15 and 17 years were legally entitled to access MA15+ content but were likely to be denied this entitlement because of the obligation upon them to provide evidence to verify their age. The more commonly accepted evidence of age such as a driver's licence or credit card are not available to them.
81. ACMA took into consideration the above views expressed by industry relating to the need for comparable age verification requirements with other MA15+ content, and the need to incorporate the existing restricted access arrangements for both MA15+ and R18+ content to minimise the financial burden on industry and to minimise the risk that MA15+ content providers may move offshore. Also it accepted the need to provide more flexibility where evidence of age had been provided prior to an application for access to age restricted content and requires that a risk analysis only apply to R18+ content and only to the types of evidence accepted by a content provider. The risk analysis obligation is retained to ensure consideration by providers of the risk that a child may use the identity documents of another person. Schedule 7 requires that there be a means of restricting access by others to age restricted content where access has been granted. Accordingly the need for a PIN or password or some other means of restricting access is retained. ACMA has also noted consumer concern about maintaining records of persons aged between 15 and 17 years. Records will not be required for access to commercial MA15+ content.

Conclusion and Recommendation Option

82. ACMA is proposing a new restricted access system declaration which will be technology neutral but which incorporates the platform specific differences for internet content, live streamed content and mobile phone content rather than just one type of service namely the internet and one party namely internet content host. ACMA has also proposed separate restricted access arrangements for commercial MA15+ content and R18+ content. The former will take into account the preference not to retain records about persons aged between 15 and 17 years, absence of proof of age documentation and the need for comparable age verification with access to other types of MA15+ content which is strongly argued in the submissions received from the public consultation process. The latter will take into account the need for a greater level of protection for children from R18+ content but will adopt existing approaches to restriction of access to take advantage of existing business models.
83. The ACMA proposes to adopt option 2 to make the Restricted Access System Declaration 2007 which will harmonise the regulation of existing restrictions of access to commercial MA15+ and R18+ content across communication platforms. Option 2 is intended to achieve the public interest consideration of protecting children from access to inappropriate content while not imposing undue financial

and administrative burdens on industry and to readily accommodate technological change.

Implementation and Review

84. The ACMA will make the Restricted Access Systems Declaration 2007 in line with option 2 and in accordance with section 14 of Schedule 7 to the Broadcasting Services Act. The declaration is a disallowable instrument for the purposes of section 42 of the *Legislative Instruments Act 2003*. The declaration is to commence after the commencement of Schedule 7 which is 20 January 2008.
85. Section 118 of Schedule 7 to the Broadcasting Services Act requires that within 3 years after the commencement of Schedule 7, the Minister is required to conduct a review of the operation of Schedule 7 and to determine whether Schedule 7 should be amended or repealed. The report of the review will be tabled in each House of the Parliament.
86. The ACMA intends to monitor the level of complaints for content services and the effectiveness of the new regulatory framework after implementation of the Restricted Access System Declaration 2007. Complaint information will continue to be included in ACMA's annual report and other publications. This information is also expected to be included in the review of the operation of Schedule 7.

Table 1: Summary of impact of options**Option 1**

PARTIES	COSTS	BENEFITS
Internet (stored) (approx 400)	Nil impact for R18+ content as it would continue with the existing arrangements. However, it would incur costs in applying the model to MA15+ content. (Refer to page 10 Option 1 for costs)	No change to current business model for R18+ content and able to apply this model to MA15+ content.
Mobile Portal (approx 5)	Removal of existing age restriction arrangements and the establishment of a new restricted access system for MA15+ and R18+ content. (Refer to page 10 Option 1 for costs)	
Premium SMS/MMS (approx 33)	Removal of existing age restriction arrangements and the establishment of a new restricted access system for MA15+ and R18+ content. (Refer to page 10 Option 1 for costs)	
Premium Rate (approx 50)	Removal of existing age restriction arrangements and the establishment of a new restricted access system for MA15+ and R18+ content. (Refer to page 10 Option 1 for costs)	
Telephone Sex Services (approx 2)	Removal of existing age restriction arrangements and the establishment of a new restricted access system for MA15+ and R18+ content. (Refer to page 10 Option 1 for costs)	
Live Streamed (A number operating in Australia)	Establishment of a restricted access system for MA15+ and R18+ content where no restrictions had previously applied. (Refer to page 10 Option 1 for costs)	
Consumers (approx 6.43 million internet subscribers & 19.5 million mobile phone customers)	Children aged between 15 and 17 years will lose access to MA15+ content where they do not have suitable evidence of age. Costs of establishing new restricted access system arrangements are likely to be passed on to consumers.	A restricted access system will be introduced to minimise the risk of children getting access to inappropriate live streamed content.

Table 2: Summary of impact of options continued

Option 2

CONTENT PROVIDERS	COSTS	BENEFITS
Internet (stored) (approx 400)	Costs of additional requirement to established restricted access system arrangements (Refer page 10-11 option 2 for costs)	Able to utilise the existing restricted access system business model with a small number of changes. Simplified system for access to MA15+ content which is comparable to other media. Greater available MA15+ content and increased revenue.
Mobile Portal (approx 5)	Costs of additional requirement to established restricted access system arrangements (Refer page 10-11 option 2 for costs)	Able to utilise the existing restricted access system business model with a small number of changes. Simplified system for access to MA15+ content which is comparable to other media. Greater available MA15+ content and increased revenue.
Premium SMS/MMS (approx 33)	Costs of additional requirement to established restricted access system arrangements (Refer page 10-11 option 2 for costs)	Able to utilise the existing restricted access system business model with a small number of changes. Simplified system for access to MA15+ content which is comparable to other media. Greater available MA15+ content and increased revenue.
Premium Rate (approx 50)	Costs of additional requirement to established restricted access system arrangements (Refer page 10-11 option 2 for costs)	Able to utilise the existing restricted access system business model with a small number of changes. No change to R18+ content access. R18+ content not permitted under TISSC Code.
Telephone Sex Services (approx 2)	Costs of additional requirement to established restricted access system arrangements (Refer page 10-11 option 2 for costs)	Able to utilise the existing restricted access system business model with a small number of changes.
Live Streamed (A number operating in Australia)	Cost of the establishment of a restricted access system for both MA15+ and R18+ content. (Refer page 10-11 option 2 for costs)	The MA15+ restrictions are less costly than those applied in option 1 which requires documentation of age.

<p>Consumers (approx 6.43 million internet subscribers & 19.5 million mobile phone customers)</p>	<p>Costs of additional requirement to establish restricted access system arrangements are likely to be passed on to consumers but less cost than option 1 given the minimal level of change required.</p>	<p>A restricted access system will be introduced to minimise the risk of children getting access to inappropriate live streamed content Children aged between 15 and 17 years will be able to access MA15+ content without need for identify documents.</p>
--	---	--