

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2012 No. 216**

Issued by the Authority of the Minister for Broadband, Communications  
and the Digital Economy

*Telecommunications Act 1997*

*Telecommunications Amendment Regulation 2012 (No. 1)*

Subsection 594(1) of the *Telecommunications Act 1997* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted to be prescribed by the Act, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act provides the Australian Communications and Media Authority (ACMA) with the ability to make service provider determinations. Specifically, under subsection 99(1) of the Act, the ACMA may make service provider determinations in relation to specified carriage services or specified content services. Under subsection 99(3), the ACMA can only make service provider determinations in relation to matters specified in the regulations or in section 346 of the Act (which relates to designated disaster plans).

The Amending Regulation will amend the *Telecommunications Regulations 2001* (the Principal Regulation) to enable the ACMA to make service provider determinations in relation to consumer-related interests as regards the provision of certain carriage services. Matters covered by these service provider determinations may include the issues identified in the ACMA's final report into its Reconnecting the Customer inquiry, such as requirements for clearer pricing information in advertisements, improved information about plans, increased transparency about billing and expenditure arrangements and improved complaints handling.

Details of the Amending Regulation are set out in the Attachment.

The Act specifies no conditions that need to be satisfied before the power to make the Amending Regulation may be exercised.

The Amending Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (LIA) (see paragraph 6(a) of the LIA).

The Amending Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments.

#### **Statement of compatibility with human rights**

This statement of compatibility is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The Regulation provides the ACMA with the ability to make service provider determinations in relation to consumer-related interests as regards the provision of certain carriage service.

The Regulation is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act*. It does not engage any of the applicable rights or freedoms and does not raise any human rights issues.

### **Consultation and Regulatory Impact**

As the Amending Regulation provides the ACMA with the ability to make service provider determinations in relation to consumer-related issues, consultation was only undertaken with the ACMA and the Australian Competition and Consumer Commission. Wider consultation was not considered necessary as it is open to the ACMA to consult more broadly when making service provider determinations.

In making a service provider determination, the ACMA, under section 17 of the LIA, needs to be satisfied that appropriate and reasonably practicable consultation is undertaken. The ACMA's consultation, under section 17(3) of the LIA, could involve notification, either directly or by advertisement, of bodies that, or of organisations representative of persons who, are likely to be affected by the instrument.

The ACMA, in accordance with subsection 99(4) of the Act, must consult with the Australian Competition and Consumer Commission before making a service provider determination.

The Office of Best Practice Regulation (OBPR) has confirmed that the preparation of a Regulation Impact Statement is not necessary, as the amendments have a nil or low impact on business or the economy or individuals.

If the ACMA makes a service provider determination using the amended regulation, the ACMA will be required to consult with the OBPR to determine the impact on business or the economy or individuals and whether a Regulation Impact Statement is necessary.

Authority: Section 594 of the  
*Telecommunications Act 1997*

**ATTACHMENT****Details of the Amending Regulation****Section 1 – Name of Regulation**

This section provides that the title of the Amending Regulation is the *Telecommunications Amendment Regulation 2012 (No. 1)*.

**Section 2 – Commencement**

This section sets out that the Amending Regulation will commence on the day after it is registered on the Federal Register of Legislative Instruments.

**Section 3 – Amendment of *Telecommunications Regulations 2001***

This section sets out that Schedule 1 to the Amending Regulation amends the Principal Regulations.

**Schedule 1 – Amendment**

Item [1] inserts new Division 3.4 (Fixed or mobile voice or data carriage services) and new regulation 3.13 (Fixed or mobile voice or data carriage services) into the Principal Regulations.

New subregulation 3.13(1) sets out that the regulation applies to the supply of certain carriage services, namely:

- a standard telephone service;
- a public mobile telecommunications service; and/or
- a carriage service that enables customers to access the internet.

The carriage services specified in this provision reflect the ‘eligible carriage service providers’ that the Telecommunications Industry Ombudsman (TIO) has jurisdiction over, as provided in section 127 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*. There are parallels with the matters the TIO has jurisdiction over and the matters the proposed service provider determinations will cover, as both are concerned with the protection of consumer interests.

New subregulation 3.13(2) provides the ACMA with the ability to make service provider rules in relation to a customer’s interests. As illustrated in the examples after new subregulation 3.13(2) (which are not exhaustive), there are a number of different consumer-related matters that the service provider determinations could cover. In particular, it is noted that service provider determinations would be able to cover issues in relation to potential as well as existing customers.

While the provision in new subregulation 3.13(2) is quite broad, any service provider determination would need to be made in accordance with section 99 of the Act, which requires the determination to be made in relation to *specified* carriage services (subsection 99(1)) as well as within relevant constitutional limitations (subsection 99(2)). Any service provider determination made by the ACMA would be a disallowable instrument (subsection 99(6)).