

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2012 No. 286**

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

*Telecommunications Act 1997*

*Telecommunications Amendment Regulation 2012 (No. 2)*

#### **Purpose**

Section 594 of the *Telecommunications Act 1997* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, 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. Service provider determinations set out rules that apply to telecommunications providers in relation to the supply of specified services. Specifically, under subsection 99(1) of the Act the ACMA may make a written service provider determination 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 disaster plans).

Division 3.2 of Part 3 of the *Telecommunications Regulations 2001* (the Principal Regulations) broadly allows the ACMA to make a determination relating to the collection of relevant information and the verification of the identity of customers of prepaid carriage services (for example, prepaid mobile telephone services). However, the Principal Regulations specify various limits and requirements in relation to the making of such a determination. The current relevant determination made by the ACMA is the *Telecommunications (Service Provider – Identity Checks for Pre-paid Public Mobile Telecommunications Services) Determination 2000 (the Determination)*.

The Determination sets out rules that apply to carriage service providers in relation to the supply of certain prepaid public mobile telecommunications services within the limits of the Principal Regulations. Broadly, the rules relate to the collection of relevant information and the verification of the identity of customers of the service.

Under section 313 of the Act, service providers must “do their best” to prevent their networks and facilities from being used for, or in relation to, the commission of offences, and provide government agencies with such help as is reasonably necessary for law enforcement and other purposes. Relevant government agencies may lawfully obtain information about telecommunications customers under legislation such as the *Telecommunications (Interception and Access) Act 1979*. The information is also used for critical services such as the emergency call service and the emergency alert system.

The purpose of the Amendment Regulation is to amend the Principal Regulations in order to:

- provide the ACMA with a greater degree of discretion in the matters the Determination may relate to;
- allow the ACMA to amend the Determination to introduce proposed new ways in which a customer's identity can be verified; and
- repeal redundant provisions and make some minor corrections.

The first two points are explained further below.

The Principal Regulations are currently very prescriptive and, therefore, limit the ACMA's ability to update the Determination in response to technological and market changes. The Amendment Regulation provides the ACMA with greater flexibility to respond to these changes in the future and determine the best approach to implementing identity verification requirements. This will also reduce the likelihood of requiring minor technical amendments to the Principal Regulations.

Providing the ACMA with greater discretion is consistent with the ACMA's role as the telecommunications regulator and in determining the details of the obligations that apply to industry. It is also consistent with section 99 of the Act which provides for the ACMA to make a written determination setting out specific rules that apply to service providers but within the general limitation that the ACMA must not make a determination unless it relates to a matter specified in the regulations (or in section 346).

The Amendment Regulation will also enable the ACMA to introduce proposed new identity verification methods. It will do this by enabling the ACMA to require the collection of information that would assist law enforcement and national security investigations, such as date of birth, the type of identification method and the identity document used, the outcome of the verification and any verification receipt.

The Amendment Regulation does not affect the provisions in the Principal Regulations dealing with other types of service provider determinations.

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

The Amendment Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

### Background

Mobile phone service providers and third party retailers currently check the identity of a purchaser of a prepaid mobile service at the point of sale in accordance with the Determination. This is a face-to-face process primarily carried out using a hardcopy form.

A range of concerns have been expressed about the current arrangements. Industry has expressed concern about the cost and the risk of non-compliance by third party retailers. Law enforcement and security agencies have expressed concern about the accuracy of the information collected and problems associated with retrieving the

information. There have also been concerns expressed from a consumer's perspective, including concerns with providing personal details twice (once at the shopfront and once when activating the service), as well as the privacy implications of providing identification in a retail environment.

The Principal Regulations currently limit the ACMA's flexibility to introduce new ways in which service providers can verify a customer's identity.

To address the concerns expressed by stakeholders, the Department of Broadband, Communications and the Digital Economy has worked with industry to develop a range of new verification methods that can be used as an alternative to the current point of sale process. The new methods will allow service providers to verify a customer's identity online, over the phone or face-to-face when activating the service.

Under the proposed arrangements, an ACMA determination could require a service provider to collect the customer's name, address and other information required for the Integrated Public Number Database, as well as date of birth, and verify the customer's identity by:

- verifying the details of a government-issued document using an online service such as the national Document Verification Service;
- confirming the existence of a bank account, a certain type of email address, or an existing post-paid account;
- completing the purchase with a credit card or EFTPOS;
- using a signed courier delivery; or
- sighting identification at the service provider's shopfront.

In order to implement the new arrangements, and ensure that they can accommodate future changes, amendments are required to the Principal Regulations and the Determination.

#### Regulation Impact Statement

A Regulation Impact Statement is being prepared to assess the impacts of the proposed new verification methods.

The Office of Best Practice Regulation has confirmed that a Regulation Impact Statement is not required for the Amendment Regulation as it has no impact on business, the economy or individuals. It merely specifies the matters upon which the ACMA may make a service provider determination, repeals redundant provisions and makes some minor corrections.

#### Statement of compatibility with human rights

A statement of compatibility has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* and is included at **Attachment A**.

## Consultation

The proposed changes to the identity verification requirements were developed by a working group comprising representatives of the Department of Broadband, Communications and the Digital Economy, the Australian Mobile Telecommunications Association, Telstra, Optus, Vodafone Hutchison Australia, the Attorney-General's portfolio, the Office of the Australian Information Commissioner and the ACMA. The department consulted the working group on the proposed amendments to the Principal Regulations.

The department has also consulted consumer groups (through the Australian Communications Consumer Action Network) and mobile virtual network operators on the details of the proposal.

The groups are generally supportive of the proposal subject to the implementation details. Industry has expressed concern that there should be cost effective access to verification services, particularly the national Document Verification Service. Consumer groups have emphasised the need to continue supporting groups who may have limited identification documents and to protect consumers' privacy.

In response to the concerns expressed by industry, it is proposed that industry would be able to continue with the current arrangements in the short-term or adopt the new verification methods as they become available. The ACMA will consult on further implementation details during the development of the amendments to the Determination.

The proposal takes into account the needs of groups who may have limited identification documents and has been designed to improve the privacy of prepaid mobile customers. The department commissioned an independent Privacy Impact Assessment and has included provisions dealing with privacy in the Amendment Regulation.

## Details of the Amendment Regulation

Details of the Amendment Regulation are set out in **Attachment B**.

**ATTACHMENT A****Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

***Telecommunications Amendment Regulation 2012 (No. 2)***

This legislative instrument 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 2011*.

**Background**

Section 99 of the *Telecommunications Act 1997* (the Act) confers on the Australian Communications and Media Authority (ACMA) the power to make service provider determinations setting out rules that apply to service providers supplying specified carriage services or specified content services. Determinations must relate to designated disaster plans (section 346) or a matter specified in the regulations.

Section 594 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act provides for the creation and maintenance of an Integrated Public Number Database by Telstra or another person (section 472 and Part 4 of Schedule 2). It also authorises the use and disclosure of information held in that database for purposes such as the provision of directory assistance services, the publication and maintenance of a public number directory, dealing with matters raised by a call to an emergency service number (section 285), or giving emergency warnings (section 285A, Division 3B of Part 13).

Part 14 of the Act provides that the ACMA, carriers and carriage service providers must:

- do their best to prevent telecommunications networks and facilities from being used to commit offences;
- give authorities such help as is reasonably necessary for the purposes of:
  - enforcing the criminal law and laws imposing pecuniary penalties;
  - protecting the public revenue; and
  - safeguarding national security.

Giving help in this context relevantly includes the disclosure or use of information or a document where the disclosure or use is required or authorised by or under law or under warrant (see sections 280 and 313).

It further provides that a carriage service provider may suspend the supply of a carriage service if requested to do so by a senior police officer to prevent loss of life, the infliction of serious personal injury, serious damage to property or self-harm.

Division 3.2 of Part 3 of the *Telecommunications Regulations 2001* (the Principal Regulations) in its current form specifies that the ACMA may make a determination preventing a service provider from supplying a person with a prepaid carriage service unless the service provider collects certain information from the person and undertakes verification and identity checks on the person. The manner in which this may be undertaken is specified in considerable detail in the Principal Regulations and focuses primarily on the point of sale.

The information to be collected is limited to:

- information required for the Integrated Public Number Database;
- information about how many public numbers are currently issued to the customer for use in connection with the supply of the same kind of prepaid carriage service; and
- where a customer is purchasing a prepaid mobile service on behalf of an organisation, information identifying that organisation.

Under this Division, the ACMA may also currently make a determination about a service provider not allowing a person to use a public number for a prepaid carriage service if the service provider knows that the person has given information that is false or misleading.

Additionally, the Division currently allows the ACMA to make a determination about a service provider not allowing a person to use a public number for a prepaid carriage service if:

- the service provider has an incomplete record of information about the person, or suspects on reasonable grounds that the information is incorrect; and
- the service provider has been asked in writing by a senior officer of a criminal law enforcement agency not to allow the person to use the number because:
  - the officer has a suspicion on reasonable grounds that the person has used, or is likely to use, the service to engage in serious criminal conduct; and
  - the action is necessary for the purposes of: enforcing the criminal law and laws imposing pecuniary penalties; assisting the enforcement of the criminal laws in force in a foreign country; protecting the public revenue; or safeguarding national security.

The *Telecommunications (Service Provider - Identity Checks for Pre-paid Public Mobile Telecommunications Services) Determination 2000* (the Determination) was

made pursuant to section 99 of the Act and Division 3.2 of Part 3 of the Principal Regulations.

This special regime for prepaid mobile carriage services has been put in place because there is no commercial driver for service providers to check the identity of prepaid customers. This is in contrast to the case of customers of post-paid telecommunications services where service providers have an incentive to undertake identity checks for credit management purposes. The identification information sought to be obtained from customers of prepaid mobile carriage services under this Determination is thus already generally held by service providers in relation to customers of post-paid carriage services.

### **Overview of the legislative instrument**

The *Telecommunications Amendment Regulation 2012 (No. 2)* (the Amendment Regulation) principally amends Division 3.2 of Part 3 of the Principal Regulations in order to:

- provide the ACMA with a greater degree of discretion in the matters the Determination may relate to; and
- allow the ACMA to amend the Determination to introduce proposed new ways in which a customer's identity can be verified.

The Amendment Regulation also repeals redundant provisions and makes some minor corrections.

The amendments to Division 3.2 seek to allow the Determination to be amended to address a range of concerns about the current arrangements from industry, law enforcement and security agencies, and consumers. Concerns include:

- cost;
- risk of non-compliance by third party retailers currently responsible for collecting the identifying information;
- problems with information accuracy and retrieval;
- difficulties for some customers (such as minors) in satisfying the identity checks;
- the provision of personal details twice (once at the shopfront and once when activating the service); and
- the privacy implications of providing identification in a retail environment.

To address the concerns expressed by stakeholders, the Department of Broadband, Communications and the Digital Economy has worked with industry to develop a range of new verification methods that can be used as an alternative to the current point of sale process. The new methods will allow service providers to verify a customer's identity online, over the phone or face-to-face when activating the service.

Under the proposed arrangements, the Determination could require a service provider to collect the customer's name, address and other information required for the Integrated Public Number Database, as well as date of birth, and verify the customer's identity by:

- verifying the details of a government-issued document using an online service such as the national Document Verification Service;
- confirming the existence of a bank account, a certain type of email address, or an existing post-paid account;
- completing the purchase with a credit card or EFTPOS;
- using a signed courier delivery; or
- sighting identification at the service provider's shopfront.

While much of the detail of the proposed arrangements will be set out in an amended Determination, the amendments to the Principal Regulations are required in order to enable the amended Determination to be made.

### **Human rights implications**

#### ***Right to freedom from arbitrary or unlawful interference with privacy***

Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR) (and Article 16 of the *Convention on the Rights of the Child* and Article 22 of the *Convention on the Rights of Persons with Disabilities*) protects the right to freedom from arbitrary or unlawful interference with privacy. This right needs to be considered in the context of the Amendment Regulation.

The Amendment Regulation clearly authorises the collection and storage of personal information. However, to the extent that the Amendment Regulation could be said to authorise an interference with privacy, that interference will be neither unlawful nor arbitrary. It will not be "unlawful" because collection will be provided for and circumscribed by the Amendment Regulation and the Determination. It will not be "arbitrary" because the Amendment Regulation limits the information that a determination may require to be obtained from a customer to:

- the minimum amount of information that is reasonably necessary to identify a customer (subparagraph 3.2(3)(a)(i));
- information about the customer's existing carriage services (subparagraph 3.2(3)(a)(iii)); and
- information about what the customer proposes to use the carriage service for (such as residential, business, government or charitable use) (paragraph 3.2(3)(b)).

In terms of the information that may be recorded and kept, while this extends to the information obtained when verifying the identity of a customer (including the type of



document produced and information about existing services), as well as intended usage, the identifying number on a government document may not be recorded and kept (subparagraph 3.2(3)(c)(i)).

It is proposed that the Determination will include, as part of the minimum amount of information that is reasonably necessary to identify the customer, the date of birth of the customer. This information is not required to be collected under the current Determination. It is proposed to collect this information as law enforcement and security agencies have advised that it allows searches of service provider data stores to be more accurate and targeted. It therefore facilitates their law enforcement and national security functions and reduces the risk of targeting the wrong person.

The Amendment Regulation allows the Determination to require carriage service providers to find out what other carriage services the customer has (subparagraph 3.2(3)(a)(iii)). This relates to the existing requirement of the Determination for carriage service providers to record the number of other activated prepaid mobile services (if any) supplied to a customer and to sight additional identification documents if the customer informs the provider that they have five or more activated prepaid mobile services. This requirement exists as it is more common for those involved in unlawful activity to obtain multiple carriage services, and particularly multiple prepaid mobile carriage services. The provision will also cover the proposed option to verify a customer's identity by confirming the details of an existing post-paid account.

Information about what the customer proposes to use the carriage service for (such as residential, business, government or charitable use) (paragraph 3.2(3)(b)) is also currently collected both for the Integrated Public Number Database and for law enforcement and national security purposes. This information assists law enforcement and security agencies in their investigations and allows them to narrow their inquiries. For instance, if a carriage service is used for business purposes, agencies will know that it may be used by multiple people and that some call records may not be of interest.

The Amendment Regulation also allows the Determination to require service providers to destroy the information that they have collected if the destruction is reasonable, including destruction when the information is no longer required by the carriage service provider (paragraph 3.2(3)(d)). A determination cannot currently deal with this issue. It is proposed that the Determination will specify a time frame (or time frames) within which the information (or parts of that information) will be required to be destroyed (for example a number of years after a prepaid mobile carriage service account becomes inactive). The ACMA will consult relevant stakeholders to determine the appropriate period for retention. The aim is to ensure that information is not retained when it is no longer required. National Privacy Principle 4.2 in the *Privacy Act 1988* also imposes a requirement on organisations to take reasonable steps to destroy or permanently de-identify personal information if it is no longer needed for any purpose for which the information may be used or disclosed under the *Privacy Act 1988*.

Further to the safeguards included in the Amendment Regulation, it is important to note that Part 13 of the Act is directed to protecting the confidentiality of personal information held by service providers. The disclosure or use of such information is

prohibited except in limited circumstances such as for purposes relating to the enforcement of the criminal law, assisting the ACMA to carry out its functions or powers, or providing emergency warnings. In addition, Part 13 imposes a range of record-keeping requirements on service providers in relation to authorised disclosures or uses of information. The Information Commissioner has the function of monitoring compliance with, and reporting to the Minister, in relation to these record-keeping requirements and on whether the records indicate compliance with limitations imposed on disclosure and use of personal information held by service providers.

In addition to these protections, the *Privacy Act 1988* requires service providers to inform individuals about how the information collected will be used, ensure the physical security of the personal information held, and allow access to, and correction of, that information amongst other things.

The Amendment Regulation, together with the amended Determination to be made under the Amendment Regulation, is also expected to enhance the privacy protections accorded to individuals in the following ways:

- providing prepaid mobile customers with a range of choices about how they can verify their identity;
- reducing the number of times that a customer must provide the same personal information about themselves; and
- eliminating the risk of loss or mishandling of paper forms containing personal information in the current system by moving to an electronic system and eliminating the involvement of retailers.

In conclusion, the collection, use, storage and disclosure of personal information enabled by the Amendment Regulation are neither “unlawful” nor “arbitrary”. The information is collected for the legitimate objectives of law enforcement and national security. The type of personal information authorised to be collected, and the safeguards included in the Act and Amendment Regulation around the subsequent use and disclosure of that personal information, are reasonable, necessary and proportionate to these objectives.

Further, it should be noted that a determination is a disallowable instrument and will therefore be subject to Parliamentary scrutiny and require its own statement of compatibility. This provides a further safeguard against the occurrence of any arbitrary interference with privacy.

### ***Right to freedom of expression***

Article 19(2) of the ICCPR (and Article 13 of the *Convention on the Rights of the Child* and Article 21 of the *Convention on the Rights of Persons with Disabilities*) protects the right to freedom of expression, including the right to seek, receive and impart information and ideas through any media of a person’s choice. This right needs to be considered in the context of that part of the Amendment Regulation that authorises a determination to require a service provider to prevent the use of a prepaid mobile carriage service if:

- a customer fails to verify his or her identity, including by giving false or misleading information; or
- an authorised law enforcement officer gives the carriage service provider a written request to prevent a person using a carriage service that states that action is necessary for the purposes of:
  - enforcing the criminal law and laws imposing pecuniary penalties;
  - assisting the enforcement of the criminal laws in force in a foreign country;
  - protecting the public revenue; or
  - safeguarding national security.

This power, which exists in a similar form in the current Principal Regulations, clearly authorises a restriction on the freedom to express oneself using a prepaid mobile carriage service unless certain identifying information is provided and a person's identity is verified in accordance with the Determination. However, the restrictions imposed are necessary for the purposes of law enforcement and national security.

One of the objectives of the Act, and responsibilities imposed on service providers, is to prevent telecommunications networks and facilities from being used in, or in relation to, the commission of offences against the laws of the Commonwealth or of the States and Territories. This objective goes to law enforcement and preventing threats to national security.

Requiring individuals who use telecommunications networks and facilities to disclose their identity is one basic and crucial way to minimise the risk of telecommunications networks from being used in, or in relation to, the commission of offences. It also assists law enforcement agencies to identify and apprehend individuals who do use, or attempt to use, telecommunications networks and facilities in, or in relation to, the commission of offences. It is reasonable, necessary and proportionate to give effect to the legitimate law enforcement and national security objectives discussed above to make the use of prepaid mobile carriage services conditional upon providing the minimum amount of information that is reasonably necessary to identify the customer.

Preventing the use of a prepaid mobile carriage service by a person in circumstances where an authorised law enforcement officer considers that this is necessary to prevent unlawful activity or to enforce the criminal law is also a reasonable, necessary and proportionate restriction on the freedom of expression.

The Amendment Regulation, together with the amended Determination to be made under the Amendment Regulation, is also expected to enhance the freedom of expression of certain groups of people (such as minors and people in remote and indigenous communities) by expanding the range of ways in which they can verify their identity. It is anticipated that under the new arrangements 99 per cent of prepaid mobile customers will be able to verify their identity online or over the phone, while retaining the option to verify their identity in person.

**Conclusion**

This legislative instrument is compatible with human rights. Any interference with privacy is not arbitrary and is provided for by law. The restrictions imposed on freedom of expression are provided for by law and are necessary for the purposes of law enforcement and national security.

**ATTACHMENT B****Details of the *Telecommunications Amendment Regulation 2012 (No. 2)*****Section 1 – Name of regulation**

This section provides that the name of the Amendment Regulation is the *Telecommunications Amendment Regulation 2012 (No. 2)*.

**Section 2 – Commencement**

This section provides that the Amendment Regulation commences on the day after it is registered.

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

This section provides that Schedule 1 amends the Principal Regulations.

**Schedule 1 – Amendments**

**Item 1** repeals regulations 1.3 to 1.6 as those regulations have taken effect and are no longer required.

**Item 2** repeals the definition of “criminal law-enforcement agency” in regulation 1.7. This definition is out of date and is now covered by the definition of “authorised law enforcement officer” in new subregulation 3.2(4).

**Item 3** amends the heading of Part 3 from “Service providers” to “Service provider determinations” to more accurately reflect the content of that Part.

**Item 4** amends regulation 3.1 to more precisely describe the purpose of Part 3. The purpose of the Part is to specify the matters to which a service provider determination, made under subsection 99(1) of the Act, may relate.

**Item 5** repeals regulation 3.2 which contains a number of definitions. Some of the definitions are no longer required while others are covered by new regulation 3.2.

**Item 6** replaces Division 3.2 with a new Division 3.2 with the following provisions relating to prepaid mobile carriage services:

**New subregulation 3.2(1)** provides that new regulation 3.2 relates to the supply of prepaid mobile carriage services.

**New subregulation 3.2(2)** states that a carriage service is a “prepaid mobile carriage service” if:

- (a) any payment for using the service is made before the service is used;
- (b) the customer has not been provided with an account for the service after it has been used (this is in contrast to a post-paid service where the customer is provided with an account or bill after using the service); and

- (c) the service is not a fixed-line carriage service (“fixed-line carriage service” is defined in new subregulation 3.2(4)).

The new subregulation updates the definition of “pre-paid carriage service” currently in regulation 3.2 to make it clear that it includes a prepaid mobile carriage service that is provided to a customer at no cost (for example, as part of a promotion).

It also updates the definition to clearly limit the matters specified in the Principal Regulations (and therefore the operation of the Determination) to prepaid carriage services that are not fixed-line carriage services. In addition to prepaid mobile phones, the definition would include services such as a mobile broadband service.

The Amendment Regulation also changes the existing definition of “pre-paid carriage service” so that it is not limited to a prepaid service that has a public telephone number associated with it. Many prepaid services have a mobile telephone number even though they are not used as a mobile telephone – for example, mobile broadband services. However, it is technically possible for service providers to supply such prepaid mobile carriage services without telephone numbers. The ACMA will be able to specify which prepaid mobile carriage services will be subject to the identity verification requirements in the Determination.

**New subregulation 3.2(3)** specifies the matters upon which the ACMA may make a service provider determination. The provision provides the ACMA with a greater degree of discretion in the matters the Determination may relate to. It will allow the existing provisions of the Determination to continue while providing the ACMA with the ability to amend the Determination to introduce alternative verification methods.

The Principal Regulations in effect currently provide that the Determination can only require the collection of information that is required for the Integrated Public Number Database or the number of prepaid services that have been issued to a customer or, in the case of a customer that is not an individual, information identifying the customer (see current subregulations 3.3(3) and 3.5(3)). The Integrated Public Number Database is a centralised database of all Australian telephone numbers and associated subscriber information. The database provides information to support a range of services, including the Triple Zero emergency call service, the dissemination of telephone-based emergency warnings and investigations by law enforcement and security agencies. Service providers are required to provide customer information to the database manager for inclusion in the database. Information in the database includes customer name, the service address and the details of the relevant service provider.

The amendments will remove these restrictions to enable the ACMA to introduce proposed new identity verification methods and require the collection of other information (including information that is not required for the Integrated Public Number Database), such as date of birth, the type of

identification method and the identity document used, the outcome of the verification and any verification receipt.

**New paragraph 3.2(3)(a)** provides that the ACMA may make a service provider determination in relation to verifying the identity of a customer who the carriage service provider supplies with the carriage service, including by doing any of the following:

- (i) obtaining from the customer the minimum amount of information that is reasonably necessary to identify the customer (for a company or other non-individual, this could include an Australian Business Number, Australian Company Number or Australian Registered Body Number);
- (ii) using the national Document Verification Service, or a similar service, to check whether a document produced by the customer as evidence of identity is authentic, accurate and up-to-date;
- (iii) finding out what other carriage services (if any) the customer has (this covers the existing requirement in the Determination to ascertain the number of other prepaid services that the customer has, as well as the proposed option to verify a customer's identity by confirming the details of an existing post-paid account).

**New paragraph 3.2(3)(b)** provides that the ACMA may make a service provider determination in relation to obtaining from the customer information about what the customer proposes to use the carriage service for (such as residential, business, government or charitable use). This reflects the existing requirements of the Determination, as well as the requirements relating to the Integrated Public Number Database.

**New subparagraph 3.2(3)(c)(i)** provides that the ACMA may make a service provider determination in relation to recording and keeping information that is obtained under new paragraph 3.2(3)(a), including the type of document produced as evidence of identity, but not including the identifying number of a government document. "Identifying number of a government document" is defined in new subregulation 3.2(4). New subparagraph 3.2(3)(c)(i) protects the privacy of customers by preventing the ACMA determination from requiring service providers to record or keep numbers such as Medicare numbers, passport numbers and driver's licence numbers provided by customers for identity verification purposes.

**New subparagraph 3.2(3)(c)(ii)** provides that the ACMA may make a service provider determination in relation to recording and keeping information that is obtained under new paragraph 3.2(3)(b) (intended use of the service).

**New subparagraph 3.2(3)(c)(iii)** provides that the ACMA may make a service provider determination in relation to recording and keeping information that the carriage service provider possesses about the supply of the carriage service to the customer (such as any public number issued in

connection with the carriage service and the name of the carriage service provider). This information assists in identifying the service.

**New paragraph 3.2(3)(d)** provides that the ACMA may make a service provider determination in relation to destroying information that is recorded under new paragraph 3.2(3)(c) if the destruction is reasonable, including destruction when the information is no longer required by the carriage service provider.

**New paragraph 3.2(3)(e)** provides that the ACMA may make a service provider determination in relation to preventing the use of a carriage service if:

- (i) a customer fails to verify his or her identity, including by giving false or misleading information; or
- (ii) an authorised law enforcement officer gives the carriage service provider a written request to prevent a person using a carriage service that states that action is necessary for a purpose mentioned in subsection 313(3) or (4) of the Act.

This reflects current provisions of the Principal Regulations. “Authorised law enforcement officer” is defined in new subregulation 3.2(4).

**New paragraph 3.2(3)(f)** provides that the ACMA may make a service provider determination in relation to advising customers of the effect of the determination. This reflects current regulation 3.10.

Examples of matters that may be included in a determination in accordance with new subregulation 3.2(3) are provided at the end of the subregulation.

**New subregulation 3.2(4)** defines several terms used in new regulation 3.2.

“Authorised law enforcement officer” is defined as “an authorised officer of a criminal law-enforcement agency within the meaning of the *Telecommunications (Interception and Access) Act 1979*.” The definition has been updated to reflect the transfer of definitions from subsection 282(10) of the *Telecommunications Act 1997* to the *Telecommunications (Interception and Access) Act 1979* by the *Telecommunications (Interception and Access) Amendment Act 2007*.

“Fixed-line carriage service” is defined as a carriage service that is supplied using a line to premises occupied or used by an end-user, or a service that facilitates the supply of such a service. This reflects the definition used in the *Telecommunications Act 1997*.

“Identifying number of a government document” is defined as a unique identifying number of a government document, such as a driver’s licence, Medicare card or passport (these documents are verifiable through services such as the national Document Verification Service). The definition excludes a receipt or transaction number, an Australian Business Number, an Australian Company Number or an Australian Registered Body Number.



**Item 7** re-makes current regulation 3.11 as regulation 3.14 in new Division 3.5. The regulation allows the ACMA to make a determination requiring carriage service providers to publish and distribute information relating to the telecommunications industry. As the regulation is not specific to prepaid mobiles, it is being moved into a separate division. The item also makes minor updates to the language of the regulation.

**Item 8** repeals regulation 5.1. The regulation (which is unrelated to prepaid mobiles) prescribes authorities for the purposes of subsection 282(10) of the *Telecommunications Act 1997*. As stated above, that section of the Act has been repealed and is now covered by the *Telecommunications (Interception and Access) Act 1979*.