



# Telecommunications (Backup Power and Informed Decisions) Service Provider Determination 2014

*Telecommunications Act 1997*

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The AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY makes this Service Provider Determination under subsection 99(1) of the *Telecommunications Act 1997*.

Dated *12<sup>th</sup> August 2014*

*Chris Chapman*  
[signed]  
Member

*Richard Bean*  
[signed]  
Member / ~~General Manager~~

Australian Communications and Media Authority

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## Part 1 - Preliminary

### 1 Name of Determination

This Determination is the *Telecommunications (Backup Power and Informed Decisions) Service Provider Determination 2014*.

*Note* All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.comlaw.gov.au>.

### 2 Commencement

This Determination commences on 2 October 2014.

### 3 Object

- (1) The object of this Determination is to help protect the interests of customers of carriage service providers that supply specified carriage services which will not operate during a power failure unless a backup power service is supplied.
- (2) This Determination achieves this object by requiring the providers to do the following, if a customer has requested them to supply a specified carriage service to the customer's premises:
  - (a) to give the customer, before entering into any agreement for the supply of the specified carriage service, sufficient information about what a backup power service supplied by means of a BPSU would do, and not do, during a power failure, which:
    - (i) may be relied upon by the customer to make an informed decision about whether or not to have the backup power service; and
    - (ii) will ensure that the customer is made aware of the limitations of the backup power service; and
  - (b) to make and retain records verifying that the customer was given such information before entering into the agreement.

*Note* For the purposes of subsection 99(3) of the Act, this Determination relates to a matter specified in subregulation 3.13(2) of the *Telecommunications Regulations 2001*.

### 4 Definitions

In this Determination:

**ABN** has the meaning given in section 41 of the *A New Tax System (Australian Business Number) Act 1999*.

**ACMA** means the Australian Communications and Media Authority.

**Act** means the *Telecommunications Act 1997*.

**backup power service** means a service supplied by a carriage service provider that enables the continued operation of a specified carriage service for a limited period of time during a power failure.

**BPSU** means a battery backup power supply unit supplied by NBN Co that may be installed at a customer's premises and activated, in accordance with arrangements made by a carriage service provider, for the primary purpose of supplying a backup power service.

**business** has the meaning given in section 41 of the *A New Tax System (Australian Business Number) Act 1999*.

**customer** has the meaning given in section 6.

**fibres-to-the-premises architecture** means an optical fibre cable that reaches all the way to a customer's premises, allowing for the high speed carriage of communications.

**National Broadband Network** has the meaning given in section 5 of the *National Broadband Network Companies Act 2011*.

**NBN Co** has the meaning given in section 5 of the *National Broadband Network Companies Act 2011*.

**NBN connection box** means a network termination device supplied by NBN Co that:

- (a) is installed at a customer's premises; and
- (b) has voice (UNI-V) and data (UNI-D) ports to which customer equipment may be connected;

for the supply of a specified carriage service.

**specified carriage service** has the meaning given in section 5.

*Note* A number of expressions used in this Determination are defined in the Act, including carriage service, carriage service provider, carrier, customer equipment, emergency service number and standard telephone service.

## 5 Specified carriage service

In this Determination, a carriage service that is, or is to be, supplied to a customer is a **specified carriage service** if the carriage service:

- (a) is a standard telephone service irrespective of whether or not the service is, or is to be, supplied as part of, or in conjunction with, another carriage service or some other kind of service; and
- (b) is, or is to be, supplied to the customer's premises by means of the National Broadband Network using fibres-to-the-premises architecture.

*Note* One effect of paragraph (a) is that this Determination applies to a carriage service provider who has been requested to supply a standard telephone service to the customer's premises even if the provider is not offering to supply a backup power service by means of a BPSU or any other form of backup power service.

## 6 Customer

- (1) In this Determination, subject to subsection (2), a person is a **customer** of a carriage service provider that supplies specified carriage services if the person:
  - (a) has requested the provider to supply a specified carriage service to the person's premises; or

- (b) has entered into an agreement with the provider for the supply of a specified carriage service to the person's premises.
- (2) A person is not a customer of such a carriage service provider if the person:
  - (a) carries on a business and has an ABN for that business; or
  - (b) is itself a carriage service provider or a carrier.

## **Part 2 – Rules relating to informing customers about backup power services**

### **7 Application of Part 2**

This Part applies to a carriage service provider if a customer has requested the provider to supply a specified carriage service to the customer's premises.

### **8 Obligation to inform before entering into an agreement for the supply of a specified carriage service**

- (1) The carriage service provider must not enter into an agreement with the customer to supply a specified carriage service to the customer's premises unless the provider has:
  - (a) informed the customer that the ability to use the specified carriage service to make or receive any calls during a power failure, including calls to an emergency service number, depends on whether a backup power service is supplied to the customer's premises by means of a BPSU; and
  - (b) given the customer accurate, clear and concise information concerning:
    - (i) the impact that a power failure would have on the operation of the specified carriage service if a backup power service is not supplied to the customer's premises, particularly in respect of an end-user's inability to use the specified carriage service during a power failure:
      - (A) to make any calls to an emergency service number; or
      - (B) to make any other calls or receive any calls; and
    - (ii) the impact that a power failure would have on the operation of the specified carriage service if a backup power service is supplied to the customer's premises by means of a BPSU, particularly in respect of:
      - (A) the estimated period of time the backup power service would enable the continued operation of the specified carriage service; and
      - (B) the fact that customer equipment for use in connection with the specified carriage service will not operate during a power failure unless:
        - (i) it has its own backup power supply; or
        - (ii) it is a standard corded telephone device that is not dependent on mains power and is connected to a voice (UNI-V) port on the NBN connection box designated for the supply of the specified carriage service.
- (2) If the customer enters into an agreement with the carriage service provider for the supply of a specified carriage service to the customer's premises, the provider must:

- (a) obtain from the customer an acknowledgement that the customer was given the information described in subsection (1) prior to entering into the agreement; and
- (b) make a record of the following:
  - (i) a description of the information that was given to the customer in accordance with subsection (1);
  - (ii) the acknowledgement obtained from the customer in accordance with paragraph (a), including the date the acknowledgement was obtained;
  - (iii) the customer's decision about whether or not to have the backup power service; and
  - (iv) the date the provider entered into the agreement with the customer for the supply of the specified carriage service.

## **9 Provision of information**

The following does not constitute the giving of information by a carriage service provider to a customer for the purposes of this Part:

- (a) giving information to a customer as part of a standard form of agreement formulated by a carriage service provider for the purposes of section 479 of the *Telecommunications Act 1997*; or
- (b) making information available to a customer as part of marketing, promotional or advertising material by broadcast, publication or by any other means.

## **Part 3 – Rules relating to the making, retention and provision of records**

### **10 Making of records**

Where a provision of this Determination requires a carriage service provider to make a record, the record must be in writing or in such an electronic form that will enable the ACMA to verify the provider's compliance with that provision.

### **11 Retention of records**

Where a provision of this Determination requires a carriage service provider to make a record, the provider must retain that record for at least:

- (a) 6 years after the creation of the record; or
- (b) 6 months after the provider ceases to supply the specified carriage service to the customer to which the record relates;

whichever is the earlier.

### **12 Provision of records to the ACMA**

A carriage service provider must, within one month or such longer period as the ACMA allows after receiving a written notice from the ACMA issued pursuant to this section, provide the ACMA with copies of any record made in accordance with this Determination and described in the notice.