

EXPLANATORY STATEMENT

Prepared by the Australian Communications and Media Authority

Telecommunications (Consumer Protection and Service Standards) Act 1999

TELECOMMUNICATIONS (EMERGENCY CALL SERVICE) AMENDMENT DETERMINATION 2014 (No.1)

Outline

The Australian Communications and Media Authority (the **ACMA**) has made the *Telecommunications (Emergency Call Service) Amendment Determination 2014 (No.1)* (the **Amendment Determination**) under subsection 147(1) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the **Act**).

Subsection 147(1) of the Act provides that the ACMA must make a written determination imposing requirements on carriers, carriage service providers (**CSPs**) and/or emergency call persons in relation to emergency call services (**ECS**). In accordance with subsection 147(1), the ACMA made the *Telecommunications (Emergency Call Service) Determination 2009* (the **ECS Determination**).

Subsection 33(3) of the *Acts Interpretation Act 1901* (the **AIA**) provides that where an Act confers a power to make a legislative instrument, the power shall be construed to include a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument. The power to make a written determination under subsection 147(1) therefore also includes the power to amend the instrument on the basis of subsection 33(3) of the AIA.

Background

The ECS in Australia operates at a national level, with an ECS provider acting as the initial answering point for emergency calls. The ECS provider then transfers calls to the appropriate state-based emergency service organisation for resolution according to the information available to the call-taker. The ECS Determination establishes arrangements that enabled end-users to contact the ECS.

The Amendment Determination amends the ECS Determination as part of a whole of government initiative to amend or repeal legislation across various portfolios.

Operation of the Amendment Determination

The ECS Determination requires that:

- a carriage service provider has records of written arrangements that it has in place that enable it to comply with the Determination;
- a carriage service provider provide the ACMA with requested records within seven days of the ACMA issuing a written request to inspect the records specified; and

- a carriage service provider inform the ACMA if it is unable to keep records of arrangements it makes to comply with the Determination because of a dispute with another person.

These requirements for carriage service providers to have written records in place were unnecessarily duplicated within the ECS Determination in order to ensure carriage service providers retained the appropriate records. The ACMA also has relevant information gathering powers under section 521 of the *Telecommunications Act 1997* which it can use to monitor compliance with the ECS Determination. The Amendment Determination removes the duplicated obligations within the ECS Determination.

Statement of Compatibility with Human Rights

For the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* a statement of compatibility with human rights is set out in **Attachment A**.

Regulation Impact Statement

After consultation with the Office of Best Practice Regulation (OBPR), the ACMA was advised that a regulatory impact statement was not required as the amendments are of minor and machinery nature, and do not substantially alter existing arrangements. The OBPR reference number is ID16669.

Public Consultation

Subsection 147(9) of the Act requires that, before making a determination, the ACMA must consult representatives of each of the following groups:

- carriers
- carriage service providers
- recognised persons who operate an emergency call service
- emergency service organisations
- consumers of standard telephone services.

The amendments put forward in this Amendment Determination were consulted upon as part of a public consultation process during April 2014. Submissions were received from six organisations, including:

Consumer representatives

- the Australian Communications Consumer Action Network

Industry

- Communications Alliance
- Telstra (the Emergency Call Person for Triple Zero (000) and 112)
- Optus
- Vodafone Hutchison Australia

Government

- Telecommunications Universal Service Management Authority
Emergency Service Organisations

- NSW Police.

Each of the submissions received supported the proposed amendments to the ECS Determination.

Description of the provisions in the Amendment Determination

Section 1 - Name of Determination

Section 1 provides that the name of the Amendment Determination is the *Telecommunications (Emergency Call Service) Amendment Determination 2014 (No.1)*.

Section 2 - Commencement

Section 2 provides that the Amendment Determination commences on the day after it is registered on the Federal Register of Legislative Instruments.

Section 3 - Amendment of the Telecommunications (Emergency Call Service) Determination 2009

Section 3 provides that Schedule 1 of the Amendment Determination amends the *Telecommunications (Emergency Call Service) Determination 2009*.

Schedule 1 – Amendments

Item [1]

Item [1] corrects a typographical error in subsection 49(3) of the ECS Determination.

Item [2]

Item [2] removes the heading to Division 7.1 of the Amendment Determination. This heading has become unnecessary given that the Amendment Determination omits the only other Division under Part 7, that being Division 7.2.

Item [3]

Item [3] omits section 61 of the Amendment Determination.

Subsection 61(1) requires that carriage service providers have records of written arrangements that it has in place that enable the provider to comply with the ECS Determination. This specific requirement duplicates general record-keeping requirements specified under section 7 of the ECS Determination.

Subsection 61(2) enables the ACMA to make a written request to carriage service providers to inspect their records and requires that carriage service providers provide the ACMA with the specified records within seven days of receiving the request. This requirement duplicates the general power accorded to the ACMA under section 521 of the *Telecommunications Act 1997*.

The ACMA considered that the removal of section 61 would alleviate the necessity to provide separate and specific reporting under those requirements, but would not

weaken the operation of the emergency call service, nor the obligation on carriage service providers to keep written arrangements.

Item [4]

Item [4] omits Division 7.2 of the Amendment Determination which consists of section 62.

Section 62 requires carriage service providers to inform the ACMA if they are unable to keep records of arrangements it makes to comply with the ECS Determination because of a dispute with another person. It also requires the ACMA to have regard to this information.

The ACMA proposed to remove this reporting requirement as it considered that along with the removal of section 61, there was an opportunity to simplify and reduce potential duplication of record-keeping requirements.

Statement of Compatibility with Human Rights

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

Telecommunications (Emergency Call Service) Amendment Determination 2014 (No. 1)

The *Telecommunications (Emergency Call Service) Amendment Determination 2014 (No.1)* (the **Amendment Determination**) 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*.

Overview of the Amendment Determination

The Amendment Determination amends the *Telecommunications (Emergency Call Service) Determination 2009* (the **ECS Determination**), which is made under subsection 147(1) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the **Act**).

The ECS Determination previously imposed requirements that:

- carriage service providers have records of written arrangements that they have in place that enable them to comply with the ECS Determination under subsection 61(1)
- carriage service providers provide the ACMA with requested records within seven days upon written request from the ACMA to inspect specified records, under subsection 61(2)
- carriage service providers inform the ACMA if they are unable to keep records of arrangements they make to comply with the ECS Determination because of a dispute with another person.

The requirement to have written records in place is duplicated elsewhere in the ECS Determination and the ACMA has other information gathering powers under section 521 of the *Telecommunications Act 1997*. Therefore these obligations are redundant and are being repealed.

Human rights implications

This Amendment Determination does not engage any of the applicable rights or freedoms.

Conclusion

This Amendment Determination is compatible with human rights as it does not raise any human rights issues.

Australian Communications and Media Authority