

## EXPLANATORY STATEMENT

Prepared by the Australian Communications and Media Authority

*Telecommunications Act 1997*

### ***Telecommunications (Service Provider – Identity Checks for Prepaid Mobile Carriage Services) Amendment Determination 2014 (No.1)***

The Australian Communications and Media Authority (**the ACMA**) makes the *Telecommunications (Service Provider – Identity Checks for Prepaid Mobile Carriage Services) Amendment Determination 2014 (No.1) (the Amendment Determination)* under subsection 99(1) of the *Telecommunications Act 1997 (the Act)*. The Amendment Determination amends the *Telecommunications (Service Provider – Identity Checks for Prepaid Mobile Carriage Services) Determination 2013 (the 2013 Determination)*.

Schedule 4 of the 2013 Determination sets out the approved methods of identity verification that must be complied with at the time a service is activated. A carriage service provider (**CSP**) must use one of these methods to confirm whether identifying evidence obtained about the service activator is authentic, accurate and up to date. The Amendment Determination amends the 2013 Determination to allow CSPs to use an additional three methods of identity verification at the time a service is activated.

#### **Background**

The 2013 Determination was made by the ACMA under subsection 99(1) of the Act and commenced on 30 October 2013. The 2013 Determination revoked and replaced an earlier determination, and introduced modifications to improve the arrangements for the identity checking of customers of prepaid mobile carriage services.

The 2013 Determination allows CSPs to verify a person's identity information through a range of methods. These include confirming an existing post-paid account or using a government online verification service.

In moving to implement the new methods introduced by the 2013 Determination, the Australian Mobile Telecommunications Association (**AMTA**) identified two additional methods for potential inclusion in a further revised 2013 Determination, which would allow:

1. An existing prepaid customer, who has already completed an identity check using one of the 'time of activation' methods introduced in the 2013 Determination, to have additional prepaid services activated without the need for identity re-verification.
2. Visual checking of identification documents at a CSP shopfront where the service can be immediately activated at the shopfront. This would mean that verifying identity by sighting identity documents would not be limited to when the service is initially purchased as it could be undertaken at a later time when the service is activated.

#### **Operation of the Amendment Determination**

The Amendment Determination amends the 2013 Determination to introduce three additional methods of identity verification and makes a number of consequential changes, including the introduction of new definitions.

#### **Purpose of the Amendment Determination**

The purpose of the Amendment Determination is to allow CSPs to use the following three additional methods for verifying identity at the time of activation:

1. Confirming that the customer is the holder of a prepaid mobile carriage service account where a financial account is not linked to the existing service account (with a maximum of five mobile carriage services able to be activated within a two year period in reliance on such a service, before verification using an alternative identity verification method is required) (**Type 1 eligible prepaid account**).
2. Confirming that the customer is the holder of a prepaid mobile carriage service account where a financial account is linked to the existing service which the customer uses to make payments for the ongoing supply of the service (**Type 2 eligible prepaid account**).

3. Visual checking of identity documents provided by the customer at a CSP shopfront where the service can be immediately activated at the shopfront (**Visual identity document check**).

### **Regulation Impact Statement**

The Office of Best Practice Regulation (OBPR) has advised that the regulatory impacts are minor and a Regulation Impact Statement is not required for the Amendment Determination. The OBPR reference number is 16948.

### **Public consultation**

On 17 October 2014, the ACMA released a consultation paper attaching a draft version of the Amendment Determination for public comment<sup>1</sup>. The consultation paper sought submissions from interested parties on the key proposed changes under the draft Determination, including the new methods of identity verification. The ACMA also consulted the Australian Competition and Consumer Commission under subsection 99(4) of the Act by sending it a draft version of the Amendment Determination for comment with a covering letter explaining the proposed changes.

The ACMA received submissions from AMTA, Optus, the Communications Access Co-ordinator representing the views of all Australian interception agencies and the Attorney-General's Department, other government agencies (including the Office of the Australian Information Commissioner) and consumer advocacy groups.

Submissions were generally supportive of the proposed amendments set out in the draft Amendment Determination, although there were some suggestions that it might be preferable to revise the 2013 Determination after the proposed two year review<sup>2</sup> following the making of the 2013 Determination.

The key issues to emerge from the consultation process related to:

- whether any conditions should apply to the use of type 1 eligible prepaid mobile carriage service accounts for identity verification under Schedule 4.
- the nature of the identity documents that could be used under the 'visual identity document check' method of identity verification under Schedule 4.
- consistency between the proposed visual identity document check method and the current rules for verifying identity at the time of sale.

In response to those issues, the ACMA made further amendments to the draft Amendment Determination in consultation with relevant parties and in line with the objects of the 2013 Determination as outlined in section 2.1 of the 2013 Determination.

### **Notes on Sections**

The provisions of the Amendment Determination, and how they operate, are described in **Attachment A**.

### **Statement of Compatibility with Human Rights**

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

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<sup>1</sup> See Issue for Comment: Proposed new ID verification for prepaid mobile services.

<sup>2</sup> The Department of Communications' February 2013 Regulation Impact Statement supporting the 2013 Determination stated that 'it is proposed that the adoption of the new verification methods will be assessed two years after the ACMA's Determination has been amended'.

## NOTES ON SECTIONS

### Section 1 – Name of Determination

Section 1 provides that the Amendment Determination may be cited as the *Telecommunications (Service Provider — Identity Checks for Prepaid Mobile Carriage Services) 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 (Service Provider — Identity Checks for Prepaid Mobile Carriage Services) Determination 2013*

Section 3 provides that the 2013 Determination is amended as outlined in Schedule 1 to the Amendment Determination.

### Schedule 1 – Amendments

#### [1] Section 1.4

This item amends section 1.4 to include new defined terms used in the 2013 Determination. Four new terms have been added to support the new verification methods.

#### ***“type 1 eligible prepaid service” and “type 1 eligible prepaid account”***

The related terms “type 1 eligible prepaid account” and “type 1 eligible prepaid service” have been added to support the introduction of the new verification method at Item 7 of Schedule 4.

A type 1 eligible prepaid account is an account held by a service activator with a CSP for the supply of a type 1 eligible prepaid service.

A type 1 eligible prepaid service is an activated prepaid mobile carriage service that has been activated for not more than 24 months from the time of activation and that is not a “type 2 eligible prepaid service”. The significance of excluding a type 2 eligible prepaid service from the definition is to ensure that the definition does not capture prepaid services that are linked to a financial account, as a “type 1 eligible prepaid service” is not linked to a financial account.

Another element of the definition is that the service activator’s identity must have been verified using a method of identity verification described in Schedule 4 of the 2013 Determination, other than that in item 7 of Schedule 4. The effect of this element of the definition is that a person cannot rely upon a type 1 eligible prepaid account as evidence of identity to support the activation of another type 1 eligible prepaid service.

Under item 7 of Schedule 4, a type 1 eligible prepaid account for this service can be used to support the activation of further prepaid mobile services, subject to there being a limit of five subsequent services that can be activated using this method before a new verification is required. This means that only the account for the initial type 1 eligible prepaid service held by a person can be used as evidence of identity and not any accounts for additional services that have subsequently been activated using this method.

#### ***“type 2 eligible prepaid service” and “type 2 eligible prepaid account”***

The related terms “type 2 eligible prepaid account” and “type 2 eligible prepaid service” have been added to support the introduction of the new verification method at Item 8 of Schedule 4.

A type 2 eligible prepaid account is an account held by a service activator with a CSP for the supply of a type 2 eligible prepaid service.

A type 2 eligible prepaid service is an activated prepaid mobile carriage service that is linked to a financial account with an authorised deposit-taking institution (**ADI**) in the name of the service activator. The service activator must use that financial account to make payments to the CSP for the ongoing supply of the service.

Another element of this type of service is that the carriage service provider supplying this service must have complied with Part 5 in relation to the activation of the service by verifying the service activator’s identity using a method of identity verification described in Schedule 4 to the Determination.

Under item 8 of Schedule 4, a type 2 eligible prepaid account can be used as a method of identity verification to support the activation of further prepaid mobile services indefinitely as long as at the time of activation, the ongoing supply of this type 2 eligible prepaid service continues to be paid for using the financial account.

**[2] Sub-paragraph 7.3(1)(b)(i)**

This item substitutes a new sub-paragraph 7.3(1)(b)(i).

Section 7.3 restricts a CSP from recording or copying the identifying number of a government document or a credit card or debit card number. It also restricts a CSP from recording or copying any of the documents mentioned in Schedule 2.

Sub-paragraph (1)(b)(i) has been amended so that a CSP may record the last four digits of a credit card or debit card number, in accordance with sub-paragraph 7.1(2)(f)(v), as well as sub-sub-paragraph 7.1(2)(e)(iii)(B). The effect of this is that if a CSP has complied with Part 5 in relation to a service activator, where the verification transaction details to be recorded relate to a credit card or debit card number, then the CSP may record the last four digits of the credit card or debit card number – in accordance with sub-paragraph 7.1(2)(f)(v). The only verification transaction details that relevantly require the CSP to record the last four digits of a credit or debit card in this way is Column C of the new item 9 of Schedule 4 (“Visual identity document check”).

This item is now consistent with the existing requirement that if a CSP has complied with Part 4 in relation to a purchaser, and the service was purchased using a credit card or debit card, then the CSP may record the last four digits of the credit card or debit card number – in accordance with sub-sub-paragraph 7.1(2)(e)(iii)(B).

**[3] Schedule 2**

This item substitutes a new Schedule 2 in order to make it also apply to service activators at the time of activation under item 9 of Schedule 4 (“Visual identity document check”), as well as being relevant to purchasers at the time of sale. Other than including provision for the Category A and Category B documents to be used by service activators at the time of activation under item 9 of Schedule 4, the documents described under Schedule 2 are substantially unchanged.

In effect, a CSP will be able to use the documents described in Schedule 2 for verification under the Part 4 rules (time of sale) and under Part 5 for the “visual identity document check” method described at the new item 9 of Schedule 4.

**[4] Schedule 3**

This item substitutes a new Schedule 3 to describe all types of identifying evidence for verification at the time of activation in accordance with the definition of “identifying evidence” in section 1.4 and the requirement in section 5.4 to obtain identifying evidence about the service activator. The identifying evidence is related to the method of identity verification described in column B of Schedule 4.

**[5] Schedule 4**

This item inserts new items 7 to 9 of Schedule 4 to prescribe new approved methods of identity verification in relation to a service activator at the time of activation. A CSP may use one of these methods to confirm whether identifying evidence obtained about the service activator is authentic, accurate and up-to-date, as required by section 5.5.

The Amendment Determination adds the following identity verification methods to Schedule 4:

- Item 7 – “Existing type 1 eligible prepaid account” (not linked to a financial account) which involves, amongst other requirements, confirming that the service activator is the holder of an existing type 1 eligible prepaid account and that the activation of the service will not result in the service activator having more than five prepaid mobile carriage services activated using the method of identity verification described in this item.
- Item 8 – “Existing type 2 eligible prepaid account” (linked to a financial account) which involves, amongst other requirements, the service activator demonstrating that he or she is the holder of an existing type 2 eligible prepaid account that is linked to a financial account which is used to make payments for the ongoing supply of the service.
- Item 9 – “Visual identity document check” which involves, amongst other requirements, the service activator showing the CSP a combination of category A and category B identity documents listed in Schedule 2 to verify his or her identity. The service activator will be

required to show a different combination of category A and category B documents depending on whether or not the activation of the service will result in the service activator having five or more activated prepaid mobile carriage services.

## Statement of Compatibility with Human Rights

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

### **Telecommunications (Service Provider – Identity Checks for Prepaid Mobile Carriage Services) Amendment Determination 2014 (No.1)**

This Legislative Instrument, the *Telecommunications (Service Provider – Identity Checks for Prepaid Mobile Carriage Services) Amendment Determination 2014 (No.1)* (**the 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**

The Australian Communications and Media Authority (**the ACMA**) has made the Legislative Instrument under subsection 99(1) of the *Telecommunications Act 1997* (**the Act**). The Legislative Instrument amends the *Telecommunications (Service Provider – Identity Checks for Prepaid Mobile Carriage Services) Determination 2013* (**the 2013 Determination**).

Schedule 4 to the 2013 Determination sets out the approved methods of identity verification that must be complied with at the time a service is activated. A carriage service provider (**CSP**) must use one of these methods to confirm whether identity evidence obtained about the service activator is authentic, accurate and up to date. The Legislative Instrument amends the 2013 Determination to allow CSPs to use an additional three methods of identity verification at the time a service is activated.

#### **Overview of the Legislative Instrument**

The Legislative Instrument allows CSPs to use the following three additional methods for verifying identity at the time of activation:

1. Confirming that the customer is the holder of a prepaid mobile carriage service account that has been activated for 24 months or less from the time of activation and where a financial account is not linked to the existing service account and where the person has activated the service using a method of identity verification described in Schedule 4 to the Legislative Instrument other than that in item 7 of Schedule 4 (with a maximum of five mobile carriage services able to be activated within the 24 month period in reliance on the service) (**Type 1 eligible prepaid account**).
2. Confirming that the customer is the holder of a prepaid mobile carriage service account where a financial account is linked to the existing service which the customer uses to make payments for the ongoing supply of the service, and for which the carriage service provider has complied with Part 5 of the Legislative Instrument in relation to the activation of the service (**Type 2 eligible prepaid account**).
3. Visual checking of identity documents provided by the customer at a CSP shopfront where the service can be immediately activated at the shopfront. This would mean that verifying identity by sighting identity documents would not be limited to when the service is initially purchased, as it could be undertaken at a later time when the service is activated (**Visual identity document check**).

These new methods allow CSPs to verify the identity of a service activator online or over the telephone, as well as in person, at the time of activation of a prepaid mobile carriage service.

The Legislative Instrument does not impose new record keeping requirements. CSPs will still be required to keep records for as long as the prepaid mobile carriage service is activated, but are prohibited from recording or copying the identifying number of a government document or a credit card or debit card number unless certain circumstances exist.

However, this Legislative Instrument does provide an exemption for the recording of the last four digits of a credit or debit card number where it is authorised. This amendment is made to allow the recording of this information where a CSP verifies a customer's identity using the 'visual identity document check' method of identity verification (at the time of activation) and the identifying evidence presented is a credit or debit card. The recording of this information is already allowed under the time of sale arrangements in Part 4 of the Legislative Instrument where a CSP sights a credit or debit card as evidence of identity.

## **Human rights implications**

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

Article 17 of the *International Covenant on Civil and Political Rights* (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 unlawful or arbitrary interference with privacy. Certain provisions in the Legislative Instrument could be considered to limit the right to privacy. However, the right to privacy is not an absolute right and a limitation is not incompatible with the right itself.

The Legislative Instrument authorises the collection, use and storage of personal information. However, to the extent that the Legislative Instrument could be said to authorise an interference with privacy, that interference will be neither unlawful nor arbitrary. It will not be unlawful because the collection, use and storage of personal information, which is provided for and circumscribed by the 2013 Determination, is authorised by section 3.2 of the *Telecommunications Regulations 2001* and section 99 of the Act. It will not be arbitrary because the Legislative Instrument specifies only the minimum amount of personal information that is reasonably necessary to assist with the legitimate objectives of law enforcement and national security. The Legislative Instrument also imposes restrictions on the collection, recording and copying of personal information in the identity-checking process.

In addition to those restrictions, Part 13 of the Act is directed at protecting the confidentiality of (among other things) personal information held by CSPs. 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. Part 13 of the Act also imposes a range of record-keeping requirements on CSPs in relation to authorised disclosures or uses of information. The Office of the Australian Information Commissioner currently 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 CSPs.

Some CSPs are also subject to the *Privacy Act 1988* in relation to the personal information they handle in accordance with the Legislative Instrument. The Legislative Instrument is expected to enhance the privacy protections afforded to individuals in the following ways:

- minimising the handling of personal information for customers who have specified existing prepaid mobile carriage service accounts;
- customers of prepaid mobile carriage services are provided with a range of choices about how their identity can be verified; and
- restrictions on the collection, recording and copying of personal information in the identity-checking process are imposed.

These safeguards, together with the other restrictions on the handling of personal information described above, indicate that the Legislative Instrument is reasonable, necessary and proportionate to the objectives of law enforcement and national security.

## **Conclusion**

This Legislative Instrument is compatible with human rights. Any interference with privacy is neither unlawful nor arbitrary. The restrictions imposed on freedom of expression are reasonable, necessary and proportionate to give effect to the legitimate objectives of law enforcement and national security.

**Australian Communications and Media Authority**