

EXPLANATORY STATEMENT

Issued by the Authority of the Australian Communications and Media Authority

Telecommunications (Annual Charge) Determination 2014

Telecommunications (Numbering Charges) Act 1997

The *Telecommunications (Annual Charge) Determination 2014 (the Determination)*, is made by the Australian Communications and Media Authority (**the ACMA**) under subsections 20(1) and 22(2) of the *Telecommunications (Numbering Charges) Act 1997 (the Numbering Charges Act)*

Background

Part 3 of the Numbering Charges Act imposes an annual charge on carriage service providers (**CSPs**) that hold telephone numbers. This charge is known as the annual numbering charge (**ANC**).

The Numbering Charges Act sets out the general framework under which the ANC is imposed on CSPs that hold telephone numbers.

- Under subsection 18(1), if a CSP holds an allocated number on a date determined by the ACMA each year, a charge is imposed on the number. This date is referred to as the “census date”.
- Subsection 20(1) provides that the amount of charge imposed on a number held on the census date is the amount ascertained in accordance with a written determination made by the ACMA.
- Subsection 22(2) provides that the ACMA may by written determination, exempt a specified number from the charge.

The *Telecommunications (Annual Charge) Determination 2007 (No. 2) (the old instrument)* specifies the ANC formula under subsection 20(1) of the Numbering Charges Act and allows for a reduced amount of charge for some numbers. The old instrument also exempts some numbers from the charge, as allowed by subsection 22(2) of the Numbering Charges Act. The old instrument is due to “sunset” (i.e. be automatically repealed) on 1 April 2018, in accordance with Part 6 of the *Legislative Instruments Act 2003 (the LIA)*.

Subsection 33(3) of the *Acts Interpretation Act 1901 (the AIA)* provides that where an Act confers a power to make a legislative instrument, as the Numbering Charges Act does in this instance, 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 subsections 20(1) and 22(2) also includes the power to revoke the old instrument on the basis of subsection 33(3) of the AIA. The Determination is a legislative instrument for the purposes of the LIA.

Purpose

The Determination made under the Numbering Charges Act:

- establishes how the ANC is calculated under subsection 20(1) of the Act;
- specifies the revenue target to be achieved each year; and
- specifies the numbers exempt from the ANC under subsection 22(2) of the Act.

Following review, and consultation with external stakeholders, the ACMA formed the view that the old instrument is operating effectively and efficiently, and continues to form a necessary and useful part of the legislative framework. Accordingly, the ACMA has remade the old instrument by making the

Determination, without any significant changes, in order to preserve the ongoing effect of the old instrument.

Operation

The Determination sets the formula used to calculate the ANC and the revenue target to be achieved each year. It also lists the numbers that are exempt from the ANC or charged at a reduced rate.

The formula in the Determination is based on the length of the number, such that the shorter digit numbers attract higher charges. Under section 21 of the Numbering Charges Act the maximum allowable charge that may be imposed on any one number is \$100,000.

The Determination largely replicates the old instrument, with only minor stylistic and drafting changes that are administrative in nature, including the removal of redundant information.

Details pertaining to the Determination are set out in **Attachment A**.

Consultation

Subsection 17(1) of the LIA requires that, before the ACMA makes a legislative instrument, it must be satisfied that any consultation that the ACMA considers is appropriate and reasonably practicable to undertake, has been undertaken.

The ACMA consulted publicly between 20 May 2014 and 2 July 2014 by means of a consultation paper published on its website. The ACMA also contacted affected stakeholders by email about the proposal on 20 May 2014.

The ACMA received two submissions from Vodafone Hutchison Australia and Telstra, in response to the consultation. The submissions have been made available on the ACMA's website. In finalising the Determination, the ACMA has considered the submissions it received.

Regulatory Impact Statement

The ACMA determined that the existing instrument were operating efficiently and effectively, and should be remade without any significant changes. Accordingly, the ACMA has certified those matters to the Office of Best Practice Regulation (**OBPR**), and no Regulation Impact Statement (**RIS**) is required. The OBPR reference number is 16688.

Statement of Compatibility with Human Rights

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires the rule maker in relation to a legislative instrument to which section 42 (disallowance) of the LIA applies to cause a statement of compatibility to be prepared in respect of that legislative instrument.

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

The Determination establishes how the ANC is calculated under subsection 20(1) of the Numbering Charges Act; specifies the revenue target to be achieved each year; and specifies the numbers exempt from the ANC under subsection 22(2) of the Act.

The ACMA has considered whether the Determination engages any applicable human rights or freedoms and has formed the view that it does not. The Determination does not raise any human rights issues and 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*.

DETAILS OF THE *TELECOMMUNICATIONS (ANNUAL CHARGE) DETERMINATION 2014*

Section 1 – Name of Determination

Section 1 provides that the name of the Determination is the *Telecommunications (Annual Charge) Determination 2014*.

Section 2 – Commencement

Section 2 provides that the Determination commences on 1 April 2015.

Section 3 – Revocation

Section 3 provides that the *Telecommunications (Annual Charge) Determination 2007 (No. 2)* is revoked.

Section 4 – Definitions

Section 4 defines various terms used in the Determination.

Section 5 – Amount of charge

Section 5 specifies how the annual charge is calculated and the revenue target to be achieved each year (currently \$60 million).

Section 6 - Numbers exempt from charge

Section 6 specifies the numbers exempt from the annual charge.