

EXPLANATORY STATEMENT

Issued by the Authority of the Australian Communications and Media Authority

Telecommunications (Collection of Numbering Charges) Determination 2014

Telecommunications Act 1997

The *Telecommunications (Collection of Numbering Charges) Determination 2014 (the Determination)*, is made by the Australian Communications and Media Authority (**the ACMA**) under subsections 468(3) and (4) of the *Telecommunications Act 1997 (the Act)*.

Background

The annual numbering charge (**ANC**) is a charge that is payable by carriage service providers (**CSPs**) on telephone numbers they hold on a specified census date under Part 3 of the *Telecommunications (Numbering Charges) Act 1997 (the Numbering Charges Act)*.

The purpose of the ANC is to derive payment to the Commonwealth from CSPs for the use, by them, of telephone numbers (which are regarded as a public resource) to provide commercial services. The Act sets out the following payment requirements with respect to the ANC:

- Subsection 468(3) of the Act provides that the annual charge is due and payable at the time ascertained in accordance with a written determination made by the ACMA.
- Subsection 468(4) of the Act provides that the ACMA may by written instrument, determine that if any annual charge payable by a person remains unpaid after the due date, the person is liable to pay a penalty to the Commonwealth.
- Subsection 468(6) provides that a determination may authorise the ACMA to make decisions regarding the remission of the whole or a part of an amount of late payment penalty.

The *Telecommunications (Due Date for Annual Charge) Determination 1999 (Due Date Instrument)* and *Telecommunications (Annual Numbering Charge - Late Payment Penalty) Determination 2000 (Late Payment Penalty Instrument)* (together the **old instruments**) are due to “sunset” (i.e. be automatically repealed) on 1 April 2015 and 1 October 2015 respectively, in accordance with Part 6 of the *Legislative Instruments Act 2003 (the LIA)*.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 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 468(3) and (4) also includes the power to revoke the old instruments on the basis of subsection 33(3) of the AIA. The Determination is a legislative instrument for the purposes of the LIA.

The Determination largely replicates the old instruments, 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**.

Purpose

The Determination made under the Act:

- determines the due date for the ANC under subsection 468(3) of the Act;
- specifies the ANC late payment penalty rate under subsection 468(4) of the Act;
- authorises the ACMA to make decisions about remission of a late payment penalty as mentioned in subsection 468(6) of the Act; and

- establishes transitional arrangements for any annual charges that remain wholly or partly unpaid on the commencement day, and for decisions about applications for remission of a late payment penalty, where the application was made before the commencement day.

Following review, and consultation with external stakeholders, the ACMA formed the view that the old instruments were operating effectively and efficiently, and continue to form a necessary and useful part of the legislative framework. Accordingly, the ACMA has remade the old instruments by making a consolidated Determination, without any significant changes, in order to preserve the ongoing effect of the old instruments.

Public 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.

In this case, 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 consultation paper explained the sunseting process and the ACMA's preliminary view that the existing arrangements remain relevant. Interested parties were invited to comment.

The ACMA received one submission from Telstra supporting the remaking of the instruments, in response to the consultation paper.

Regulatory Impact Statement

The ACMA determined that the existing instruments 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 sets a due date for payment of the ANC; specifies the rate of late payment penalty applicable in relation to the ANC; and authorises the ACMA to make decisions about the remission of late penalty. The Determination replaces the *Telecommunications (Due Date for Annual Charge) Determination 1999* and the *Telecommunications (Annual Numbering Charge - Late Payment Penalty) Determination 2000*, which are due to be automatically repealed on 1 April 2015 and 1 October 2015 respectively. The Determination includes transitional arrangements in recognition of the fact that these old instruments are being replaced.

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 (COLLECTION OF NUMBERING CHARGES) DETERMINATION 2014

PART 1 INTRODUCTION

Part 1 sets out introductory information about the Determination.

Section 1 – Name of Determination

Section 1 provides that the name of the Determination is the *Telecommunications (Collection of Numbering Charges) Determination 2014*.

Section 2 – Commencement

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

Section 3 – Revocation of determination specifying late payment penalty for unpaid annual charge

Section 3 provides that the *Telecommunications (Annual Numbering Charge - Late Payment Penalty) Determination 2000* is revoked.

Section 4 – Definitions

Section 4 defines various terms used in the Determination.

PART 2 DUE DATE FOR ANNUAL CHARGE

Part 2 sets out when the annual charge is due and payable.

Section 5 – When annual charge is due and payable

Section 5 specifies that the annual charge is due and payable by a person on the later of 15 June of the year in which the charge is imposed, or 30 calendar days from the date of the invoice issued to the person by the ACMA.

PART 3 LATE PAYMENT PENALTY FOR UNPAID ANNUAL CHARGE

Part 3 sets out when a late payment penalty is payable and how it is calculated.

Section 6 - Late payment penalty payable

Section 6 sets out when a person is liable to pay the penalty and how it is calculated.

Section 7 - Rate of late payment penalty

Section 7 specifies the annual charge late payment penalty daily rate as: 20% per annum; or if, for any day, the previous financial year average GIC rate is less than 20% per annum – the previous financial year average GIC rate.

The previous financial year average GIC rate is worked out in accordance with Schedule 1 to the Determination.

Section 8 - Attribution of payments made to the ACMA

Section 8 sets out the order in which a payment should be attributed against an amount of annual charge and late payment penalty on the annual charge when a person pays an amount of money to the ACMA without any attribution by the person or the ACMA as to the annual charge and the late payment penalty.

PART 4 DECISIONS ABOUT REMISSION OF LATE PAYMENT PENALTY

Part 4 allows the ACMA to remit the whole or a part of a late payment penalty, and sets out what the ACMA may consider in its decision to remit the late payment penalty.

Section 9 - Remission of late payment penalty: general

Section 9 provides that the ACMA may remit the whole or a part of an amount of late payment penalty payable by a person, whether or not the person has applied to the ACMA for the remission. Section 9 also sets out the conditions for applying for a remission of late payment penalty.

Section 10 - Remission of late payment penalty: reasons

Section 10 sets out the reasons for which the ACMA may decide to remit the whole or a part of the amount of late payment penalty.

Section 11 - Notification of decision

Section 11 provides that if the ACMA makes a decision about an application for a remission, it must give the applicant a written statement setting out the reasons for the decision and the arrangements under the Act for reviewing the decision, if the application is refused.

The section also notes that an application may be made to the ACMA for reconsideration of a decision about the remission of the whole or a part of an amount of late payment penalty. If the ACMA affirms or varies the original decision under section 559 of the Act, an application may be made to the Administrative Appeals Tribunal for review of the decision.

PART 5 MISCELLANEOUS

Part 5 deals with miscellaneous matters.

Section 12 - Judgment for payment of annual charge and interest only

Section 12 sets out the treatment of late payment penalty if judgment is given by, or entered in, a court for the payment of an annual charge, and the judgment carries interest. This section does not apply if section 13 applies.

Section 13 - Judgment for payment of annual charge, interest and other amounts

Section 13 sets out the treatment of late payment penalty if judgment is given by, or entered in, a court for the payment of an annual charge, and the judgment carries interest and other amounts.

Section 14 - Rounding of amount of late payment penalty

Section 14 sets out how a late payment penalty amount ending in a part of a whole cent should be treated.

PART 6 TRANSITIONAL ARRANGEMENTS

Part 6 sets out the transitional arrangements that apply as a result of moving from the old instruments to the new Determination.

Section 15 - Annual charge unpaid as at the commencement day

Section 15 sets out transitional arrangements for any annual charges that remain wholly or partly unpaid on the commencement day.

Section 16 - Application for remission under the *Telecommunications (Annual Numbering Charge — Late Payment Penalty) Determination 2000*

Section 16 sets out transitional arrangements that apply to an application for a remission of a late payment penalty that was or is made in accordance with the Late Payment Penalty Instrument but not decided before the commencement day. In such a case, the application is to be dealt with in accordance with the Late Payment Penalty Instrument.

Schedule 1 - Calculation of previous financial year average GIC rate

Schedule 1 sets out how the previous financial year average GIC (general interest charge) rate, referred to in section 4 of the Determination is calculated.

It specifies the formula to be used, the means by which the general interest charge rates are determined, and the rounding to apply.