

## EXPLANATORY STATEMENT

Prepared by the Australian Communications and Media Authority

*Telecommunications (Section of the Telecommunications Industry – Cabling Service Operators) Determination 2015*

***Telecommunications Act 1997***

### Purpose

The Australian Communications and Media Authority (the **ACMA**) has made the *Telecommunications (Section of the Telecommunications Industry – Cabling Service Operators) Determination 2015* (the **Determination**) to replace the *Telecommunications (Section of Telecommunications Industry) Determination 2003 (No. 1)* (the **2003 Determination**).

The ACMA has made the Determination as the 2003 Determination was due to be automatically repealed on 1 April 2015, in accordance with Part 6 of the *Legislative Instruments Act 2003* (the **LIA**).

### Legislative Provisions

Part 6 of the *Telecommunications Act 1997* (the **Act**) provides that:

- bodies representing sections of the telecommunications industry may develop industry codes;
- the ACMA may register these codes; and
- the ACMA may direct a particular participant in the telecommunications industry to comply with such a code.

Industry codes apply to sections of the telecommunications industry as defined in subsection 110(2) of the Act. In some circumstances, parties who undertake a telecommunications activity may not fall within a section of the telecommunications industry as defined. Subsection 110(3) of the Act provides that the ACMA may, by written instrument, determine that persons carrying on specified kinds of telecommunications activities constitute a section of the telecommunications industry.

Section 109 of the Act identifies those activities considered to be telecommunications activities for the purposes of Part 6 of the Act. Paragraph 109(c) identifies “supplying goods or services for use in connection with the supply of a listed carriage service” as a telecommunications activity.

The Determination determines cabling service operators to be a section of the telecommunications industry. Under the Determination, cabling service operators are persons that are not subject to the *Telecommunications Cabling Provider Rules 2014* (**Cabling Provider Rules**) and that, on a commercial basis, perform, propose to perform, or arrange, or propose to arrange the performance of, “cabling services”.

The Cabling Provider Rules are made pursuant to section 421 of the Act and specify requirements for those cabling providers that directly perform or supervise the customer cabling work themselves. The Cabling Provider Rules do not apply to those companies or organisations that employ or contract a person to perform such work on their behalf. It is the intention of the Determination to cover this latter group.

Under the Determination “cabling services” encompass the following activities:

- the installation of customer cabling for connection to a telecommunications network or facility that is used to supply a listed carriage service;
- the connection of customer cabling to a telecommunications network or a facility that is used to supply a listed carriage service;
- the maintenance of customer cabling connected to a telecommunications network or facility that is used to supply a listed carriage service.

## **Background**

The 2003 Determination specified cabling service operators to be a section of the telecommunications industry for the purposes of subsection 110(3) of the Act.

The 2003 Determination provided the legal basis for the registration of the industry code, *Cabling Industry Committee Industry Code – Cabling requirements for Business (the Code)*. The Code specifies requirements for cabling service operators to promote a high standard of cabling work across the cabling industry.

Accredited cabling registrars, consisting of the Australian Cabler Registration Service, Australian Security Industry Association Limited, BICSI Registered Cablers Australia, Fire Protection Association Australia and TITAB Australia Cabler Registry Services are currently reviewing the Code. It is expected that a revised code will be submitted to the ACMA for registration. However, the 2003 Determination is due to be automatically repealed on 1 April 2015 in accordance with the sunset provisions in the LIA. Accordingly, it is necessary to remake the 2003 Determination in order to facilitate the registration of a revised code.

The Determination remakes the content of the 2003 Determination in substantially the same form and provides the basis for registration of a revised code to apply to cabling service operators.

## **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 with stakeholders in the cabling industry and the general public on the making of the Determination to replace the 2003 Determination. Between 15 December 2014 and 2 February 2015 the ACMA conducted a public consultation process and made the draft Determination available on the ACMA website. A consultation paper which explained the sunset (automatic repeal) process and the ACMA’s preliminary view that the existing arrangements should be continued without any significant changes, was also made available on the ACMA website. Interested parties were notified of the release of the consultation paper and invited to comment.

The ACMA received a total of seven submissions on the proposed instrument from: the Australian Digital & Telecommunications Industry Association; the Australian Cabler Registration Service, Cabling Advisory Group; Communications Alliance, International Copper

Association, Reid-Net and TITAB. All submissions indicated the need for the continued operation of the 2003 Determination and supported its remaking before the sunset date.

### **Regulation Impact**

The Office of Best Practice Regulation (OBPR) has advised that the remaking of the 2003 Determination will have more than a minor impact on business and as such, a Regulatory Impact Statement (RIS) may be required. However as the 2003 Determination is to be remade without significant amendment, the ACMA is permitted to self-assess the performance of the instrument.<sup>1</sup>

This self-assessment process permits the ACMA to make an assessment as to whether the instrument is operating effectively and efficiently. This assessment must be informed by a formal consultation process with affected stakeholders.

The public consultation process conducted by the ACMA confirmed that the Determination is operating effectively and efficiently and a confirmation letter to that effect has been sent to the OBPR. The ACMA has submitted this letter to OBPR for publication on their website in lieu of doing a RIS. The OBPR reference number is ID 18049.

### **Notes on Sections**

The provisions of the Determination are described in Attachment 1.

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

Section 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 determines cabling service operators as a section of the telecommunications industry for the purposes of Part 6 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 is compatible with human rights as it does not raise any human rights issues.

---

<sup>1</sup> Department of Prime Minister and Cabinet, Office of Best Practice Regulation, *Guidance Note - Sunsetting Legislative Instruments*, July 2014

## NOTES ON SECTIONS

### Section 1 - Name of Determination

Section 1 provides for the citation of the Determination as the *Telecommunications (Section of the Telecommunications Industry – Cabling Service Operators) Determination 2015*.

### Section 2 - Commencement

Section 2 provides that the Determination will commence on the day after it is registered.

### Section 3 – Revocation

Section 3 revokes the *Telecommunications (Section of Telecommunications Industry) Determination 2003 (No. 1)*.

### Section 4 – Definitions

Section 4 defines terms used in the Determination. The term “cabling services” is defined to mean any of the following activities:

- the installation of customer cabling for connection to a telecommunications network or facility that is used to supply a listed carriage service;
- the connection of customer cabling to a telecommunications network or a facility that is used to supply a listed carriage service;
- the maintenance of customer cabling connected to a telecommunications network or facility that is used to supply a listed carriage service.

### Section 5 – Specification of telecommunications activity

The effect of section 5 is that the telecommunications activity covered by the Determination is the supply of cabling services.

### Section 6 – Section of the telecommunications industry

Section 6 provides that persons that are not subject to the *Telecommunications Cabling Provider Rules 2014* and that, on a commercial basis, perform, propose to perform, or arrange, or propose to arrange the performance of, cabling services are a section of the telecommunications industry for the purposes of Part 6 of the Act to be identified as “cabling service operators”.