

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Telecommunications (Provision of Pre-selection) Determination 2015

Telecommunications Act 1997

Purpose

The purpose of the *Telecommunications (Provision of Pre-selection) Determination 2015* (the **Determination**), made by the Australian Communications and Media Authority (the **ACMA**) under subsection 349(1) of the *Telecommunications Act 1997* (the **Act**), is to replace the following instruments:

- *Telecommunications (Provision of Pre-selection for a Standard Telephone Service) Determination 1998* (the **STS Determination**);
- *Telecommunications (Provision of Pre-selection for Specified Carriage Services) Determination 1998* (the **SCS Determination**); and
- *Telecommunications (Standard Telephone Service and Specified Carriage Service Exemption) Declaration 1998* (the **Exemption Declaration**).

Legislative Provisions

Subsection 349(1) of the Act requires the ACMA to make a written determination requiring each carrier or carriage service provider who supplies a standard telephone service to provide pre-selection in favour of a specified carriage service provider, in relation to calls made using a standard telephone service.

The Determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (the **LIA**).

Subsection 33(3) of the *Acts Interpretation Act 1901* 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 Determination is made under subsection 349(1) of the Act and revokes the STS Determination, the SCS Determination and the Exemption Declaration previously made under the Act (see section 3 of the Determination).

Background

In 1998, the three instruments which gave effect to pre-selection obligations in Part 17 of the Act were made.

The STS and SCS Determinations required carriers and carriage service providers to allow end-users to select a provider for certain, 'pre-selectable services', and the Exemption Declaration ensured that the selection is for a 'single basket' of pre-selectable services so that an end-user cannot select a different provider for each different pre-selectable service.

The Determination replaces the STS Determination, the SCS Determination and the Exemption Declaration. The Determination maintains the requirements on industry to provide pre-selection and does not substantively alter the scope of the pre-selection requirements, while incorporating those obligations into a single instrument.

The pre-selectable services required by the Determination to be provided are calls made using a standard telephone service to any of the following:

- (a) a geographic number or local number that is not a local call;
- (b) an international direct dial service;
- (c) an operator service for which the numbering plan specifies the use of a shared selectable number;
- (d) a carriage service that is both a ring back price service and an international service;
- (e) a public mobile telecommunications service.

The 'single basket' requirement, formerly found in the Exemption Declaration, has also been incorporated into the new Determination as a limit on the obligation to provide pre-selection.

Consultation

The ACMA has consulted with industry stakeholders and the general public on the making of the Determination. Section 17 of the LIA requires that, before making a legislative instrument, the ACMA must be satisfied that any consultation it considers to be appropriate and that is reasonably practicable to undertake has been undertaken.

On 1 December 2014, the ACMA released the Determination in draft form for public consultation together with a consultation paper.

One submission was received from an industry participant in response to the ACMA consultation paper. The submission did not raise any concerns about the Determination.

Under section 349(6) of the Act, the ACMA must consult with the ACCC before making a pre-selection determination. The ACMA commenced consultation with the ACCC (in September 2014) prior to issuing the consultation paper, and at the ACCC's request, provided a copy of the submission received in response to the consultation paper. The ACCC responded in writing on 3 February 2015, advising the ACMA that it did not have any substantive comments on the Determination.

Regulatory Impact Statement

The Office of Best Practice Regulation (**OBPR**) has considered the matter and formed an opinion that the impact of the Determination is minor or machinery in nature and, on that basis, a Regulatory Impact Statement is not required. The OBPR reference is ID 17568.

Documents incorporated in the Determination by reference

The Determination incorporates, by reference, some definitions and other material taken from the following documents:

- the Act;
- the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the **TCPSS Act**); and
- the *Telecommunications Numbering Plan 1997* (the **1997 Numbering Plan**) (made under subsection 455(1) of the Act).

The Act, the TCPSS Act and the 1997 Numbering Plan can be found on the Australian Government's ComLaw website (<http://www.comlaw.gov.au/>).

Notes on instrument

The provisions of the Determination are described in Attachment 1.

Statement of compatibility with human rights

A Statement of Compatibility with Human Rights has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* and is set out in Attachment 2.

Notes on Instrument

Part 1 Preliminary

Section 1 Name of Determination

This section provides that the title of the Determination is the *Telecommunications (Provision of Pre-selection) Determination 2015*.

Section 2 Commencement

This section states that the Determination will commence on the day after it is registered on the Federal Register of Legislative Instruments.

Section 3 Revocations

Section 3 has the effect of revoking the:

- (a) *Telecommunications (Provision of Pre-selection for a Standard Telephone Service) Determination 1998* (FRLI No. F2005B00452);
- (b) *Telecommunications (Provision of Pre-selection for Specified Carriage Services) Determination 1998* (FRLI No. F2005B00451); and
- (c) *Telecommunications (Standard Telephone Service and Specified Carriage Service Exemption) Declaration 1998* (FRLI No. F2005B00455).

Section 4 Definitions

This section sets out some key terms used in the Determination. The terms are the same as those used in instruments which the Determination replaces other than the following:

- *access service deliverer* means a carrier or a carriage service provider who is required under section 7 or section 8 of the Determination to provide pre-selection;
- the inclusion of a public mobile telecommunications service in the definition of a *pre-selectable service*;
- the inclusion of *1997 numbering plan* (the plan made by the ACMA under subsection 455(1) of the Act) as a defined term.

Other terms defined in section 4 refer to legislation or instruments incorporated by reference in the Determination including terms defined in the TCPSS Act and in the 1997 Numbering Plan.

Section 5 Application

Subsection 5(1) provides that the Determination applies to a carrier or carriage service provider who supplies a standard telephone service.

Subsection 5(2) limits the application of the Determination to only those circumstances in which the end-user requests pre-selection for all of the end-user's pre-selectable services and where the carriage service provider requested by the end-user as their provider does, in fact, provide termination of all the pre-selectable services.

Subsection 5(3) excludes from the definition of standard telephone service a service supplied by means of a public mobile telecommunications service (mobile service). The effect of subsection 5(3) is that pre-selection is not required to be provided for a call which originates on a standard telephone service which is a mobile service. However, a call made

from a standard telephone service which terminates on a mobile service is a pre-selectable service for which pre-selection must be provided.

Part 2 Requirement to provide pre-selection

Section 6 Determination under subsection 349(1) of the Act

This section sets out the provisions of the Determination with which each carrier or carriage service provider who supplies a standard telephone service must comply:

- in the case of a carrier – sections 7, 9 and 10;
- in the case of a carriage service provider – sections 8, 9 and 10.

Section 7 Requirement to provide pre-selection – carriers

Subsection 7(1) requires carriers to ensure that their controlled networks and facilities permit an end-user to:

- pre-select a carriage service provider as the person's preferred carriage service provider; and
- change that pre-selection from time to time.

Subsection 7(2) requires carriers to ensure that their controlled networks and facilities provide over-ride dial codes which enable an end-user to select alternative carriage service providers on a call-by-call basis.

Section 8 Requirement to provide pre-selection – carriage service providers

Subsection 8(1) requires carriage service providers to ensure that their controlled networks and facilities permit an end-user to:

- pre-select another carriage service provider as the person's preferred carriage service provider; and
- change that pre-selection from time to time.

Subsection 8(2) requires carriage service providers to ensure that their controlled networks and facilities provide over-ride dial codes which enable an end-user to select alternative carriage service providers on a call-by-call basis.

Section 9 Records

Under subsection 351(2) of the Act, a person required to provide pre-selection must do so in accordance with a determination under section 349 and on such terms and conditions as are agreed between that person and the carriage service provider in whose favour pre-selection is required to be provided.

Section 9 of the Determination requires an access service deliverer who is required to provide pre-selection to keep a written record of any such agreed terms and conditions.

Section 10 Technical quality of pre-selection

Subsection 10(1) requires an access service deliverer to take all reasonable steps to ensure the quality of carriage services supplied to the carriage service provider for pre-selectable services is equivalent in all respects to the quality of carriage services it supplies to any other carriage service provider.

Subsection 10(2) sets out the four criteria by which the quality of the carriage services supplied for pre-selectable services are to be measured.

Statement of Compatibility with Human Rights

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

Telecommunications (Provision of Pre-selection) Determination 2015

This 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*.

Overview of the Legislative Instrument

The *Telecommunications (Provision of Pre-selection) Determination 2015* requires carriers and carriage service providers supplying a standard telephone service to provide pre-selection to end-users. It gives effect to pre-selection obligations set out in subsection 349(1) of Part 17 of the *Telecommunications Act 1997*.

The Determination allows an end-user to choose their preferred carriage service provider for certain telephone services.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.