

EXPLANATORY STATEMENT

Prepared by the Australian Communications and Media Authority

Telecommunications Numbering Plan (Consequential Amendments and Transitional Arrangements) Instrument 2015 (No. 1)

Telecommunications Act 1997
Telecommunications (Numbering Charges) Act 1997

Purpose

When sections 5 to 135 of, and Schedules 1 to 8 to, the *Telecommunications Numbering Plan 2015* (the Numbering Plan 2015) commence, the *Telecommunications Numbering Plan 1997* (the Numbering Plan 1997) will be repealed and the operative provisions of the Numbering Plan 2015 will take effect. This will occur on 1 August 2015 (see the *Telecommunications Numbering Plan Commencement Instrument 2015* (the Commencement Instrument)).

The *Telecommunications Numbering Plan (Consequential Amendments and Transitional Arrangements) Instrument 2015 (No. 1)* (the Instrument) makes consequential amendments to two legislative instruments that refer to terms defined in the Numbering Plan 1997, and repeals two legislative instruments that will become redundant once the operative provisions of the Numbering Plan 2015 commence.

Legislative provisions

The Instrument is made under subsections 349(1), 463(1) and 581(1) of the *Telecommunications Act 1997* (the Act) and subsections 20(1) and 22(2) of the *Telecommunications (Numbering Charges) Act 1997*, and in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (AIA).

Subsection 33(3) of the AIA relevantly provides that, where an Act confers a power to make a legislative instrument, the power shall be construed as including 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 Instrument is a legislative instrument, and most of its provisions are subject to disallowance under Part 5 of the *Legislative Instruments Act 2003* (LIA). Subsection 3(1) of the Consequential Amendments Instrument is made under subsection 463(1) of the Act, in accordance with subsection 33(3) of the AIA, and is therefore not subject to disallowance (see item 36 of the table at subsection 44(2) of the LIA).

Background

On 10 March 2015, the Australian Communications and Media Authority (ACMA) made the Numbering Plan 2015 under subsection 455(1) of the Act. The Numbering Plan 2015 specifies the numbers that are for use in connection with the supply of carriage services to the public in Australia and sets out rules about the allocation of numbers to carriage service providers (CSPs), the transfer of allocated numbers between CSPs, the surrender or withdrawal of allocated numbers, the portability of allocated numbers, and the use of

allocated numbers in connection with the supply of carriage services to the public (including rules about the issue of allocated numbers to customers).

Section 2 of the Numbering Plan 2015 provides for the operative provisions of the Numbering Plan 2015 (sections 5 to 135 and Schedules 1 to 8) to commence on a single day to be set by the ACMA by legislative instrument. The Commencement Instrument set the commencement date as 1 August 2015. Upon the commencement of Schedule 8 to the Numbering Plan 2015, the Numbering Plan 1997 will be repealed.

The Numbering Plan 2015 forms part of the telecommunications regulatory framework under the Act for the numbering of carriage services, replacing and improving the arrangements that were made under the Numbering Plan 1997.

Among other things, the Numbering Plan 2015:

- makes some changes to the way that certain types of number are described or defined;
- introduces over-the-counter allocation of ‘smartnumbers’, replacing an auction process.

Two legislative instruments, the *Telecommunications (Annual Charge) Determination 2014* (Annual Charge Determination) and the *Telecommunications (Provision of Pre-selection) Determination 2015* (Pre-selection Determination), refer to certain types of numbers as defined in the Numbering Plan 1997. The Annual Charge Determination is made under subsections 20(1) and 22(2) of the *Telecommunications (Numbering Charges) Act 1997*. The Pre-selection Determination is made under subsection 349(1) of the Act.

The Numbering Plan 1997, along with two other legislative instruments, the *Telecommunications (Freephone and Local Rate Numbers) Allocations Determination 2007 (No. 1)* (FLRN Allocation Determination) and the *Telecommunications (Freephone and Local Rate Numbers) Directions 2004 (No. 1)* (FLRN Directions), made under sections 463 and 581 of the Act respectively, provided for a certain sub-set of freephone and local rate numbers, called “smartnumbers”, to be allocated through a competitive online auction process. The Numbering Plan 2015 introduces a new system of over-the-counter allocation of smartnumbers and, consequently, the FLRN Allocation Determination and the FLRN Directions are longer necessary and may be revoked.

Operation

The Annual Charge Determination is made under subsections 20(1) and 22(2) of the *Telecommunications (Numbering Charges) Act 1997*. It sets out how the annual numbering charge, imposed on CSPs, is calculated and specifies the numbers that are exempt from this charge. Section 4 of, and Schedule 1 to, the Instrument update the references in the Annual Charge Determination from the Numbering Plan 1997 to the Numbering Plan 2015, and ensure the number types referred to in the Annual Charge Determination are consistent with the number types as defined in the Numbering Plan 2015. These changes do not have any material effect on the operation of the Annual Charge Determination, but ensure that the numbers referred to in that instrument for the purpose of determining the annual charge are numbers specified for use by the Numbering Plan 2015.

The Pre-selection Determination is made under subsection 349(1) of the Act, which allows the ACMA to make a written determination requiring each carrier and CSP who supplies an eligible standard telephone service to provide pre-selection in favour of a specified CSP in relation to certain calls made using that service. The Pre-selection Determination relevantly sets out the type of calls that are ‘pre-selectable services’ by reference to calls being made to particular number types or particular services. Section 5 of, and Schedule 2 to, the Instrument update the references in the Pre-Selection Determination from the Numbering Plan 1997 to the Numbering Plan 2015, and ensure that the number types referred to in the Pre-selection Determination are consistent with the number types as defined in the Numbering Plan 2015. These changes do not have any material effect on the operation of the Pre-selection Determination, but ensure that the numbers referred to in that instrument for the purpose of imposing the pre-selection obligations are numbers specified for use by the Numbering Plan 2015.

The FLRN Allocation Determination, made under subsection 463(1) of the Act, provided for an allocation system for allocating smartnumbers. The allocation system effectively auctioned the rights of use for smartnumbers. The successful bid for the rights of use of a smartnumber became the allocation charge for the allocation of that smartnumber to a CSP under the *Telecommunications (Numbering Charges) Act 1997*. Under the Numbering Plan 2015, these numbers are to be allocated through a direct over-the-counter sales process. Consequently, the FLRN Allocation Determination is redundant. Subsection 3(1) of the Instrument revokes the FLRN Allocation Determination.

The FLRN Directions are directions, given by the ACMA under section 581 of the Act to CSPs, indicating which freephone and local rate numbers a CSP may apply for under the Numbering Plan 1997 and which must be applied for under the FLRN Allocation Determination. Essentially, this was the basis for distinguishing smartnumbers, which were allocated by auction, from other freephone and local rate numbers. Although under the Numbering Plan 2015 there are separate allocation mechanisms for smartnumbers and for other freephone and local rate numbers, the Numbering Plan 2015 itself allows the ACMA to identify which freephone and local rate numbers are smartnumbers (see section 57 of the Numbering Plan 2015). Accordingly, the FLRN Directions are redundant. Subsection 3(2) of the Instrument revokes the FLRN Directions.

The Instrument commences on the day that Schedule 8 to the Numbering Plan 2015 commences, that is, when the Numbering Plan 1997 is repealed.

Consultation

Before determining an allocation system under section 463 of the Act, the ACMA must publish on its website a notice containing certain information (section 464 of the Act). The ACMA must also consult the Australian Competition and Consumer Commission (ACCC) (subsection 463(2)).

Before making a determination under section 349 of the Act, the ACMA must consult the ACCC (subsection 349(6)).

Before the Numbering Plan 2015 was made, the ACMA conducted consultation in relation to the proposed changes from the Numbering Plan 1997 and, in particular, the proposal to move from an auction to an over-the-counter allocation of smartnumbers. The consultation included

the publication on the ACMA's website of a notice. Details of this consultation can be found in the explanatory statement to the Numbering Plan 2015 on the ComLaw website at <http://www.comlaw.gov.au>.

The ACMA consulted with the ACCC about the proposed revocation of the FLRN Allocation Determination as part of its consultation with the ACCC in relation to the new Numbering Plan 2015. The ACCC advised on 8 July 2015 that it had no comments on the proposed revocation.

The ACMA has also consulted with the ACCC in relation to the proposed variation of the Pre-selection Determination. The ACCC advised on 8 July 2015 that it had no comments on the proposed variation.

Regulation impact

The Office of Best Practice Regulation (OBPR) has determined that the Instrument is machinery in nature and accordingly has advised that no further regulatory impact analysis is required. The OBPR reference is ID 19048.

Documents incorporated by reference

The Instrument refers to Acts and other legislative instruments as in force from time to time (as permitted by section 13 of the LIA and section 589 of the Act). Those Acts and legislative instruments are:

- the Act;
- the *Telecommunications (Numbering Charges) Act 1997*;
- the Numbering Plan 2015;
- the Numbering Plan 1997.

The Instrument also refers to the FLRN Allocation Determination, as in force immediately before the commencement of the Instrument.

These Acts and legislative instruments are available on the ComLaw website at <http://www.comlaw.gov.au>.

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 Instrument updates references to certain numbers types in two legislative instruments, the Annual Charge Determination and the Pre-selection Determination, to ensure that they refer to the relevant definitions in the Numbering Plan 2015. The Instrument does not have any other effect on the operation of the two instruments.

The Instrument also revokes two legislative instruments, the FLRN Allocation Determination and the FLRN Directions, that have become redundant upon the commencement of the provisions of the Numbering Plan 2015 relating to the allocation of certain freephone and local rate numbers.

The ACMA has considered whether the Instrument engages any applicable human rights or freedoms and has formed the view that it does not. The Instrument is compatible with human rights as it does not raise any human rights issues.

Notes on sections

Section 1 Name of Instrument

Section 1 provides that the name of the Instrument is the *Telecommunications Numbering Plan (Consequential Amendments and Transitional Arrangements) Instrument 2015 (No. 1)*.

Section 2 Commencement

Section 2 provides that the Instrument commences on the day that Schedule 8 to the Numbering Plan 2015 commences. Schedule 8 to the Numbering Plan 2015 commences on the day fixed by the ACMA under the Commencement Instrument, being 1 August 2015.

Section 3 Revocations and cessation

Section 3 revokes the FLRN Allocation Determination and the FLRN Directions. Subsection 3(3) provides for the Instrument to be repealed, as if by another instrument, 12 months after it commences.

Section 4 Amendment – *Telecommunications (Annual Charge) Determination 2014*

Section 4 provides that Schedule 1 amends the Annual Charge Determination.

Section 5 Amendment – *Telecommunications (Provision of Pre-selection) Determination 2015*

Section 5 provides that Schedule 2 amends the Pre-selection Determination.

Section 6 Transitional arrangements – allocations under the *Telecommunications (Freephone and Local Rate Numbers) Allocation Determination 2007 (No. 1)*

Section 6 sets out transitional arrangements to ensure that successful bidders who have won the rights of use for a particular freephone or local rate number through an auction conducted before the revocation of the FLRN Allocation Determination are able to pay any unpaid eligible amount and obtain the rights of use in the manner set out in the FLRN Allocation Determination after the revocation of that instrument, as if that instrument had not been revoked.

Under the FLRN Allocation Determination, successful bidders and successful applicants have up to 60 days to pay the eligible amount (i.e. the winning bid amount) after the end of the auction. Under section 6, if that amount is paid within that 60 day period but after the commencement of the Instrument, the ACMA must allocate the particular freephone or local rate number to the successful applicant, and the successful bidder will acquire the rights of use in accordance with the FLRN Allocation Determination and the Numbering Plan 1997, as if those instruments had not been repealed.

Subsection 6(4) clarifies that a successful bidder who acquires the rights of use to a particular freephone or local rate number pursuant to the operation of section 6 will be taken to be the holder of the enhanced rights of use for that particular freephone or local rate number under the Numbering Plan 2015. Likewise, subsection 6(5) ensures that the successful applicant

who is allocated a particular freephone or local rate number under section 6 is taken to have been allocated that number under the Numbering Plan 2015.

Schedule 1 Amendments to the *Telecommunications (Annual Charge) Determination 2014*

Schedule 1 makes amendments to the Annual Charge Determination to update references to the Numbering Plan 2015, and to update terminology used to describe exempt numbers so that it is consistent with the Numbering Plan 2015.

Items 1 to 9 of the Schedule amend section 4 of the Annual Charge Determination, which defines the terms used within that determination, by adding new definitions where necessary, removing redundant terms, and updating references to relevant sections in the Numbering Plan 2015.

Section 5 of the Annual Charge Determination sets out the formula to be used to calculate the annual charge imposed on a number held by a CSP. Subsection 5(2) defines relevant terms necessary for the application of that formula. Item 10 of Schedule 1 makes minor changes to the definition of *reduced service type* in subsection 5(2) so that it more accurately refers to numbers used for the relevant service types described in the Numbering Plan 2015. Item 11 adds a definition of *service type* to clarify that, for the purpose of determining whether a number is within a particular *chargeable holding* as that term is defined in the Annual Charge Determination, there are three service types that a number may fall within: exempt service type, normal service type or reduced service type. Those terms are already defined in subsection 5(2) of the Annual Charge Determination.

Item 12 substitutes section 6 of the Annual Charge Determination, which sets out the number types that are exempt from charge. The effect of the new section 6 is the same as the previous section 6 (i.e. the same numbers are exempt from the annual charge) but the manner in which the exempt numbers are described has been updated to be consistent with the manner in which those number types are defined or described in the Numbering Plan 2015.

Schedule 2 Amendments to the *Telecommunications (Provision of Pre-selection) Determination 2015*

This Schedule makes amendments to the Pre-selection Determination to update references to the Numbering Plan 2015, and to update terminology used to describe pre-selectable services so that it is consistent with the manner in which those services are described in the Numbering Plan 2015.

Items 1 to 4 of the Schedule update section 4 of the Pre-selection Determination, which defines the terms used within that determination, by adding new definitions so that the terminology is consistent with the terms used in the Numbering Plan 2015.