

EXPLANATORY STATEMENT

Prepared by the Australian Communications and Media Authority

Telecommunications Numbering Plan Variation 2016 (No.1)

Purpose

The Australian Communications and Media Authority (the ACMA) has made the *Telecommunications Numbering Plan Variation 2016 (No.1)* (the Variation) to improve the operation of the *Telecommunications Numbering Plan 2015* (the Numbering Plan).

Background

The Numbering Plan forms part of the telecommunications regulatory framework under the *Telecommunications Act 1997* (the Act) for the numbering of carriage services. The ACMA made the Numbering Plan in March 2015 to address the impending sunset of the *Telecommunications Numbering Plan 1997* and to facilitate the delegation of the majority of the ACMA's numbering functions and powers to an external provider. From 3 August 2015, ZOAK Solutions Pty Ltd (ZOAK) has provided allocation and administrative services for most of Australia's telephone numbers.

Since ZOAK commenced service provision on 3 August 2015, the ACMA and carriage service provider (CSP) stakeholders have identified a number of changes which would further streamline the automated number allocation process and improve the operation of the Numbering Plan.

Legislative provisions and operation

The ACMA has made the Numbering Plan under subsection 455(1) of the Act. The Numbering Plan sets out the framework for the numbering of carriage services in Australia and the use of numbers in connection with the supply of these services. It specifies the rules for the allocation, transfer, surrender, withdrawal, portability and use of different types of numbers. The Numbering Plan also places obligations on carriage service providers when using numbers to supply carriage services. Compliance with the Numbering Plan is a requirement of the Act and is enforceable as a civil penalty provision.

Subsection 33(3) of the *Acts Interpretation Act 1901* (the AIA) provides that where an Act confers a power to make, grant or issue any instrument, the power includes a power to amend or vary that instrument, in the like manner and subject to the like conditions as making the instrument.

The ACMA has varied the Numbering Plan by means of the Variation. The Variation has been made under subsection 455(1) of the Act, taking into account the relevant matters listed under subsection 455(10) of the Act, and subsection 33(3) of the AIA.

Consultation

Subsection 17(1) of the *Legislation Act 2003* (the LA) requires the ACMA to be satisfied, before making a legislative instrument, that all consultation that is appropriate and reasonably practicable to undertake has been undertaken. The ACMA has undertaken consultation with industry and the general public on the proposed changes.

If the ACMA is of the opinion that a variation of the numbering plan is in the public interest, or that it will affect a number issued to a customer of a carriage service provider, subsection 460(3) of the Act requires the ACMA to make available for public inspection a draft of the variation for 30 days before varying the Numbering Plan. Members of the ACMA's Numbering Advisory Committee were specifically consulted as part of this consultation.

Between 29 January and 29 February 2016, the ACMA conducted a public consultation process inviting submissions on the proposed changes by releasing a draft variation instrument and a consultation paper on the ACMA's website, and alerting the public to the proposed changes in a national newspaper advertisement.

The consultation paper discussed the proposed minor changes to improve the operation of the Numbering Plan, including: correcting an incorrect cross-reference, making certain reporting requirements consistent with current practice, removing merits review rights in relation to a kind of decision that the ACMA has no discretion in making, and creating clearer timeframes for decision-making.

The consultation paper also discussed the proposed substantive changes to facilitate:

- additional automation of number transactions for freephone and local rate numbers (FLRNs);
- efficiency in the surrender of ported FLRNs; and
- clarity in arrangements for surrendering numbers not in multiples of standard units for the number type.

The ACMA also consulted the ACCC in accordance with subsection 461(1) of the Act before making the Variation. The ACCC advised the ACMA that the proposed variation did not raise any competition or consumer issues.

The ACMA received one submission in response to the consultation paper which supported making the Variation.

Regulation impact

The Office of Best Practice Regulation (OBPR) has determined that the overall effect of the changes is minor and machinery in nature. Accordingly, the OBPR advised that no further regulatory impact analysis (in the form of a Regulation Impact Statement) was required. The OBPR reference number is 20083.

Detailed description of the Variation

Details of the Variation are in Attachment A.

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 LA 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 Variation, which improves the operation of the Numbering Plan, 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*.

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

Attachment A

Notes on Sections

Section 1 Name of Instrument

Section 1 names the instrument as the *Telecommunications Numbering Plan Variation 2016 (No. 1)*.

Section 2 Commencement

Section 2 sets the commencement time for the Variation. The variation will commence on 21 March 2016.

Section 3 Amendment of the *Telecommunications Numbering Plan 2015*

Section 3 provides that the Numbering Plan is amended by Schedule 1 of the Variation.

Schedule 1 Amendment

Schedule 1 lists the amendments to the Numbering Plan.

Items 1-6, 11, 12, 14-17 and 20

The ACMA (or its delegate) is required to make several decisions under the Numbering Plan within specified periods of time. The Variation provides that, in the event that the ACMA does not make a decision within the specified time period, the application or request is taken to be refused. This ensures that applicants affected by such a failure to make a decision are able to seek review of the deemed refusal decision. Items 1 – 6, 11, 12, 14-17 and 20 of Schedule 1 introduce these deemed refusal provisions in relation to various decision-making processes required under the Numbering Plan.

Items 7, 8 and 9

Section 63 sets out the arrangements for registered CSPs to apply for an allocation of numbers in special circumstances. Special circumstances apply where the number is not listed as available for allocation under section 57 of the Numbering Plan (i.e. the number is in 'quarantine'), or where the application is not for a multiple of standard units of the type of number applied for.

Most such applications need to be considered on a case by case basis, taking into account all the circumstances and the matters listed in section 65 of the Numbering Plan. However, item 7 of the Variation adds subsection 64(2A) which provides the ACMA must approve an application made under section 63 for a freephone or local rate number when the application is made by the registered CSP who last held the number for the purpose of issuing the number to the customer that was the last customer to whom the number was issued. The applications are known as 'last:last applications'.

Item 8 of the Variation makes a consequential amendment so that the existing subsection 64(4) is replaced with a provision that requires the ACMA to make a decision on more than one application for allocation of the same number in the order the requests were received, unless one of the applications is a last:last application.

Item 8 also adds a new subsection 64(5) which allows the ACMA to regard a last:last application as complete without payment of the relevant application fee and allocation fees, if the ACMA has determined that that subsection applies to the registered CSP submitting the application. This allows the ACMA to authorise CSPs to use post-payment arrangements for these kinds of applications.

Item 8 also adds a new subsection 64(6) which provides that if the ACMA does not make a decision on an application made under section 63 within 10 business days, the ACMA is taken to have made a decision to refuse the application. Item 9 makes a consequential change to subsection 65(1).

Item 10 amends subsection 71(3) to correct a typographical error.

Item 13 makes changes to subsection 89(2) to clarify when the ACMA may decide to approve an application for surrender of numbers which are not a multiple of standard units for the type of number.

Relevantly, subsection 89(2) as amended provides that the ACMA must decide not to approve such an application, unless it is satisfied of certain matters. These matters are that:

- a) the surrender of the numbers is consistent with the current number analysis capabilities of telecommunications networks operated in Australia; and
- b) the carriage service provider is unable to surrender numbers as a multiple of standard units, or would be significantly disadvantaged or inconvenienced by being required to surrender numbers as a multiple of standard units; and
- c) it is appropriate to allow the surrender of the numbers in all the circumstances.

This removes the requirement for the ACMA to consider whether the surrender of numbers will hinder the later allocation of the numbers. It has been the ACMA's experience that this provision is incapable of being given practical effect, particularly with regard to non-standard surrender of digital mobile numbers.

This will allow the ACMA to consider an application from a CSP to surrender numbers in a quantity that is not a multiple of the standard unit for the number on the circumstances of each case, recognising that such surrenders are sometimes necessary (for example, in the event of CSP failure).

New subsection 89(2A) provides that when considering whether it is appropriate to allow the surrender of the numbers for the purposes of paragraph 89(2)(c) the ACMA may take into consideration any matters it considers relevant and may request further information about the matters to which the application relates.

New subsection 89(2B) provides that the period within which the ACMA must make a decision on an application for surrender of numbers (10 business days) does not include any period of time starting when the ACMA asks the CSP for further information and ending when the ACMA receives the information. Subsection 89(2C) provides that if an applicant does not give the ACMA requested further information within a period of 30 business days, their application is taken to be withdrawn.

Items 18 and 19 amend section 114 of the Numbering Plan, which sets out the requirements for a CSP who has been ported numbers to ensure the surrender of that number occurs when the customer cancels the service.

New paragraph 114(2)(a) requires a CSP to which a freephone number or local rate number has been ported to advise the ACMA if the service to which the ported number relates has been cancelled. Under the Numbering Plan, only the CSP that has been allocated or transferred the number can surrender the number. In order to allow the effective return of such ported numbers in relation to cancelled services to be put back into the available number pool, new subsection 114(4) provides that, if such notification is given by the gaining CSP under paragraph 114(2)(a) to the ACMA, the number is taken to be surrendered by the holder of the number.

Item 21 amends section 125, which requires CSP to report to the ACMA on their holdings of digital mobile numbers for the purposes of allowing the ACMA to calculate the annual numbering charges.

Previously, only CSPs that held digital mobile numbers and were also carriers in relation to the digital mobile services were required to report. This reflected the fact that most digital mobile numbers were held by carriers. However, any CSP who holds a digital mobile number, whether a carrier or not, is required to pay annual numbering charges on those

numbers so it is necessary for the ACMA to receive reports from all CSPs who hold digital mobile numbers in order to accurately calculate these charges.

Item 22 amends section 127 which sets out administrative decisions which are subject to merits review.

Item 22 removes paragraph 127(n) from the list of reviewable decisions as a decision to cancel the enhanced rights of use when the number has not been allocated for three years, is not a decision that the ACMA has any discretion in making (if there has been no allocation for three years, the ACMA must cancel the enhanced rights of use).