**Explanatory Statement**

***Telecommunications (Consumer Protection and Service Standards) Act 1999***

**Telecommunications (Consumer Protection and Service Standards) Regulations 2018**

Issued by the Authority of the Minister for Communications

# Purpose

The *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the Act) provides, among other things, for the support of the provision of public interest telecommunications services. This includes the National Relay Service (NRS).

Section 160 of the Act provides that the Governor‑General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 6(4) of the Act provides that in making a recommendation about the making of regulations to the Governor‑General, the Minister must have regard to whether a carriage service for the purpose proposed to be declared by the regulations can be supplied using the same infrastructure as is, at that time, being used by universal service providers, contractors or grant recipients to supply a standard telephone service for the purpose of voice telephony and such other matters (if any) as the Minister considers relevant.

Part 2 of the Act sets out provisions related to public interest telecommunication services. Division 3 of the Act applies to public interest telecommunication service contracts and grants. Paragraph 13(1)(d) of the Act provides that the NRS is to be reasonably accessible to all persons in Australia who are deaf, or have a hearing and/or speech impairment wherever they reside or carry on business. Paragraph 13(1)(k) of the Act provides that policy objectives relating to public interest telecommunication service contracts and grants also encompass the objectives (if any) specified in the regulations, where those objectives relate to the supply of carriage services.

The purpose of the *Telecommunications (Consumer Protection and Service Standards) Regulations**2018*(the Regulations) is to complement the objective that the NRS is to be reasonably accessible to all persons in Australia who are deaf, or have a hearing and/or speech impairment wherever they reside or carry on business. This is achieved by introducing a new objective in the Regulations relating to the supply of carriage services. This in turn, will facilitate future outreach activities for people who are deaf, hearing and/or speech impaired to include information about mainstream communication services as well as the NRS.

The current NRS outreach program is focused specifically on raising awareness, providing training and other forms of support in relation to NRS services. However, the existing program does not have the authority to educate potential new users of mainstream communication service alternatives which may better suit their needs. The changing communications environment means that there is now a variety of mainstream communication services available that are potentially appropriate for the needs of deaf, hearing and/or speech impaired consumers such as online chat or messenger services. The Regulations will allow future outreach activities to include information about mainstream communication services, in addition to the NRS, which will better inform people who are deaf, hearing and/or speech impaired about their communications options.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the Regulations are set out at Attachment 1.

# Consultation

The development of the Regulations was an outcome from a consultation process which was undertaken by the Department of Communications and the Arts in 2016, *Communications Accessibility: 2016 and beyond,* which sought views on a range of options related to the short and long term sustainability of the NRS*.*

An exposure draft of the Regulations was provided to stakeholders during a targeted consultation process that commenced on 10 November 2017. Three stakeholder engagement sessions took place between the Department of Communications and the Arts and key stakeholders during the consultation period in Sydney and Melbourne. Face-to-face meetings and consultation over the phone also took place, and 15 written response were received. The consultation process closed on 19 January 2018. The following organisations provided responses on the exposure draft:

* Australian Communications Consumer Action Network (ACCAN);
* Australian Communication Exchange (ACE);
* Australian Communications and Media Authority (ACMA);
* Australian Mobile Telecommunications Association (AMTA);
* Conexu Foundation;
* Deaf Australia;
* Optus;
* Telecommunications Industry Ombudsman (TIO);
* Telstra;
* Vodafone Australia; and
* Westwood Spice (WWS).

Overall, stakeholders were supportive of the introduction of the policy objective, raising anecdotally that many NRS users already use mainstream communications. Concerns were raised by some stakeholders in relation to the funding of initiatives undertaken under this new policy objective and any potential effect this would have on NRS funding. There will be no impact on current NRS funding. Clarification was also sought around the definition of what constitutes a ‘mainstream communication service’. After further discussion, the existing definition was considered to be sufficient. No objections were raised in relation to the introduction to the Regulations.

# Regulation Impact Statement

The Office of Best Practice Regulation (OBPR) assesses policy proposals that may have a regulatory impact on businesses, community organisations or individuals. A Regulation Impact Statement is required if a proposal would result in a regulatory impact, unless the proposed change is a minor regulatory change.

OBPR has assessed that this proposal is not likely to have more than a minor regulatory impact and does not impose additional regulatory obligations on individuals, businesses or community organisations. As such, a Regulation Impact Statement is not required (OBPR ID: 21311).

# Statement of Compatibility with Human Rights

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at Attachment 2.

# Attachment 1: Notes on Sections

Part 1—Preliminary

Part 1 contains general provisions relating to the commencement and operation of the 2018 Regulations.

Section 1—Name

Section 1 provides for the 2018 Regulations to be cited as the *Telecommunications (Consumer Protection and Service Standards) Regulations 2018*.

Section 2—Commencement

Section 2 provides for the commencement of the 2018 Regulations.

The 2018 Regulations commence on the day after they are registered.

Section 3—Authority

Section 3 provides that the 2018 Regulations are made under the authority of the Act.

Section 160 of the Act contains a general regulation making power.

Section 4—Definitions

Section 4 provides that Act means the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

Part 2—Policy objectives

Part 2 contains details of the policy objective to be added to Section 13 of the Act.

**Section 5 – Policy objective – use of mainstream communication services by people who are deaf or have a hearing and/or speech impairment.**

Subsection 5(1) details the purpose of the policy objective. To assist in, and promote, the use of mainstream communication services by people who are deaf or have a hearing and/or speech impairment.

Subsection 5(2) provides the definition and also examples of ‘mainstream communication services’ for the purposes of the Act.

**Attachment 2: Statement of Compatibility with Human Rights**

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

**Telecommunications (Consumer Protection and Service Standards) Regulations 2018**

This 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 Instrument**

The general purpose of this Instrument is to introduce a new policy objective to the *Telecommunications (Consumer Protection and Service Standards) Act 1999 (the Act)* allowing for the implementation of information and support programs to assist people who are deaf, hearing and/or speech impaired to access and utilise where appropriate mainstream communication services as well as the National Relay Service.

The Act sets out the policy objectives of Public interest telecommunications service contracts and grants which include that a standard telephone service be reasonably accessible to all people in Australia on an equitable basis. Paragraph 13(1)(d) of the Act provides that the National Relay Service is to be reasonably accessible to all persons in Australia who are deaf, hearing and/or speech impaired. This Instrument allows for expansion of support programs to include, where appropriate, support and education of mainstream communication options which may better suit the needs of consumers.

**Human rights implications**

The Instrument engages the following rights:

* the rights of people with a disability under the *Convention on the Rights of Persons with Disabilities* (CRPD).

*The rights of persons with a disability*

The CRPD requires countries to ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disability without discrimination of any kind on the basis of their disability. In particular, countries are required to take into account the protection and promotion of the human rights of persons with disability in policies and programs, and adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the Convention.

Article 9 of the CRPD recognises that people with disability have the right to live independently and take part in all aspects of life, including access to information and communications on an equal basis to others.

This Instrument promotes the rights of people with disability by recognising and better supporting the potentially complex communications needs of those consumers who are deaf, hearing and/or speech impaired. The changing communications environment means that there are now a variety of mainstream communications options available that are potentially appropriate for deaf, hearing and/or speech impaired consumers such as online chat or messenger services.

The introduction of this policy objective will assist those consumers to be aware of and engage with the communication options that best suit their needs, either a mainstream communication option or the National Relay Service, which allows them reasonable access to the equivalent of a standard telephone service.

**Conclusion**

This Instrument is compatible with human rights because it promotes the protection of human rights of persons with disability.