

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Telecommunications Act 1997

Telecommunications – NBN Instruments Omnibus Variation 2020 (No.1)

Authority

The Australian Communications and Media Authority (the **ACMA**) has made the *Telecommunications – NBN Instruments Omnibus Variation 2020 (No.1)* (the **instrument**) to vary:

- the *Telecommunications Service Provider (NBN Service Migration) Determination 2018* (the **Determination**) under subsection 99(1) of the *Telecommunications Act 1997* (the **Act**); and
- the *Telecommunications (NBN Continuity of Service) Industry Standard 2018* (the **Standard**) under subsection 125AA(1) of the Act and in accordance with sections 5 and 7 of the *Telecommunications (NBN Consumer Experience Industry Standard) Direction 2017* (the **Direction**), and

in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the **AIA**).

Under subsection 33(3) of the AIA, where an Act confers a power to make, grant or issue any instrument of a legislative character 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.

Authority to make the Determination

Under subsection 99(1) of the Act, the ACMA may, by legislative instrument, make a determination, called a service provider determination, setting out rules that apply to service providers in relation to the supply of either or both of the following:

- (a) specified carriage services;
- (b) specified content services.

The Determination is such a service provider determination.

Authority to make the Standard

The Minister has the power under subsection 125AA(4) of the Act to direct the ACMA to:

- (a) determine a standard under subsection 125AA(1) of the Act that:
 - (i) applies to participants in a specified section of the telecommunications industry;
 - (ii) deals with one or more specified matters relating to the activities of those participants; and
- (b) do so within a specified period.

The Standard was made under subsection 125AA(1) pursuant to the Direction.

Purpose and operation of the instrument

Relevant background regarding the history and making of the Determination and the Standard is set out in the Explanatory Statements to those instruments.

On 16 October 2020, the ACMA made a number of variations to the Determination in the *Telecommunications Service Provider (NBN Service Migration) Determination Variation 2020 (No. 1)* (the **Determination Variation**). Due to an administrative error, an incorrect word was included in the Determination Variation by item 1 of that instrument. That word is now corrected by the substitution of the correct word, taking effect upon commencement of the instrument. The instrument commences immediately after the Determination Variation commences.

On 16 October 2020, the ACMA also made a number of variations to the Standard in the *Telecommunications (NBN Continuity of Service) Industry Standard Variation 2020 (No. 1)* (the **Standard Variation**). Due to an administrative error, some unintended text was included in the Standard by items 2 and 3 of the Standard Variation and 4 items were mistakenly omitted from the Standard Variation. Those minor errors are now corrected by means of the instrument with the corrections taking effect upon commencement of the instrument. The instrument commences immediately after the Standard Variation commences.

A provision-by-provision description of the instrument is set out in the notes at **Attachment A**.

The instrument is a legislative instrument for the purposes of the *Legislation Act 2003* (the **LA**).

Documents incorporated by reference

The instrument does not incorporate any document by reference.

Consultation

Before the instrument was made, the ACMA was satisfied that consultation was undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the LA. In accordance with subsection 99(4) of the Act, the ACMA consulted directly with the Australian Competition and Consumer Commission. In accordance with subsection 125AA(3), the ACMA also consulted directly with Communications Alliance. An extensive public consultation process was undertaken on the making of the Determination Variation and the Standard Variation. The variations made by the instrument give effect to matters that were consulted on during that earlier consultation process. As such, no further public consultation was conducted prior to making the instrument.

Regulatory impact assessment

A preliminary assessment of the proposal to make the Determination Variation and the Standard Variation was conducted by the Office of Best Practice Regulation (**OBPR**), based on information provided by the ACMA, for the purposes of determining whether a Regulation Impact Statement (**RIS**) would be required. OBPR advised that a RIS would not be required because the instrument was not expected to have more than a minor regulatory impact on businesses, community organisations or individuals (OBPR reference number 25870). OBPR have also considered the variations made in the instrument and have advised that, as the changes are machinery in nature, a RIS is not required.

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 LA applies to cause a statement of compatibility with human rights to be prepared in respect of that legislative instrument.

Overview of the instrument

The ACMA has made the instrument under subsections 99(1) and 125AA (1) of the Act.

The instrument makes variations to the Determination and the Standard to correct minor errors that were included in the Determination Variation and the Standard Variation.

Human rights implications

The ACMA has assessed whether the instrument is compatible with human rights, being the rights and freedoms recognised or declared by the international instruments listed in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* as they apply to Australia.

Having considered the nature of the instrument and the nature of the applicable rights and freedoms, the ACMA has formed the view that the instrument does not raise any human rights issues.

Conclusion

The instrument is compatible with human rights as it does not raise any human rights issues.

Notes to the *Telecommunications – NBN Instruments Omnibus Variation 2020 (No.1)*

Section 1 Name

This section provides for the instrument to be cited as the *Telecommunications – NBN Instruments Omnibus Variation 2020 (No.1)*.

Section 2 Commencement

This section provides for the instrument to commence immediately after the commencement of the Determination Variation and the Standard Variation, both of which commence on 14 December 2020.

The Federal Register of Legislation may be accessed free of charge at www.legislation.gov.au.

Section 3 Authority

This section provides that the instrument is made under subsections 99(1) and 125AA(1) of the Act.

Section 4 Variation - *Telecommunications Service Provider (NBN Service Migration) Determination 2018*

This section provides that the Determination is varied in accordance with Schedule 1.

Section 5 Variations - *Telecommunications (NBN Continuity of Service) Industry Standard 2018*

This section provides that the Standard is varied in accordance with Schedule 2.

Schedule 1

This schedule sets out a variation to the Determination.

Item [1] omits the word “legacy” and substitutes the word “interim” to correct a drafting error.

Schedule 2

This schedule sets out the variations to the Standard.

Item [1] omits some words which were included in the Standard Variation as the result of an administrative error. This omission has the effect of aligning the definition of “consumer” in section 5 of the Standard with that in the *Telecommunications Consumer Protection Code C628:2019* (the **TCP Code**). The revision increases the estimated annual spend that a business or non-profit organisation may have with a carriage service provider and still be considered a consumer from \$20,000 to \$40,000. The revised TCP Code definition of consumer commenced on 1 January 2020. The revised definition of “consumer” will commence on 14 December 2020.

Item [2] repeals paragraph 11(1)(c) of the Standard and substitutes a revised paragraph which corrects some minor errors which were included due to an administrative error. Namely:

- it replaces the word “applies” with “circumstances exist”;
- it replaces “3” with “three”; and
- it deletes the word “circumstances” where it last appears, as its inclusion was superfluous.

Items [3], [4], [5] and [6] make a minor amendments to the note to subsection 11(2) and to subsections 14(1), 14(2) and 14(4) of the Standard to include cross-references to paragraph 11(1)(c).