

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Telecommunications Act 1997

Telecommunications Numbering Plan Variation 2022 (No. 1)

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Telecommunications Numbering Plan Variation 2022 (No.1)* (**the instrument**) under subsection 455(1) of the *Telecommunications Act 1997* (**the Act**) and subsection 33 of the *Acts Interpretation Act 1901* (**the 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 amends the *Telecommunications Numbering Plan 2015* (**the Numbering Plan**). In accordance with subsection 455(10) of the Act, the ACMA considered the obligations imposed on carriage service providers (**CSPs**) by Part 4 of the *Telecommunications (Consumer Protection and Services Standards) Act 1999* and recognised international standards.

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

Purpose and operation of the instrument

The purpose of this instrument is to make targeted amendments to the Numbering Plan to benefit consumers and industry. These amendments are intended to enhance the Numbering Plan's efficiency and effectiveness by:

- supporting scam disruption initiatives
- enabling efficient allocation of numbers
- removing outdated provisions
- ensuring sufficient geographic numbers are available for allocation to meet predicted demand.

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

Regulatory framework

The ACMA made the Numbering Plan on 10 March 2015. Together with arrangements set out in Part 22 of the Act, the Numbering Plan regulates the numbering of carriage services in Australia and the use of numbers in connection with the supply of such services. Under these arrangements, the ACMA manages number allocation, transfer and surrender of numbers. Under the Numbering Plan, the ACMA is able to delegate the majority of its numbering functions and powers to an external provider. The numbering system enables telecommunications providers, individuals and businesses to purchase different types of numbers, including mobile and geographic numbers and is currently managed by an external provider under contract with the ACMA.

Scam disruption initiatives

Phone scams cause significant direct social and economic harms. The ACMA and industry have been actively engaged in disrupting scams. Scams are caused by third-party bad actors, generally operating offshore. Scammers are determined, agile and deceptive. They adapt to regulatory measures and target system weaknesses and perceived regulatory gaps.

In this context, the instrument makes the following amendments to further support regulatory arrangements to protect Australians from scams and fraud.

Item 30 of Schedule 1 to the instrument varies the Numbering Plan to specify 7226 as a special service 4-digit number, to enable consumers from any participating telco provider to report scam short message service messages (scam SMS) to a single short code that spells SCAM on a telephone keypad (7226).

Items 4, 6 and 9 vary the Numbering Plan to limit the use of freephone, local rate and premium rate numbers respectively to inbound calls only, to disrupt scammers' ability to use these numbers to make outbound scam calls look legitimate.

Item 16 varies the Numbering Plan to enable the ACMA to withdraw numbers used in association with a scam communication or other fraudulent activity, in limited circumstances. This amendment will increase the regulatory options available to the ACMA to prevent numbers being used by scammers or for other fraudulent activity. A decision to withdraw a number is subject to potential review by the Administrative Appeals Tribunal.

Efficient allocation of numbers

Item 31 varies the Numbering Plan to decrease the size of a "standard unit of premium rate numbers (10 digits long)" and "special services numbers specified for use with a digital mobile service" from 100,000 to 10,000.

Unit sizes are based in part on telecommunications network conditioning practices. Technological changes mean larger sizes are no longer necessary. It is anticipated that smaller unit sizes will increase flexibility for industry and encourage CSPs to transfer numbers under section 86 of the Numbering Plan, which occurs via the Numbering System, rather than by assignment. This will provide the ACMA with visibility of those transfers. Item 15 of the instrument requires CSPs to only transfer numbers in a standard unit, or a multiple of a standard unit.

Outdated provisions

The Numbering Plan allows for the use of numbers in association with location independent communications services (LICS). The instrument removes LICS as industry has confirmed that they are now redundant and there are no LICS allocated to any CSPs.

Section 97 of the Numbering Plan requires CSPs to give customers a minimum of 1 year's notice before recalling and replacing a number. This timeframe allowed for numbers to be changed in annually published telephone books. As telephone books are no longer generally published and distributed in hard copy (they are only printed on order), Item 18 varies the Numbering Plan to reduce the notice period to 90 calendar days.

The instrument also:

- removes the objects from the Numbering Plan, to align its interpretation directly with the relevant objects of the Act; and
- updates definitions for accuracy and to ensure consistency with other Acts and instruments.

Availability of geographic numbers

The instrument also amends Schedule 1 of the Numbering Plan to include additional geographic number ranges in specific areas. Prefixes are included for localities where numbers are predicted to run out in the next 2 to 5 years. The new prefixes will not be made available until current allocations in these areas are exhausted.

Finally, the instrument specifies that certain number ranges are exempt from allocation. The ACMA has designated some numbers to use for fictional purposes, for example, in TV shows.

Documents incorporated by reference

This instrument makes amendments which will result in the Numbering Plan incorporating or otherwise referring to the following documents:

- the Act;
- the *Online Safety Act 2021*.

The Acts mentioned above are registered on the Federal Register of Legislation (which may be accessed at www.legislation.gov.au). The Acts are incorporated as in force from time to time, in accordance with section 10 of the *Acts Interpretation Act 1901* and subsection 13(1) of the LA.

Consultation

Subsection 17(1) of the LA requires the ACMA to be satisfied, before making a legislative instrument, that all consultation that is appropriate and reasonably practicable has been undertaken.

Subsection 460(3) of the Act requires the ACMA to publish a notice on its website, setting out a draft of the variation and inviting interested persons to give written comments about the draft to the ACMA within 30 days after the publication of the notice, if the ACMA is of the opinion that it is in the public interest that the public should be consulted about a variation of the Numbering Plan.

The ACMA published such a notice on its website from 5 October to 4 November 2022, including a consultation paper setting out all the proposed changes and a draft of the instrument (consultation number: 32/2022).

The paper and draft instrument were also provided to the ACMA's Numbering Advisory Committee, established under Part 7 of the *Australian Communications and Media Authority Act 2005*, which includes representatives from government, consumer organisations, the peak communications organisation (Communications Alliance Ltd) and telecommunications carriers and CSPs.

The ACMA also consulted with the Australian Competition and Consumer Commission, in accordance with subsection 461(1) of the Act, before making the instrument.

The ACMA received 12 submissions in response to the consultation paper. The ACMA considered all of the relevant issues raised in the submissions when finalising the instrument. Most of the proposed variations were supported, with some exceptions.

Scam disruption initiatives

Most submitters did not support the proposal to require CSPs who are assigned numbers under a commercial arrangement to register with the ACMA under section 122 of the Numbering Plan. The reasons provided include that it would not help combat scams, the same outcome could be achieved by other means, it could result in additional costs to industry and consumers, and it could constrain market entry by global service providers. The ACMA's view remains that the proposed registration would be beneficial, but after considering all of the issues raised in the submissions, further examination is required before the proposal can be implemented. The ACMA will therefore not proceed with this variation at this time.

Some submitters supported the proposal to give the ACMA new powers to withdraw numbers used for scams (items 16 and 20), but some were opposed. The reasons against the proposal included that the Reducing Scam Calls and Scam SMS Industry Code C661:2022 already requires CSPs to take action to block scam traffic, it could result in additional costs and work for CSPs, it would not be effective for certain types of scams, it could adversely affect end users, and withdrawing single numbers could present practical problems. After carefully considering all submissions, the ACMA's view remains that the power to withdraw numbers in limited circumstances would be an effective regulatory option. As the benefits outweigh the risks, the ACMA has decided to proceed with this variation. The ACMA acknowledges, however, that this is a power that it must use judiciously.

Efficient allocation of numbers

Most submitters supported the proposal to reduce the notice period for the recall and replacement of numbers from 1 year to 90 days (item 18). One submitter considered that 90 days is not long enough for consumers and small businesses to make changes to accommodate a new number. As directories are generally no longer published and distributed in hard copy (they are only printed on order), the

ACMA's position is that 90 days is a sufficient minimum notification period. The ACMA also notes that the Numbering Plan only permits recall and replacement of numbers in limited circumstances.

Availability of geographic numbers

Some concerns were raised about the inclusion of new geographic number ranges in Schedule 1 to the Numbering Plan (items 21, 22 and 25). Some CSPs suggested that the ACMA should first check if existing geographic numbers are being utilised efficiently prior to releasing new geographic number ranges, noting geographic number usage has decreased due to increased mobile use and complex networks and systems changes are required when new geographic numbers are made available. The ACMA will designate the specified number ranges in the Numbering Plan so that they are available in the event that numbers in those areas run out, but the ACMA does not propose to make them available for allocation until current allocations in those areas are exhausted.

Aside from removing the variation for CSP registration, no material changes were made to the instrument as a result of the consultation. Copies of the submissions are available on the ACMA website.

Regulatory impact assessment

The Office of Best Practice Regulation (**OBPR**) advised that it considers the proposal is unlikely to have a more than minor regulatory impact, as the proposed amendments will not impose major costs or obligations onto CSPs, industry and consumers. As such, the preparation of a Regulation Impact Statement is not required.

The OBPR reference number is OBPR 22-03208.

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 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, 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*, as it 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 Numbering Plan Variation 2022 (No. 1)*

Section 1 - Name

This section provides for the instrument to be cited as the *Telecommunications Numbering Plan Variation 2022 (No.1)*.

Section 2 - Commencement

This section provides for the instrument to commence at the start of the day after the day it is registered on the Federal Register of Legislation, with the exception of Item 31, which will commence on 17 April 2023. The delayed commencement of Item 31 allows time for necessary changes to the numbering system to implement that change.

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

Section 3 - Authority

This section identifies the provision of the Act that authorises the making of the instrument, namely subsection 455(1) of the Act.

Section 4 - Amendments

This section provides that the Numbering Plan is amended by Schedule 1 of the instrument.

Schedule 1 – Amendments

Telecommunications Numbering Plan 2015 (Registration No. F2015L00319)

Item 1

This Item omits ‘this instrument (see Part 2)’ from paragraph 6(a) and substitutes ‘the Act’, so that in interpreting and making decisions under the Numbering Plan, regard is to be had to the objects of the Act.

Item 2

This item repeals Part 2, Chapter 1 of the Numbering Plan, as it is not necessary to have separate objects to those in the Act.

Item 3

This item repeals the definition of age-restricted content in section 15 and substitutes it with the meaning from subsection 107(1) of the *Online Safety Act 2021*, so it is consistent with current legislation.

Item 4

This item amends the definition of “freephone service” in section 15, so that a freephone service can only be used for receiving inbound calls and cannot be used to make outgoing calls.

Item 5

This item omits LICs from the definition of “freephone service” in section 15, as a result of the variation in Item 8.

Item 6

This item amends the definition of “local rate service” in section 15, so that a local rate service can only be used for receiving incoming calls and cannot be used to make outgoing calls.

Item 7

This item omits LICs from the definition of “local rate service” in section 15, as a result of the variation in Item 8.

Item 8

This item repeals the definition of LICs in section 15. LICs are no longer used and it is not necessary to make provision for them in the Numbering Plan.

Item 9

This item repeals the definition of “premium rate service” in section 15 and substitutes it with a new definition, so that a premium rate service can only be used for receiving incoming calls and cannot be used to make outgoing calls.

Item 10

This item inserts a definition of “scam communication” in section 15, to support the variation in Item 16.

Item 11

This item omits LICs from section 16, as a result of the variation in Item 8.

Item 12

This item omits LICs from subsection 19(1), as a result of the variation in Item 8.

Item 13

This item omits LICs from paragraph 20(1)(a), as a result of the variation in Item 8.

Item 14

This item omits LICs from subsection 57(5), as a result of the variation in Item 8.

Item 15

This item inserts a new subsection 86(1A), so that CSPs can only transfer numbers in a standard unit or a multiple thereof. This will provide clarity to industry on the transfer process.

Item 16

This item inserts a new section 92A which allows the ACMA to withdraw a number that is associated with scam communications or other fraudulent activity if:

- the ACMA has reasonable grounds to believe that the number has been used, or is likely to be used, in association with a scam communication or other fraudulent activity, and
- the ACMA is satisfied that the benefits of withdrawing the number, or the problems to be avoided by withdrawing the number, are more significant for end-users and CSPs than any adverse technical and financial consequences of withdrawing the number.

If the ACMA decides to withdraw a number, the ACMA must give written notice of the withdrawal to the CSP that holds the number. The notice must set out reasons for the withdrawal and specify the date on which the number is to be withdrawn. The period between the date of the notice and the date on which the number is to be withdrawn must be at least 5 business days.

Item 17

This item removes the requirement that a customer’s request or agreement to recall and replace a number be in writing, by omitting ‘in writing’ from paragraphs 97(1)(b) and (c).

Item 18

This item repeals subsection 97(3) and substitutes it with a new paragraph that reduces the minimum timeframe between the recall and replacement of numbers to not less than 90 days.

Item 19

This item removes the requirement that a customer's request for, or agreement to, a shorter period between the recall and replacement of a number be in writing, by omitting 'in writing' from paragraphs 97(4)(a) and (b).

Item 20

This item inserts a new paragraph 127(qa), so that an ACMA decision under subsection 92A(1) (inserted by Item 16) to withdraw a number is a reviewable decision.

Item 21

This item inserts a new item 1A after item 1 of clause 1 of Schedule 1, to provide an additional geographic number range for allocation in Kempsey, Lord Howe Island, Muswellbrook, Singleton, Taree and Wauchope: (02) (35), as numbers are predicted to run out in these areas in the next 2 to 5 years.

Item 22

This item inserts a new item 22A after item 22 of clause 2 of Schedule 1, to provide an additional geographic number range for allocation in Geeveston, Hobart, Oatlands and Ouse in Tasmania: (03) (60), as numbers are predicted to run out in these areas in the next 2 to 5 years.

Item 23

This item inserts an exception in column 1 of item 29 of clause 2 of Schedule 1, so that (03) 7010 is not available for allocation, as this prefix has been designated for use for fictional purposes, for example, in movies, television series and novels.

Item 24

This item inserts an exception in column 1 of item 64 of clause 3 of Schedule 1, so that (07) 7010 is not available for allocation, as this prefix has been designated for use for fictional purposes, for example, in movies, television series and novels.

Item 25

This item inserts a new item 64A after item 64 of clause 3 of Schedule 1, to provide an additional geographic number range for allocation in Bundaberg, Gayndah, Kingaroy, Maryborough and Murgon in Queensland: (07) 73, as numbers are predicted to run out in these areas in the next 2 to 5 years.

Item 26

This item inserts an exception in column 1 of item 7 of clause 4 of Schedule 1, so that (08) 5550 is not available for allocation, as this prefix has been designated for use for fictional purposes, for example, in movies, television series and novels.

Item 27

This item inserts an exception in column 1 of item 65 of clause 4 of Schedule 1, so that (08) 7010 is not available for allocation, as this prefix has been designated for use for fictional purposes, for example, in movies, television series and novels.

Item 28

This item removes the LICs prefix from item 13 of clause 1 of Schedule 5, due to the variation at Item 8.

Item 29

This item removes item 14 of clause 1 of Schedule 5, due to the variation at Item 8.

Item 30

This item inserts a new community service number “7226” in clause 2 of Schedule 5. This will enable consumers from any participating CSP to report scam SMS in single short code. The number is low charge and not selectable. Incoming international access is permitted at the discretion of CSPs.

Item 31

This item omits “100,000” and substitutes “10,000” in column 3 of items 5 and 11 of clause 1 of Schedule 7, to change the standard unit size for allocation of premium rate numbers and special services numbers specified for use with a digital mobile service numbers to 10,000.