

# Explanatory Statement

Issued by the authority of the Minister for Communications

*Australian Communications and Media Authority Act 2005*

## ***Australian Communications and Media Authority (Emergency Call Service Determination) Direction 2024***

### **Authority**

The *Australian Communications and Media Authority (Emergency Call Service Determination) Direction 2024* (the Direction) is made by the Minister for Communications (the Minister) under subsection 14(1) of the *Australian Communications and Media Authority Act 2005* (the Act).

Subsection 14(1) of the Act enables the Minister to direct the Australian Communications and Media Authority (ACMA) in relation to the performance of its functions or the exercise of its powers.

### **Purpose**

The instrument directs the ACMA to amend the *Telecommunications (Emergency Call Service) Determination 2019* (the Determination) to improve the reliability of access to the Triple Zero Emergency Call Service.

This instrument is a legislative instrument for the purpose of the *Legislation Act 2003*. However, this instrument is not subject to disallowance or sunseting, as it is a direction by a Minister to a person or body (see item 2 of the table in section 9 and item 3 in the table in section 11 of the *Legislation (Exemptions and Other Matters) Regulation 2015*).

Details of the Direction are set out in [Attachment A](#).

### **Background**

The Optus outage of 8 November 2023 had a significant impact on a wide range of Australians, affecting emergency services, government services, businesses and vulnerable people. In response to the outage, the Australian Government commissioned a post-incident review to understand how to reduce the chance of, and the impact of, future outages.

The post-incident review found gaps in the emergency call service regulatory framework. Australians expect that in the event of a network outage, mobile phones will be able to connect to other available networks to access Triple Zero. On the day of the outage, it was unclear to the public, and many within the Triple Zero ecosystem, if this was occurring as expected. The outage made apparent the lack of clarity about requirements to ensure mobile phone users can access Triple Zero during a network outage, and a lack of clarity about what information pertaining to Triple Zero needs to be shared during and after a network outage.

The post-incident review made a range of recommendations relating to the Triple Zero Emergency Call Service. This instrument will direct the ACMA to make necessary amendments to the Determination in response to four of these recommendations.

The first recommendation is to clearly and explicitly articulate what is expected of providers in regard to ensuring calls are delivered to Triple Zero. This recommendation is being addressed by subsection 6(1)(a) of the Direction.

The second recommendation is to require providers to share real time network information detailing outages with relevant emergency service organisations and other appropriate entities. This recommendation is being addressed by subsection 6(1)(b) of the Direction.

The third recommendation is to require providers to report to the ACMA and the Department after a major outage, identifying its causes, steps taken to resolve it, the impact on Triple Zero, and a plan to avoid similar outages in future. This recommendation is being addressed by subsection 6(1)(c) of the Direction.

The fourth recommendation is to combine and expand existing disruption protocol instruments to cover all matters relevant to outages in any element of the Triple Zero ecosystem. This recommendation is being addressed by subsection 6(1)(d) of the Direction.

In addition to the 8 November outage, the shutdown of Australia's 3G mobile networks has demonstrated the technical limitations of some mobile phones in the Australian telecommunications environment. These limitations mean some mobile phones will be unable to call Triple Zero after these networks are closed. This includes some mobile phones that will continue to be capable of making non-emergency calls over 4G and 5G networks.

Subsection 6(2) directs ACMA to include requirements for providers to identify mobile phones unable to access Triple Zero, notify the user, provide assistance if necessary to access an alternative mobile phone, and cease providing service to the affected device. Providers will also be required to not provide service to a prospective customer seeking service with an affected mobile phone. This requirement makes clear the responsibility providers have to ensure mobile networks provide access to the emergency call service.

The amendments to the Determination to be made under section 6(1) are to be determined by 30 April 2025 and commence in full by 1 November 2025 at the latest.

The amendments to the Determination to be made under section 6(2) are to be determined and commence in full by 1 November 2024.

## **Impact Analysis**

The Office of Impact Analysis will consider the appropriate requirements for the amendments to the Determination made in accordance with the Direction, in due course.

## **Consultation**

Consultation on the proposed Direction was undertaken with the ACMA, the Telecommunications Industry Ombudsman (TIO), the Australian Communications Consumer

Action Network (ACCAN), Communications Alliance and members of the telecommunications industry.

### **Statement of Compatibility with Human Rights**

As section 42 of the *Legislation Act 2003* does not apply to this instrument, being exempted under Part 4 of the *Legislation (Exemption and Other Matters) Regulation 2015*, a statement of compatibility with human rights is not required under section 9 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Details of the *Australian Communications and Media Authority (Emergency Call Service Determination) Direction 2024***

**Section 1 – Name**

This section provides that the name of the Direction is the *Australian Communications and Media Authority (Emergency Call Service Determination) Direction 2024*

**Section 2 – Commencement**

This section provides that the Direction commences on the day after it is registered on the Federal Register of Legislation.

**Section 3 – Authority**

This section states that the Direction is made under subsection 14(1) of the *Australian Communications and Media Authority Act 2005*.

**Section 4 – Definitions**

This section sets out definitions for terms used in the Direction.

The note to this section informs the reader that a number of expressions used in the instrument are defined in the *Australian Communications and Media Authority Act 2005* (the Act).

**Section 5 – Direction to the ACMA**

This section directs the ACMA to amend the *Telecommunications (Emergency Call Service) Determination 2019* in accordance with section 6 of the Direction.

Subsection 5(2) provides that the amendments to the Determination provided by subsection 6(1) are to be determined by 30 April 2025 and commence in full at the earliest practical opportunity and no later than 1 November 2025 at the latest.

Subsection 5(3) provides that the amendments to the Determination provided by subsection 6(2) are to be determined and commence in full by 1 November 2024.

**Section 6 – Content of the Determination**

Subsection 6(1) outlines the requirements to be included in the Determination resulting from recommendations in the outage post-incident review.

Paragraph 6(1)(a) seeks to ensure the requirements contained in the following subparagraphs are explicitly stated in the amended Determination to provide clarity to providers. The provisions within this paragraph should be accompanied by a similar provision to subsection 19(2) of the Determination to provide some flexibility in regards to matters materially beyond the control of the provider.

Subparagraph 6(1)(a)(i) seeks to ensure the amended Determination includes a requirement that providers will mobile network controlled facilities in the event of loss of connectivity to a core network. Defining ‘wilt’ will be at the discretion of the ACMA in the development of this amendment, but it is broadly taken to refer a mobile network controlled facility ceasing to emit a signal to mobile phones during a network outage. When a mobile phone stops receiving this signal, it will seek an alternative network for Triple Zero calls, using emergency call camp on, ensuring end users can access the emergency call service during a network outage.

Subparagraph 6(1)(a)(ii) seeks to ensure the amended Determination includes a requirement that providers will take all reasonable steps to ensure their respective networks and controlled facilities will not impede emergency call camp on functionality during an outage. This will further ensure end users can access the emergency call service, during a network outage. Defining ‘emergency call camp on’ will be at the discretion of ACMA in the development of this amendment, but it typically refers to a mobile phone function that allows for users to access the emergency call service when not connected to the users own mobile network provider.

Subparagraph 6(1)(a)(iii) seeks to ensure the amended Determination includes a requirement that providers undertake testing to confirm their respective networks are capable of carrying calls to the emergency call service, including calls made using the emergency call camp on functionality. This will also further ensure end users have access to emergency call camp on and that calls will be delivered to the emergency call service.

Subparagraph 6(1)(a)(iv) seeks to ensure the amended Determination includes a requirement that providers configure their respective networks to carry calls to the emergency call service regardless of the mobile phone used to initiate the call. In some instances, it is not possible to carry calls from particular mobile phones, for example, a network cannot be configured to carry calls from phones that are only able to make calls on second generation (2G) mobile networks if the provider’s network cannot carry 2G calls. This subparagraph applies to scenarios where a particular mobile phone’s call could be carried on the provider’s network if the network can be configured to do so.

Paragraph 6(1)(b) introduces a requirement that the Determination be amended to impose requirement on providers to share real time network information relating to network outages with relevant emergency service organisations, the emergency call person for 000 and 112, and other appropriate entities. During the early stages of an outage, access to this information will assist to identify the scale of the outage as different entities within the Triple Zero ecosystem will have greater visibility of the impact of the outage. It will also provide front line emergency service personnel with awareness of how an outage may impact operations, particularly during natural disasters.

This paragraph includes reference to other appropriate entities. One of the recommendations resulting from the outage post-incident review was for the establishment of a ‘Triple Zero Custodian’ to provide oversight of the emergency call service. Upon the establishment of such a body, it is anticipated it would also be an ‘appropriate entity’ to receive real time information.

Paragraph 6(1)(c) will require the Determination to be amended to impose requirements on providers to report to the ACMA and the Department information, within a specified timeframe after a major outage that impacts the delivery of emergency calls to the emergency call person for 000 and 112. Reporting this information will assist the ACMA with undertaking compliance monitoring activity and will assist policy makers to identify policy and regulatory gaps which may need rectification.

Subparagraph 6(1)(c)(i) will require providers to include an explanation as to what caused the major outage.

Subparagraph 6(1)(c)(ii) will require providers to explain how the major outage was resolved.

Subparagraph 6(1)(c)(iii) will require providers to explain what impact the major outage had on the delivery of emergency calls to the emergency call person for 000 and 112, including an estimate of how many users were impacted.

Subparagraph 6(1)(c)(iv) will require providers to include a clear and detailed plan, with timeline, which details the steps the provider will take to rectify the issues identified as contributing to the outage and to avoid similar outages in the future.

Paragraph 6(1)(d) will require a comprehensive disruption protocol to be included in the Determination. This will detail the actions that must be taken during and after a major outage that affects the delivery of emergency calls to the emergency call person. This protocol will serve as a clearly articulated source of guidance for providers to follow during and after a major outage.

Subparagraph 6(1)(e) will require the Determination to be amended to include a requirement that providers submit to ACMA and other appropriate entities, within a specified timeframe in advance of any proposed changes to their operations or their networks that will impact the delivery of calls to the emergency call person for 000 and 112, a management plan that details the steps the provider will take to minimise any detrimental impacts to end-users resulting from those proposed changes.

It is understood that there is a risk with any change to a network or operations that there may be unexpected detriment to an end user. This requirement is not intended to capture detriment resulting from accidents or unforeseen outcomes to more general network changes, rather, if a decision is made to change the provider's network or operations and it is clear this will impact the delivery of calls to the emergency call person for 000 and 112, the provider has a responsibility to these end users to minimise this detriment. Examples of how this could be achieved include, but are not limited to, informing end users in advance of the change, providing tailored assistance to vulnerable customers, utilising the provider's payment assistance policy for financial assistance customers, and engaging with key stakeholders to advise of the change.

This paragraph references other appropriate entities. As per 6(1)(b) above, this is intended to capture the yet to be established Triple Zero Custodian.

Subsection 6(2) provides that the Determination be amended to give effect to objectives relating to requirements for providers to identify mobile phones that are unable to access the

emergency call service and take steps to notify the end user and cease providing service to these devices. Providers should take all reasonable measures to ensure end users have access to the emergency call service. In the event an end user's mobile phone is unable to access the emergency call service, the provider must not supply carriage services to this device.

Paragraph 6(2)(a) provides that the Determination be amended to give effect to the objective and carriage service providers be required identify if the mobile of an end user requesting the supply of carriage services from the provider is able to access the emergency call service using both:

- the provider's own network (ss 6(2)(a)(i)); and
- the networks of other carriage services providers who provide carriage services to the public, in addition to the provider's own network (ss 6(2)(a)(ii)).

It is intended mobiles phones should be able to access the emergency call service using both the network of the provider supplying carriage services to it, and each other network belonging to the other providers supplying carriage services to the public. This will ensure, in the event an end user must use emergency call camp on functionality to access the emergency call service, the end user's call will be carried regardless of the network utilised.

Paragraph 6(2)(b) provides that the Determination be amended to give effect to the objective that providers be required to undertake the actions listed under the following subparagraphs, in the event an end user's mobile phone is unable to access the emergency call service either using the provider's own network or the networks of other carriage service providers who provide carriage services to the public. This will ensure end users can access the emergency call service on their own provider's network, and when utilising emergency call camp on functionality across other networks.

It is intended that end users must be able to access the emergency call service on all carrier mobile networks which deliver calls to the emergency call service. It is insufficient for a mobile phone to be able to access emergency services on some, but not all of these networks. In the event this is not possible due to the mobile phone, the provider will have an obligation to notify the end user and not provide service to the mobile phone.

Subparagraph 6(2)(b)(i) requires the provider to notify the end user that their mobile phone is not able to access the emergency call service.

Subparagraph 6(2)(b)(ii) requires the provider to not supply carriage services to the end user in connection with that mobile phone.

Subparagraph 6(2)(b)(iii) requires the provider to provide the end user with information about alternative mobile phones which are available, including low or no cost mobile phones, which are able to access the emergency call service.

Subparagraph 6(2)(b)(iv) requires the provider to ensure its payment assistance policy includes avenues for financial hardship customers to receive assistance to obtain a low or no cost alternative mobile phone which is able to access the emergency call service. This requirement should be read in the context of requirements under the *Telecommunications (Financial Hardship) Industry Standard 2024*.

Paragraph 6(2)(c) requires the Determination to be amended to give effect to the objective that carriage service providers be required to use best endeavours to promptly identify if an end user's mobile phone, which the provider is currently providing carriage services to, is no longer able to access the emergency call service using either:

- the provider's own network
- the networks of other carriage services providers who provide carriage services to the public, in addition to the provider's own network.

As noted above under 6(2)(a), it is intended that mobiles phones should be able to access the emergency call service using both the network of the provider supplying carriage services to it, and each other network belonging to the other providers supplying carriage services to the public.

Whereas 6(2)(a) is a general requirement that also applies to prospective customers of the provider, this paragraph articulates that this also required in instances where an existing end user of the provider's carriage service is no longer able to access the emergency call service with their mobile phone. This may apply in instances where a change to a provider's network results in the end user's device ceasing to have access to the emergency call service.

Paragraph 6(2)(d) requires providers to undertake the actions listed under the following subparagraphs, in the event an end user's mobile phone is no longer able to access the emergency call service using either the provider's own network, or using the networks of other carriage service providers who provide carriage services to the public. As noted previously, the intent is that an end user's mobile is capable of accessing the emergency call service across all networks.

Subparagraph 6(2)(d)(i) requires the provider to notify the end user that their mobile phone is no longer able to access the emergency call service.

Subparagraph 6(2)(d)(ii) requires the provider to cease supplying carriage services to the end user in connection with that mobile phone.

Subparagraph 6(2)(d)(iii) requires the provider to provide the end user with information about alternative mobile phones which are available, including low or no cost mobile phones, which are able to access the emergency call service.

Subparagraph 6(2)(d)(iv) requires the provider to ensure its payment assistance policy includes avenues for financial hardship customers to receive assistance to obtain a low or no cost alternative mobile phone which is able to access the emergency call service. This requirement should be read in the context of requirements under the *Telecommunications (Financial Hardship) Industry Standard 2024*.

Paragraph 6(2)(e) includes an exception to the objectives referred to in (2)(b)(ii) and (2)(d)(ii).

Subparagraph 6(2)(e)(i) includes an exception where a mobile phone which is unable to access the emergency call service is being used by a foreign traveller in Australia who intends to remain in Australia for a period of time which is less than a specified period. This specified period is to be determined by ACMA during the development of the amendment.

Subparagraph 6(2)(e)(ii) requires the provider to notify the foreign traveller that the mobile phone is not able to access the emergency call service.

Subsection 6(3) provides that ACMA may define terms that it considers appropriate or necessary, including terms used in the direction but not defined in section 4.