

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Telecommunications Act 1997

Telecommunications (Section of the Telecommunications Industry – Portability Service Suppliers) Determination 2025

Authority

The Australian Communications and Media Authority (the **ACMA**) has made the *Telecommunications (Section of the Telecommunications Industry – Portability Service Suppliers) Determination 2025* (the **instrument**) under subsection 110(3) of the *Telecommunications Act 1997* (the **Act**) and subsection 33(3) of the *Acts Interpretation Act 1901* (the **AIA**).

Subsection 110(3) of the Act provides that the ACMA may, by written instrument, make determinations that persons carrying on specified kinds of telecommunications activities constitute a section of the telecommunications industry.

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.

Purpose and operation of the instrument

The purpose of this instrument is to continue to determine parties providing portability services as participants in the telecommunications industry for the purposes of Part 6 of the Act, and to assist carriage service providers and carriers to meet their number portability obligations under Chapter 10 of the *Telecommunications Numbering Plan 2025* (the **Plan**).

Chapter 10 of the Plan requires carriage service providers and carriers to allow for the porting of certain types of numbers such as geographic, mobile, free and local rate numbers. A customer can change the carriage service provider or carrier involved in providing a service, or both, and retain the number. Porting requires a flow of messages between carriage services providers and routing calls to ported numbers, and requires information being provided on ported numbers to carriage service providers that may route calls.

The instrument replaces the *Telecommunications (Section of the Telecommunications Industry – Portability Service Suppliers) Determination 2015* (the **2015 instrument**). The 2015 instrument was due to “sunset” on 1 April 2025 under Part 4 of Chapter 3 of the *Legislation Act 2003* (the **LA**). The ACMA considered that there is an ongoing requirement for an instrument to identify parties providing portability services as participants in the telecommunications industry as contemplated by Part 6 of the Act, and to assist carriers and carriage service providers with their number portability obligations under the Plan. The instrument has been made in substantially the same form as the 2015 instrument, with minor consequential changes to conform with current drafting practice.

This instrument commences on the day after it is registered.

Part 6 of the Act provides that the bodies representing sections of the telecommunications industry may develop industry codes, that the ACMA may register these codes and that the

relevant participants in sections of the telecommunications industry must comply with such codes. Section 109 of the Act identifies those activities that are telecommunications activities. Paragraph 109(c) identifies ‘supplying goods or services for use in connection with the supply of a listed carriage service’ as a telecommunications activity. Portability service suppliers provide services for use in connection with porting numbers and enabling calls to ported numbers, including port administration services, maintaining ported number databases, providing information to assist with routing calls or other support in porting geographic numbers. These services are particularly essential for smaller carriage service providers. Participants in the telecommunications industry, through Communications Alliance, have developed industry codes, which the ACMA registers, including the Local Number Portability Industry Code (C540:2023) and the Mobile Number Portability Industry Code (C570:2024) that detail how industry participants interact to port geographic numbers and mobile numbers respectively. This instrument enables portability services suppliers to participate in the drafting of and consultation for the number portability codes and be subject to code compliance obligations and potential compliance actions.

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

The instrument is a legislative instrument for the purposes of the LA. The instrument is a disallowable instrument under Part 2 of Chapter 3 of the LA and is subject to the sunseting provisions in Part 4 of Chapter 3 of the LA.

Documents incorporated by reference

Subsection 589(1) of the Act provides that an instrument under the Act may make provision in relation to a matter by applying, adopting or incorporating (with or without modifications) provisions of any Act as in force at a particular time, or as in force from time to time.

Subsection 589(2) of the Act provides that an instrument under the Act may make provision in relation to a matter by applying, adopting or incorporating (with or without modifications) matter contained in any other instrument or writing as in force or existing at a particular time, or as in force or existing from time to time.

The instrument incorporates the following Acts and legislative instruments or otherwise refers to them:

- the Act
- the AIA
- the LA
- the Plan.

The Acts and legislative instrument listed above may be obtained, free of charge, from the Federal Register of Legislation (www.legislation.gov.au).

Consultation

The ACMA has consulted with industry stakeholders and the general public on the making of the instrument. Section 17 of the LA requires that, before making a legislative instrument, the ACMA must be satisfied that any consultation it considers to be appropriate and that is reasonably practicable to undertake has been undertaken.

On 13 November 2024, the ACMA published the instrument in draft form for public consultation together with a consultation paper which proposed remaking the 2015 instrument with minor changes as noted above. The consultation period spanned for 90 days and concluded on 12 February 2025. There were 15 submissions provided. Respondents agreed that the instrument is operating efficiently and effectively. There were no issues cited with the operation of the 2015 instrument, and as such, no substantial changes were proposed for the new instrument. The submissions have been made available on the ACMA's website.

The ACMA had regard to the views of stakeholders during the finalisation of the instrument. No changes were made to the instrument arising from consultation.

Regulatory impact assessment

A preliminary assessment of the proposal to make the instrument was conducted by the Office of Impact Analysis (**OIA**), based on information provided by the ACMA, for the purposes of determining whether a Regulation Impact Statement (**RIS**) would be required. OIA advised that a RIS would not be required because the proposed regulatory change is minor or machinery in nature. The OIA reference number is ID OIA25-08941.

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.

The statement of compatibility with human rights set out below has been prepared to meet that requirement.

Overview of the legislative instrument

The instrument determines portability service suppliers as participants in the telecommunications industry, allowing them to participate in codes processes under Part 6 of the Act.

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 likely impact of the instrument and the nature of the applicable rights and freedoms, the ACMA has formed the view that the instrument does not engage any of those rights or freedoms.

Conclusion

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

Notes to the *Telecommunications (Section of the Telecommunications Industry – Portability Service Suppliers) Determination 2025*

Section 1 Name

This section provides that the name of the instrument is the *Telecommunications (Section of the Telecommunications Industry – Portability Service Suppliers) Determination 2025*.

Section 2 Commencement

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

Section 3 Authority

This section identifies the provision which authorises the making of the instrument, namely subsection 110 (3) of the *Telecommunications Act 1997*.

Section 4 Repeal of *Telecommunications (Section of the Telecommunications Industry – Portability Service Suppliers) Determination 2015*

This section repeals the *Telecommunications (Section of the Telecommunications Industry – Portability Service Suppliers) Determination 2015* (Registration No. F2015L00292).

Section 5 Definitions

This section defines a number of key terms used throughout the instrument. A number of other expressions used in the instrument are defined in the *Telecommunications Act 1997*.

Section 6 References to other instruments

This section provides that in the instrument, unless the contrary intention appears, a reference to any other legislative instrument is a reference to that other legislative instrument as in force from time to time. A reference to any other kind of instrument is a reference to that instrument as in force or existing from time to time.

Section 7 Application

This section specifies that persons carrying on, or proposing to carry on, one or more kinds of telecommunications activity specified in section 109 of the Act and providing portability services constitute a section of the telecommunications industry for the purposes of Part 6 of the Act. Paragraph 109(c) relevantly provides that telecommunications activities include supplying goods or services for use in connection with the supply of a listed carriage service.

Section 8 Section of the telecommunications industry

This section provides that persons to whom the instrument applies constitute the section of the telecommunications industry identified as “Portability Service Suppliers.”