

## EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Telecommunications Act 1997*

### ***Telecommunications (Collection of Numbering Charges) Determination 2025***

#### **Authority**

The Australian Communications and Media Authority (the **ACMA**) has made the *Telecommunications (Collection of Numbering Charges) Determination 2025* (the **instrument**) under subsections 468(3) and (4) of the *Telecommunications Act 1997* (the **Act**) and subsection 33(3) of the *Acts Interpretation Act 1901* (**AIA**).

Subsection 468(3) of the Act provides that the annual numbering charge (**ANC**) is due and payable at the time ascertained in accordance with a written determination made by the ACMA. Under subsection 468(4) of the Act, the ACMA may determine, by written instrument, the late payment penalty rate for late payment of the ANC, and subsection 468(6) provides that a determination made under subsection 468(4) may authorise the ACMA to make decisions about remission of a late payment penalty.

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**

Part 3 of the *Telecommunications (Numbering Charges) Act 1997* (the **Numbering Charges Act**) imposes an annual charge on carriage service providers (**CSPs**) that hold telephone numbers. This charge is known as the ANC. The ANC is a charge that is payable by CSPs for telephone numbers they hold on a specified census date that is set by the ACMA under subsection 20(1) of the Numbering Charges Act.

The general framework under which the ANC is imposed on CSPs that hold telephone numbers is set out in the Numbering Charges Act. However, requirements with respect to the payment of the ANC are set out in the Act:

- Subsection 468(3) of the Act provides that the ANC is due and payable at the time ascertained in accordance with a written determination made by the ACMA.
- Subsection 468(4) of the Act provides that the ACMA may by written instrument, determine that if any ANC payable by a person remains unpaid after the due date, the person is liable to pay a penalty to the Commonwealth. Subsection 468(4) of the Act provides that the penalty is 20% per annum or, if the ACMA specifies a lower percentage, that lower percentage.
- Subsection 468(6) provides that an instrument made under subsection 468(4) may authorise the ACMA to make decisions regarding the remission of the whole or a part of an amount of late payment penalty.

The instrument replaces the *Telecommunications (Collection of Numbering Charge) Determination 2014* (the **2014 instrument**) and continues the arrangements in the 2014 instrument for the collection of ANC and the imposition of late payment penalties. Minor updates have been made to reflect

updated terms used in the Numbering Plan and simplify the provisions for applying for and assessing applications for remission of penalties. The instrument has been made in part because the 2014 instrument was due to “sunset” under Part 4 of Chapter 3 of the Legislation Act 2003 (**the LA**), on 1 April 2025. The ACMA considered that there is an ongoing requirement for an instrument to facilitate the collection of numbering charges, as intended by the Act.

The instrument commences on the day after it is registered.

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

The instrument is an 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 sunset 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, even if the other instrument or writing does not yet exist when the instrument made under the Act is made.

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

- the Act;
- the AIA;
- the LA; and
- the *Taxation Administration Act 1953* (**the TAA**).

The Acts listed above may be obtained, free of charge, from the Federal Register of Legislation ([www.legislation.gov.au](http://www.legislation.gov.au)).

The instrument also incorporates by reference the general interest charge rate (**GIC rate**) determined by the Australian Taxation Office (**ATO**) under section 8AAD of the TAA. The average GIC rates determined by the ATO for each quarter is published by the ATO and may be obtained, free of charge, from the ATO’s website: [www.ato.gov.au](http://www.ato.gov.au).

### **Consultation**

Subsection 17(1) of the LA requires that, before the ACMA makes a legislative instrument, it must be satisfied that any consultation that it considers is appropriate and reasonably practicable to undertake, has been undertaken.

The ACMA consulted publicly between 16 December 2024 and 12 February 2025 by means of a consultation paper and draft instrument published on its website.

The ACMA received 4 submissions in response to the consultation paper, which raised no substantial issues regarding the proposed updates to the 2014 instrument provisions, noting they are primarily administrative and minor in nature. The submissions have been made available on the ACMA’s

website. Following closure of the initial consultation, the ACMA published submissions and opened a brief reply-to-comment period. No further submissions were provided to the ACMA.

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.

### **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.

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

### **Overview of the instrument**

The instrument sets a due date for payment of the ANC, specifies the rate of late payment penalty applicable in relation to the ANC, and authorises the ACMA to make decisions about the remission of late penalty.

### ***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 of freedoms.

### ***Conclusion***

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

## **Notes to the *Telecommunications (Collection of Numbering Charges) Determination 2025***

### **PART 1 – INTRODUCTION**

Part 1 sets out introductory information about the instrument.

#### **Section 1      Name**

This section provides that the name of the instrument is the *Telecommunications (Collection of Numbering Charges) Determination 2025*.

#### **Section 2      Commencement**

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

#### **Section 3      Authority**

This section identifies the provisions which authorise the making of the instrument, namely subsection 468(3) and (4) of the Act.

#### **Section 4      Repeal of the *Telecommunications (Collection of Numbering Charges) Determination 2014***

This section repeals the *Telecommunications (Collection of Numbering Charges) Determination 2014* (F2014L01783).

#### **Section 5      Definitions**

This section defines key terms used throughout the instrument.

#### **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 or writing is a reference to that other instrument or writing as in force or existing from time to time.

### **PART 2 – DUE DATE FOR ANNUAL CHARGE**

Part 2 sets out when the ANC is due and payable.

#### **Section 7      When annual charge is due and payable**

This section specifies that the ANC is due and payable by a person on the later of 15 June of the year in which the charge is imposed, or 30 calendar days from the date of the invoice issued to the person by the ACMA in relation to the ANC.

### **PART 3 – LATE PAYMENT PENALTY FOR UNPAID ANNUAL CHARGE**

Part 3 sets out when a late payment penalty is payable and how it is calculated.

## **Section 8      Late payment penalty payable**

Subsection 8(1) sets out that if the ANC remains unpaid after the time when it becomes due for payment, the person who is required to pay the ANC is liable to pay a penalty to the Commonwealth in accordance with Part 3. Subsection 8(2) sets out the method for calculating the penalty.

## **Section 9      Rate of late payment penalty**

This section specifies the ANC late payment penalty. Subsection 9(1) provides that the daily rate is 20% per annum, subject to the exception in subsection 9(2). Subsection 9(2) provides that if, for any day, the previous financial year average GIC rate is less than 20% per annum, the late penalty for that day is the previous financial year average GIC rate.

The previous financial year average GIC rate is defined in section 5 of the instrument to be the rate worked out in accordance with Schedule 1 to the instrument.

## **Section 10     Attribution of payments made to the ACMA**

This section sets out the order in which a payment should be attributed against an amount of ANC and late payment penalty on the ANC, when a person pays an amount of money to the ACMA without any attribution by the person or the ACMA as to the ANC or the late payment penalty. The payment is credited to the ANC first.

## **PART 4 – DECISIONS ABOUT REMISSION OF LATE PAYMENT PENALTY**

Part 4 allows the ACMA to remit the whole or a part of a late payment penalty and sets out what the ACMA may consider in its decision to remit the late payment penalty.

## **Section 11     Remission of late payment penalty: general**

This section provides that the ACMA may remit the whole or a part of an amount of late payment penalty payable by a person, whether or not the person has applied to the ACMA for the remission. If a person seeks remission, their application must comply with subsection 11(3).

Subsection 11(4) sets out that the ACMA may only remit the whole or part of a late payment penalty if it is satisfied of one of the matters set out in that subsection.

Subsection 11(5) provides that partial remission decisions made on the ACMA's own initiative must relate to an amount which is outstanding following a partial payment, or correspond with particular identified days. This is to ensure that a decision to partially remit a late payment penalty on the ACMA's own initiative does not inadvertently complicate any application for further (or complete) remission of the late payment penalty that a person may wish to make.

Subsection 11(6) provides that the ACMA must notify applicants of its decision about remission or partial remission and provide reasons for the decision in writing.

A person affected by a decision under section 11 may apply to the ACMA for reconsideration of the decision under section 558 of the Act. If the ACMA affirms or varies the original decision under section 559 of the Act, an application may be made to the Administrative Review Tribunal for review of the decision.

## **PART 5 – MISCELLANEOUS**

Part 5 deals with miscellaneous matters.

### **Section 12 Judgment for payment of annual charge and interest only**

This section sets out the treatment of late payment penalty if judgment is given by, or entered in, a court for the payment of an ANC, and the judgment carries interest. The late penalty is not taken to have ceased to be payable only because of the giving or entering of the judgment. However, the late payment penalty is reduced by the relevant amount of interest carried by the judgment that is attributable to ANC.

### **Section 13 Rounding of amount of late payment penalty**

This section sets out how a late payment penalty amount ending in a part of a whole cent should be treated. If the part of the cent is at least 0.5, it is to be rounded up to one cent. Otherwise, it must be disregarded.

## **PART 6 TRANSITIONAL ARRANGEMENTS**

Part 6 sets out the transitional arrangements that apply as a result of the 2014 instrument being replaced.

### **Section 14 Annual charge unpaid at commencement**

This section sets out transitional arrangements for any ANC that remain wholly or partly unpaid on the commencement day. The late payment penalty is to be calculated in accordance with the 2014 instrument, and any application for remission is to be dealt with in accordance with the 2014 instrument.

### **Section 15 Application for remission under the previous determination**

This section sets out transitional arrangements that apply to an application for a remission of a late payment penalty that was made in accordance with the 2014 instrument but not decided before the commencement of the instrument. In such a case, the application is to be dealt with in accordance with the 2014 instrument.

### **Schedule 1 Calculation of previous financial year average GIC rate**

Schedule 1 sets out how the previous financial year average GIC (general interest charge) rate is calculated.

It specifies the formula to be used, the means by which the general interest charge rates are determined, and the rounding to apply.

The previous financial year GIC rate is relevant to the calculation of late payment penalty under Part 3.