

EXPLANATORY STATEMENT

Telecommunications Regulations 2001

Premium Service Determination 2004 (No. 1)

Issued by the authority of the Minister for Communications,
Information Technology and the Arts

Overview

The purpose of this determination is to extend the power of the Australian Communications Authority (the ACA) under Regulation 3.12 of the *Telecommunications Regulations 2001* (the Regulations) to enable it to make rules that apply to service providers that supply premium rate mobile services which will be supplied on the 19x number range and proprietary networks.

The Regulations enable the ACA to make rules in respect of such services, including rules relating to access to content supplied by such services and the billing of customers for such services.

Background

Section 99 of the *Telecommunications Act 1997* (the Act) enables the ACA to make a written determination, known as 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; and
- (b) specified content services.

Section 86 of the Act provides that, for the purposes of the Act, a service provider is either a carriage service provider or a content service provider.

The term 'carriage service provider' is defined in section 87 of the Act to include a person who supplies, or proposes to supply, a listed carriage service to the public using a network unit owned by one or more carriers or a network unit in relation to which a nominated carrier declaration is in force.

The term 'carriage service' is defined in section 7 of the Act as a service for carrying communications by means of guided and/or unguided electromagnetic energy. 'Communications' is defined widely in section 7 to include a communication in any form or combination of forms. The reference to the carriage of communications by means of 'guided electromagnetic energy' includes the carriage of communications by means of a wire, cable, waveguide or other physical medium used, or for use, as a continuous artificial guide for or in connection with the carrying of the communication. The reference to the carriage of communications by means of 'unguided electromagnetic energy' covers communications by means of

radiocommunication. The term ‘carriage service’ includes a fixed or mobile telephone service, an Internet service or an Intranet service.

A listed carriage service is defined in section 16 of the Act as a carriage service between 2 or more points, at least one of which is in Australia. Section 88 of the Act sets out the circumstances in which a carriage service is taken to be supplied to the public by a carriage service provider.

The term ‘content service provider’ is defined in section 97 of the Act to mean a person who uses, or proposes to use, a listed carriage service to supply a content service to the public. The term ‘content service’ is defined in section 15 of the Act to include an on-line service, a term which is not defined in the Act but is intended to bear its understood meaning in the telecommunications industry. It will include an Internet or Intranet service that a person can access by way of a mobile phone.

Subsection 99(2) of the Act provides that the ACA must not make a service provider determination unless, among other things, the determination relates to a matter specified in the regulations.

Regulation 3.12(1) of the Regulations enables the ACA to make a service provider determination setting out rules that apply to service providers in relation to the supply of any of the following services:

- (a) a carriage service or content service using a number with a prefix starting with ‘190’;
- (b) a carriage service used to supply:
 - (i) a content service; or
 - (ii) another service by way of a voice call (including a call that involves a recorded or synthetic voice);
 using a number that includes an international access code;
- (c) another carriage service or content service determined in writing by the Minister for the purposes of this paragraph.

The accompanying determination is made under paragraph 3.12(1)(c) of the Regulations.

Note on Clauses

Clause 1 – Name of Determination

Clause 1 provides that the accompanying determination is the *Premium Service Determination 2004 (No. 1)*.

Clause 2 – Commencement

Clause 2 provides that the accompanying determination commences on gazettal.

Clause 3 – Definitions

Clause 3 sets out key definitions for the purposes of the accompanying determination.

Clause 4 – Determination

Clause 4 provides that the following services are determined for the purposes of paragraph 3.12(1)(c) of the Regulations:

- (a) a carriage service supplied by way of a call to a number with an eligible prefix;
- (b) a content service supplied by way of a call to a number with an eligible prefix;
- (c) a public mobile telecommunications service that enables an end-user to access a proprietary network.

The ACA is proposing the release of short digit numbers with the 19 prefix to be used for the provision of certain premium services. The numbers will be used for a variety of services, including short message services (SMS) and multi-media messaging services (MMS). SMS is a service that enables the sending of person to person standard text messages and MMS is a service that enables the sending of person to person messaging including pictures and sound. The release of such numbers is effected by the *Telecommunications Numbering Plan 1997* made by the ACA under section 455 of the Act.

Premium SMS and MMS services will involve calls to a number with an ‘eligible prefix’, as defined in clause 3 of the determination. Paragraphs 4(a) and (b) of the determination will ensure that the ACA’s service provider determination is able to set out rules in relation to premium SMS and MMS services.

Paragraph 4(c) of the determination will ensure that the ACA’s service provider determination is able to set out rules in relation to a proprietary network or walled garden through which an end-user is able to access services using a mobile phone and in relation to which a relevant customer of a mobile phone provider is charged. An example of how proprietary networks work is as follows. An end-user in possession of an appropriate mobile handset selects a pre-configured icon on their mobile screen. This takes the end-user to a list of sites pre-selected by the carrier or carriage service provider supplying the mobile phone service. The end-user may then select and enter a site. Key features of this system include:

- an end-user does not need to dial any number to connect to the proprietary network or walled garden;
- a relevant customer of the carrier or carriage service provider is charged by the carrier or provider in relation to material accessed on the proprietary network or walled garden by the end-user; and

- access to the material on the proprietary network or walled garden is not freely available to persons who are not customers of the carrier or carriage service provider.