EXPLANATORY STATEMENT

Telecommunications (Consumer Protection and Service Standards) Act 1999

Special Digital Data Service Provider Determination Revocation 2006 (No. 1)

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

The special digital data service obligation, set out in section 10B of the Telecommunications (Consumer Protection and Service Standards) Act 1999 (the Act), in conjunction with subsection 15A(5) of the Act, requires special digital data service providers to take all reasonable steps to supply a service that broadly compares to a basic rate 64 kilobits per second Integrated Services Digital Network (ISDN) service to the 4 per cent of the population in special digital data service areas that, for technical reasons, is unable to access ISDN. Under the Telecommunications (Consumer Protection and Service Standards) (Special Digital Data Service) Regulations 1999, as affected by item 3 of Schedule 2 to the Telecommunications (Consumer Protection and Service Standards) Amendment Act (No. 2) 2000, a customer of a special digital data service provider is entitled to a rebate of the lesser of 50 per cent of the cost of purchase and installation of the equipment necessary to provide a special digital data service and $765.

The Special Digital Data Service Provider Determination Revocation 2006 (No. 1) revokes the Special Digital Data Service Provider Determination 2002 (No. 1), which determined Hotkey Internet Services Pty Ltd (ABN 66 075 759 821) (Hotkey) to be a special digital data service provider for special digital data service areas within Australia. Hotkey sought revocation from the Minister for Communications, Information Technology and the Arts.

Subsection 15(2) of the Act provides for the Minister for Communications, Information Technology and the Arts to make a written determination stating that a specified carrier or carriage service provider is a special digital data service provider for a specified special digital data service area. Subsection 33(3) of the Acts Interpretation Act 1901 provides that where an Act confers a power to make an instrument, the power shall, unless the contrary intention appears, be construed as including a power exercisable in the like manner and subject to the like conditions to revoke any such instrument. In the absence of a contrary intention in the Act, subsection 33(3) of the Acts Interpretation Act allows the Minister to revoke Hotkey’s determination as a special digital data service provider.

Subsection 15(3) of the Act provides that in deciding whether to make a determination under section 15, the Minister is limited to considering factors that are relevant to achieving the objects of the Act. As a result of subsection 33(3) of the Acts Interpretation Act, this requirement applies to the Minister’s instrument of revocation of Hotkey’s determination as a special digital data service provider.
The relevant objects are those set out in sections 3 and 8A of the Act. Section 3 of the Act provides that the objects of the *Telecommunications Act 1997* apply to the Act in a corresponding way to the way in which they apply to the *Telecommunications Act 1997*. The most relevant sets of these objects to revocation of Hotkey’s special digital data service obligation (SDDSO) are those relating to:

(a) the efficient, economical, and competitive supply of services in accordance with subsection 3(1) and paragraphs 3(2)(a) and (d) of the *Telecommunications Act 1997*;

(b) providing consumers with appropriate access to services and appropriate protection in accordance with paragraphs 3(2)(a), (b) and (c) of the *Telecommunications Act 1997*; and

(c) the flexibility of the Universal Service Regime to respond to rapid changes in the telecommunications industry in accordance with paragraph 8A(g) of the Act.

The Minister for Communications, Information Technology and the Arts has considered the revocation of Hotkey’s SDDSO status against these objects. The Minister has concluded that requiring Hotkey to continue to provide services when it is commercially unable to do so is not consistent with the efficient, economical and competitive supply of services. In these circumstances, it would not serve the interests of consumers to try to continue to require Hotkey to provide SDDSO services. Hotkey has indicated it has put in place arrangements to provide continuity of service for its small number of SDDSO customers. SDDSO services will continue to be available from Telstra, which has been an SDDSO provider since 1999 and has supplied most SDDSO services. Revocation of Hotkey’s SDDSO status exemplifies the ability of the universal service regime to respond to rapid changes in the telecommunications industry, in this case, the operational circumstances of Hotkey.

Subsection 15(5) of the Act provides that a determination made under section 15 takes effect on the day specified in the determination and that that day must not be before the day on which the instrument is published in the Commonwealth of Australia Gazette. Subsection 15(9) of the Act provides that a determination under section 15 of the Act is a disallowable instrument for the purposes of the *Acts Interpretation Act 1901*.

As a consequence of the commencement of the *Legislative Instruments Act 2003* (LIA) and the repeal of section 46A of the *Acts Interpretation Act 1901* on 1 January 2005, the accompanying instrument is a legislative instrument for the purposes of the LIA (see paragraph 6(1)(d) of the LIA). The accompanying instrument must therefore be tabled in Parliament and is subject to Parliamentary disallowance. The requirement for gazettal under section 15 of the Act has been satisfied by the registration of the accompanying determination and this explanatory statement on the Federal Register of Legislative Instruments (see subsection 56(1) of the LIA).
Consultation

Hotkey requested that its status as a SDDSO provider be revoked and the Department of Communications, Information Technology and the Arts (the Department) consulted with it accordingly. The Department also sought input from the Australian Communications and Media Authority (ACMA) and the Telecommunications Industry Ombudsman (TIO). Neither the Department, ACMA nor the TIO is aware of any complaints about Hotkey’s conduct or its request for revocation of its status. Hotkey has only attracted a small number of SDDSO customers as a SDDSO provider.

The Office of Regulation Review (ORR) advised the Department that a regulation impact statement was not required to be prepared in relation to the revocation of Hotkey’s determination as a special digital data service provider as the revocation would have only a minor impact on one business (Hotkey) and was machinery of government in nature.

Details of accompanying determination

Details of the accompanying determination are as follows:

Clause 1 – Name of Determination

Clause 1 of the accompanying determination provides that the name of the accompanying determination is the Special Digital Data Service Provider Determination Revocation 2006 (No. 1).

Clause 2 – Commencement

Clause 2 of the accompanying determination provides that the accompanying determination commences on the day after it is registered on the Federal Register of Legislative Instruments.

Clause 3 – Revocation

Clause 3 of the accompanying determination provides for the revocation of the determination of Hotkey as special digital data service provider for special digital data service areas within Australia.