EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

TELECOMMUNICATIONS SERVICE PROVIDER (MOBILE PREMIUM SERVICES) AMENDMENT DETERMINATION 2006 (No.1)

Section 99 of the Telecommunications Act 1997 (the Act) provides that the Australian Communications and Media Authority (ACMA) may make a written determination setting out rules that apply to service providers in relation to either or both of the following:

(a) specified carriage services
(b) specified content services

The Telecommunications Amendment Regulations (No.3) 2002 inserts Division 3.3 into the Telecommunications Regulations 2001 (the Regulations). Division 3.3 enables the ACMA 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.

On 13 April 2004 the then Minister for Communications, Information Technology and the Arts issued the Premium Service Determination 2004 (No.1) (the Premium Service Determination). The Premium Service Determination expanded the range of services upon which the then ACA could make a service provider determination by determining the following services for the purposes of paragraph 3.12(1)(c) of the Regulations above:

(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.

An eligible prefix means a prefix of 191, 193, 194, 195, 196, 197 or 199.

A proprietary network means a telecommunications network used by a mobile carriage service provider that enables customers of that provider to access a premium content service by way of a mobile device where the service is not otherwise generally available.
Compliance by service providers with a service provider determination is mandatory in that the effect of section 101 of the Act is that a service provider must comply with the service provider rules that apply to the provider, or otherwise be subject to civil penalties under Part 31 of the Act. Sections 102 and 103 of the Act allow the ACA to take regulatory action where a service provider has contravened, or is contravening, a service provider rule. This includes giving remedial directions requiring the provider to take specified action directed toward ensuring that the provider does not contravene the rule or issuing a formal warning in relation to a breach. Proceedings may also be brought in the Federal Court seeking a civil penalty or an injunction.

The former ACA made the *Telecommunications Service Provider (Mobile Premium Services) Determination 2005 (No.1)* (the Principal Determination) under section 99 of the Act on 29 June 2005. The Principal Determination includes rules that requires content service providers or mobile carriage service providers to

- require adult content that is rated MA15+ or R18+ and is supplied via premium messaging services to be supplied on numbers beginning with 195 and 196;
- prohibit content that is rated X18+ or is refused classification being supplied via mobile premium services; and
- require access to content that is rated MA15+ or R18+ to be restricted to adults 18 years and over.

**Outline**

The purpose of the Telecommunications Service Provider (Mobile Premium Services) Amendment Determination 2006 (No.1) (the Amending Determination) is to amend the Principal Determination to provide for a flexible definition for the self-regulatory scheme identified as the Mobile Premium Services Industry Scheme (MPSIS).

The Principal Determination depends on a self-regulatory scheme being developed in concert by the Telephone Information Services Standards Council (TISSC), the Australian Mobile Telecommunications Association (AMTA) and the Australian Direct Marketing Association (ADMA). ACMA understands that such a scheme will not be developed for submission.

ACMA has amended the Principle Determination relating to the development of the MPSI Scheme by providing a broader requirement that the first scheme received by ACMA which have been developed by suppliers of mobile premium services and content and their industry body or association can be regarded as a default scheme under the principle determination.

The Principal Determination provides for the development of industry self-regulatory schemes with rules to require the:

- provision of information to customers about cost, term and conditions of mobile premium services;
- an ability of customers to unsubscribe from mobile premium services that are supplied as subscription services;
- acceptable use policies for mobile chat room services that are supplied via mobile premium services; and
• the establishment of arrangements for escalated handling of complaints regarding mobile premium services.

Additionally, ACMA has made three other amendments to assist with the administration of the Principal Determination. The changes propose to:

• reduce the time between approval of a self-regulatory scheme and its commencement from 60 days to 30 days
• extend the time ACMA has to approve amendments to self-regulatory schemes from 28 days to 60 days and
• provide a mechanism for the replacement of the default scheme in the event that the self-regulatory scheme upon which it is drawn is revoked and then replaced by its members for another scheme.

Consultation

In developing this Amending Determination, ACMA issued a media release on 21 August 2006 calling for submissions from the public and providing access to the proposed amendment on the ACMA website. ACMA consulted via direct contact with 21 stakeholders representing industry and consumer groups inviting comment.

ACMA consulted the Australian Competition and Consumer Commission in relation to the draft amendment as required by subsection 99(4) of the Act.

The Office of Regulation Review (ORR) was consulted regarding whether a Regulation Impact Statement (RIS) was required for the Amending Determination. ORR granted ACMA RIS on the basis that the amendments were of a minor or machinery in nature and do not substantially alter existing arrangements.

The Determination is to take effect on the day after it is registered. This is to ensure that, from the first moment of its operation following approval of the MPSI Scheme, the Principal Determination will be in its amended form.

Notes on Sections

1 Name of the Determination

The name of the Determination is the Telecommunications Service Provider (Mobile Premium Services) Amendment Determination 2006 (No.1).

2 Commencement

The Determination takes effect on the day it is registered.

3 Amendment of Telecommunications Service Provider (Mobile Premium Services) Determination 2005 (No.1)

Schedule 1 to the Determination amends the Telecommunications Service Provider (Mobile Premium Services) Determination 2005 (No.1) (the Principal Determination).
Schedule 1  Amendments

[1]  **Subsection 5.2(1)**

Item [1] amends subsection 5.2(1) of the Principal Determination to provide that subsections (2), (3), (4) and (5) will apply 30 days after rather than 60 days after the day on which there is a default scheme under section 5.13.

[2]  **Subsection 5.4(9)**

Item [2] amends subsection 5.4(9) of the Principal Determination so that when ACMA approves a proposed self-regulatory scheme, the approved self-regulatory scheme will apply to each member of the scheme 30 days after the day on which the scheme is approved.

[3]  **Subsection 5.8(1)**

Item [3] amends subsection 5.8(1) of the Principal Determination to increase the time from 28 days to 60 days for ACMA to either approve or refuse any proposed amendment to an approved self-regulatory scheme.

[4]  **Subsection 5.8(2)**

Item [4] amends subsection 5.8(2) of the Principal Determination to reflect the increase in the period of time from 28 days to 60 days in subsection 5.8(1).

[5]  **Paragraph 5.8(3)(a)**

Item [5] amends subsection 5.8(3)(a) of the Principal Determination to reflect the increase in the time period from 28 days to 60 days in subsection 5.8(1).

[6]  **Subsection 5.8(4)**

Item [6] amends subsection 5.8(4) of the Principal Determination to reflect the increase in the time period from 28 days to 60 days in subsection 5.8(1).

[7]  **After subsection 5.13(1)**

Item [7] inserts new subsection 5.13(1A) into the Principal Determination which requires that if the approved MPSI scheme is a replacement scheme the default scheme is also revoked and replaced. The subsection also provides that ACMA must make the content of the default scheme available on the Internet as soon as practicable and before the replacement scheme starts to apply.

[8]  **Subsection 5.13(3)**

Item [8] omits the reference to subsection 5.12(4) in subsection 5.13(3) of the Principal Determination. This means that if the approved MPSI scheme is revoked by its members as a self-regulatory scheme under section 5.11 the default scheme
remains valid and will continue to apply to all content service providers and carriage service providers who are not members of an approved self-regulatory scheme.

[9] After subsection 5.13(3)

Item [9] inserts new subsection 5.13(3A) into the Principal Determination which requires that if the approved MPSI scheme is revoked, the default scheme continues to exist, however, the approved MPSI scheme will cease to apply to the revoking members who have revoked the scheme under section 5.11 of the Principle Determination.

[10] Subsection 5.13(5), definition of MPSI scheme

Item [10] amends subsection 5.13(5) of the Principal Determination to provide a new definition of the MPSI scheme. The definition provides that the MPSI scheme is the first self-regulatory scheme submitted to ACMA under section 5.3 of the Principle Determination and developed by one or more bodies who together represent content service providers and mobile carriage service providers who supply mobile premium services.


Item [11] omits references to ACA (meaning the Australian Communications Authority) and replaces them with the acronym ACMA (meaning the Australian Communications and Media Authority) throughout the Principal Determination. ACMA is the Commonwealth regulatory body dealing with mobile premium services following the merger of the Australian Communications Authority and the Australian Broadcasting Authority on 1 July 2006.