EXPLANATORY STATEMENT

Issued by the authority of the Australian Communications and Media Authority (ACMA)

Telecommunications Act 1997

Telecommunications Numbering Plan Variation 2007 (No. 1)

Statutory basis

Subsection 455(1) of the Telecommunications Act 1997 (the Act) provides that the Australian Communications and Media Authority (ACMA) must, by written instrument, make a plan for the numbering of carriage services in Australia and the use of numbers in connection with the supply of such services. This is the Telecommunications Numbering Plan 1997 (the Plan). ACMA may vary the Plan under section 455 of the Act provided it:

a) has regard to the obligations imposed on carriage service providers (CSPs) by Part 4 of the Telecommunications (Consumer Protection and Service Standards) Act 1999 (the TCPSS Act) and recognised international standards in accordance with subsection 455 (10) of the Plan;

b) ensures that any person likely to be affected by the variation, where that variation is likely to have a direct, or substantially indirect, effect on business, or restrict competition, has been provided with adequate opportunity to comment as required by section 17 of the Legislative Instruments Act 2003 (the LI Act);

c) formally consults the Australian Competition and Consumer Commission (ACCC) before varying the Plan in accordance with section 461 of the Act; and

d) releases the draft variation for 30 days public consultation if ACMA is of the opinion that the variation will affect a number issued to a customer or if it is otherwise considered in the public interest to consult, as provided by section 460(3) of the Act.

Purpose of variation

The purpose of this variation is to change the specification of the directory assistance service (DAS) number 12 23 to allow, under certain circumstances, the supply of a national and international operator connected call service and an operator service (hereafter optional services) in addition to the existing DAS that is presently associated with 12 23.

ACMA wishes to encourage market innovation by CSPs, and any value-added services on 12 23 have the potential to benefit consumers. However, permitting optional services on 12 23 from calls using a carriage service, other than a public mobile telecommunications service, which is subject to the price control arrangement of Part 9 of the TCPSS Act, will require appropriate consumer safeguards to ensure that customers are fully informed of additional charges. As a consequence, the variation imposes certain conditions upon the supply of optional services on 12 23 in respect to the services mentioned above. Any CSP wishing to offer optional services on 12 23 in relation to such calls must have an ACMA-approved Implementation Operation Plan (IOP) in place and must comply with it. This will ensure that CSPs offering optional services on 12 23 have appropriate measures in place to preserve the integrity and prime availability of free DAS on 12 23.
**Background**

In August 2005, SENSIS and Telstra submitted a proposal to ACMA to provide call connection services on 12 23 in addition to the existing DAS.

12 23 is a special services number presently specified in the Plan for national directory assistance services (DAS). 12 23 is a shared number, so it may be used by all CSPs to provide DAS. The DAS provided on 12 23 is the means by which CSPs meet their obligations under Part 3 of Schedule 2 of the Act to provide DAS to customers of their STS.

Part 9 of the TCPSS Act regulates the call charging (“low charge”) arrangements that apply to Telstra retail customers. The price control arrangements provide a clear indication of the Government’s commitment to the provision of free call access to DAS to Telstra’s residential fixed line customers. The Plan supports the Government’s commitment to DAS by permitting directory assistance on 12 23 at the low charge rates.

DAS is provided on 12 23 by Telstra and Vodafone (on its mobile network). Telstra’s DAS on 12 23 is free to its residential fixed line customers, Telstra payphones and not for profit customers. Many other CSPs contract with Telstra for provision of DAS and in those instances call charges apply.

The Numbering Advisory Committee (NAC)¹ was consulted about the proposal to respecify 12 23 to permit additional call connection services in November 2005, and again in May 2006, where a number of options were canvassed. Several submissions were received from CSPs other than Telstra, and the public. After taking these submissions into account, ACMA decided to allow optional services on 12 23 subject to certain conditions.

Consequently, the variation changes the specification of the DAS number 12 23 to allow, under certain circumstances, the supply of National and international operator connected call services and operator services (optional services) in addition to the existing DAS. In certain circumstances, the decision to permit optional services on 12 23 will be conditional upon approval by ACMA of an Implementation Operation Plan (IOP). Conditional approval will apply if optional services are provided to calls to 12 23 from services (other than public mobile telecommunications services) subject to the price control arrangements pursuant to Part 9 of the TCPSS Act. Currently Telstra is the only CSP subject to the price control arrangements.

**Consultation**

Section 460 of the Act specifies that public consultation must be undertaken where ACMA is of the opinion that a variation to the Plan will affect a number issued to a customer or if it is otherwise considered in the public interest to consult. Due to the considerable interest expressed by NAC members (particularly consumer groups) about this matter and the interrelationship with the call charging arrangements for 12 23, ACMA determined that it was in the public interest to consult. Consequently, ACMA released the draft variation for public consultation on 18 November 2006 for a 30 day period.

¹ NAC membership is drawn from the telecommunications industry, business and consumer groups, customer equipment suppliers and government agencies.
ACMA also conducted extensive and targeted consultation with NAC members. Numerous submissions were received. This consultation, in addition to that conducted under section 460 of the Act, satisfies the requirements of section 17 of the LI Act.

Section 461 of the Act separately requires ACMA to formally consult the ACCC before varying the Plan. ACMA formally consulted the ACCC on 10 January 2007.

The Office of Best Practice Regulation (OBPR) has noted that the variation is minor and machinery in nature and a Regulation Impact Statement (RIS) is not required (OBPR Reference: 8864).

Details of Variation

Section 1 provides that the variation may be cited as the *Telecommunications Numbering Plan Variation 2007 (No. 1)*.

Section 2 provides that the Variation takes effect on the date after it is registered.

Section 3 specifies that the *Telecommunications Numbering Plan 1997* is amended as set out in the first schedule.

Schedule 1 Variations


Section 3.12A

Section 3.12A sets out the rules for using special services number 12 23 for the supply of optional services in addition to the provision of DAS.

This section states that if a call to 12 23 is made using a
(a) public mobile telecommunications service, or
(b) a carriage service other than a public mobile telecommunications where that service is not subject to the price control arrangements specified in a determination made by the Minister under subsection 154 (1), 155 (1) or 157 (1) of the TCPSS Act, then optional services may be supplied at the CSP’s discretion.

However, if the call to 12 23 is made using a carriage service other than a public mobile telecommunications service, where the service is subject to the price control arrangements specified in a determination made by the Minister under subsection 154 (1), 155 (1) or 157 (1) of the TCPSS Act (ie the opposite of (b) above), then optional services may only be supplied by a CSP in accordance with an Operation Implementation Plan (IOP) submitted by that CSP and approved by ACMA.

This item also states that optional services can only be provided on 12 23 in accordance with sections 3.12B, 3.12C and 3.12D.
Section 3.12B

Section 3.12B sets out the circumstances under which a CSP must apply to ACMA for approval of IOP. This section also sets out the process for the submission of an IOP by a CSP and the criteria under which it must be considered by ACMA.

Subsection (1) states that if a CSP wishes to supply optional services on 12 23 in response to a call made using a carriage service other than a public mobile telecommunications service, where the service is subject to the price control arrangements specified in a determination made by the Minister under subsection 154 (1), 155 (1) or 157 (1) of the TCPSS Act, then that CSP must apply to ACMA for approval of an IOP. Subsection (2) states that the application must be in a form approved by ACMA.

Subsection (3) sets out the criteria for consultation that must be conducted by the applicant CSP for the application to be considered by ACMA. This subsection includes a note which states that this consultation must be targeted at consumer organisations that are appropriate to the circumstances in which, and clients to whom, the applicant intends to supply the optional services. This subsection also states that this consultation should be documented and included as part of the application. ACMA will consider the opinions expressed in accordance with subsection (5) (see below).

Subsection (4) states that the application must be accompanied by a draft IOP. This subsection also lists the criteria that an IOP must demonstrate. In particular, the IOP must demonstrate that the applicant has arrangements in place to ensure that:

a) the applicant will continue to supply DAS when 12 23 is also used to supply optional services;
b) the supply of optional services on 12 23 will not diminish access to, or the supply of, DAS; and
c) consumers will be adequately informed about the availability of the optional service and any applicable charges.

Subsection (5) sets out the criteria which ACMA must have regard to in its consideration of the application. This criteria includes whether the draft IOP will ensure the outcomes mentioned in subsection (4) and whether the IOP is consistent with the objects of the Act. ACMA must also consider the opinions expressed by appropriate consumer organisations consulted by the applicant under subsection (3). ACMA may also consider any other matter that it considers relevant to the application. This subsection also states the 60 business day time frame in which consideration of the application by ACMA must be completed.

Subsection (6) enables ACMA to ask the applicant CSP for further information about matters mentioned in the application to assist in its consideration.

Subsection (7) notes that the 60 business days ACMA has to consider the application do not include a period starting when ACMA asks the applicant for further information. The period will end when ACMA receives the information.
Subsection (8) sets out the criteria under which ACMA must approve an IOP application. ACMA must approve the draft IOP and notify the applicant of its decision when it is satisfied that:

- the IOP demonstrates that the applicant has arrangements in place to ensure the criteria listed in subsection (4);
- the IOP is consistent with the objects of the Act;
- the applicant has provided adequate records of consultation conducted with appropriate consumer organisations; and
- any other matter ACMA considers relevant has been satisfactorily addressed by the applicant.

Subsection (9) sets out the criteria under which ACMA must reject an IOP application. ACMA must reject the draft IOP and notify the applicant of its decision when it is not satisfied the applicant has not met the criteria for approval of an IOP as listed in subsection (8), above. This subsection also notes that any such decision by ACMA to refuse an application may be reviewed by the Administrative Appeals Tribunal (AAT).

Section 3.12C

Section 3.12C sets out the circumstances under which ACMA may direct a CSP to amend or replace an IOP approved by ACMA. This section also sets out the process for the amendment or replacement of an IOP.

Subsection (1) provides for ACMA to direct a CSP with an approved IOP to amend or replace that IOP. This direction must be in writing.

Subsection (2) states that ACMA may only direct a CSP to amend an approved IOP where ACMA is satisfied that this amendment(s) or replacement will be more effective than the CSP’s existing IOP in ensuring that:

a) the CSP will continue to supply DAS when 12 23 is also used to supply optional services;
b) the supply of optional services on 12 23 will not diminish access to, or the supply of, DAS; and
c) consumers will be adequately informed about the availability of the optional service and any applicable charges.

Subsection (3) provides for optional services on 12 23 to cease after ACMA issues a direction to a CSP with an approved IOP. Optional services may not resume until ACMA has decided that the CSP has complied with the direction. It should be noted that the CSP is not required to comply with the direction and may instead decide to cease supplying optional services on 12 23.

Subsection (4) sets out the time frame in which ACMA must consider an amended or replacement IOP submitted by a CSP in response to a direction from ACMA. This period is 60 business days.

Subsection (5) enables ACMA to ask the applicant CSP for further information about matters mentioned in the submission to assist in its consideration.
Subsection (6) notes that the 60 business days ACMA has to consider the application do not include a period starting when ACMA asks the applicant for further information and ending when ACMA receives the information.

Subsection (7) provides for ACMA to approve the amended or replacement IOP if it is satisfied that the CSP has complied with the direction. ACMA must notify the CSP of its decision.

Subsection (8) provides for ACMA to notify the CSP where ACMA is not satisfied that the CSP has complied with the direction. This subsection also notes that any such decision by ACMA may be reviewed by the AAT.

Section 3.12D

Section 3.12D sets out the circumstances under which a CSP may apply to ACMA to amend or replace an IOP approved by ACMA. This section also sets out the process for a CSP-initiated amendment or replacement of an IOP.

Subsection (1) provides for a CSP with an approved IOP to apply to ACMA to amend, or replace that IOP.

Subsection (2) states that the application must be a form approved by ACMA.

Subsection (3) states the 60 business day time frame in which consideration of the application must be completed by ACMA. In considering the application, ACMA must have regard to whether the amendment(s) or replacement suggested in the application will be more effective than the CSP’s existing IOP in ensuring that:

a) the CSP will continue to supply DAS when 12 23 is also used to supply optional services;
b) the supply of optional services on 12 23 will not compromise access to, or the supply of, DAS; and
c) consumers will be adequately informed about the availability of the optional service and any applicable charges.

Subsection (4) enables ACMA to ask the applicant CSP for further information about matters mentioned in the submission to assist in its consideration.

Subsection (5) notes that the 60 business days ACMA has to consider the application do not include a period starting when ACMA asks the applicant for further information and ending when ACMA receives the information.

Subsection (6) states that a CSP applying to ACMA for an amendment to, or replacement of, an IOP must supply optional services in accordance with the CSP’s current approved IOP until ACMA notifies the CSP of its decision.

Subsection (7) sets out the criteria under which ACMA must approve an application from a CSP for an amendment to or replacement of an IOP. ACMA must approve the application and notify the applicant of its decision when it is satisfied that:

- the amendment or replacement IOP will be more efficient than the current approved plan to ensure the outcomes mentioned in subsection 3.12B(4);
the amendment or replacement IOP is consistent with the objects of the Act; and
any other matter ACMA considers relevant for paragraph 3.12B(5)(d) has been satisfactorily addressed by the applicant.

Subsection (8) sets out the criteria under which ACMA must reject an application from a CSP for an amendment to, or replacement of, an IOP. ACMA must refuse the application and notify the applicant of its decision when it is not satisfied that the criteria listed in subsection (7), above, have been demonstrated. This subsection also notes that any decision by ACMA to refuse an application may be reviewed by the AAT.

Section 3.12E

Section 3.12E sets out the rules for ceasing the supply of optional services in addition to the provision of DAS on special services number 12 23.

Subsection (1) notes that if a CSP using the special services number 12 23 in connection with the supply of optional services intends to cease the supply of the service, then that CSP must notify ACMA of its intention, in writing, as soon as practicable before ceasing to supply the service.

Subsection (2) notes that the CSP must include in the notification the likely date on which service will cease.

Item 2 sets out a change to Schedule 4, Part 1 of the Plan. The change is the insertion of a new entry for the item beginning with number 12 23. The new entry substitutes three new service types for 12 23. These service types are:

1 Directory assistance service within the meaning of the Act, provided on a national basis (column 2). The call charge is limited to low charge (column 2). The number is a 4 digit number (column 3). No incoming international access is available and the number is shared and non-selectable (column 4);
2 National and international operator connected call service to which section 3.12A applies (column 2). There is no limit on the level of call charge (column 2). The number is a 4 digit number (column 3). No incoming international access is available and the number is shared and non-selectable (column 4); and
3 Operator service to which section 3.12A applies (column 2). There is no limit on the level of call charge (column 2). The number is a 4 digit number (column 3). No incoming international access is available and the number is shared and non-selectable (column 4).

Item 3 sets out a change to Schedule 4, Part 1 of the Plan. The change is the insertion of a new entry for the item beginning with number 12 36. The new entry specifies a new service type for 12 36 in column 2. The new service type is: Directory assistance service within the meaning of the Act, provided on a national basis. The values in columns 1, 3 and 4 remain unchanged.

Item 4 sets out a change to Schedule 11 of the Plan. The change inserts new text after item 2. The text lists 4 new decisions that may be made by ACMA that are subject to review by the Administrative Appeals Tribunal. These decisions are:
1 A decision under subsection 3.12B (9) to refuse to approve an IOP submitted by a CSP;
2 A decision under subsection 3.12C (1) to direct a CSP to:
   a) to amend that CSP’s approved IOP; or
   b) to replace that CSP’s approved IOP;
3 A decision under subsection 3.12C (8) that ACMA is not satisfied that a CSP has complied with a direction given under subsection 3.12C (1); and
4 A decision under subsection 3.12D (8) to refuse to approve:
   a) an amendment of an IOP submitted by a CSP; or
   b) a replacement IOP submitted by a CSP.

**Item 5** sets out a change to the Dictionary to the Plan. The change inserts a new expression into the Definitions Note at the end of the Dictionary. The expression ‘directory assistance service’ is inserted after the text ‘content service.’ This denotes that the expression ‘directory assistance service’ is defined in the Act.