EXPLANATORY STATEMENT


Telecommunications (Consumer Protection and Service Standards) Act 1999

Legislative Provisions

The Telecommunications (Performance Standards) Determination 2002 Revocation Determination 2007 (“the Determination”) has been made by the Australian Communications and Media Authority (“ACMA”) to revoke the Telecommunications (Performance Standards) Determination 2002.

The Australian Communications Authority (“the ACA”) had the power to make the Telecommunications (Performance Standards) Determination 2002 under paragraphs 125(3)(a) and 125(4)(a) of the Telecommunications (Consumer Protection and Service Standards) Act 1999 (“the Act”).

Paragraph 125(3)(a) of the Act provided that, in the event that the Minister varied a direction made under section 124 of the Act, the ACA must vary an existing standard made under section 115 of the Act so as to comply with the varied direction.

Paragraph 125(4)(a) also conferred power upon the ACA to vary an existing standard made under section 115 at its own initiative, so long as the varied standard complied with the direction made under section 124 of the Act.

The relevant direction in question was the Telecommunications (Customer Service Guarantee) Direction No.1 of 1999, as varied by the instrument entitled Telecommunications (Customer Service Guarantee) Direction No.1 of 1999 (Amendment No.1 of 2001). The relevant standard made under section 115 of the Act was the Telecommunications (Customer Service Guarantee) Standard 2000 (No.2).

ACMA can make the Determination under paragraphs 125(3)(a) and 125(4)(a) of the Act, as enlarged by subsection 33(3) of the Acts Interpretation Act 1901 to include a power to revoke a previous instrument of variation.

The Determination is a legislative instrument for the purposes of the Legislative Instruments Act 2003.

Background

The Telecommunications (Performance Standards) Determination 2002 was made by the ACA on 27 March 2002 and provided definitions for the purpose of interpreting terms used in paragraphs 8(1)(a) and 8(1)(b) of the Telecommunications (Customer Service Guarantee) Standard 2000 (No.2). These terms were:

- “reasonable offer by a carriage service provider to supply a customer with an alternative service”; and
- “sufficient information supplied to a customer about the functionality of each service”.

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In 2006, the Minister made the *Telecommunications (Customer Service Guarantee) Direction No.1 of 1999 (Amendment No.1 of 2006)* which amended the *Telecommunications (Customer Service Guarantee) Direction No.1 of 1999*. This had the effect, amongst others, of directing ACMA to incorporate the substance of the Determination into the *Telecommunications (Customer Service Guarantee) Standard 2000 (No.2)*.

ACMA made the *Telecommunications (Customer Service Guarantee) Amendment Standard 2006 (No.1)* to amend the *Telecommunications (Customer Service Guarantee) Standard 2000 (No.2)* to provide definitions of the terms “reasonable offer” and “sufficient information” (in the context of subsection 8(1)) at subsections 8(2) and 8(3) of that Standard. These changes were registered in the Federal Register of Legislative Instruments on 30 October 2006 and commenced on 31 October 2006.

The substantive provisions of the *Telecommunications (Performance Standards) Determination 2002* have been incorporated into subsections 8(2) and 8(3) of the *Telecommunications (Customer Service Guarantee) Standard 2000 (No.2)*. The *Telecommunications (Performance Standards) Determination 2002* is therefore redundant and ACMA is revoking the instrument in order to avoid duplication.

The Determination is named the *Telecommunications (Performance Standards) Determination 2002 Revocation Determination 2007*.

**Regulation Impact**

An exemption from the requirement to prepare a Regulation Impact Statement was obtained on the basis that the Determination is likely to have no or negligible impact on the cost of compliance.

**Consultation**

ACMA is satisfied that the Determination is of a minor or machinery nature and does not substantially alter existing arrangements because it is revoking an instrument that is now redundant (as a result of the incorporation of the substantive provisions of the *Telecommunications (Performance Standards) Determination 2002* into the *Telecommunications (Customer Service Guarantee) Standard 2000 (No.2)*). On this basis, ACMA is satisfied that consultation is unnecessary and/or inappropriate in accordance with paragraph 18(2)(a) of the *Legislative Instruments Act 2003*. Accordingly, ACMA has not undertaken a consultation process in respect of the revocation of the *Telecommunications (Performance Standards) Determination 2002*.

**Commencement of Determination**

The Determination commences on the day after it is registered.
Notes on Sections

Section 1 – Name of Determination
Section 1 provides for the citation of the Determination as the *Telecommunications (Performance Standards) Determination 2002 Revocation Determination 2007*.

Section 2 – Commencement
Section 2 provides that the Determination commences on the day after it is registered.

Section 3 – Revocation of the Telecommunications (Performance Standards) Determination 2002
Section 3 revokes the Determination known as the *Telecommunications (Performance Standards) Determination 2002*. 