EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Telecommunications Service Provider (Mobile Premium Services) Revocation Determination 2009

Outline of Determination

The Telecommunications Service Provider (Mobile Premium Services) Revocation Determination 2009 revokes the 2005 Determination, and provides for transitional provisions relating to complaints handling.

Legislative Provisions

This determination is made under section 99(1) of the Telecommunications Act 1997.

Background

On 13 May 2004 the Hon Daryl Williams, the then Minister of Communications, Information Technology and the Arts directed the former Australian Communications Authority (ACA) to establish interim regulatory controls on access to age restricted content supplied via mobile phones, whether the content was supplied by a premium rate Short Message Service and Multimedia Message Service or on mobile portals.

The ACA made the Telecommunications Service Provider (Mobile Premium Services) Determination 2005 (No. 1) (2005 Determination) under section 99(1) of the Telecommunications Act 1997 (Cth) on 29 June 2005 to address these concerns. The ACA also included consumer protection requirements in the 2005 Determination, including those relating to the transparency of mobile premium content, the assessment of content, and escalated complaints handling.

The arrangements established under the 2005 Determination were made pending the development of the Government’s longer term approach to regulation of emerging content services, including mobile premium services (MPS). The 2005 Determination was amended in 2006 and again in 2007.

The associated Mobile Premium Services Industry Scheme (MPSI Scheme) was developed by industry and approved by the successor to the ACA, the Australian Communications and Media Authority (ACMA), on 28 September 2006. The MPSI Scheme is the self-regulatory scheme for the purposes of the 2005 Determination. Industry parties that are not members of the MPSI Scheme are governed by the Default Scheme, which was also adopted at this time.

Creation of the MPS Code

During 2008-2009, the industry body representing the MPS industry, the Communications Alliance Ltd, prepared the Industry Code Mobile Premium Services
C637:2009 (MPS Code) for registration with the ACMA. This process included public consultation on the draft code.

The issues currently addressed in the 2005 Determination and the associated Mobile Premium Services Industry Scheme (the MPSI Scheme, which was approved by ACMA under the Determination) and Default Scheme have been superseded by Schedule 7 of the Broadcasting Services Act 1992 (BSA) or will be superseded by the MPS Code when registered.

In particular, clause 6.1 of the MPS Code establishes new procedures for handling complaints about mobile premium services. These procedures will apply to any complaints brought after the MPS Code takes effect, and which relate to mobile premium services content provided on or after that date.

However, at the time of registration a large number of complaints will be in the process of investigation by mobile carriage service providers and the Telecommunications Industry Ombudsman (TIO). The latest report from the TIO in March 2009 indicated that the TIO had received 2,310 complaints. While almost all of these complaints were referred to the customer’s carriage service provider without investigation by the TIO (as they had not first been raised with the carriage service provider), 22 were the subject of investigation by the TIO, as the customer’s carriage service provider had been unable to resolve these issues in the first instance.

As a result, the revocation of the 2005 Determination requires the establishment of transitional provisions applying to complaints brought before the MPS Code takes effect, and applying to complaints brought on or after but relating to content received before the effective date.

Consultation

The revocation of the 2005 Determination was canvassed as part of the public consultation undertaken by the ACMA in October and November 2007 in relation to its discussion paper, Changes to the restrictions on access to Mobile Premium Services. Accordingly, the ACMA is satisfied that consultation has been conducted in accordance with the requirements under section 17 of the Legislative Instruments Act 2003 (Cth).

Regulation Impact Statement

A Regulation Impact Statement is not required for the Determination as the changes are machinery in nature and the costs to industry and restrictions on competition are not significant. The ACMA RIS exemption reference number is ACMA 093.

NOTES ON SECTIONS

Section 1 - Name of Determination

Section 1 provides for the citation of the instrument.
Section 2 – Commencement

Section 2 provides that the Determination is to commence on the day on which the provisions of the Industry Code Mobile Premium Services C637:2009, made by Communications Alliance Ltd, take effect. The proposed day of effect is 1 July 2009.

Section 3 – Definition

Section 3 provides defined terms for the instrument, including that the ‘revoked Determination’ means the Telecommunications Service Provider (Mobile Premium Services) Determination 2005 (No.1), as amended by Telecommunications Service Provider (Mobile Premium Services) Amendment Determination 2006 (No.1) and Telecommunications Service Provider (Mobile Premium Services) Determination 2005 (No.1) Amendment Determination 2007 (No. 1).

Section 4 – Revocation

Section 4 provides that the following determinations are revoked:

- Telecommunications Service Provider (Mobile Premium Services) Determination 2005 (No.1);
- Telecommunications Service Provider (Mobile Premium Services) Amendment Determination 2006 (No.1); and
- Telecommunications Service Provider (Mobile Premium Services) Determination 2005 (No.1) Amendment Determination 2007 (No. 1).

Section 5 – Transitional

Section 5 introduces transitional provisions to deal with any complaints brought under the revoked Determination that are still pending once the MPS Code takes effect.

The effect of these provisions is for the complaints handling mechanisms of the 2005 Determination to continue in force in relation to a complaint that was made in accordance with the complaints handling procedures set out in the 2005 Determination that:

- was made on a day before the commencement of the MPS Code and had not been resolved before the day on which the MPS Code took effect; or
- was made on or after the day on which the MPS Code commenced, but in relation to MPS content that was received by the complainant before the day on which the MPS Code took effect.