EXPLANATORY STATEMENT

Issued by the authority of the Australian Communications and Media Authority

Telecommunications (Consumer Protection and Service Standards) Act 1999

Telecommunications Universal Service Obligation (Public Consultation on the Location or Removal of Payphones) Determination 2011

TELECOMMUNICATIONS (PAYPHONE CONSULTATION DOCUMENT) GUIDELINES 2012

Purpose

The Telecommunications (Payphone Consultation Document) Guidelines 2012 (the PCD Guidelines) are made by the Australian Communications and Media Authority (the ACMA) under paragraph 13(1)(a) of the Telecommunications Universal Service Obligation (Public Consultation on the Location or Removal of Payphones) Determination 2011 (Payphone Public Consultation Determination).

The purpose of the PCD Guidelines is to set out guidelines on the format of a public consultation document (PCD). A PCD is a document that must be published by the Primary Universal Service Provider (the PUSP) when the PUSP proposes to remove a payphone from a payphone site where if that payphone removal were to occur, no payphone would remain at the site from which the payphone is removed.

Legislative provisions

Under subsection 12EG(1) of the Telecommunications (Consumer Protection and Service Standards) Act 1999 (the TCPSS Act), the Minister for Broadband, Communications and the Digital Economy (the Minister) may make a determination setting out the rules to be complied with by a PUSP in relation to the process for public consultation on the location or removal of payphones. A determination made under subsection 12EG(1) must provide that if the PUSP makes a decision to remove a payphone and that payphone is the only payphone at that location, then the PUSP must undertake a process of public consultation on the proposed removal, and if a person makes submissions during the consultation process, the PUSP must notify the person in writing of the outcome of the consultation (subsection 12EG(2)).

The Payphone Public Consultation Determination which was made by the Minister under subsection 12EG(1) of the TCPSS Act commenced on 1 January 2012.

Under section 9 of the Payphone Public Consultation Determination, the PUSP must prepare and publish a PCD when it proposes to remove the last remaining payphone from a site. Section 13 of the Payphone Public Consultation Determination states that the PCD must comply with any guidelines prepared by the ACMA that set out the format for such a document.

The PCD Guidelines, made under paragraph 13(1)(a) of the Payphone Public Consultation Determination are guidelines that set out the format for a PCD. A PUSP must comply with the PCD Guidelines when preparing and publishing a PCD.
Background

The Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act 2010 received Royal Assent on 15 December 2010. It contained a package of legislative reforms aimed at enhancing competitive outcomes and strengthening consumer safeguards in the Australian telecommunications industry. Part of these reforms included amendments to the TCPSS Act in relation to the universal service obligations (USO) that a PUSP is required to fulfil.

In relation to payphones, the following five legislative instruments, which commenced on 1 January 2012, were made by the Minister to implement these reforms:

- the Telecommunications Universal Service Obligation (Payphone Performance Standards) Determination (No. 1) 2011;
- the Telecommunications Universal Service Obligation (Payphone Performance Benchmarks) Instrument (No. 1) 2011;
- the Telecommunications Universal Service Obligation (Location of Payphones) Determination 2011 (Payphone Location Determination);
- the Telecommunications Universal Service Obligation (Payphone Complaint Rules) Determination 2011 (Payphone Complaint Rules Determination); and
- Telecommunications Universal Service Obligation (Public Consultation on the Location or Removal of Payphones) Determination 2011.

Together these instruments impose requirements on a PUSP relating to the location or removal of payphones that a PUSP is required to supply in fulfilment of its USO. The Payphone Public Consultation Determination deals with the process for public consultation that a PUSP undertakes on the proposed removal of a payphone from a payphone location.

Consultation

Before making the PCD Guidelines, the ACMA consulted publicly for a period of six weeks; three submissions were received (Telstra, Australian Communications Consumer Action Network and the Centre for Appropriate Technology).

A small number of amendments were made as a result of the comments received, including:

- the PUSP is not required to quantify a net profit made by a payphone that is proposed for removal, as this could advantage a competitor;
- additional information was added to the PCD Guidelines to clarify the meaning of ‘decile’;
- due to the evolving nature of coverage maps, amendment was made so that under social benefit assessment no. 9, within Part 4 of the PCD Guidelines, evidence of mobile coverage can be provided by on-site testing, or by provision of coverage maps.
Regulatory Impact Analysis
The PCD Guidelines are covered by a Regulatory Impact Statement (RIS) prepared by the Department of Broadband, Communications and the Digital Economy (cleared by the Office of Best Practice Regulation (OBPR) on 2 December 2011). Therefore, the OBPR confirmed on 28 March 2012 that no further analysis (in the form of a RIS) was required from the ACMA for this proposal (Reference Number: 12769).

Statement of Compatibility with Human Rights
Subsection 9(1) of the Human Rights (Parliamentary Scrutiny) Act 2011 requires the rule maker in relation to a legislative instrument to which section 42 (disallowance) of the Legislative Instruments Act 2003 applies to cause a statement of compatibility to be prepared in respect of that legislative instrument. This statement is Attachment B.

Notes on the instrument
Details of the instrument are set out in Attachment A.
Part 1 – Preliminary

1.1 Name of guidelines
Section 1.1 provides that the name of the instrument is the *Telecommunications (Payphone Consultation Document) Guidelines 2012*.

1.2 Purpose
Section 1.2 provides that the ACMA has prepared these guidelines for the purposes of paragraph 13(1)(a) of the Payphone Public Consultation Determination.

1.3 Commencement
Section 1.3 provides that the *Telecommunications (Payphone Consultation Document) Guidelines 2012* commence on the day after they are registered.

Part 2 – Definitions
Part 2 provides for the definitions of terms used in the PCD Guidelines. Some of the terms used in the PCD Guidelines have the same meanings as in the Payphone Public Consultation Determination and the Payphone Location Determination.

Part 3 – Purpose and application
Part 3 outlines the purpose and application of the PCD Guidelines. It outlines the relevant legislative framework (see section 3.1), particularly the main requirements in the Payphone Public Consultation Determination that are relevant to the PCD Guidelines. Section 3.1 also provides an overview of the provisions of the Payphone Location Determination that are relevant to the PCD Guidelines.

Section 3.2 outlines the notification requirements specified in sections 9 to 13 of the Payphone Public Consultation Determination that a PUSP must comply with when it is proposing to remove the last remaining payphone from a site.

Section 3.3 outlines the requirements of a payphone removal display notice set out in section 10 of the Payphone Public Consultation Determination.

Section 3.4 outlines that a PCD must meet the requirements that are set out in section 13 of the Payphone Public Consultation Determination, including the requirement that the PCD must comply with the PCD Guidelines. The PCD must also include all of the information specified in paragraph 13(1)(b) of the Payphone Public Consultation Determination. Subsection 3.4(3) outlines the requirements in subsection 13(2) of the Payphone Public Consultation Determination which specify where and for how long, the PUSP must publish the PCD.

Section 3.5 provides an overview of Parts 4, 5, 6 and 7 of the PCD Guidelines which specify what a PUSP is required to include in a PCD. It confirms that the PCD
Guidelines only apply when the PUSP is proposing to remove the last remaining payphone from a site and provides that, in applying these guidelines, the PUSP must:

(a) consider which criteria in paragraph 20(1)(b) of the Payphone Location Determination apply to the proposed removal; and

(b) prepare the PCD in accordance with the table in the applicable part of the guidelines which relate to those criteria.

Subsection 3.5(2) specifies that the PUSP is only required to prepare one PCD in relation to each payphone removal concerned. The PUSP must use the table in the applicable part as the template for the PCD as the table provides guidelines on the format of the PCD. The PUSP must complete the table (or tables, as applicable) according to the guidance provided by the ACMA (in the right-hand column of the table).

Subsection 3.5(3) sets out that if two or more tables are used in the one PCD (because more than one Part of the PCD Guidelines applies to the same payphone removal proposal), information which is common to each table (see legislative requirements (iv) and (v) in the left-hand column of the tables) need only be addressed once in the PCD. For example, if the PUSP needs to complete Table 1 and 2, the information common to both Tables 1 and 2 need only be provided in Table 1. The purpose of this provision is to avoid duplication of information in the PCD.

Subsections 3.5(4) to 3.5(7) provide that:

- Part 4 details the format for the PCD to be used when the PUSP is proposing to remove a payphone because it considers that maintaining the payphone at the site would not deliver a net social benefit to the local community;
- Part 5 details the format for the PCD to be used when the PUSP is proposing to remove a payphone from a payphone site because there is demonstrated community support for removal of the payphone from the site;
- Part 6 details the format for the PCD to be used when the PUSP is proposing to remove a payphone from a payphone site on the basis that it cannot continue to reasonably operate the payphone at the site;
- Part 7 details the format for the PCD to be used when the PUSP is proposing to remove a payphone which is located at a payphone site that is located in a place or area described in Division 1 of Schedule 1 to the Payphone Location Determination, and the payphone is to be relocated to a new site within the same place or area.

Part 3 also outlines key provisions of the related instruments – the Payphone Location Determination and the Payphone Complaint Rules Determination – as well as the TCPSS Act which relate to the making and resolution of complaints by persons to the PUSP and the ACMA about the location or removal of payphones.

Part 4 – Guidelines on PCD format when maintaining the payphone at the payphone site would not deliver a net social benefit to the local community

Section 4.1 provides that Part 4 sets out the format of the PCD that applies if the PUSP is proposing to remove the payphone because it considers that maintaining the payphone at the site would not deliver a net social benefit to the local community.
Section 4.2 requires that if Part 4 applies, the PUSP must use Table 1 as the PCD template and include its responses to each of the ACMA’s guidelines in the right-hand column of the table.

This section also confirms that the PCD Guidelines only apply to the proposed removal of the last remaining payphone from a site and that if Part 4 applies, the PUSP must have had regard to the Payphone (Assessment of Net Social Benefit) Guidelines (NSB Guidelines) made by the ACMA before completing the PCD. Under the NSB Guidelines, an assessment is made against 11 parameters for payphone removals and 9 parameters for payphone installations. The assessments made by the PUSP against the NSB Guidelines will form the basis for the information it is required to provide in the PCD.

Section 4.3 clarifies that for Part 4 of the PCD Guidelines, only the parameters for payphone removals in the NSB Guidelines (and not the parameters relating to installation of payphones) are relevant.

Section 4.4 requires that the PCD must contain all of the information set out in the left-hand column of Table 1, and that the PUSP must comply with the ACMA’s guidelines set out in the right-hand column of Table 1 that correspond to each of the requirements set out in the left hand column.

This section also notes that to the extent that it is available, and it is reasonable for the PUSP to disclose it, certain evidence proving the facts upon which the payphone removal proposal is based must be included in the PCD. This requirement, which is also reflected in Parts 5, 6 and 7 of the PCD Guidelines, flows from the terms of subparagraph 13(1)(b)(ii) of the Payphone Public Consultation Determination.

Table 1

The left-hand column of Table 1 contains the applicable legislative requirements set out in paragraph 13(1)(b) of the Payphone Public Consultation Determination and the right-hand column contains the ACMA guidelines and includes a space for the PUSP to insert the information required by the relevant legislative provision, in accordance with the preceding ACMA guidance. The purpose of this structure – which is also adopted in Tables 2, 3 and 4 – is to allow a person to easily ascertain by looking at a PCD, what information a PUSP is required to include in a PCD, what the ACMA’s guidance is and what information the PUSP has provided in response.

Row (i) of Table 1 sets out the requirement in subparagraph 13(1)(b) that the PUSP must outline its reasons for why it is proposing to remove the payphone concerned, including the facts upon which the proposal is based. The ACMA’s guidelines provide that after the PUSP has had regard to the NSB Guidelines, it should complete the ‘summary table’ provided. Based on the outcomes of its 11 social benefit assessments under the NSB Guidelines (applicable to proposed payphone removals), the PUSP should indicate (by ticking) for each social benefit assessment (in the summary table) whether there is an ‘increased likelihood of providing a social benefit outcome’ or a ‘decreased likelihood of providing a social benefit outcome’ or whether the relevant social benefit assessment is ‘not applicable’ to the affected local community.

Row (ii) of Table 1 sets out the requirement in subparagraph 13(1)(b)(ii) which requires the PUSP to provide evidence — to the extent that it is available, and it is reasonable for the PUSP to disclose it — which proves the facts upon which the proposed payphone removal (as outlined in the summary table in row (i)) is based.

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For each applicable ‘social benefit assessment’ that the PUSP has identified in the summary table, row (ii) provides what evidence a PUSP may provide in support of its reasons for removing the payphone. The guidelines applicable to each social benefit assessment are outlined separately in the Table.

Similarly, rows (iii)-(v) of Table 1 outline the requirements in subparagraphs 13(1)(b)(iii)-(v), the applicable ACMA guidance and allow space for a PUSP to provide the required information. In particular, row (iv) provides guidelines on the format of information to be provided in the PCD about how a person may make a complaint to the PUSP about the proposed removal. In complying with the requirement in paragraph 13(1)(b)(iv) to include this information in the PCD, the PUSP should consider its obligations under the Payphone Complaint Rules Determination as well.

**Part 5 – Guidelines on PCD format when there is demonstrated community support for the removal of the payphone from the payphone site**

Section 5.1 provides that Part 5 sets out the format of the PCD that applies if the PUSP is proposing to remove a payphone from a payphone site on the grounds that there is demonstrated community support for removal of the payphone from the site.

Section 5.2 requires that if Part 5 applies, the PUSP must use Table 2 as the PCD template and include its responses to each of the ACMA’s guidelines in the right-hand column of the table.

Section 5.3 requires that the PCD must contain all of the information set out in the left-hand column of Table 2, and the PUSP must comply with the ACMA’s guidelines set out in the right-hand column of Table 2 that correspond to each of the requirements set out in the left hand column.

This section also notes that to the extent that it is available, and it is reasonable for the PUSP to disclose it, certain evidence proving the facts upon which the proposed payphone removal is based must be included in the PCD.

**Table 2**

As with Table 1, the left-hand column of Table 2 contains the applicable legislative requirements set out in paragraph 13(1)(b) of the Payphone Public Consultation Determination and the right-hand column contains the ACMA guidelines (including spaces for the PUSP to insert its responses).

Row (i) of Table 2 requires the PUSP to outline its reasons for why it is proposing to remove the payphone concerned. The PUSP is required to clearly state its reasons why there is demonstrated community support for the removal of the payphone from the payphone site. The PUSP is also required to include the facts upon which the proposed removal is based – that is, the facts that demonstrate that there is community support for the removal of the payphone. The ACMA guidelines, by way of example provide that the format of such information could be in the form of a statement such as ‘the PUSP has received a number of petitions from members of the community for the removal of the payphone concerned.’

Row (ii) of Table 2 requires the PUSP to outline what evidence — to the extent that it is available, and it is reasonable for the PUSP to disclose it — it has proving the facts
upon which the proposed payphone removal is based – that is, evidence of community support for the removal of the payphone. The ACMA guidelines provide that this evidence may include copies attached to the PCD (or details of how interested persons may obtain copies) of any correspondence received from the local community demonstrating support for the removal of the payphone.

The guidelines also make it clear that the PUSP must obtain prior consent from submitters to publicly release their correspondence. Alternatively, if the PUSP is not able to obtain prior consent, it may publish a statement similar to the following: ‘The PUSP has received [x] pieces of correspondence from the local community which demonstrates support for the removal of the payphone from the payphone site’. A note clarifies that correspondence from one submitter should only be counted once.

Similarly, rows (iii)-(v) of Table 2 outline the requirements in subparagraphs 13(1)(b)(iii)-(v), the applicable ACMA guidance and allow space for a PUSP to provide the required information. The information in rows (iv)-(v) of Table 2 is identical to that in Tables 1, 3 and 4.

**Part 6 – Guidelines on PCD format when the PUSP cannot continue to reasonably operate the payphone at the payphone site**

Section 6.1 provides that Part 6 sets out the format of the PCD that applies if the PUSP is proposing to remove a payphone from a payphone site on the grounds that it cannot continue to reasonably operate the payphone at the payphone site.

Section 6.2 provides that when the PUSP is determining whether a payphone can continue to be operated at the payphone site, regard may be had to the following matters which are set out in subsection 20(4) of the Payphone Location Determination:

- subject to subsection 20(7), whether the PUSP continues to hold, or is able to obtain, relevant approvals for the operation of the payphone at the payphone site;
- subject to subsection 20(7), whether the PUSP continues to hold, or is able to obtain relevant approvals for access to the payphone site; or
- the safety of the public, users of the payphone and the PUSP’s employees and agents.

Section 6.3 provides that under subsection 20(7) of the Payphone Location Determination, in assessing whether a payphone can reasonably be installed and operated at a new payphone location, the PUSP must take all reasonable steps required to obtain the relevant approvals for the operation of a payphone at the payphone site and for access to the payphone site.

Section 6.4 confirms that under subsection 20(5) of the Payphone Location Determination, the matters to which regard may be be had by the PUSP in considering whether they can continue to operate a payphone at a payphone site is limited to the matters specified in subsection 20(4).

Section 6.5 requires that if Part 6 of the PCD Guidelines applies, the PUSP must use Table 3 as the PCD template and include its responses to each of the ACMA’s guidelines in the right-hand column of the table.
Section 6.6 requires that the PCD must contain all of the information set out in the left-hand column of Table 3, and that the PUSP must comply with the ACMA’s guidelines set out in the right-hand column of Table 3 that correspond to each of the requirements set out in the left hand column.

This section also notes that to the extent that it is available, and it is reasonable for the PUSP to disclose it, certain evidence proving the facts upon which the payphone removal proposal is based must be included in the PCD.

Table 3

As with Tables 1 and 2, the left-hand column of Table 3 contains the applicable legislative requirement of the Payphone Public Consultation Determination and the right-hand column contains the ACMA guidelines (including spaces for the PUSP to insert its responses).

Row (i) of Table 3 requires the PUSP to outline its reasons for proposing to remove the payphone concerned. The PUSP is required to clearly state its reasons why it cannot continue to reasonably operate the payphone at the payphone site. The PUSP is also required to include the facts upon which the proposal is based – that is, the facts that demonstrate that the payphone cannot reasonably be operated at the payphone site from which it is proposed to be removed. The ACMA guidelines provide that such facts may include, for example, reference to one or more of the applicable criteria set out in section 6.2 and section 6.3 of the PCD Guidelines.

Row (ii) of Table 3 requires the PUSP to outline the evidence — to the extent that it is available, and it is reasonable for the PUSP to disclose it — it has proving the facts upon which the proposed payphone removal is based — that is, evidence demonstrating that the payphone cannot reasonably be operated at the existing payphone site.

The ACMA guidelines provide that the evidence should correspond to the basis on which the PUSP has concluded that it is no longer possible to operate the payphone at the payphone site. For example, if the PUSP is proposing to remove the payphone on the basis that it is no longer able to continue to hold, or obtain relevant approvals for the operation of a payphone at a payphone site, this evidence may include the reasonable steps it has taken to obtain the relevant approvals for the operation of the payphone at the payphone site and the reasons why it does not continue to hold (or is unable to obtain) the relevant approvals for the operation of a payphone at the payphone site. Similarly, if the PUSP considers that it cannot continue to operate a payphone at a payphone site for safety reasons, evidence of the reasons why this is the case may include the reasons why the PUSP is concerned for the safety of the public, users of the payphone and its employees and agents.

Similarly, rows (iii)-(v) of Table 3 outline the requirements in subparagraphs 13(1)(b)(iii)-(v), the applicable ACMA guidance and allow space for a PUSP to provide the required information.

Part 7 – Guidelines on PCD format when an existing payphone is to be relocated in the same place or area

Section 7.1 provides that Part 7 sets out the format of the PCD that applies if the PUSP is proposing to remove a payphone where the existing payphone site is located at one of the 12 places or areas described in Division 1 of Part 1 of Schedule 1 of the
Payphone Location Determination and the PUSP is proposing to relocate the payphone to a new site within that same place or area. Section 7.2 sets out the 12 types of places and areas listed in Division 1 of Part 1 of Schedule 1 of the Payphone Location Determination.

Section 7.3 requires that if Part 7 of the PCD Guidelines applies, the PUSP must use Table 4 as the PCD template and include its responses to each of the ACMA’s guidelines in the right-hand column of the Table.

Section 7.4 requires that the PCD must contain all of the information set out in the left-hand column of Table 4 and that the PUSP must comply with the ACMA’s guidelines set out in the right-hand column of Table 4 that correspond to each of the requirements set out in the left hand column.

This section also notes that to the extent that it is available, and it is reasonable for the PUSP to disclose it, certain evidence proving the facts upon which the payphone removal proposal is based must be included in the PCD.

**Table 4**

As with Tables 1, 2 and 3, the left-hand column of Table 4 contains the applicable legislative requirement of the Payphone Public Consultation Determination and the right-hand column contains the ACMA guidelines (including spaces for the PUSP to insert its responses).

Row (i) of Table 4 requires the PUSP to outline its reasons for the proposal to remove the payphone concerned. The PUSP is required to clearly state its reasons why it is proposing to relocate the existing payphone to a new payphone site within the same place or area.

The PUSP must also include the facts upon which the proposal is based. The ACMA guideline provides that such reasons/facts could include details of the applicable place or area described in Division 1 of Schedule 1 of the Payphone Location Determination where the payphone to the removed is located, as well as the specific address details for the existing payphone site and the address of the new payphone site that the payphone is proposed to be relocated to.

Row (ii) of Table 4 requires the PUSP to outline what evidence — to the extent that it is available, and it is reasonable for the PUSP to disclose it — it has proving the facts upon which the proposed payphone removal is based.

The ACMA guidelines provide that this evidence should include a website address for accessing an online mapping locator which identifies the existing location of the payphone that is proposed to be relocated and the proposed new location for the payphone concerned.

Similarly, rows (iii)-(v) of Table 4 outline the requirements in subparagraphs 13(1)(b)(iii)-(v), the applicable ACMA guidance and allow space for a PUSP to provide the required information.
ATTACHMENT B

Statement of Compatibility with Human Rights
Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Telecommunications (Payphone Consultation Document) Guidelines 2012

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Legislative Instrument
The Telecommunications (Payphone Consultation Document) Guidelines 2012 made by the Australian Communications and Media Authority (the ACMA) under paragraph 13(1)(a) of the Telecommunications Universal Service Obligation (Public Consultation on the Location or Removal of Payphones) Determination 2011 set out guidelines on the format of a payphone consultation document. The payphone consultation document is a document that a primary universal service provider must prepare and publish at least 42 days prior to making a final decision about the proposed removal of a payphone from a payphone site, where if that removal were to occur, there would be no payphone remaining at the site.

Human rights implications
This legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion
This legislative instrument is compatible with human rights as it does not raise any human rights issues.