



Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No. 1)

as amended

made under subsection 99 of the

Telecommunications Act 1997

This compilation was prepared on 27 October 2014
taking into account amendments up to *Telecommunications Service Provider (Mobile
Premium Services) Amendment Determination 2014 (No.1)*

Prepared by the Australian Communications and Media Authority

Contents

1	Name of Determination	2
2	Commencement	2
3	Definitions	2
4	Application	3
5	Object	3
6	Requirement to implement service capable of barring all premium SMS and MMS services	4
7	Requirements if customer requests premium SMS and MMS services to be barred	4
8	Requirement to provide customer-convenient service	4
9	Requirements if potential customer requests premium SMS and MMS services to be barred	5
10	When mobile carriage service provider must stop barring premium SMS and MMS services	5
13	Ensuring compliance with this Determination	6

1 Name of Determination

This Determination is the *Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No. 1)*.

Note This Determination is made in accordance with:

- (a) paragraph 3.12 (1) (c) of the *Telecommunications Regulations 2001*; and
- (b) section 4 of the *Premium Service Determination 2004 (No. 1)*.

2 Commencement

This Determination commences on:

- (a) 1 July 2010; or
 - (b) the day after this Determination is registered;
- whichever is the later.

3 Definitions

In this Determination:

Act means the *Telecommunications Act 1997*.

business day means a day other than a Saturday, Sunday or a public holiday in the Australian Capital Territory.

customer means a person who has an agreement with a mobile carriage service provider for the supply of a public mobile telecommunications

service from the mobile carriage service provider to the person or another person.

customer-convenient service has the meaning given by subsection 8(2).

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

mobile carriage service provider means:

- (a) a carriage service provider that supplies a public mobile telecommunications service; or
- (b) a carriage service intermediary that arranges for the supply of a public mobile telecommunications service by a carriage service provider.

potential customer means a person who requests that a mobile carriage service provider supply a public mobile telecommunications service to the person or another person.

premium SMS and MMS service means:

- (a) a carriage service supplied by way of a call to or from a number with an eligible prefix; or
- (b) a content service supplied by way of a call to or from a number with an eligible prefix.

pre-paid public mobile telecommunications service means a public mobile telecommunications service that is supplied on terms requiring that any payment that may be required to use the service is made before the service is used.

Note The following terms used in this Determination are defined in the Act:

- carriage service
- carriage service intermediary
- carriage service provider
- content service
- public mobile telecommunications service.

4 Application

This Determination applies to a mobile carriage service provider:

- (a) that supplies a public mobile telecommunications service to a customer; or
- (b) that proposes to enter into an agreement with a potential customer to supply a public mobile telecommunications service.

5 Object

The object of this Determination is to protect the interests of customers and potential customers of premium SMS and MMS services by assisting them to control the use of, or expenditure for, public mobile telecommunications services by requiring mobile carriage service providers:

- (a) to implement a service that enables the barring of the supply of all premium SMS and MMS services to a customer; and
- (b) to bar all premium SMS and MMS services to a customer if requested to do so by the customer; and

- (c) to provide a convenient method for making such requests.

6 Requirement to implement service capable of barring all premium SMS and MMS services

The mobile carriage service provider must implement a service that enables the barring of all premium SMS and MMS services in relation to a public mobile telecommunications service supplied by it to a customer.

7 Requirements if customer requests premium SMS and MMS services to be barred

- (1) This section applies to the mobile carriage service provider if the mobile carriage service provider supplies a public mobile telecommunications service to a customer and the customer makes a request to the mobile carriage service provider to bar all premium SMS and MMS services in relation to the public mobile telecommunications service.
- (2) The mobile carriage service provider:
 - (a) must, as soon as practicable, activate the barring service mentioned in section 6 for the relevant public mobile telecommunications service it supplies to the customer; and
 - (b) must not charge the customer a fee for supplying a premium SMS and MMS service after 6 pm on the business day after the day on which the customer makes the request; and
 - (c) must not charge the customer a fee for barring the premium SMS and MMS services; and
 - (d) must not cease supplying, commence supplying, or fail to supply, any other service to the customer as a consequence of the customer's request.
- (3) In this section, a reference to a *request* from a customer is a reference to a request which is made using a customer-convenient service or any other reasonable means.

8 Requirement to provide customer-convenient service

- (1) Without limiting subsection 7(3), the mobile carriage service provider must provide a customer-convenient service that assists a customer to request the barring of all premium SMS and MMS services in relation to a public mobile telecommunications service supplied by it to the customer.
- (2) A *customer-convenient service* means a service which:
 - (a) ensures that a request mentioned in subsection (1) is received promptly by the mobile carriage service provider; and
 - (b) is convenient for the customer to use; and
 - (c) does not require the customer to use a postal service or to attend at any location in person; and

- (d) can be accessed by each of the methods by which the mobile carriage service provider ordinarily enables the customer to communicate with the mobile carriage service provider in relation to the customer's public mobile telecommunications service.

Note For example, if the mobile carriage service provider ordinarily allows a customer to communicate with it in relation to their public mobile telecommunications service by sending a particular keyword by SMS from the customer's handset, by making a call to a designated number or by clicking on a button or icon on a designated Wireless Application Protocol (WAP) or internet page, then the mobile carriage service provider must also allow the customer to request the barring of all premium SMS and MMS services by each of those same methods.

9 Requirements if potential customer requests premium SMS and MMS services to be barred

- (1) This section applies to the mobile carriage service provider if:
 - (a) a potential customer of the mobile carriage service provider requests the supply of a public mobile telecommunications service in relation to which all premium SMS and MMS services are barred; and
 - (b) the potential customer then becomes a customer of the mobile carriage service provider.
- (2) The mobile carriage service provider:
 - (a) must supply the customer with a public mobile telecommunications service in relation to which all premium SMS and MMS services are barred; and
 - (b) must not charge the customer a fee for supplying a premium SMS and MMS service; and
 - (c) must not charge the customer a fee for barring the premium SMS and MMS services; and
 - (d) must not cease supplying, commence supplying, or fail to supply, any other service to the customer as a consequence of the request referred to in paragraph (1)(a).

10 When mobile carriage service provider must stop barring premium SMS and MMS services

- (1) If the mobile carriage service provider is supplying a customer with a public mobile telecommunications service in relation to which all premium SMS and MMS services have been barred at the election of the customer, the mobile carriage service provider must not stop barring those services unless the customer requests that the mobile carriage service provider stop the barring of all premium SMS and MMS services.
- (2) If a customer makes a request mentioned in subsection (1), the mobile carriage service provider must stop barring all premium SMS and MMS services as soon as practicable after the customer makes the request.

13 Ensuring compliance with this Determination

- (1) The ACMA may make enquiries about the mobile carriage service provider's compliance with this Determination.

Note The ACMA has information gathering powers under Part 27 of the Act.

- (2) If the ACMA determines that the customer-convenient service provided by the mobile carriage service provider under this Determination did not comply with this Determination, the ACMA may give a notice to the mobile carriage service provider setting out how the customer-convenient service provided by the mobile carriage service provider must be improved.
- (3) The mobile carriage service provider must comply with a notice given to it under subsection (2).

Notes to the *Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No. 1)*

Note 1

The *Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No. 1)* (in force under subsection 99 of the *Telecommunications Act 1997*) as shown in this compilation is amended as indicated in the Tables below.

Table of Instruments

Title	Date of notification in Gazette or FRLI registration	Date of commencement	Application, saving or transitional provisions
<i>Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No. 1)</i>	11 March 2010 (see F2010L00639)	1 July 2010	
<i>Telecommunications Service Provider (Mobile Premium Services) Amendment Determination 2012 (No.1)</i>	14 Dec 2012 Te(see F2012L02458)	15 Dec 2012	-
<i>Telecommunications Service Provider (Mobile Premium Services) Amendment Determination 2014 (No.1)</i>	24 Oct 2014 (see F2014L01396)	25 Oct 2014	-

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 1	
S. 3.....	am. 2014 No. 1
S. 5.....	am. 2014 No. 1
S. 11.....	rep. 2014 No. 1
S. 12.....	am. 2012 No. 1, rep. 2014 No. 1
S. 13.....	am. 2012 No. 1, am. 2014 No.1