

Telecommunications Regulations 2001 2001 No. 65

EXPLANATORY STATEMENT

Statutory Rules 2001 No. 65

Issued by the Authority of the Minister for Communications,

Information Technology and the Arts

Telecommunications Act 1997

Telecommunications Regulations 2001

Section 594 of the *Telecommunications Act 1997* (the Act) provides for the Governor-General to make regulations under the Act.

The purpose of the accompanying regulations is to consolidate several regulations made under the Act (as outlined in paragraph (a) below) and to add new regulations (as outlined in paragraphs (b) and (c) below).

The accompanying regulations:

- (a) repeal certain 'stand alone' regulations under the Act (see regulations 1.3 to 1.6) and incorporate the text of these in Parts 3, 5, 8 and 11 and Schedule 1 of the regulations; and
- (b) enable the Australian Communications Industry Forum (ACIF) to develop and have registered an industry code that prescribes particular design features and minimum performance requirements for telecommunications networks and facilities operated by different service providers over Telstra's 'unconditioned local loop service' (a service which involves the use of metallic communications wire between the network boundary on the end-user's side and a point at which the wire terminates) (Part 4 of the regulations); and
- (c) enable the disclosure of protected information relating to telecommunications in certain circumstances to the Queensland Crime Commission and the Anti-Corruption Commission of Western Australia by specifying these bodies as prescribed authorities for the purposes of paragraph (g) of the definition of *criminal law-enforcement agency* in subsection 282(10) of the Act (in addition to the Police Integrity Commission of New South Wales which is currently the only prescribed authority for the purposes of this paragraph) (regulation 5.1).

The accompanying regulations also insert headings for Parts 2, 6, 7, 9 and 10 together with a note explaining that if any regulations dealing with network units, technical regulation, numbering of carriage services and regulation of electronic addressing, standard carrier licence conditions and standard service provider rules are made they will be inserted into the relevant Part. There are currently no regulations dealing with these matters.

Details of the accompanying regulations appear in the Attachment.

The accompanying regulations commenced on gazettal.

ATTACHMENT

DETAILS OF THE REGULATIONS

Part 1 - Preliminary

Part 1 of the accompanying regulations deals with the name of the regulations and their commencement. It also repeals certain regulations made under the *Telecommunications Act* 1997 (the Act). The text of these repealed regulations is incorporated in Parts 3, 5, 8 and 11 of the accompanying regulations.

Regulation 1.1 - Name of Regulations

Regulation 1.1 provides that the name of the accompanying regulations is the *Telecommunications Regulations 2001*.

Regulation 1.2 - Commencement

Regulation 1.2 provides that the accompanying regulations commence on gazettal.

Regulation 1.3 - *Telecommunications Regulations 1998* - repeal

Regulation 1.3 repeals the *Telecommunications Regulations 1998*. The text of these repealed regulations is incorporated in Part 5 of the accompanying regulations.

Regulation 1.4 - *Telecommunications (Compliance with International Agreements) Regulations 1997* - repeal

Regulation 1.4 repeals the *Telecommunications (Compliance with International Agreements) Regulations 1997*. The text of these repealed regulations is incorporated in Part 11 and Schedule 1 of the accompanying regulations.

Regulation 1.5 - *Telecommunications (Service Provider Determinations) Regulations 1997* -repeal

Regulation 1.5 repeals the *Telecommunications (Service Provider Determinations) Regulations 1997*. The text of these repealed regulations is incorporated in Part 3 of the accompanying regulations.

Regulation 1.6 - *Telecommunications (Standard Agreements) Regulations* - repeal

Regulation 1.6 repeals the *Telecommunications (Standard Agreements) Regulations*. The text of these repealed regulations is incorporated in Part 8 of the accompanying regulations.

Regulation 1.7 - Definitions

Regulation 1.7 sets out key definitions for the purposes of the accompanying regulations. The definition of ***criminal-law enforcement agency*** is relevant to regulations 3.9 and 5.1.

Part 2 - Network units

The accompanying regulations insert a heading for Part 2 and a note to explain that any future regulations dealing with network units will be included in this Part. There are currently no regulations dealing with network units.

Part 3 - Service providers

Part 3 of the accompanying regulations contains the text of the current *Telecommunications (Service Provider Determinations) Regulations 1997* which are repealed by regulation 1.5.

Paragraph 99(1)(a) of the Act enables the Australian Communications Authority (ACA) to make a written determination setting out rules that apply to service providers in relation to the supply of specified carriage services. However, under subsection 99(3) of the Act, the ACA cannot make a service provider determination unless the determination relates to a matter specified in the regulations or in section 346 of the Act.

Part 3 of the accompanying regulations allows the ACA to make a determination under subsection 99(1) of the Act in relation to the collection of information from, and conducting verification and identity checks on, purchasers of pre-paid carriage services at the point of sale. The SIM card (Subscriber Identity Module) is an example of current technology that is used to supply a pre-paid carriage service. This ensures that law-enforcement agencies can gain customer identity information where a person purchases a pre-paid carriage service that involves the issuing of a public number, to assist in the interception of communications services used for criminal purposes. Part 3 of the accompanying regulations also enables the ACA to make a determination about collecting and verifying identification of end-users as well as purchasers. This is to address the concerns of law-enforcement agencies that purchasers of the service will often not be the end-user.

In addition, Part 3 of the accompanying regulations enables the ACA to make a determination relating to the dissemination of information in relation to the telecommunications industry. This enables the ACA to disseminate information to telecommunications customers through carriage service providers. This ensures that the telecommunications industry informs their customers about issues that they might not otherwise choose to keep the public informed about, for example unfair selling practices and consumer rights and carriage service provider obligations under the customer service guarantee.

Division 3.1 - Preliminary

Regulation 3.1 - Purpose

Regulation 3.1 provides that the purpose of Part 3 of the accompanying regulations is to set out matters about which the ACA may make a service provider under subsection 99(1) of the Act. Under subsection 99(3) of the Act, the ACA must not make a service provider determination unless it relates to a matter specified in the regulations or in section 346 of the Act.

Regulation 3.2 - Definitions

Regulation 3.2 defines key terms used in Part 3 of the accompanying regulations.

The term *activate* is defined as it relates to pre-paid carriage services. The definition means that a prepaid carriage service will not be activated if it cannot receive calls, and the only calls from the service that can be connected are calls to the carriage service provider supplying the service and to the emergency call service.

The term *end-user* is defined for the purposes of a pre-paid carriage service as a person who uses the service to make calls.

The term *pre-paid carriage service* is defined as a telecommunications service that can only be supplied to a customer if:

- (a) the customer is issued with a public number (which is a number specified in the numbering plan under subsection 455(3) of the Act) for use with that service;

- (b) the customer pays for the service before using it; and
- (c) no service provider or other person gives the customer an account for the service after the customer has used it.

The term *purchaser* is defined for the purposes of a pre-paid carriage service as the person who pays for the service at the point of sale.

The term *senior officer*, for a criminal law-enforcement agency (as defined in regulation 1.7) is relevant for regulation 3.9. This is defined to have the meaning given by subsection 282(10) of the Act.

Division 3.2 - Pre-paid carriage services

Regulation 3.3 - Collecting information for selling a pre-paid carriage service purchaser at point of sale

Subregulation 3.3(1) provides that the ACA may make a determination preventing a service provider from supplying a pre-paid carriage service to a purchaser unless the service provider collects specified information from the purchaser at the point of sale.

Subregulation 3.3(2) limits any determination under subregulation 3.3(1) from relating to a purchaser of a pre-paid carriage service where relevant information requirements have been satisfied through a previous sale to the purchaser or through the Telecommunications (Conditions for Allocation of Numbers) Determination 1997.

Subregulation 3.3(3) provides that the information required under subregulation 3.3(1) can only relate to the following matters:

- information the service provider is required to collect in order to provide and maintain the integrated public number database; or
- information about how many public numbers are currently issued to the purchaser for the same kind of pre-paid carriage service (this relates to regulation 3.6); or
- where the purchaser is not an individual (eg. a company), additional information which can identify the purchaser such as an Australian Business Number, Australian Company Number or Australian Registered Business Number.

Regulation 3.4 - Verification and identity checks for selling a pre-paid carriage service - purchaser at point of sale

Subregulation 3.4(1) provides that the ACA may make a determination preventing a service provider from supplying a pre-paid carriage service to a purchaser unless the service provider conducts verification and identity checks on the purchaser at the point of sale.

Subregulation 3.4(2) requires that the determination under subregulation 3.4(1) must not relate to a purchaser of a pre-paid carriage service where the information requirements have been satisfied through a previous sale to the purchaser or through the Telecommunications (Conditions for Allocation of Numbers) Determination 1997.

Regulation 3.5 - Collection of information, verification and identity checks - end-user after sale

Regulation 3.5 enables the ACA to make a determination that includes a process for the collection of information, verification and identity check of end-users after the sale of the pre-paid carriage service.

Subregulation 3.5(1) provides that the ACA determination may require a service provider to collect information from the end-user post sale, or conduct verification and identity checks of the end-user post sale, or require both the collection of information and verification and identity checks.

Subregulation 3.5(2) places certain limits on the determination. The determination must not relate to a purchaser of a pre-paid carriage service where relevant information requirements have been satisfied through a previous sale to the end-user of the same kind of service for use with a particular public number, or through the Telecommunications (Conditions for Allocation of Numbers) Determination 1997.

Subregulation 3.5(3) provides that the information required under subregulation 3.5(1) can only relate to the following matters:

- information the service provider is required to collect in order to provide and maintain the integrated public number database; or
- information about how many public numbers are currently issued to the end-user for the same kind of prepaid carriage service (this relates to subregulation 3.6); or
- where the purchaser is not an individual (eg a company), additional information which can identify the end-user, such as an Australian Business Number, Australian Company Number or Australian Registered Business Number.

Regulation 3.6 - Verification and identity checks

Regulation 3.6 adds an additional criterion under which verification and identity checks can differ in a determination made under regulation 3.4 or regulation 3.5.

Regulation 3.6 enables the verification and identity checks in the determination to differ on the following basis:

- the person is issued with 5 or more public numbers in connection with the supply of the same kind of pre-paid carriage service;
- how the service is to be, or was, purchased (eg. by cash, or cheque or credit card); or
- the process by which the service provider has indicated they intend to conduct verification and identity checks, ie. either point of sale or post sale.

This regulation provides examples of how the determination under subregulation 3.4(1) or paragraph 3.5(1)(b) may differ according to the method of purchase of the pre-paid carriage service.

Regulation 3.7 - Records of information and identifying documents

Subregulation 3.7(1) provides that the ACA may make a determination about the service provider keeping records of the information required under regulation 3.3 (point of sale process) or paragraph 3.5(1)(a) (post sale process).

Subregulation 3.7(2) provides that the ACA may make a determination about the service provider keeping records of the documents used for verification and identity checks in regulation 3.4 (point of sale process) or paragraph 3.5(1)(b) (post sale process).

Regulation 3.8 - Restriction for giving false information

Regulation 3.8 provides that the ACA may make a determination preventing a service provider from allowing a person to use a public number for a pre-paid carriage service where the service provider is aware that information given by the person, being information mentioned in a determination made for the purposes of regulation 3.3, 3.4 or 3.5, is false or misleading in a material particular.

Regulation 3.9 - Restriction at request of criminal law-enforcement agency

Subregulations 3.9(1), (2) and (3) provide that the ACA may make a determination about a service provider allowing a person to use a public number for a pre-paid carriage service where:

- the service provider has an incomplete record of information about the person, being information mentioned in a determination made for the purposes of regulation 3.3 or paragraph 3.5(1)(a); or
- the service provider has reasonable grounds to suspect that its record of the information is incorrect; or
- the service provider has been asked in writing by a senior officer of a law-enforcement agency not to allow the person to use the number because the officer suspects on reasonable grounds that the person has used, or is likely to use, the service to engage in serious criminal conduct and the action is necessary for a purpose mentioned in subsections 313(3) or 313(4) of the Act (which require carriers, carriage service providers and carriage service intermediaries who arrange for the supply of carriage services to assist law enforcement, public revenue or national security agencies).

Regulation 3.10 - Telling users about the determination

Regulation 3.10 provides that the ACA may make a determination requiring service providers to advise users of pre-paid carriage services of the effect of a determination made for the purposes of regulations 3.3, 3.4, 3.5, 3.8 or 3.9.

Regulation 3.11 - Information in relation to the telecommunications industry

Regulation 3.11 provides for the ACA to make a determination specifying the information in relation to the telecommunications industry that a carriage service provider must publish or distribute and the method or way in which that information must be distributed or published.

This will enable the ACA to make a determination about the publishing or distribution of material about the operation of the customer service guarantee (CSG) under Part 5 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*. For example, it may make a determination requiring carriage service providers to publish or distribute material relating to a consumer's rights and the carriage service provider's obligations under the CSG.

Part 4 - Industry codes and industry standards

Part 4 of the accompanying regulations will enable the Australian Communications Industry Forum (ACIF) to develop and have registered an industry code that prescribes particular design features and minimum performance requirements for telecommunications networks and facilities

operated by different service providers over Telstra's 'unconditioned local loop service' (a service which involves the use of metallic communications wire between the network boundary on the end-user's side and a point at which the wire terminates).

The role of ACIF is to develop and administer industry, technical and operational arrangements that promote both the long-term interests of end-users and the efficiency and international competitiveness of the Australian communications industry.

Regulation 4.1 - ACIF industry codes - application of s 115

Part 6 of the Act allows bodies and associations that represent sections of the telecommunications industry (such as ACIF) to develop industry codes that may be registered by the ACA. Compliance with an industry code is voluntary unless the ACA directs a particular participant in the telecommunications industry to comply with the code.

Section 115 of the Act provides that industry codes and standards will not have effect to the extent that they require customer equipment or cabling or telecommunications networks or facilities to have particular design features or performance requirements except as specified in subsection 115(2). Subsection 115(2) provides a limited exception to subsection 115(1) for technical codes or standards that relate to the accuracy of billing of customers and the quality of the standard telephone service. Other matters may be specified by regulation.

ACIF is currently developing the Unconditioned Local Loop Services Network Deployment Rules. To enable these Rules to be registered by the ACA as an industry code, it is necessary to make regulations specifying matters dealt with by the Rules, as contemplated by subsection 115(2) of the Act. The Rules are intended to minimise the possibility of undue interference between wideband telecommunication systems using the unconditioned local loop service that are deployed in the same cable unit.

Subregulation 4.1 (1) provides that the rule in subsection 115(1) of the Act does not apply to an industry code developed by ACIF to the extent to which compliance with the code is likely to have the indirect effect of requiring a telecommunications network or a facility to have particular design features, or to have the direct or indirect effect of requiring the network or facility to meet performance requirements, that relate to:

- (a) interference between telecommunications systems operated using the unconditioned local loop service; or
- (b) the health and safety of a person operating or working on a telecommunications network or facility that incorporates, or is used in connection with, the unconditioned local loop service; or
- (c) the integrity of a telecommunications network or a facility that incorporates, or is used in connection with, the unconditioned local loop service.

Subregulation 4.1(2) defines the term *unconditioned local loop service* to mean the service declared by the ACCC on 4 August 1999 under subsection 152AL(3) of the *Trade Practices Act 1974* to be a declared service for the purposes of Part XIC of that Act. Under Part XIC of that Act, carriers and carriage service providers who provide declared services are required to comply with standard access obligations set out in section 152AR of the Trade Practices Act.

The unconditioned local loop service is the use of unconditioned (metallic) communications wire between the boundary of a telecommunications network at an end-user's premises and a point on a telecommunications network that is a potential point of interconnection located at or associated with a customer access module and located on the end-user side of the customer

access module. A customer access module is a device that provides ring tone, ring current and battery feed to customers' equipment.

Part 5 - Protection of communications

Part 5 of the accompanying regulations contains the text of the current *Telecommunications Regulations 1998*, which are repealed by regulation 1.3.

It also provides that, in addition to the Police Integrity Commission of New South Wales, the Queensland Crime Commission and the Anti-Corruption Commission of Western Australia are specified as prescribed authorities for the purposes of paragraph (g) of the definition of *criminal law-enforcement agency* in subsection 282(10) of the Act.

Regulation 5.1 - Criminal law-enforcement agencies (Act s 282(10))

Under Part 13 of the Act, telecommunications carriers and certain other persons are required to protect the confidentiality of information. Disclosure or use of protected information is authorised in limited circumstances, for example, in cases where the disclosure is reasonably necessary for the enforcement of the criminal law (section 282 of the Act). Subsection 282(3) authorises a person to disclose information or a document if an authorised officer of a criminal-law enforcement agency has certified that the disclosure is reasonably necessary for the enforcement of the criminal law.

Under paragraph (g) of the definition of *criminal-law enforcement agency* in subsection 282(10) of the Act, a criminal law-enforcement agency includes 'a prescribed authority established by or under a law of the Commonwealth, a State or a Territory'.

Regulation 5.1 provides that for the purposes of paragraph (g) of the definition of *criminal-law enforcement agency* (see regulation 1.7), the Police Integrity Commission of New South Wales, the Queensland Crime Commission and the Anti-Corruption Commission of Western Australia are prescribed authorities.

The Police Integrity Commission of New South Wales is constituted by the *Police Integrity Commission Act 1996* (NSW). The principal functions of this Commission are to detect, investigate and prevent serious police misconduct.

The Queensland Crime Commission is established by section 11 of the *Crime Commission Act 1997* (Qld). The principal function of this Commission is to investigate criminal paedophilia.

The Anti-Corruption Commission of Western Australia is established by section 5 of the *Anti-Corruption Act 1988* (WA). It is empowered to receive or initiate allegations of corrupt conduct, criminal conduct, criminal involvement or serious improper conduct against State police officers and other public officers as well as certain persons who are involved with public officers engaged in such conduct.

Regulation 5.2 - Disclosure of information by emergency call persons - research about emergency service numbers (Act s 292(3))

Section 278 of the Act prohibits an 'emergency call person' from disclosing any information or document that relates to the contents or substance of a communication, or the affairs or personal particulars of another person, that comes to the person's knowledge or into the person's possession in connection with the operation of an emergency call service. Subsection 292(3) of the Act provides that section 278 does not prohibit a disclosure or use of information or a document in circumstances specified in the regulations.

Regulation 5.2 allows an emergency call person to disclose information to a researcher engaged by the ACA to conduct research into the way in which emergency call numbers are used or dialled. To conduct the research the researcher needs to call back persons who misdial emergency call numbers. This requires emergency call persons to be able to disclose the numbers of persons who misdial emergency call numbers to enable the researcher to call these persons back.

Subregulation 5.2(1) provides that the disclosure of information:

- must be by an emergency call person to a researcher;
- must be made to a researcher who is engaged by the ACA to conduct research of a specific kind into the way in which emergency service numbers are dialled or used - the ACA specifying the nature of the research that the researcher will undertake;
- will only be for the purpose of allowing the researcher to conduct the research;
- will only occur following agreement between the ACA and the researcher that the research will be finished within 12 months after the research is begun; and that the researcher will not disclose or use any of the information disclosed under these regulations except for the purpose of conducting the specific research.

Subregulation 5.2(2) provides that nothing in subregulation 5.1 (1) authorises disclosure or use of information or documents more than 12 months after the researcher starts the research.

Part 6 - Technical regulation

The accompanying regulations insert a heading for Part 6 and a note to explain that any future regulations dealing with technical regulation will be included in this Part. There are currently no regulations dealing with technical regulation.

Part 7 - Numbering of carriage services and regulation of electronic addressing

The accompanying regulations insert a heading for Part 7 and a note to explain that any future regulations dealing with numbering of carriage services and regulation of electronic addressing will be included in this Part. There are currently no regulations dealing with this topic.

Part 8 - Standard agreements for the supply of carriage services

Part 8 of the accompanying regulations contains the text of the current Telecommunications (Standard Agreements) Regulations which are repealed by regulation 1.6.

Section 479 of the Act allows a carriage service provider (defined in section 87 of the Act to include a person who supplies, or proposes to supply, carriage services to the public using network units owned by a telecommunications carrier) to use a standard form of agreement as a contract with customers for the supply of a standard telephone service (defined in section 6 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*) and for such other carriage services or goods or services for use in connection with a carriage service as are specified in the regulations.

Part 8 of the accompanying regulations enables carriage service providers to use standard forms of agreement with their customers not only for the supply of a standard telephone service but also for the supply of other mass market carriage services, ancillary goods and ancillary services specified in the regulations.

Regulation 8.1 - Definition

Regulation 8.1 defines the term ***standard agreement*** for the purposes of Part 8 of the accompanying regulations.

Regulation 8.2 - Carriage services (Act s 479(1))

Regulation 8.2 specifies the types of carriage services that may be dealt with in a standard form of agreement as being:

- (a) Carriage services for voice telephony. This will include carriage services where there is a service rather than a customer at the other end. These include automatic reverse call charging services accessed by a customer on a call by call basis by dialling a nongeographic access code or an access code specific to a carriage service provider such as 13 and 1800 calls. Also included are services offering traffic management features to enable control of incoming calls.
- (b) Carriage services for the purposes of data transmission. These include facsimile services, dedicated data services such as 1900 services and public switched data services.
- (c) Carriage services for the purpose of tone signalling. These include pay by phone or other services that are activated using tone signals or numbers on the telephone pad.
- (d) Carriage services for the purpose of live or recorded information services. These include telephone information services dedicated to the transmission of live or recorded voice messages, facsimiles and other computer stored information provided by independent service providers. Examples are Dial It Information, information lines and InfoFax services.

Regulation 8.3 - Ancillary goods (Act s 479(1))

Regulation 8.3 specifies the type of goods for use in connection with a carriage service that may be dealt with in standard forms of agreement as being:

- (a) Goods for use in connection with a standard telephone service. Examples of such goods are telephone handsets, pagers and payphones.
- (b) Goods for use in connection with carriage services covered by regulation 8.2.

Regulation 8.4 - Ancillary services (Act s 479(1))

Regulation 8.4 specifies the types of services for use in connection with a carriage service that may be dealt within standard forms of agreement as being:

- (a) Services for use in connection with a standard telephone service. Examples of such services are voice mail services for non-business customers, services allowing the customer to receive two calls on the one telephone service and alternate between callers, call barring and call diversion, telephone card services and automatic reverse call charging services accessed by a customer to the home phone or other nominated phone.
- (b) Services for use in connection with carriage services covered by regulation 8.2.

Part 9 - Standard carrier licence conditions

The accompanying regulations insert a heading for Part 9 and a note to explain that any future regulations dealing with standard carrier licence conditions will be included in this Part. There are currently no regulations dealing with this topic.

Part 10 - Standard service provider rules

The accompanying regulations insert a heading for Part 10 and a note to explain that any future regulations dealing with standard service provider rules will be included in this Part. There are currently no regulations dealing with this topic.

Part 11 - Carriers' powers and immunities

Part 11 and Schedule 1 of the accompanying regulations contains the text of the current *Telecommunications (Compliance with International Agreements) Regulations 1997* which are repealed by regulation 1.4.

Clause 13 of Schedule 3 to the Act provides that if a telecommunications carrier engages in an activity covered by Division 2, 3 or 4 of Part 1 of Schedule 3 (dealing with inspection of land and installation and maintenance of telecommunications facilities), the carrier must do so in a manner that is consistent with Australia's obligations under a listed international agreement that is relevant to the activity. 'Listed international agreement' is defined in clause 2 of Schedule 3 of the Act to mean an international agreement specified in the regulations.

Schedule 1 to the accompanying regulations specifies as 'listed international agreements' a wide range of international agreements, principally relating to environment and heritage matters, with which telecommunications carriers are required to comply.

Regulation 11.1 -Listed international agreements (Act, Schedule 3)

Regulation 11.1 provides that for the purposes of the definition of *listed international agreement* in clause 2 of Schedule 3 to the Act, an international agreement mentioned in Schedule 1 to the accompanying regulations is a listed international agreement.