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# Telecommunications Regulations 2001

Statutory Rules 2001 No.  $\surd^1$

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I, WILLIAM PATRICK DEANE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Telecommunications Act 1997*.

Dated - 5 APR 2001 2001

**WILLIAM DEANE**

Governor-General

By His Excellency's Command

RICHARD ALSTON  
Minister for Communications, Information Technology  
and the Arts

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**Regulation 1.1**

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**Part 1 Preliminary****1.1 Name of Regulations**

These Regulations are the *Telecommunications Regulations 2001*.

**1.2 Commencement**

These Regulations commence on gazettal.

**1.3 *Telecommunications Regulations 1998* — repeal**

The following Statutory Rules are repealed:

- 1998 No. 72
- 2000 No. 197.

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

The following Statutory Rules are repealed:

- 1997 No. 175
- 2000 No. 222.

**1.5 *Telecommunications (Service Provider Determinations) Regulations 1997* — repeal**

The following Statutory Rules are repealed:

- 1997 No. 377
- 2000 No. 246.

**1.6 *Telecommunications (Standard Agreements) Regulations* — repeal**

Statutory Rules 1997 No. 349 is repealed.

**Regulation 1.7**

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**1.7 Definitions**

In these Regulations:

*Act* means the *Telecommunications Act 1997*.

*criminal law-enforcement agency* has the meaning given by subsection 282 (10) of the Act.

**Part 2 Network units**

*Note* Part 2 of the Act deals with network units. Regulations for Part 2 of the Act will be in this Part.

## Part 3 Service providers

### Division 3.1 Preliminary

#### 3.1 Purpose

This Part sets out the matters about which the ACA may make a service provider determination.

*Note 1* Under subsection 99 (1) of the Act, the ACA may make a written *service provider determination* setting out rules that apply to service providers in relation to the supply of either or both of the following:

- (a) specified carriage services;
- (b) specified content services.

*Note 2* 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.

#### 3.2 Definitions

In this Part:

*activate*, in relation to a pre-paid carriage service, means to enable the service to be used:

- (a) to make calls other than to the emergency call service or to the carriage service provider; and
- (b) to receive calls.

*end-user*, of a pre-paid carriage service, means the person who uses the service to make calls.

*pre-paid carriage service* means a carriage service with the following characteristics:

- (a) it can only be supplied to a customer if the customer is issued with a public number to be used in connection with the supply of the service;
- (b) the customer must pay for the service before using it;
- (c) no service provider or other person gives the customer an account for the service after the customer has used it.

*Note* The SIM card (Subscriber Identity Module) is an example of current technology that is used to supply a pre-paid carriage service.

*public number* means a number specified in the numbering plan mentioned in subsection 455 (3) of the Act.

*purchaser*, of a pre-paid carriage service, means the person who pays for the service at the point of sale of the service.

*senior officer*, for a criminal law-enforcement agency, has the meaning given by subsection 282 (10) of the Act.

## **Division 3.2 Pre-paid carriage services**

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

- (1) The ACA may make a determination about a service provider not supplying to a person (the *purchaser*) a pre-paid carriage service, as a sale of the service, unless the service provider collects, at the point of sale, information from the purchaser.
- (2) However, the determination must not relate to a sale to the purchaser of a pre-paid carriage service associated with a public number if:
  - (a) the requirements of the determination have been satisfied for a previous sale (if any) to the purchaser of the same kind of pre-paid carriage service for the public number; or
  - (b) the requirements of the Telecommunications (Conditions for Allocation of Numbers) Determination 1997 have been satisfied for an allocation (if any) of the public number to the purchaser.
- (3) The determination may only mention information for collection if it is:
  - (a) information about the purchaser that the service provider may be required to give a person or association in connection with the person's or association's fulfilment of the obligation to provide and maintain an integrated public number database; or
  - (b) information about how many public numbers are currently issued to the purchaser for use in connection with the supply of the same kind of pre-paid carriage service as the service for sale; or

### Regulation 3.4

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- (c) for a purchaser that is not an individual — information identifying the purchaser.

*Example*

Information that may be collected from a purchaser that is not an individual includes its Australian Business Number, Australian Company Number or Australian Registered Business Number.

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

- (1) The ACA may make a determination about a service provider not supplying to a person (the *purchaser*) a pre-paid carriage service, as a sale of the service, unless the service provider conducts, at the point of sale, verification and identity checks on the purchaser.
- (2) However, the determination must not relate to a sale to the purchaser of a pre-paid carriage service associated with a public number if:
  - (a) the requirements of the determination have been satisfied for a previous sale (if any) to the purchaser of the same kind of pre-paid carriage service for the public number; or
  - (b) the requirements of the Telecommunications (Conditions for Allocation of Numbers) Determination 1997 have been satisfied for an allocation (if any) of the number to the purchaser.

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

- (1) The ACA may make a determination that requires a service provider to do either or both of the following:
  - (a) to collect information from an end-user after the sale of a pre-paid carriage service and before the service is activated;
  - (b) to conduct verification and identity checks on the end-user after the sale of a pre-paid carriage service and before the service is activated.



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- (2) However, the determination must not relate to a sale of a pre-paid carriage service associated with a public number if:
  - (a) the requirements of the determination have been satisfied in relation to the end-user for a previous sale (if any) of the same kind of pre-paid carriage service for the public number; or
  - (b) the requirements of the Telecommunications (Conditions for Allocation of Numbers) Determination 1997 have been satisfied for an allocation (if any) of the public number to the end-user.
- (3) A determination under paragraph (1) (a) may only mention information for collection if it is:
  - (a) information about the end-user that the service provider may be required to give a person or association in connection with the person's or association's fulfilment of the obligation to provide and maintain an integrated public number database; or
  - (b) information about how many public numbers are currently issued to the end-user for use in connection with the supply of the same kind of pre-paid carriage service as the service sold; or
  - (c) for an end-user that is not an individual — information identifying the end-user.

*Example*

Information that may be collected from an end-user that is not an individual includes its Australian Business Number, Australian Company Number or Australian Registered Business Number.

### **3.6 Verification and identity checks**

The verification and identity checks to be mentioned in a determination under regulation 3.4 or paragraph 3.5 (1) (b) may only differ on the basis of 1 or more of the following:

- (a) whether the person is issued with 5 or more public numbers used in connection with the supply of the same kind of pre-paid carriage service as the service for sale;
- (b) how the service is to be, or was, purchased;
- (c) whether the verification and identity checks are conducted at the point of sale or after the sale.

### Regulation 3.7

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#### *Examples*

1. If a person offers to buy a pre-paid carriage service using a credit card or debit card, the service provider must:
  - (a) see a current credit card or debit card showing the person's name and signature; or
  - (b) obtain from the person the number and expiry date of the credit card or debit card.
2. If a person offers to buy a pre-paid carriage service using a method of payment other than credit card or debit card, the service provider must see 1 or more of the following documents:
  - a current licence or permit issued in the person's name under a law of the Commonwealth, or a State or Territory
  - a current passport issued in the person's name
  - a birth certificate issued in the person's name, or a name the person has previously used
  - a current credit card, debit card or ATM card showing the person's name and signature
  - a current Medicare card issued in the person's name
  - a statement of account for a fixed network telephone service, issued in the last year, showing the name and address used by the person for the purchase.

### **3.7 Records of information and identifying documents**

- (1) The ACA may make a determination about a service provider keeping records of the information, mentioned in regulation 3.3 or paragraph 3.5 (1) (a), that a person offers the provider.
- (2) The ACA may make a determination about a service provider keeping records of documents, used for verification and identity checks mentioned in regulation 3.4 or paragraph 3.5 (1) (b), that a person offers the provider.

### **3.8 Restriction for giving false information**

The ACA may make a determination about a service provider not allowing a person to use a public number for a pre-paid carriage service if the service provider knows that the person has given information, mentioned in a determination made for regulation 3.3, 3.4 or 3.5, that is false or misleading in a material particular.

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

- (1) The ACA may make a determination about a service provider not allowing a person to use a public number for a pre-paid carriage service if subregulations (2) and (3) are satisfied.
- (2) The service provider must:
  - (a) have an incomplete record of information, about the person, mentioned in a determination made for regulation 3.3 or paragraph 3.5 (1) (a); or
  - (b) suspect on reasonable grounds that its record of the information contains incorrect information.
- (3) The service provider must also have been asked in writing by a senior officer of a criminal law-enforcement agency not to allow the person to use the number because:
  - (a) the officer has a suspicion on reasonable grounds that the person has used, or is likely to use, the service to engage in serious criminal conduct; and
  - (b) the action is necessary for a purpose mentioned in subsection 313 (3) or (4) of the Act.

**3.10 Telling users about the determination**

The ACA may make a determination about service providers telling users of their pre-paid carriage services of the effect of a determination made for regulation 3.3, 3.4, 3.5, 3.8 or 3.9.

**3.11 Information in relation to the telecommunications industry**

The ACA may make a determination that specifies:

- (a) information in relation to the telecommunications industry that a carriage service provider must publish or distribute; and
- (b) the method or way in which the carriage service provider must distribute or publish that information.

**Regulation 4.1**

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## **Part 4 Industry codes and industry standards**

### **4.1 ACIF industry codes — application of s 115**

- (1) The rule in subsection 115 (1) of the Act does not apply to an industry code developed by the Australian Communications Industry Forum to the extent to which compliance with the code is likely:
  - (a) to have the indirect effect of requiring a telecommunications network or a facility to have particular design features that relate to:
    - (i) interference between telecommunications systems that are operated using the unconditioned local loop service; or
    - (ii) the health and safety of a person operating or working on a telecommunications network or a facility that incorporates, or is used with, the unconditioned local loop service; or
    - (iii) the integrity of a telecommunications network or a facility that incorporates, or is used with, the unconditioned local loop service; or
  - (b) to have the direct or indirect effect of requiring a telecommunications network or a facility to meet performance requirements that relate to:
    - (i) interference between telecommunications systems that are operated using the unconditioned local loop service; or
    - (ii) the health and safety of a person operating or working on a telecommunications network or a facility that incorporates, or is used with, the unconditioned local loop service; or
    - (iii) the integrity of a telecommunications network or a facility that incorporates, or is used with, the unconditioned local loop service.

**Regulation 4.1**

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(2) In subregulation (1):

*unconditioned local loop service* means 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.

Regulation 5.1

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## Part 5 Protection of communications

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

For paragraph (g) of the definition of *criminal law-enforcement agency*, each of the following is a prescribed authority:

- (a) the Police Integrity Commission of New South Wales constituted by the *Police Integrity Commission Act 1996* of New South Wales;
- (b) the Queensland Crime Commission established by section 11 of the *Crime Commission Act 1997* of Queensland;
- (c) the Anti-Corruption Commission established by section 5 of the *Anti-Corruption Commission Act 1988* of Western Australia.

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

- (1) For subsection 292 (3) of the Act, the following circumstances apply to a disclosure or use of information or a document:
  - (a) the disclosure must be made by an emergency call person;
  - (b) the disclosure must be made to a person (the *researcher*) who is engaged by the ACA to conduct research, of a kind specified by the ACA, into the way in which emergency service numbers are dialled or used;
  - (c) the disclosure must be made solely for the purpose of allowing the researcher to conduct the research;
  - (d) the ACA and the researcher must have agreed that:
    - (i) the research for which the researcher is engaged is to be finished not later than 12 months after the researcher starts the research; and
    - (ii) the researcher will not disclose or use any information or document that is disclosed to the

**Regulation 5.2**

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researcher except for the purpose of conducting the research.

- (2) Subregulation (1) does not authorise the disclosure or use of information or a document more than 12 months after the researcher starts the research.

*Note* The effect of this regulation is that section 278 of the Act will not prohibit a disclosure or use of information or a document in the circumstances specified in the regulation.

**Part 6                      Technical regulation**

*Note* Part 21 of the Act deals with technical regulation. Regulations for Part 21 of the Act will be in this Part.

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

*Note* Part 22 of the Act deals with numbering of carriage services and regulation of electronic addressing. Regulations for Part 22 of the Act will be in this Part.

**Regulation 8.1**

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## **Part 8                      Standard agreements for the supply of carriage services**

### **8.1              Definition**

In this Part:

*standard agreement* means a standard form of agreement formulated by a carriage service provider for section 479 of the Act.

### **8.2              Carriage services (Act s 479 (1))**

For paragraph 479 (1) (b) of the Act, the following kinds of carriage services are specified:

- (a) a carriage service for voice telephony;
- (b) a carriage service for data transmission;
- (c) a carriage service for tone signalling;
- (d) a carriage service for a live or recorded information service.

### **8.3              Ancillary goods (Act s 479 (1))**

For paragraph 479 (1) (c) of the Act, the following kinds of ancillary goods are specified:

- (a) goods for use in connection with a standard telephone service;
- (b) goods for use in connection with a carriage service specified in regulation 8.2.

### **8.4              Ancillary services (Act s 479 (1))**

For paragraph 479 (1) (d) of the Act, the following kinds of ancillary services are specified:

- (a) a service for use in connection with a standard telephone service;
- (b) a service for use in connection with a carriage service specified in regulation 8.2.



## **Part 9**                      **Standard carrier licence conditions**

*Note* Schedule 1 to the Act deals with standard carrier licence conditions. Regulations for Schedule 1 to the Act will be in this Part.

## **Part 10**                     **Standard service provider rules**

*Note* Schedule 2 to the Act deals with standard service provider rules. Regulations for Schedule 2 to the Act will be in this Part.

## **Part 11**                     **Carriers' powers and immunities**

### **11.1**      **Listed international agreements (Act, Schedule 3)**

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 is a listed international agreement.

## Schedule 1 Listed international agreements

(regulation 11.1)

Item	Agreement	Done at	Date
1	Plant Protection Agreement for the Asia and Pacific Region (as amended in 1979 and by the 1994 Amendment)	Rome	27 February 1956
2	Convention on Wetlands of International Importance especially as Waterfowl Habitat (as amended by the 1982 Protocol and the 1987 Amendment)	Ramsar	2 February 1971
3	Convention for the Protection of the World Cultural and Natural Heritage	Paris	23 November 1972
4	International Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (the <i>London Convention</i> )	London, Mexico City, Moscow, Washington	29 December 1972
5	Convention on International Trade in Endangered Species of Wild Fauna and Flora (as amended by the 1979 and 1983 Amendments)	Washington	3 March 1973
6	Agreement between the Government of Australia and the Government of Japan for the Protection of Migratory Birds and Birds in Danger of Extinction and their Environment	Tokyo	6 February 1974
7	Convention on Conservation of Nature in the South Pacific	Apia	12 June 1976
8	Convention on the Conservation of Migratory Species of Wild Animals	Bonn	23 June 1979

Item	Agreement	Done at	Date
9	Treaty Between Australia and the Independent State of Papua New Guinea concerning the Sovereignty and Maritime Boundaries in the area between the two Countries, including the area known as Torres Strait, and Related Matters	Sydney	18 December 1978
10	Revised Text of the International Plant Protection Convention of 6 December 1951	Rome	28 November 1979
11	United Nations Convention on the Law of the Sea	Montego Bay	10 December 1982
12	Vienna Convention for the Protection of the Ozone Layer	Vienna	22 March 1985
13	Agreement between the Government of Australia and the Government of the People's Republic of China for the Protection of Migratory Birds and their Environment	Canberra	20 October 1986
14	Convention for the Protection of the Natural Resources and Environment of the South Pacific Region	Noumea	24 November 1986
15	Protocol for the Prevention of Pollution of the South Pacific Region by Dumping	Noumea	25 November 1986
16	Montreal Protocol on Substances that Deplete the Ozone Layer (as amended by the 1992 and 1994 Amendments)	Montreal	16 September 1987
17	Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal	Basel	22 March 1989

Item	Agreement	Done at	Date
18	The Timor Gap Treaty (being the Treaty defined by subsection 5 (1) of the <i>Petroleum (Timor Gap Zone of Cooperation) Act 1990</i> )	Timor Sea	11 December 1989
19	Agreement between the Government of Australia and the Government of the USSR on Cooperation in the Field of Protection and Enhancement of the Environment	Canberra	15 February 1990
20	United Nations Framework Convention on Climate Change	New York	9 May 1992
21	Convention on Biological Diversity	Rio de Janeiro	5 June 1992
22	Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982	New York	5 October 1994

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**Note**

1. Notified in the *Commonwealth of Australia Gazette* on / 2001. 12 April