

Telecommunications Amendment Regulations 2002 (No. 1)

2002 No. 99

EXPLANATORY STATEMENT

Statutory Rules 2002 No. 99

Issued by the authority of the Minister for Communications, Information Technology and the Arts

Telecommunications Act 1997

Telecommunications Amendment Regulations 2002 (No. 1)

Section 594 of the *Telecommunications Act 1997* (the Act) provides that the Governor-General may make regulations for the purposes of the Act.

The purpose of the accompanying Regulations is to amend the *Telecommunications Regulations 2001* to allow for the disclosure and use of information for the purpose of providing the National Relay Service (NRS). The NRS provides persons who are deaf, or who have a hearing and/or speech impairment, with access to a standard telephone service on terms, and in circumstances, that are comparable to the access other Australians have to a standard telephone service.

Section 276 of the Act prohibits, inter alia, telecommunications carriers and carriage service providers from disclosing or using information relating to: (a) the contents or substance of communications that have been, or are being, carried by them; (b) carriage services supplied by them; and (c) the affairs or personal particulars of other persons. Section 292 of the Act provides that section 276 does not prohibit a disclosure or use of information or a document in circumstances specified in the regulations.

The NRS provider, Australian Communication Exchange Limited (ACE), is not a carrier or carriage service provider and therefore provision of information to it is not permitted by section 291 of the Act which permits disclosure or use where it is necessary in order to carry on the business of being a carrier or carriage service provider. The current prohibition on disclosure to ACE has an adverse effect on the provision to NRS customers of a service comparable to the access other Australians have to a standard telephone service. The accompanying Regulations address this problem by allowing disclosure to ACE where this is necessary in order for ACE to carry on the business of providing the NRS. In particular, they enable ACE to access information provided through caller line identification (CLI) to address routing difficulties associated with numbers that are diverted to the closest geographical outlet. The accompanying Regulations also allow simplification of billing processes, by avoiding the need for regular clients of the NRS to use Personal Identification Numbers when calling from their usual location.

The accompanying Regulations commence on gazettal.

Details of the accompanying Regulations are set out in the Attachment.

DETAILS OF THE TELECOMMUNICATIONS AMENDMENT REGULATIONS 2002 (NO. 1)

Regulation 1 - Name of Regulations

Regulation 1 provides that the name of the accompanying Regulations is the *Telecommunications Amendment Regulations 2002 (No. 1)*.

Regulation 2 - Commencement

Regulation 2 provides that the accompanying Regulations commence on their publication in the Commonwealth of Australia *Gazette*.

Regulation 3 - Amendment of *Telecommunications Regulations 2001*

Regulation 3 provides that Schedule 1 to the accompanying Regulations amends the *Telecommunications Regulations 2001*.

Schedule 1 Amendment

Item 1 - After regulation 5.1

Item 1 inserts a new regulation 5.1A into the *Telecommunications Regulations 2001*.

This new regulation provides for the disclosure or use of information or document under certain circumstances. The disclosure or use must:

- (a) be made by or on behalf of a carrier or a carriage service provider; and
- (b) be made to the NRS provider; and
- (c) be information or a document that relates to a person who is a customer or former customer of:
 - (i) the carrier or carriage service provider; or
 - (ii) the NRS provider (the third person); and
- (d) be made for a purpose of, or must be connected with, the supply, or proposed supply, by the NRS provider to the third person of the NRS (new subregulation 5.1A(1)).

New subregulation 5.1A(2) defines key terms used in the new regulation. It provides that **National Relay Service** has the meaning given by section 94 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*. Section 94 of this Act provides that in Part 3 of that Act (which regulates the NRS) **National Relay Service** or **NRS** has the meaning given by subsection 95(1) of that Act. Subsection 95(1) provides that a reference in Part 3 of that Act to these terms is a reference to a service that:

- (a) provides persons who are deaf, or who have a hearing and/or speech impairment, with access to a standard telephone service on terms, and in circumstances, that are comparable to those on which other Australians have access to a standard telephone service; and
- (b) is provided by a person under a contract with the Commonwealth.

New subregulation 5.1A(2) also provides that **NRS provider** has the meaning given by section 94 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*. Section

94 of that Act provides that **NRS provider** means the person who provides the National Relay Service. This person is currently Australian Communication Exchange Limited.

The accompanying Regulations will allow a carrier or a carriage service provider or a person acting on their behalf (such as an employee or contractor) to disclose information or a document where the disclosure is made to the NRS provider, the information relates to a customer or former customer of either the carrier or carriage service provider or the NRS provider (the third person) and it is for a purpose of, or connected with, the supply, or proposed supply, by the NRS provider to the third person of the NRS.

Australians generally have access to services that are dependent on the availability of information to the network delivering the call about their geographic location when they make the call. For example, certain kinds of numbers, mainly local rate or free call numbers (13 xxxx, 130x xxx xxx or 1800 xxx xxx) are available nationally, but are connected to services that are delivered according to the location of the caller. Examples of this include numbers used to call taxis, or request roadside assistance. State-based organisations share the number and particular calls are forwarded to the relevant state or district organisation. Other numbers may be only available in certain areas so that if a call is being placed from outside the nominated areas that call will not be terminated. This could apply to numbers established by utilities for the reporting of faults or emergencies or for the provision of information to people affected by particular circumstances such as fire or flood.

Where a caller uses the NRS to place a call to one of these numbers, information about the geographic location of the NRS is substituted for geographic information about the caller asking the NRS to place the call. This will generally prevent the successful termination of the call or will lead to termination on an inappropriate destination, effectively denying users of the relay service access on comparable terms.

To remedy this, the NRS needs access to information normally available only to carriers or carriage service providers. With that information, it can undertake technical procedures to substitute the original caller's location information (conveyed by the phone number from which the call to the relay service was placed) for its own. Currently the carriage service provider carrying the calls to the relay service is prohibited from providing that information. The accompanying Regulations will permit its provision where its conditions are met.

The second purpose of the accompanying Regulations is to simplify billing and call set up procedures. NRS clients must give a PIN when making a timed call which adds to the time taken to place the call and adds a level of inconvenience not present for non-users of the NRS. The accompanying Regulations will enable the use of network information to confirm the phone number from which the NRS client is calling, obviating the requirement for a PIN where the originating phone number is associated with a regular client.

The need for the accompanying Regulations arises because the NRS provider is not a carriage service provider, and therefore provision of information to it is not permitted by section 291 of the Act, which permits disclosure or use where it is necessary in order to carry on the business of being a carrier or carriage service provider. The accompanying Regulations allow disclosure where it is necessary in order to carry on the business of providing the NRS. Although the ability to provide comparable service where NRS users wish to call particular kinds of numbers is the primary reason for the accompanying Regulations, the ability to access information will also enable other aspects of the relay service to be provided on terms more closely comparable to those available to other Australians. These aspects could include billing and fraud prevention.