

EXPLANATORY STATEMENT

Telecommunications (Consumer Protection and Service Standards) Act 1999

Universal Service Subsidies (2005-06, 2006-07, 2007-08 Contestable Areas) Determination (No. 1) 2005

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

Background

The accompanying Determination is one of a series of instruments that details the subsidy amounts available to universal service providers for the supply of standard telephone services and the supply, installation and maintenance of payphones in the 2005-06, 2006-07 and 2007-08 claim periods. The accompanying Determination outlines the subsidies available for the provision of services in the contestable universal service areas for these periods.

Under sections 9G and 12E of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the Act), the Minister for Communications, Information Technology and the Arts (the Minister) has determined, or is taken to have determined, universal service areas as follows:

- The *Universal Service Areas Determination (No. 1) 2001* (as amended) specifies universal service areas in north-east New South Wales and inland south-east Queensland; central-west and south-west Victoria and central-west Victoria and south-east South Australia in which the universal service obligation relating to the standard telephone service (as set out in section 9 of the Act) has been made contestable (the contestable pilot areas).
- On 1 June 2001 the Commonwealth and Telstra Corporation Limited (Telstra) entered into a written agreement under section 57 of the *Telstra Corporation Act 1991* that is expressed to have effect for the purpose of subsection 12E(1) of the Act. By virtue of this agreement, paragraph 12E(2)(a) of the Act deems the Minister to have determined under section 9G of the Act that the Extended Zones are a universal service area for the purposes of the service obligation referred to in paragraphs 9(1)(a), (b) and (c) of the Act (dealing with standard telephone services, payphones and prescribed carriage services – there are currently no prescribed carriage services). The Extended Zones are call charge zones outside Telstra's standard local call charge zones, covering approximately 80 per cent of the Australian landmass. This deemed Determination was published by notice in the Commonwealth of Australia Gazette No. GN29 of 25 July 2001.
- By virtue of subsection 9G(3) of the Act, the remaining service areas in Australia constitute a default area in their own right.

Sections 16 and 16B of the Act provide for the Minister to determine subsidies for the supply of services under the universal service obligation (USO) in a universal service area for up to 3 years in advance. Section 16A of the Act requires the Minister to seek the advice of the Australian Communications Authority (ACA) prior to determining or varying USO subsidies for a universal service area.

On 30 August 2004 the Minister made the *Australian Communications Authority (Advice about Universal Service Subsidies) Direction (No. 1) 2004* under section 16A of the Act. This Direction required the ACA to provide advice to the Minister on universal service subsidies for the various universal service areas for the 2005-06 to 2007-08 financial years, using the same or similar methodologies used to arrive at subsidies for the 2001-02 to 2004-05 financial years. The ACA provided the Minister with advice in accordance with this Direction on 20 December 2004. The accompanying Determination, and related Determinations for other universal service areas, give effect to the ACA's advice.

The accompanying Determination is made under subsection 16(1) of the Act. Subsection 16(1) requires the Minister, before the end of a claim period as defined in section 8D of the Act (in this case the 2005-2006 financial year and the next 2 subsequent financial years), to determine in writing one or more universal service subsidies for the period.

Subsection 16(2) of the Act requires the Minister to ensure that there is a subsidy for each universal service area in respect of each service obligation. Subsection 16(3) requires a determination of universal service subsidy under section 16 to specify the amount, or a method for working out the amount, of the subsidy, and the circumstances in which a universal service provider for the claim period is eligible to be paid the subsidy. Subsection 16(4) specifies the circumstances that may be specified. Subsection 16(5) requires the determination to specify that a subsidy is only payable to a universal service provider who complies with the provider's obligations under section 12C (relating to primary universal service providers) or section 13D (relating to competing universal service providers). Telstra is the primary universal service provider for the whole of Australia in respect of the service obligations referred to in paragraphs 9(1)(a), (b) and (c) of the Act. There are currently no competing universal service providers.

Consultation

The *Australian Communications Authority (Advice about Universal Service Subsidies) Direction (No. 1) 2004* required the ACA to seek the views of affected persons as the ACA considered appropriate before providing its advice to the Minister. The ACA held discussions with Optus and Telstra about available data and invited comment from all licensed telecommunications carriers and other interested persons concerning issues raised in an ACA paper that proposed subsidy amounts and explained the process the ACA undertook to calculate those amounts. Only Optus and Telstra provided comments to the ACA. The ACA gave careful consideration to those comments before providing advice to the Minister.

As appropriate consultation has already been undertaken by the ACA, and the accompanying Determination and related Determinations for other universal service areas give effect to the ACA's advice, no further consultation has been undertaken on the Determinations (see paragraph 18(2)(e) of the *Legislative Instruments Act 2003*).

Operation of the Legislative Instruments Act

The accompanying Determination is a legislative instrument as defined in section 5 of the *Legislative Instruments Act 2003* (LIA). It is therefore required to be registered on the Federal Register of Legislative Instruments and to be tabled in each House of Parliament within 6 sitting days of that House after it is registered (see LIA ss. 24 and 38). However, as a result of regulation 8 and item 9 of Schedule 2 to the *Legislative Instruments Regulations 2004*, the accompanying Determination is not subject to Parliamentary disallowance.

The requirement in subsection 16(1) of the Telecommunications (Consumer Protection and Service Standards) Act for a copy of the accompanying determination to be gazetted has been satisfied by its registration on the Federal Register of Legislative Instruments (see LIA s.56(1)).

Clause 1 – Name of Determination

Clause 1 provides for the citation of the Determination as the *Universal Service Subsidies (2005-06, 2006-07, 2007-08 Contestable Areas) Determination (No. 1) 2005*.

Clause 2 – Commencement

Clause 2 provides that the Determination commences on the day after it is registered on the Federal Register of Legislative Instruments.

Clause 3 – Definitions

Clause 3 sets out the key definitions used in the accompanying Determination.

The Act under which this Determination is made is the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

As a result of subsection 8D of the Act, a claim period is the 2000-2001 financial year and each later financial year or such other period as the Minister determines in writing. As the Minister has not determined any other period, a claim period is the 2000-2001 financial year and each subsequent financial year. For the purposes of the accompanying Determination, clause 3 defines the claim periods as:

- (a) the 2005-2006 financial year;
- (b) the 2006-2007 financial year; and
- (c) the 2007-2008 financial year.

Section 9G of the Act allows the Minister to determine that a service area is a universal service area in respect of one or more universal service obligations. These areas are discussed above.

Section 9 of the Act provides a definition of the universal service obligation and the relevant service obligations which it consists of. For the purposes of the accompanying Determination the relevant service obligations are:

- (a) the obligation referred to in paragraph 9(1)(a) of the Act (dealing with the standard telephone service); and
- (b) the obligation referred to in paragraph 9(1)(b) of the Act (dealing with payphones).

As set out in subsection 9(2) of the Act, the universal service obligation is delivered via:

- (a) the supply of standard telephone services to people in Australia, on request; and
- (b) the supply, installation and maintenance of payphones in Australia.

The standard telephone service is defined in section 6 of the Act as a carriage service used for the purpose of voice telephony (or an equivalent for disabled end-users) that passes the connectivity test set out in subsection 6(2). For the purpose of the accompanying Determination, the standard telephone service includes an alternative telecommunications service (ATS) which is supplied in accordance with an approved ATS marketing plan (as defined in section 12P of the Act) in fulfilment of the obligation under paragraph 9(1)(a) of the Act (dealing with the standard telephone service).

Clause 4 – Universal service subsidies

Section 16 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* requires the Minister for Communications, Information Technology and the Arts to determine in writing one or more universal service subsidies for a claim period. The Minister is also required to ensure that:

- (a) subsidies are set for each relevant service obligation;
- (b) subsidies are set for each universal service area; and
- (c) subsidies are set before the end of each relevant claim period.

Clause 4 explains that for the purposes of section 16 of the Act and subject to clause 5, the amount of the universal service subsidies specified in the Schedule is determined for the contestable areas in respect of the relevant service obligations for the claim periods.

Clause 5 – Circumstances in which subsidies are payable

Clause 5 outlines the circumstances and conditions under which contestable universal service subsidies will be paid to primary and competing universal service providers.

Generally, a universal service provider is eligible to claim the universal service subsidies as specified in the Determination's Schedule, where the provider:

- (a) was an end-user's prime service deliverer for the claim period – that is the universal service provider that supplies the retail standard telephone service to the end-user;
- (b) complies with the obligations set out in subsections 12C or 13D of the Act (see below); and
- (c) supplies the retail standard telephone service continuously to an end-user for not less than 90 calendar days. (This paragraph is only relevant where a competing universal service provider exists in the relevant universal service area).

Subsections 12C and 13D of the Act define the obligations of primary universal service providers and competing universal service providers, in respect to their relevant service obligations and service areas.

Section 12C and 13D respectively, require a primary universal service provider (currently Telstra) or competing universal service provider for a universal service area in respect of a service obligation to take all reasonable steps to:

- (a) fulfil that service obligation so far as it relates to that area; and
- (b) comply with the provider's approved policy statement; and
- (c) comply with the approved standard marketing plan and the approved ATS marketing plan (if any) of the provider that covers that area in respect of that service obligation.

In addition to the general conditions outlined above, paragraph 5(c) defines the number of services per place for which subsidies can be claimed. An end-user's universal service provider is only eligible to subsidies specified in the Schedule for one retail standard telephone service that it supplies to:

- (a) an end-user's residence; or
- (b) an end-user's business.

If an end-user's residence and place of business are co-located, the universal service provider is eligible to claim a subsidy for one retail standard telephone service supplied to the 'residential customer' and one to the 'business customer'. However, the end-user's universal service provider must be able to demonstrate to the ACA that the co-located business was a *bona fide* business.

For the purposes of paragraph 5(c), where a customer receives a service from a single provider, that provider is considered to be the end-user's universal service provider. Where a customer receives services from two or more separate providers, the customer must nominate (in a manner acceptable to the ACA) which provider is the end-user's universal service provider.

Following consultation with the Minister, the ACA may also determine in writing other circumstances in which a subsidy specified in the Schedule is payable to a universal service provider. These circumstances may include where an end-user receives a second service for the purpose of connecting to a recognised distance education service.

Where a universal service provider claims a subsidy for a service supplied under clause 5, the provider must be able to satisfy the ACA (if the ACA so requests) that the

service was supplied in accordance with the circumstances set out in that clause. This information must be supplied upon request of the ACA.

Schedule – Universal Service Subsidies

The Schedule lists the lump sum universal service subsidies for the contestable areas for the 2005-06, 2006-07 and 2007-08 financial years in respect to the service obligation set out in paragraphs 9(1)(a) of the Act (dealing with standard telephone services).