

EXPLANATORY STATEMENT

Telecommunications (Consumer Protection and Service Standards) Act 1999

Universal Service Subsidies (2008-09 Default Area) Determination (No. 1) 2008

Issued by the authority of the Minister for Broadband, Communications and the Digital Economy

Purpose

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 2008-09 claim period. This accompanying Determination outlines the subsidies available for the provision of services in the default universal service area for this claim period.

Background

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

- the **contestable area**, which is an area (determined under the *Universal Service Areas Determination (No. 1) 2001*) where the provision of the universal services referred to in paragraph 9(1)(a) of the Act (dealing with the standard telephone service) is open to competition under the *Contestable Service Obligation Determination (No. 1) 2001*;
- the **Extended Zones area**, which is an area (notified in the *Notice of the Primary Universal Service Provider for the Extended Zones of Australia*) where the provision of the universal services referred to in paragraph 9(1)(a) and (b) of the Act is provided by Telstra Corporation Limited (Telstra) as the primary universal service provider; and
- the **default area**, which pursuant to subsection 9G(3) of the Act, is the residual areas of Australia which are not covered by a determination made under subsection 9G(1) of the Act.

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 and Media Authority (ACMA) prior to determining or varying USO subsidies for a universal service area.

On 8 May 2008 the Minister issued the *Australian Communications and Media Authority (Advice about Universal Service Subsidies) Direction (No. 1) 2008* (Direction) under section 16A of the Act. The Direction came into effect on 16 May 2008. The Direction required the ACMA, in providing its advice to the Minister, to consider whether universal service subsidies for the various universal service areas for the 2008-09 financial year should remain the same as the subsidies for the previous 2007-08 claim period.

The Direction indicated that in providing its advice, ACMA should take into account the fact the Department of Broadband, Communications and the Digital Economy (the Department) was undertaking a review of the USO (USO Review) examining:

- universal service costing and future funding mechanisms;
- changes in technology and in the Australian telecommunications marketplace; and
- how the universal service should be provided in the future.

The Explanatory Statement accompanying the Direction also noted that the Government had invited industry and public interest groups to provide submissions on regulatory issues associated with the National Broadband Network (NBN) project, and that it was likely that some of these submissions would raise issues relevant to the USO. The Government also issued its Request for Proposals for the National Broadband Network on 11 April 2008. These additional factors were also considered by the ACMA in the provision of its advice.

Advice was sought from ACMA in regard to the subsidies for the 2008-09 financial year only, allowing for the USO subsidies for later financial years to be considered when other processes have concluded.

The ACMA provided the Minister with advice in accordance with the Direction on 12 August 2008. The Minister has accepted the ACMA's advice. The accompanying Determination, and related Determinations (the *Universal Service Subsidies (2008-09 Contestable Areas) Determination (No. 1) 2008* and *Universal Service Subsidies (2008-09 Extended Zones) Determination (No. 1) 2008*) give effect to the ACMA's advice.

The universal service subsidies in the accompanying Determination and related Determinations are for the 2008-09 financial year only, noting that Government consideration of the outcomes of the USO Review and National Broadband Network process is relevant to future USO arrangements.

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 2008-2009 financial year), 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 and Media Authority (Advice about Universal Service Subsidies) Direction (No. 1) 2008* invited ACMA to seek the views of affected persons as the ACMA considered appropriate before providing its advice to the Minister. On 30 May 2008 and 2 June 2008, the ACMA wrote to all licensed telecommunications carriers and invited comment from them by 16 June 2008 on whether the 2008-09 USO subsidy should be set at the same level as in the 2007-08 financial year. Optus, Telstra, aCure Technology, Silver Telecom, Macquarie Telecom and Vodafone provided comments to the ACMA. The ACMA had regard to those comments before providing advice to the Minister.

As appropriate consultation has already been undertaken by the ACMA, and the accompanying Determination and related Determinations for other universal service areas give effect to the ACMA'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 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 (2008-09 Default Area) Determination (No. 1) 2008*.

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*.

For the purposes of the accompanying Determination, clause 3 defines the claim period as the 2008-2009 financial year (subsection 8D of the Act).

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. As a result of subsection 9G(3) of the Act and for the purposes of this Determination, the default area means the area of Australia which is neither in the Extended Zones nor a contestable pilot area.

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 fulfilment of the universal service obligation includes:

- (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 subsection 12P(2) 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 Broadband, Communications and the Digital Economy to determine in writing one or more universal service subsidies for the claim period. The Minister is also required to ensure that subsidies are set:

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

Clause 4 explains that for the purposes of section 16 of the Act, the amount of the universal service subsidies specified in the Schedule is determined for the default area in respect of the relevant service obligations for the claim period.

Clause 5 – Circumstances in which subsidies are payable

Subsection 12C of the Act defines the obligations of primary universal service providers in respect to its relevant service obligations and service areas.

Clause 5 provides that where a universal service provider for the claim period meets its obligations as specified in section 12C of the Act it is eligible to claim the universal service subsidies as specified in the Determination's Schedule. Section 12C requires a primary universal service provider for a universal service area, in respect of a service obligation (currently Telstra), 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.

Schedule – Universal Service Subsidies

The Schedule lists the universal service subsidies for the default area for the 2008-09 financial year in respect to the service obligations set out in paragraphs 9(1)(a) and (b) of the Act.