

Explanatory Statement

AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY (ADVICE ABOUT UNIVERSAL SERVICE SUBSIDIES) DIRECTION (NO. 1) 2010

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

Purpose

The *Australian Communications and Media Authority (Advice about Universal Service Subsidies) Direction (No. 1) 2010* (the Direction) is made by the Minister for Broadband, Communications, and the Digital Economy (the Minister) to the Australian Communications and Media Authority (ACMA) pursuant to subsection 16A(1) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the Act). The Direction requires the ACMA to provide advice on whether the Minister should make a Determination setting the universal service subsidy at particular amounts for particular universal service areas for the period of the 2009-10 financial year. The universal service subsidy amounts referred to in the Direction relate to the universal service obligations indicated in paragraph 9(1)(a) and (b) of the Act.

The ACMA must provide its advice to the Minister within 90 days of the commencement of the Direction.

Background

Part 2 of the Act sets out the universal service regime, which includes the universal service obligation (USO). Subsection 9(1) relevantly provides that the USO includes an obligation to ensure that:

- standard telephone services are reasonably accessible to all people in Australia on an equitable basis wherever they reside or carry on business (paragraph 9(1)(a)); and
- payphones are reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business (paragraph 9(1)(b)).

Division 9 of Part 2 of the Act provides for the determination of the universal service subsidy (or subsidies).

Under section 16 of the Act, the Minister is required to determine in writing the universal service subsidies before the end of a relevant claim period and to ensure that there is a subsidy for each universal service area in respect of each service obligation (that is, the provision of standard telephone services and the provision of payphones).

Three types of universal service areas currently exist and are contemplated by the Direction:

- the contestable area, which is an area (determined under the *Contestable Service Obligations Determination (No. 1) 2001*) where the provision of the universal services referred to in subsection 9(1)(a) of the Act is open to competition,
- 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 subsection 9(1)(a) and (b) of the Act is provided by 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.

Section 16A of the Act further requires the Minister to direct the ACMA to provide advice on a proposed determination or variation to be made under section 16 (unless a proposed variation is of a minor technical nature).

The Direction requires the ACMA to provide advice pursuant to section 16A for the 2009-10 financial year claim period in contemplation of a Determination being made pursuant to section 16 for the 2009-10 financial year. The claim periods in relevant previous USO Determinations (that is the *Universal Service Subsidies (2008-09 Contestable Areas) Determination (No. 1) 2008*, the *Universal Service Subsidies (2008-09 Extended Zones) Determination (No. 1) 2008* and the *Universal Service Subsidies (2008-09 Default Area) Determination (No. 1) 2008*) were for one financial year and expired on 30 June 2009.

On 15 September 2009 the Minister announced a telecommunications reform package. The main points of the announcement involved:

- addressing Telstra's high level of integration to promote greater competition and consumer benefits;
- streamlining and simplifying the competition regime to provide more certain and quicker outcomes for telecommunications companies;
- strengthening consumer safeguards to ensure service standards are maintained at a high level; and
- removing redundant and inefficient regulatory red-tape.

In announcing the package the Minister advised that it was the Government's intention that the USO levy would remain at the same rate for this financial year and also gave an undertaking that the Government would consider the broader range of issues associated with the delivery of universal access once the detailed operating arrangements for the National Broadband Network (NBN) had been settled.

To this end, subclause 5(2) nominates a proposed total amount for the USO subsidy in respect to the combined universal service subsidy referred to in paragraphs 9(1)(a) and (b) for the relevant claim period and seeks the ACMA's advice about setting the total universal service subsidy at that amount. Likewise, subclauses 5(3) through 5(7) of the Direction nominate individual amounts for the universal service obligations referred to in paragraphs 9(1)(a) and (b) in respect of each universal service area for the relevant claim period and seeks the ACMA's advice in relation to those amounts. The amounts nominated in

subclauses 5(2) through to 5(7) are the same amounts as set by the relevant previous USO Determinations for the 2008-09 claim period.

The Direction also requires that in providing its advice, the ACMA must have regard to the objects of Part 2 of the Act, the length of the relevant claim period compared to the aggregate length of the claim periods in previous USO Determinations, the Government's announcement regarding the building of the NBN and the announcement of a telecommunications reform package on 15 September 2009. It is intended that these subclauses highlight the interim transitional nature of the Determination that is proposed by the Direction.

Further, the ACMA is able to provide advice about other matters it considers relevant. This could be, for example, whether any substantial changes in economic conditions such as inflation, interest rates, telecommunication industry sector productivity, costs and revenues are likely to substantially affect the merits of maintaining the current subsidy levels as a short term and interim measure.

Given that the contemplated universal service subsidy levels are intended to be an short term measure, it is not anticipated that the ACMA will find it necessary to conduct extensive industry consultation. To this end, in framing its advice, the ACMA is given discretion as to the conduct of any consultation it considers appropriate.

The Direction also revokes:

- four previous directions to the former Australian Communications Authority (ACA), which required the ACA to provide advice on whether the Minister for Communications, Information Technology and the Arts (former Minister) should make a Determination setting the universal service subsidy at particular amounts for particular universal service areas for previous claim periods; and
- a further direction issued to the ACMA in 2008 by the Minister, which also required the ACMA to provide advice regarding the setting of the universal service subsidy.

The Directions have been complied with and are now redundant. Removing redundant regulation reduces costs incurred by business in understanding and complying with outdated regulatory requirements and is part of a range of better regulation initiatives being taken forward by the Government to improve the quality of regulatory stock and ensure regulation does not impose unnecessary costs and inefficiencies on business.

The Direction is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Notes on clauses

Clause 1 provides for the citation of the Direction.

Clause 2 provides that the Direction will be registered on the Federal Register of Legislative Instruments and will take effect on the day after its registration.

Clause 3 provides that the Direction will cease on 31 July 2010. A cessation date is included to overcome the requirement for this Direction to be revoked at a future date, once its effect is finished. A cessation date of 31 July 2010 has been chosen as by this date the ACMA will have provided its advice to the Minister in accordance with the Direction and the Minister will have made a determination setting the universal service subsidy for 2009-2010 financial year.

Clause 4 defines the terms to be used throughout the Direction.

Clause 5 requires the ACMA to provide the Minister with advice on whether the Minister should make a Determination setting the universal service subsidy at nominated amounts.

Paragraph 5(1)(a) requires that the ACMA provide advice pursuant to the Direction within 90 days of its commencement in order to provide industry with some certainty about financial obligations relating to the 2009-10 Universal Service Subsidy.

Paragraph 5(1)(b) instructs ACMA to assume, for the purposes of the advice, that the current statutory arrangements for the fulfilment of the USO will continue in the 2009-10 claim period.

The matters provided for in paragraph 5(1)(c) highlight the transitional nature of the Direction. In particular, sub-paragraphs 5(1)(c)(iii) and (iv) (which requires the ACMA to have regard to the Government's intention to consider the broader range of issues associated with universal access arrangements once the detailed operating arrangements for the NBN have been settled) is intended to emphasise that the Determination contemplated by the Direction will be a short-term measure.

Subclause 5(2) requires the ACMA to advise whether the Minister should make a Determination about whether the aggregate level of the universal service subsidy referred to by paragraph 9(1)(a) and (b) of the Act for the 2009-10 financial year should be set at \$145,076,237. This amount was the same as the amount set by the relevant previous USO Determinations for the 2008-09 financial year.

Subclauses 5(3) through (7) direct the ACMA to advise whether the Minister should make a Determination about setting the universal service subsidy at specified amounts for the service obligations referred to by paragraph 9(1)(a) and (b) of the Act in respect to the contestable area, the Extended Zones area, and the default area. These amounts are the same as the amounts set by the relevant previous USO Determinations for those areas for the 2008-09 financial year.

Paragraph 5(8)(a) provides that, before providing its advice, the ACMA may consult with affected persons as it considers appropriate. Given the interim nature of the

direction it is not contemplated that the ACMA will need to conduct extensive industry consultations.

Paragraph 5(8)(b) clarifies for the avoidance of doubt that the ACMA is not prevented from providing advice about other matters it considers relevant.

Clause 6 revokes previous directions made by the former Minister, which required the Australian Communications Authority to provide advice on whether the former Minister should make a Determination setting the universal service subsidy at particular amounts for particular universal service areas for previous claim periods. A more recent and similar direction issued by the Minister to the ACMA in 2008 is also revoked under clause 6. The Directions have been complied with and are therefore spent.

Consultation

The ACMA has been consulted in relation to the making of this Direction.

As the Direction only contemplates that the ACMA will provide advice to the Minister, no further consultation was deemed necessary. Broader consultation with parties that may be potentially affected has not been undertaken, since it is open to the ACMA to undertake industry consultation before advising the Minister. However, as noted above, given the limited and interim nature of the Determination envisaged by this Direction it is not anticipated that the ACMA will need to conduct detailed industry consultations in preparing its advice.