

EXPLANATORY STATEMENT

Telecommunications (Consumer Protection and Service Standards) Act 1999

Universal Service Subsidies (2009-10 Contestable Areas) Determination (No. 1) 2010

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 2009-10 claim period. This accompanying Determination outlines the subsidies available for the provision of services in the contestable universal service areas 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 4 February 2010 the Minister issued the *Australian Communications and Media Authority (Advice about Universal Service Subsidies) Direction (No. 1) 2010* (Direction) under section 16A of the Act. The Direction came into effect on 16 February 2010. 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 2009-10 claim period should remain the same as the subsidies for the previous 2008-09 claim period.

The Direction indicated that in providing its advice, the ACMA should take into account three matters. These matters are:

- the objects of Part 2 of the Act;
- the length of the 2009-10 claim period compared to previous determinations; and
- the fact that 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 as the preceding 2008-09 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.

Advice was sought from ACMA in regard to the subsidies for the 2009-10 claim period only, allowing for the USO subsidies for later years to be considered when other processes have concluded.

The ACMA provided the Minister with advice in accordance with the Direction on 23 April 2010. The Minister has accepted the ACMA's advice. The accompanying Determination, and related Determinations (the *Universal Service Subsidies (2009-10 Default Area) Determination (No. 1) 2010* and *Universal Service Subsidies (2009-10 Extended Zones) Determination (No. 1) 2010*) give effect to the ACMA's advice.

The universal service subsidies in the accompanying Determination and related Determinations are for the 2009-10 financial year only, noting that the 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 2009-10 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) 2010* invited the ACMA to seek the views of affected persons as the ACMA considered appropriate before providing its advice to the Minister. On 16 February 2010, the ACMA wrote to all licensed telecommunications carriers and invited comment from them by 19 March 2010 on whether the 2009-10 USO subsidy should be set at the same level as in the 2008-09 financial year. Optus Group, Telstra Corporation, Primus Telecom, Macquarie Telecom, aCure Technology and the Competitive Carriers' Coalition 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 (2009-10 Contestable Areas) Determination (No. 1) 2010*.

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 2009-10 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.

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 end-users with a disability) 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 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 period.

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 ACMA 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 ACMA) which provider is the end-user's universal service provider.

Following consultation with the Minister, the ACMA 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 ACMA (if the ACMA 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 ACMA.

Schedule – Universal Service Subsidies

The Schedule lists the lump sum universal service subsidies for the contestable areas for the 2009-10 financial year with respect to the service obligation set out in paragraphs 9(1)(a) of the Act (dealing with standard telephone services). Refer to the *Universal Service Areas Determination (No. 1) 2001* for details of the contestable areas.