

Explanatory Statement

AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY (ADVICE ABOUT UNIVERSAL SERVICE SUBSIDIES) DIRECTION (NO. 1) 2011

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) 2011* (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 2010-11 financial year. The universal service subsidy amounts referred to in the Direction relate to the universal service obligations indicated in paragraphs 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 subsections 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 that 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 2010-11 financial year claim period in contemplation of a determination being made pursuant to section 16 for the 2010-11 financial year. The claim period in relevant previous USO Determinations (that is the *Universal Service Subsidies (2009-10 Contestable Areas) Determination (No. 1) 2010*, the *Universal Service Subsidies (2009-10 Extended Zones) Determination (No. 1) 2010* and the *Universal Service Subsidies (2009-10 Default Area) Determination (No. 1) 2010*) was for one financial year and expired on 30 June 2010.

The *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act 2010* introduces a package of telecommunications reforms aimed at enhancing competitive outcomes in the Australian telecommunications industry and strengthening consumer safeguard measures, including the universal service obligation.

The strengthening of consumer safeguards contained in the *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act 2010* will ensure that consumers are protected and service standards are maintained at a high level during the transition to the National Broadband Network (NBN).

Further, in recognition of the fundamental changes to the sector, the Government is developing a new institutional, regulatory and funding framework for the delivery of universal service outcomes and other public interest services in an NBN environment that is expected to commence from 1 July 2012.

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 previous USO Determinations for the 2009-10 claim period.

The Direction also requires that, in providing its advice, the ACMA must have regard to the following matters:

- the objects of Part 2 of the Act;
- the range of policy decisions made by the Government in relation to implementation of a new regulatory, funding and institutional framework for delivery of universal service outcomes and other public interest services from 1 July 2012;
- changes to the way telecommunication infrastructure and services will be provided in new developments; and
- the telecommunications reform package introduced by the *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act 2010*

It is envisaged these policy and regulatory changes will have little impact on existing universal service requirements for the 2010-2011 claim period. The planned changes have either not yet commenced, or in relation to the telecommunications reform package and arrangements for new developments any impacts are likely to be limited to a small subset of services during the last quarter of the claim period. The Government's proposed policy reform to the institutional, regulatory and funding framework for the delivery of universal service outcomes and other public interest services is expected to commence from 1 July 2012. It is intended that these subclauses highlight the 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 a 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 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 2011. 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 2011 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 the 2010-2011 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 2010-11 Universal Service Subsidy.

The matters provided for in paragraph 5(1)(b) highlight the transitional nature of the Direction. In particular, sub-paragraph 5(1)(b)(ii) (which requires the ACMA to have regard to the Government's intention to introduce a new institutional, regulatory and funding framework for the delivery of universal service outcomes and other public interest services in an NBN environment) 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 2010-11 financial year should be set at \$145,076,237. This amount was the same as the amount set by the previous USO Determinations for the 2009-10 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 paragraphs 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 previous USO Determinations for those areas for the 2009-10 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 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.

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 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.