

## **EXPLANATORY STATEMENT**

*Telecommunications (Consumer Protection and Service Standards) Act 1999*

### **Determination under subsections 9(2D) and 9(3)**

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

#### Purpose

*The Telecommunications Universal Service Obligation (Standard Telephone Service—Requirements and Circumstances) Determination (No. 1) 2011* (the Requirements and Circumstances Determination) is made by the Minister for Broadband, Communications and the Digital Economy (the Minister) pursuant to subsections 9(2D) and 9(3) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the Act).

The Requirements and Circumstances Determination sets out circumstances in which the primary universal service provider, currently Telstra, is not required to provide a standard telephone service under the Universal Service Obligation (USO) and requirements for a valid request.

#### Background

Subsection 9(1)(a) of the Act provides that part of the USO is the 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.

The *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act 2010* (CCS Act) repealed subsections 9(2) and 9(3) of the Act and substituted new subsections to clarify the matters that are included in the USO.

Subsection 9(2) of the Act requires the primary universal service provider to supply standard telephone services to people on request.

Subsection 9(2D) of the Act enables the Minister, by legislative instrument to determine requirements for requests for a standard telephone service such as the form of the request or information to be provided in a request.

Subsection 9(3) of the Act enables the Minister to determine circumstances under which an obligation to supply a standard telephone service under the USO does not arise. Under the previous regulatory arrangements the primary universal service provider had a wide discretion to make decisions on the extent and manner in which it fulfilled the USO through its Universal Service Policy document and Standard Marketing Plan. As a result the universal service provider was only required to make reasonable endeavours to supply a service and had discretion in decision making on a case by case basis. In addition, the

business practices embedded in the practical operation of these policies were not transparent and consumers had difficulty in understanding what the universal service provider was required to do.

In the absence of the Minister making this instrument, the primary universal service provider would be required to meet each and every request for a universal service standard telephone service whether or not it is reasonable to do so. For this reason the Requirements and Circumstances Determination commences the same day as Part 4 of Schedule 1 of the CCS Act.

The rules set out in the Requirements and Circumstances Determination make clear when a standard telephone service is required to be provided under the USO. These rules will also provide improved clarity for the Australian Communications and Media Authority (ACMA) enabling it to more easily determine if the primary universal service provider has breached its obligations under the USO.

If the primary universal service provider fails to comply with the universal service requirements in Part 2 of the Act, it may face pecuniary fines of up to \$10 million for each contravention under section 570 of the *Telecommunications Act 1997*. The ACMA has the power to take enforcement action under *Telecommunications Act 1997* when there is a contravention.

**Notes on the *Telecommunications Universal Service Obligation (Standard Telephone Service – Requirements and Circumstances) Determination (No. 1) 2011***

**Part 1 PRELIMINARY**

**1 Name of instrument**

Section 1 provides that the name of this Instrument is the *Telecommunications Universal Service Obligation (Standard Telephone Service—Requirements and Circumstances) Determination (No. 1) 2011*.

**2 Commencement**

Section 2 provides for the Instrument to commence on:

- (a) the day after it is registered on the Federal Register of Legislative Instruments; or
- (b) the commencement of Part 4 of Schedule 1 to the *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act 2010*,

whichever is later.

### **3 Definitions**

Section 3 defines the terms used in this Instrument.

The definition of a person's 'principal place of residence' requires the person making the request to either reside or intend to reside at that residence for 183 days or more per annum.

A 'request' is defined as a request made to the primary universal service provider for a standard telephone service using the provider's website, by telephone or in person at a retail centre.

Subsection 3(2) defines 'excluded premises'. Paragraph 5(1)(a) provides that the obligation to supply a standard telephone service on request does not apply in relation to the supply of a standard telephone service to 'excluded premises'. If the premises satisfies one or more of the criteria set out in paragraphs 3(2)(a)-(l) it will be an excluded premises.

Paragraph 3(2)(l) defines a residential premises that is not a distinct residence as an excluded premises. For the purpose of paragraph 3(2)(l), subsection 3(3) outlines a non-exhaustive list of premises that are distinct residences.

A distinct residence under subsection 3(3) may still be an 'excluded premises' if it meets any of the criteria in paragraphs 3(2)(a) to (k).

### **4 Requests from a person on behalf of the requestor**

Section 4 clarifies that in the circumstances where a person is authorised to make a request for a standard telephone service on someone else's behalf, the request is deemed to have been made by the person on whose behalf the request is made.

This section provides for flexibility where a third party is making a request for the supply of a standard telephone service on behalf of others, e.g. a request made by a relative or carer.

## **5 Objects of Part 2 of the Act**

Section 5 provides that in interpreting the provisions of the Determination, regard should be had to the objects of Part 2 of the Act. The objects of Part 2 are set out in section 8A of the Act and include giving effect to the policy principle that all people in Australia, wherever they reside or carry on business, should have reasonable access, on an equitable basis, to standard telephone services.

## **Part 2            REQUIREMENTS AND CIRCUMSTANCES**

### **Division 1      Requirements for a request for supply of a standard telephone service**

## **6 Request requirements**

Section 6 sets out the requirements for a request for supply of a standard telephone service. The requirements enable the primary universal service provider and the prospective customer to ascertain with certainty when a request triggers the statutory arrangements applying to the universal service obligation under the Act.

The requirements of a request enable the primary universal service provider to have sufficient information to enable it to carry out activities to supply the service, for example, where to install cabling, where and when to supply the service, who to bill etc.

Section 6 enables the primary universal service provider to request other information that it reasonably requires to assess whether it has no obligation to supply a service pursuant to the circumstances specified under section 7 of the Determination.

The information required to be in the request is:

- the full name of the person making the request;
- the location of the premises where the service is to be supplied;
- the date when the person wants the standard telephone service to be supplied;
- in the case of a business, written documentation verifying that a business is carried on permanently at the premises, for example, a notice of registration, advertising material, business cards, business stationery or

other document which confirms that the business is carried out at the premises on a permanent basis;

- other information requested by the primary universal service provider that it reasonably requires to supply a service, for example, in which room to install the telephone connection, arrangements as to accessing the property; and
- other information requested by the primary universal service provider that it reasonably requires to ascertain whether or not it has no obligation to supply a service pursuant to section 7 of the Determination. This could, for example, include information establishing that the person requesting the service has a legal right to occupy the premises, or agrees to pay for trenching for underground cable where lead-in cabling is required.

**Division 2      Circumstances in which the obligation to supply standard telephone services on request does not apply**

**7      No obligation to supply a standard telephone service in certain circumstances**

Paragraph 7(1)(a) sets out the circumstances in which an obligation to supply a standard telephone service will not arise. The circumstances include:

- where the premises is an ‘excluded premises’ as defined by subsection 3(2);
- subject to subsection 7(2), where there is a request already pending for the supply of a standard telephone service for the premises (subparagraph 7(1)(a)(ii));
- where the person making the request does not have the right to occupy the premises;
- under subparagraph 7(1)(a)(iv), the primary universal service provider will not have to supply a service under the USO, if a service provider supplying a service to which the Customer Service Guarantee (CSG) applies would be exempt from the CSG standard because of the customer’s lack of creditworthiness. This test ensures consistency in exemptions applying to the USO and CSG for creditworthiness issues;
- where there are reasonable grounds for the primary universal service provider to believe that the request is fraudulent;

- the person making the request is a minor and is not the legal owner or lessee of the premises to which the request relates;
- where the person making the request is a carriage service provider other than the primary universal service provider, and the request is in order to permit that carriage service provider to provide a carriage service to its customer;
- the installation or supply of the standard telephone service would contravene a Commonwealth, State or Territory law; or
- subject to subsection 7(3), the primary universal service provider has made a reasonable offer to supply a standard telephone service to the premises which has been refused by the person making the request (subparagraph 7(1)(a)(ix)).

Under paragraph 7(1)(b), the primary universal service provider must also comply with requirements to notify review rights as set out in subsection 8(3).

Subsection 7(2) makes it clear that the exception where there is an already pending request does not apply where equipment or other goods or services are required to be supplied in order to comply with the *Disability Discrimination Act 1992*.

Subsection 7(3) makes it clear an offer to supply is not a reasonable offer where equipment or other goods or services are required to be supplied in order to comply with the *Disability Discrimination Act 1992*, and the offer does not include that equipment, or those goods or services.

Subsection 7(4) provides that if the primary universal service provider complies with requirements to notify review rights at subsection 8(4), an obligation to supply a standard telephone service on request does not arise for any period during which any of the following circumstances apply to a request:

- if an electricity supply is required for the service, the person does not provide access to an electricity supply to enable the standard telephone service to be provided. In many circumstances a customer provided electricity supply is not required, but there are instances where the most efficient technology used to supply a standard telephone service does require an electricity supply at the premises. This reflects a requirement currently set out the primary universal service provider's standard customer terms and conditions;

- where lead-in cabling is required at the premises and the person making the request does not agree to supply or pay the reasonable costs of trenching, or where applicable, the erection of poles. The provision by the customer of trenching or poles on the customer's property has been a long standing practice in relation to the universal service obligation. Negotiations between the customer and the primary universal service provider can lead to agreement for the supply of standard telephone services using technologies that do not require lead-in cabling, or which substantially reduces the length of lead-in cabling and therefore eliminate or substantially reduce customer trenching costs;
- the person making the request does not agree to the primary universal service provider's standard form of agreement in relation to the standard telephone service (see Part 23 of the *Telecommunications Act 1997*);
- the person making the request does not provide identification;
- the primary universal service provider cannot gain access to the necessary power and infrastructure to enable the standard telephone service to be supplied;
- the premises is not sufficiently secure for the housing of telecommunications equipment;
- the installation or supply of a standard telephone service would be unsafe for employees of the primary universal service provider or the public;
- the primary universal service provider is prevented from supplying the service because of circumstances beyond its control. Paragraph 7(4)(h) limits this exemption to those cases that would exempt the primary universal service provider from complying with the service standards under the CSG Standard due to circumstances beyond its control. The CSG exemption requires all of the following:
  - the circumstances are beyond the provider's control;
  - the circumstances prevent the provider from meeting the CSG standard (to make a new connection, rectify a fault, or meet an appointment time); and

- the provider complies with the notice requirements set out in sections 23, 24 and 27 of the *Telecommunications (Customer Service Guarantee) Standard 2011*;
- the installation would not be in the interests of public safety, for example the installation would impede a fire escape;
- the installation or supply would put employees of the primary universal service provider at risk due to, for example dangerous animals, unhealthy or unsanitary environments, injury from unsafe buildings;
- the primary universal service provider is prevented from installing a standard telephone service at the proposed location because installation activity would have significant adverse environmental impacts;
- the work necessary to install the standard telephone service requires consent or authority which has not been provided; and
- subject to subsections 7(5) and (6), the premises already receives the supply of a standard telephone service which is able to provide Priority Assistance (paragraph 7(4)(m)).

Subsection 7(5) provides that the exemption for services supplied by other providers offering Priority Assistance does not apply where the existing standard telephone service is a public mobile telephone service or a mobile satellite service. In this context, a mobile satellite service is a satellite service that involves a handset that is either handheld, or is non-handheld and is used in a mobile environment. Subsection 7(6) provides that the exemption for an existing service fulfilling the universal service obligation does not apply where equipment, or other goods or services are required to be supplied in order to comply with the *Disability Discrimination Act 1992*.

## **8 Notification requirements**

Section 8 sets out the notification requirements on the primary universal service provider where it refuses to supply in one or more of the circumstances outlined under paragraph 7(1)(a) or subsection 7(4) of the Determination.

Under subsections 8(3) and (4) the primary universal service provider must within 10 business days of deciding that one or more of the circumstances listed in paragraph 7(1)(a) or subsection 7(4) applies to the request, provide the person a written statement setting out the following:



- which circumstances under this Instrument the primary universal service provider is relying on in coming to its decision to refuse supply;
- the grounds on which the primary universal service provider has based its judgment;
- the entitlement of the person making the request to dispute that the circumstance applies to the request by requesting the primary universal service provider to reconsider whether the grounds for refusal of supply exist or are a proper basis for the decision; or by complaining to the Telecommunications Industry Ombudsman following such a request; and
- how the person making the request can contact the primary universal service provider and the Telecommunications Industry Ombudsman.