

Explanatory Statement

AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY (ADVICE ABOUT UNIVERSAL SERVICE SUBSIDIES) DIRECTION (NO. 1) 2012

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) 2012* (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 2011-12 claim period (i.e. 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) 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 (i.e. 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 paragraph 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 paragraphs 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 2011-12 claim period in contemplation of a determination being made pursuant to section 16 for the 2011-12 claim period. The claim period in relevant previous USO Determinations (that is the *Universal Service Subsidies (2010-11 Contestable Areas) Determination (No. 1) 2011*, the *Universal Service Subsidies (2010-11 Extended Zones) Determination (No. 1) 2011* and the *Universal Service Subsidies (2010-11 Default Area) Determination (No. 1) 2010*) was for one financial year and expired on 30 June 2011.

Subclause 5(2) nominates a proposed total amount for the USO subsidy in respect of the service obligations referred to in paragraphs 9(1)(a) and (b) of the Act 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 Direction also requires that, in providing its advice, the ACMA have regard to the following matters:

- the objects of Part 2 of the Act;
- the Government's policy announcement of 23 June 2011 and the subsequent release of the related policy statement, *Universal Service Policy in the National Broadband Network environment*, which outlined the Government's policy to introduce a new regulatory, funding and institutional framework for the delivery of universal service outcomes and other public interest services from 1 July 2012;
- a report by Paul Paterson from Castalia Strategic Advisors, *Net Cost of Meeting the Standard Telephone Service and Payphone Universal Service Obligations* (June 2011); and
- other matters that the ACMA considers relevant.

On 23 June 2011, the Government released a policy statement, *Universal Service Policy in the National Broadband Network environment*, which outlined the Government's policy to introduce a new regulatory, funding and institutional framework for the delivery of universal service outcomes and other public interest services from 1 July 2012. The policy statement describes the establishment of a new statutory agency, the Telecommunications Universal Service Management Agency (TUSMA), to administer the delivery of telecommunications universal service arrangements from 1 July 2012. On 2 November 2011, the Minister introduced a package of reforms to the USO and other telecommunications safeguards into parliament. The package included the following bills:

- Telecommunications Universal Service Management Agency Bill 2011;
- Telecommunications (Industry Levy) Bill 2011; and
- Telecommunications Legislation Amendment (Universal Service Reform) Bill 2011

Also on 23 June 2011, the Government announced that it had entered into initial service agreements with Telstra to ensure continuity of services during the transition to the National Broadband Network (NBN). The Telstra agreement will cover access to the standard telephone service and payphone elements of the USO, as well as emergency call services and other public interest telecommunications services. Under the Telstra Agreement, the Commonwealth will make annual payments to Telstra of \$230 million for the standard telephone service component and \$40 million for the payphone component. These funding figures are based on independent advice commissioned by the Government, *Net Cost of Meeting the Standard Telephone Service and Payphone Universal Service Obligations* (Paul Paterson, Castalia Strategic Advisors, June 2011). The Government considers that the Castalia Report provides a good indication of the net cost to Telstra of providing the USO.

Given the proposed arrangements with Telstra, the Direction is a short-term measure that will, subject to the passage of the TUSMA Bills through the Parliament, be the final direction to be made before new levy arrangements commence. To this end, the amounts nominated in subclauses 5(2) through to 5(7) are the same amounts as set by the previous USO Determinations for the 2010-11 claim period.

The ACMA is able to have regard to other matters that it considers relevant. This could include, 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*.

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 consultation in preparing its advice.

Statement of Compatibility with Human Rights

This statement is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The Direction requires the ACMA to provide advice to the Minister on whether the Minister should make a determination setting the universal service subsidy at particular amounts for the period of the 2011-12 claim period (i.e. financial year). The Direction assists the Minister in setting the subsidy amount relating to the delivery of standard telephone services and payphones to all people in Australia, regardless of where they live or carry on business, consistent with the USO.

The Direction does not engage any of the applicable rights or freedoms. Accordingly, the Direction is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*, as it does not raise any human rights issues.

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 2012. 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 2012 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 2011-2012 claim period.

Clause 4 defines the terms 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 2011-12 Universal Service Subsidy.

The matters provided for in paragraph 5(1)(b) highlight the transitional nature of the Direction. In particular, subparagraph 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, as under that proposed framework the 2011-12 claim period would be the final claim period for the purposes of the Act. Similarly, sub-paragraph 5(1)(b)(iii), which requires the ACMA to have regard to the independent advice the Government has received on the net cost of providing the USO, reinforces the short-term nature of what is intended to be the final determination made under subsection 16(1) of the Act.

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 paragraphs 9(1)(a) and (b) of the Act for the 2011-12 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 2010-11 claim period.

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 2010-11 claim period.

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