

EXPLANATORY STATEMENT

Prepared by the Australian Communications and Media Authority

Telecommunications (Consumer Protection and Service Standards) Act 1999

TELECOMMUNICATIONS (EMERGENCY CALL SERVICE) AMENDMENT DETERMINATION 2013

Outline

The Australian Communications and Media Authority (the **ACMA**) makes the *Telecommunications (Emergency Call Service) Amendment Determination 2013* (the **Amendment Determination**) under subsection 147(1) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the **Act**).

Subsection 147(1) of the Act provides that the ACMA must make a written determination imposing requirements on carriers, carriage service providers (**CSPs**) and/or emergency call persons in relation to emergency call services (**ECS**). In accordance with subsection 147(1), the ACMA made the *Telecommunications (Emergency Call Service) Determination 2009* (the **ECS Determination**).

The ECS Determination imposed emergency call service requirements in relation to a satellite phone service only if a call using that service and made to an emergency call person was transferred to an Australian-based terrestrial network. The Amendment Determination amends the ECS Determination in order to impose emergency call service requirements in relation to a wider range of satellite phone services.

Background

The Amendment Determination addresses concerns raised in the Report of the 2011-12 Regional Telecommunications Review Committee (the **Report**) about ECS access from satellite phones.

The Report expressed concerns that people might not be able to access the ECS from their satellite phones during emergencies. As satellite phones are commonly used as emergency devices in remote areas, the Report recommended that the ACMA explore the feasibility of making ECS access a condition of a satellite carrier obtaining and/or maintaining its carrier licence.

On 23 August 2012 the Government responded to the recommendation made in the Report, advising that the ACMA would investigate the feasibility of requiring the provision by CSPs of ECS access to all satellite phones through the ECS Determination rather than through the imposition of additional conditions on the relevant carriers' licences.

Under the ECS Determination, a CSP supplying satellite telephone services must give an end-user access to the ECS, unless the call is transferred to a network other than an Australian-based terrestrial network. At the time the ECS Determination was made, it was recognised

that there were technical limitations inherent in the way some global satellite systems were configured to transfer calls to networks outside Australia that prevented access to the ECS. However, most satellite services that are routed through ground stations in countries other than Australia do now support access to the ECS. Those technical advances have made it possible to impose new ECS requirements in relation to satellite phone services. In addition, developments in the market have made it necessary to better protect the small number of consumers who use handheld satellite phones that do not support ECS access.

Operation of the Amendment Determination

The Amendment Determination will amend the ECS Determination so that a CSP that supplies a satellite service must give an end-user access to the emergency call person unless, in the case of the emergency service numbers 000 and (where the customer equipment used to supply the service is capable of being used to access a public mobile telecommunications service that uses GSM technology) 112, the service is an “exempt satellite service” or, in the case of the emergency service number 106, the service is not technically capable of carrying a call using that number. Whether or not a call is transferred to an Australian-based terrestrial network will no longer be determinative of whether a CSP is required to provide ECS access from a satellite phone service.

A definition of the term “exempt satellite service” will be inserted in the dictionary at the end of the ECS Determination (the **Dictionary**). In order to fall within that definition, a satellite service must be supplied to a “non-handheld satellite device” (which will also be defined in the Dictionary), must be of a kind specified in new Schedule 1, and must not be supplied in fulfilment of the universal service obligation. New Schedule 1 presently specifies only one kind of satellite service, namely a satellite service supplied by means of a satellite owned, controlled or operated by Inmarsat Global Limited (**Inmarsat satellites**).

Purpose of the Amendment Determination

The purpose of the Amendment Determination is to ensure that, from 1 July 2013, all satellite phone services, other than a particular kind of satellite service supplied to particular kinds of devices, will be capable of accessing the emergency service numbers 000 and (where the customer equipment used to supply the service is capable of being used to access a public mobile telecommunications service that uses GSM technology) 112 and that all satellite phone services that are technically capable of carrying a call to the emergency service number 106, will do so. The kind of satellite phone service that will be exempt from the ECS requirements are niche satellite services generally only used by those in the maritime, aeronautical, mining, exploration, disaster relief or media industries. Services of this kind are supplied by means of Inmarsat satellites to devices that only function when connected to other customer equipment (other than a SIM). As a consequence of this functional limitation, these kinds of devices are not routinely used by the general population. Rather, members of the general population who wish to use a satellite phone service tend to use portable standalone devices akin to a mobile phone. Satellite phone services supplied to devices of that kind will now be subject to the ECS requirements.

Statement of Compatibility with Human Rights

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out in **Attachment A**.

Regulation Impact Statement

The Office of Best Practice Regulation (**OBPR**) has advised that a Regulation Impact Statement is not required for the Amendment Determination. The OBPR reference number is ID 14478.

Public consultation

On 21 February 2013 the ACMA released a consultation paper attaching a draft version of the *Telecommunications (Emergency Call Service) Amendment Determination 2013* for public comment. In particular, the ACMA sought information from CSPs about any satellite phone services that they considered should be exempt from the ECS requirements.

The ACMA also discussed the proposed amendments with the Communications Alliance Satellite Services Working Group, which represents many of Australia's leading satellite service providers.

The ACMA received submissions from the emergency services sector, industry participants (including providers of satellite services) and the Telecommunications Universal Service Management Agency. Based on the feedback received, there is support for the imposition of ECS requirements in relation to satellite phone services aside from those particular kinds of services where ECS access is either not technologically feasible or not of a kind from which users would expect ECS access to be available.

Inmarsat Global Limited (**Inmarsat**) was the only satellite provider to propose that some of its satellite phone services be exempt from the ECS requirements. Inmarsat submitted to the ACMA that satellite services provided through its existing and evolved networks or its Broadband Global Area Network are designed to service a niche market of professional users in the international shipping, aeronautical, mining and exploration industries as well as in disaster recovery and media. The circumstances in which those services are supplied, it was submitted, are such that access to the emergency service numbers 000, 112 or 106 are not warranted.

The ACMA considered Inmarsat's submission and drew the following conclusions.

- The end-users of these niche services are likely to have little or no expectation of accessing the ECS from these services. The devices to which these services are supplied are not available from general retail shops and are usually purchased by companies as part of a high-end remote-communications solution package.
- There are special arrangements in place for end-users of Inmarsat's maritime and aeronautical satellite services to access assistance in the event of an emergency. These services make up the majority of the services provided on the Inmarsat satellites. There are also other telephone numbers that could be called in an emergency (such as the numbers of the Rescue Coordination Centre run by the Australian Maritime Safety Authority, or local numbers for police). In any event, the customer notification requirements proposed in new section 14A will ensure that customers of these niche services are notified that emergency calls cannot be made using those services (see item 3 of Schedule 1 to the Amendment Determination).

- There would be a great cost associated with overhauling the Inmarsat networks to support ECS access on all non-handheld services and, in light of end-users' expectations about ECS access and the availability of alternative emergency assistance as mentioned above, that cost was not commensurate with need.

Description of the provisions in the Determination

Section 1 - Name of Determination

Section 1 provides that the Amendment Determination is the *Telecommunications (Emergency Call Service) Amendment Determination 2013*.

Section 2 - Commencement

Section 2 provides that the Amendment Determination commences on 1 July 2013.

Section 3 - Amendment of the Telecommunications (Emergency Call Service) Determination 2009

Section 3 provides that Schedule 1 of the Amendment Determination amends the *Telecommunications (Emergency Call Service) Determination 2009*.

Schedule 1 Amendments

Item 1

Item 1 amends example 4 beneath subsection 7(1) to reflect the new requirement that calls made to the emergency call service from a satellite service must be delivered to the emergency call person, except if the service used to make the call is an exempt satellite service.

Item 2

Item 2 substitutes paragraph 13(2)(b) so that CSPs will be required to give an end-user access to the emergency service number 000 from a satellite phone service unless the service is an "exempt satellite service" as defined in the Dictionary. The exception originally in paragraph 13(2)(b), which applied to satellite services transferred to a network other than an Australian-based terrestrial network, will no longer be available.

Item 3

Item 3 adds a new section 14A that sets out customer notification requirements for CSPs supplying exempt satellite services. Section 14A, which has been included as a safeguard measure, should ensure that customers are fully informed of the ECS limitation associated with an exempt satellite service before an emergency arises.

Subsection 14A(1) stipulates that if a CSP commences supply of an exempt satellite service to a customer on or after 1 July 2013, the provider must notify the customer in writing that the service cannot be used to make an emergency call.

Subsection 14A(2) requires a CSP to retain a copy of the customer notification for at least 3 years from when it was given.

Subsection 14A(3) provides for the ACMA to request a copy of a customer notification and for the CSP to provide it within 21 days of such a request.

Item 4

Item 4 substitutes paragraph 16(1)(c) so that CSPs will be required to give an end-user access to the emergency service number 112 from a satellite phone service, where the customer equipment used to supply the satellite service is capable of being used to access a public mobile telecommunications service, unless the service is an “exempt satellite service” as defined in the Dictionary. The exception that previously operated by virtue of paragraph 16(1)(c), which covered satellite services transferred to a network other than an Australian-based terrestrial network, will no longer be available.

Item 5

Item 5 substitutes subsection 18(1) so that CSPs are required to provide access to the emergency service number 106 if an end-user calls 106 on a satellite service that is technically capable of carrying a call. The exception that previously applied if a call was transferred to a network other than an Australian-based terrestrial network will no longer be available.

Item 6

New paragraph 19(c) adds an exception to the requirement that a CSP ensure its controlled networks and controlled facilities give an end-user access to ECS, whether or not a number is currently issued to the end-user. The new exception applies if the service used to make the call is an exempt satellite service.

Item 7

Item 7 changes the heading to section 22 to reflect the amendments made to section 22 by item 8 below.

Item 8

Item 8 amends section 22 so that CSPs are required to carry an emergency call made using a satellite service unless the service is an exempt satellite service.

Item 9

Item 9 omits section 23 because, as a result of the amendments made by item 8 above, section 22 now deals with satellite services, thereby making section 23 superfluous.

Item 10

Item 10 corrects a typographical error in subsection 49(4) by removing a reference to the emergency service number 112. A call to 112 cannot be made from a fixed local service.

Item 11

Item 11 corrects a typographical error in the heading to section 52A.

Item 12

Item 12 inserts a new Schedule 1 in the ECS Determination that specifies satellite services for the purposes of paragraph (b) of the new definition of “exempt satellite services” in the Dictionary.

Only one kind of satellite service is specified in Schedule 1, namely a satellite service supplied by means of Inmarsat satellites. (The reasons for specifying this kind of service in Schedule are elaborated on page 3 of this Explanatory Statement.) This does not, however, mean that every satellite service supplied by means of an Inmarsat satellite will be exempt from the ECS requirement. Only those Inmarsat satellites services that are supplied to a “non-handheld satellite device”, as defined in the Dictionary, and not supplied in fulfilment of the universal service obligation will fall within the definition of “exempt satellite service” and thereby be exempt from the ECS requirements.

Item 13

Item 13 removes the definition of *Australian-based terrestrial network* from the Dictionary as this term will no longer appear in the ECS Determination.

Item 14

Item 14 inserts the definition of *exempt satellite service* in the Dictionary. All three of the listed requirements must be met in order for a satellite service to be exempt from the ECS requirements. The purposes behind the requirements in paragraphs (a) and (b) are explained in this Explanatory Statement under items 15 and 12 respectively. The purpose behind the requirement in paragraph (c) is to ensure that ECS access would be available if a satellite phone service were to be supplied utilising an Inmarsat satellite (or any other satellite service that may in the future be specified in Schedule 1) in fulfilment of the universal service obligation. That is, a satellite phone service supplied in the fulfilment of the universal service obligation must provide ECS access.

Item 15

Item 15 inserts the definition of *non-handheld satellite device* in the Dictionary. Both of the listed requirements must be met in order for a satellite device to be considered non-handheld. The requirement in paragraph (b) is that for “customer equipment” to be considered non-handheld it must be capable of operating only when connected to other customer equipment, other than a SIM. The purpose behind this requirement is to ensure that the kind of satellite services that can be exempted from providing ECS access is limited to high-end niche satellite services not routinely used by the general public, where there is likely to be little or no expectation of accessing the ECS. These satellite services are in contrast to conventional handheld satellite services supplied to standalone devices akin to a mobile phone, where end-user expectation of ECS access is high and exemption from the requirement to provide ECS

access is not appropriate. The term “customer equipment” has the meaning given by section 21 of the *Telecommunications Act 1997*.

Item 16

Item 16 inserts the definition of *SIM* in the Dictionary, which appears in the definition of “non-handheld satellite device”.

Item 17

Item 17 amends the note that appears at the end of the Dictionary, so that readers are directed to the *Telecommunications Act 1997* for a definition of the term “customer equipment”.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Telecommunications (Emergency Call Service) Amendment Determination 2013

The *Telecommunications (Emergency Call Service) Amendment Determination 2013* (the **Amendment Determination**) 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*.

Overview of the Amendment Determination

The Amendment Determination amends the *Telecommunications (Emergency Call Service) Determination 2009* (the **ECS Determination**), which is made under subsection 147(1) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the **Act**).

Sections 13, 16 and 18 of the ECS Determination impose certain requirements upon carriage service providers in relation to the carriage of emergency calls to the emergency service numbers 000, 112 and 106 respectively. However, the ECS Determination does not require a satellite phone service to provide access to those emergency service numbers if the satellite service is not transferred to an Australian-based terrestrial network. The Amendment Determination will remove that broad exemption so that, subject to certain other exceptions, satellite phone services must provide access to the emergency service numbers 000, 112 and 106.

Items 2 and 4 of Schedule 1 to the Amendment Determination amend, respectively, sections 13 and 16 of the ECS Determination so that carriage service providers will be required to provide access to the emergency service numbers 000 and (provided the customer equipment used to supply the service is capable of being used to access a public mobile telecommunications service that uses GSM technology) 112 from a satellite phone service unless the service is an “exempt satellite service”. The term “exempt satellite service”, will be defined to cover niche satellite services that are only operable when connected to customer equipment (other than a SIM) and are specified in a Schedule to the ECS Determination. The only such niche services presently so specified are those supplied by means of a satellite owned, controlled or operated by Inmarsat Global Limited. Customers of those services must be notified that emergency calls cannot be made using those services (see item 3 of Schedule 1 to the Amendment Determination).

Item 5 of Schedule 1 to the Amendment Determination amends section 18 of the ECS Determination. That section deals with the emergency service number 106 which is available for those who are deaf, hearing impaired or speech impaired and who have access to a teletypewriter or similar technology (TTY). The ACMA understands that the emergency service number 106 is rarely, if ever, accessed from a TTY satellite service. Nevertheless,

section 18 of the ECS Determination addresses accessibility measures of the kind described in Article 9 of the *Convention on the Rights of Persons with Disabilities*.

The ECS Determination in its current form requires carriage service providers to provide access from a satellite phone service to the emergency service number 106 if the service is technically capable of carrying a call using that number *and* the call is transferred to an Australian-based terrestrial network. The Amendment Determination will remove the latter requirement. Accordingly, as a result of the amendment, if a TTY satellite service is technically capable of carrying a call to 106, the carriage service provider must give the TTY user access to 106.

Deaf, hearing impaired and speech impaired persons will also continue to have access to the emergency service number 106 from a TTY using a carriage service that is a “standard telephone service” under subparagraph 6(1)(b)(ii) of the Act (as provided in section 17 of the ECS Determination) and may also have other means of accessing an emergency service number (such as through the internet relay service).

Human rights implications

The Amendment Determination does not engage any of the applicable rights or freedoms other than in relation to the amendment made to section 18 of the ECS Determination as discussed above.

Conclusion

The Amendment Determination is compatible with human rights.

Australian Communications and Media Authority