**EXPLANATORY STATEMENT**

**Issued by the Australian Communications and Media Authority**

***Telecommunications Numbering Plan Variation 2013 (No. 1)***

**Purpose**

The *Telecommunications Numbering Plan Variation 2013 (No. 1)* (the Variation) will introduce rules to limit the allocation of carriage service provider identification (CSPID) codes to one number per carriage service provider (CSP) after they are exempt from the annual numbering charge (ANC).

In addition to the Variation, the ACMA has separately made the *Telecommunications (Annual Charge) Amendment Determination 2013 (No. 1)* (the Amendment Determination), which will exempt four types of short-digit special services numbers[[1]](#footnote-1), including the CSPID codes from the ANC.

The purpose of the Variation is to ensure that CSPID codes are managed efficiently following their exemption from the ANC as the amount of these numbers available to be allocated by the ACMA is limited[[2]](#footnote-2). The Variation amends the *Telecommunications Numbering Plan 1997* (the Numbering Plan) by introducing the following rules which apply specifically to the allocation of CSPID codes:

* the allocation of CSPID codes will be limited to one number per CSP after the commencement of the Variation; and
* the ACMA will be able to allocate additional CSPID codes if the ACMA is satisfied that special circumstances justify the allocation. The ACMA proposes to publish guidelines on its website about how it will exercise this discretion from time to time.

These rules will apply to the allocation of CSPID codes occurring after the commencement of the Variation, irrespective of whether a CSP already holds a CSPID code.

These rules will remain in force until such time as the ACMA declares that an industry code, developed by industry and registered by the ACMA under Part 6 of the *Telecommunications Act 1997* (the Telecommunications Act), is a replacement code for the matters covered by the Variation.

**Legislative provisions**

The ACMA has made the Numbering Plan under subsection 455(1) of the Telecommunications Act. The Numbering Plan sets out the rules in relation to the numbering of carriage services in Australia and the use of numbers in connection with the supply of such services. Chapter 6 of the Numbering Plan sets out the rules for the ACMA to allocate certain numbers to CSPs, including short-digit special services numbers.

Subsection 33(3) of the *Acts Interpretation Act 1901* (the AIA)provides that where an Act confers a power to make, grant or issue any instrument, the power includes a power to amend or vary that instrument, in the like manner and subject to the like conditions as making the instrument.

The ACMA has varied the Numbering Plan by means of the Variation. The Variation has been made under subsection 455(1) of the Telecommunications Act, taking into account the relevant matters listed under subsection 455(10) of the Telecommunications Act, and subsection 33(3) of the AIA.

**Background**

During 2010 and 2011 the ACMA examined a wide range of issues related to the regulatory framework for telephone numbers. These issues emerged as a result of changes in industry structures, service offerings and consumer behaviour since the Numbering Plan was created.

The aim of this work program was to consider existing arrangements for telephone numbers to ensure that they were efficent and effective, as well as what transitional arrangements might be necessary to ensure that they continue to remain so in the future.

An issue of concern raised by the ACMA with stakeholders was the impact on competition in the telecommunications market caused by the ANC levied on short-digit special services numbers. Submissions to the ACMA stated that the high ongoing cost of ANC acted as a barrier to market entrants and disproportionately affected smaller CSPs. Submissions also raised concerns with that the removal of ANC from CSPID codes may cause a high demand for these numbers and result in exhaustion of their available supply.

On 27 September 2012, the ACMA announced its decision to implement 24 actions in response to consultation on the review of numbering arrangements. One of the actions arising from the review was to consult on the proposal to exempt the four types of short-digit special services numbers from the ANC.

The Variation has been made to ensure that CSPID codes are managed efficiently when they are no longer subject to the ANC.

**Consultation**

Section 17 of the *Legislative Instruments Act 2003* (LIA) requires rule makers to be satisfied that consultation that is appropriate and reasonably practicable to undertake has been undertaken before a legislative instrument is made.

Subsection 460(3) of the Telecommunications Act requires the ACMA to undertake public consultation on a variation to the Numbering Plan if the ACMA considers that the proposed variation will affect a number issued to a customer of a CSP in a particular State, or that it is in the public interest that the public in a particular State be consulted about the variation.

Although the Variation will affect current and/or future holders of short-digit special services numbers, these numbers are not issued to customers and it is not in the public interest that the public in a particular State be consulted. The parties who have the greatest interest in the changes are CSPs who pay the ANC. Accordingly, the steps in subsection 460(3) were not taken.

In November and December 2012, the ACMA consulted with industry and other affected parties on the proposed changes in accordance with section 17 of the LIA by providing copies of the draft Variation to:

* all providers who pay ANC; and
* the Numbering Advisory Committee, whose membership includes the larger service providers, Communications Alliance and other industry and consumer organisations.

The ACMA also consulted with the ACCC on the proposed Variation in accordance with the requirements of subsection 461(1) of the Telecommunications Act.

The ACMA also published information about the changes and the draft instruments on its website for comment by interested persons.

**Submissions received**

Six submissions were received in response to consultation by the ACMA. The complete list of submissions has been made available on the ACMA’s website. In finalising the Variation, the ACMA has considered the submissions it received.

**Regulation impact**

The Office of Best Practice Regulation (OBPR) requested that the ACMA lodge a Regulation Impact Statement (RIS) for the proposed ANC exemption.

The OBPR approved the RIS on 22 July 2013.

Detailed description of the Instrument

Section 1 names the instrument as the *Telecommunications Numbering Plan Variation 2013 (No. 1).*

Section 2 provides that the instrument commences on the day after it is registered.

Section 3 specifies that the Numbering Plan is amended as set out in Schedule 1.

**Schedule 1 Variations**

Item 1 inserts a new section, 6.21A, into the Numbering Plan after section 6.21. This new section places a limit on the allocation of certain special services numbers into the Numbering Plan.

Subsection (1) defines the term *relevant number* as being a special services number as defined in Part 3 of Schedule 4 to the Numbering Plan.

Subsection (2) confirms the ACMA must not allocate a relevant number to a CSP if the CSP already holds a relevant number that was allocated on or after commencement of section 6.21A of the Numbering Plan.

Subsection (3) allows the ACMA to allocate a relevant number to a CSP that already holds a relevant number allocated after the commencement of section 6.21A, if it is satisfied that special circumstances justify the allocation of an additional relevant number in the particular case.

Subsection (4) states that in instances when a relevant number was allocated to a CSP after section 6.21A commenced, and subsequently surrendered by the CSP, the relevant number will not be taken as allocated to the CSP for the purposes of subsection 6.21A(2). This will allow a CSP to apply again for a relevant number.

Subsection (5) provides that the allocation rule set out in subsection 6.21A(2) will not apply if an industry code, registered in the Register of Industry Codes kept under section 136 of the Telecommunications Act, is declared by the ACMA to be a replacement code for the purposes of subsection 6.21A(5).

Statement of compatibility with human rights

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires the rule maker in relation to a legislative instrument to which section 42 (disallowance) of the LIA applies to cause a statement of compatibility to be prepared in respect of that legislative instrument. This statement is Attachment A.

**Attachment A**

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.* ***Telecommunications Numbering Plan Variation 2013 (No.1)***

This Legislative Instrument 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 Legislative Instrument**

The legislative instrument varies the *Telecommunications Numbering Plan 1997* by introducing the following rules which apply specifically to the allocation of one type of short-digit special services number, being CSPID codes:

* a limitation on the allocation of CSPID codes to one number per CSP after the commencement of the instrument; and
* a rule enabling the ACMA to allocate additional CSPID codes if the ACMA is satisfied that special circumstances justify their allocation.

The intended impact and effect of the legislative instrument is to ensure that CSPID codes are managed efficiently when they are no longer subject to the annual numbering charge.

The allocation rules will remain in force until such time as the ACMA declares that an industry code, developed by industry and registered by the ACMA under Part 6 of the *Telecommunications Act 1997*, is a replacement code for the matters covered by the instrument.   
  
**Human rights implications**  
  
This Legislative Instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

1. Four and five digit international access codes, carriage service provider identification codes, virtual private network access codes and incoming-only international access codes. [↑](#footnote-ref-1)
2. 90 CSPID codes are available for allocation. As at August 2013, 18 CSPID Codes had been allocated by the ACMA, leaving 72 still available for allocation. [↑](#footnote-ref-2)