

## **EXPLANATORY STATEMENT**

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

#### *Telecommunications (Approved Auditors and Auditing Requirements) Determination Variation 2014 (No 1)*

#### *Telecommunications Act 1997*

### **Purpose**

The purpose of the *Telecommunications (Approved Auditors and Auditing Requirements) Determination Variation 2014 (No 1)* (the Variation Instrument) is to amend the *Telecommunications (Approved Auditors and Auditing Requirements) Determination 2006* (the Determination) so that it specifies persons who are approved auditors and approved auditing requirements, for the purposes of reimbursement of costs in relation to both the development and the variation of an industry code by a body or association under, and consistent with the terms of, the *Telecommunications Act 1997* (the Act).

### **Legislative Basis**

Telecommunications industry bodies and associations are eligible to apply for reimbursement of the costs of developing consumer-related industry codes in accordance with Division 6A in Part 6 of the Act. Under recent amendments to the Act, pursuant to subsection 136C(3A) of the Act, reimbursement of the costs of varying an existing industry code can also be the subject of an application by an industry body or association.

Subsection 136C(5) of the Act provides that the Australian Communications and Media Authority (the ACMA) may make a determination specifying persons who are to be approved auditors for the purposes of section 136C, and the requirements that are to be approved auditing requirements for the purposes of that section.

Under subsection 33(3) of the *Acts Interpretation Act 1901* a power to make an instrument shall be construed as including a power exercisable in the like manner and subject to like conditions (if any) to vary the instrument. The Variation Instrument is made under subsection 136C(5) of the Act, and varies the Determination.

The Variation Instrument is a disallowable legislative instrument for the purposes of section 42 of the *Legislative Instruments Act 2003*.

### **Consultation**

The changes to the Determination are consequential to the amendments made to the Act by the *Telecommunications Legislation Amendment (Consumer Protection) Act 2014* to allow a body or association to apply for reimbursement of the costs of varying an industry code. The amendments to the Determination ensure that the approved auditors and approved auditing requirements specified in the Determination apply to code variations as well as code development.

The ACMA consulted with Communications Alliance, the main industry body affected by the amendments and the only industry body which has to date, made an application

for reimbursement of costs under Part 6 of the Act. Communications Alliance was supportive of the proposed amendments to the Determination.

Public consultation has not been considered necessary as the instrument is of a minor or machinery nature and does not substantially affect or alter existing arrangements.

## **Operation**

The Variation Instrument varies section 3 of the Determination to include in the definition of ‘statement of costs’ reference to the new subparagraph 136C(3A)(e)(i) which specifies the requirement for a statement of costs to be submitted in relation to an application for reimbursement of costs of varying an existing industry code.

The Variation Instrument also varies section 4 of the Determination to include a reference to the new subparagraph 136C(3A)(e)(iii) which specifies the requirement for a declaration by an approved auditor to be submitted in relation to an application for reimbursement of costs of varying an existing industry code. The amendments to the Determination ensure that the approved auditors and approved auditing requirements specified in the Determination apply to code variations as well as code development.

## **Regulation Impact Statement**

The Office of Best Practice Regulation (OBPR) has determined that the proposed regulatory change is minor or machinery in nature and has therefore verified that no further regulatory impact analysis is required – OBPR reference number ID 16807.

## **Statement of Compatibility**

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 LI Act applies to cause a statement of compatibility to be prepared in respect of that legislative instrument. The statement is at Attachment 1.

## **Documents incorporated by reference**

None.

## **NOTES ON THE VARIATION INSTRUMENT**

### **Section 1    Name of instrument**

Section 1 provides that the name of the instrument is the *Telecommunications (Approved Auditors and Auditing Requirements) Determination Variation 2014 (No 1)*.

### **Section 2    Commencement**

Section 2 provides that the instrument commences on the day after it is registered on the Federal Register of Legislative Instruments.

### **Section 3    Variation of *Telecommunications (Approved Auditors and Auditing Requirements) Determination 2006***

Section 3 provides that variations to the Determination are effected by Schedule 1 of the instrument.

## **Schedule 1            Variations**

### **Item [1]    Section 3**

This variation inserts a reference to subparagraph 136C(3A)(e)(i) in the definition of ‘statement of costs’, to extend the definition to statements of costs in relation to varying an industry code.

### **Item [2]    Section 4**

This variation inserts a reference to subparagraph 136C(3A)(e)(iii) in order to include applications for costs of varying an industry code in the scope of the purpose of the Determination.

## **Attachment 1 - Statement of Compatibility with Human Rights**

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

The *Telecommunications (Approved Auditors and Auditing Requirements) Determination Variation 2014 (No.1)* (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**

This Legislative Instrument is made under subsection 136C(5) of the *Telecommunications Act 1997* (the Act) and amends the *Telecommunications (Approved Auditors and Auditing Requirements) Determination 2006*. The overall effect of the Legislative Instrument is to expand the scope of the existing Determination so that the provisions prescribing approved auditors and approved auditing requirements apply to applications for reimbursement of certain costs incurred by an industry body in varying an industry code for the purposes of the reimbursement scheme under Division 6A of Part 6 of the Act.

### **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.