EXPLANATORY STATEMENT

Prepared by the Australian Communications and Media Authority

***Telecommunications Universal Service Management Agency (Approved Auditor) Amendment Determination 2014 (No.1)***

*Telecommunications Universal Service Management Agency Act 2012*

The *Telecommunications Universal Service Management Agency (Approved Auditor) Amendment Determination 2014 (No.1)* (the Amendment Determination) is made by the Australian Communications and Media Authority (the ACMA) under subsection 94(4) of the *Telecommunications Universal Service Management Agency Act 2012* (the TUSMA Act) and in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.

**Background**

Paragraph 91(1)(a) of the TUSMA Act provides that a participating person for an eligible revenue period (other than the first eligible revenue period)[[1]](#footnote-1) must give the ACMA a written return of the person’s eligible revenue for that period[[2]](#footnote-2) (eligible revenue return).[[3]](#footnote-3)

Subsection 94(1) of the TUSMA Act provides that the eligible revenue return must be accompanied by a report of an approved auditor which meets certain requirements as to form and content (audit report).[[4]](#footnote-4)

Subsection 94(4) of the TUSMA Act provides that the ACMA may, by legislative instrument, determine that a specified person is an approved auditorfor the purposes of section 94 of that Act.

In June 2013, the ACMA made the *Telecommunications Universal Service Management Agency (Approved Auditor) Determination 2013* (the Principal Determination) which specifies the classes of persons who are approved auditors for the purposes of section 94 of the TUSMA Act. Those classes relevantly include:

* registered auditors – persons registered as auditors under Part 9.2 of the *Corporations Act 2001* (the Corporations Act) and named in the Register of Auditors provided for in section 1285 of that Act; and
* authorised audit companies – companies registered as authorised audit companies under Part 9.2A of theCorporations Act and named in the Register of Authorised Audit Companies provided for in section 1299E of that Act.

The Australian Securities and Investments Commission (ASIC) has recently informed the ACMA that there is a potential defect in the registration of certain persons as auditors or as authorised audit companies under the Corporations Act.

ASIC has been registering certain persons as auditors in reliance on an auditing competency standard[[5]](#footnote-5) approved by ASIC under subsection 1280A(1) of the Corporations Act by an instrument made in November 2004 (the ASIC Instrument). ASIC considers that the ASIC Instrument is likely to be a legislative instrument and it is likely that it was taken to have been repealed by the *Legislative Instruments Act 2003* (the LIA) due to an inadvertent failure to have it lodged for registration on the Federal Register of Legislative Instruments (FRLI) by the prescribed deadline.[[6]](#footnote-6)

Consequently, there is some uncertainty surrounding the validity of the registration of persons as auditors in reliance on the auditing competency standard after the prescribed deadline (affected auditors).

As a company’s eligibility for registration as an authorised audit company requires it to have directors and members who are registered auditors, there is also some uncertainty surrounding the validity of the registration of certain companies as authorised audit companies after the prescribed deadline (affected audit companies).

ASIC has advised that the Australian Government will be introducing remedial legislation so as to ensure the validity of the registration of affected auditors, with effect from their purported registration. In the interim, ASIC has made ASIC Class Order [CO 14/757] (which is registered on FRLI) to give prospective relief, to the extent possible, so that acts and things that must be done by persons registered as auditors or as authorised audit companies under the Corporations Act may also be done by affected auditors or affected audit companies.[[7]](#footnote-7)

**Purpose**

The Amendment Determination has been made so as to ensure that affected auditors and affected audit companies are approved auditors for the purposes of section 94 of the TUSMA Act and, as such, are qualified to prepare audit reports to accompany eligible revenue returns.

**Operation**

The Amendment Determination expands the definition of registered auditor in section 3 of the Principal Determination to include an affected auditor within the meaning of ASIC Class Order [CO 14/757].

The Amendment Determination expands the definition of authorised audit company in section 3 of the Principal Determination to include an affected audit company within the meaning of ASIC Class Order [CO 14/757]. The Amendment Determination also makes one minor editorial change to that definition to refer to the status of a company registered under Part 9.2A of the Corporations Actas an authorised audit company.

**Regulation Impact**

On 25 August 2014, the Office of Best Practice Regulation (OBPR) advised that a Regulation Impact Statement was not required for the Amendment Determination then proposed to be made on the basis that the changes would be minor or machinery in nature (OBPR ID 17488).

**Consultation**

Consultation was not undertaken before making the Amendment Determination.

As noted above, the Amendment Determination has been made so that affected auditors and affected audit companies are approved auditors for the purposes of section 94 of the TUSMA Act and, as such, are qualified to prepare audit reports to accompany eligible revenue returns. If the ASIC Instrument had been lodged for registration on FRLI by the prescribed deadline, those persons would be approved auditors and, as such, would be qualified to prepare reports of that kind.

Accordingly, the ACMA considered that the making of the Amendment Determination was of a technical nature, that its regulatory impact was minor or machinery and, on that basis, that consultation was not necessary.

**Notes on Sections**

The provisions of the Amendment Determination are described in the Attachment.

**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 has been prepared for that purpose.

***Human rights implications***

The Amendment Determination does not engage any of the rights or freedoms recognised or declared by the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

***Conclusion***

The Amendment Determination is compatible with the applicable rights and freedoms as it does not raise any human rights issues.

**Attachment**

# Notes on sections of the *Telecommunications Universal Service Management Agency (Approved Auditor) Amendment Determination 2014 (No.1)*

## Section 1 – Name of Determination

This section provides that the name of the Determination is the *Telecommunications Universal Service Management Agency (Approved Auditor) Amendment Determination 2014 (No.1)*.

## Section 2 – Commencement

### This section provides that the Determination commences on the day after it is registered.

The note at the end of the section indicates that all legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003* (see <http://www.comlaw.gov.au>).

## Section 3 – Amendment of the *Telecommunications Universal Service Management Agency (Approved Auditor) Determination 2013*

This section provides that the Schedule amends the *Telecommunications Universal Service Management Agency (Approved Auditor) Determination 2013* (the Principal Determination)*.*

**Schedule – Amendment of the** ***Telecommunications Universal Service Management Agency (Approved Auditor) Determination 2013***

Item 1 – Section 3, definition of *authorised audit company*

This item repeals the definition of authorised audit company in section 3 of the Principal Determination and substitutes it with a new definition that has been expanded to include an affected audit company within the meaning of ASIC Class Order [CO 14/757].

The new definition also incorporates one minor editorial change to refer to the status of a company registered under Part 9.2A of the *Corporations Act 2001* as an authorised audit company.

Item 2 – Section 3, definition of *registered auditor*

This item repeals the definition of registered auditor in section 3 of the Principal Determination and substitutes it with a new definition that has been expanded to include an affected auditor within the meaning of ASIC Class Order [CO 14/757].

Item 3 – At the end of section 3

This item adds a note at the end of section 3 of the Principal Determination to indicate that ASIC Class Order [CO 14/757] is registered on the Federal Register of Legislative Instruments (see <http://www.comlaw.gov.au>).

1. Section 92 of the TUSMA Act defines a participating person for an eligible revenue period for the purposes of that Act. An eligible revenue period means the 2011-12 financial year or a later financial year. [↑](#footnote-ref-1)
2. Section 93 of the TUSMA Act defines eligible revenue of a person for an eligible revenue period (other than the first eligible revenue period) for the purposes of that Act. [↑](#footnote-ref-2)
3. The eligible revenue return, once given, is used by the ACMA in its assessment of the participating person’s eligible revenue and contribution to the industry levy imposed by the *Telecommunications (Industry Levy) Act 2012*. [↑](#footnote-ref-3)
4. Subsection 94(2) of the TUSMA Act permits the ACMA by written notice to exempt a person from the requirements in subsection 94(1) of that Act. [↑](#footnote-ref-4)
5. That is, the *Auditing Competency Standard for Registered Company Auditors* issued by CPA Australia and the then Institute of Chartered Accountants in Australia as at 24 November 2004. [↑](#footnote-ref-5)
6. See subsection 29(1) of the LIA, subregulation 6(1) of the *Legislative Instruments Regulations 2004* and subsection 32(2) of the LIA. [↑](#footnote-ref-6)
7. ASIC has also made ASIC Class Order [CO 14/784] (which is registered on FRLI) to reapprove the auditing competency standard so as to ensure that ASIC may register persons as auditors in reliance on that standard prospectively. [↑](#footnote-ref-7)