**EXPLANATORY STATEMENT**

*Telecommunications (Section of the Telecommunications Industry – Portability Service Suppliers) Determination 2015*

**Legislative Provisions**

Part 6 of the *Telecommunications Act 1997* (the Act) provides that bodies representing sections of the telecommunications industry may develop industry codes, that the Australian Communications and Media Authority (ACMA) may register these codes and that the ACMA may direct participants in sections of the telecommunications industry to comply with such codes. Subsection 110(3) of the Act provides that the ACMA may, by written instrument, make determinations that persons carrying on specified kinds of telecommunications activities constitute a section of the telecommunications industry. Section 109 of the Act identifies those activities that are telecommunications activities. Paragraph 109 (c) identifies

*supplying goods or services for use in connection with the supply of a listed carriage service*

as a telecommunications activity. Portability service suppliers provide services for use in connection with porting numbers and enabling calls to ported numbers. The *Telecommunications (Section of the Telecommunications Industry – Portability Service Suppliers) Determination 2015* (the Determination)identifies portability services suppliers as part of the telecommunications industry.

The Determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (LIA)*.*

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make a legislative instrument, the power shall be construed to include a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument. The Determination is made under subsection 110(3) of the Act and revokes the *Telecommunications (Section of Telecommunications Industry) Determination 2001* (the 2001 Determination) (see section 7 of the Determination).

**Background**

The portability of service numbers such as geographic numbers, mobile service numbers and free and local rate call numbers is a requirement under the *Telecommunications Numbering Plan 1997.* Porting numbers requires a flow of messages between carriage services providers and routing calls to ported numbers requires providing information on ported numbers to carriage service providers that may route calls. Some entities provide such port administration services and information services to some carriage service providers. The *Telecommunications (Section of Telecommunications Industry) Determination 2001* determined that entities that provide these services were part of the telecommunications industry. As the 2001 determination is due to sunset, the Determination has been made to preserve its effect.

**Consultation**

The ACMA has consulted with industry stakeholders and the general public on the making of the Determination. Section 17 of the LIA requires that, before making a legislative instrument, the ACMA must be satisfied that any consultation it considers to be appropriate and that is reasonably practicable to undertake has been undertaken.

On 1 December 2014, the ACMA released the Determination in draft form for public consultation together with a discussion paper.

**Regulation Impact**

The Office of Best Practice Regulation (OBPR) has considered the matter and formed an opinion that the impact of the Determination is minor or machinery in nature and, on that basis, a Regulatory Impact Statement is not required. The OBPR reference numbers is ID 17630.

**Notes on instrument**

The provisions of the Determination are described in Attachment 1.

**Statement of compatibility with human rights**

A Statement of Compatibility with Human Rights has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* and is set out in Attachment 2.

**Attachment 1**

**NOTES ON SECTIONS**

**Section 1 - Name of Determination**

Section 1 provides for the citation of the Determination as the *Telecommunications (Section of the Telecommunications Industry – Portability Service Suppliers) Determination 2015.*

**Section 2 - Commencement**

Section 2 provides that the Determination will commence on the day after it is registered on the Federal Register of Legislative Instruments.

**Section 3 – Definitions**

Section 3 provides definitions used in the Determination. It confirms that the Determination is made under the *Telecommunications Act 1997,* and that Number Portability is to have the same meaning as given in the *Telecommunications Numbering Plan 1997* or successor documents.

Portability services are defined as:

1. port administration services;
2. ported number register database maintenance or provision; and
3. the provision of network information services, or intelligent network database services, for call routing

when provided to carriers or carriage services providers in relation to the provision and operation of number portability.

**Section 4 – Application**

Section 4 provides that this Determination applies to persons providing portability services.

**Section 5 – Specification of Telecommunications Activity**

Section 5 provides that the telecommunications activity covered by the Determination is the supply of portability services.

**Section 6 – Section of Telecommunications Industry**

Section 6 provides that persons engaging in the activity defined in section 5 are a section of the telecommunications industry to be identified as Portability Service Suppliers.

**Section 7 – Revocation of the *Telecommunications (Section of Telecommunications Industry) Determination 2001***

Section 7 revokes the *Telecommunications (Section of Telecommunications Industry) Determination 2001*.

 **Attachment 2**

**Statement of Compatibility with Human Rights**

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

**Telecommunications (Section of the Telecommunications Industry – Portability Service Suppliers) Determination 2015**

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 Determination recognises portability service suppliers as participants in the telecommunications industry, allowing them to participate in codes processes under Part 6 of the *Telecommunications Act 1997*.

**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.