Explanatory Statement

# Telecommunications Act 1997

**Telecommunications (Amendment of International Mobile Roaming Industry Standard) Direction 2016**

Issued by the Authority of the Minister for Communications

Legislative Authority

Subsection 125AA(4) of the *Telecommunications Act 1997* enables the Minister for Communications to direct the Australian Communications and Media Authority (ACMA), in writing, to determine a standard that applies to participants in a specified section of the telecommunications industry that deals with one or more specified matters relating to the telecommunications activities of those participants.

Purpose

The purpose of the *Telecommunications (Amendment of International Mobile Roaming Industry Standard) Direction 2016* (Direction)is to direct the ACMA to amend the *Telecommunications (International Mobile Roaming) Industry Standard 2013* (Standard).

The amendments of the Standard required by the Direction are intended to allow for greater streamlining and simplification of the Standard, including:

* allowing the upfront warning and charging SMS messages to be combined into one SMS message
* increasing flexibility in the types of mechanisms that can be used to decline international mobile roaming (IMR) services
* adding the ability for suppliers of IMR services to voluntarily offer a mechanism for customers to opt out of spend management notifications
* delaying the application of parts of the Standard to mobile virtual network operators (MVNOs) until 2019, after the completion of the review of the Standard.

These changes are expected to deliver net benefits to consumers and suppliers of IMR services by:

* reducing carriage service provider messaging costs, while also reducing unnecessary message load on customers
* providing greater flexibility for both carriage service providers and their customers to terminate unwanted IMR services and opt out of spend management notifications without imposing additional consumer costs
* avoiding potentially unnecessary costs on MVNOs and a loss of market competition and consumer options.

Background

In August 2012, a ministerial direction was made under section 125AA of the *Telecommunications Act 1997*, the *Australian Communications and Media Authority (International Mobile Roaming Industry Standard) Direction (No. 1) 2012* (2012 Direction), requiring the ACMA to make the Standard.

The ACMA made the Standard in June 2013 in accordance with the 2012 Direction. It commenced progressively from September 2013 in three tranches, with the second tranche having commenced on 27 September 2014 and the third tranche currently required to commence on 23 May 2016.

The first tranche requires mobile carriers to send SMS messages to customers upon arrival in their destination country containing information on the pricing of IMR services in that country. This tranche requires MVNOs to either send post-paid and automatically recharging prepaid customers the same SMS messages regarding pricing, or instead to provide information to a customer prior to agreeing to provide an IMR service to the customer. This tranche also requires all carriage service providers to allow customers to opt out of purchasing these services.

The second tranche requires carriers to provide spend management tools, including at least one tool to allow customers to obtain current usage estimates for IMR services. Carriers must send SMS notifications to customers in the following circumstances:

* if the customer is using a post-paid service or automatically recharging prepaid service, for every $100 of IMR data used
* where the customer has an included value pack for data, calls or SMS, alerts for when 50%, 85% and 100% of the included value has been used
* where the customer reaches 100% of an include value pack, a notification of the maximum charges of continuing to use the service (i.e. excess charges).

The third tranche would extend the application of the pricing SMS message requirements from the first tranche and spend management tools from the second tranche to MVNOs.

Industry stakeholders put forward proposals in 2014-15 to amend the Standard to address concerns about potential unintended consequences on MVNOs and to streamline the operation of the Standard where possible.

The Department of Communications and the Arts (the Department) and the ACMA consulted with the Australian Mobile Telecommunications Association (AMTA), the Communications Alliance (CA) and the Australian Communications Consumer Action Network (ACCAN) in 2014 and 2015 on possible amendments to the Standard that would deliver benefits to both consumers and industry.

Following analysis of information provided by industry and the consultations with ACCAN, CA and AMTA, there were four areas of the Standard that were identified as being suitable for amendment based on the evidence available. These amendments form this Direction, which are to:

* Make changes that would reduce the need for multiple upfront SMS warning and charging notifications. This could reduce carriage service provider messaging costs, while also reducing unnecessary message load for customers.
* Allow greater flexibility in the types of mechanisms that can be provided to allow customers to decline IMR services. This will provide greater flexibility for both carriage service providers and customers to terminate unwanted IMR services without imposing additional consumer costs.
* Add the ability for carriage service providers to voluntarily offer a mechanism for customers to opt out of spend management notifications.
* Delay introduction of the Standard’s third tranche (applying parts of the Standard’s requirements to MVNOs) until 1 January 2019, after the 2018 review of the Standard is completed. This will allow the ACMA to further assess any potential unintended impacts of the Standard’s requirements on MVNOs before they start.

Other possible amendments were assessed as not having sufficient merit based on the information available. In addition, further changes to the Standard beyond those specified in the Direction could negatively impact on the decline in IMR related complaints (including relating to bill shock) that have been achieved in recent years.

Regulation Impact Statement

The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required for this Direction (OBPR reference number 19650).

Consultation

In developing the proposed amendments to the Standard that make up this Direction, consultations were undertaken between the Department, the ACMA, ACCAN, CA, AMTA, individual carriers and MVNOs as necessary. CA and AMTA provided written submissions for consideration by the Department and the ACMA and responded to requests for additional information as required. CA and AMTA also provided their submissions to ACCAN for comment.

To facilitate these consultations the Department circulated a discussion paper to the relevant stakeholders in June 2015 seeking further clarification and/or evidence to support any proposed amendments to the Standard. The responses to this discussion paper were reviewed by the Department and the ACMA to decide on viable amendments that maintained appropriate consumer safeguards and delivered industry benefits.

Other details

Details of the Direction are set out at Attachment A. A statement of the Direction’s compatibility with human rights is set out at Attachment B. The Direction is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

**ATTACHMENT A**

**Details of the Telecommunications (Amendment of International Mobile Roaming Industry Standard) Direction 2016**

Section 1 provides that the name of the Direction is the *Telecommunications (Amendment of International Mobile Roaming Industry Standard) Direction 2016*.

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

Section 3 provides that the Direction will expire on the day after the commencement of the amendments to the Standard made in accordance with section 5 as if it had been repealed by another instrument.

Section 4 defines expressions used throughout the Direction. Several expressions, such as ‘customer’, ‘international mobile roaming service’, ‘mobile virtual network operator’, ‘SMS’ and ‘SMS message’ replicate the meanings from the Standard, or otherwise adopt those meanings.

A note is also included to remind the readers that, in accordance with paragraph 13(1)(b) of the *Legislative Instruments Act 2003*, the expressions ‘ACMA’, ‘carriage service’, ‘carriage service provider’, ‘public mobile telecommunications service’ and ‘telecommunications network’ are defined in the *Telecommunications Act 1997*.

Section 5 requires the ACMA to amend the Standard, which applies to all Australian suppliers of international mobile roaming services.

Paragraph 5(1)(a) requires the ACMA to amend the Standard to allow the warning and charging information in the SMS messages currently in paragraphs 5(1)(a), (b) and (c) of the Standard to be combined into one or more SMS messages by carriage service providers. This reduces the need for multiple SMS message notifications.

Paragraph 5(1)(b) requires the ACMA to amend the Standard to allow carriage service providers to make available other methods for customers to decline the continued supply of IMR services. This increases flexibility in the types of mechanisms that can be used to decline IMR services. Paragraph 5(1)(c) ensures that cost minimisation provisions of the kind in subclauses 8(3) and (4) of the Standard apply to any new alternative methods for customers to decline international mobile roaming services allowed by the Standard. This ensures methods for declining the continued supply of IMR services will continue to be available at low cost or not cost to customers, easily accessible and virtually instantaneous.

Paragraph 5(1)(d) requires the ACMA to amend the Standard to allow carriage service providers to voluntarily offer a mechanism for customers to opt out of the spend management tool notifications required by subclause 9(3) of the Standard.

Carriage service providers will not be required to offer this opt-out mechanism. If the mechanism is offered and a customer chooses to opt out, this will not affect the other requirements in the Standard, such as to provide warning and charging messages to customers when arriving in a new country.

Paragraph 5(1)(e) requires the ACMA to amend the Standard to delay the application of subclauses 6(3) and 9(2)-(8) of the Standard to mobile virtual network operators (MVNOs) until 1 January 2019. As the third tranche of the Standard has not yet commenced, MVNOs may choose to comply with either subclause 6(2) or 6(3) of the Standard and subclauses 9(2)-(8) do not yet apply to MVNOs. The third tranche removes the option of complying with subclause 6(2) instead of 6(3), and commences application of subclauses 9(2)-(8) to MVNOs. The application of this third tranche is being postponed until the 2018 review of the Standard is completed. This will allow the ACMA to further assess any potential unintended impacts of the Standard on MVNOs.

Subsection 5(2) allows the ACMA to make other amendments to the Standard that are related to the matters listed in subsection 5(1).

For example, the ACMA may, at its discretion, also choose to consider the following non-exhaustive list of matters when amending the Standard to provide for the opt-out mechanism required by paragraph 5(1)(d):

* the ability for customers to easily and quickly opt back into receiving roaming usage alerts at no cost; or
* the ability for customers to check whether they have opted out of roaming usage alerts; or
* whether opting out of usage alerts should not be either or both the default option, or agreed at the commencement of a mobile contract, which often occurs well in advance of travel.

Subsection 5(3) requires the ACMA to make all amendments to the Standard within 3 months of the commencement of the Direction.

**ATTACHMENT B**

**Statement of Compatibility with Human Rights**

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

**Telecommunications (Amendment of International Mobile Roaming Industry Standard) Direction 2016**

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 Determination

The *Telecommunications (International Mobile Roaming) Industry Standard 2013* (Standard) is administered by the Australian Communications and Media Authority (ACMA). The Standard requires suppliers of international mobile roaming (IMR) services to send alerts to customers on the pricing of those services.

The purpose of the *Telecommunications (Amendment of International Mobile Roaming Industry Standard) Direction 2016* (Direction)is to direct the ACMA to amend the Standard.

The changes in the Direction are intended to allow for greater streamlining and simplification of the Standard, including:

* allowing the warning and charging SMS messages to be combined into one SMS message
* increasing flexibility in the types of mechanisms that can be used to decline IMR services
* adding the ability for suppliers of IMR services to voluntarily offer a mechanism for customers to opt out of spend management notifications
* delaying the application of parts of the Standard to mobile virtual network operators (MVNOs) until 2019.

No human rights issues were raised during the consultation undertaken in developing the proposal to direct the ACMA to amend the Standard.

Human rights implications

The amendments to the Standard required by the Direction do not engage any of the applicable rights or freedoms. The amendments are intended to allow for greater streamlining and simplification of the IMR Standard.

Conclusion

The Direction is compatible with human rights as it does not raise any human rights issues.