

Legislation Act 2003

Subsection 15G(4) - Explanatory Statement

Telecommunications Act 1997

**Telecommunications (International Mobile Roaming) Industry
Standard Variation 2016 (No. 1)**

Issued by the Australian Communications and Media Authority

Purpose and legislative basis

Under subsection 125AA(4) of the *Telecommunications Act 1997* (the Act) the Minister may direct the ACMA in writing to determine an industry standard that applies to participants in a specified section of the telecommunications industry, and deals with one or more specified matters relating to the telecommunications activities of those participants.

On 1 February 2016 the Minister made the *Telecommunications (Amendment of International Mobile Roaming Industry Standard) Direction 2016* (the Direction) under subsection 125AA(4) of the Act. The Direction requires the ACMA to make particular amendments to the *Telecommunications (International Mobile Roaming) Industry Standard 2013* (the IMR Standard), and provides that the ACMA may also make related amendments.

On 2 May 2016 the ACMA made the *Telecommunications (International Mobile Roaming) Industry Standard Variation 2016 (No. 1)* (the Variation). The Variation amends the IMR Standard, consistent with the Direction. The ACMA has made the Variation under subsection 125AA(1) of the Act and subsection 33(3) of the *Acts Interpretation Act 1901* (AIA).

Subsection 125AA(1) of the Act provides that the ACMA may determine an industry standard that applies to participants in a specified section of the telecommunications industry, and deals with one or more specified matters relating to the telecommunications activities of those participants. Subsection 125AA(5) of the Act provides that such a standard can only be made following a direction from the Minister under subsection 125AA(4).

Subsection 33(3) of the AIA relevantly provides that where an Act confers a power to make a legislative instrument, the power shall be construed as including 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.

Background

In August 2012, the *Australian Communications and Media Authority (International Mobile Roaming Industry Standard) Direction (No. 1) 2012* (2012 Direction) was

made under subsection 125AA(4) of the Act, requiring the ACMA to make the IMR Standard. The ACMA made the IMR Standard in accordance with the 2012 Direction in June 2013. The IMR Standard commenced progressively, with certain obligations not due to become operative until 23 May 2016.

Industry stakeholders put forward proposals in 2014-15 to amend the Standard to address concerns about potential unintended consequences of the provisions due to become operative on 23 May 2016, and to streamline the operation of the IMR Standard where possible.

The Department of Communications and the Arts conducted targeted consultation in 2014 and 2015 about possible amendments to the IMR Standard. Following this process, there were four areas of the IMR Standard that were identified as being suitable for amendment:

- changes that would reduce the need for multiple upfront SMS warning and charging notifications;
- changes to allow greater flexibility in the types of mechanisms that can be provided to allow customers to decline IMR services;
- changes to include the ability for carriage service providers to voluntarily offer a mechanism for customers to opt out of spend management notifications; and
- changes to delay introduction of the provisions previously due to commence on 23 May 2016 until 1 January 2019, after the 2018 review of the IMR Standard is completed.

These four areas of desired amendment form the basis of the Direction, which also provides that the ACMA may make related amendments to the IMR Standard.

The amendments

The Variation amends the IMR Standard in the manner contemplated by the Direction. Some additional related amendments (as allowed for in the Direction) are also included, relating to:

- the ability for customers to easily and quickly opt back into receiving roaming usage alerts at no cost;
- the ability for customers to check whether they have opted out of roaming usage alerts; and
- the requirement for customers to opt out of usage alerts other than by acceptance of a term or condition of a standard form contract or a default term or condition associated with the purchase of a prepaid included value pack, both of which often occur well in advance of travel.

Consultation

In developing the Variation, the ACMA conducted a public consultation in accordance with section 132 of the Act. The consultation period ran from 25 February 2016 until 30 March 2016. Four submissions were received, and these were generally supportive of the proposed amendments. Some minor changes were also incorporated in the Variation after considering suggestions to improve clarity.

Regulatory Impact

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

Other details

Details of the Variation are set out at Attachment A. A Statement of Compatibility with Human Rights with regard to the Variation is set out at Attachment B. The Variation is a legislative instrument for the purposes of the *Legislation Act 2003*.

ATTACHMENT A**Details of the Telecommunications (International Mobile Roaming) Industry Standard Variation 2016 (No. 1)**

Section 1 provides that the name of the Variation is the *Telecommunications (International Mobile Roaming) Industry Standard Variation 2016 (No. 1)*.

Section 2 provides that the Variation will commence on the day after it is registered on the Federal Register of Legislation.

Section 3 provides that Schedule 1 of the Variation amends the *Telecommunications (International Mobile Roaming) Industry Standard 2013*.

Schedule 1 provides a detailed description of the amendments varying the *Telecommunications (International Mobile Roaming) Industry Standard 2013*.

Schedule 1, item 1 inserts a definition of “standard form customer contract” in clause 3 of the IMR Standard.

Schedule 1, item 2 removes text from paragraph 5(1)(c) that is no longer necessary as a result of the new subclause 5(1A) (see below).

Schedule 1, item 3 adds a new subclause 5(1A) after subclause 5(1), which has the effect of permitting the SMS messages required by paragraphs 5(1)(a), (b) and (c) to be combined in one or more messages. This reduces the need for multiple SMS message notifications.

Schedule 1, item 4 replaces all instances of the date 23 May 2016 in subclause 6(1) with the new date of 1 January 2019. This delays the application of subclause 6(3) of the IMR Standard to mobile virtual network operators (MVNOs) until 1 January 2019. MVNOs are those CSPs that provide a public mobile telecommunications service, but do not use their own telecommunications network to do so. MVNOs will continue to have a choice between complying with either subclause 6(2) or 6(3) of the Standard until 1 January 2019. From 1 January 2019, MVNOs will be required to comply with subclause 6(3).

Schedule 1, item 5 replaces subclause 8(1) with a less prescriptive requirement for the availability of methods to decline roaming services. New subclause 8(1) requires that CSPs must provide at least one method for customers to decline roaming services at any time overseas. Previously the IMR Standard prescribed that customers must be able to decline roaming services by calling an Australian number or accessing their CSP’s website.

The amendment also has the effect of removing one of the notes under subclause 8(1), which is no longer relevant due to the changes to subclause 8(1).

Schedule 1, item 6 adds two new subclauses after subclause 8(4). New subclause 8(5) relates to cases where a customer chooses to decline roaming services from overseas by a method other than those referred to in subclause 8(3) (calling a

particular Australian number) or subclause 8(4) (accessing the website of the CSP). Subclause 8(5) provides that CSPs must not charge customers more than a nominal charge for declining roaming services from overseas. This is to ensure that customers can decline roaming services at low or no cost, regardless of the method used. Existing cost restrictions relating to methods referred to in subclauses 8(3) and 8(4) are maintained.

New subclause 8(6) requires that the method made available to customers to decline roaming services from overseas to satisfy subclause 8(1) must be reasonably accessible.

Schedule 1, item 7 inserts four new subclauses following subclause 9(3). New subclause 9(3A) allows CSPs to offer a mechanism for customers to decline to receive the roaming usage notifications required by subclause 9(3) of the IMR Standard. CSPs are not required to provide this option, but if it is provided, subclauses 9(3B) – (3D) must be complied with.

Subclause 9(3B) provides that a CSP cannot allow a customer to decline to receive roaming usage notifications by way of accepting a term or condition of a standard form customer contract or the default terms and conditions associated with the purchase of an included value pack. This requirement is designed to ensure that declining notifications is a genuine election on the part of the customer.

Under new subclause 9(3C), where a customer elects to decline to receive roaming usage notifications, the CSP must send an SMS to the customer acknowledging that a request to decline receipt of roaming usage alerts has been made. This SMS must also advise the customer that they may request to receive notifications again at any time. Such a request must also be implemented as soon as is reasonably practicable, and at no cost to the customer.

Subclause 9(3D) provides that a CSP that chooses to offer a mechanism as contemplated by subclause 9(3A) must also make available methods for customers to quickly and easily establish whether they have elected to not receive the notifications.

Schedule 1, item 8 replaces the occurrence of the date 23 May 2016 in subclause 9(9) with the new date of 1 January 2019. This amendment delays the application of subclauses 9(2) - (8) of the IMR Standard to MVNOs until 1 January 2019.

ATTACHMENT B**Statement of Compatibility with Human Rights**

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

Telecommunications (International Mobile Roaming) Industry Standard Variation 2016 (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 Variation

The *Telecommunications (International Mobile Roaming) Industry Standard 2013* (IMR Standard) is administered by the Australian Communications and Media Authority (ACMA). The IMR 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 (International Mobile Roaming) Industry Standard Variation 2016 (No. 1)* (Variation) is to amend the IMR Standard in accordance with the *Telecommunications (Amendment of International Mobile Roaming Industry Standard) Direction 2016* (the Direction), made by the Minister under subsection 125AA(4) of the *Telecommunications Act 1997*.

The changes made by the Variation are intended to allow for greater streamlining and simplification of the IMR Standard, including:

- allowing certain 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; and
- delaying the application of parts of the IMR 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 IMR Standard.

Human rights implications

The amendments to the IMR Standard required by the Variation 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 Variation is compatible with human rights as it does not raise any human rights issues.