

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Communications,
Urban Infrastructure, Cities and the Arts.

Telecommunications (Consumer Protection and Service Standards) Act 1999

Telecommunications (Payphones) Determination 2022

Authority

This Determination is made under subsections 12ED(1), 12EE(1), 12EE(6), 12EF(1), 12EG(1) and 12EH(1) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* ('the Act'). These subsections provide that the Minister may, by legislative instrument, determine, respectively, payphone performance standards (subsection 12ED), payphone benchmarks (subsection 12EE), make rules about the location of payphones (subsection 12EF), make rules about the process for public consultation on the location or removal of payphones (subsection 12EG) and make rules about the process for resolution of complaints about the location or removal of payphones (subsection 12EH). All such standards, benchmarks and rules are to be complied with by a primary universal service provider in relation to a range of payphone carriage services.

Purpose

The purpose of this Determination is to require a primary universal service provider (currently Telstra) to comply with a number of requirements in fulfilment of the Universal Service Obligation (USO) in relation to the supply, installation or maintenance of payphones across Australia on an equitable basis.

Due to 12D of the Act, Telstra is currently taken to be the primary universal service provider under section 12A of the Act. Accordingly, the performance standards, benchmarks and other rules outlined in Parts 2 to 6 of the Determination apply to payphones supplied by Telstra in fulfilment of the USO (USO payphones). As such, this Determination does not apply to payphones that are operated by private providers, or the payphone carriage services that supply private payphones. The Determination also does not apply to community phones in Indigenous communities which are supplied under separate government funding programs.

This Determination sets out performance matters (through standards and benchmarks) and makes a number of rules to be complied with by a primary universal service provider in relation to the supply of payphones.

Part 1 is a preliminary section and includes details on commencement of the Determination, defines a number of terms used throughout the instrument and deals with matters relating to interpretation.

Part 2 of the Determination sets out payphone performance standards that must be complied with by a primary universal service provider in relation to:

- the characteristics, supply and reliability of payphones carriage services;

- the supply, installation or maintenance of a payphone;
- maximum timeframes for the supply, installation or maintenance of a payphone; and
- maximum timeframes to rectify a payphone or payphone carriage service fault or service difficulty.

Part 3 sets out payphone performance benchmark standards and minimum performance benchmarks. While performance benchmark standards do not need to be complied with in every case, a primary universal service provider must meet or exceed the minimum benchmark.

Part 4 sets out the rules on the:

- places and areas where payphones are to be located;
- requirements for lodging an eligible payphone request;
- criteria a primary universal service provider must follow, including the net social benefit factors, in determining when it is appropriate for a payphone to be installed or removed from a particular place or area; and
- need for a primary universal service provider to keep a payphone register, make it publicly available, and provide it to the Australian Communications Media Authority (ACMA).

Part 5 sets out rules in relation to notifications involving the installation, removal or relocation of payphones. Generally a primary universal service provider is required to take steps to notify relevant stakeholders of proposed installation, removal and relocation of payphones (including via its website and through local papers where practical), and prepare and publish a detailed public consultation document if the final payphone at a site is proposed to be removed. Part 5 also provides that a primary universal service provider must provide notifications of its final decision on proposals to install or remove payphones. There are some exceptions to these notification and consultation rules, such as where payphones need to be temporarily removed (such as to be repaired, upgraded or due to civil works by a third party).

Part 6 sets out rules that require a primary universal service provider to implement and maintain an accessible public complaints process with regard to final decisions to install or remove payphones. A primary universal service provider must ensure the complainant is aware, as applicable, of avenues to object through the ACMA in the case of payphone removals.

This Determination is a legislative instrument for the purposes of the *Legislation Act 2003* and will be repealed automatically (or ‘sunset’) approximately 10 years after being registered. This provides certainty for stakeholders. As is the case with all legislative instruments, this Determination may be further amended or otherwise repealed in the future if further consideration of issues raised shows that is desirable, noting that this would necessarily involve further stakeholder consultation.

Background

Telstra, as the current primary universal service provider under the Act, is required as part of the USO to ensure that all people in Australia have reasonable access to payphone services on an equitable basis, wherever they reside or carry on business.

These payphone statutory obligations are supported by a 20 year contract between the Commonwealth and Telstra — the Telstra USO Performance Agreement (TUSOPA) — which runs from 2012 to 2032. Under the contract, Telstra is contractually obliged to, amongst other things, supply fixed voice services to premises in Australia on reasonable request and supply, install and maintain payphones. In relation to the supply and maintenance of USO payphones, Telstra receives a fixed and unindexed annual contractual payment of \$40 million.

As part of the process of making annual contractual payments to Telstra, amongst other things, Telstra’s compliance with relevant USO regulatory obligations is taken into account. The TUSOPA (including payments for USO payphones) and other public interest telecommunications contracts and grants are funded through an annual budget appropriation from the Commonwealth of \$100 million per annum, with the remaining funding provided by industry through annual contributions towards the Telecommunications Industry Levy (TIL). Carriers contribute to the TIL based on their share of total industry eligible revenue, with Telstra itself contributing the most towards the TIL of any carrier, currently followed by Optus, TPG Group, NBN Co and a range of other smaller carriers.¹

On 13 December 2011, the then Minister for Broadband, Communications and the Digital Economy made five (5) instruments (‘the previous payphone instruments’) under the Act in relation to a range of matters relating to payphones and payphone carriage services. The previous payphone instruments were:

- *Telecommunications Universal Service Obligation (Location of Payphones) Determination 2011*
- *Telecommunications Universal Service Obligation (Payphone Performance Standards) Instrument (No. 1) 2011*
- *Telecommunications Universal Service Obligation (Payphone Performance Benchmarks) Instrument (No. 1) 2011*
- *Telecommunications Universal Service Obligation (Public Consultation on the Location or Removal of Payphones) Determination 2011*, and
- *Telecommunications Universal Service Obligation (Payphone Complaint Rules) Determination 2011*.

These commenced from 1 January 2012. Collectively, the previous payphone instruments responded to community dissatisfaction with the adequacy of arrangements for payphones in Australia provided for under the USO. This previous dissatisfaction was particularly apparent in relation to the processes for removing payphones and the time taken to repair them, especially in rural and remote areas.

Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on 1 April or 1 October immediately on or following the tenth anniversary of its registration. Accordingly, the sunset date for the five previous payphone instruments was 1 April 2022.

¹ *Telecommunications Industry Levy Assessment 2020-21*, available at www.acma.gov.au/telecommunications-funding-arrangements

The ACMA also supplemented the five previous payphone instruments through two related guidelines (the *Payphone (Assessment of Net Social Benefit) Guidelines—2014* and *Telecommunications (Payphone Consultation Document) Guidelines 2012*) and record-keeping rules (*Telecommunications (Payphone Performance Benchmarks) Record Keeping Rules 2012*).

The ACMA undertook separate consultation on remaking its payphone record keeping rules from 21 December 2021 to 31 January 2022², and has indicated it will separately consider the two guidelines as needed.

There were around 18,000 payphones when the five previous instruments commenced in 2012. Telstra currently has around 15,000 USO payphones in operation. Since the previous instruments were made, the regulator (ACMA) has indicated it receives on average approximately 2-3 complaints per year from residents or small business owners about the location, relocation or removal of Telstra payphones. These complaints generally relate to the existing placement of Telstra payphones. The ACMA notes that where complaints have arisen, Telstra has either considered an alternative appropriate location for the payphone, or conducted an investigation to determine whether the placement of the payphone met net social benefit requirements. Accordingly, the ACMA has advised it has not had to take any formal action in relation to the small number of complaints it has received.

The volume of calls made from USO payphones has been in decline for a number of years, falling 73% from 39.8 million calls in 2011–12 to 10.6 million calls in 2019–20. This overall decline strongly correlates with ongoing industry investment in the quality and coverage of mobile networks, as well as strong overall consumer take up of mobile phones.

Telstra started offering free national calls from payphones from 3 August 2021. This has resulted in some increase in the number of calls being made from payphones. However, it needs to be kept in mind that this increase in call volume is from a low base, given the prior decline in payphone usage over a number of years. It is also not possible to determine whether more people are using payphones, whether existing users of payphones are making more calls, or some combination of the two. It also remains to be seen if this immediate increase in calls will ultimately be sustained, or whether it may taper off in time.

Consultation

Consultation took place from 17 December 2021 to 18 February 2022 on the five previous payphone instruments. The Department of Infrastructure, Transport, Regional Development and Communications (‘the Department’) issued a consultation paper³ and sought stakeholder comment to determine if the instruments remained fit for purpose, should be remade with amendments, or could be allowed to lapse.

² www.acma.gov.au/consultations/2021-12/remaking-telecommunications-payphone-performance-benchmarks-record-keeping-rules-2012-consultation-482021

³ www.infrastructure.gov.au/have-your-say/review-payphone-rules

The Department sought views on whether a less prescriptive, more outcomes-focused approach could be adopted in some instances, and whether there would be benefit in consolidating some or all of the five payphone instruments into one or fewer instruments.

The Department received seven submissions from the following organisations:

- Australian Communications Consumer Action Network
- Australian Local Government Association
- National Rural Women's Coalition
- NBN Co
- Optus
- Regional, Rural and Remote Communications Coalition, and
- Telstra

Those submissions were considered as part of the decision to remake the five previous instruments as a single, consolidated determination. As none of the submissions were confidential, they have all been published on the Department's website.

Stakeholders broadly supported (or did not raise specific concerns) about consolidating the five previous instruments into a single determination. Accordingly, the Determination consolidates and makes minor changes to the previous five payphone instruments. The key changes are to:

- require community use of payphones in cases of natural disasters to be considered (amongst other factors) as part of decisions by a primary universal service provider on the installation or removal of payphones;
- maintain existing requirements for website notification of payphone installation/removals, while providing greater flexibility in how payphone removal/installations are advertised in local papers (reflecting changes in the media market and declining readership of newspapers);
- allow payphones to be temporarily removed without undertaking notification / community consultation where this is due to construction or civil works (this is a minor addition to previous provisions that deal with temporary removal of payphones);
- require notifications, public consultation documents and final payphone decisions to be retained on a primary universal service provider's website for six months after a final decision is made in relation to installation or removal of a payphone, to provide greater transparency of its conduct;
- clarify that community support for a payphone can be demonstrated through a variety of ways, not solely through support from 100 people that reside in Australia (this was the case under the previous instruments, but stakeholder submissions indicate this was not well understood); and
- adjust key provisions relating to assessment of payphone revenue and commercial viability that are used to guide decisions on the installation and removal of payphones.

The final change in the list above reflects that the current USO provider (Telstra) made an operational decision to cease charging for national calls from payphones from 3 August 2021. In its submission, Telstra noted that as a result of making most calls free of charge, payphone usage and total payphone calls had significantly

increased (at least in the short term). However, revenue and commercial viability are factors that have long been used as factors as part of balancing decisions on the installation and removal of payphones. Telstra however indicated in subsequent discussion with the Department that that it did not foresee making any short changes to its processes or decision making in relation to the installation or removal of payphones. Accordingly, to maintain the status quo, references in the previous instruments to assessment of commercial viability and payphone revenue have been adjusted, so that such assessments will be based as if arrangements for payphone calls and associated payphone call charges in place as at 2 August 2021 were still in effect.

Finally, the Determination also reflects changes in drafting style since the previous payphone instruments were made and removes some redundant and spent provisions.

Many operational and technological changes have occurred over the past 10 years, including Telstra recently making most calls from USO payphones free of charge. These changes have resulted in some uncertainty around the long-term demand and use for payphones, as well as the costs and overall economics of supplying payphones.

While relatively few Australians are users of payphones, and most probably do not think about them except in times of emergency, the statute presently requires payphones to be reasonably available. Payphones can be an important means of communication in areas outside mobile coverage, to Indigenous communities and for vulnerable or disadvantaged people, including low income earners. The approach set out by Government in 2018 was therefore to further consider the ongoing location of payphones to better align them with need and usage.

While some stakeholder submissions raised broader questions about the long term future and need for payphones, it was also the case that there was acceptance of rules and guidance on the delivery of USO payphones as remaining important in the short term. Accordingly, apart from the key changes set out above, the broad range of matters in the previous payphone instruments will continue to be dealt with in much the same way.

As noted above, further review and adjustment to the Determination is possible in light of consumer demand and broader market developments, and the Government will continue to keep this under consideration.

Details of the accompanying Determination are set out in **Attachment A**.

Regulatory Impact Statement

A preliminary assessment of the proposal to remake and consolidate the previous payphone instruments with minor changes was provided to the Office of Best Practice Regulation (OBPR) to determine whether a Regulatory Impact Statement (RIS) was required.

The OBPR assessed the proposal as having a no more than minor regulatory impact and advised no RIS was required (OBPR ID: 22-01977).

Statement of compatibility with human rights

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at **Attachment B**.

Details of the *Telecommunications (Payphones) Determination 2022*

Part 1 – Preliminary

Part 1 is a preliminary section and includes details on commencement, the authority for the Determination, and definitions for key terms used in Parts 2 to 6 of the Determination.

Section 1 – Name of instrument

This section provides that the name of the instrument is the *Telecommunications (Payphones) Determination 2022*.

Section 2 – Commencement

This section provides that the whole of the Determination will commence on 1 April 2022.

Section 3 – Authority

This section provides the Determination is made under subsections 12ED(1), 12EE(1), 12EE(6), 12EF(1), 12EG(1) and 12EH(1) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

Section 4 – Simplified outline of this instrument

To assist readers, this section provides an overview of the overall structure and purpose of the Determination.

Section 5 – Interpretation

Notes are provided to clarify that a number of terms used in the Determination have the same meaning as in the *Acts Interpretation Act 1901*, *Telecommunications Act 1997* and the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

Subsection 5(1) sets out key definitions used in the Determination. Definitions are explained below by exception (on the basis that a number of definitions are self-explanatory and/or widely used in the telecommunications industry, and given a number of definitions have been carried over unchanged from the five previous payphone instruments).

The term ***category 1 payphone location*** is a place or area in Australia that is of a type described in Division 1 of Schedule 1, which does not have a payphone, and has demonstrated community support for the location of a payphone at that place or area. Further, the primary universal provider must also determine that the place or area is commercially viable for the purpose of the installation of a payphone. A further

provision sets out that, in assessing whether a place or area is commercially viable, the provider must make this assessment as if arrangements for the types of payphone calls and associated payphone call charges in place as at 2 August 2021 are still in effect. This is intended to preserve the status quo. Such a determination must be made within 60 business days of the provider receiving an eligible payphone request.

The term ***category 2 payphone location*** is a place or area in Australia that is set out in the table at Division 2 of Schedule 1, where either there is no payphone located within the area of the specified radius (if applicable) or no payphone at that place or area. As per the definition of ‘category 1 payphone location’, a ‘category 2 payphone location’ must have demonstrated community support. Further, the primary universal provider must also determine whether the projected revenue will cover the projected depreciation and maintenance costs of providing and maintaining a payphone on an annual basis. A further provision sets out that, in assessing projected revenue against projected depreciation and maintenance costs, the provider must make this assessment as if arrangements for the types of payphone calls and associated payphone call charges in place as at 2 August 2021 are still in effect. This is intended to preserve the status quo. Such a determination must be made within 60 business days of the provider receiving an eligible payphone request.

The term ***category 3 payphone location*** is a place or area in Australia that is of a type described in the table at Division 3 of Schedule 1, where either there is no payphone located within the area of the specified radius (if applicable) or no payphone at that place or area. As per category 1 and 2 payphone locations, there must be demonstrated community support for the location of a payphone. However, there is no requirement that the primary universal provider consider the commercial viability, revenue or costs of providing a payphone in these cases.

Section 5(2) relevantly also provides that for category 1, 2 and 3 payphone locations, references to ‘demonstrated community support’ for a payphone to be located at a place or area may be demonstrated through an eligible payphone request, or via other means. For example, a primary universal service provider might become aware of community support for a payphone at a particular location, and so propose to install a payphone without necessarily receiving a formal request.

The term ***eligible payphone request*** is a request that a payphone be installed at either a ‘category 1 payphone location’, ‘a category 2 payphone location’ or a ‘category 3 payphone location’. This definition provides that a request must be made by a duly authorised person on behalf of representative bodies and include eligible payphone request requirements. The definition clarifies that a primary universal service provider does not have to respond to requests if an eligible payphone request has been made with respect to the same place or area within the period commencing two years prior to the date of the request, or if a payphone was removed, in accordance with this instrument, from the place or area subject of the request, within the previous two years. For the purpose of this definition, a request on behalf of ‘representative bodies’ can include a request made on behalf of five or more individuals who would be directly affected by the operation of a payphone at the place or area that is the subject of the request, by 100 or more individuals who reside in the vicinity of the proposed new payphone site or otherwise have a demonstrated interest in the location of the

payphone at the place or area that is the subject of the request, or by a local government or state/territory authority.

The term ***eligible payphone request requirements*** sets out the information that must be provided as part of a request for a new payphone to be located at a site. The required information includes the name of the person making the request, the name of the local government body or authority or institution on whose behalf the request is made, relevant contact details of the person or body making the request, details of the location where the payphone is proposed to be located, reasons why the payphone is being requested, and the type of payphone requested. A note provides that an example of the type of payphone that can be requested is a TTY payphone. It is generally anticipated that a primary universal service provider will take into account any type of payphone requested and seek to reasonably meet such requests. However, if it is not reasonable or otherwise impractical to provide a particular type of payphone at a specific location (such as due to limitations in obtaining equipment or parts to support the ongoing operation of that type of payphone), a primary universal service provider would generally be expected to engage with the person making the request about alternative types of payphones that could otherwise be installed. This definition is intended to provide for minimum information to be provided in support of a request, but does not prevent a primary universal service provider from seeking additional information in support of a request.

The term ***fault or service difficulty*** is a fault or condition which affects the useability of the payphone or payphone carriage service such as the absence of a dial or ring tone or repeated service cut-offs. It does not include non-critical faults, such as a flickering light in a phone box, damage to a phone booth, or damage to a payphone where at least one payment mechanism is available to a user to make a call (where a call requires a payment to be made). A particular distinction is drawn here between critical and non-critical faults, as this is important for the operation of Part 3 of the Determination, which sets out performance standards and benchmarks. While non-critical faults are matters which a primary universal service provider is generally expected to respond to, they are not captured by performance standards or performance benchmarks.

The term ***local newspaper***, in relation to a payphone location proposal or payphone removal proposal, means a newspaper which is in circulation (whether in print or online) where the payphone that is the subject of the proposal is located. This definition is relevant to both section 25 and 29 of the Determination, which require a primary universal provider to publish notices about proposed payphone installations and removals on its website and in a local newspaper (so far as this is reasonably practicable). Reasonableness of publishing notices may include consideration of the costs and benefits and extent to which it is practical to place notices in a newspaper specifically circulating in a specific town or specific region where a payphone is proposed to be located or removed, as against placing notices in national or state newspapers that have far broader distribution and readership beyond the area where a payphone is proposed to be installed or removed.

The term ***notifiable payphone location persons*** is used to specify relevant stakeholders that must be notified by a primary universal service provider about a proposal to locate a new payphone. It means the relevant local government body (this

would generally be expected to be the local council) and owners or occupiers of each residential and business premises within 50 metres of the proposed site. This provides a baseline of stakeholders to be notified, but does not prevent a primary universal provider for engaging more broadly with additional stakeholders.

The term ***notifiable payphone removal persons*** is used to specify relevant stakeholders that must be notified by a primary universal service provider. It includes the relevant local government body (this would generally be expected to be the local council), and the owner of the land from which it is proposed the payphone will be removed (or otherwise the occupier of the land). This provides a baseline of stakeholders to be notified, but does not prevent a primary universal provider from engaging more broadly with other stakeholders.

The term ***payment mechanism*** is defined to include payment by coin, phonecard, credit card, operator assistance and/or reverse charge calling. It is not necessary for a primary universal provider to provide or support all of these potential payment mechanisms, but where a particular type of call that can be made from a payphone requires a form of payment, a primary universal service provider is expected to have at least one payment mechanism in working order. The definition of ‘fault or service difficulty’ (see above) recognises that the inability to make a type of call requiring a form of payment is to be considered a critical fault.

The term ***payphone complaint*** means an expression of disagreement about a final decision of the primary universal provider on the location or removal of a payphone. This definition specifically excludes any general request for information or other assistance to enable a person to make a payphone complaint, or an issue that is the subject of legal action. This definition is generally used throughout Part 6 of the Determination which provides that a primary universal service provider is required to have and maintain a process for handling complaints, and respond to complaints within specific timeframes, unless it is reasonably satisfied no further action is required to investigate or respond to a payphone complaint. A complaint can only be made in relation to a final decision on the installation or removal of a payphone. That is because the Determination otherwise requires notifications to be provided about proposed installation, removal or relocation of payphones, and a universal service provider generally needs to wait at least 42 days before making final decisions on permanent payphone installation or removals. As such, stakeholders are expected to engage with a primary universal service provider during this period if they have concerns about any proposal.

The term ***social benefit factors*** sets out the range of matters that must be taken into account by a primary universal service provider in making final decisions on the installation or removal of payphones. The matters to be considered include:

- the use or potential use of a payphone in the event of a natural disaster;
- the commercial viability of installing or continuing to maintain the payphone, including all reasonable steps that may be taken to minimise costs (a note sets out reasonable steps could include installation of a robust phone or locating the phone to minimise the risk of vandalism or misuse);
- actual or forecast call usage patterns for the payphone (including actual or forecast TTY calls if applicable);

- whether the actual or projected revenues from the payphone will cover the actual or forecast depreciation and maintenance costs of maintaining the payphone on an annual basis; and
- the extent to which funding (including from the Commonwealth) will contribute to covering the depreciation and maintenance costs of maintaining the payphone on an annual basis.

The definition of social benefit factors further requires the provider to consider the circumstances relating to the installation of a payphone at the new payphone location, or the removal of a payphone at the payphone site (as applicable), including:

- the benefit to the local community arising from installing a payphone at the new payphone location or maintaining the payphone at the payphone site (as applicable);
- the extent to which there is adequate mobile phone coverage in the relevant area where the payphone is proposed to be installed or removed (as applicable); and
- in the event mobile phone coverage in the relevant area where the payphone is proposed to be installed or removed is inadequate - the extent to which a payphone is needed for the purposes of assisting with responding to an emergency.

A provider must also take into account any guidelines prepared by the ACMA that detail the format and methodology for assessing whether the installation or removal of a payphone at the new payphone location or the payphone site (as applicable) would deliver a net social benefit to the local community. This provides flexibility for the regulator to provide detailed administrative guidance on the detail of how assessments are to be undertaken.

This definition broadly replicates consideration of social benefit previously reflected in the *Telecommunications Universal Service Obligation (Location of Payphones) Determination 2011*, with two substantive changes. The first change is to include consideration of the use of payphones in natural disasters in making payphone installation and removal decisions. This is not expected to be an onerous requirement and is a matter that a universal service provider is likely to otherwise consider as part of its own due diligence processes concerning payphone sites. It also reflects growing community awareness of the importance of telecommunications in natural disasters, and the current provider (Telstra) has promoted payphones as a potential means of staying connected in the event of natural disasters. A further change is to require the provider in determining the commercial viability of payphones, and whether the actual or projected revenues will cover actual or projected depreciation and maintenance costs, to do so as if arrangements for the types of payphone calls and associated payphone call charges in place as at 2 August 2021 were still in effect.

Part 2 – Payphone performance standards

Division 1 – Compliance with payphone performance standards

Section 7 – Primary universal service provider must comply with standards

This section specifies that compliance by a primary universal service provider with payphone performance standards is mandatory unless the provider is prevented from complying under a Commonwealth, state or territory law or is unable to comply because of circumstances beyond its control.

Subsection 7(2) provides a non-exhaustive list of circumstances which may be considered beyond the control of the primary universal service provider, for the purposes of paragraph 7(1)(b). The circumstances listed at paragraphs 7(2)(a)-(e) largely reflect (with suitable modification) the circumstances outlined in subsection 21(2) of the *Telecommunications (Customer Service Guarantee) Standard 2011* (CSG Standard).

The two circumstances at paragraphs 7(2)(f)-(g) cover a situation where a payphone is rendered inoperable due to insufficient power supply; or where a facility or network used to supply the payphone is temporarily interrupted because it is being modified, maintained or upgraded in connection with the migration of services to the National Broadband Network.

The circumstance at paragraph 7(2)(h) recognises that an area affected by an event (such as, for example, a natural disaster, extreme weather event or other emergency event as listed at paragraphs 7(2)(b)-(d)) may require the movement of resources to that area and, as a consequence, a primary universal provider may not be able to meet connection and/or repair timeframes in other non-affected areas.

Subsection 7(3) provides that a primary universal service provider is not exempt from compliance with a payphone performance standard unless it has procedures in place for the purpose of ensuring that it does not rely on the exemption in circumstances that are not beyond its control. This section is intended to ensure that a primary universal service provider has in place reasonable procedures to ensure it limits the extent to which circumstances beyond its control affect its ability to meet the payphone performance standard. This subsection 7(3) largely mirrors subsection 21(3) of the CSG Standard.

Subsection 7(4) has been included to clarify that a provider must comply with the performance standards from the time those circumstances which have prevented the provider from being able to comply with the standards no longer prevent compliance.

Division 2 – Payphone performance standards

Section 8 – Payphone performance standard – characteristics, supply and reliability of payphone carriage services

This section sets out the specific performance standards applying to a primary universal service provider in relation to the characteristics, supply and reliability of a

payphone carriage service. Subsection 8(1) provides that, when in normal working order, a payphone carriage service must allow automated local and long-distance voice calls 24 hours a day, access to emergency services free of charge 24 hours a day and operator assistance 24 hours a day. This section also specifies that these obligations apply even where a payphone is located at a site in which public access is not allowed 24 hours per day.

Paragraph 8(1)(d) also makes compliance with the Communications Alliance's *Accessibility of Payphones Industry Guideline* (and any replacement guidelines issued by the Communications Alliance or a successor organisation) mandatory in relation to payphone carriage services supplied in fulfilment of the USO.

Subsection 8(2) provides that a standard set out at subsection 8(1) does not apply in respect of a payphone or payphone carriage service that is, at the relevant time, experiencing a fault or service difficulty. This is because performance standards (see section 11) separately apply and set timeframes for repairing faults with payphone carriage services.

This section includes one note. The note is provided after paragraph 8(1)(d) to explain that subsection 589(2) of the Tel Act provides the legislative basis by which any guidelines replacing the *Accessibility of Payphones Industry Guideline* can be applied in future as a payphone performance standard.

Section 9 – Payphone performance standard – supply, installation or maintenance of a payphone

Section 9 establishes standards to apply to any new payphones supplied by a primary universal service provider. Like subsection 8(1), subsection 9(2) requires payphones to meet the Communications Alliance's *Accessibility of Payphones Industry Guideline*. New payphones must also provide operating instructions in languages other than English and be able to be modified to include a teletypewriter (TTY) attachment.

Subsection 9(3) clarifies that operating instructions must be provided in at least three of the following languages: Mandarin, French, Spanish or Japanese. However, a primary universal service provider may instead provide operating instructions in one or more other language if it deems this appropriate, based on the needs of the community.

The section includes one note. The note is provided after paragraph 9(2)(c) to explain that subsection 589(2) of the Tel Act provides the legislative basis by which any guidelines replacing the *Accessibility of Payphones Industry Guideline* can be applied in future as a payphone performance standard.

Section 10 – Payphone performance standard – maximum timeframes for the supply, installation and maintenance of a payphone

Section 10 provides for a maximum period of three months for a primary universal service provider to install a payphone which is required to be installed at a site or at a new location in compliance with the location requirements set out in Part 4 of the

Determination. Before it can install a payphone, a primary universal service provider must also first follow consultation rules set out in Part 5 of the Determination.

The table in this section sets out alternative maximum timeframes that may apply, subject to circumstances set out in Column 1 of the table. For ‘minor rural’ and ‘remote areas’, the table provides a longer period of time to install a payphone when the site is not readily accessible to telecommunications network infrastructure or there is insufficient network infrastructure capacity to enable service – being a maximum installation period of six months for minor rural areas and nine months for remote areas. Geographic areas such as ‘minor rural’ and ‘remote’ are defined in section 5 (interpretation).

Section 11 – Payphone performance standard – maximum timeframes to rectify a payphone or payphone carriage service fault or service difficulty

Subsection 11(1) provides for maximum time periods in which a primary universal service provider must rectify faults or service difficulties relating to a payphone or a payphone carriage service following a report of a fault or service difficulty.

The timeframes allowed are set out in the table as follows:

- 10 business days for payphones located in urban areas;
- 15 business days for payphones located in minor and major rural areas; and
- 20 business days for payphones located in remote areas.

Geographic areas such as ‘urban’, ‘minor rural’, ‘major rural’ and ‘remote’ are defined in section 5 (interpretation).

Paragraph 11(2)(a) works with the table at subsection 11(1) to clarify that the commencement of the timeframe for fault rectification occurs the day after the primary universal service provider receives a report about the fault or service difficulty or produces a report about the fault or service difficulty (whichever occurs earlier).

Paragraph 11(2)(b) clarifies that a report about a fault or service difficulty can include an automated or electronic report generated by the primary universal service provider, and not just a report provided by a potential user of a payphone.

Paragraph 11(2)(c) states that where a report is received or produced on a non-business day or after 5.00pm on a business day, the timeframes commence on the next business day.

The effect of setting maximum timeframes for the rectification of faults under this section is that every instance of non-compliance with the timeframe could result in the universal service provider being subject to a penalty or other compliance or enforcement action by the regulator (the ACMA).

The longer timeframes for rectifying faults in rural or remote areas, in comparison with urban areas, reflect that there are typically longer travel times involved in moving staff or resources to attend to fault or service difficulties in rural and remote areas.

A primary universal service provider is expected to meet these maximum timeframes in all cases. This is in contrast to the comparatively shorter payphone benchmark standards (provided for in Part 3 of the Determination) which are discussed below.

Part 3 – Payphone benchmark standards and benchmarks

Division 1 – Compliance with payphone benchmark standards

Section 12 – Primary universal service provider must comply with standards

Subsection 12(1) specifies that compliance by a primary universal service provider with payphone benchmark standards is mandatory unless the provider is prevented from doing so under a Commonwealth, state or territory law or is unable to comply because of circumstances beyond its control.

While compliance with payphone benchmark standards is expected, it is not required in all instances. The Act therefore provides that a failure to meet individual payphone benchmark standards in particular cases cannot be enforced by the ACMA as a breach of a service provider rule or carrier licence condition. This reflects that a provider may be subject to compliance or enforcement action in relation to individual breaches of the maximum performance standards in section 11, and is also expected to comply with payphone benchmarks at section 14.

Subsection 12(2) provides a non-exhaustive list of circumstances which may be considered beyond the control of the primary universal service provider, for the purposes of paragraph 12(1)(b). The circumstances listed at paragraphs 12(2)(a)-(e) largely reflect (with appropriate modifications) the circumstances outlined in subsection 21(2) of the CSG Standard.

The two circumstances at paragraphs 12(2)(f)-(g) cover a situation where a payphone is rendered inoperable due to insufficient power supply; or where a facility or network used to supply the payphone has been interrupted in connection with the migration of services to the National Broadband Network. The circumstance at paragraph 12(2)(h) recognises that an area affected by an event (such as, for example, a natural disaster, extreme weather event or other emergency event as listed at paragraphs 12(2)(b)-(d)) may require the movement of resources to that area and, as a consequence, a primary universal service provider may not be able to meet connection and/or repair timeframes in other non-affected areas.

Subsection 12(3) provides that a primary universal service provider is not exempt from compliance with a payphone performance benchmark standard unless it has procedures in place for the purpose of ensuring that it does not rely on the exemption in circumstances that are not beyond its control. This section is intended to ensure that a primary universal service provider has in place reasonable procedures to ensure it limits the extent to which circumstances beyond its control affect its ability to meet the payphone performance benchmark standard. This subsection (12(3)) largely mirrors subsection 21(3) of the CSG Standard.

Subsection 12(4) has been included to further clarify that a provider must comply with the performance benchmark standards from the time those circumstances which have prevented the provider from being able to comply with the standards have ceased.

Division 2 – Payphone benchmark standards

Section 13 – Payphone benchmark standards – maximum timeframe to rectify a payphone or payphone carriage service fault or service difficulty

Subsection 13(1) sets out, in table format, the maximum timeframes for repair of a payphone or payphone carriage service fault or service difficulty for distinct geographic areas. They are:

- within one business day where the payphone is situated in an urban area;
- two business days where the payphone is situated in a rural area; and
- three business days where the payphone is situated in a remote area.

Geographic areas such as ‘urban’, ‘rural’ and ‘remote’ are defined in section 5 (interpretation).

The timeframes work together with the fault rectification performance standards set out in Part 2, section 11 which sets maximum timeframes for repairs that must be met by a primary universal service provider in each case. Subsection 13(1) sets shorter timeframes that must be met or exceeded in a specified number of instances according to benchmarks as set out in section 14 (see below).

A note is provided under the table at subsection 13(1) to alert readers to subsections 12EE(10) and (11) of the Act. The Act provides that a universal service provider is not subject to potential compliance or enforcement in relation to payphone benchmark standards in section 13 (noting a provider is however subject to compliance or enforcement in relation to the maximum performance standards in section 11).

Paragraph 13(2)(a) works with the table at subsection 13(1) to clarify that the commencement of the timeframe for fault rectification occurs the day after the primary universal service provider receives a report about the fault or service difficulty or produces a report about the fault or service difficulty (whichever occurs earlier).

Paragraph 13(2)(b) clarifies that a report about a fault or service difficulty can include an automated or electronic report generated by the primary universal service provider, and not just a report provided by a potential user of a payphone.

Paragraph 13(2)(c) states that where a report is provided on a non-business day or after 5.00pm on a business day, the report is deemed to be received on the next business day.

The primary universal service provider is required to comply with the performance benchmarks at section 14 that relate to payphone benchmark standards set out in this section 13.

Division 3 – Payphone Performance Benchmarks

Section 14 – Minimum performance benchmarks

Subsection 14(1) sets out, in table format, the minimum performance benchmarks that a primary universal service provider must meet or exceed. These relate to the payphone benchmark standards and associated fault rectification timeframes set out in section 13. The table includes performance benchmarks for each distinct geographic area (urban, rural and remote).

A note is provided under the table at subsection 14(1) to alert readers to subsections 12EE(6) and (9) of the Act. The Act provides that the Minister may set minimum performance benchmarks, and that a primary universal service provider must meet or exceed a minimum benchmark.

Paragraph 14(1)(b) sets out the minimum percentage of the total number of cases for the payphone benchmark standard under section 13 that a primary universal service provider must comply with in each financial year, being 90 per cent in urban and regional areas, and 80 per cent in remote areas. The different performance benchmark for remote areas reflects the distances and amount of travel that may be involved.

Part 4 – Rules about location of payphones

Division 1 – Payphone locations

Section 15 – Places and areas at which payphones must be located

Subsection 15(1) requires payphones to be located at particular sites. A primary universal service provider must ensure a payphone is located, and continues to be located, at each site at which a payphone (including TTY payphones) it supplied was located immediately prior to the date of the commencement of the Determination. The provider must also ensure payphones are located at new payphone sites, including where an existing payphone is relocated to a different site within the same place or area.

Subsection 15(2) importantly provides that the obligations at subsection 15(1) are not absolute, and draws attention to section 20 and section 21 of the Determination that respectively deal with rules for installation of payphones; and rules for removal of payphones.

Subsection 15(3) offers an important additional safeguard in relation to a primary universal service provider's obligations to provide payphones at particular sites. It provides that the provider must still ensure payphones are located at the sites specified in subsection 15(1), even if it enters into an arrangement with another provider whereby the supply, management, operation or maintenance of a payphone is undertaken by that other provider.

Section 16 – Meaning of new payphone location

The term ‘new payphone location’ is used throughout the Determination as part of processes for managing and assessing requests for new payphones, and associated consultation and notification arrangements.

Section 16 defines a new payphone location as being either a category 1, category 2 or category 3 payphone location. Each of these categories is defined in detail in section 5 (interpretation), which in turn refers to further detail in Schedule 1.

Division 2 – Eligible payphone request

Section 17 – Information about making an eligible payphone request

Subsection 17(1) sets out the matters that a primary universal service provider must provide on its website so that a person may make an ‘eligible payphone request’, including a mechanism for making the request, the requirements applying to such requests and contact details by which a person may make a request.

Subsection 17(2) sets out the actions a primary universal service provider must undertake if it receives an eligible payphone request for a particular payphone location, but determines that the place or area is not a new payphone location. In this circumstance, the provider must notify the person who made the request of the reasons why it does not consider the place or area to be a new payphone location. It must also further advise the person that it is not obliged to consider installing the payphone in response to the request.

Section 18 – Notification of response to an eligible payphone request

Section 18 sets out the actions a primary universal service provider must undertake if it receives an eligible payphone request for a particular payphone location (i.e. the request itself includes all required information) but considers it does not have a legal requirement to install a payphone at the requested place or area.

Subsection 18(a) requires a primary universal service provider to notify the person in writing of its reasons why it does not consider that it is required to install a payphone at that place or area. It is expected that the notification would necessarily have regard to the provider’s consideration of the criteria in section 15 that deals with places and locations for payphones.

Subsection 18(b) states the timeframe in which a primary universal service provider must send a notification under subsection 18(a), being at least 42 days prior to making its final decision on an eligible payphone request for a payphone to be located in a particular place or area.

Section 19 – Notification of response to a payphone request that is not an eligible payphone request

Section 19 sets out the actions a primary universal service provider must undertake if it receives a request for the installation of a payphone, but it does not consider the

request an eligible payphone request. The provider must notify the person in writing of its reasons why it does not consider the request to be eligible, and also advise that it is not obliged to consider installing the payphone in response to the request.

This is intended to cover the circumstances where a person may not provide the full range of information for their request to be considered as an eligible request. The notification would therefore assist that person to understand the requirements and make a future valid eligible request.

Division 3 – Installation and removal of payphones

Section 20 – Installation of payphones

Subsection 20(1) clarifies that a primary universal service provider may only install a payphone at a new payphone site if the provider has complied with public consultation rules set out at Division 2 of Part 5 of the Determination.

Subsection 20(2) sets out exceptions to the requirement to install a payphone at a new location. Paragraph 20(2)(a) specifies that a primary universal provider does not have to install a new payphone if it has complied with the consultation rules set out at Division 2 of Part 5, and it has determined either:

- doing so would not deliver a net social benefit to the local community; or
- it cannot reasonably install and operate a payphone at a new payphone location.

Subsection 20(3) provides that a primary universal service provider must only have regard to the social benefit factors defined in section 5 (interpretation) when determining whether installing a payphone would not deliver a net social benefit to the local community

Similarly, in determining whether a payphone cannot reasonably be installed and operated at a new payphone location, a primary universal service provider may only have regard to matters that would, effectively, prevent a new installation from going ahead. Subsection 20(4) sets out relevant criteria, including whether the provider is able to obtain relevant site location approvals and access; the extent to which it is reasonably practicable to provide power to the new payphone location; and the safety of the public, users of the payphone and the provider's employees and agents.

Subsection 20(5) establishes that the obligation on a primary universal service provider to locate a payphone at a new payphone location commences immediately after it has provided written notification of its final decision and finalised any complaints in relation to that final decision.

Section 21 – Removal of a payphone from a site

Subsection 21 sets out the criteria which must apply before a payphone can be removed from a site, in the circumstance where the primary universal service provider is required (in order to comply with section 15) to ensure that at least one payphone is located at a site.

Paragraph 21(1)(a) specifies that the provider must comply with the rules set out in Divisions 3 and 4 of Part 5 before removing the final payphone from a site. The effect is to enable the public to be appropriately informed of, and given a chance to comment on, a proposed payphone removal. Furthermore, paragraph 21(1)(b) specifies that a payphone can only be removed if one or more of the listed criteria from (i)-(iv) must apply. Those criteria are that maintaining the payphone at the payphone site would not deliver a net social benefit to the local community, there is demonstrated community support for the removal of the payphone, it is not possible to reasonably operate the payphone at the payphone site, or it is a category 1 payphone that is being relocated to a new payphone site within that place or area.

Subsection 21(2) clarifies that a provider will not need to first demonstrate that one or more of the criteria under subsection 21(1) apply if it is temporarily removing a payphone. However, this only applies where a payphone is temporarily removed to upgrade the payphone; repair or replace the connecting line; connect the payphone to another network; install an equivalent or enhanced line; undertake significant off-site repairs to the payphone; or to allow for the development of a construction site or civil works at the reasonable request of a third party.

Subsection 21(3) requires that a primary universal service provider must only have regard to the social benefit factors defined at section 5 (interpretation) when determining whether installing and maintaining a payphone at a new payphone location would not deliver a net social benefit to the local community.

Subsection 21(4) sets out criteria a primary universal service provider must have regard to when assessing whether it can continue to reasonably operate a payphone at a payphone site. These criteria are similar to those set out in subsection 20(4) (see above), but with the difference that the provision of power to the payphone is not included. As with section 15, the criteria cover matters which would prevent a payphone from continuing to be operated at the site.

Subsection 21(5) offers an important additional safeguard in relation to a primary universal service provider's obligations under the Determination to locate payphones at particular places and areas. It provides that the provider must still comply with subsection 21(1), even if it enters into an arrangement with another provider whereby the supply, management, operation or maintenance of a payphone is undertaken by that other provider.

Subsection 21(6) requires a primary universal service provider to take all reasonable steps to hold or obtain relevant approvals (under paragraphs 21(4)(a)-(b)) in relation to a consideration as to whether a payphone can continue to be reasonably operated at a payphone site. This may depend on the specific circumstances. For example, if an existing payphone site was sold or transferred to a new owner, a primary universal service provider would generally be expected to seek to negotiate to continue to operate any existing payphones at that site or consider other available legal avenues to retain the payphone. However, if an existing payphone site was acquired or sold and the site is being substantially redeveloped, it may be difficult for a primary universal service provider to continue to retain permission to operate the payphone, and there may be practical questions as to whether or not the payphone is still required.

Division 4 – Payphone register

Section 22 – Primary universal service provider must keep and make available payphone register

Section 23 – Primary universal service provider must provide payphone register to the ACMA

Together, sections 22 and 23 provide that a primary universal service provider must continue to maintain a payphone register and make the register available to the public on its website. The provider must also provide a copy to the ACMA within three months of the commencement of the Determination and every three months thereafter. These provisions provide continuity of the payphone register that was previously required under the *Telecommunications Universal Service Obligation (Location of Payphones) Determination 2011*.

Payphone register is a defined term in section 5 (interpretation). The register must be kept electronically (or in another form) and include key information about each payphone site, such as geographic details; the number of payphones at the payphone site; the next available payphone and radial distance to that payphone; a unique identifier code for each payphone; and details of the type(s) of payphone.

The effect of these sections is to provide a mechanism by which detailed information on all USO payphones can be obtained for use by the regulator (the ACMA) and the public.

Part 5 – Rules about process for public consultation on location or removal of payphones

Subsection 12EG(1) of the Act provides that the Minister may make a determination setting out rules in relation to the process for public consultation on the location or removal of payphones. Subsection 12EG(2) of the Act further requires any Ministerial determination to provide that, if a primary universal service provider makes a decision to remove a payphone from a particular location, and that payphone is the only payphone at that location, then the provider must undertake a public consultation process. If a person makes a submission to the provider in accordance with the consultation process, the provider must notify the person, in writing, of the outcome of the process. Accordingly, this part of the Determination provides an enforceable public consultation process in relation to decisions on the installation or removal of payphones.

Division 1 – Preliminary

Section 24 – Application of this Part

Section 24 determines that notification and consultation processes must be followed in specific circumstances, including if there is installation of a payphone at a site, removal of a payphone from an existing site (depending on whether or not it is the final payphone at the site) or permanent relocation of a payphone (which entails both removal and installation activities).

Where a primary universal service provider proposes to install a payphone at a site, subsection 24(1) specifies that it must comply with Division 2 of Part 5 of the Determination.

Where a primary universal service provider proposes to remove a payphone from a site where it is required to ensure that a payphone is located, subsection 24(2) provides it must comply with the following parts of the Determination:

- Division 3 of Part 5 where, if the removal were to occur, no payphone would remain at the site from which the payphone is removed; or
- Division 4 of Part 5 where, if the removal were to occur, one or more payphones would remain at that site.

The provider must also comply with Division 5 of Part 5, which sets out requirements in relation to a final decision about a payphone removal.

However, if a primary universal service provider proposes to permanently relocate a payphone from one site (current site) to another site (new site), subsection 24(3) specifies which parts of the Determination it must comply with as applicable:

- Division 2 of Part 5 in relation to the proposal to install the payphone at the new site; and
- Division 3 of Part 5 where the removal would result in there being no payphone at the current site and the new site is located more than 200 metres from the current site; and
- Division 4 of Part 5 in relation to a payphone removal proposal where that proposed removal would result in either at least one payphone remaining at the current site or no payphones at the current site, but the new site is located within 200 metres of the current site; and
- Division 5 of Part 5, which sets out obligations on a primary universal service provider in relation to making a final decision about a payphone removal proposal.

Division 2 – Location of a payphone

Section 25 – Notification of payphone location proposal

This section requires a primary universal service provider to provide written notification when it has made a preliminary decision to install a payphone. The provider must notify the relevant local government body, as well as the owners or occupiers of each residential and business premise within 50 metres of the proposed site. There is no specific requirement for the provider to consult with the owner or occupier of the proposed site (as the case may be), as those discussions would necessarily need to be settled before any broader notification to other stakeholders.

This section also requires that this notice must include certain information. For example, it must describe the exact location of the site at which the payphone is proposed to be located and the date by which it is intended that a final decision be made regarding the proposal – which must be a minimum of 42 days. A primary universal service provider must in all cases publish notices on its website, and where reasonably practical, also take steps to publish those notices in a local newspaper. Notices published on a primary universal service provider’s website must be kept for

six months after the date of the final decision regarding the installation of the payphone.

Notices published on a primary universal service provider's website and, if reasonably practical, in a local newspaper, must also invite people to make submissions on the proposal and provide an explanation of how such a submission can be made.

These notification requirements are so that relevant persons who may have an interest in the proposed location of a payphone have an opportunity to make a submission on whether or not they support or disagree with the proposal.

Subsection 25(3) provides a limited exemption to the notification obligations where a payphone is proposed to be installed at a site in accordance with a commercial agreement between a primary universal service provider and the owner of the site, provided the site is an airport, a transport hub, a commercial retail site (including a shopping centre), a campus of a tertiary education institution, a correctional facility or a hospital. These are all sites at which typically no new payphone could be installed unless the owner or manager of the site agrees to the installation, and it would be redundant to require a primary universal service provider to notify other stakeholders of the proposal when the ultimate decision on the installation will involve the provider gaining commercial agreement from the owner of the site.

Section 26 – Final decision—payphone location proposal

This section provides that a primary universal service provider may only make a final decision to install a payphone at a site if it has met the notification obligations set out in section 25. The provider must take into account all the submissions it has received regarding the proposal, and must not make a final decision regarding the proposed location of the payphone before the date it has previously specified as the date by which it intended to make its final decision (which must be a minimum of 42 days).

Section 27 – Final decision notification requirements—payphone location proposal

This section requires a primary universal service provider, as soon as practicable after it has made a final decision regarding a payphone location proposal, to provide written notification of the final decision to the relevant local government body and any person who made a submission on the proposal. The notification must include:

- a statement of the final decision;
- the reasons for the final decision;
- an explanation of any differences which may exist between the proposal and the final decision; and
- details of how a person who disagrees with the final decision may make a complaint to the primary universal service provider.

Subsection 27(3) also provides that the primary universal service provider, as soon as practicable following its final decision to locate a payphone at a site, must publish the details of its decision and keep these details on its website for six months.

Division 3 – Payphone removal—no payphone remaining at site

This Division deals with requirement to provide notifications so that relevant stakeholders are aware of, and can make submissions on, proposed removals of a payphone in instances where no payphone would then remain at a site.

Section 28 – Application of this Division

Paragraph 28(1)(a) provides for the requirements in the Division to apply where a primary universal service provider proposes to relocate a payphone from one site (current site) to another site (new site). Paragraph 28(1)(b) also specifies that this Division applies where a primary universal service provider proposes to relocate a payphone from one site (current site) to another site (new site) and that would result in there being no payphone at the current site and the new site is located more than 200 metres from the current site. A note advises readers that where a relocation involves a new site located within 200 metres of the current site, Division 4 of Part 5 applies.

Subsection 28(2) further clarifies that this Division does not apply where a payphone removal arises as a direct result of the property owner of the site at which the payphone is located having withdrawn its consent to retain the installation of the payphone at the site. This reflects that, if consent for a payphone to be located at a site cannot be reasonably maintained, the universal service provider is likely to have little to no discretion in relation to the timing for the removal of payphone, and providing notifications, preparing a detailed consultation document and inviting submissions on the removal would not change the outcome.

However, in all cases, as part of decision making around the removal of a final payphone from a site, a primary universal service provider will separately need to be able to demonstrate as per paragraph 21(1)(b) that one or more relevant criteria apply for the proposed removal. The criteria includes, depending on the circumstances, that the provider has taken reasonable steps required to obtain relevant approvals to continue to maintain the payphone at the site.

A note also clarifies that if a payphone is temporarily removed (in accordance with section 21), the notification requirements in Division 3 do not apply.

Section 29 – Notification of payphone location proposal—no payphone remaining at site

This section requires a primary universal service provider to provide written notification when it proposes to remove the final payphone from a site. The provider must notify the relevant local government body, as well as the owner or occupier of the land (as applicable) from which the payphone is proposed to be removed. This notice must include certain information and be in a certain form. For example, it must describe the exact location of the site at which the payphone is proposed to be removed, the details of the nearest payphone to the payphone which is proposed to be removed and the date by which it is intended that a final decision be made regarding the proposal – which must be a minimum of 42 days. The notice must also include an explanation of how a person may make a submission to the primary universal service provider during the consultation period and details of how a person may request and obtain further information about the provider’s proposal by telephone, post or email.

Paragraph 29(b) provides that a copy of the notice, where reasonably practicable, must be attached to the payphone or payphone cabinet, or otherwise displayed near the payphone. Alternatives are provided to deal with the possibility that it may not always be possible to display a notice on the payphone (as some payphones do not have payphone cabinets).

A primary universal service provider must also, in all cases, place notices on its website and, where reasonably practical, take steps to publish notices in a local newspaper. Notices published on the provider's website must be kept for six months after the date of the final decision regarding the removal of the payphone. This is to provide transparency in the event that a person wishes to complain or object to a final decision (in accordance with Part 6).

Section 30 – Requirements of display notice

This section provides a copy of the notice required by paragraph 29(b) must be clearly visible to a person using the payphone (if attached to the payphone or payphone cabinet) or otherwise clearly visible to the public and placed within the line of sight of a person using the payphone. Notices attached to, or displayed near, payphones must be printed in indelible ink.

These display notices are required so that people who either use the payphone or live and work within the vicinity of the payphone are aware of the removal proposal and have an opportunity to make a submission either supporting or disagreeing.

Section 31 – Requirements of payphone removal consultation document

This section requires a primary universal service provider to prepare and publish a payphone consultation document where it is proposing to remove the final payphone from a site. This is in addition to the notices required by section 29.

A copy of the payphone removal consultation document must be made available on the first page of the section of the primary universal service provider's website relating to payphones at least 42 days prior to the intended final decision date; and maintained online for the duration of the consultation period and until six months after the date of the final decision.

The consultation document must comply with guidelines (if any) issued by the ACMA detailing the format for a payphone consultation document. It must set out reasons for the proposed removal, including facts upon which the proposal is based and, if reasonable, evidence proving those facts.

The consultation document must include a statement about which criteria under paragraph 21(1)(b) of Part 4 is considered to apply to the proposed payphone removal. That paragraph sets out four possible reasons for removing a payphone. They are:

- maintaining the payphone at the payphone site would not deliver a net social benefit to the local community;
- there is demonstrated community support for the removal of the payphone from the payphone site;

- the primary universal service provider cannot continue to reasonably operate the payphone at the payphone site; or
- if the existing payphone site is at a place or area of a type described in Division 1 of Schedule 1 – a payphone is to be relocated at a new payphone site within that place or area.

The payphone consultation document must also include information on how a person may make a complaint to the primary universal service provider about a final decision on a payphone removal, and a notification (for the purposes of the *Privacy Act 1988*) indicating that a primary universal service provider may be required to disclose a complainant’s personal information to the ACMA. This possibility arises because, should any person advise the ACMA that they object to a final decision on a payphone removal, the primary universal service provider must provide the ACMA with copies of all submissions and complaints about the proposal. More detail on complaints and objections is set out in Part 6 of the Determination.

The requirement to prepare and publish a payphone consultation document provides members of the public with detailed information about a primary universal service provider’s reasons for the proposed removal, given the outcome may be that no payphone will continue to be located at a site. It also provides people wishing to make a submission on the proposal with an opportunity to review and address the specific matters set out in the consultation document.

Division 4 – Payphone removal—at least one payphone remaining at site

Division 3 of Part 5 addresses proposed removals of payphones where at least one payphone would remain at the site. A primary universal service provider must still provide notification on these proposed removals and seek submissions, but is not required to prepare a detailed consultation document. This reflects that, in this circumstance, irrespective of the final decision, at least one payphone would still remain at the site.

Section 32 – Application of this Division

Paragraph 32(1)(a) provides that the Division applies where a primary universal service provider is proposing to remove a payphone, but at least one payphone would remain at the site. Paragraph 28(1)(b) also specifies that this Division applies where a primary universal service provider proposes to relocate a payphone from one site (current site) to another site (new site) and either there will still be at least one payphone at the current site following the proposed removal, or the new site is within 200 metres of the current site. A note advises readers that, where a relocation involves a new site located more than 200 metres of the current site, Division 3 of Part 5 applies.

Subsection 32(2) also clarifies that the notification requirements do not apply where a payphone removal arises as a direct result of the property owner of the site at which the payphone is located having withdrawn its consent to retain the payphone at the site. If ongoing consent for a payphone to be located at a site cannot be reasonably maintained, the universal service provider is likely to have little to no discretion in relation to the timing for the removal of the payphone, and providing notifications

inviting submissions on the removal would not change the outcome. However, it would always remain open to the provider to negotiate with the site owner or consider other available legal avenues if it had particular concerns about consent to retain a particular payphone being removed (noting that in this case, at least one other payphone would still remain at the site).

A note reminds readers that if a payphone is temporarily removed (in accordance with section 21), the requirements in Division 4 also do not apply.

Section 33 – Notification of payphone removal proposal—at least one payphone remaining at the site

This section provides that a primary universal service provider must provide written notification to the relevant local government body and the owner or occupier of the land (as applicable) from which the payphone is proposed to be removed, of the payphone removal proposal.

‘Required removal notice information’ is defined in section 5 (interpretation) and sets out the information that needs to be provided in written notifications, including a description of the site and the street address, if applicable, from which the payphone is proposed to be removed. It must also include details of the other payphones which are located at the relevant site, the date by which a primary universal service provider intends to make a final decision regarding the proposal and an explanation of how a person may make a written submission to the primary universal service provider during the consultation period. The notification must also provide details of how a person may request, and obtain, further information by telephone, post or email regarding the proposal from a primary universal service provider.

This notification must be provided at least 42 days prior to the intended final decision date and must also be prominently published on the first page of the section of the primary universal service provider’s website relating to payphones. This notification must also be maintained on a primary universal service provider’s website until six months after the date of the final decision regarding the payphone removal proposal.

Division 5 – Final decision—payphone removal proposal

Section 34 – Final decision—payphone removal proposal

This section provides that a primary universal service provider may only make a final decision to remove a payphone from a site if the primary universal service provider has given notification of a payphone removal proposal in relation to the removal of a payphone from the site in accordance with the rules set out at Division 3 or 4 of Part 5, as applicable. A final decision may not be made earlier than the intended final decision date.

In making a final decision regarding a payphone removal proposal, a primary universal service provider must take into account all the submissions received regarding the proposal.

Section 35 – Final decision notification requirements—payphone removal proposal

This section means that as soon as practicable after a primary universal service provider has made a final decision regarding a payphone removal proposal, it must notify the relevant local government body and the owner or occupier of the land from which it is proposed the payphone will be removed, as well as any person who made a submission. This notification must include a statement of its final decision (including if and how it differs from the removal proposal), the reasons for the decision, the number of submissions received and a summary of the content of those submissions.

The notification must also explain how a person can make a complaint to the primary universal service provider regarding the removal of the payphone, and advise that a person may also be able to make an objection to the ACMA about the final decision within 10 business days. More detail on the operation of complaint and objection processes are set on in Part 6 of the Determination.

A note explains to readers that ACMA may make a direction to a primary universal service provider, under either subsections 12EI(2) or (3) of the Act, to not remove a payphone or to supply and install a payphone at a particular location within a specified period (where a payphone has already been removed).

The final decision and associated information regarding a payphone removal proposal must be promptly published and maintained on the primary universal service provider's website for a period of six months after the date of the final decision.

Division 6 – Other rules in relation to the location or removal of a payphone

Section 36 – Responding to request for further information

If a person requests further information from a primary universal service provider regarding a payphone location proposal (for which Division 2 applies) or a payphone removal proposal (for which Division 3 or 4 applies) prior to the intended final decision date, as relevant, the provider must respond within 14 days. A primary universal service provider must provide a response in writing if requested to do so. This provides flexibility as a person might contact the primary universal service provider with a straightforward request that can be answered verbally without necessitating a detailed written response.

Further, where a request for further information involves a payphone location proposal, the primary universal service provider must include in any written response the reasons for the proposal, including details of the alleged facts upon which the proposal is based and a statement about which criteria under paragraph 20(2)(b) are considered to apply to the proposed payphone location. Paragraph 20(2)(b) provides that a primary universal service provider does not have to install a payphone if the payphone would not deliver a net social benefit to the local community, or if the provider cannot reasonably install and operate a payphone at a new payphone location. In that case, to the extent that it is available, and it is reasonable for the primary universal service provider to disclose it, it must also provide evidence to

substantiate the reasons for the proposal. In this context, releasing commercial-in-confidence material may not be reasonable, but equally, it is expected that the primary universal service provider will seek to provide a reasonable level of evidence on request.

Part 6 – Rules about resolution of complaints regarding final decisions on the location or removal of payphones

This Part requires a primary universal service provider to develop and maintain an accessible payphone complaint process and ensure the options available for making complaints are low cost or free, and flexible, and relevant timeframes associated with the complaints process are clear. It also provides that any objections (in relation to a final decision to remove a payphone) can be referred to the ACMA, but only once a primary universal service provider has first had an opportunity to seek to address any complaints.

Division 1 – Payphone complaint process

Section 37 – Primary universal service provider must develop payphone complaint process

Section 38 – Complaint process must be made publicly available

These sections provide that a primary universal service provider must develop and maintain a payphone complaint process concerning final decisions on installation or removal of payphones. The details of the complaint process must be publicly available, including by publishing details prominently on the first page of the primary universal service provider's section of its website relating to payphones. The complaints process must set out payphone complaint and objection timeframes, the details of how a complaint can be made (including allowing for complaints to be made orally, in writing, or via electronic and non-electronic means) and set out the relevant contact details or address where complaints can be submitted.

The provision for both written and oral complaints gives flexibility to members of the public who may wish to make a complaint. However, complaints received orally are to be recorded in writing as soon as practicable. This ensures details of all complaints are recorded and can be provided to the ACMA if it is asked to review a complaint about a final decision involving a payphone removal.

Subsection 37(3) provides the payphone complaint process does not extend to payphones that are not supplied in fulfilment of the universal service obligation or a complaint in relation to a payphone that is not the responsibility of a primary universal service provider.

However, Subsection 37(4) provides that a payphone is to be taken to be provided for the purposes of complying with the universal service obligation even if a primary universal service provider has entered into, or will enter into, an arrangement with another provider for the supply, management, operation or maintenance of the payphone. This is to prevent a primary universal service provider from engaging in an activity, such as leasing a payphone to another person, which could enable it to avoid the requirement to follow a complaints process in relation to that payphone.

Division 2 – Receiving payphone complaints

Section 39 – Manner of receiving payphone complaints

The intention of this section is to make the complaints process as straightforward as possible. A primary universal service provider must provide low cost or free, and flexible, means for members of the public to make a complaint (either in writing or orally) about a final decision regarding the location or removal of a payphone.

A primary universal service provider cannot impose a fee, charge or penalty on any person or entity in relation to the receipt or handling of a payphone complaint.

A primary universal service provider must make publicly available the details of the means by which a payphone complaint may be made, including on the part of its website relating to payphones. It must also maintain freecall general service contact numbers and multi-lingual enquiry lines to enable persons to obtain information about making a written complaint or to make an oral complaint to do so.

In addition to these requirements, a primary universal service provider must provide a person with reasonable assistance to make a complaint. This requirement has been included to ensure that the process for making a complaint is as straightforward as possible. Reasonable assistance includes but is not limited to providing detail of the processes the primary universal service provider follows in determining a payphone location or removal, and providing any additional information from the public that would assist the primary universal service provider in considering a payphone complaint.

Section 40 – Acknowledge receipt of complaint

This section provides that a complaint reference number must be allocated to each complaint received. A primary universal service provider must also provide a person who has made a payphone complaint with an acknowledgement of receipt of the complaint, including the complaint reference number, within 5 business days of receiving the complaint. This is to support proper management of complaints, ensuring that a person making a complaint knows that their complaint has been received. Allocation of a complaint reference will also assist the ACMA if it receives objections in relation to a final decision regarding removal of a payphone.

Division 3 – Resolving complaints

Section 41 – Principles for the resolution of payphone complaints

This section requires that a primary universal service provider investigate and seek to resolve all payphone complaints in an efficient, fair and timely way. These words are intended to have their ordinary meanings. While it is expected the complaint process should seek, as far as practical and reasonable, to resolve all complaints received, a resolution considered satisfactory to both parties may not necessarily be able to be achieved in all instances.

Section 42 – Response to payphone complaint

This section provides that a primary universal service provider must respond to a payphone complaint in writing within 20 business days of receiving the complaint referencing the complaint reference number. However, if a primary universal service provider is reasonably satisfied no further action is required to investigate or address the payphone complaint, it must state its reasons for this. This reflects that while a primary universal service provider should respond to substantive complaints, it is equally not expected to direct resources to respond to vexatious or frivolous complaints, or complaints that lack detail. Accordingly, a note provides that reasons for not addressing a payphone complaint may be because a complaint lacks sufficient information to enable further investigation or resolution, or because the primary universal service provider has previously received and addressed a payphone complaint relating to the same final decision. The definition of a complaint (see section 5 (interpretation)) makes clear that a complaint does not include a general request for information or other assistance to enable a person to make a payphone complaint or an issue that is the subject of legal action.

If applicable, the response must advise that the person may apply to the ACMA in writing for a review of that decision (if the complaint relates to a final decision to remove a payphone). A note clarifies that the ACMA will only review a final decision to remove a payphone once the primary universal service provider has first responded to a complaint received (or has otherwise advised its reasons for not investigating or addressing the payphone complaint). This reflects that the primary universal service provider should first have an opportunity to seek to address these type of complaints before they are considered by the regulator.

Otherwise, if a primary universal service provider proposes to take further action to investigate or resolve a complaint, it must continue to keep the complainant reasonably informed of the steps that are being taken, and the outcome of those steps.

Section 43 – Retention of records and provision of information to the ACMA

This section provides that a primary universal service provider must retain all materials collected and recorded in relation to a payphone complaint for a period of at least two years following the resolution of the complaint. A primary universal provider must retain records of any complaints and its response (or reasons why it did not investigate or address the payphone complaint), and related information and documents. Depending on the circumstances, that will include its reasons for installing or removing a payphone, copies of notices provided, details of its final decision, and if applicable, a copy of the payphone consultation document and details of the public consultation conducted in relation to the payphone removal proposal.

This section also provides that if ACMA notifies a primary universal service provider that it has received an objection to a final decision to remove a payphone and the ACMA intends to conduct a review, it must provide the ACMA with all relevant materials within 10 business days. This will ensure, in considering any objection, that ACMA has ready access to all relevant documents to inform its decisions.

Section 44 – Payphone must not be removed if decision is subject to a complaint or objection

The section establishes that once a primary universal service provider has made a final decision to remove a payphone, it cannot immediately proceed to remove a payphone. This is to allow any complaints to the primary universal service provider (or subsequent objections to the ACMA) to run their course.

A primary universal service provider can proceed to remove a payphone if no complaints are received within 20 business days of its notification of its decision to remove a payphone.

Otherwise, if one or more complaints are received, the primary universal service provider must first respond to each of those complaints. Once those complaints have been responded to, and if no written objection is then made to the ACMA, the payphone can then be removed.

In the event an objection about the payphone removal is made to the ACMA, the payphone cannot be removed by a primary universal service provider until the ACMA advises that it has completed its consideration of the objection (and its decision is to allow the payphone to be removed).

The first note at the end of this section clarifies a person has 10 business days in which they may make a written objection to the ACMA. The second note draws attention to the legislative basis for ACMA to give directions about the removal of payphones. The third note is included to clarify the timeframe in which the ACMA is expected to consider any objection to the removal of a payphone, being within 45 days from notification of the objection. The note makes clear that this timeframe is indicative, and it may be extended by the ACMA.

Schedule 1 – Places and areas

Schedule 1 further defines the places and areas that may constitute category 1, category 2 and category 3 payphone locations. Definitions and explanation of the operation of the categories is provided in the notes for section 5 (interpretation).

Division 1 – Category 1 payphone locations

This sets out the places and areas that constitute ‘category 1 payphone locations’. This includes places and areas such as retail centres; entertainment venues; residential communities in cities and towns with an average or high level of home telephone connection; industrial or commercial areas and small villages and towns (including holiday areas) with a permanent population of 200 or more persons.

Division 2 – Category 2 payphone locations—eligible places and areas

This provides a table with places and areas that constitute ‘category 2 payphone locations’ and distances from the places and areas within which a payphone must be located. While these places and areas reflect category 1 payphone location, they differ in that the eligible area extends to cover all places and areas located within a specified

radius of the original place or area. For example, a category 2 payphone location may include places and areas located within one kilometre of retail centres; within two kilometres of industrial and commercial areas; and within 100 kilometres of small service centres on highways and major roads in rural and remote areas where there is inadequate mobile phone coverage.

Division 3 – Category 3 payphone locations—eligible places and areas

This part lists places and areas that constitute ‘category 3 payphone locations’ and distances from the places and areas within which a payphone must be located. While these places and areas replicate some of the category 1 and category 2 payphone locations, they differ in that the eligible area extends to cover places and areas located within a larger radius to the original location than with a category 1 or 2 payphone location. For example, a category 3 payphone location extends to places and areas within a 250 kilometre radius of small service centres on highways and major roads in rural and remote areas where there is inadequate mobile service.

Statement of Compatibility with Human Rights

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

Telecommunications (Payphones) Determination 2022

Overview

The Universal Service Obligation (USO) is a long-standing legislated consumer safeguard that provides that standard telephone services (STS) and payphones are reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business. The USO is set out in the *Telecommunications (Consumer Protection and Service Standards) Act 1999* ('the Act'). Telstra is responsible for delivering the STS and payphone USO. The USO forms part of the Government's Universal Service Guarantee (USG) for broadband and voice.

Beyond the overarching statutory objective that requires payphones to be reasonably accessible, the Act provides the Minister can determine payphone performance standards (subsection 12ED) and payphone benchmarks (subsection 12EE), make rules about the location of payphones (subsection 12EF), make rules about the process for public consultation on the location or removal of payphones (subsection 12EG) and make rules about the process for resolution of complaints about the location or removal of payphones (subsection 12EH). Such rules were originally made through instruments made by the responsible Minister in late 2011 and which commenced from 1 January 2012. The purpose of the *Telecommunications (Payphones) Determination 2022* (the Determination) is to replace in consolidated form (with minimal changes) the five previous payphone instruments, which would otherwise sunset on 1 April 2022.

The Determination accordingly repeals the five previous instruments (the *Telecommunications Universal Service Obligation (Location of Payphones) Determination 2011*; *Telecommunications Universal Service Obligation (Payphone Performance Standards) Instrument (No. 1) 2011*; *Telecommunications Universal Service Obligation (Payphone Performance Benchmarks) Instrument (No. 1) 2011*; *Telecommunications Universal Service Obligation (Public Consultation on the Location or Removal of Payphones) Determination 2011*; and *Telecommunications Universal Service Obligation (Payphone Complaint Rules) Determination 2011*).

Human rights implications

No human rights issues were raised during the consultation process. The Determination does not engage any of the applicable rights or freedoms, and is compatible with the rights and freedoms recognised or declared by the international instruments listed in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* as they apply to Australia. Access to telecommunications services is increasingly seen as important to broader social, economic, political and cultural participation. The USO regime is focused on maximising such access, along with the wider USG of which it is part.

Conclusion

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