

Submission to the Australian Communications and Media Authority



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Restricted Access Systems Declaration

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1. Introduction

- 1.1 Vodafone Australia welcomes the opportunity to comment on the draft Restricted Access Systems (RAS) Declaration. Further, Vodafone appreciates the consultative approach adopted by the Australian Communications and Media Authority (ACMA) during the drafting of the RAS Declaration.
- 1.2 Vodafone notes that the Australian Mobile Telecommunications Association (AMTA) is providing a submission to ACMA on the draft RAS Declaration. Vodafone supports the comments made in the AMTA submission.
- 1.3 Vodafone supports the policy objectives of the RAS Declaration. As articulated by ACMA in the discussion paper, these include:
 - (a) protecting children from exposure to content that is unsuitable for children; and
 - (b) protecting children who have not reached 15 years from exposure to content that is unsuitable for children who have not reached 15 years.
- 1.4 While broadly supporting these objectives, Vodafone has concerns with the way in which they are realised through the draft RAS Declaration. Vodafone considers that certain obligations placed on mobile carriers are onerous and commercially unsupportable.
- 1.5 Specifically, Vodafone contends that the concept of an 'access key' is onerous on business and legitimate customers, out of step with international experience, and commercially burdensome and unnecessary.
- 1.6 Vodafone also has serious concerns about the differences between the *Telecommunications Service Provider (Mobile Premium Services) Determination 2005 (No. 1)* (MPS Determination) and the way in which the draft RAS Declaration has been drafted. Vodafone has invested heavily, both financially and strategically, in developing a restricted access system that will meet the specific requirements of the MPS Determination. The differences between the MPS Determination and the draft RAS Declaration could have significant commercial and procedural consequences for Vodafone.
- 1.7 In addition this submission will address Vodafone's concerns with the MA15+ Access Key, Age Verification Plans and Risk Assessments, and the financial impacts of the draft RAS Declaration on industry.

2. Restricting access to Age Restricted Content

- 2.1 Vodafone's interpretation of the 'access key' concept, as outlined in the draft RAS Declaration, requires Vodafone to implement a restricted access system that would issue a unique Personal Identification Number (PIN) or password to any customer who successfully applies to 'unlock' the RAS. This PIN or password would then need to be entered by the customer on every occasion that the customer seeks to access restricted content.
- 2.2 Vodafone does not support the concept of an 'access key' as described above for the following reasons:
- (a) The access key concept is a prescriptive notion of the way in which the policy objectives of protecting children from harmful content can be achieved and appears to be an unintended consequence of the interpretation of the *Content Services Act 2007*;
 - (b) The draft RAS Declaration represents a significant departure from the way in which access to age restricted content was outlined in the MPS Determination. The approach in the draft RAS Declaration is overly onerous and burdensome on industry;
 - (c) The public interest consideration of protecting children can be achieved using alternative methods;
 - (d) Vodafone has invested a significant amount of money to develop a restricted access system to restrict on-net content and comply with the current MPS Determination. Vodafone is extremely concerned that this system will not meet the new requirements as outlined in the draft RAS Declaration. This is at odds with the statement in the RAS consultation paper that the RAS Declaration would allow 'industry participants to implement a restricted access system that is both robust and compatible with their business models'.
- 2.3 The 'access key' concept goes beyond the scope of the *Content Services Act 2007* and imposes a narrow interpretation of the Act on industry. The definition of 'access control system' in the Act states that it is:
- a system under which:*
- (a) *persons seeking access to the content have been issued with a Personal Identification Number that provides a means of limiting access by other persons to the content; or*
 - (b) *persons seeking access to the content have been provided with some other means of limiting access by other persons to the content.*

- 2.4 The draft RAS Declaration introduces the concept of an 'access key', stating it is:
- (a) *a password; or*
 - (b) *a Personal Identification Number; or*
 - (c) *any other means by which a person who has been granted access by the restricted access system can be identified.*
- 2.5 There is a fundamental difference between the definition of an access control system in the *Content Services Act 2007* and how it is described in the draft RAS Declaration. In the Act, the intention is about limiting access to content by a PIN or '*some other means*' whereas the draft RAS Declaration requires that a person who has already been granted access be further identified every time they seek access. This interpretation precludes the ability of industry to develop appropriate safeguards in relation to controlling access.
- 2.6 It is clear that this prescriptive approach in the draft RAS Declaration is a departure from the principles-based MPS Determination requirements. The MPS Determination provides an outcome based framework while providing industry the flexibility to develop appropriate solutions. It is unclear why there has been a policy shift away from the principles outlined in the MPS Determination.
- 2.7 Vodafone believes that there are a number of ways of achieving the policy objective of restricting access to age restricted content, and that the draft RAS declaration is far too prescriptive. Further, Vodafone contends that the approach outlined in the draft RAS Declaration makes dangerous assumptions about the effectiveness of issuing a PIN or password to restrict content (for example: that a PIN/password will not be shared with others; or that an unlocked handset will not be left in reach of children).
- 2.8 As such, Vodafone considers that an approach to restricting content that is multi-layered is essential, and a more effective way to mitigate against any risks. An example of the way in which an approach may be multi-layered are as follows:
- (a) A verification process to ascertain age and identity is an essential component of any RAS. This may be done through the use of a valid credit card, or some other form of identification by which age can be ascertained, for example driver's licence, proof-of-age card, passport or birth certificate in the name of the customer;
 - (b) The verification of age and identity is coupled with a requirement for a customer to use his or her mobile phone account password, or use other methods of adequately identifying themselves, for example providing a description of the mobile phone account usage history;
 - (c) A one-off unlocking of a customer's handset is confirmed, for example through a message on a customer's mobile phone account, or sending a SMS, or a credit/debit transaction on a customer's credit card bill; and

- (d) A level of personal responsibility is assumed, however, all customers are advised at the time of unlocking that it is advisable to lock their phones using a keypad lock and be mindful of children getting possession of their phone.

2.9 Vodafone holds that the concept of an 'access key' should be removed from the RAS Declaration.

2.10 Vodafone suggests that a more appropriate approach to restricting content is to adopt an outcome-based, principles approach that allows industry the flexibility to implement appropriate solutions to restricting access to content. In particular, it would be worthwhile to draw upon Clause 3.4(1)(2)(3) and (4) of the MPSD.

3. MA15+ Access Key

3.1 Vodafone supports the principle of allowing persons 15, 16 and 17 years of age to access age appropriate content within the MA15+ category.

3.2 While Vodafone supports this principled approach, at this time it is impractical for industry to develop age verification processes for the MA15+ age group given the lack of availability of suitable identification for those young adults of 15, 16 and 17 years of age.

4. Implementing the Age Verification Plan

4.1 Vodafone is concerned that the draft RAS Declaration significantly increases the burden on industry compared with the requirements for assessing risk and developing measures that currently exist under the MPS Determination.

4.2 In particular, Vodafone has concerns with the 'risk analysis' requirements of the age verification process.

4.3 The draft RAS Declaration requires an analysis of each type of evidence (for example passport, birth certificate, credit card, student card) and for each manner in which the evidence is received (for example electronic, in person, over the phone) whether the evidence could be used by a person other than the person it purports to identify or a person younger than the age the evidence attributes.

4.4 Requiring every provider to undertake such a risk analysis creates the potential for different conclusions across industry regarding the suitability or otherwise of evidence types and methods of receipt.

- 4.5 Vodafone is concerned that it will be difficult to assess compliance with the RAS Declaration as it pertains to the acceptable level of risk. It is entirely possible that carriers may choose very different age verification methods and settle on very different approaches to risk management. Additionally, it is unclear what ACMA considers an 'acceptable' level of risk, and therefore what may constitute a 'failure' of risk mitigation measures should this be a consideration in any ACMA activities – for example during an investigation – and the regulatory consequences of such.
- 4.6 Furthermore, Vodafone is concerned that the age verification and quality assurance measures as described in the draft RAS Declaration are overly prescriptive and therefore place an unnecessary and costly burden on industry. It is also questionable whether these will provide additional benefits to customers.
- 4.7 A principles and outcome based approach to the types of measures that must be documented for the age verification plan would allow a greater level of flexibility in industry's approach to the development of these plans.
- 4.8 The obligations described in the measures section are more burdensome than the current requirements of the MPS Determination, extending the requirements to include measures around the allocation of 'access keys'. This is particularly concerning given that the access obligations are also much more prescriptive than in the MPS Determination.
- 4.9 During its consultation with industry, ACMA provided industry with assurances that its intention was to develop a high level, outcomes focussed RAS Declaration. Vodafone contends that an example of an alternative, principles-based approach to describing the age verification and quality assurance measures requirements that must be captured could state:
- 4.10 The restricted access system must incorporate an age verification compliance plan that specifies the following:
- (a) The measures to be adopted by the Designated Content/Hosting Service Provider to ensure that an application has been received and that the age of the applicant has been verified as at least 15 years for access to MA15+ content and 18 years for access to R18+ content;
 - (b) The procedures to be followed by employees and agents of the Designated Content/Hosting Service Provider to implement the age verification measures;
 - (c) The measures that will be taken so that the Designated Content/Hosting Service Provider removes, without delay, an applicant's access to age restricted content, if the applicant's access is given in contravention to the requirements for access only

via a restricted access system, the receipt of a request for access and verifying the age of the applicant; and

(d) The procedures for conducting periodic internal review of the measures in the above paragraphs.

4.11 Vodafone contends that the 'risk analysis' section of the age verification plan should be removed from the draft RAS Declaration. Vodafone asserts that a more suitable approach to describing the age verification and quality assurance measures to be included in an age verification compliance plan would be to adopt the principles and outcome based description – as above.

5. Financial impact of the Restricted Access System

5.1 Vodafone is reassured that ACMA does not want to impose *'undue financial and administrative burdens on industry'*.

5.2 As discussed above, Vodafone's current restricted access system has been developed as an appropriate response to the requirements of the MPS Determination. Vodafone's solution does not include allowance for the allocation of a password or PIN as a part of the RAS.

5.3 The cost implication of altering Vodafone's RAS has not been determined. However, it is likely to have a significant impact. In particular, there will be costs associated with altering the technical solution and processes, in addition to the costs of lost revenue due to potential delays to amend the solution.

6. Conclusion

6.1 Vodafone supports restricting access to inappropriate content and is committed to implementing an appropriate and workable solution to achieve this objective.

6.2 However, Vodafone has serious concerns with the way in which this objective is to be achieved through the draft RAS Declaration. Vodafone considers that some of the obligations being placed on mobile carriers are overly onerous and would have serious commercial consequences for Vodafone.

6.3 Vodafone contends that the following changes to the draft RAS Declaration are required:

(a) the concept of an 'access key' should be removed;

- (b) the draft RAS Declaration should draw on Clause 3.4(1)(2)(3) and (4) of the MPS Determination to develop an outcome based, principles approach that allows industry the flexibility to develop appropriate solutions to restrict access to content;
- (c) the 'risk analysis' section of the age verification plan should be removed from the RAS Declaration; and
- (d) the age verification and quality assurance measures to be included in an age verification compliance plan should be principles and outcome based. An example of such an approach is described in paragraph 4.10.