

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Telecommunications Service Provider (Mobile Premium Services) Determination 2005 (No.1) Amendment Determination 2007 (No.1)

Background

On 13 May 2004 the Hon Daryl Williams, the then Minister of Communications, Information Technology and the Arts directed the former Australian Communications Authority (ACA) to establish interim regulatory controls on access to age restricted content supplied via mobile phones, whether the content was supplied by a premium rate Short Message Service (SMS) and Multimedia Message Service (MMS) or on mobile portals.

The ACA made the *Telecommunications Service Provider (Mobile Premium Services) Determination 2005* (No. 1) (MPS Determination) under section 99(1) of the *Telecommunications Act 1997* on 29 June 2005 to address these concerns.

The arrangements established under the MPS Determination were made pending the development of the Government's longer term approach to regulation of emerging content services.

In addition to the Minister's requirements, the ACA included consumer protection requirements in the MPS Determination relating to the transparency of cost of, and terms and conditions for use of premium services. It also provided for the registering of an industry self-regulatory scheme with an escalated complaints mechanism to a review body and rules for the inclusion of safety measures for mobile chat room services.

The Mobile Premium Services Industry Scheme (MPSI Scheme) was developed by industry and approved by ACMA on 28 September 2006. The MPSI Scheme is the self-regulatory scheme for the purposes of the MPS Determination.

Creation of Schedule 7 to the Broadcasting Services Act

The *Communications Legislation Amendment (Content Services) Act 2007* (the Content Services Act) was passed on 20 June 2007 and inserts a new Schedule 7 into the *Broadcasting Services Act 1992* (the Broadcasting Services Act). Schedule 7 is due to commence on 20 January 2008.

Schedule 7 amalgamates the regulation of all content services delivered via carriage services including premium rate SMS and MMS content and extends the legislative framework established to regulate internet content under Schedule 5, to a broad range of content services delivered on convergent devices. The Content Services Act also

repeals parts of Schedule 5 to the Broadcasting Services Act as it applies to content services and obligations on internet content hosts.

Schedule 7 will replace both the existing restricted access arrangements for internet content in place under Schedule 5 and the interim arrangements for mobile premium content under the MPS Determination and the MPSI Scheme established under that instrument.

Under Schedule 7, ACMA has the power to investigate complaints about prohibited content and potentially prohibited content for a broad range of content services, including content on the internet and mobile phones. It will also have the ability to monitor compliance with industry codes and undertake necessary enforcement action.

Clause 14 of Schedule 7 requires ACMA to make a restricted access systems declaration (RAS declaration) to regulate access to R18+ content and commercial MA15+ content, including internet content, live content services and mobile premium content where the service providing the content has an Australian connection.

Outline of Amendment Determination

The *Telecommunications Service Provider (Mobile Premium Services) Determination 2005 (No.1) Amendment Determination 2007 (No.1)* (amendment Determination) contains various amendments to the MPS Determination to omit content related provisions that are now dealt with by obligations in Schedule 7 to the Broadcasting Services Act and therefore to remove regulatory duplication. It also provides for transitional provisions to allow current ACMA investigations into contraventions of the current obligations of the MPS Determination related to the regulation of content to continue without interruption.

Consultation

The ACMA decided to consult as widely as possible and issued a media release inviting comment on the proposed amendment to the MPS Determination. A consultation paper and draft *Telecommunications Service Provider (Mobile Premium Services) Determination 2005 (No.1) Amendment Determination 2007 (No.1)* instrument was posted on the ACMA website on 26 October 2007 for public comment. A period of 30 days was provided for public, industry and representative body comment. Additionally, 33 stakeholders were emailed a copy of the consultation paper and draft amendment determination and were invited to comment on it.

The ACMA received 8 submissions from carriage service providers, mobile content providers and regulatory bodies. Some of these included the Australian Mobile Telecommunications Association, Communications Alliance Ltd, Australian Competition and Consumer Commission, Office of Consumer and Business Affairs South Australia and the Telecommunications Industry Ombudsman. The view expressed by stakeholders is that they support the proposed amendments to the MPS Determination as the matters are addressed in Schedule 7 to the Broadcasting Services Act.

Regulation Impact Statement

A Regulation Impact Statement is not required for the Determination as the changes are machinery in nature and the costs to industry and restrictions on competition are not significant. The ACMA RIS exemption reference number is 028.

NOTES ON SECTIONS

Section 1 - Name of Determination

Section 1 provides for the citation of the instrument.

Section 2 – Commencement

Section 2 provides that the Determination is to commence on the commencement of Parts 1 and 2 of Schedule 1 to the *Communications Legislation Amendment (Content Services) Act 2007*.

Section 3 – Amendment of Telecommunications Service Provider (Mobile Premium Services) Determination 2005 (No. 1)

Section 3 provides that Schedule 1 amends the *Telecommunications Service Provider (Mobile Premium Services) Determination 2005 (No.1)*

Section 4 – Transitional

Section 4 introduces transitional provisions to deal with any compliance action brought under the MPS Determination in respect of a contravention, suspected contravention, conduct taken or proposed to be taken, complaint made or action taken, or proposed to be taken, before the commencement for the amendments. These provisions will ensure that actions arising prior to the commencement of Schedule 7 will continue to be dealt with under the original provisions of the MPS Determination. For actions arising after the commencement of the Schedule 7, these will be dealt with under the new Schedule 7 provisions.

Schedule 1 – Amendments

[1] Section 1.1

Item 1 substitutes the name of the MPS Determination to the Telecommunications Service Provider (Mobile Premium Services) Determination 2005 after the amending determination commences.

[2] Section 1.3

Item 2 omits the definition of *age-restricted audio visual service, age-restricted content, age-restricted service, age-restricted text service, age verification compliance plan, Classification Board, classification guidelines, National Classification Code, prohibited content* and *telephone sex service* from the MPS

Determination as these terms will no longer be used in the MPS Determination as the sections that used these terms are to be repealed in later items.

[3] Subparagraph 2.2(a)(i)

Item 3 omits subparagraph 2.2(a)(i) of the objects of the MPS Determination as the Determination will no longer regulate age-restricted content. Regulation of content is now dealt with under Schedule 7 of the BSA.

[4] – Part 3

Item 4 omits Part 3 of the MPS Determination which deals with the prohibition and restriction of access to certain content from a mobile premium service. Part 3 also limits the supply of age-restricted premium SMS and MMS services to numbers beginning with the prefix 195 and 196 and requires mobile carriage service providers to maintain age verification compliance plans, which ACMA could audit, and keep a record of for each customer given access to age-restricted content. These obligations will hereafter be addressed by Schedule 7, included in the proposed RAS Declaration, inserted into the *Telecommunications Numbering Plan 1997* or removed completely from legislation.

[5] Paragraph 5.5(3)(b)

Item 5 amends paragraph 5.5(3)(b) to remove requirements under a self regulatory scheme for promotional material advertising age-restricted services.

[6] Paragraph 5.5(3)(c)

Item 6 omits paragraph 5.5(3)(c), which specifies that a self regulatory Scheme set out procedures for assessing the classification of mobile content.

[7] Paragraph 5.6(1)(c)

Item 7 omits paragraph 5.6(1)(c) which required the removal of content or access to content about which a complaint is made under a self regulatory complaints handling procedure.

[8] Subparagraphs 5.6(1)(f)(iii) and (iv)

Item 8 omits subparagraphs 5.6(1)(f)(iii) and (iv), which provided for a review body to obtain advice from the Classification Board regarding the classification of content about which a complaint is made and to rely on the advice of the Classification Board in determining a complaint.

[9] Subparagraph 5.6(1)(f)(v)

Item 9 amends subparagraph 5.6(1)(f)(v) to remove the requirement of a review body to audit the age-verification compliance plan of a member of a self regulatory scheme.

[10] Subparagraph 5.6(1)(f)(vi)

Item 10 amends subparagraph 5.6(1)(f)(vi) to remove the obligation of a review body under a self regulatory scheme to give directions to a member to remove content or access to content about which a complaint is made.

[11] Part 6

Item 11 omits Part 6 which detailed ACMA's enforcement powers in relation to the removal of content or access to content.