

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority
Telecommunications Act 1997

Telecommunications Numbering Plan Variation 2007 (No. 4)

Purpose of Variation

The purpose of the *Telecommunications Numbering Plan Variation 2007 (No. 4)* (the Variation) is to remove content provided on the prefixes 195 and 196 from the *Telecommunications Service Provider (Mobile Premium Services) Determination 2005 (No. 1)* (MPS Determination) and into the *Telecommunications Numbering Plan 1997* (the Plan). This is required because of the introduction of new regulatory measures, provided by Schedule 7 to the *Broadcasting Services Act 1992* (the Broadcasting Services Act), that remove the need for the regulation of mobile premium content under the MPS Determination.

Legislative Provisions

Subsection 455(1) of the *Telecommunications Act 1997* (the Act) provides that the Australian Communications and Media Authority (ACMA) must, by written instrument, make a plan for the numbering of carriage services in Australia and the use of numbers in connection with the supply of such services. This is the *Telecommunications Numbering Plan 1997* (the Plan). ACMA may vary the Plan under section 455 of the Act provided it:

- a) has regard to the obligations imposed on carriage service providers (CSPs) by Part 4 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the TCPSS Act) and recognised international standards in accordance with subsection 455(10) of the Plan;
- b) ensures that any person likely to be affected by the variation, where that variation is likely to have a direct, or substantially indirect, effect on business, or restrict competition, has been provided with adequate opportunity to comment as required by section 17 of the *Legislative Instruments Act 2003* (the LI Act);
- c) formally consults the Australian Competition and Consumer Commission (ACCC) before varying the Plan in accordance with section 461 of the Act; and
- d) releases the draft variation for 30 days public consultation if ACMA is of the opinion that the variation will affect a number issued to a customer or if it is otherwise considered in the public interest to consult, as provided by section 460(3) of the Act.

Background

On 13 May 2004, the Hon Daryl Williams, the then Minister of Communications, Information Technology and that 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 those concerns.

The MPS Determination included a prohibition on the supply of age-restricted content by way of SMS or MMS unless the content was supplied on a prefix or prefixes specified by the ACA. Prior to the creation of the MPS Determination, the Plan housed a restriction that a person must not use a premium rate number to supply prohibited content or adult services.

Once the MPS Determination was made and confined the provision of age-restricted services to numbers with a prefix of 195 or 196, the relevant provisions were removed from the Plan. In the MPS Determination, those prefixes had the practical effect of assisting end-users in recognising age-restricted services provided via SMS or MMS.

Creation of Schedule 7 of 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. 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 established under the MPS Determination.

Much of the mobile services regulation is being removed from the MPS Determination because of Schedule 7 and in order to avoid regulatory duplication. The restriction on age restricted content provided using prefixes 195 and 196 now needs to be moved out of the MPS Determination and placed in the Plan as this is now the more relevant place in which to regulate restrictions on numbers.

Public Consultation

Section 460 of the Act provides that public consultation must be undertaken where ACMA is of the opinion that a variation to the Plan will affect a number issued to a customer or if it is otherwise considered in the public interest to consult. Whilst the variation is not likely to have a direct or substantially indirect effect on business or restrict competition, given that the variation to the Plan stems from changes to the BSA and the MPS Determination, ACMA determined that it was in the public interest to consult. Consequently, ACMA released the draft Variation for public consultation on 30 October 2007 for a 30 day statutory period.

ACMA also conducted targeted consultation with the Numbering Advisory Committee (NAC)¹. This consultation, in addition to that conducted under section 460 of the Act, satisfies the requirements of section 17 of the LI Act.

Section 461 of the Act separately requires ACMA to formally consult the ACCC before varying the Plan. ACMA formally consulted the ACCC on 5 December 2007.

Regulation Impact

ACMA's preliminary assessment of the Variation indicates that it has no competition impacts on the parties to which it applies, and imposes no consequential compliance costs on the parties to which it applies. For those reasons, under the self-assessment regime administered by the Office of Best Practice Regulation, ACMA has determined there is no need to produce a Business Cost Calculator report or to prepare a Regulation Impact Statement. The ACMA RIS exemption reference number is 039.

Attachment

Details of the Variation are set out in Attachment 1.

¹ NAC membership is drawn from the telecommunications industry, business and consumer groups, customer equipment suppliers and government agencies.

ATTACHMENT 1

NOTES ON SECTIONS

Section 1 provides for the citation of the instrument.

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

Section 3 provides that Schedule 1 varies the *Telecommunications Numbering Plan 1997*.

Schedule 1 Variations

[1] Subsection 3.35A(1)

Item 1 amends subsection 3.35A(1) to include a new column, Column 3, into Schedule 4C. The new column describes the limits on the use of the prefixes and notes the supply of age-restricted services is limited to prefixes 195 and 196 only.

[2] After section 3.37

Item 2 inserts a new section 3.37A entitled 'Prefixes for age-restricted services'. This section reflects those requirements on mobile carriage service providers that were in section 3.3 of the MPS Determination. The new subsection 3.37A(1) provides that a mobile carriage service provider must not supply age-restricted services by way of premium SMS or MMS services, otherwise than on a number with a prefix of 195 or 196. Subsection 3.37A(2) sets out when a mobile carriage service provider is taken not to have contravened subsection 3.37A(1). Subsection 3.37A(3) sets out the matters that ACMA must have regard to in determining whether a contravention of subsection 3.37A(1) has taken place;

[3] Schedule 4C

Item 3 substitutes a new four column Schedule 4C, to include the new Column 3 which sets out the limits on the use of a number. Within that column is a reference to the fact that the prefixes 195 and 196 must be used to supply age-restricted services only.

[4] Dictionary, after definition of *advisory committee*

Item 4 inserts a definition for *age-restricted audio-visual service*, *age-restricted content*, *age-restricted service* and *age-restricted text service*.

[5] Dictionary, after definition of *message transfer part*

Item 5 inserts a definition of *mobile carriage service provider*.

[6] Dictionary, after definition of *premium rate service*

Item 6 inserts a definition of *premium SMS or MMS service*.

[7] Dictionary, after definition of *supplementary control service*

Item 7 inserts a definition of *telephone sex service*.