



# Telecommunications (Service Provider — Identity Checks for Pre-paid Public Mobile Telecommunications Services) Amendment Determination 2004 (No. 1)

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The AUSTRALIAN COMMUNICATIONS AUTHORITY makes this Determination under subsection 99 (1) of the *Telecommunications Act 1997*.

Dated 2004

Chair

Member

Australian Communications Authority

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## **1 Name of Determination**

This Determination is the *Telecommunications (Service Provider — Identity Checks for Pre-paid Public Mobile Telecommunications Services) Amendment Determination 2004 (No. 1)*.

## **2 Commencement**

This Determination commences on the date of its notification in the *Gazette*.

## **3 Amendment of *Telecommunications (Service Provider — Identity Checks for Pre-paid Public Mobile Telecommunications Services) Determination 2000***

Schedule 1 amends the *Telecommunications (Service Provider — Identity Checks for Pre-paid Public Mobile Telecommunications Services) Determination 2000*.

## Schedule 1 Amendments

(section 3)

### [1] Section 1.4, after definition of *agent*

*insert*

***approved compliance plan*** means a compliance plan approved by the ACA under section 4A.4, including any amendment to the plan approved under section 4A.5, that has not been revoked under section 4A.7 or 4A.8.

### [2] Section 1.4, note, after the first dot point

*insert*

- agency (see s 7)
- agency co-ordinator (see s 7A)

### [3] Subsection 2.1 (3), note

*substitute*

*Note* In addition to complying with the rules set out in this Determination, a carriage service provider must also comply with the rules set out in Part 1 of Chapter 5 of the *Telecommunications (Emergency Call Service) Determination 2002* and Schedule 2 to the Act — see subsection 101 (1) of the Act. See, in particular, the rules set out in Part 4 of Schedule 2 to the Act (which relate to the provision by carriage service providers to Telstra of information in connection with the maintenance of an integrated public number database).

### [4] Subsections 2.2 (1) and (2)

*substitute*

- (1) A carriage service provider who supplies a pre-paid public mobile telecommunications service to a person must not activate the service unless the carriage service provider has:
  - (a) in accordance with the rules set out in Part 3 (the ***Part 3 rules***), collected certain identifying information about, and, if necessary, verified the identity of, the purchaser of the service at the point of sale of the service; or
  - (b) in accordance with the rules set out in Part 4 (the ***Part 4 rules***), collected certain identifying information about, and, if necessary, verified the identity of, the end-user of the service by means of a call from the end-user using the service that is automatically diverted to the carriage service provider after the completion of the sale of the service; or

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- (c) in accordance with an approved compliance plan, collected certain identifying information about, and, if necessary, verified the identity of, the end-user of the service.

*Note* Usually, a pre-paid public mobile telecommunications service that is not activated cannot receive calls and can only be used to make calls to the emergency call service or to the carriage service provider.

- (2) The carriage service provider must keep a record, in relation to each pre-paid public mobile telecommunications service supplied, of whether the carriage service provider complied with the Part 3 rules, the Part 4 rules or an approved compliance plan.

**[5] After subsection 2.2 (4)**

*insert*

- (5) If the carriage service provider authorises an agent to supply pre-paid public mobile telecommunications services for the carriage service provider, and the authorisation states that the agent is authorised to comply with the carriage service provider's approved compliance plan in relation to the supply of all pre-paid public mobile telecommunications services supplied by the agent for the carriage service provider, the agent must not activate a pre-paid public mobile telecommunications service supplied by the agent for the carriage service provider unless the agent has complied with the approved compliance plan.
- (6) The carriage service provider must not authorise an agent to prepare a compliance plan, or apply for approval of a compliance plan.

**[6] After Part 4**

*insert*

## **Part 4A Alternative method for collection of information and verification of identity of end-users**

### **4A.1 Application of Part 4A**

This Part sets out the rules with which a carriage service provider must comply if the carriage service provider wishes to collect information about, and, if necessary, verify the identity of, the end-user of a pre-paid public mobile telecommunications service in accordance with an approved compliance plan.

*Note* This Part is intended to provide an alternative method for the collection of information and verification of the identity of end-users of pre-paid public mobile telecommunications services. If a carriage service provider wishes to collect information and, if necessary, verify the identity of end-users of pre-paid public mobile telecommunications services, the carriage service provider may use the method set out in Part 4 or the method set out in this Part.

#### **4A.2 Preparation, approval and amendment of compliance plan**

- (1) The carriage service provider must:
  - (a) prepare a compliance plan in accordance with section 4A.3; and
  - (b) apply to the ACA for approval of the compliance plan under section 4A.4.
- (2) If a carriage service provider wishes to amend an approved compliance plan, the carriage service provider must apply to the ACA for approval of the amendment under section 4A.5.

#### **4A.3 Content of compliance plan**

- (1) A compliance plan must be in writing.
- (2) A compliance plan must include the following:
  - (a) a description of the pre-paid mobile telecommunications services that the carriage service provider offers or intends to offer, and wishes to be covered by the proposed compliance plan;
  - (b) a description of the kind of sales and distribution channels for pre-paid mobile telecommunications services to be covered by the arrangements under the proposed compliance plan;
  - (c) if applicable, a description of each method the carriage service provider is currently using under this Determination to collect information and verify customer identity;
  - (d) a description of the proposed arrangements for the collection of the information mentioned in clauses 1 and 2 of Part 1 of Schedule 1 for an end-user who is an individual;
  - (e) a description of the proposed arrangements for the collection of the information mentioned in clauses 1 to 4 of Part 2 of Schedule 1 for an end-user who is not an individual;
  - (f) a description of the proposed arrangements (if any) for the collection of other identifying information about the end-user of the service;
  - (g) a description of each strategy that the carriage service provider proposes to use to try to prevent pre-paid public mobile telecommunications services being used in, or in relation to, the commission of criminal offences against a law of the Commonwealth or of a State or Territory;
  - (h) a description of each strategy that the carriage service provider proposes to use to try to ensure that accurate customer data is collected and maintained.

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*Note* A carriage service provider's arrangements for collecting and verifying identifying information about end-users of pre-paid mobile telecommunications services must comply with Commonwealth privacy and anti-discrimination laws (for example, the *Privacy Act 1988*, the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1974*, the *Disability Discrimination Act 1992* and the *Human Rights and Equal Opportunity Act 1986*).

- (3) For paragraph (2) (b):  
***sales and distribution channels***, for pre-paid mobile telecommunications services, means the ways in which a carriage service provider makes the pre-paid mobile telecommunications services available for sale and distribution to an end-user.

#### **4A.4 Approval of compliance plan**

- (1) If the ACA receives an application from a carriage service provider for approval of a compliance plan, the ACA must:
- (a) consider the application; and
  - (b) decide to approve or refuse to approve the compliance plan; and
  - (c) as soon as practicable after making the decision, give the applicant written notice of the decision.
- (2) A notice under paragraph (1) (c) about a decision to refuse to approve a compliance plan must include the reasons for the decision.
- (3) If the ACA requires further information about the application, the ACA must ask the applicant, in writing, for the information.
- (4) The ACA must consider the following matters in deciding whether to approve a compliance plan:
- (a) the written views of the Agency Co-ordinator on whether the compliance plan will satisfy the information needs of agencies;
  - (b) whether the compliance plan will facilitate the collection of identifying information about the end-users of pre-paid public mobile telecommunications services;
  - (c) whether the compliance plan will facilitate greater innovation in the provision of:
    - (i) pre-paid public mobile telecommunications services to end-users; or
    - (ii) assistance to officers and authorities of the Commonwealth and of the States and Territories under subsection 313 (3) of the Act;
  - (d) any other relevant matter.
- (5) The ACA must make a decision under subsection (1) within 1 month after the later of:
- (a) receiving the written views of the Agency Co-ordinator; and
  - (b) if the ACA requires further information, receiving the further information.

*Note* A person affected by a decision under this section may apply to the ACA for the ACA to reconsider the decision: see section 555 of the Act and paragraph 1 (g) in Schedule 4 to the Act. An application may be made to the Administrative Appeals Tribunal to review a decision under this section if the ACA has affirmed or varied the decision under section 559 of the Act: see section 562 of the Act.

#### **4A.5 Approval of amendments of approved compliance plan**

- (1) If the ACA receives an application from a carriage service provider for approval of an amendment of an approved compliance plan, the ACA must decide whether the proposed amendment would result in a significant change to the approved compliance plan.
- (2) If the ACA decides that the proposed amendment would not result in a significant change, the ACA must decide to approve the proposed amendment.
- (3) If the ACA decides that the proposed amendment would result in a significant change, the ACA must:
  - (a) consult the Agency Co-ordinator about whether the compliance plan will satisfy the information needs of agencies; and
  - (b) decide whether to approve or to refuse to approve the amendment.
- (4) In making a decision under paragraph (3) (b), the ACA must consider the following matters:
  - (a) the written views of the Agency Co-ordinator on whether the amended compliance plan would satisfy the information needs of agencies;
  - (b) whether the amended compliance plan would facilitate the collection of identifying information about the end-users of pre-paid public mobile telecommunications services;
  - (c) whether the amended compliance plan would facilitate greater innovation in the provision of:
    - (i) pre-paid public mobile telecommunications services to end-users; or
    - (ii) assistance to officers and authorities of the Commonwealth and of the States and Territories under subsection 313 (3) of the Act;
  - (d) any other relevant matter.
- (5) The ACA must give the carriage service provider written notice of a decision under subsection (2) or paragraph (3) (b) as soon as practicable after making the decision.
- (6) A notice under subsection (5) about a decision to refuse to approve an amendment of a compliance plan must include the reasons for the decision.

*Note* A person affected by a decision under this section may apply to the ACA for the ACA to reconsider the decision: see section 555 of the Act and paragraph 1 (g) in Schedule 4 to the Act. An application may be made to the Administrative Appeals Tribunal to review a decision under this section if the ACA has affirmed or varied the decision under section 559 of the Act: see section 562 of the Act.

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#### **4A.6 Contravention of approved compliance plan**

A carriage service provider must comply with an approved compliance plan in relation to collecting information about, and, if necessary, verifying the identity of, the end-user of a pre-paid mobile telecommunications service covered by the plan.

*Note* The effect of rule 4A.6 is that if a carriage service provider contravenes an approved compliance plan, the carriage service provider contravenes this Determination. A rule set out in this Determination is a service provider rule: see section 98 of the Act. Under section 101 of the Act, a service provider is required to comply with the service provider rules that apply to that service provider.

#### **4A.7 Revocation of approved compliance plan — by carriage service provider**

A carriage service provider may revoke an approved compliance plan only if the carriage service provider has given the ACA written notice of its intention to revoke the plan.

*Note* If a carriage service provider revokes an approved compliance plan, the carriage service provider must comply with Part 3 or 4 — see subsection 2.2 (1) and the definition of *approved compliance plan*.

#### **4A.8 Revocation of approved compliance plan — by ACA**

- (1) If the ACA is satisfied, on reasonable grounds, that a carriage service provider has not complied with an approved compliance plan to a significant extent, the ACA must give the carriage service provider written notice of the ACA's intention to revoke the approved compliance plan.

*Note* The ACA intends that if a carriage service provider is unable to ensure that its agents comply with the approved compliance plan, this will be a ground for believing that the carriage service provider has not complied with the approved compliance plan to a significant extent.

- (2) A notice under subsection (1) must include:
  - (a) the grounds mentioned in subsection (1); and
  - (b) a statement setting out the effect of subsections (3), (4), (5), (6), (7), (8) and (9).
- (3) A carriage service provider that receives a notice under subsection (1) may, within 21 days after the date of the notice, give the ACA a written notice objecting to the revocation of the plan.
- (4) A notice under subsection (3) must include the grounds on which the carriage service provider objects to the revocation.
- (5) If the ACA requires further information about the objection, the ACA must ask the carriage service provider, in writing, for the information.

- (6) If a carriage service provider receives a request for information under subsection (5), the carriage service provider must give the information to the ACA within 21 days after the date of the request.
- (7) The ACA must decide to revoke or not to revoke the plan as soon as practicable after the later of:
  - (a) the end of the period in which the carriage service provider could have given the ACA a notice under subsection (3); and
  - (b) if the ACA requires further information, the end of the period in which the carriage service provider must give the information to the ACA under subsection (6).
- (8) The ACA must give the carriage service provider written notice of a decision under subsection (7) as soon as practicable after making the decision.
- (9) A notice under subsection (8) about a decision to revoke an approved compliance plan must include the reasons for the decision.

*Note 1* If the ACA revokes carriage service provider's approved compliance plan, the carriage service provider must comply with Part 3 or 4 — see subsection 2.2 (1) and the definition of *approved compliance plan*.

*Note 2* A person affected by a decision under this section may apply to the ACA for the ACA to reconsider the decision: see section 555 of the Act and paragraph 1 (g) in Schedule 4 to the Act. An application may be made to the Administrative Appeals Tribunal to review a decision under this section if the ACA has affirmed or varied the decision under section 559 of the Act: see section 562 of the Act.

**[7] Paragraph 5.1 (2) (e)**

*substitute*

- (e) the information collected in accordance with an approved compliance plan;
- (f) any other information that the ACA requires, by notice in writing to the carriage service provider, to be recorded.

**[8] Section 5.2**

*substitute*

**5.2 Agent to keep records**

- (1) If a carriage service provider authorises an agent:
  - (a) to supply pre-paid public mobile telecommunications services for the carriage service provider; and

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- (b) to comply with the rules in Part 3 in relation to the supply of the services;

the carriage service provider must make arrangements with the agent to ensure that the agent complies with the record-keeping requirements in section 5.1 (except the requirements in paragraphs 5.1 (2) (d) and (e)) in relation to each pre-paid public mobile telecommunications service supplied by the agent for the carriage service provider.

- (2) If a carriage service provider authorises an agent:

- (a) to supply pre-paid public mobile telecommunications services for the carriage service provider; and

- (b) to comply with the carriage service provider's approved compliance plan, in relation to the supply of the services;

the carriage service provider must make arrangements with the agent to ensure that the agent complies with the record-keeping requirements in section 5.1 (except the requirements in paragraphs 5.1 (2) (c) and (d)) in relation to each pre-paid public mobile telecommunications service supplied by the agent for the carriage service provider.

**[9] Paragraph 7.1 (b)**

*substitute*

- (b) does not supply the information required under either the rules in Part 3, the rules in Part 4 or an approved compliance plan.