



Submission in response to  
ACMA consultation

**Emergency Call Service  
Determination: Proposed  
amendments to ensure  
mobile phones can access  
the Triple Zero (000)  
emergency call service**

Public Version

October 2024

## EXECUTIVE SUMMARY

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1. Optus welcomes the opportunity to provide feedback to the ACMA's consultation on proposed amendments to the Emergency Call Service (ECS) Determination to ensure mobile phones can access the emergency call service. The Minister for Communications has directed the ACMA to make amendments to the ECS Determination to address this matter.
2. Optus supports the overarching intention that consumers have confidence in their mobile phone's ability to access the emergency call service. The proposed changes to the Determination seek to give effect to this by requiring providers take action that would mean consumers would be unable to use their mobile phone. Relevant notification obligations are also included.
3. Optus notes that this approach will require the ACMA to consider consumer experience concerns and the technical feasibility of achieving such an outcome when implementing the Minister's Direction.
4. Where possible Optus supports flexible drafting of the amendments to the Determination, noting that the outcome of ensuring a consumer cannot use their mobile phone can be achieved by different technical means. Specifically, the ECS Determination should ensure it does not preclude device blocking as this will deliver a better consumer experience. Optus further considers flexible drafting is needed given the ECS Determination obligations are imposed on CSPs who do not operate mobile networks.
5. Optus also considers flexible drafting in the approach to new customers is needed, where information may be limited about whether a consumer's mobile phone device will be able to access the emergency call service.
6. Finally, Optus supports additional measures focussing on the capability of mobile phone devices, including:
  - (a) the establishment of an independent device testing regime to inform an independently maintained register; and
  - (b) clear requirements and enforcement of a relevant Australian Standard (AS/CA S042.1:2022).
7. This is so that mobile network operators (MNOs), mobile virtual network operators (MVNOs) and consumers can have confidence in fulfilling requirements under the ECS and in the capability of mobile phone devices to access the emergency call service.

## PROPOSED CHANGES TO THE ECS

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8. The Minister for Communications has directed the ACMA to make various amendments to the ECS Determination with amendments regarding access to the Triple Zero emergency call service to be made in full by 1 November 2024 (the Direction).<sup>1</sup>
9. These amendments are to give effect to objectives relating to requirements for "...providers to identify mobile phones that are unable to access the emergency call service and take steps to notify the end user and cease providing service to these devices".<sup>2</sup>
10. The Direction specifies that the ECS Determination be amended to give effect to the following objectives:
  - (a) Carriage service providers be required to identify if the mobile phone of an end-user requesting the supply of carriage services from the provider is able to access the emergency call service using both:
    - (i) The operator's own network; and
    - (ii) The networks of other carriage service providers who provide carriage services to the public;
  - (b) Where an end-user's mobile phone is unable to access the emergency call service using either the provider's own network or the networks of other carriage services providers who provide carriage services to the public, the carriage service provider is:
    - (i) To notify the end-user that the mobile phone is not able to access the emergency call service;
    - (ii) Not to supply carriage services to the end-user in connection with that mobile phone;
    - (iii) To provide the end-user with information about alternative mobile phones available, including low cost or no cost mobile phones, which are able to access the emergency call services; and
    - (iv) To ensure the carriage service provider's payment assistance policy includes avenues for financial hardship customers to receive assistance to obtain a low cost or no cost alternative mobile phone which is able to access the emergency call service;
  - (c) Carriage service providers be required to use best endeavours to promptly identify if any end-user's mobile phone to which carriage services are being provided is no longer able to access the emergency call service using either:

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<sup>1</sup> Minister for Communications, Australian Communications and Media Authority (Emergency Call Service Determination) Direction 2024, 21 August 2024.

<sup>2</sup> Explanatory Statement, Australian Communications and Media Authority (Emergency Call Service Determination) Direction 2024, pp. 6-7.

- (i) The provider's own network; or
  - (ii) The networks of other carriage service providers who provide carriage services to the public;
- (d) Where an end-user's mobile phone is no longer able to access the emergency call service using either the provider's own network, or the networks of other carriage service providers who provide carriage services to the public, the carriage service provider is to:
  - (i) Within a specified period, notify the end-user that the mobile phone is no longer able to access the emergency call service;
  - (ii) At the end of a specified period, cease supplying carriage services to the end-user in connection with that mobile phone;
  - (iii) Provide the end-user with information about alternative mobile phones available, including low cost or no cost mobile phones, which are able to access the emergency call service; and
  - (iv) Ensure the carriage service provider's payment assistance policy includes avenues for financial assistance customers to receive assistance to obtain a low cost or no cost alternative mobile phone which is able to access the emergency call service, and
- (e) There be an exception to the objectives referred to in (2)(b)(ii) and (2)(d)(ii) where:
  - (i) The mobile phone is being used by a foreign traveller in Australia who intends to remain in Australia for period of time which less than a specified period of time; and
  - (ii) The foreign traveller has been notified by the carriage service provider that the mobile phone is not able to access the emergency call service.

11. Essentially, the Direction aims to address a potentially serious policy issue, which is that technical changes may occur which means that a mobile phone may not be configured to access the emergency call service yet may otherwise continue operating as usual. In those circumstances, the intention is consumers may not be aware their mobile may not be able to access the emergency call service and should be made aware of this so that they can take action.

#### **Flexibility is needed in how the outcome is achieved**

12. The Ministerial Direction and proposed ECS Determination require that when a CSP identifies that a mobile phone is not capable of accessing the emergency call services (even if otherwise able to be used) the CSP cease supply of the carriage services so that the consumer is no longer able to use a mobile phone handset and is then prompted to take action.
13. Optus considers the policy outcome can be achieved by different technical means, some of which are easier to implement than others. Simple blocking of the device's ability to use the underlying carriage service has the same technical effect as ceasing supply of the carriage service itself but with added benefits that as soon as the consumer has a compatible device the SIM can be transferred to that device and the service used immediately.

14. If a provider ceases supply of the carriage service the consumer must contact the service provider to reactivate the carriage service. This is greater inconvenience and a less desirable consumer experience.
15. Another option may be for a provider to suspend the service instead of cancelling the service completely. A provider could reactivate the service once the consumer has a compatible device. Again, providers should have flexibility in implementing the technical measures required to give effect to the intention the consumer is not able to use the mobile phone handset.
16. Another additional reason for flexibility where possible, is that the Direction and ECS Determination are crafted to place obligations on carriage service providers (CSPs). Not all CSPs operate mobile networks (approximately 11% of the Australian mobile market is MVNOs).
17. While a CSP supplies the carriage service to the consumer and is the one who can cancel or suspend supply of the service, it is the mobile network operators who operate the network. MNOs have greater access to information about device ability to access emergency call services and may also be able to implement a technical measure at the network level that would also achieve the same outcome as an MVNO cancelling the service.
18. Optus considers greater flexibility in the drafting of amendments would enable MNOs to work with their wholesale MVNO customers to implement a solution that achieves the same technical outcome of a consumer not being able to use their mobile phone device in these scenarios where services are supplied by an MVNO.
19. Finally, there can be challenges in relation to obligations for new customers (s. 62 and 63). There are various factors that can impact whether a device is able to access the emergency call service and this may not be known to the CSP when the customer requests a service.
20. This includes the make/model of a device as well as the firmware on the device and even if the device was purchased overseas (devices sold in Australia must meet the relevant Australian standard).
21. At present, in the lead up to switching off 3G networks, makes/models not capable of accessing emergency call services can be listed on a 'blacklist' as not being able to access emergency call services. However, otherwise, it can only be determined if a mobile phone handset can/cannot access emergency call services once the phone connects to a mobile network.
22. Therefore, at point of sale, a CSP could only be confident a device can access the emergency call service is if it is purchased from the CSP and has the relevant regulatory compliance mark of meeting the Australian Standard (AS/CA S042.1:2022).
23. Otherwise, whether the device can access the ECS would need to be determined once the phone has connected to the mobile network. Further, Optus notes that due to differences between MNO networks, a device may be able to access emergency call services from one MNO network but not others. This would not be known to the network provider / CSP providing the service.
24. Optus supports an independent testing regime to inform an independently maintained register of devices that can access the ECS on all mobile networks. We note that until such a long-term solution is available, MNOs have in place arrangements where devices that are determined not to support the ECS will be blocked. However, Optus

considers that long-term an independent testing regime and independently maintained list will give confidence to industry and consumers as to the veracity of any advice about a mobile handset's capabilities.

25. However, until such time as an independent testing regime is implemented, Optus would welcome clarification in the amended ECS Determination and accompanying explanatory statement that, if it is not known whether a device's make/model will not access the emergency call service, then the device can be considered as capable of accessing the emergency call service until any subsequent information informs the provider otherwise. At which time the provider would need to follow the notification steps for a device that is 'no longer' configured to be able to access the ECS before taking technical steps to ensure the customer cannot use the mobile phone.
26. Specific responses to the ACMA's questions are contained in the following table.

## RESPONSE TO CONSULTATION PAPER QUESTIONS

27. Optus' responses to the consultation paper questions are in the table below.

<b>Question 1</b>
<p>Do the proposed amendments to the ECS Determination fulfil the objectives and content requirements of the direction? If not, please explain why, and describe any alternative or additional approaches that could be used to meet the objectives and requirements of the direction.</p>
<b>Response</b>
<p>A suggested clarification is that the ECS Determination should only apply to a standard telephone service (STS) which is used to access the emergency call service (ECS), and not to all carriage services (that is, should not encompass data only services). Optus considers this is consistent with the overarching policy objectives because consumers would not have an expectation that a data only device is able to be used to contact the emergency call service.</p> <p><b>[CiC begins:] [CiC ends]</b></p> <p>Optus requests that to assist with implementation the requirements be linked to a standard telephone service so that the requirements do not inadvertently affect users where those users have no expectation of being able to use the device to call the ECS. This would be an unintended consequence of the amendments.</p> <p>Optus also considers there could be some minor drafting amendments to sections 63 and 65, and accompanying explanation in the ECS Determination's explanatory statement, to give flexibility in achieving an outcome with the same effect as not supplying or ceasing to supply a service. For example:</p> <p>63(2)The CSP must:</p> <ul style="list-style-type: none"><li>(a) not supply carriage services to the customer in connection with the mobile phone; or</li><li>(b) take action which has the same effect as not supplying carriage services to the customer in connection with the mobile phone.</li></ul> <p>Or:</p> <p>65(4) Between 8 and 15 days after sending the fourth notification under paragraph (2)(d), the carriage service provider must:</p> <ul style="list-style-type: none"><li>(a) cease to supply any carriage services to the end-user in connection with the mobile phone; or</li><li>(b) take action which has the same effect as ceasing to supply carriage services to the end-user in connection with the mobile phone.</li></ul> <p>A drafting note or explanation in the explanatory statement could note that the action the provider could take should have the effect the same as ceasing to supply the service, that is, the end-user is unable to use their voice service.</p>
<b>Question 2</b>

Is the ordinary meaning of mobile phone sufficient noting that the direction does not intend to inadvertently capture other communication devices such as internet of things devices or medical alert devices? If not, please explain what the definition of mobile phone should be and provide reasons.

**Response**

Optus considers that the term 'mobile phone' be defined to ensure it is clear what the requirements are intended to apply to. Optus suggests a definition for "mobile phone" could be something like:

'Mobile phone means customer equipment capable of voice communications when connected to or intended for use in connection with a standard telephone service using a mobile network. For clarity, it excludes devices such as Internet of Things (IoT) devices, smartwatches and medical alert devices.'

**Question 3**

Can a carriage service provider currently identify whether the mobile phone that a customer proposes to use to access its network is configured to be able to access the emergency call service before service is supplied to that mobile phone?

**Response**

No, where a consumer is not acquiring a mobile phone from Optus and is simply acquiring a SIM only plan, Optus is not able to proactively identify whether the mobile phone the customer proposes to use is configured to be able to access the emergency call service before service is supplied.

Optus notes that for SIM only plans for new customers, even where a mobile phone make/model is listed on a blacklist, Optus would only be able to confirm that the mobile phone is not configured to be able to access the emergency call service once the device has connected to the network.

**Question 4**

Can providers currently identify whether a mobile phone that a customer proposes to use is configured to be able to access the emergency call service on the mobile networks of other providers before service is supplied to that mobile phone?

**Response**

No. It would only be possible to determine a phone would not work if it had already been identified and listed on a blacklist of devices that will not be capable of accessing the emergency call service.

Optus notes that it is also possible for a phone to be able to access the emergency call service on one MNO's network and not on others. Optus' view is that if a device is only able to access the ECS on one mobile network but not others it should not be considered capable of accessing the ECS at all.

**Question 5**

If the answer to either of Questions 3 and 4 is no, what additional information would be needed to give effect to such a requirement? Is that information currently available?

**Response**



Where phones are not purchased in Australia there is no way of knowing if those phones would meet the relevant Australian Standard (AS/CA S042.1:2022).

It is simply not possible to technically determine if a device can access the ECS until a phone connects to a mobile network.

An independent testing regime which could classify whether phones are capable of accessing the ECS could then provide industry with this necessary information.

#### **Question 6**

If a mobile phone is configured to be able to access the emergency call service using both the network of the carriage service provider supplying carriage service to it, and the networks of other providers supplying carriage services to the public, can a carriage service provider that is supplying service to the mobile phone identify whether that mobile phone will 'camp-on' to another network if required? If not, please explain why and indicate what additional information would be required to enable a carriage service provider to identify the 'camp-on' capability of a mobile phone.

#### **Response**

No, it is not clear the consumer's provider would be able to identify that a mobile phone device is able to camp on to another network if required, unless that mobile phone was purchased from the provider.

Where the mobile phone is not purchased from the provider, other variables that affect the ability of the device to access the ECS (such as the firmware on the mobile phone or whether the device was purchased overseas and may not comply with the relevant Australian standard) may mean the device is not able to camp on to other networks.

Where a consumer does not acquire a handset from their provider, at point of sale, a provider could only have some degree of confidence as to a device's capability if there is an independent testing regime and list of devices maintained that goes to the capabilities of those devices.

Optus is of the view that until such a testing regime is in place and informing an independent register/list of devices, until that time if any MNO confirms that a device is not able to access the ECS on their network, the device should not be used by consumers on any mobile network as camp on may not be possible.

#### **Question 7**

What information do (or can) providers know about a mobile phone when it has connected to a provider's network?

#### **Response**

Once the mobile phone connects to the MNO's mobile network, based on the phone's IMEI, the MNO can then determine the TAC (Type Allocation Code) for that device based on the IMEI.

Once the TAC is known, the MNO can check the GSMA TAC database (the GSMA allocates TACs to device makes/models in compliance with standards, industry agreed practice and worldwide regulatory requirements) to determine if devices with that TAC have 4G calling capability. However, further consultation would be needed with the original equipment manufacturer to confirm if the 4G calling capability extends to the emergency call service.

**Question 8**

Can providers:

- (a) identify the make/model number of a mobile phone once it has connected to its network?
- (b) share information with each other to identify mobile phones that cannot access the emergency call service on mobile networks?

**Response**

- (a) Yes
- (b) Providers may be able to share certain technical information with other providers, noting that this would be subject to the information the provider has available to it and Privacy Act obligations (that is, whether technical information may be considered 'Personal Information' under the Privacy Act, for example an IMEI, IMSI and/or mobile number would likely be considered Personal Information).

**Question 9**

Based on information that is available or will be available to providers on 1 November 2024, indicate the number or proportion of mobile phones to which providers currently supply service, that providers may no longer be able to supply service to because of the requirements in the draft amendments to the ECS Determination. Please explain your response indicating which provision/s is relevant to your answer.

**Response**

[CiC begins:]

[CiC ends]

**Question 10**

What are the minimum reasonable steps that a carriage service provider should take to identify whether a customer's mobile phone can access the emergency call service on their network and the networks of other carriage service providers?

**Response**

What is likely to be considered 'reasonable' will vary depending on the capabilities of the provider, factors related to the device itself and if there is a long-term solution for independent testing and an independently maintained register in place.

Optus notes the capabilities of a CSP are likely to be more limited than the capabilities of an MNO.

In addition, as previously noted, there are variables that could impact whether a device is able to access the emergency call service (such as, the make/model of the device, the firmware installed, including if the device was purchased overseas).

Finally, it is anticipated there will be a long-term solution for industry involving independent testing and an independently maintained register.

Therefore, reasonable steps could include some or all of the following:

- Consulting the original equipment manufacturer;
- Where there is an industry list/register in place, checking with that industry list/register;
- Device testing of the hardware and software together to confirm ECS compatibility (noting this is unlikely to be possible/feasible for devices acquired overseas given the hardware and software need to be paired together for testing, the software will likely be unknown and the sheer volume of overseas variants and firmware permutations globally);
- Spot checking random samples of devices on the network for compatibility and/or behaviours;
- Checking device behaviour on the network if there are any emergency call records available; and
- Following any other industry agreed processes regarding devices.

If a provider sells mobile phone devices itself, it should ensure in future it:

- sells devices compliant with the relevant Australian Standard and/or
- undertake its own testing of new devices to market to ensure they have emergency calling capability.

#### **Question 11**

Should any groups of carriage service providers be exempt from the obligations? Or should there be different obligations on certain sub-sets of carriage service providers? If so, please explain.

#### **Response**

Optus does not have a specific recommendation however notes that challenges arise as the ECS Determination obligations apply to CSPs yet MNOs have the technical capability to determine if a device is able to access the ECS.

Optus recommends ensuring obligations are drafted more broadly so that CSPs and MNOs are able to establish processes that meet the overarching intentions.

#### **Question 12**

Can a carriage service provider identify whether a mobile phone that it is supplying carriage services to can no longer access the emergency call service? If not, what, if any, additional information would providers need to identify such phones?

#### **Response**

A CSP that does not operate a mobile network would not be able to determine this information by its own technical/operational means.

A CSP that does operate a mobile network (i.e. a carrier) may be able to in limited circumstances (as has happened with the switch off of the 3G networks).

However, going forward an independent mobile phone testing regime should be established to test devices, particularly those that have been updated after the date of the device's original supply to market, to inform an industry list/register that MNOs and

CSPs can rely on.
<b>Question 13</b>  Does this raise any issues for end-users that should be considered?
<b>Response</b>  Optus has noted elsewhere that flexibility in the drafting of the requirements would be welcome to ensure a better customer experience.
<b>Question 14</b>  Is the rolling set of notifications to ensure that end-users have sufficient time to change mobile phones before their services are disabled appropriate? If not, why not?
Optus believes this time is sufficient. Based on our experience with other network shutdowns it does not need to be longer as consumers can fail to take action. Further, we would consider three notifications usually sufficient to prompt consumers to take action.
<b>Question 15</b>  Should any other information be included in notifications to help the end-user to prepare for the disabling of their carriage services and prompt them to action?
<b>Response</b>  Optus considers the proposed notification requirements in section 65 are sufficient, noting that depending on the channel of notifications to customers in future (sms or email) space may be limited. It is always preferable to keep important notifications like this clear and concise.
<b>Question 16</b>  Noting that the disabling of service to an end-user's mobile phone will require the end-user to obtain another mobile phone, do providers have any data available or information relevant to the assessment of the likely cost of this requirement to end-users of mobile services?
<b>Response</b>  Optus notes a range of low-cost unlocked mobile phone handsets are available from various retailers (e.g. JB Hifi; Harvey Norman; Dick Smith, Kogan, Big W, Woolworths) for as little as \$99.
<b>Question 17</b>  Should the Determination specify the acceptable forms of notification, or leave this undefined to provide flexibility to carriage service providers to determine appropriate methods of notification?
<b>Response</b>  Optus would recommend leaving this flexible, noting that other consumer law requirements continue to apply (including communications obligations in the TCP Code). The more operationally prescriptive requirements are the more difficult they are to

implement.
<p><b>Question 18</b></p> <p>Should any groups of carriage service providers be exempt from the obligations? Or should there be different obligations on certain sub-sets of carriage service providers? If yes, please explain.</p>
<p><b>Response</b></p> <p>Optus has already noted some of the challenges with addressing this policy issue and the supply of mobile services by MNOs and MVNOs. As noted, we recommend flexibility where possible and an industry testing regime and whitelist which all providers could use going forward.</p>
<p><b>Question 19</b></p> <p>Are carriage service providers able to confirm that a person requesting the supply of a mobile service is a foreign traveller to Australia and the period of time that such a person may intend to stay in Australia?</p>
<p><b>Response</b></p> <p>Not easily. Relying on the exception in s. 67 would require building these questions into the sales process across all channels (in store, telesales, online etc) and then relying on the response of the customer, which is more complex implementation.</p>
<p><b>Question 20</b></p> <p>Where a foreign traveller roams on more than one network in Australia, the proposed amendment would require all carriage service providers that handle roaming to comply with the notification requirement. Is this appropriate? If not, why not?</p>
<p><b>Response</b></p> <p>A mobile network operator would not normally provide service notifications to an international traveller roaming on their network because they do not have a service relationship with that traveller. The MNOs relationship is a contractual roaming agreement with the traveller's overseas MNO. It is possible a traveller may not pay attention to any such notification given it is not from their service provider.</p>
<p><b>Question 21</b></p> <p>Should the exception involving foreign travellers in Australia be limited to situations where the carriage service provider is being approached in Australia to supply services? This would exclude the requirements from applying to international roamers. If not, why not?</p>
<p><b>Response</b></p> <p>Optus acknowledges the intention to assist industry with the exception in section 67, however, as currently crafted Optus considers the exception is unlikely to be relied upon.</p> <p>Where a traveller seeks to acquire a SIM only plan for use while they are in Australia, Optus does not consider this should be treated differently to Australian consumers acquiring a SIM only plan and Optus would propose to block their mobile phone device if Optus determined the device was unable to access the ECS consistent with the</p>

overarching public safety intention of the Direction.

To do otherwise would unnecessarily put the person at risk in an emergency situation. The same issue would arise with roamers whose lives could be put at risk if they are exempted and permitted to use handsets that rely on 3G for emergency calling.

**Question 22**

Is the 60-day period for foreign travellers to use carriage services on mobile phones that are not able to access the emergency call service appropriate? If not, why not, and what alternative timeframe would be appropriate?

**Response**

See response to question 21.

**Question 23**

For carriers and carriage service providers, what are the likely costs and benefits of implementation for your organisation? (Please provide specific cost estimates in your response.) Are there alternative ways to achieve the objective of the direction that would be consistent with its terms and provide for lesser costs and/or greater benefits?

**Response**

**[CiC begins:]**

**[CiC ends]**

We note that if the objective of the direction is to ensure customers cannot use their mobile phone where it has been identified that the phone handset is incapable of accessing emergency call services, this can be achieved in a number of ways, the most cost effective of this is by blocking the ability of the phone handset to use the service supplied to the customer.

**Question 24**

The ACMA is seeking feedback on whether there are:

- Additional matters aligned to the objectives that should be included in the proposed amendments to the ECS Determination?
- Matters included in the proposed amendments to the ECS Determination for which alternative arrangements that should be considered?

Please provide evidence to support your position.

**Response**

Optus has no further comments.