

Premium voice services

Review of the Telecommunications Service Provider (Premium Services) Determination 2004 (No. 1)

Consultation paper

MARCH 2013

Canberra

Purple Building
Benjamin Offices
Chan Street
Belconnen ACT

PO Box 78
Belconnen ACT 2616

T +61 2 6219 5555
F +61 2 6219 5353

Melbourne

Level 44
Melbourne Central Tower
360 Elizabeth Street
Melbourne VIC

PO Box 13112
Law Courts
Melbourne VIC 8010

T +61 3 9963 6800
F +61 3 9963 6899

Sydney

Level 5
The Bay Centre
65 Pirrama Road
Pymont NSW

PO Box Q500
Queen Victoria Building
NSW 1230

T +61 2 9334 7700
1800 226 667
F +61 2 9334 7799

© Commonwealth of Australia 2013

This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Commonwealth. Requests and inquiries concerning reproduction and rights should be addressed to the Manager, Editorial Services, Australian Communications and Media Authority, PO Box 13112 Law Courts, Melbourne Vic 8010.

Published by the Australian Communications and Media Authority

Contents

Introduction	1
Regulatory context	1
Purpose of this paper	1
Background	1
The Premium Services Determination	3
Overview	3
Information requirements	3
Provision of information	4
Prepaid customers	4
Post-paid customers	4
Current environment	5
Proposed options for the determination	5
Option 1	5
Option 2	6
Option 3	6
Questions for consideration	6
Invitation to comment	7
Submissions	7
Evidence-based regulation	7
Effective consultation	7
Publication of submissions	7
Release of submissions where authorised or required by law	8
Status of this paper	8
Appendix 1—Premium Services Determination	9

Introduction

Regulatory context

The premium voice services market has undergone significant change since the Telecommunications Service Provider (Premium Services) Determination 2004 (No. 1) (the Determination) was made in May 2004. The Determination has been in operation for nearly nine years without change. As a legislative instrument, it is subject to the sunset provisions of the *Legislative Instruments Act 2003* (the LIA). The LIA provides that legislative instruments will automatically cease to be in force after 10 years of operation unless action is taken to preserve them. In these circumstances, the Australian Communications and Media Authority (the ACMA) considers that it is timely to review the Determination.

Purpose of this paper

The ACMA is releasing this consultation paper to inform a review of the Determination to assess whether it is meeting its objectives and if the objectives are still relevant. The consultation paper canvasses three options:

- > Option 1—allow the Determination to sunset after 10 years of operation.
- > Option 2—revoke the Determination.
- > Option 3—remake the Determination and update the complaints-handling arrangements.

Submissions to this consultation paper will inform the ACMA's overall assessment of the effectiveness and relevance of the current Determination.

Background

Premium services were introduced to the Australian marketplace in 1990 and are one of the earliest formats to deliver content to customers for which they are charged amounts in excess of the standard call fee. Premium services include:

- > voice calls
- > fax-back services
- > video services that are made via a call to a number beginning with 1900, 1901 and 1902 from either a fixed line or mobile service.

These services provide a range of content including recipes, voting, competitions, chat, astrology services and adult services. Telstra Corporation Limited (Telstra) is the only 190-platform provider in Australia and it has contracts with a number of service providers and other carriage service providers to provide premium services.

Premium services also include voice calls offered on international numbers that are accessed via carriage service provider international access codes. These numbers offer access to adult chat services and internet content for dial-up internet service customers.

Premium services were regulated under an industry self-regulatory code of practice, which included rules about the advertising and message content of these services. Telstra funded a body called the Telephone Information Services Standards Council Limited (TISSC) in 1994 to resolve complaints about the advertising and message content of premium services and to undertake monitoring of compliance with the code of practice.

Complaints about the billing of premium services, including unexpectedly high bills, are resolved by a customer's carriage service provider in the first instance. They can be escalated to the independent complaints-handling body, the Telecommunications Industry Ombudsman (TIO).

During 2003, complaints from the public about 190 premium services rose dramatically, reaching a monthly peak in September 2003 of 2,840 complaints. Many of these complaints related to customers receiving unexpectedly high bills arising from the operation of internet diallers. In these circumstances, users who normally accessed the internet via a local call to their internet service provider (ISP) were disconnected and reconnected, without their knowledge or consent, to a 190 number incurring a time-based charge to view the internet content. Many of these complaints related to the customer accessing adult content services. Telstra, as the platform provider, withdrew support for internet diallers on 190 numbers in August 2003, which removed the major source of all unexpectedly high bill complaints about these services.

Complaints about diallers associated with international numbers also increased significantly between August and September 2003—from 12 complaints per month to 333 complaints per month. In a similar way to the operation of diallers on 190 numbers, users were disconnected from a local call to their ISP and connected to an international number for a select group of countries, including Guinea-Bissau and Diego Garcia, which had the highest timed call rates to view internet content. Complaints about diallers operating on international numbers declined significantly following the actions of Telstra and the other carriers to identify and block international numbers associated with diallers.

The Premium Services Determination

Overview

On 19 May 2004, the ACMA made the Telecommunications Service Provider (Premium Services) Determination 2004 (No. 1). The objective was to raise awareness of premium services and how they operate, to enable telecommunications customers to control their use of and expenditure on premium services, and to minimise the risk of incurring an unexpectedly high bill. Measures customers could use included tools for limiting expenditure and the barring of all premium services.¹

Information requirements

Under the Determination, carriage service providers are required to provide information to customers in writing that must include:

- > the definition of premium service
- > an overview of the kinds of premium services that may be supplied to a customer
- > information about the financial risks associated with premium services
- > information about the action a customer may take to lessen the risk of an unexpectedly high bill for premium services
- > an explanation of how international numbers may be accessed by another carriage service provider's over-ride code
- > an explanation of the calling charges associated with premium services (for example, the difference between flat rate charges and charges per minute)
- > an explanation of how liability for the cost of premium services arises, including an explanation of how to determine who is to pay for the supply of a premium service
- > an explanation of actions that a relevant customer may take to restrict the services supplied using the customer's account
- > a description of the role, and contact details, of complaint handling organisations, including:
 - > the relevant carriage service provider
 - > the Telecommunications Industry Ombudsman (TIO)
 - > the Telephone Information Services Standards Council (TISSC)
 - > the ACA (now, the Australian Communications and Media Authority (ACMA)).

¹ The Determination does not relate to mobile premium services, which are regulated under the Mobile Premium Services Industry Code C637:2011 and Telecommunications Service Provider (Mobile Premium Services) Determinations 2010 (No. 1 and No. 2).

Provision of information

The Determination requires that carriage service providers provide their customers with information in writing to raise their awareness of premium services and to help them make an informed decision as to whether they wish to have these services barred. Carriage service providers are required to provide information to customers at the following times:

- > as soon as practicable after the person becomes a customer
- > at least once in each period of 2 years after the provider first gave the required information to the customer
- > when a customer requests a copy of the information.

Prepaid customers

Carriage service providers are taken to have given the information required by the Determination to prepaid mobile customers accessing the 190-platform if the carriage service provider either:

- > delivers the information to the customer in person (for example, handing the information to the customer at a retail outlet)
- > sends the information by pre-paid post to the address recorded in the provider's customer database
- > sends the information by electronic mail if the customer has an electronic mail address and has given their consent to the provider to send information to the customer at that address
- > otherwise makes the information available to the customer, such as through a website or at a retail outlet of the provider, and advises the customer when the customer adds additional credit to the prepaid account how the customer can obtain the information.

Post-paid customers

Post-paid mobile or landline customers with access to premium services are also required to receive the information in writing. The Determination does not prescribe the methods that carriage service providers could use to provide information to post-paid mobile or landline customers. However, information could be:

- > included as part of a customer welcome pack when a new service is purchased
- > provided as a brochure or leaflet handed to a customer when purchasing a mobile or fixed-line service in a retail outlet
- > included on a paper or online bill
- > provided as a leaflet accompanying a bill
- > sent to a customer via one of the normal channels the carriage service provider uses to communicate with its customers.

Current environment

The premium services market has undergone significant change over the past eight-and-a-half years. Onshore and offshore content providers have taken advantage of the changing customer market for content, which has seen much of the premium services content migrate to the internet, where safeguards for these services are provided for under other legislative instruments. Potential misleading and deceptive conduct falls under the Australian Consumer Law administered by the Australian Competition and Consumer Commission and prohibited content falls under the provisions of the *Broadcasting Services Act 1992*. This trend has been characterised by increasing uptake by consumers of new technologies such as smartphones that have access to the internet.

In May 2012, Telstra implemented new arrangements for complaints-handling and monitoring compliance with the industry code of practice. As part of this new arrangement, funding to TISSC was discontinued.

Since 1 July 2012, Telstra is responsible for resolving complaints about the advertising and message content of premium services with carriage service providers. A specialist company, WMC Global, is contracted to Telstra to monitor content providers' compliance with a new code of practice for advertising and message flow—[Code of Practice for InfoCall 190 Services – December 2012](#).

Other complaints-handling arrangements remain unchanged. Carriage service providers continue to be responsible for resolving customer complaints in the first instance, including those relating to billing. The TIO remains the escalated complaints-handling body for all billing complaints for premium services. The ACMA investigates complaints about potential prohibited content under Schedule 7 to the *Broadcasting Services Act 1992* and telephone sex services under Part 9A of the *Telecommunications (Consumer Protection and Services Standards) Act 1999*. As premium services are billed by carriage service providers to their customers, the protections of the Telecommunications Consumer Protections Code C628:2012 (TCP Code) also apply to billing and complaints-handling matters.

Complaints about unexpectedly high bills from premium services have declined significantly, remaining at very low levels for some time. In 2012, the TIO reported that it had received a total of 32 complaints about 190 and international premium services. Telstra advised that it had received no premium services complaints on numbers with the prefix 190 about advertising and message content of these services.

Proposed options for the determination

Given the changed environment in which premium services operate, the ACMA is presently considering three options for the future of the Determination.

Option 1

Allow the Determination to sunset. This would see the Determination automatically cease to be in force on 1 October 2015. Consumers seeking information about premium services would be able to consult their full contractual terms and conditions for their telecommunications service and, from March 2013, the Critical Information Summary required under the TCP Code. This summary includes:

- > advice on whether premium services are included in their service offer
- > details on how to contact customer service, internal dispute resolution processes and the TIO, to allow customers to address complaints about their service, including unexpectedly high bills.

Option 2

Revoke the Determination, which would cease to operate from the date the ACMA decides to revoke it.

Option 3

Remake the Determination to:

- > allow for the continuation of the existing information about premium services
- > update the role of carriage service providers to include responsibility for resolving complaints about the advertising and message content of premium services as well as billing complaints.

Questions for consideration

Stakeholders are invited to provide information on the current operation and relevance of the Telecommunications Service Provider (Premium Services) Determination 2004 (No. 1) by responding to the questions below.

- 1. Should the Determination be allowed to sunset? Please provide reasons.**
- 2. Should the Determination be revoked? Please provide reasons.**
- 3. Should the Determination continue in its present form with only the complaints-handling provisions updated? Please provide reasons.**
- 4. If the Determination is to be retained in some form, is there any information that should be added to, or removed from, the list required to be given to customers by carriage service providers. If so, what information and why?**
- 5. Is the frequency of the obligation to provide information adequate (that is, when a customer takes out a mobile or landline service, and once every two years thereafter)? Should the provision of information be less frequent or more frequent?**
- 6. Are the methods set out in the Determination for providing information to prepaid mobile customers adequate? Are there more effective methods for providing prepaid mobile customers with information?**
- 7. Are the methods currently adopted by carriage service providers for providing information for post-paid mobile and landline customers adequate? Are there more effective methods for providing post-paid mobile and landline customers with information?**
- 8. Has providing information about premium services been an effective way to inform customers about premium services? Does it assist them to minimise the risk of an unexpectedly high bill and adequately inform them about where to complain? Are there more effective methods of providing information and what evidence is there in support of the effectiveness of such methods?**
- 9. Are there any other issues relating to the efficacy and impact of the Determination which should be raised? Is there any evidence that the Determination has had unintended impacts (financial or otherwise)?**

Invitation to comment

Submissions

The ACMA invites submissions from the public on the issues set out in this paper. Specific questions are highlighted. The ACMA seeks to gather information about the efficacy of the Determination in the regulation of premium services.

Submissions can be made:

By email: premium-voice@acma.gov.au

By mail: Manager,
New Communications Issues and Safeguards
Australian Communications and Media Authority
PO Box 13112,
Law Courts
Melbourne Vic 8010

The closing date for submissions is 5.00 pm, 10 May 2013.

Electronic submissions in Microsoft Word or Rich Text Format are preferred.

Media enquiries should be directed to Emma Rossi on 02 9334 7719 or by email to media@acma.gov.au.

Any other enquiries may be directed by email to the Manager, New Communications Issues and Safeguards at premium-voice@acma.gov.au.

Evidence-based regulation

Evidence-informed regulation: The ACMA approach describes how the ACMA informs its regulatory processes using high-quality evidence from a range of sources. Evidence-informed regulation aims to improve the transparency of the ACMA's decision-making process and facilitate stakeholder involvement in regulatory issues and decisions. The ACMA takes all of this evidence into consideration when forming its opinions on the matters it regulates.

Effective consultation

The ACMA is working to enhance the effectiveness of its stakeholder consultation processes, which are an important source of evidence for its regulatory development activities. To assist stakeholders in formulating submissions to its formal written consultation processes, it has developed [Effective consultation: A guide to making a submission](#). This guide provides information about the ACMA's formal written public consultation processes and practical guidance on how to make a submission.

Publication of submissions

In general, the ACMA publishes all submissions it receives. The ACMA prefers to receive submissions that are not claimed to be confidential. However, the ACMA accepts that a submitter may sometimes wish to provide information in confidence. In these circumstances, submitters are asked to identify the material over which confidentiality is claimed and provide a written explanation for the claim.

The ACMA will consider each confidentiality claim on a case-by case basis. If the ACMA accepts a claim, it will not publish the confidential information unless authorised or required by law to do so.

Release of submissions where authorised or required by law

Any submissions provided to the ACMA may be released under the *Freedom of Information Act 1982* (unless an exemption applies) or shared with other Commonwealth Government agencies or other parties under Part 7A of the *Australian Communications and Media Authority Act 2005*. The ACMA may also be required to release submissions for other reasons including for the purpose of parliamentary processes or where otherwise required by law (for example, under a court subpoena). While the ACMA seeks to consult submitters of confidential information before that information is provided to another party, the ACMA cannot guarantee that confidential information will not be released through these or other legal means.

Status of this paper

This paper provides background information to assist people making comments to the ACMA. Nothing in this paper should be taken to bind the ACMA to any particular course of action in later processes.

Appendix 1—Premium Services Determination



Telecommunications Service Provider (Premium Services) Determination 2004 (No. 1)

as amended

made under subsection 99 (1) of the

Telecommunications Act 1997

This compilation was prepared on 19 August 2004
taking into account amendments up to *Telecommunications Service Provider
(Premium Services) Amendment Determination 2004 (No. 1)*

Prepared by the Office of Legislative Drafting and Publishing,
Attorney-General's Department, Canberra

Contents

Part 1 Preliminary

- 1.1 Name of Determination 11
- 1.2 Commencement 11
- 1.3 Definitions 11

Part 2 Purpose and application of Determination

- 2.1 Purpose 12

Part 3 Information about premium services

- 3.1 Information 12

Part 1 Preliminary

1.1 Name of Determination

This Determination is the *Telecommunications Service Provider (Premium Services) Determination 2004 (No. 1)*.

1.2 Commencement

This Determination commences on 19 August 2004.

1.3 Definitions

In this Determination:

190 premium service means a carriage service or a content service using a number with a prefix starting with '190'.

Act means the *Telecommunications Act 1997*.

international number has the meaning given by the numbering plan.

over-ride code means a code that allows a customer to use an alternative carriage service provider on a call-by-call basis.

premium service means:

- (a) a 190 premium service; or
- (b) a carriage service used to supply:
 - (i) a content service; or
 - (ii) another service by way of a voice call (including a call that involves a recorded or synthetic voice);

using a number that includes an international access code.

relevant billing carriage service provider, in relation to a relevant customer, means the relevant carriage service provider that is responsible for billing the customer for the supply of 190 premium services.

relevant carriage service provider means a carriage service provider that provides access to premium services.

relevant customer means a person who has entered into an agreement with a relevant carriage service provider for:

- (a) the supply of a carriage service using a line connected to the person's customer equipment; or
- (b) the supply of a public mobile telecommunications service to the person's mobile equipment (within the meaning of subsection 33 (1) of the Act);

if the nature of the carriage service supplied by the relevant carriage service provider allows access to premium services.

Note 1 If a person has 1 line that is used for the supply of voice calls, and a different line that is used for the supply of Internet services, the person is a customer in relation to each of the lines. Therefore, if 2 or more carriage services are supplied to a person, the person can be a **relevant customer** in relation to the supply of each carriage service.

Note 2 The following terms are defined in the *Telecommunications Act 1997*:

- carriage service
- carriage service provider
- customer equipment
- numbering plan
- public mobile telecommunications service.

Part 2 Purpose and application of Determination

2.1 Purpose

- (1) Subsection 99 (1) of the Act provides that the ACA may make a written determination setting out rules that apply to service providers in relation to the supply of either or both of the following:

- (a) specified carriage services;
- (b) specified content services.

Note 1 A determination must relate to a matter specified in the *Telecommunications Regulations 2001* or in section 346 of the Act (which relates to designated disaster plans) — see subsection 99 (3) of the Act.

Note 2 The ACA must consult with the Australian Competition and Consumer Commission before making a determination — see subsection 99 (4) of the Act.

- (2) This Determination sets out rules that apply to carriage service providers in relation to the supply of premium services.

Part 3 Information about premium services

3.1 Information

- (1) A relevant carriage service provider must prepare the following information relating to calls to premium services:

- (a) the definition of *premium service*;
- (b) an overview of kinds of premium services that may be supplied to a relevant customer;
- (c) information about the financial risks associated with premium services;
- (d) information about the action that a relevant customer may take to lessen the risk of unexpected high bills for premium services;
- (e) an explanation of how international numbers may be accessed by another carriage service provider's over-ride code;
- (f) an explanation of the calling charges associated with premium services (for example, the difference between flat rate charges and charges per minute);
- (g) an explanation of how liability for the cost of premium services arises, including an explanation of how to determine who is to pay for the supply of a premium service;
- (h) an explanation of actions that a relevant customer may take to restrict the services supplied using the customer's account;
- (i) a description of the role, and contact details, of complaint handling organisations, including:
 - (i) the relevant carriage service provider; and
 - (ii) the Telecommunications Industry Ombudsman (TIO); and
 - (iii) the Telephone Information Services Standards Council (TISSC); and
 - (iv) the ACA.

- (2) The relevant carriage service provider must keep the information up to date.

- (3) Subject to subsection (4A), the relevant carriage service provider must give the information, in writing, to each of its relevant customers:
 - (a) as soon as practicable after this Determination commences; and
 - (b) at least once in each period of 2 years after the provider first gives the information to the customer.
- (4) Subject to subsection (4A), if a person becomes a relevant customer after this Determination commences, the relevant carriage service provider must give the information, in writing, to the customer:
 - (a) as soon as practicable after the person becomes a relevant customer; and
 - (b) at least once in each period of 2 years after the provider first gives the information to the customer.
- (4A) For subsection 3.1 (3) and paragraph 3.1 (4) (b), in the case of a pre-paid customer, the carriage service provider is taken to have given the information, in writing, to the customer if the carriage service provider:
 - (a) delivers the information to the customer in person; or
 - (b) sends the information by pre-paid post to the address listed in the provider's records for the customer; or
 - (c) transmits the information to the customer's electronic mail address if the customer:
 - (i) has an electronic mail address; and
 - (ii) gives his or her consent to the sending of information by the provider to the customer at that address; or
 - (d) makes the information available to the customer by means such as through a website, or at a retail outlet of the provider, and advises the customer (by means of a recorded message or text message, or in writing), when the customer adds additional credit to his or her pre-paid account, how the customer can obtain the information.
- (4B) For paragraph (4A) (d), the information must be available in accordance with the advice when the advice is provided.
- (5) In addition to subsections (3) and (4), the relevant carriage service provider must give the information, in writing, to a person on request.
- (6) A relevant billing carriage service provider is taken to have complied with a provision of this section in relation to a customer if another carriage service provider:
 - (a) is a relevant carriage service provider in relation to the customer; and
 - (b) complies with the provision in relation to the customer.

(7) If the ACA:

- (a) considers that the information is not adequate for the purposes of this Determination; and
- (b) gives the relevant carriage service provider a notice setting out the information that must be provided to a customer;

the relevant carriage service provider must provide information to the customer in accordance with the notice.

Note Under Part 29 of the Act, decisions of an administrative character under this Determination are subject to reconsideration by the ACA. Application may be made to the Administrative Appeals Tribunal for review of the decision if the decision is affirmed or varied on reconsideration.

(8) In this section:

pre-paid customer means a customer of a pre-paid public mobile telecommunications service, within the meaning given by section 1.5 of the *Telecommunications (Service Provider — Identity Checks for Pre-paid Public Mobile Telecommunications Services) Determination 2000*.