

ACMA submission

Registration or Licensing Scheme for CSPs discussion paper

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Executive summary

The Australian Communications and Media Authority (ACMA) is the independent statutory authority responsible for the regulation of broadcasting, radiocommunications and telecommunications in Australia. The ACMA's remit covers a broad range of telecommunications regulation, including consumer safeguards under the *Telecommunications Act 1997* and the *Telecommunications (Consumer Protection and Service Standards) Act 1999*, matters related to national interests and public safety, and anti-scam rules.

The ACMA welcomes the opportunity to provide this public submission to the *Registration or Licensing Scheme for Carriage Service Providers* discussion paper released by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts on 29 September 2023.

The telecommunications sector has evolved significantly since the introduction of the *Telecommunications Act 1997*. The proliferation and diversification of the sector necessitates regulatory visibility of market participants for consumer-focused regulatory purposes.

This submission reiterates the ACMA's longstanding advocacy for a mandatory registration scheme. The ACMA supports a light touch registration model with minimal pre-registration information and assessment that would not unduly burden CSPs with financial or administrative requirements. It should capture all participants in the market (with limited exceptions) and reflect the vital role of telecommunications in the daily lives of Australians.

The proposed model would minimise the financial and administrative burden on industry, while encouraging compliance and bolstering a competitive market and consumer protection.

The ACMA's submission provides detail and supporting information to inform how a scheme may be framed and operate.

Should the government decide to move forward with the scheme, the ACMA is well-placed to provide advice about the practical implications and resource requirements.

Our responses to questions in the discussion paper follow.

1. Background and identified issues, including improving visibility of CSPs and excluding CSPs from the market

Question 1: Do you think a CSP registration or licensing scheme should be implemented in the telecommunications sector and what are the key arguments for and against?

The ACMA supports the establishment of a mandatory registration scheme that requires all Carriage Service Providers (CSPs), including both those that are members of the Telecommunications Industry Ombudsman (TIO) scheme and those that may have received exemptions, to register their details with the ACMA before operating in the telecommunications sector.

The ease of entry to market for telecommunications service providers differs markedly from other essential services sectors such as banking, energy and financial services, where licensing or authorisation schemes are commonplace. Several key issues in the telecommunications sector necessitate such a scheme.

The telecommunications industry has evolved significantly since the *Telecommunications Act 1997* (Tel Act) was introduced. While the low barrier to entry has supported a large and diverse market for the supply of telecommunications services, it has also allowed some irresponsible providers to operate in a manner that causes consumer detriment. For example, the ACMA has come across providers operating in the market that are unaware of key regulatory obligations such as:

- > the need to take steps to identify and stop scams (as set out in the Reducing Scam Calls and Scam SMS Industry Code)
- > providing customer data to the Integrated Public Number Database (IPND) (as set out in the Schedule 2 to the Tel Act)
- > provide a Critical Information Summary (as set out in the Telecommunications Consumer Protections Industry Code)
- > the requirement to join the TIO scheme (as set out in the *Telecommunications (Consumer Protections and Service Standards) Act 1999*).

The ACMA is also aware of cases in which directors of non-compliant companies have established new telecommunications companies to apparently avoid enforcement action. The current market has matured and needs to prioritise consumer safeguards. With numerous CSPs in operation, it is essential to maintain a consolidated list of all market participants.

The discussion paper estimated there may be around 1,500 eligible CSPs and a larger number of general CSPs.¹ As at 30 June 2023, there were 1,686 TIO members², while as at October 2023 there were approximately 900 CSPs registered with the IPND Manager and 382 CSPs registered to use the [Numbering System](#),³ illustrating that there is no consistent or comprehensive list of CSPs.

¹ Department of Infrastructure, Transport, Regional Development, Communications and the Arts (DITRDC), [Registration or Licensing Scheme for Carriage Service Providers discussion paper](#) (September 2023), p. 7, accessed 13 November 2023.

² Telecommunications Industry Ombudsman 2022-23 Annual Report, p.46, accessed 13 November 2023.

³ The ACMA allocates telephone numbers to C/CSPs via its Numbering System. CSPs who want to obtain numbers in this way must register to use the system. Many CSPs obtain numbers from other CSPs under suballocation arrangements by-passing the Numbering System.

Telecommunications services are an essential service. Complete visibility of the diverse range of CSPs operating in the market is required. The ACMA considers this would best be achieved through a mandatory registration scheme administered by the ACMA as the sectoral regulator.

This would enable the ACMA and other government agencies to educate CSPs about their regulatory obligations (for new entities, when they enter the market), monitor industry activities, and enforce compliance more effectively. As a last resort, it would enable deregistration of CSPs.

The absence of a registration scheme impacts the current monitoring, compliance and enforcement of telecommunications consumer protection rules and other regulatory obligations. While enforcement action may be taken for non-compliance, there's no mechanism to compel a CSP to cease trading where it has engaged in repeated or egregious non-compliance resulting in consumer detriment. The ability to deregister a CSP in such cases would be an effective way to protect consumers from unacceptable risks and provide a strong incentive for industry compliance.

The ACMA supports a light touch registration model with minimal pre-registration information and assessment that would not unduly burden CSPs with financial or administrative requirements. It should capture all participants in the market (with limited exceptions), encourage compliance with obligations, enhance consumer protections and reflect the vital role of telecommunications in the daily lives of Australians.

A mandatory CSP registration scheme would have the following benefits:

- > reduce the risks posed by market entrants, irresponsible providers and enhance the quality of service to consumers
- > improve the ACMA's ability to identify CSPs that could cause, or are causing, consumer detriment
- > enable deregistration of non-compliant CSPs causing significant harm
- > reduce the risk of unscrupulous operators from re-entering the industry unnoticed
- > boost consumer confidence by providing certainty that all CSPs in the market have been registered by the ACMA and have undertaken to comply with their regulatory obligations
- > assist the TIO in managing its membership
- > enhance accountability and act as a deterrent to non-compliance.

An effective CSP registration scheme should:

- > be administered by the ACMA and cost-neutral to Government, with administration and maintenance costs covered by registration and renewal fees
- > avoid duplication, have clear requirements, and allow for exemptions in certain cases
- > use deregistration as a measure of last resort for serious issues, after exhausting all other reasonable enforcement and compliance approaches
- > categorise CSPs by the types of services they offer and to whom, enabling targeted education and compliance monitoring
- > allow conditions of participation to be imposed, require periodic renewal, integrate with existing requirements, include transparency, appeal, and review mechanisms, and permit the ACMA to refuse or deregister CSPs in limited circumstances (with applicable rights of review)

- > require carriers and wholesale CSPs to validate the registration of CSPs they engage with via contractual mechanisms.

To the extent there are arguments against the introduction of a registration scheme, these are likely to centre on any perceived or actual burdens. The ACMA's view is any such arguments are outweighed by the benefits to consumers and legitimate participants in the market.

A registration scheme is preferable to a licensing scheme. In a mature market with potentially more than 1,500 participants, it would be a protracted and resource intensive exercise to retrofit a licensing regime, necessitating comprehensive analysis to ensure compliance with minimum standards. While CSPs would still be required to provide specific information under a registration scheme, the ACMA does not propose it undertakes complex assessments or approvals as part of this process.

Question 2: Are current issues with transparency and enforcement (as raised by stakeholders) substantial enough to warrant the creation of a registration or licensing scheme, and do these outweigh possible impacts (for example, any barriers to market entry and competition impacts)?

The absence of a consolidated list of CSPs in the market hampers the ACMA's ability to educate, monitor, and enforce compliance with various regulatory obligations. These obligations encompass critical areas of regulation including anti-spam measures, IPND requirements and key consumer protections such as the supply of telecommunications services, complaints handling, providing support to law enforcement and security agencies, and compliance with interactive gambling rules.⁴

Law enforcement agencies have noted missing or inaccurate IPND data can impact and hinder investigations including related to scams, fraud and identity theft. Other potential consequences of missing IPND data include delayed emergency responses, the inability to locate emergency callers and citizens missing emergency warnings.

Addressing the problem of scams in Australia is a government priority under its Fighting Scams initiative as the harms can be significant. From 1 January to 31 October 2023, there were 48,077 reports and \$105,074,231 in reported losses from scam calls, and 92,531 reports and \$24,545,996 in reported losses from text message scams.⁵ Rules to help address these harms are set out in the Reducing Scam Calls and Scam SMS Industry Code registered by the ACMA.

The ACMA has been auditing SMS aggregators (telcos that send bulk SMS) in the market as a potential key source of scam traffic onto Australian networks. This work has revealed that it is challenging to identify CSPs and CSP intermediaries operating in the market, often utilising complex and attenuated supply chains. As an outcome of this work to date, the ACMA has taken enforcement action against multiple entities, several of which have stated that they were not aware of Australian regulatory requirements when entering the market.

A CSP registration scheme would also offer clarity to industry and relevant stakeholders about who is a CSP and assure the public that CSPs are registered with the ACMA. It could integrate with the carrier licencing scheme to the extent possible and strengthen many of the ACMA's existing processes and systems, including allocation and enforcement of Australia's telephone numbering arrangements. Beyond the points raised in the discussion paper, comprehensive visibility of all CSPs, not just eligible CSPs, would enable the assessment of their compliance with other important

⁴ ACMA, [Industry codes and standards for telcos](#); ACMA, [Rules for telco products and services](#), accessed 5 December 2023.

⁵ ACCC, [Scamwatch](#) report data, accessed 4 December 2023.

regulatory obligations such as scam reduction and provision of data to the IPND as discussed above.

A registration scheme would provide an effective and efficient tool to identify and prevent harmful operators from entering or re-entering the market. Currently, there are limited means to prevent CSPs that repeatedly fail to meet regulatory obligations or engage in phoenixing activity from operating, with lengthy court proceedings the primary option for banning such entities and their directors.

The ACMA considers the impacts of a light touch registration scheme would be minimal and should not impose onerous barriers to enter the market. The low barriers to entry should not deter any compliant CSPs from entering the market, and in fact, may serve to benefit legitimate and compliant entities in the market by helping to address any issues of competitive advantage gained by the behaviour of non-compliant entities.

Potential registration and renewal fees should be kept low and set on a cost-recovery basis after the initial establishment of the scheme, with the intention of not unduly impacting competition or creating barriers to market entry.

Regardless, a small increase in the regulatory burden should be viewed as a measured response to the growing importance of telecommunications as an essential service.

While there may be initial costs associated with setting up a new framework, these should be weighed against the expected long-term benefits, such as reduced regulatory and compliance costs, and a more competitive market.

Pursuing enforcement through court proceedings can be time-consuming, resource-intensive, and costly for both regulators and providers. A CSP registration scheme would provide the ACMA with a broader range of remedies, potentially improving compliance leading to lower regulatory costs in the long run. The costs associated with establishing and running the scheme would likely be offset by the resources saved in seeking out non-compliant providers, where it is possible to identify such entities.

The establishment of a CSP registration scheme should require minimal assessment requirements for registration, with limited and defined circumstances in which the ACMA would deny registration. Detailed assessments for registration, such as those related to organisational, technical, and financial capacity, should be avoided to be consistent with a low barrier to entry approach.

Under the Australian Government Charging Framework,⁶ cost recovery should be applied to the development and operation of the CSP registration scheme, with the cost born by the entities responsible for the regulatory effort (CPS that register).

2. Design considerations for a scheme – light touch

Question 3: What information or assessments should be required at the point of registration?

The ACMA supports a light-touch registration model as outlined in the discussion paper, aiming to deliver the most benefit to consumers, government and regulators, and industry while minimising impositions and costs for CSPs to register. The goal

⁶ Department of Finance, [What is the Australian Government Charging Framework?](#), accessed 9 November 2023.

should be to require the least amount of information necessary to attain visibility of CSPs in the market and the capacity to exclude non-compliant CSPs.

The inclusion of suitability criteria such as organisational, technical, and financial capacity, would likely necessitate in-depth assessments by the ACMA. This would be overly burdensome, time-consuming, and costly for CSPs – disproportionately so for smaller CSPs, resulting in a potential negative impact on competition. Such detailed assessments would be unnecessary to achieve the scheme's objectives, although there may be some benefit in aligning information requirements with those used in the energy sector to minimise duplication of effort for CSPs that may also operate in the energy retail market. Applying suitability criteria to potentially more than 1,500 CSPs already operating in the market would likely be contested, create uncertainty and take considerable time and resources to assess.

To streamline the registration process, the creation of a relatively simple online register linked to the ACMA's carrier licence register could be considered. If a CSP is also a carrier, the online form could be pre-populated with entity and contact details. Although carriers would also likely be CSPs, a CSP register should operate independently to the carrier register given different regulatory obligations apply to the respective entities and revocation/deregistration criteria would differ.

There may also be opportunity to link a CSP register to the Numbering System,⁷ with only registered CSPs able to be allocated numbers in the system. This may be a consequential consideration that could aid in scam reduction and law enforcement activities.

The minimum required information for registration could be the following:

Information required	Explanation
Hold carrier licence? Y/N If yes, licence number should be provided.	Link to carrier licence register to potentially pre-populate online form with entity and contact details.
Company name (must match registered company name)	Pre-populate if the entity is also a carrier; otherwise, validate against the company register. If information cannot be validated by the company register further information would be required from the applicant. Companies that are not registered with ASIC should not be permitted to register. An email address, monitored by multiple persons, should be mandatory.
ACN/ABN	
Directors (including Director ID)	
Registered business or trading name/s	
Postal address/Registered address	
Details of dedicated contact person for regulatory matters	This person should also be the one completing the online registration form.
Details of an emergency contact person	This person should be contactable 24 hours a day, 7 days a week.
Has the applicant previously carried on business under any other names (or similar)? – Y/N	If yes, details should be provided.
Who is your wholesaler(s)	Required for full visibility of market.

⁷ ACMA, [Numbering system](#), accessed 9 November 2023.

Information required	Explanation
<p>Whether any director (or secretary or any other person involved in management) was/is:</p> <p>(a) associated with a company previously deregistered by the ACMA – Y/N</p> <p>(b) associated with breaches of telco safeguards made by other corporations Y/N</p> <p>(c) associated with breaches of other sectors – Y/N</p> <p>(d) on a list of persons disqualified from managing corporations by the ACCC or ASIC.</p>	<p>If yes, details should be provided for assessment; even if the answer is no, routine checks would still be conducted by the ACMA.</p>
<p>Police checks for Company Directors, CEO, CFO and Company Secretary</p>	<p>Consideration would be given to the nature of any conviction and relevance to operating a telecommunications business.</p>
<p>TIO member? Yes/No/Not applicable</p> <p>TIO exemption granted Y/N</p>	<p>If a carrier, this information would also be pre-populated. CSPs granted an exemption from the TIO scheme should still be required to register with the ACMA. An eligible CSP not registered with the TIO or without an exemption could provisionally register, with the condition to join the TIO scheme within X days or apply to the ACMA for exemption, and failure to comply would result in non-registration.</p> <p>Whether TIO membership is applicable could be assessed on the basis of the type of service(s) supplied.</p>
<p>Type of services supplied i.e., fixed line, mobile (prepaid, post-paid), local rate, freephone, internet, OTT⁸ and market serviced i.e., retail, wholesale, residential, small business, enterprise, other (specify the service)</p>	<p>If a carrier, this information is already required in the carrier application form. CSPs should specify the type of services they provide and to whom. This information would aid in appropriately targeting education and compliance activities, considering that different regulatory obligations apply to different types of CSPs. An extensive list of options could be available for selection, with clear descriptions about which obligations apply.</p>
<p>Declaration of truth and compliance</p>	<p>The applicant should declare that the provided information is accurate and undertake to comply with all applicable rules. A warning about the consequences of giving false or misleading information should be included.</p>

Furthermore, the ACMA and/or minister should be empowered to exempt specific CSPs or classes of CSPs from registration requirements, subject to strict qualification, that is, potentially CSP intermediaries or sections of the market. This would allow flexibility in future.

⁸ Over-The-Top (OTT) services functionally equivalent from a consumer perspective should be subject to the same consumer protection rules, irrespective of how they are provided. This ensures that consumers receive equivalent safeguards when using functionally equivalent OTT services, given the difficulty in distinguishing them from traditional telephony services.

Refusing registration should be discretionary and based on very limited grounds, such as:

- > providing false or misleading information
- > failing to provide the required information
- > a director's association with a CSP deregistered by the ACMA within a specific period
- > where there are grounds and supporting evidence that a CSP (already operating in the market) poses a major risk to consumers, i.e., such as where multiple enforcement actions have been taken over time and the CSP continues to undertake activities that pose a major risk to consumers.

Question 4: What other harmful activities could potentially be disrupted through registration?

The absence of a single comprehensive list of CSPs significantly hampers the capacity to identify non-compliance with key regulatory obligations. Some of these are discussed above, however a notable example is the requirement for CSPs to upload customer data to the IPND.

The inability to identify CSPs that are not providing data to the IPND as required can lead to serious public safety risks, including:

- > delays in emergency response due to a lack of readily available service address information
- > an inability to locate an emergency caller if that caller cannot identify their location
- > failure to receive emergency warnings, as the emergency system relies on the information in the IPND to determine which telephone numbers are associated with specific geographical areas
- > impairing or compromising efficient investigations conducted by law enforcement and national security agencies.

This issue also impacts the ACMA's activities related to assessing compliance with rules aimed at preventing scam activity and the *Interactive Gambling Act 2001*. The ACMA has received feedback from law enforcement agencies highlighting the hindrance that missing IPND data poses during their scam-related investigations.

Furthermore, a comprehensive CSP registration scheme would be beneficial for law enforcement agencies seeking assistance from CSPs. For example, certain departments and agencies could use the register as a tool to identify CSPs to which security obligations may be attached under the *Security of Critical Infrastructure Act 2018*.

A comprehensive list of all CSPs would also assist in identifying whether CSPs have complied with other obligations, such as the requirements to report on:

- > disclosures (Tel Act)
- > the cost of complying with data retention rules in the *Telecommunications (Interception and Access) Act 1979*.

Question 5: Which CSPs should be required to register, and what are the advantages or disadvantages of different approaches?

A registration scheme should encompass all types of CSPs to ensure comprehensive visibility of all CSPs operating in the market.

While the TIO scheme primarily facilitates dispute resolution, the CSP registration scheme's primary objectives are to provide transparency regarding CSPs operating in the market and to provide mechanisms to mitigate the risk associated with non-compliant CSPs. Given these distinct purposes, the eligibility criteria for the TIO scheme and the CSP registration scheme need not necessarily align. Consequently, the registration scheme should capture a wider range of entities, including those with TIO exemptions.

As raised above, CSPs should be required to identify the types of services they supply and to whom they provide them. This information would allow the ACMA to efficiently target education and compliance activities and effectively monitor and enforce compliance with key obligations. For example, if a CSP does not fall under the category of eligible CSP supplying services to individual consumers or small business customers, it may not be subject to the TIO scheme but could be subject to other important regulatory obligations. Examples include SMS aggregators and CSPs that originate calls domestically that are subject to the Reducing Scam Calls and Scam SMS Industry Code and IPND obligations or CSPs that exclusively provide services to large enterprise customers.

It is also important to include Wholesale CSPs and carriage service intermediaries within the registration scheme. This would provide transparency throughout the supply chain, as the performance of a service often depends on various entities in the supply chain. In some cases, retailers may need the cooperation of other parties, such as a wholesale CSP, to resolve issues for a consumer.

Where a supplier of retail telecommunications services relies on another party within the supply chain for service quality and reliability, rules and associated enforcement powers should apply to all relevant parties. Such cooperation is already mandated in certain instruments. For example, the Telecommunications (Consumer Complaints Handling) Industry Standard 2018 requires all parties in the NBN supply chain to provide 'reasonable assistance' to resolve consumer complaints in a timely and effective manner.

Question 6: How could a registration scheme best integrate with existing obligations and processes?

The ACMA proposes a simple public online register, separate to, but linked, to the ACMA's carrier licence register. This solution would simplify the registration process by minimising duplication of effort for CSPs. When a CSP is also a carrier, the online registration form could be pre-populated with entity and contact details. Additionally, carriers that are also CSPs should not be subject to double registration fees. This streamlined system would ensure that CSPs (who are also carriers) could fulfill their obligations efficiently. Also, as noted above, there may be scope to integrate a CSP register with the Numbering System.

Integrating the registration scheme with the TIO exemption process would provide significant benefits. CSPs could indicate their TIO scheme membership status or whether they have been exempted by the ACMA on their registration record. For CSPs not registered with the TIO scheme or lacking an exemption, a provisional registration with conditions could be implemented. These conditions would require a CSP to join the TIO scheme within a specified timeframe or apply to the ACMA for exemption.

Failure to meet these requirements would result in non-registration, thus helping compliance with the TIO scheme.

The CSP register would be instrumental in facilitating compliance with multiple regulatory obligations, including but not limited to:

- > TIO scheme membership and compliance, encompassing requirements to join and comply with the TIO scheme and addressing non-compliance
- > Compliance with CommCom obligations, such as lodging an annual compliance attestation
- > Registering critical infrastructure assets with the Cyber and Infrastructure Security Centre (CISC).

As previously highlighted, a comprehensive CSP register, categorised by the type of service provided and to whom, would greatly enhance the ACMA's ability to assess CSP compliance with a wide range of important regulatory obligations. This categorisation would ensure regulatory obligations are accurately applied, and CSPs are held accountable for their specific obligations based on their services.

Incorporating these integration strategies would create a well-coordinated, efficient, and streamlined registration scheme that harmonises with existing obligations and processes. CSPs could confidently meet their compliance requirements while reducing administrative complexity and ensuring greater transparency in the telecommunications industry.

Question 7: What processes could be used to ensure and maintain a rigorous list of CSPs?

To ensure and maintain a rigorous list of CSPs, the scheme should be underpinned by new legislation mandating the ACMA to establish a registration scheme for CSPs. This legislation should define the scope, objectives and operational parameters of the scheme, and specify key aspects such as the imposition of conditions, mandatory consultation in scheme development, criteria for refusal and de-registration, and the reviewability of decisions.

Key aspects of a CSP registration regime should include:

- > legislation that empowers the ACMA to set conditions on participation within the sector
- > mandatory registration, with clear provisions for transitional arrangements to facilitate compliance by CSPs already operating in the sector
- > the potential to impose penalties for non-registration as a means to incentivise compliance and introduce a graduated approach to de-registration for non-compliant CSPs
- > a requirement that a CSP must be registered to hold or use numbers generally, or be allocated numbers in the Numbering System.

Once a CSP register is established, carriers and wholesale CSPs should be obligated to restrict their services to registered CSPs exclusively. A transition period, possibly six months, should be allowed for existing CSPs to register, to minimise disruptions in the telecommunications sector.

To ensure the initial list of CSPs is comprehensive and covers all relevant entities, existing industry processes and lists, such as the carrier license register, TIO register, CommCom register, porting registers, information provided through the Nominated Carrier Declaration process, and other industry-specific databases (such as the IPND

and Numbering system) can be harnessed by the ACMA. Carriers and wholesale CSPs could also assist with identifying CSP participants.

To maintain the register's accuracy over time, the following mechanisms are recommended:

- > a requirement for CSPs to promptly update their details upon any changes, with a specified timeframe for compliance
- > regular notifications to remind entities of their obligation to maintain accurate information
- > an annual attestation (from the date of registration) by CSPs and spot audits conducted by the ACMA to ensure the register remains current
- > an option for an entity to initiate de-registration
- > updates within a specified timeframe if any changes occur to details provided at registration.

3. Approaches to excluding CSPs from the market

Question 8: What factors should be considered before deregistering a CSP, and what alternatives should the ACMA consider?

Before contemplating the deregistration of a CSP, the ACMA would need to carefully evaluate several factors. Deregistration should be a measure of last resort and typically only be considered after all other available enforcement measures have been exhausted. Although, in cases of significant and ongoing consumer detriment, deregistration might be necessary to provide immediate protections for consumers.

The factors mentioned in the discussion paper should be integral to the deregistration process. These factors encompass a CSP's compliance history, the impact on its customers, and the necessity of preventing consumer harm. Additionally, criteria should be established to determine the circumstances under which a CSP may be deregistered.

A graduated pathway toward deregistration should be used, with deregistration considered only in cases of severe and/or repeat non-compliance with ongoing consumer harm. It would be essential to set thresholds for previous levels of non-compliance, considering factors such as the number of adverse findings over a specified period, the types and quantity of enforcement actions, the impact of the breach on consumers and the number of consumers affected, the seniority of staff involved in the misconduct and remediation taken in the past or to date.

These types of thresholds for deregistration are akin to those set out for revocation in the Australian Energy Regulator (AER) – Retailer authorisation guideline,⁹ which stipulates that the AER may revoke a retailer authorisation under specific circumstances.¹⁰

⁹ Australian Energy Regulator (AER), [Retailer authorisation guideline](#), (December 2014), accessed 10 November 2023.

¹⁰ The AER may revoke a retailer authorisation if a retailer has materially failed to meet its obligations under the National Energy Retail Law and National Energy Retail Rules or other applicable energy regulation and the AER has reason to believe the retailer will not be able to meet its obligations in the future; for electricity, a retailer is not a registered participant for purchasing electricity as required by s. 11(4) of the *National Electricity Law*; for gas, a retailer is not registered under s. 107 of the Retail Law.

To minimise the adverse impact on customers during deregistration, provisions should be put in place to facilitate a smooth transfer of billing and service provision to another entity, guaranteeing continuity for customers.

Consultation with relevant authorities, such as the Communications Access Coordinator (CAC), when contemplating deregistration should also be undertaken, especially if such action could compromise ongoing investigations or active interception warrants. Consultation would ensure a comprehensive approach and maintain the integrity of law enforcement activities.

A process similar to the AER revocation arrangements could be followed when considering whether to deregister a CSP. Deregistration must not occur until that process is completed. This process should include giving written notice of the intention to deregister, giving the CSP a reasonable opportunity to respond, and considering whether the CSP can address identified issues before deciding to proceed.

The mere threat of deregistration may serve as a deterrent, encouraging compliance without the need for actual deregistration.

Besides deregistration, alternative measures should be explored, including the suspension of registration and the imposition of specific conditions on CSPs as a remedial action. However, suspension may come with risks to a CSPs consumers.

Question 9: How can deregistration be best leveraged to facilitate compliance and enforcement of existing regulatory obligations?

Leveraging deregistration as a tool for compliance and enforcement of existing regulatory obligations cannot be underestimated. As noted above, the mere threat of deregistration may serve as a powerful deterrent, effectively encouraging compliance within the industry.

Continuous monitoring and enforcement actions would be important to ensure CSPs adhere to their obligations. Introducing additional enforcement options to use before deregistration, such as the imposition of conditions and penalties for non-compliance, would also likely provide incentives to comply. Moreover, the general deterrence effect of even one deregistration would be significant, as it would send a strong message to other CSPs about the consequences of non-compliance.

By deploying deregistration as a measure of last resort, coupled with robust compliance monitoring and a credible threat of enforcement, the regulatory framework can be a strong deterrent, promoting compliance with existing regulatory obligations within the telecommunications industry.

Question 10: What transparency and review measures should be implemented?

The ACMA agrees with the importance of transparency and review measures in the registration decision process and aligns with the principles outlined in the discussion paper. The ACMA's Compliance and Enforcement Policy¹¹ and Regulatory Guides¹² set out factors that would be relevant to how ACMA decisions regarding the register are made.

Transparency in registration decisions would be fundamental. The decision-making process should instil trust and assurance in the registration and deregistration process. CSPs should be provided with genuine early opportunities to engage and respond.

¹¹ ACMA, [Compliance and enforcement policy](#), accessed 5 December 2023.

¹² ACMA, [Regulatory guides](#), accessed 5 December 2023.

This would involve granting CSPs the opportunity to address areas of non-compliance, present information, and understand the reasons for regulatory concern.

Avenues for review need to be accessible and enable those dissatisfied with decisions to seek recourse. These could be similar to those set out in the Tel Act for other ACMA decisions. As set out in the discussion paper, avenues could include internal review, where the ACMA would re-evaluate the original decision and consider new evidence, as well as merits review by the Australian Administrative Tribunal, judicial review by the Federal Court of Australia, and review by the Commonwealth Ombudsman.

Question 11: What would be the advantages or disadvantages of establishing a mechanism to remove CSPs with a history of non-compliance without also having a complementary registration scheme?

An alternative stand-alone mechanism for removing non-compliant CSPs, without a complementary registration scheme, would fail to achieve the primary objective of ensuring market visibility. The absence of a comprehensive registration scheme hampers effective monitoring and regulation of the telecommunications sector.

Although options like enhancing existing CSP lists may improve market visibility, they fall short of providing the comprehensive insight and transparency offered by a well-structured registration scheme.