**Subsection 102(2) of the *Telecommunications Act 1997***

**Direction in relation to the *Telecommunications (Service Provider — Identity Checks for Prepaid Mobile Carriage Services) Determination 2017***

**TO: Lycamobile Pty Ltd ACN 139 717 212**

**OF: Unit 2, 1B Kleins Road, Northmead NSW, 2152**

### BACKGROUND

The Australian Communications and Media Authority (**the ACMA**) is responsible for monitoring and enforcing compliance by carriage service providers (**CSP**s) with their obligations under the *Telecommunications Act 1997* (**the** **Telecommunications Act**).

Lycamobile Pty Ltd ACN 139 717 212 (**Lycamobile**) is a CSP as defined in section 87 of the Telecommunications Act and under subsection 101(1) of the Telecommunications Act, it must comply with the ‘service provider rules’ applicable to it. The service provider rules, set out in section 98 of the Telecommunications Act, include those set out in a service provider determination in force under section 99.

The *Telecommunications (Service Provider — Identity Checks for Prepaid Mobile Carriage Services) Determination 2017* (**Prepaid Determination**) is a service provider determination in force under section 99 of the Telecommunications Act that is applicable to Lycamobile.

The ACMA has investigated whether Lycamobile contravened the service provider rules by not meeting its obligations under the Prepaid Determination. The ACMA has found that between 1 March and 16 July 2019 Lycamobile did not comply with the Prepaid Determination. Specifically, Lycamobile did not comply with:

* Paragraph 2.3(1)(a) – as it failed to comply with the rules under Part 4 of the Prepaid Determination for obtaining information and verifying the identity of customers before activating a prepaid mobile carriage service on 206 instances.
* Section 6.1 – as it failed to keep records for prepaid mobile carriage services that it supplies sufficient for the ACMA to determine Lycamobile’s compliance with the Prepaid Determination on 2,000 instances.
* Section 6.3 – as it failed to keep a written description of arrangements Lycamobile has in place to comply with the Determination on one instance.
* Subsection 6.4(1) – as it recorded and kept the identifying number of a government document beyond the time necessary to verify the identity of a service activator on 2,000 instances.

### DIRECTION

The ACMA, being satisfied that Lycamobile has contravened the service provider rules set out in the Prepaid Determination as described above;

DIRECTS Lycamobile, under subsection 102(2) of the Telecommunications Act, to take the following action directed towards ensuring that Lycamobile does not contravene or is unlikely to contravene the Prepaid Determination in the future as required by subsection 101(1) of the Telecommunications Act:

**Independent Auditor and Initial Audit**

1. Lycamobile must appoint, in accordance with paragraph 2, a qualified and independent person (the **Independent Auditor**) to audit and report in writing on:
2. the extent to which Lycamobile’s governance and IT systems, policies and procedures are directed towards ensuring Lycamobile’s compliance with the Prepaid Determination; and
3. recommendations as to the improvements or maintenance of those systems, policies and procedures directed towards ensuring Lycamobile’s compliance with the Prepaid Determination.
4. By no later than 29 January 2021, Lycamobile must seek written approval from the ACMA to:
	1. appoint a person to be the Independent Auditor; and
	2. endorse the terms of reference for the audit.
5. If the ACMA refuses to approve the person for such appointment, or endorse the terms of reference, Lycamobile must repeat this process within 5 business days of receiving the ACMA’s refusal, until it obtains the ACMA’s written approval.

*Example: If the ACMA refuses to approve a person for such an appointment or endorse the terms of reference, Lycamobile may nominate another person or amend the terms of reference and must apply to the ACMA for approval again within 5 business days of receiving the ACMA’s refusal.*
6. Within 5 business days after the ACMA has given its approval, Lycamobile must appoint the person to be the Independent Auditor at its own cost.
7. Lycamobile must require that the Independent Auditor’s written report referred to in paragraph 1 (the **first report**) be completed by no later than 23 April 2021 and be provided by no later than 10 May 2021 to Lycamobile and the ACMA.

**Project plan**

1. Lycamobile must develop a project plan in response to the first report setting out the steps Lycamobile has taken, or will take over the following 3 months, to implement each recommendation made in the first report. The project plan must include the timeframe for implementing each recommendation (unless the ACMA has agreed and notified Lycamobile in writing before completing the project plan that the recommendation need not be implemented).
2. Within one month after receiving the first report Lycamobile must provide to the ACMA the project plan referred to in paragraph 6 for its approval. The ACMA will inform Lycamobile of any changes it requires to the project plan and Lycamobile will within 5 business days modify and resubmit the project plan to the ACMA for its approval.
3. Lycamobile must comply with the project plan approved by the ACMA under paragraph 7 (the **approved project plan**).

**Further Audits**

1. Lycamobile must engage the Independent Auditor it appointed in accordance with paragraph 2 (or a new Independent Auditor approved in writing by the ACMA) to conduct 3 further audits, to further assess Lycamobile’s compliance with the Prepaid Determination.
2. The 3 audits in paragraph 9 must respectively commence by 15 October 2021, 15 October 2022 and 15 October 2023 and be completed within 2 months.
3. Lycamobile must ensure that the Independent Auditor prepares and provides written reports to Lycamobile within one month following each audit in paragraph 10 that:
4. confirms that the Independent Auditor has examined a random sample of prepaid mobile carriage services activated by Lycamobile, consisting of at least 10 per cent activated over a 6-month period or 100 prepaid mobile carriage services, whichever is the higher;
5. confirms whether the Independent Auditor is satisfied that Lycamobile’s governance and IT systems, policies and procedures and training provided to employees and contractors are effective in ensuring compliance with the Prepaid Determination; and
6. if the Independent Auditor is not so satisfied, identifies the deficiencies in Lycamobile’s governance and IT systems, policies and procedures and training provided to employees and contractors to relation to compliance with the Prepaid Determination.

**Training**

1. By no later than 17 May 2021, Lycamobile must provide the ACMA with a written outline of a training program that includes details of the obligations imposed on Lycamobile under the Prepaid Determination (**Compliance Training)**.
2. Unless otherwise approved in writing by the ACMA, by 5 July 2021, Lycamobile must ensure that all existing employees and contractors and its authorised parties (and any related bodies corporate) involved in the identity verification and/or activation of prepaid mobile carriage services have completed Compliance Training.
3. From 5 July 2021, Lycamobile must ensure that:
	1. all employees, contractors of Lycamobile and its authorised parties (and any related bodies corporate) involved in the identity verification and/or activation of prepaid mobile carriage services undertake Compliance Training at least once a year for 3 years; and
	2. Lycamobile’s induction program requires all new employees, contractors of Lycamobile and its authorised parties involved in the verification and/or activation of prepaid mobile carriage services to undertake Compliance Training.
4. Lycamobile must keep a written record of the details of the Compliance Training undertaken including:
5. the name and designation of each attendee of the session/course;
6. the details of the content, method of delivery and the duration of the session/course;
7. the date/s the session/course was delivered;
8. whether the training/course requirements were successfully completed by each attendee.
9. Lycamobile must pay all the costs associated with the provision of the Compliance Training and must not seek any reimbursement of, or contribution towards, those costs from the attendees.

**Reporting**

1. Within one month after Lycamobile receives a report from the Independent Auditor under paragraph 11, Lycamobile must report in writing to the ACMA on each of the following matters:
2. any potential contraventions of the Prepaid Determination identified during the audit;
3. the cause of each contravention;
4. the actions Lycamobile will take to remedy the contravention and when they will be taken;
5. any recommendations by the Independent Auditor to address identified contraventions, including any additional changes to systems and processes;
6. the actions Lycamobile will undertake in relation to the recommendations made by the Independent Auditor and when they will be taken.
7. For each month that any actions described in paragraph 17(c) remain outstanding or incomplete, Lycamobile must provide to the ACMA a written report on its progress with those actions by the end of the following month and reasons for any delays.
8. By no later than 15 February 2021, Lycamobile must provide a written report to the ACMA detailing:
9. The carriage service numbers and dates of activation of any prepaid mobile carriage services activated between 29 June 2019 and 13 January 2021 where the activations may not be compliant with the Prepaid Determination; and
10. the actions Lycamobile has undertaken or will undertake to ensure that the prepaid mobile carriage services in paragraph 19(a) are compliant with the Prepaid Determination, including the dates of those actions.

*Example: Lycamobile may, among other actions, revalidate prepaid mobile carriage services to ensure that they are compliant with the Prepaid Determination*.

1. Within one month of the completion of the recommendations in the approved project plan in paragraph 7, Lycamobile must provide a written report to the ACMA detailing:
2. The carriage service numbers and dates of activation of any prepaid mobile carriage services activated between 13 January 2021 and the completion of the recommendations in the approved project plan, where the activations may not be compliant with the Prepaid Determination; and
3. the actions Lycamobile has undertaken or will undertake to ensure that the prepaid mobile carriage services in paragraph 20(a) are compliant with the Prepaid Determination, including the dates of those actions.
4. Unless the ACMA has approved a longer period in writing, Lycamobile must complete the actions in paragraph 17(e), 19(b) and 20(b) within the timeframes specified.
5. By no later than 15 February 2021 Lycamobile must provide the ACMA a copy of the written arrangements Lycamobile is required to keep under section 6.3 of the Prepaid Determination.
6. If Lycamobile amends the written arrangements described at paragraph 22 at any point up until 31 December 2023, Lycamobile must provide a copy of the amended written arrangements to the ACMA within 2 weeks of that amendment.

### TAKE NOTE

1. Section 98 of the Telecommunications Act sets out the service provider rules which are applicable to a CSP. The service provider rules, set out in section 98 of the Telecommunications Act, include those set out in a service provider determination in force under section 99 of the Act.
2. Subsection 101(1) of the Telecommunications Act provides that a service provider must not contravene the service provider rules that apply to it.
3. If a service provider has contravened, or is contravening, a service provider rule, under subsection 102(2) of the Telecommunications Act, the ACMA may direct a service provider to take specified action directed towards ensuring that the service provider does not contravene a service provider rule, or is unlikely to contravene a rule, in the future.
4. Subsection 102(4) of the Telecommunications Act provides that a service provider must not contravene a direction given under subsection 102(2).

### REVIEW RIGHTS

1. Lycamobile may request the ACMA to reconsider its decision to give the direction by application in writing made within 28 days of being informed of the decision, in accordance with section 558 and Part 29 of the Telecommunications Act.
2. If Lycamobile is dissatisfied with the ACMA’s decision upon reconsideration then, in accordance with section 562 of the Telecommunications Act, Lycamobile has the right to seek review of the reconsideration decision by the Administrative Appeals Tribunal.

### CONTACTING THE ACMA

1. Should you require further information, please contact:

Vince Humphries

Executive Manager, Telecommunications Safeguards Branch

Australian Communications and Media Authority

PO Box 13112 Law Courts

Melbourne, VIC 8010

Ph: (03) 9963 6944

Email: Vince.Humphries@acma.gov.au

*Original direction given on 13 January 2021, and variation to clause 5 occurred on 26 March 2021.*