Pivotel submission on the ACMA proposal to vary the Telecommunications Numbering Plan 2015

1. INTRODUCTION

1.1 Pivotel welcomes the opportunity to engage with the ACMA on its proposal to vary the Telecommunications Numbering Plan 2015 Consultation paper (the **Consultation Paper**) and the *Telecommunications Numbering Plan Variation 2022 (No. 1)* (**Draft Variation**).

1.2 Pivotel considers that it is of vital importance to both industry and consumers that there is clear alignment across legislation, delegated legislation and industry codes.

2. EXECUTIVE SUMMARY

2.1 Pivotel considers many of the reforms to be uncontroversial but has some significant concerns with those imposing further restrictions on dealing with numbers. In particular, it considers that the new section 87A would have little impact on reducing scam calling and SMs, while imposing new regulatory burdens and reducing innovation.

2.2 Pivotel considers that restricting the types of entities that can be assigned numbers to Australian businesses would be likely to harm competition and is inconsistent with the objects of the *Telecommunications Act 1997* (Cth) (**Telecommunications Act**). It also sees little benefit in requiring CSPs to be registered in the Numbering System given the existing IPND requirements.

2.3 Pivotel finally considers that giving the ACMA a power to withdraw numbers 'suspected' of being used for scams is problematic.[1] Obligations to block or suspend numbers used for scam voice calls or SMs have recently been imposed on CSPs, yet this proposal would hold CSPs to a higher threshold than that imposed on the ACMA.[2] In addition, proposals to serve notice of withdrawal on the 'holder' of the number do not acknowledge the fact that it may not be the CSP currently using the number as well as raising procedural fairness issues.

2.4 Pivotel provides submissions on those questions most relevant to it below and would welcome the opportunity to discuss these with the ACMA should that be of assistance.

3. 7226 SHORT CODE (Questions 1.1 – 1.7)

3.1 Pivotel supports the ACMA's proposal to amend Schedule 5 of the Telecommunications Numbering Plan 2015 (the **Numbering Plan**) to specify short code 7226 as a shared special services number for community services purposes. Pivotel considers that it would provide consumers with a quick and easy means of flagging a potential scam to their provider.

3.2 At present, consumers are generally advised to report scams to the ACCC's Scamwatch or the Australian Cyber Security Centre (**ACSC**). However, the ACSC is not concerned with *potential* scams and Scamwatch is principally focussed on educating consumers. Neither service is well suited to notifying CSP's so they can take appropriate steps

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[1] Draft Variation Schedule 1 cl 21.
[2] Ibid.

(whether that involves further investigation, notification or suspension/blocking of a number).

3.3   Pivotel therefore considers that, while it should not be mandatory, introducing the "SCAM" short code would give consumers the ability to notify their providers in real time thus enabling providers to investigate accordingly and supporting them in complying with their enhanced obligations under the amended Reducing Scams Code.

3.4   Pivotel does not have a firm view on whether incoming international access should be prohibited. To a large extent, this will depend on whether the benefits from preventing misuse will outweigh legitimate use cases (e.g. Australian users reporting scams from overseas).

3.5   As noted above, Pivotel supports this initiative and would encourage the use of the SCAM short code by its customers. Pivotel already encourages its customers to report potential scams to it, and this would build upon that initiative.

4.   LIMITING FREEPHONE, LOCAL RATE AND PREMIUM RATE NUMBERS (Question 1.8)

4.1   Pivotel supports the ACMA's proposal that freephone, local rate and premium rate numbers be restricted from being used to make outbound calls.[3] This is consistent with the approach taken in clause 4.2.4 of the Reducing Scams Code and will likely assist in efforts to combat CLI spoofing or "overstamping".

5.   REGISTRATION IN THE NUMBERING SYSTEM (Questions 1.9 – 1.13)

5.1   Pivotel has significant concerns with the proposals to restrict the assignment (or sub-allocation) of numbers to registered CSPs[4] as well as any suggestion that limits should be imposed on the number of times a number can be assigned or that assignment should be limited to Australian businesses.[5]

5.2   Pivotel understands that the proposal is aimed at increasing transparency and preventing the misuse of numbers by scammers. Pivotel supports efforts to minimise voice and SMs scams but does not consider that the proposed changes will substantially further that aim. It also considers that they will impose an administrative burden which outweighs any benefits.

Requirement that assignees be registered CSPs

5.3   Pivotel does not consider that the introduction of s.87A[6] would achieve the ACMA's objectives of efficiently allocating numbering resources or supporting scam disruption initiatives. This is because there are already a number of regulations either in place or in train that allow the ACMA to trace the assignees of numbers. These include:

5.3.1   Integrated Public Numbers Database (IPND) Code (C555:2020 (the "**IPND Code**"): Under the Telecommunications Act[7], the ACMA was required to

[3] Draft Variation Schedule 1 cl 4, 6 and 9.
[4] Consultation Paper, p 7.
[5] Ibid.
[6] Draft Variation Schedule 1 cl 18.
[7] s 295A.

make an IPND scheme by legislative instrument. Management of the IPND sits with Telstra as a condition of its carrier licence.[8]

The IPND Code sets out the obligations on carriage service providers in respect of the IPND. It requires, at clause 4.2.1., that each CSP that provides a carriage service to a customer using a number **must** provide the IPND Manager (i.e. Telstra) with the relevant Public Number Customer Data (PNCD) in respect of each carriage service it supplies. In addition, CSPs with an obligation under clause 4.2.1 must register with Telstra as the IPND Manager.

Information that must be provided as PNCD includes the name of the CSP that provides the services for the originating Carriage Services to the Customer or a Public Mobile Telecommunications Service (PMTS) to the Customer.[9]

As the IPND Code is registered, the ACMA has the ability to direct CSPs to comply with it. The ACMA has made such directions in the past.[10] The ACMA also conducts audits of the IPND.

In short, the information that the ACMA seeks to obtain via the proposed s.87A[11] is already available to it via the IPND Code and it has sufficient enforcement powers under the Telecommunications Act (including the issuing of infringement notices or pursuing civil penalties).[12]

5.3.2   <u>Reducing Scams Code</u>: The updated Reducing Scams Code, which has also been registered by the ACMA, requires carriers or carriage service providers that identify a material issue of alleged scam calls or SMs to notify both the C/CSP that delivered it, as well as the ACMA.[13] This is in addition to the quarterly reporting obligations that C/CSPs have to report scam volumes to the ACMA.[14]

5.3.3   *<u>Number Management- Use of Numbers by Customers Industry Code</u>* (**Number Management Code**): Pivotel understands from the Consultation Paper that the draft code prepared by Communications Alliance will shortly be submitted to the ACMA for registration.

The draft that was circulated for comment provides at clause 3.1.3 that:

A CSP that Assigns, or Churns an Allocated Number(s) to another CSP outside of the Numbering System, must maintain a record, for as long as that Number is Assigned or Churned, including the:

(a) Number Assigned or Churned;

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[8] Telecommunications Act s 295(2)(a).
[9] IPND Code cl 2.2.
[10] See for example: Direction to comply with the IPND Code, given under subsection 121(1) of the Telecommunications Act to Aussie Broadband Limited, 26 July 2022, and to Symbio Networks Pty Ltd on 5 October 2021.
[11] Draft Variation Schedule 1 cl 18.
[12] Telecommunications Act s 295S.
[13] Reducing Scams Code cl 4.4.1.
[14] Ibid cl 6.1.1.

> *(b) date of the assignment or Churn; and*
>
> *(c) name and contact details of the CSP.*
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> This will impose on CSPs an obligation to maintain records of their assignees. The ACMA will have the power to direct compliance pursuant to s.121 of the Telecommunications Act and pursue civil penalties if a CSP does not comply with the direction.

5.4 Given the information that is already provided by assignee CSPs to the IPND Manager and the assignor CSP, and the rights that the ACMA already has to enforce those obligations, there is little utility in adding a further regulatory hoop for CSPs to jump through. It would merely duplicate existing regulation, which is inefficient.

5.5 The proposed changes could also have a detrimental effect on consumers by limiting the availability, and/or increasing the cost of, communications services.

5.6 The Draft Variation has removed the objects section of the Numbering Plan and instead, relies principally on the objects of the Telecommunications Act for its purpose.[15] The main object of the Telecommunications Act is to provide a regulatory framework that promotes:

> *(a)   the long-term interests of end-users of carriage services or of services provided by means of carriage services; and*
>
> *(b)   the efficiency and international competitiveness of the Australian telecommunications industry; and*
>
> *(c)   the availability of accessible and affordable carriage services that enhance the welfare of Australians.[16]*

5.7 Sub-allocation of numbers has benefited Australian consumers by promoting innovation and increasing competition at the services layer. It has enabled the entry of international competitors that may have otherwise been reluctant to enter the Australian market. Many of these new entrants have enabled Australian businesses to communicate more efficiently with their customers including by way of both A2P messaging and unified communications services. Forcing assignees of numbering resources to register as CSPs will simply add to the cost of supply without any concomitant benefit to consumers.

5.8 Pivotel notes that the proposed s.87A(1) applies to the assignment of a number from a CSP to another person "*on the same network*"[17]. This is also problematic to the extent that it implies that assignment of numbers can or should only occur between CSPs which use the same network for *outbound* calls. There is no reason why numbering resources should be tied to a particular network in this way. Indeed, doing so is likely to restrict competition and innovation at the services layer. Nor has the ACMA provided any compelling evidence as to how such a restriction would in fact reduce the likelihood of scam calls or scam SMs, such a restriction. *Limitation on the number of assignments*

5.9 Pivotel does not see any compelling reason for a limitation on the number of times a number can be assigned. Rather, any such limitation is likely to be arbitrary. It is also

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[15] Draft Variation Schedule 1 cl 2.
[16] Telecommunications Act s 3(1).
[17] Ibid cl 18.

unnecessary given the obligations outlined above in the IPND Code (and the obligations that are likely to be implemented in the Number Management Code), which collectively ensure that the CSP that has been assigned a number can be effectively traced.

5.10   Nor is it clear to Pivotel what public benefit would be served by imposing such a restriction or what harm it seeks to address. Such a change would also constrain the final assignee in the chain from full usage of the number that they have obtained.

5.11   This also begs the question: how many sub-assignments is too many? If the ACMA considers there is a harm associated with sub-assignment, at what point does this occur? What would happen to those numbers that have been sub-assigned to CSPs beyond the number of times that the ACMA decides a number can be sub-assigned? Pivotel believes that any restriction would be entirely arbitrary.

Restricting assignment of numbers to Australian businesses

5.12   The ACMA also asks whether the Numbering Plan should restrict the assignment of numbers to Australian businesses only.[18] It is unclear from the Consultation Paper what the ACMA considers an "Australian business". Pivotel assumes that this will involve a CSP either being an Australian company or a foreign company that has registered with ASIC pursuant to the *Corporations Act 2001* (Cth), and thus holds an ARBN. In any event, Pivotel requests that the ACMA make clear what definition will be applied before making any change to the Numbering Plan.

5.13   Pivotel also considers that the proposed restriction runs contrary to the objects of the Telecommunications Act which set out to promote both efficiency and international competitiveness of the Australian telecommunications industry; and the availability of accessible and affordable carriage services that enhance the welfare of Australians.[19] This is because it would constrain market entry by global services providers, many of whom do not have a place of business in Australia. Any such company wishing to trial a new product or service in Australia, which relies upon the use of numbering resources would need to potentially restructure its operations to meet the ACMA's requirements (Pivotel assumes this would involve either the incorporation of a local subsidiary or registration of a foreign business). This can be both a time consuming and costly task, particularly for large multinationals.

5.14   In addition, verifying which businesses are entitled to be assigned numbers will place a significant additional administrative burden on holders of numbering resources. While this may be appropriate if there is a clear benefit to consumers, the ACMA has not (in Pivotel's view) identified one.

Timeframes

5.15   If contrary to Pivotel's submission, the ACMA elects to proceed with the Draft Variation, Pivotel then submits that the proposed timeframes are likely to be too short to allow for all participants to comply and may have significant repercussions for end-users in these circumstances

5.16   If CSPs need to establish an Australian presence, whether via a local subsidiary or registering a foreign company, this will take time. It is not uncommon for the registering of a foreign company to take a month even in straight forward cases where all necessary information has been provided. This is before any increased volumes as

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[18] Consultation Paper, p 7.
[19] Telecommunications Act s 3(1).

a result of these changes are considered. In addition, it will also take time for participants in the chain of sub-assignment to be notified of these new obligations and to obtain the necessary internal approvals. The timeframe will be a bigger issue for those CSPs that do not have a local presence and are more reliant upon the holder or assignor of that number communicating the obligations to them.

5.17 In addition, if a CSP that is the current assignee of a number elects not to proceed with registration and returns the number, this is likely to require withdrawing the number from their customer (whether that is a consumer or a further assignee down the chain). Depending on the contractual provisions in place, this may not be achievable and, in any event, is likely to take considerably longer than 90 days.

6. POWER TO WITHDRAW NUMBERS USED FOR SCAMS (Question 1.14)

6.1 Pivotel has significant concerns regarding the ACMA's proposal to grant itself the power to withdraw numbers that it suspects are being used for scam purposes.[20]

6.2 Firstly, it is unclear to Pivotel in what circumstances this power would be exercised. The ACMA has only recently registered the updated Reducing Scams Code, which imposes obligations on a C/CSP to block scam calls upon confirmation that these occurring.[21] However, the Guidelines on the clause 4.6.1 of the Reducing Scams Code provide that:

Where Scam Calls are confirmed, a C/CSP must take action to Block the Scam Calls as soon as practicable (unless the C/CSP forms a reasonable view that the Number has been subject to CLI Spoofing).

Numbers should not be blocked without clear evidence the Number continues to be used to perpetrate scam and the Number has not been the subject of CLI Spoofing.

Both the Reducing Scams Code and the Guidelines (and indeed the Consultation Paper) recognise the difficulties in confirming a voice call or SMS as a scam.[22] The Code requires "clear evidence", which likely goes beyond the "reasonable grounds"[23] that the ACMA would need in order to withdraw the number pursuant to the proposed s.92A.

6.3 In addition, it is commonly accepted within the industry, scammers tend to move quickly between numbers and it is difficult to see how the new power will have an impact in these circumstances. By the time the ACMA has sufficient grounds to satisfy itself that both s92A(1)(a) and (b) have been met, it may be too late.

6.4 The proposed s.92A(1)(b) also requires the ACMA to be satisfied that "the benefits of withdrawing the number, or the problems to be avoided by withdrawing the number, are more significant *for end-users and carriage service providers* than any adverse technical and financial consequences of withdrawing the number"[24]. However, this fails to recognise that, the interests of end-users and CSPs may not always be aligned and may indeed be opposed to one another.

6.5 Pivotel also notes that a notice of withdrawal would be issued to the holder of the number. The holder of a number for the purposes of the Numbering Plan is the

[20] Draft Variation Schedule 1 cl 21.
[21] Reducing Scams Code cl 4.6.1.
[22] See for example: Reducing Scams Code cl 4.1.2.
[23] Draft Variation Schedule 1 cl 21.
[24] Ibid.

allocatee or the transferee of that number.[25] This may, of course, be quite different from the CSP that is actually using the number. This may create real issues for service providers given the potential inconsistencies in contractual arrangements with customers and/or suppliers. The consequence could be that contractual liability arises for parties that have acted in good faith.

6.6   Pivotel submits that the updated Reducing Scams Code should be given time to bed in before any additional powers are considered.

6.7   If in the future the ACMA considers that further powers are required, then Pivotel submits that powers similar to those of the Federal Communications Commission in the United States should be considered, whereby the FCC can issue enforceable instructions to all domestic carriers to block certain international or domestic companies if they are identified as supporting scam.

7.   DECREASING THE SIZE OF A STANDARD UNIT OF NUMBERS (Question 2.1)

7.1   Pivotel supports this change for mobile numbers. It will be likely to open up allocation and transfer of numbers to other industry participants that may have reasonable scale but not be of sufficient size to justify the current number blocks.

7.2   Pivotel anticipates that this will lead to a more efficient use of scarce numbering resources.

8.   LOCATION INDEPENDENT COMMUNICATIONS SERVICES (Question 2.6)

8.1   Pivotel does not consider that there is any reason to retain the special prefix for LICS if no numbers have been issued. The proposal will also simplify the numbering framework.

8.2   Pivotel considers that the ACMA should also consider whether further revision to the Numbering Plan is required to ensure that it properly addresses new and emerging use cases by VoIP and UCaaS providers.   For example, this could involve amendments to the definitions of 'local number' and 'mobile number'.

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[25] *Telecommunications (Numbering Charges) Act 1997* (Cth) s 17.