



Minor variations to Internet Activity and Audit of telecommunications infrastructure assets record keeping rules

Decision paper

December 2023

Acknowledgement of country

The ACCC acknowledges the traditional owners and custodians of Country throughout Australia and recognises their continuing connection to the land, sea and community. We pay our respects to them and their cultures; and to their Elders past, present and future.

Australian Competition and Consumer Commission

Land of the Ngunnawal people

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Executive summary

The ACCC has concluded its consultation relating to changes required to the Audit of Telecommunications Infrastructure Assets Record Keeping Rules (**'Infrastructure Record Keeping Rules'**) and the Internet Activity Record Keeping Rules (collectively, the **'Record Keeping Rules'**).

A number of divestments across the industry have necessitated changes to the record-keepers listed in the Record Keeping Rules to ensure that all relevant industry players are captured.

The ACCC has consulted with the relevant corporate groups to ensure that the obligations in the Record Keeping Rules have been imposed on the correct entities. The amendments apply to the Record Keeping Rules are described below.

The Record Keeping Rules were varied on 15 December 2023 and will take effect as following:

- For the Infrastructure Record Keeping Rules, the 31 January 2024 reference date.
- For the Internet Activity Record Keeping Rules, the 31 December 2023 reference date.

Introduction

The Australian Competition and Consumer Commission (**'ACCC'**) has the power to collect information from industry to undertake its telecommunications regulatory functions under the *Competition and Consumer Act 2010* (**'CCA'**) and relevant telecommunications legislation. Section 151BU of the CCA provides that the ACCC may make record keeping rules which require carriers and service providers to keep records and provide reports of information in those records to the ACCC.

In November 2023 the ACCC announced it proposed to amend the list of specified record keepers to the Infrastructure Record Keeping Rules and Internet Record Keeping Rules to reflect recent changes in the industry.¹

The CCA does not provide an express power to vary the Record Keeping Rules. However, relevantly subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make a legislative instrument, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Consultation Process

To assist the ACCC's consideration of whether to make the proposed amendments to the Record Keeping Rules, the ACCC sought views from interested parties and published a

¹ ACCC, [Infrastructure and Internet Activity Record Keeping Rules Consultation Paper](#), 15 November 2023, accessed 15 December 2023.

[consultation paper](#) on 15 November 2023. Submissions to the consultation closed on 30 November 2023.

The ACCC received one submission from Superloop.² The ACCC also consulted with Maret Group Pty Ltd, Maret Infrastructure Pty Ltd and XYZ Telecom Pty Ltd, but did not receive a public submission.

² Superloop, Public submission, 30 November 2023.

Changes to the Record Keeping Rules

Infrastructure Record Keeping Rules

The [Infrastructure Record Keeping Rules](#) requires specified carriers to report on the extent and location of their core network and customer access infrastructure, as well as leased infrastructure or infrastructure operated on behalf of third parties. It was first issued in December 2007 and has been reviewed several times since then, generally to expand reporting requirements and update the list of reporting entities.

ACCC consultation paper

During 2021 and 2022, Spirit Telecom Ltd divested its customer access network and core assets to the Maret corporate group in 2022. The ACCC proposed the following amendments:

- Removal of Spirit Telecom Ltd as a record keeper.
- Addition of Maret Group Pty Ltd, Maret Infrastructure Pty Ltd and XYZ Telecom Pty Ltd.

Submissions

There were no public submissions received on the proposed variation to the Infrastructure Record Keeping Rules. However, ACCC staff did receive additional information from the Maret corporate group.³ They were of the view that only Maret Infrastructure should be listed as a record keeper, because:

- Maret Infrastructure Pty Ltd holds a carrier licence and operates network infrastructure,⁴
- XYZ Telecom Pty Ltd do not hold any assets from the Spirit Telecom divestment, and
- Maret Group Pty Ltd is not a carrier or carriage service provider.

ACCC decision

Following consideration of the information received, the ACCC has decided to vary the Infrastructure Record Keeping Rules by:

- removing Spirit Telecom Ltd (ACN 089 224 402), and
- adding Maret Infrastructure Pty Ltd (ACN 656 106 044).

The updated instrument is available on the ACCC website. The new rules will take effect for the 31 January 2024 reference date.

³ Information provided by stakeholder.

⁴ Australian Communications and Media Authority, [Register of licensed carriers](#), accessed 11 December 2023.

Internet Activity Record Keeping Rules

Information gathered under the [Internet Activity Record Keeping Rules](#) includes the number of retail services in operation in terms of access connection, wholesale speed tier and the volume of data downloaded across NBN, non-NBN fixed and mobile services.

The Internet Activity Record Keeping Rule was issued in December 2018 and has been revised several times since then, generally to expand reporting requirements and update the list of reporting entities.

ACCC consultation paper

The proposed changes were to reflect recent industry changes:

- MyRepublic Pty Ltd no longer providing broadband services in Australia, its subscribers having been acquired by Superloop Limited in late 2022.
- The merger of Harbour ISP Pty Ltd with its parent brand Uniti from 1 June 2023, with its subscribers migrated to Uniti and Aussie Broadband Pty Ltd (already a record keeper).

Submissions

The ACCC received a submission from Superloop. In its submission, Superloop proposed reporting on a consolidated basis to 'reduce the complexity of reporting across multiple group entities and reporting systems.'⁵ The entities that Superloop proposed to include were:

- Exetel Pty Ltd,
- Superloop Limited,
- Superloop Broadband Pty Ltd, and
- Superloop (Operations) Pty Ltd.

Superloop also noted that while this is a new requirement, it did not foresee any material issues with reporting for the first reporting period.⁶

ACCC decision

Following consideration of the information received, the ACCC has decided to vary the Internet Activity Record Keeping Rules by:

- Removing:
 - MyRepublic Pty Ltd (ABN 75 603 909 815),
 - HarbourISP Pty Ltd (ABN 44 154 752 968), and
- Adding:
 - Uniti Retail Pty Ltd (ACN 154 074 218), and

⁵ Superloop, Public submission, 30 November 2023.

⁶ Superloop, Public submission, 30 November 2023. The Consultation proposed that any changes come into effect as soon as possible. For the Internet Activity Record Keeping Rules, this is for the 31 December 2023 reference period.

- a consolidated Superloop reporting entity.⁷

The updated instrument and input template are available on the ACCC website. The new rules will take effect for the 31 December 2023 reference date.

⁷ The consolidated Superloop reporting entity includes Superloop Limited (ACN 169 263 094), Superloop Broadband Pty Ltd (ACN 125 849 621), Superloop (Operations) Pty Ltd (ACN 622 829 510) and Exetel Pty Ltd (ACN 097 986 546).