

## EXPLANATORY STATEMENT

### **CARRIER LICENCE CONDITIONS (TELSTRA CORPORATION LIMITED) DECLARATION 1997**

#### **TELECOMMUNICATIONS ACT 1997**

Issued by the Authority of the Minister for Communications and the Arts

Division 3 of Part 3 of the *Telecommunications Act 1997* (“the Act”) provides for the imposition of licence conditions on carriers.

Section 61 of the Act provides that a carrier licence is subject to the conditions specified in Schedule 1 to the Act. Section 62 provides that a carrier licence is subject to the condition set out in section 152AZ of the Trade Practices Act 1974, which provides that a carrier must comply with any applicable standard access obligations. Section 63 of the Act provides that the Minister may, by written instrument:

- (a) impose conditions, in addition to those referred to in sections 61 and 62, applying to all carrier licences (s.62(1))
- (b) impose conditions on specified carrier licences (s.63(2))
- (c) provide that specified conditions will be imposed on a carrier licence which may be granted to a specified person during a specified period (s.63(3)).

Section 63(2) of the Act enables conditions to be imposed on a particular licence prior to its grant and which will come into force upon that grant.

Section 49 of the Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997 provides that persons holding carrier licences under the *Telecommunications Act 1991* as at 4 June 1997 will be deemed to have been granted a carrier licence under the Act on 1 July 1997 (s.49(1) and (2)). Telstra Corporation Limited (“Telstra”) was a holder of 2 carrier licences as at 4 June 1997: a general telecommunications licence and a public mobile licence. Telstra will hold a single new carrier licence from 1 July 1997, which will replace its two existing licences.

The attached declaration under section 63(3) of the Act imposes conditions on the carrier licence of Telstra that will come into force on 1 July 1997.

Broadly, the conditions reflect the existing licence conditions which apply to Telstra, where they continue to be relevant and amended as necessary to reflect the new legislative arrangements and new licence conditions necessary for the operation of the new telecommunications legislation.

The Minister must give a copy of an instrument under s.63(3) to the relevant carrier or applicant for a carrier licence (s.63(8)). An instrument made under section 63(3) may be varied or revoked by the Minister (ss.63(5) and (6)); must be published in the *Gazette* (s.63(10)); is disallowable by the Parliament (s.63(13)); and takes effect when the licence is granted (s.63(11)).

**CARRIER LICENCE CONDITIONS (TELSTRA CORPORATION LIMITED)  
DECLARATION 1997**

**1. Citation**

This clause provides for the Declaration to be cited as the Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997.

**2. Commencement**

This clause provides that the licence conditions contained in the Declaration commence on 1 July 1997.

**3. Definitions**

This clause includes key definitions for the Declaration.

The term “unlisted number” is used in clauses 9(7) and 10(5) of the Declaration. An unlisted number should not be listed in Telstra’s alphabetical public number directory and would not be available for release through other such directory or directory assistance services (see s.285 of the Act). An unlisted number is one of four types of number: a public mobile number unless the customer and the carriage service provider that provides the mobile service to the customer agree that the number will be listed; a geographic number (ie a local telephone number for a service provided across a fixed public network that a customer and the carriage service provider that provides local access services agree will not be listed; a number of a public payphone; and a number which provides access to a private telephone exchange extension within an organisation, ie a set of digits usually consisting of the last three to five digits of the local number for the organisation, that the customer requests not be listed in the directory.

A “location dependent carriage service” is defined for the purposes of clauses 10(1)(d) and 10(7)(d) as a carriage service that depends for its provision on the availability of information about the street address of the caller. Examples of location dependent carriage services are ‘13’ services where the customer’s street address is used to direct the call to a termination point which enables the business to service the customer most efficiently. The address information is currently used only to direct the call and is not transferred to the called party. Any such transfer of directory data to the called party would be subject to privacy safeguards contained in Part 13 of the Act.

**4. Application**

This clause provides that the Declaration applies to the carrier licence deemed to have been granted to Telstra on 1 July 1997 by virtue of the transitional provisions contained in section 49 of the *Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997*.

## **5. Industry development plans**

This clause will require Telstra to give a current industry development plan (as defined in clause 3) to the Minister for Industry, Science and Tourism and obtain his or her approval of the plan within 90 days after 1 July 1997. It will also require Telstra to comply with clauses 8, 9, 10, 11, 12, 13 and 14 of Schedule 1 to the Act as if the plan were an industry development plan made under Part 2 of Schedule 1 to the Act.

## **6. Compliance**

This clause will require Telstra to comply with its obligations under clauses 7 to 10 of the Determination to the extent made possible by the information provided by carriage service providers under clause 10 of Schedule 2 to the *Telecommunications Act 1997*. (Clause 10 of Schedule 2 provides that if a carriage services provider supplies a carriage service to an end-user and the end-user has a public number (ie a number specified in the numbering plan as being for use in connection with the supply of carriage services to the public in Australia) the carriage service provider must give Telstra such information as Telstra reasonably requires in connection with Telstra's fulfilment of its obligation to provide and maintain an integrated public number database.)

## **7. Operator Services**

This clause will require Telstra to make operator services available to end-users of its standard telephone services. Part 2 of Schedule 2 to the Telecommunications Act 1997, which establishes standard service provider rules, will oblige all carriage service providers supplying a standard telephone service to make operator services available to end-users of that standard telephone service. The provider may do this by providing the service itself or arranging with another person for the provision of the operator services (clause 4, Schedule 2 to the Act).

This licence condition will ensure that Telstra provides an operator service itself, enabling other carriage service providers to seek access to that service in order to fulfil their obligations under the service provider rules (clause 5, Schedule 2 to the Act). Section 67(2) of the Act provides that a condition of a carrier licence may remove or restrict a right or privilege that the carrier would otherwise have under a provision of the Act.

## **8. Directory assistance services**

This clause will require Telstra to make directory assistance services available to end-users of its standard telephone services. Part 3 of Schedule 2 to the Telecommunications Act 1997, which establishes standard service provider rules, will oblige all carriage service providers supplying a standard telephone service to make directory assistance services available to end-users of that standard telephone service. The provider may do this by providing the service itself or arranging with another person for the provision of the directory assistance services (clause 7, Schedule 2 to the Act).

This licence condition will ensure that Telstra provides a directory assistance service, enabling other carriage service providers to seek access to that service in order to fulfil their obligations under the service provider rules (clause 8, Schedule 2 to the Act). Section 67(2) of the Act provides that a condition of a carrier licence may remove or restrict a right or privilege that the carrier would otherwise have under a provision of the Act.

Telstra's charges for directory assistance will continue to be subject to the Telstra Carrier Charges — Price Control Arrangements, Notification and Disallowance Determination 1995. This Determination requires Telstra to notify the Minister in advance of introducing charges for directory assistance. The Minister may seek advice from the Australian Competition and Consumer Commission (ACCC) and may disallow such a proposal in the public interest.

## **9. Alphabetical public number directory**

Telstra will continue to be under an obligation to produce, publish and distribute an alphabetical telephone or public number directory. The provisions broadly reflect existing obligations placed on Telstra to produce such a directory under clause 4, Licence to operation as a general telecommunications carrier, issued to the Australian and Overseas Telecommunications Corporation on 22 November 1991.

Telstra will be required to produce a directory:

- annually
- on substantially the same basis as it produced and distributed a public number director in 1997;
- in volumes by geographic area; and
- that includes all customers of carriage service providers, subject to the requirement under subclause 9(7) not to include details of unlisted numbers (clause 9(1)).

Telstra will be required to arrange to publish and distribute the directory to its own customers and the customers of other carriage service providers (or the nominees of the customers) (clause 9(2)).

Telstra will be required to include, free of charge to the customer, one standard entry for each customer. That standard entry may be either the customer's geographic number (ie a local telephone number for a service provided across a fixed public network) or, on request, the customer's mobile number (clauses 9(3) and (4)). The name may be the customer's name or, if the customer requests, the name of the principal user of the service. The address may be the service location or, if the customer requests, an alternative location such as, in the case of a business, a point for customer contact. Telstra has existing processes for handling such listing requests.

Telstra will also be required to comply with any request by a customer to include in the directory a customer's facsimile number (clause 9(5)).

Telstra will be required to provide standard and other entries in the directory, such as enhanced entries, and services for not including details of a customer in the directory, such as Telstra's unlisted number or "silent line" service, to customers of other carriage service providers on conditions which are no less favourable than for its own customers (clause 9(6)).

Telstra will be required to ensure, to the greatest extent practicable, that the directory does not include details of a customer who has an unlisted number. An unlisted number is a number that has the meaning given in clause 3 (clause 9(7)).

When contacting a customer of another carriage service provider for purposes related to the directory service, such as verification of entry details or to promote an enhanced entry, Telstra will be required to ensure to the greatest extent practicable that it does not promote its own carriage services or other goods or services unrelated to the directory entry (clause 9(8)). It is intended that Telstra have in place measures to ensure that its staff are aware of, and comply with, this licence condition.

The directory will be required to be provided to customers free of charge as a book or, if the customer agrees, in another form. It is envisaged that, in the future, customers may choose to receive access to the directory, for example, as an on-line service or on disk (clause 9(9)).

## **10. Integrated public number database**

Section 472 of the Act envisages the establishment of an integrated public number database. That section enables the Minister to determine that a specified person or association (other than Telstra) must provide and maintain an integrated public number database or to impose such an obligation on Telstra as a condition of its carrier licence.

Clause 10 will require Telstra to establish and maintain an integrated public number database for the purpose of providing information for purposes connected with:

- providing directory assistance services;
- providing operator services or operator-assistance services, as defined in clause 3;
- publishing public number directories (including classified business directories and specialist trade directories);
- providing location dependent carriage services, as defined in clause 3;
- the operation of emergency call services or assisting emergency services, in accordance with any determination by the ACA under Part 12 of the Act, which imposes requirements on carriers, carriage service providers or emergency call persons in relation to emergency call services;

- assisting enforcement agencies (defined in clause 3) or safeguarding national security, in accordance with Part 14 of the Act, which requires carriers and carriage service providers to give officers and authorities of the Commonwealth, State and Territories such help as is reasonably necessary for the purposes of enforcing the criminal law and laws imposing pecuniary penalties; protecting the public revenue and safeguarding national security; and
- any other activities specified by the Australian Communications Authority (ACA) in writing to Telstra (clause 10(1)).

The last dot point provides scope for additional purposes to be determined by the ACA should the need arise. Possible uses beyond those specified may not become apparent until the database has been established.

In establishing and maintaining the database, Telstra will be required to comply with privacy safeguards contained in Part 13 of the Act.

Telstra will be obliged to comply with the obligation to provide the database before 1 July 1998 or an earlier date specified by the Australian Communications Authority in the Commonwealth *Gazette* (clause 10(3)). It is anticipated that in view of the potential for anti-competitive use of the database, the Minister will consider whether to direct the ACA to consider using its powers, under section 581 of the Act, to direct Telstra in regard to how it should ensure it complies with this licence condition.

The database will be required to include information relating to each public number of a customer of each carriage service provider. This information comprises the public number; the name and address of the customer; the service location, if practicable; the name of the carriage service provider that provides local access services, in the case of a fixed-line number, or public mobile services to the customer; whether the telephone is to be used for government, business, charitable or private purposes, if practicable; and any other information that the ACA specifies in a written notice to Telstra (clause 10(4)). This clause describes all information that is reasonably required to be provided to Telstra by carriage service providers under clause 10(2) of Part 4, Schedule 2 to the Act. In order to meet the purposes specified in clauses 10(1) and 10(7) of the Declaration, the information contained in the database must be updated and verified from time to time. Carriage service providers (including Telstra itself) are obliged, by virtue of the specification of clause 10(4) of this Declaration and clause 10(2) of Part 4, Schedule 2 to the Act, to provide Telstra with information necessary to achieve this.

The database will also be required to include:

- an indication of whether a public number is an unlisted number (clause 10(5)); and
- information on the public number and location of payphones (clause 10(6)).

Telstra will be required to provide access to information from the database to any carriage service provider which makes a request for such access where that

information is to be used only for the purpose of helping the provider to undertake the same activities for which the database is to be established under clause 10(1) (clause 10(7)).

Clause 10(8) makes clear that section 313 of the Act applies to the database. Telstra will accordingly be required to give information from the database about its own and other carriage service providers' customers where this is necessary to comply with requirements under that section to give officers and authorities of the Commonwealth, State and Territories reasonably necessary assistance for the purposes of enforcing the criminal law and laws imposing pecuniary penalties; protecting the public revenue; or safeguarding national security. The terms and conditions on which Telstra complies with its obligations under section 313 are determined by section 314.

The terms and conditions on which access is provided under clause 10(7) are to be agreed between the parties or, failing agreement, as determined by an arbitrator or the ACCC. Access to the database is also to be subject to the privacy provisions included in part 13 of the Act (clause 10(9)).

In determining the price or price-related conditions of access, the ACCC will be required to consider only the direct costs (including labour and direct administration costs) incurred by Telstra in complying with clause 10(7) and a reasonable contribution to a formal return of the capital expended in establishing and maintaining the database (clause 10(10)). The database is an industry-wide resource to which all carriage service providers will be under an obligation to contribute (Part 4, Schedule 2 to the Act) and from which they will require information in order to comply with relevant obligations. It is therefore not appropriate that the cost of access be based on the normal commercial value of the information contained in the database.

A request for access under clause 10(7) or assistance under clause 10(8) may be a single request or part of a continuing arrangement between Telstra and the requesting carriage service provider or officer or authority (clauses 10(11) and (12)). Such an arrangement may include an arrangement for periodic updates of information or arrangements for expediting access to information by enforcement agencies subject to Parts 13 and 14 of the Act.

## **11. Differential charging conditions**

Telstra will continue to be obliged to differentiate between charges for various services in relation to the supply of the standard telephone service and a telephone handset on a rental basis (clause 11(1)); and to ensure reductions equal to or greater than specified amounts if the customer chooses not to have a rental handset provided by Telstra (clause 11(2)).

Clause 11 imposes similar obligations placed on Telstra under clause 5, Licence to operate as a general telecommunications carrier, issued to the Australian and Overseas Telecommunications Corporation on 22 November 1991. These obligations were imposed following the expiry of Telstra's first telephone monopoly on 30 June 1991 and are intended to enable customers to:

- identify the charge being made by Telstra for providing a rental handset and services associated with doing so;
- compare the handset charge with the costs of acquiring a handset, by rental or purchase, from other suppliers; and
- set minimum discounts where rental handsets are not provided.

The minimum discounts are based on estimates undertaken in 1991 of Telstra's costs of providing a handset on a rental basis and of connecting a new service with a rental handset.

In circumstances where Telstra supplies a rental telephone handset with a standard telephone service, it should differentiate between 5 separate charges connected with supply of the handset and the standard telephone service. Differentiation of a larger number of charges than in the declaration made in 1991 reflects unbundling by Telstra of the goods and services involved in supplying the standard telephone service with a handset. The charge for the initial supply of the telephone handset (clause 11(1)(a)) refers to a \$28 charge introduced by Telstra in March 1997 which is charged when a handset is collected from a Telstra office. This charge, together with the \$15 charge for connecting a handset at the customer's premises (clause 11(1)(b)), comprise the \$43 differential charge referred to in clause 11(2)(b).

In circumstances where Telstra provides a customer with a standard telephone service but does not supply the service with a rental telephone handset for use with the service, it must charge the customer:

- (a) in the case of an annual charge for supplying the standard telephone service – a charge that is at least \$30 less than the sum of the licensee's usual annual charges for:
  - (i) supplying the standard telephone service; and
  - (ii) supplying a rental telephone handset for use with the standard telephone service; or
- (b) in the case of a new service connection charge – a charge that is at least \$43 less than the sum of the Telstra's usual charges for:
  - (i) connecting a standard telephone service;
  - (ii) initial supply of a rental telephone handset; and
  - (iii) connection at the customer's premises of a rental telephone handset with the standard telephone service (clause 11(2)).

## **12. Digital data capability**

Clause 12 gives effect to section 66 of the Act which requires the imposition on Telstra of licence conditions in relation to the supply of a carriage service providing ISDN-comparable digital data capability. Telstra will be required to be in a position to make available, within 90 days of a request, a carriage service that provides a digital data capability broadly comparable to that provided by a data channel with a



data transmission speed of 64 kbps supplied to end-users as part of the designated basic rate ISDN service (as defined in section 66(2) of the Act):

- (a) by 1 July 1997 – to at least 93.4% of the Australian population; and
- (b) by 31 December 1998 – to at least 96% of the Australian population.