

## **EXPLANATORY STATEMENT**

*Telecommunications Act 1997*

### **Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 (Amendment No. 1 of 2003)**

Issued by the authority of the Minister for Communications,  
Information Technology and the Arts

Subsection 63(3) of the *Telecommunications Act 1997* (Cth) (the Act) enables licence conditions to be imposed on a particular licence prior to its grant and to come into force upon that grant. The Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 (the original Telstra licence conditions) was made on 24 June 1997 in reliance on this provision and came into force on 1 July 1997. The original Telstra licence conditions have since been varied by a number of declarations.

The accompanying amending declaration has been made in reliance on subsection 63(5) of the Act. Subsection 63(5) of the Act enables the Minister, by written instrument, to vary an instrument under subsection 63(3) of the Act. Subsection 63(13) of the Act provides that an instrument under subsection 63(5) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901* (Cth).

Section 68 of the Act provides that a carrier must not contravene a condition of its carrier licence. In the event of a contravention of a carrier's licence conditions:

- (a) section 69 of the Act enables the Australian Communications Authority (ACA) to give a carrier a remedial direction aimed at ensuring that the carrier does not contravene its licence conditions in future;
- (b) section 70 of the Act enables the ACA to issue a formal warning to a carrier in relation to the contravention; and
- (c) Part 31 of the Act enables the Minister, the ACA or the ACCC to institute proceedings in the Federal Court for the recovery of a pecuniary penalty of up to \$10 million for each contravention.

The accompanying amending declaration provides for new licence conditions to apply to Telstra Corporation Limited in relation to certain of its obligations in the provision of mobile phone coverage for selected population centres and in relation to certain of its obligations in the provision of mobile phone coverage on selected highways. All of the obligations on Telstra for the former are specified in an agreement entitled "Deed of Agreement in relation to the provision of funding for mobile phone coverage in selected population centres" dated 11 July 2002 between the Commonwealth and Telstra, as amended from time to time. All of the obligations on Telstra for the latter are specified in an agreement entitled "Deed of Agreement in relation to the provision

of funding for mobile phone coverage on selected highways” dated 15 August 2002 between the Commonwealth and Telstra, as amended from time to time.

The purpose of the new licence conditions is to maximise the enforcement of certain obligations on Telstra through a regulatory mechanism as well as through the Agreement. This approach has been taken because of the Commonwealth’s substantial financial contribution to the provision of mobile phone coverage and to ensure the provision of core services and agreed service levels over the seven-year contractual term.

The new licence conditions apply to certain other important services, detailed in the Attachment. The licence conditions reflect the Agreement, and do not go beyond it in any way. Section 64 of the *Telecommunications Act 1997* (Cth) provides that before making an instrument under subsection 63(5) the Minister must arrange for a draft version of the instrument to be provided to the licence holder and invite the holder to make a submission to the Minister on the draft. Telstra was consulted on a draft version of the accompanying declaration and had no comments.

### Clause 1 – Name of Declaration

Clause 1 provides for the citation of the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 (Amendment No. 1 of 2003)*.

### Clause 2 – Commencement

Clause 2 provides that the accompanying amending declaration commences on gazettal.

### Clause 3 – Variation

Clause 3 provides that the Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 is varied as set out in the accompanying amending declaration.

### Schedule 1 – Amendments

Schedule 1 provides that a new clause, Obligations in relation to the provision of mobile phone coverage in selected population centres, be inserted after clause 28 of the Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997.

### Clause 29 – Obligations in relation to the provision of mobile phone coverage in selected population centres

Subclause 29(1) defines key terms used in the licence condition.

The term “Actual Acceptance Date” is defined to have the same meaning as in the agreement entitled “Deed of Agreement in relation to the provision of funding under the regional mobile phone program for mobile phone coverage in selected population centres” dated 11 July 2002 between the Commonwealth and Telstra, as amended from time to time. Under the Agreement, “Actual Acceptance Date” is defined to mean the date on which the Commonwealth is reasonably satisfied that all Milestones have been fully completed in accordance with the Agreement. The Milestones relate to the rollout of handheld mobile phone coverage to 55 Designated Towns specified in Schedule 2 of the Agreement.

The term “Coverage” is defined to have the same meaning as in the Agreement. Under the Agreement, “Coverage” relates to the coverage of any service area in accordance with the Urban Centre/Locality code (UC/L) specified against each Designated Town in Schedule 2 of the Agreement, delivered in accordance with the Bell 90/90 rule and any relevant standards specified by the ACA from time to time for the purposes of the Agreement. The Bell 90/90 rule is the Northern American Bell 90/90 Rule which is defined as the ability to make and hold or receive and hold a call in accordance with any relevant service quality standards specified by the ACA for the purposes of the Agreement at 90 per cent of locations for 90 per cent of the time.

The term “Operating Coverage Map” is defined to have the same meaning as in the Agreement. This is defined in the Agreement to mean the coverage map provided by Telstra at the time of certifying that the Services specified in the Agreement have been provided to the relevant Designated Town. Under the Agreement, Telstra is required to provide handheld mobile phone coverage to each of the Designated Towns using CDMA technology as specified in Schedule 2 of the Agreement.

The term “Roaming” is defined to have the same meaning as in the Agreement. Item 2.8.1 of Schedule 1 of the Agreement provides that for the purposes of the Agreement, inter-carrier roaming for mobile telephony (roaming) provides for a user of one mobile telephone network to access the services of another mobile telephone network using the same handset and includes automatic roaming ie. where the user requires no intervention to roam between mobile networks once the service has been acquired by the user. For the purposes of the Agreement, inter-carrier roaming specifically excludes the use of mobile satellite services, whether for all or in part.

The term “Services” has the same meaning as in the Agreement.

Subclause 29(2) specifies that the date on which services come into operation is the date when a completion of a service is accepted as completed as specified in item 2.11 of Schedule 1 of the Agreement. Under item 2.11, Telstra is to provide the Commonwealth with the certification of commissioning for each Designated Town as evidence of implementation. Telstra is also required to provide Operational Coverage Maps showing the coverage to be provided for the Designated Towns.

Subclause 29(3) specifies that on or after the date on which the Services come into operation in each Designated Town, Telstra must:

- (a) provide mobile telephone services to each Designated Town. 55 designated towns are receiving improved mobile coverage under the Agreement. The coverage provided to towns is being rolled out according to a progressive schedule.
- (b) ensure that the area of Coverage in public coverage maps issued by Telstra after the provision of the Operational Coverage Maps is at least equal to the coverage shown in the Operational Coverage Maps. Operational Coverage Maps will be prepared by Telstra upon the commencement of services in each Designated Town. The coverage information shown in the Operational Coverage Maps must be provided in the public coverage maps issued by Telstra after the commencement of services.
- (c) provide Coverage in accordance with Schedule 1 of the Agreement and the area shown in the Operational Coverage Maps. The Agreement specifies that the service coverage for each town is determined in accordance with the Australian Bureau of Statistics 1996 UC/L codes. Operational Coverage Maps, confirming the area of coverage, will be

prepared by Telstra upon the commencement of services in each Designated Town.

- (d) provide for complaints handling and reports on complaints handling as provided for in Item 2.12 of Schedule 1 of the Agreement and Item 1.1(c)(iv) of Schedule 7 of the Agreement. Telstra must resolve complaints regarding Services provided through the Agreement and will report to the Commonwealth on the resolution of such complaints.

Subclause 29(4) specifies that on or after the Actual Acceptance Date Telstra must, for each of the Designated Towns:

- (a) make offers of Roaming (where applicable) as provided for in Item 2.8 of Schedule 1 of the Agreement. The Agreement requires Telstra to make offers of inter-carrier roaming in regard to the CDMA services provided.
- (b) maintain and upgrade service levels to the same standard that is generally available to the rest of Telstra's network.
- (c) provide comparable pricing and features to those generally available to the rest of Telstra's network.
- (d) provide continued opportunities for Australian and New Zealand suppliers under the conditions that apply to the Agreement.
- (e) provide the reports specified in Item 4 of Schedule 7 of the Agreement. The Agreement provides for Operational Reporting for a period of 5 years from the Actual Acceptance Date. The reports include confirmation of comparable prices and confirmation that offers of inter-carrier roaming are compliant with the Agreement.

Subclause 29(5) specifies Telstra's obligations to provide mobile telephone services to each Designated Town, subject to applicable legislation:

- (a) for a period of 5 years; and
- (b) for a further period of 5 years unless the Commonwealth agrees (with the Commonwealth not to unreasonably withhold its consent) that external technological and/or regulatory changes make it commercially impracticable or unviable for Telstra to provide the Services in a Designated Town or which otherwise require Telstra to review the method by which mobile telephone coverage is provided in the Designated Town.

Subclause 29(6) specifies that Telstra's additional obligations in relation to the provision of mobile phone services to selected population centres will continue for 5 years from the Actual Acceptance Date.

Subclause 29(7) specifies that Telstra's obligations under this clause are subject to clause 7 of the Agreement and any amendments to those obligations agreed between the Commonwealth and Telstra.

Clause 30 – Obligations in relation to the provision of mobile phone coverage on selected highways

Subclause 30(1) defines key terms used in the licence condition.

The term “Actual Acceptance Date” is defined to have the same meaning as in the agreement entitled “Deed of Agreement in relation to the provision of funding under the regional mobile phone program for mobile phone coverage on selected highways” dated 15 August 2002 between the Commonwealth and Telstra, as amended from time to time. Under the Agreement, “Actual Acceptance Date” is defined to mean the date on which the Commonwealth is reasonably satisfied that all Milestones have been fully completed in accordance with the Agreement. The Milestones relate to the rollout of mobile phone coverage to 35 Designated Highways specified in Schedule 2 of the Agreement.

The term “Coverage” is defined to have the same meaning as in the Agreement. Under the Agreement, “Coverage” relates to the coverage of any service area in accordance with the Urban Centre/Locality code (UC/L) specified against each Designated Highway in Schedule 2 of the Agreement, delivered in accordance with the Bell 90/90 rule and any relevant standards specified by the ACA from time to time for the purposes of the Agreement. The Bell 90/90 rule is the Northern American Bell 90/90 Rule which is defined as the ability to make and hold or receive and hold a call in accordance with any relevant service quality standards specified by the ACA for the purposes of the Agreement at 90 per cent of locations for 90 per cent of the time.

The term “Designated Highway” has the same meaning as in the Agreement. Under the Agreement, “Designated Highway” means a highway specified in Table 2.2 of Schedule 2 of the Agreement.

The term “Operational Coverage Map” is defined to have the same meaning as in the Agreement. This is defined in the Agreement to mean the coverage map provided by Telstra at the time of certifying that the Services specified in the Agreement have been provided to the Designated Highway. Under the Agreement, Telstra is required to provide handheld mobile phone coverage to each of the Designated Highways using CDMA technology as specified in Schedule 1 of the Agreement.

The term “Roaming” is defined to have the same meaning as in the Agreement. Item 2.8.1 of Schedule 1 of the Agreement provides that for the purposes of the Agreement, inter-carrier roaming for mobile telephony (roaming) provides for a user of one mobile telephone network to access the services of another mobile telephone network using the same handset and includes automatic roaming ie. where the user requires no intervention to roam between mobile networks once the service has been acquired by the user. For the purposes of the Agreement, inter-carrier roaming specifically excludes the use of mobile satellite services, whether for all or in part.

The term “Services” has the same meaning as in the Agreement.

Subclause 30(2) specifies that the date on which services come into operation is the date when a completion of a service is accepted as completed as specified in item 2.11 of Schedule 1 of the Agreement. Under item 2.11, Telstra is to provide the Commonwealth with the certification of commissioning for each Nominated Length as evidence of implementation. Testing of each Nominated Length shall include a drive test of the entire length of the Nominated Length by Telstra. Telstra is also required to provide Operational Coverage Maps showing the coverage to be provided for the Designated Highways.

Subclause 30(3) specifies that on or after the date on which the Services come into operation along each Designated Highway, Telstra must:

- (a) provide mobile telephone services along each Designated Highway. 35 Designated Highways are receiving improved mobile coverage under the Agreement. The coverage provided to highways is being rolled out according to a progressive schedule.
- (b) ensure that the area of Coverage in public coverage maps issued by Telstra after the provision of the Operational Coverage Maps is at least equal to the coverage shown in the Operational Coverage Maps. Operational Coverage Maps will be prepared by Telstra upon the commencement of services along each Designated Highways. The coverage information shown in the Operational Coverage Maps must be provided in the public coverage maps issued by Telstra after the commencement of services.
- (c) provide Coverage in accordance with Schedule 1 of the Agreement and the area shown in the Operational Coverage Maps. The Agreement specifies that the service coverage for each highway is determined in accordance with the Australian Bureau of Statistics 1996 UC/L codes. Operational Coverage Maps, confirming the area of coverage, will be prepared by Telstra upon the commencement of services along each Designated Highway.
- (d) provide for complaints handling and reports on complaints handling as provided for in Item 2.12 of Schedule 1 of the Agreement and Item 1.1(c)(iv) and 4.1(d) of Schedule 7 of the Agreement. Telstra must resolve complaints regarding Services provided through the Agreement and will report to the Commonwealth on the resolution of such complaints.

Subclause 30(4) specifies that on or after the Actual Acceptance Date Telstra must, in relation to each Designated Highway:

- (a) make offers of Roaming (where applicable) as provided for in Item 2.8 of Schedule 1 of the Agreement. The Agreement requires Telstra to make offers of inter-carrier roaming in regard to the services provided.

- (b) maintain and upgrade service levels to the same standard that is generally available to the rest of Telstra's network.
- (c) provide comparable pricing and features to those generally available to the rest of Telstra's network.
- (d) provide continued opportunities for Australian and New Zealand suppliers under the conditions that apply to the Agreement.

provide the reports specified in Item 4 of Schedule 7 of the Agreement. The Agreement provides for Operational Reporting for a period of 5 years from the Actual Acceptance Date. The reports include confirmation of comparable prices and confirmation that offers of inter-carrier roaming are compliant with the Agreement.

Subclause 30(5) specifies Telstra's obligations to provide mobile telephone services to each Designated Town, subject to applicable legislation:

- (a) for a period of 5 years; and
- (b) for a further period of 5 years unless the Commonwealth agrees (with the Commonwealth not to unreasonably withhold its consent) that external technological and/or regulatory changes make it commercially impracticable or unviable for Telstra to provide the Services along a Designated Highway or which otherwise require Telstra to review the method by which mobile telephone coverage is provided along the Designated Highway.

Subclause 30(6) specifies that Telstra's additional obligations in relation to the provision of mobile phone coverage to Designated Highways will continue for 5 years from the Actual Acceptance Date.

Subclause 30(7) specifies that Telstra's obligations under this clause are subject to clause 7 of the Agreement and any amendments to those obligations agreed between the Commonwealth and Telstra.