

EXPLANATORY STATEMENT

Telecommunications Act 1997

Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 (Amendment No. 1 of 2005)

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

OVERVIEW

The *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 (Amendment No. 1 of 2005)* (the amending declaration) amends the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997* (the original declaration). The amending declaration improves the operation and reporting of priority assistance for consumers and for Telstra as the provider of the priority assistance service to eligible customers who have a diagnosed life-threatening medical condition and are at risk of suffering a rapid, life-threatening deterioration in their condition.

Legislative Basis

Subsection 63(3) of the *Telecommunications Act 1997* (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 original declaration was made on 24 June 1997 under this provision and came into force on 1 July 1997. The original 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).

As a consequence of the commencement of the *Legislative Instruments Act 2003* (LIA) and the repeal of section 46A of the *Acts Interpretation Act 1901* on 1 January 2005, the accompanying amending declaration is a legislative instrument for the purposes of the LIA (see LIA s.6(1)(d)). The accompanying amending determination must therefore be tabled in the Parliament and is subject to Parliamentary disallowance. The requirement for gazettal in subsection 63(10) of the Act has been satisfied by the registration of the accompanying amending declaration and this explanatory statement on the Federal Register of Legislative Instruments (see LIA s.56(1)).

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 and Media Authority (ACMA), the successor to the Australian Communications

Authority (ACA) from 1 July 2005, 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 ACMA to issue a formal warning to a carrier in relation to the contravention; and
- (c) Part 31 of the Act enables the Minister or ACMA 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 or varied licence conditions to apply to Telstra, as a licensed telecommunications carrier, in response to recommendations made in the ACA Priority Assistance Review (27 May 2005).

The purpose of the new or varied licence conditions are to:

- address circumstances where a customer requests a connection or a fault repair outside of the required timeframes;
- require Telstra to report details of when the priority assistance timeframes are not met;
- clarify the level of detail to be included in reports to ACMA; and
- remove obsolete clauses from the original declaration.

Policy Basis

In accordance with the licence conditions imposed on it by the Government in 2002, Telstra is required to offer a priority assistance service to eligible customers, who have a diagnosed life-threatening medical condition and are at risk of suffering a rapid, life-threatening deterioration in their condition.

The priority assistance arrangements require Telstra to provide the highest level of service assurance practically available to eligible consumers for fault repair and service connection of a standard telephone service. The timeframes set out for priority service are not guaranteed, however Telstra makes every effort to meet its priority service commitments.

The priority service arrangements require Telstra to repair faults and provide new connections to priority customers within 24 hours (48 hours in remote areas) if the customer does not have any other working standard telephone service.

On 27 May 2005 the ACA released its report of a review into Telstra's priority assistance arrangements. The review looked at the current arrangements in place for priority assistance and whether they give effect to the government's priority assistance objectives and that they are being delivered in an adequate, efficient and effective manner. The changes made by the accompanying amending declaration to Telstra's licence conditions are part of the Government response to the recommendations of this review.

Consultation

Section 64 of the Act 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 has made a submission on the draft which has been considered. The matters raised by Telstra in its submission have been addressed in finalising the accompanying amending declaration.

NOTES ON CLAUSES

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 2005)*.

Clause 2 – Commencement

Clause 2 provides that the amending declaration commences on the day after it is registered on the Federal Register of Legislative Instruments.

Clause 3 – Amendment of the Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997

Clause 3 provides that the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997* (the original declaration) is amended as set out in Schedule 1 to the accompanying amending declaration.

Schedule 1 – Amendments

Item 1 – Priority assistance arrangements

Item 1 provides for a substitute clause 19 be inserted into the licence conditions. The new clause differs from clause 19 of the original declaration in the following manner:

Subclause 19(4) of the original declaration has been omitted

Subclause 19(4) of the original declaration required that Telstra complete certain tasks regarding the implementation of its priority assistance policy. These tasks included that Telstra submit a final draft of its priority assistance policy to the Minister for approval by 29 May 2002, as well as provide other information on timeframes, systems and processes, and training for staff as part of implementing its policy.

Telstra submitted its priority assistance policy to the Minister for approval on 29 May 2002. As the requirements of subclause 19(4) of the original declaration have been satisfied, it is no longer relevant and has therefore been omitted from new clause 19.

Subclause 19(5) of the original declaration has been omitted

Subclause 19(5) of the original declaration provided for Telstra to give certain information to the ACA on progress with implementation of all outstanding elements

of the priority assistance policy on 28 June 2002 and 27 September 2002, or other date or dates to be determined by the ACA.

Telstra submitted progress reports on the implementation of the policy on 28 June 2002 and 27 September 2002. As the requirements of subclause 19(5) of the original declaration have been satisfied, it is no longer relevant and has therefore been omitted from new clause 19.

Paragraph 19(8)(j) has been inserted into the amended licence conditions

Under the priority assistance arrangements, Telstra provides exception reporting to ACMA under established record-keeping rules. For example, an exemption report is generated by Telstra whenever a Customer Service Guarantee exemption (such as a mass service disruption) is claimed that affects priority assistance customers.

Paragraph 19(8)(j) specifies the details required when an exception report is made to ACMA. Paragraph 19(8)(j) provides that an exception report is required whenever a priority assistance timeframe is not met, and for Telstra to include location, time and duration information in each report.

Paragraph 19(10)(c) of the original declaration has been omitted

Paragraph 19(10)(c) of the original declaration required Telstra to report to the ACA on the number of rejected applications for priority assistance that are successfully appealed to Telstra and to the Telecommunications Industry Ombudsman. This information is available through other means and therefore is no longer required to be contained within the licence conditions. Paragraph 19(10)(c) has therefore been omitted from new clause 19.

Consequential amendment to subclause 19(1) of the original declaration

The reference to clause 20 in subclause 19(1) of the original declaration has been omitted from new subclause 19(1) as a consequence of the omission of clause 20 by item 2.

Item 2 – Omission of Clause 20

Clause 20 of the original declaration imposed a requirement on Telstra to undertake a review of its processes and systems for priority assistance and to provide reports to the Minister and the ACA on the findings of the review no longer than one month from the commencement of clause 20 of the original declaration.

The requirements are no longer relevant as Telstra reported to the Minister within the requirements of the original declaration. Clause 20 of the original declaration has therefore been omitted.

Item 3 – Schedule 4, paragraph (a) of item (8)

Schedule 4 to the original declaration provides the objectives to be addressed in Telstra's priority assistance policy under subclause 19(2). The priority assistance objective stated in paragraph (a) of item (8) of Schedule 4 is that for the connection of a standard telephone service, the maximum timeframes must be less than 24 hours, if the connection has been requested at a location within a standard zone and within an

urban centre, locality or other recognised community grouping with a population greater than or equal to 200 people.

Paragraph (a) of item (8) of Schedule 4 is amended to provide for the circumstances where a priority customer requests a connection outside of the required 24 hour timeframe. Under the original declaration, if Telstra agreed to a request outside of the required timeframe, it would have been in breach of its licence conditions. The amendment allows for Telstra to connect the service within a longer period if one is requested by a priority assistance customer.

Item 4 – Schedule 4, paragraph (b) of item (8)

Schedule 4 to the original declaration provides the objectives to be addressed in Telstra's priority assistance policy under subclause 19(2). The priority assistance objective stated in paragraph (b) of item (8) of Schedule 4 is that for the connection of a standard telephone service, the maximum timeframes must be less than 48 hours if the connection has been requested in other circumstances than those in paragraph (a) of item (8) of Schedule 4.

Paragraph (b) of item (8) of Schedule 4 is amended to provide for the circumstances where a priority customer requests a connection outside of the required 48 hour timeframe. Under the original declaration, if Telstra agreed to a request outside the required timeframe, it would have been in breach of its licence conditions. This amendment allows for Telstra to connect the service within a period longer than the 48 hours, if one is requested by a priority assistance customer.

Item 5 – Schedule 4, item (8), Note 2

Items (13) and (14) of Schedule 4 to the original declaration provided for the supply of interim priority services to priority customers where connection of the first standard telephone service or fault repair of an inoperative standard telephone service could not be achieved within 24 hours (48 hours for customers in remote areas). Note 2 to item (8) of Schedule 4 to the original declaration provided a reference to items (13) and (14) of Schedule 4.

Note 2 to item (8) is amended to provide a reference to when a priority service cannot be connected within 24 hours (48 hours in remote areas), or within a longer time period agreed to by the customer. In this circumstance, an interim service may be supplied. The supply of an interim service continues to be detailed in items (13) and (14) of Schedule 4.

Item 6 – Schedule 4, item (9), Note

The supply of an interim service is detailed in items (13) and (14) of Schedule 4. The note to item (9) of Schedule 4 to the original declaration provided a reference to items (13) and (14) of Schedule 4. Telstra must use its best endeavours to ensure any underlying network causes of the fault are identified and repaired if a priority service experiences two or more faults in a three month period. An interim service may be supplied by Telstra while a service is suffering a fault.

The note to item (9) is amended to provide a reference to when a priority service cannot be connected or repaired within 24 hours (48 hours in remote areas), or within a longer time period agreed to by the customer. In this circumstance, an interim service may be supplied. The supply of an interim service continues to be detailed in items (13) and (14) of Schedule 4.

Item 7 – Schedule 4, paragraph (a) of item (12)

Schedule 4 to the original declaration provides the objectives to be addressed in Telstra's priority assistance policy under subclause 19(2). The priority assistance objective stated in paragraph (a) of item (12) of Schedule 4 to the original declaration was that for the repair of a fault on a standard telephone service, the maximum timeframe was to be less than 24 hours, if the repair had been requested at a location within a standard zone and within an urban centre, locality or other recognised community grouping with a population greater than or equal to 200 people.

Paragraph (a) of item (12) of Schedule 4 is amended to provide for the circumstances where a priority customer requests the repair of a fault outside of the required 24 hour timeframe. Under the original declaration, if Telstra agreed to a request outside the required timeframe, it would have been in breach of its licence conditions. The amendment allows for Telstra to repair the service within a longer period if one is requested by a priority assistance customer.

Item 8 – Schedule 4, paragraph (b) of item (12)

Schedule 4 to the original declaration provides the objectives to be addressed in Telstra's priority assistance policy under subclause 19(2). The priority assistance objective stated in paragraph (b) of item (12) of Schedule 4 to the original declaration was that for the repair of a fault on a standard telephone service, the maximum timeframes was to be less than 48 hours, if the repair had been requested in all other circumstances than those in paragraph (a) of item (12) of Schedule 4.

Paragraph (b) of item (12) of Schedule 4 is amended to provide for the circumstances where a priority customer requests the repair outside of the required 48 hour timeframe. Under the original declaration, if Telstra agreed to a request outside the required timeframe, it would have been in breach of its licence conditions. The amendment allows for Telstra to repair the service within a period longer than the 48 hours if one is specified by a priority assistance customer.

Item 9 – Schedule 4, item (12), Note 2

The supply of an interim service is detailed in items (13) and (14) of Schedule 4. Note 2 to item (12) of Schedule 4 to the original declaration provided a reference to items (13) and (14) of Schedule 4. If a priority service could not be connected or repaired within 24 hours (48 hours in remote areas), an interim service could be supplied.

Note 2 to item (12) is amended to provide a reference to when a priority service cannot be repaired within 24 hours (48 hours in remote areas), or within a longer time

period agreed to by the customer, an interim service may be supplied. The supply of an interim service continues to be detailed in items (13) and (14) of Schedule 4.

Item 10 – Schedule 4, paragraph (a) of item (13)

Schedule 4 to the original declaration provides the objectives to be addressed in Telstra's priority assistance policy under subclause 19(2). The priority assistance objective stated in paragraph (a) of item (13) of Schedule 4 was that an interim service was to be offered when Telstra could not connect a standard telephone service within 24 hours, if the connection had been requested at a location within a standard zone and within an urban centre, locality or other recognised community grouping with a population greater than or equal to 200 people. Under paragraph (a) of item (13) of the original declaration, if an offer of an interim priority service was accepted by a priority assistance customer, Telstra was required to provide an interim service within 24 hours of the customer's request, unless otherwise agreed to by the priority customer, or prevented by circumstances beyond its control.

Paragraph (a) of item (13) of Schedule 4 is amended to provide for circumstances where a priority customer requests a connection outside of the 24 hour timeframe and Telstra is unable to make the connection within that requested timeframe. Telstra is required to make available an interim service in these circumstances, within the timeframe originally requested by the customer. Under the original declaration, if a customer had requested the connection to be made outside of the 24 hour timeframe, Telstra would still have been obliged to make available an interim service within 24 hours (unless otherwise agreed to by the customer) even if it was able to meet the requested timeframe.

Item 11 – Schedule 4, paragraph (b) of item (13)

Schedule 4 to the original declaration provides the objectives to be addressed in Telstra's priority assistance policy under subclause 19(2). The priority assistance objective stated in paragraph (b) of item (13) of Schedule 4 to the original declaration was that an interim service was to be offered when Telstra could not connect a standard telephone service within 48 hours, if the connection had been requested in other circumstances than those in paragraph (a) of item (13) of Schedule 4. If an offer of an interim priority service was accepted by a priority assistance customer, Telstra was required to provide an interim service within 48 hours of the customer's request, unless otherwise agreed to by the priority customer, or prevented by circumstances beyond its control.

Paragraph (b) of item (13) of Schedule 4 is amended to provide for circumstances where a customer requests a connection outside of the 48 hour timeframe and Telstra is unable to make the connection within that requested timeframe. Telstra is required to make available an interim service in these circumstances, within the timeframe originally requested by the customer. Under the original declaration, if the customer had requested the connection to be made outside of the 48 hour timeframe, Telstra would still have been obliged to make available an interim service within 48 hours (unless otherwise agreed to by the customer) even if it was able to meet the requested timeframe.

Item 12 – Schedule 4, paragraph (a) of item (14)

Schedule 4 to the original declaration provides the objectives to be addressed in Telstra's priority assistance policy under subclause 19(2). The priority assistance objective stated in paragraph (a) of item (14) of Schedule 4 was that an interim service was to be offered when Telstra could not repair a fault on a standard telephone service within 24 hours, if the repair had been requested at a location within a standard zone and within an urban centre, locality or other recognised community grouping with a population greater than or equal to 200 people. If the offer of an interim priority service was accepted by a priority customer, Telstra was required to provide an interim service within 24 hours of the customer's request, unless otherwise agreed to by the priority customer, or prevented by circumstances beyond its control.

Paragraph (a) of item (14) of Schedule 4 is amended to provide for circumstances where a customer requests a repair of a fault outside of the 24 hour timeframe and Telstra is unable to make the repair within that requested timeframe. Telstra is required to make available an interim service in these circumstances, within the timeframe originally requested by the customer. Under the original declaration, if the customer had requested the repair to be made outside of the 24 hour timeframe, Telstra would still have been obliged to make available an interim service within 24 hours (unless otherwise agreed to by the customer) even if it was able to meet the requested timeframe.

Item 13 – Schedule 4, paragraph (b) of item (14)

Schedule 4 to the original declaration provides the objectives to be addressed in Telstra's priority assistance policy under subclause 19(2). The priority assistance objective stated in paragraph (b) of item (14) of Schedule 4 to the original declaration was that an interim service was to be offered when Telstra could not repair a fault on a standard telephone service within 48 hours, if the repair had been requested in all other circumstances than those in paragraph (a) of item (14) of Schedule 4. If an offer of an interim service was accepted by a priority customer, Telstra was required to provide an interim service within 48 hours of the customer's request, unless otherwise agreed to by the priority customer, or prevented by circumstances beyond its control.

Paragraph (b) of item (14) of Schedule 4 is amended to provide for circumstances where a customer requests a repair of a fault outside of the 48 hour timeframe and Telstra is unable to make the repair within that requested timeframe. Telstra is required to make available an interim service in these circumstances, within the timeframe originally requested by the customer. Under the original declaration, if the customer had requested the repair to be made outside of the 48 hour timeframe, Telstra would still have been obliged to make available an interim service within 48 hours (unless otherwise agreed to by the customer) even if it was able to meet the requested timeframe.

Item 14 – Schedule 4, subparagraph (b)(ii) of item (20)

Subparagraph (b)(ii) of item (20) of Schedule 4 to the original declaration requires Telstra to report to ACMA an explanation of the circumstances where Telstra is unable to meet priority assistance timeframes for connection and fault repair, and is

subsequently unable to supply an interim service within timeframes, due to extreme circumstances such as a natural disaster or where a Commonwealth, State or Territory law prevents Telstra from accessing a priority customer's residence.

The amendment clarifies that the explanation of the circumstances provided by Telstra to ACMA is to include location, time and duration of the circumstances which prevented Telstra from meeting timeframes for connection and fault repair and the offering of an interim service.