

# Explanatory Statement

*Telecommunications Act 1997*

## **Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 (Amendment No. 2 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. 2 of 2005)* (the amending declaration) amends the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997* (the original declaration). The amending declaration inserts a new clause 32 into the original declaration, thereby establishing requirements on the licensee, Telstra, in relation to its ongoing commitment to a local presence in regional, rural and remote Australia.

#### **Legislative basis**

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 original Telstra licence conditions were imposed on 24 June 1997 under 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 under 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) 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.

### **Policy background**

In 2002 the Regional Telecommunications Inquiry (RTI) included in its Terms of Reference a requirement to advise the Minister on "*the ongoing commitment of Telstra to a local presence, such as Telstra Country Wide® (TCW), in regional, rural and remote Australia*". In examining this issue, the RTI made two recommendations relating to local presence:

#### **RECOMMENDATION 8.1**

*Telstra should be required to maintain an ongoing local presence in regional, rural and remote Australia. The requirement should only apply to Telstra consistent with its status as the primary universal service provider. The requirement should not be unduly prescriptive or burdensome, and should be broadly compatible with Telstra's commercial interests.*

And

#### **RECOMMENDATION 8.2**

*Telstra should be required to develop and publish a local presence plan that sets out the range of activities and strategies it would deploy in regional Australia to address the Government's broad objectives. Telstra would be required to regularly report on its achievements against the plan and to demonstrate to the Government, and to regional communities, that it was providing an effective and beneficial local presence.*

In 2003, the Government accepted the recommendations that Telstra should be obliged to maintain an ongoing local presence in regional, rural and remote Australia, subject to requirements that this be broadly compatible with Telstra's overall commercial interests, and that it not be unduly prescriptive, or administratively or financially burdensome. The Government agreed that this should be imposed via a licence condition on Telstra, rather than through legislation.

The accompanying amending declaration addresses Recommendations 8.1 and 8.2 by requiring Telstra to demonstrate to the Government and to regional, rural and remote Australia that it is providing an effective and beneficial local presence. As with all of the Government's RTI responses, the requirement on Telstra to maintain a local presence applies regardless of any future change in the ownership of Telstra.

The local presence plan developed and approved in accordance with the amending declaration may be referred to by the company as Telstra's Regional and Rural Presence Plan.

### **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 was provided with a draft version of the instrument during a 30 day statutory consultation period. Telstra did not provide a formal response at the end of the 30 days.

The amending declaration is based on the recommendations of the RTI and its advice to the Government on "*the ongoing commitment of Telstra to a local presence, such as Telstra Country Wide® (TCW), in regional, rural and remote Australia.*" The RTI reported to the Minister on 8 November 2003, with the Government response announced on 25 June 2003.

In all the RTI received 606 submissions as part of its consultations on the arrangements that should be put in place to ensure all Australians continue to share in the benefits of further service improvements and whether telecommunications services in regional, rural and remote Australia were adequate. Submissions, both negative and positive, are quoted extensively in the RTI report. Submissions have clearly influenced the 39 recommendations made in the report, including those on Telstra's local presence, as did the Inquiry's 41 meetings with stakeholders.

The Government gave careful consideration to those submissions before providing its response to the RTI's recommendations.

### **General Outline**

The purpose of the local presence obligation on Telstra is to provide a framework that will deliver a high degree of certainty and reassurance to Government and regional, rural and remote telecommunications consumers in Australia that an effective local presence will be maintained into the future.

The amending declaration establishes two central obligations on Telstra to:

1. maintain an ongoing local presence in regional, rural and remote Australia ('the local presence obligation'); and
2. have a current local presence plan at all times which sets out the activities and strategies that Telstra will deploy in fulfilling the local presence obligation.

The Government has agreed with the RTI's recommendation that local presence must be broadly compatible with Telstra's commercial interests and should not be unduly prescriptive or burdensome.

The amending declaration provides a framework for establishing the local presence obligation and requiring Telstra to have, publish, comply with and report against a local presence plan, including provisions on:

- formulation of a draft local presence plan;

- public consultation requirements for a draft local presence plan;
- Ministerial consideration and approval of the a draft local presence plan;
- publication of an approved local presence plan;
- variation, renewal and replacement of an approved local presence plan; and
- annual compliance and reporting on the local presence plan.

## 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. 2 of 2005)*.

### Clause 2 – Commencement

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

### Clause 3 – Variation

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

### Schedule 1 – Amendment

Schedule 1 provides for a new clause entitled ‘Licensee’s obligation to maintain a local presence in regional, rural and remote parts of Australia’, to be inserted after clause 31 of the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997*.

#### Subclause 32(1) – Local presence obligation

Subclause 32(1) establishes the ‘local presence obligation’ as an obligation on Telstra to maintain a local presence in regional, rural and remote parts of Australia to the extent that this is:

- broadly compatible with Telstra’s overall commercial interests;
- is not unduly prescriptive; and
- does not impose undue financial and administrative burdens on Telstra.

This is consistent with the findings of the RTI which state that “... any Government regulatory requirement should not unduly prescribe, or interfere with the way that Telstra conducts its business...” and that “This is in line with the regulatory policy of the telecommunications regime in Australia...” as articulated in paragraph 4(b) of the Act which provides:

*The Parliament intends that telecommunications be regulated in a manner that...*

*(b) does not impose undue financial and administrative burdens on participants in the Australian telecommunications industry.*

### **Subclause 32(2) – Preliminary requirements about local presence plans**

Subclause 32(2) requires Telstra to give the Minister a draft local presence plan within 120 days of the commencement of the accompanying amending declaration. The draft plan will set out the ways in which Telstra will fulfil its obligation. The draft local presence plan must set out Telstra’s activities and strategies to fulfil the local presence obligation, and may include those currently deployed in regional, rural and remote Australia or those that Telstra will deploy to fulfil the obligation.

### **Subclause 32(3) – Guidance in writing**

Subclause 32(3) allows the Minister to provide Telstra with guidance in writing on the relevant telecommunications matters for consideration when formulating a draft local presence plan. Any written guidance provided by the Minister must not be inconsistent with the requirements of the local presence obligation, that is, it must be broadly compatible with Telstra’s overall commercial interests; not be unduly prescriptive; and not impose undue financial and administrative burdens on Telstra.

### **Subclause 32(4) – Telstra to have regard to the Minister’s written guidance**

Subclause 32(4) requires Telstra to have regard to the Minister’s written guidance if it is provided under subclause 32(3).

### **Subclause 32(5) – Written guidance to be published on the Internet**

Where written guidance is provided by the Minister to Telstra for the formulation of a draft local presence plan, that guidance must be published on the website of the Department of Communications, Information Technology and the Arts. The address for the Department’s website is [www.dcita.gov.au](http://www.dcita.gov.au).

### **Subclause 32(6) – Duration of the local presence plan**

Subclause 32(6) requires a draft local presence plan to specify the period of time for the plan. The specified period of time can be up to three years duration. The limitation to three years allows Telstra to periodically review the local presence plan, so that it remains relevant to present day conditions.

### **Subclause 32(7) – Telstra to have a plan at all times**

Subclause 32(7) requires Telstra to have a local presence plan at all times except in a number of stated circumstances.

Paragraph 32(7)(a) allows Telstra not to have a local presence plan in the period within 120 days of the commencement of the accompanying amending declaration, when Telstra has not provided its first draft local presence plan to the Minister.

Paragraph 32(7)(b) allows Telstra not to have a local presence plan in the period between Telstra submitting its draft plan to the Minister and the Minister approving the plan.

Paragraph 32(7)(c) allows Telstra not to have a local presence plan in the period between the Minister refusing to approve a draft local presence plan and Telstra's submission of a fresh draft local presence plan.

**Subclause 32(8) – Local presence plan to be taken to be in place**

Subclause 32(8) provides that Telstra will be taken to have a current draft local presence plan in place if the Minister has approved the plan or if the Minister is taken to have approved the plan. The Minister will be taken to have approved the plan under subclauses (13) and (14) if the Minister has neither approved nor refused to approve the plan within 120 days of receipt of a draft local presence plan.

**Subclause 32(9) – The provision of commercially sensitive information**

Subclause 32(9) provides that a draft or approved local presence plan will not be required to contain commercially sensitive information.

**Subclause 32(10) – Requests for supporting information of a commercially sensitive nature**

Subclause 32(10) provides that commercially sensitive information may be requested and received by the Minister through additional advice and information from Telstra. The receipt of such information may assist the Minister in deciding whether to approve the draft local presence plan.

**Subclause 32(11) – Nature and extent of required consultation with stakeholders**

Subclause 32(11) establishes the consultation requirements for the draft local presence plan. Consultation with representatives of regional, rural and remote Australia is required prior to giving the Minister a draft local presence plan. Telstra must publish a preliminary version of the document and invite submissions on the preliminary draft. The period for submissions to be made will be stated in the invitation and must run for at least 42 days (see subclause 32(12)).

Consultation must be held with:

- representatives of local government bodies in regional, rural and remote parts of Australia;
- representatives of regional, rural and remote consumers and end-users of telecommunications services; and
- representatives of the interests of people in regional, rural and remote parts of Australia.

Telstra is required to consider submissions made during consultation from interested members of the community. Telstra is required to prepare a report for the Minister concerning these submissions and any changes made to the draft plan as a result of the submissions, at the same time as, or prior to, submitting the plan for approval.

This subclause is intended to provide for an adequate consultation process for draft local presence plans and to have these comments and submissions considered by

Telstra in its planning stages, before a draft local presence plan is submitted to the Minister.

**Subclause 32(12) – Period of minimum public consultation with stakeholders**

Subclause 32(12) requires that the period specified in the invitation for submissions on the preliminary version of the draft local presence plan must run for at least 42 days.

**Subclause 32(13) – Consideration of a draft presence plan submitted by Telstra**

Subclause 32(13) requires the Minister to approve or refuse to approve a draft local presence plan submitted by Telstra. When the draft local presence plan is provided to the Minister it may be accompanied by Telstra's report to the Minister about the submissions received by Telstra during the consultation period which must detail any changes made to the plan as result of submissions. The plan may also be accompanied by commercially sensitive information provided by Telstra involving the local presence obligation.

**Subclause 32(14) – Circumstances for approval a draft local presence plan**

Subclause 32(14) provides that if the Minister neither approves nor refuses to approve the draft in the relevant period the plan will be taken to be approved. The relevant period for the purposes of deemed approval is 120 days after the Minister receives the draft plan.

**Subclause 32(15) – Approval of a local presence plan**

Subclause 32(15) provides that if the Minister has either approved, or is taken to approved, a draft local presence plan under paragraph 32(13) (a) or 32(14), then the draft local presence plan becomes an approved local presence plan. If a draft plan becomes an approved plan then Telstra has a current local presence plan as required under subclause 32(7).

**Subclause 32(16) – Minister may direct Telstra to submit a fresh draft plan, specifying matters which should be addressed**

Subclause 32(16) provides that if the Minister refuses to approve a draft plan he or she may give a written notice to Telstra asking for a fresh draft local presence plan. The written notice can express the timing in which a fresh draft plan should be given to the Minister.

The written notice may also raise matters to be addressed in the fresh draft local presence plan, provided these matters are not inconsistent with the obligation to maintain a local presence in regional, rural and remote Australia that is broadly compatible with Telstra's overall commercial interests, and are not unduly prescriptive and do not impose undue administrative or financial burdens on Telstra.

### **Subclause 32(17) – Further consultation on a fresh draft local presence plan**

Subclause 32(17) provides that if a written notice to submit a fresh draft local presence plan is provided to Telstra, that notice may specify the requirements for further consultation including the period for consultation. Where a written notice does not specify the nature or timing of consultation, it is to be undertaken in accordance with subclauses (11) and (12). Those subclauses specify the range of parties for consultation and provide for a minimum consultation period of 42 days.

### **Subclause 32(18) – Licensee to have regard for the Minister’s written notice concerning the preparation of a fresh draft plan**

Subclause 32(18) provides that where a written notice is given to Telstra to provide a fresh draft local presence plan following such consultation (if any) as is specified in the notice, Telstra must comply with the written direction provided by the Minister.

### **Subclause 32(19) – Criteria for evaluation of a draft local presence plan**

Subclause 32(19) sets out criteria which the Minister must apply when considering whether or not to approve a draft local presence plan.

Subclause 32(19) requires the Minister, to consider the extent to which the draft local presence plan adequately addressed a number of matters, including;

- how Telstra will address the telecommunications service interests of Telstra’s regional, rural and remote customers, and potential customers, within its management structure and decision making processes and how these interests will be represented within its management structure (paragraph (a));
- Telstra’s customer service and support for customers in regional, rural and remote parts of Australia, including management of complaints and the provision of telecommunications service information to those customers (paragraph (b));
- the co-ordination and management of Telstra’s activities in regional, rural and remote parts of Australia, including the targeted application of resources and an integrated approach to telecommunications service connections, maintenance and repairs in those areas (paragraph (c));
- Telstra’s support for broader community development in regional, rural and remote parts of Australia through its service activities (paragraph (d));
- Telstra’s current arrangements and processes in place to address the telecommunications service interests of regional, rural and remote customers, the changes to Telstra’s arrangements and processes during the period of the local presence plan and the proposed consultation and other related processes to be followed by Telstra in relation to such changes (paragraph (e));
- Telstra’s measures for reporting its performance to Government and to regional, rural and remote telecommunications consumers in Australia in

relation to the local presence plan and the local presence obligation more generally (paragraph(f)).

**Subclause 32(20) – Minister may have regard to other matters**

Subclause 32(20) provides that the Minister may have regard to matters in addition to those specified in subclause 32(19) when considering whether to approve or refuse to approve a draft local presence plan submitted by Telstra. This will provide the Minister sufficient flexibility to adequately address specific matters of relevance to Telstra's ongoing local presence in rural, regional and remote areas of Australia.

**Subclause 32(21) – Notification of the Minister's decision**

Subclause 32(21) provides that a copy of the Minister's written notice approving a draft local presence licence plan and a copy of the approved plan must be given to Telstra and to the Australian Communications and Media Authority (ACMA). The provision of an approved local presence plan will allow Telstra and ACMA to publish the plan so that it is readily available to the public. The provision of approved plans to ACMA will also assist in its role in monitoring and reporting on all significant matters on the performance of telecommunications carriers and carriage service providers, including Telstra.

**Subclause 32(22) – A copy of the notice to be published in the *Gazette***

Subclause 32(22) provides that the Minister's written notice approving a draft local presence plan is required to be published in the Commonwealth Gazette.

**Subclause 32(23) – Notification of Minister's decision to refuse to approve a draft local presence plan**

Subclause 32(23) provides for notification of the Minister's refusal to approve a draft local presence plan submitted by Telstra. If the Minister has refused to approve a draft local presence, he or she must provide Telstra with written advice setting out the reasons why the Minister's approval has been refused.

**Subclause 32(24) – Variations to an approved local presence plan**

Subclause 32(24) sets out the process for varying an approved local presence plan. To vary a current local presence plan Telstra may give the Minister a draft variation. The Minister must approve, or refuse to approve, that draft variation.

**Subclause 32(25) – Minister may direct public consultation on a draft variation to an existing local presence plan**

Subclause 32(25) details the matters to be considered before deciding whether to approve a variation to a current local presence plan. The Minister may, if he or she considers it appropriate, require Telstra;

- to publish a preliminary version of the draft variation and invite submissions about the version within a specified period from:

- representatives of local government bodies in regional, rural and remote parts of Australia;
- representatives of regional, rural and remote consumers and end-users of telecommunications services; and
- representatives of the interests of people in rural, regional and remote parts of Australia;
- to give consideration to any submissions received within that period; and
- to report to the Minister about those submissions and any changes made to the draft variations as a result of consultations.

This provision allows the Minister to determine the kind of consultation required for draft variations to a current plan and to facilitate the public comments and the comments of relevant stakeholders on any variation, where appropriate.

#### **Subclause 32(26) – Criteria to be applied for draft variations to current plans**

Subclause 32(26) provides that in deciding whether to approve a draft variation to a current plan, the Minister must have regard to certain matters. These matters relate to the extent to which the variation:

- is broadly compatible with Telstra’s overall commercial interests;
- is not unduly prescriptive and does not impose undue financial and administrative burdens on Telstra;
- has regard to any written guidance provided by the Minister to Telstra; and
- adequately addresses the matters specified in paragraphs 32(19)(a)-(f).

#### **Subclause 32(27) – Notification by the Minister of approved variations**

Subclause 32(27) provides that a copy of the Minister’s written notice approving a draft variation to a current plan and a copy of the approved variation must be given to Telstra and ACMA. The provision of an approved local presence plan will allow Telstra and ACMA to publish the approved variation so that it is readily available to the public.

#### **Subclause 32(28) – A copy of the notice approving the variation to a current plan to be published in the *Gazette***

Subclause 32(28) provides that the Minister’s written notice approving a draft variation to a current plan is required to be published in the Commonwealth Gazette.

#### **Subclause 32(29) – Carrier to be notified in writing by the Minister if an application to vary an existing local presence plan is refused**

Subclause 32(29) provides for notification of the Minister’s refusal to approve a draft variation to a current plan submitted by Telstra. If the Minister has refused to approve a draft variation to a current plan, he or she must provide Telstra with written advice setting out the reasons why the Minister’s approval has been refused.

**Subclause 32(30) – Written notice to make draft variations or a new plan**

Subclause 32(30) enables the Minister to provide Telstra with a written notice requiring a draft variation to a current plan or the replacement of a current plan with a fresh draft local presence plan. The written notice may specify the period in which the draft variation or the fresh draft local presence plan must be given to the Minister by Telstra.

The written notice requiring a draft variation or a fresh draft local presence plan may specify the matters to be addressed, provided these matters are not inconsistent with the obligation to maintain a local presence in regional, rural and remote Australia that is broadly compatible with Telstra's overall commercial interests, are not unduly prescriptive and do not impose undue administrative or financial burdens on Telstra.

**Subclause 32(31) – Telstra must comply with a written notice to vary or replace the current plan**

Subclause 32(31) provides that where a written notice is given requiring a draft variation to a current plan, or the replacement of a current plan with a fresh draft local presence plan, Telstra must comply with the written direction provided by the Minister.

**Subclause 32(32) – New draft local presence plan to be submitted before expiry of old plan**

Subclause 32(32) provides for the submission of a new draft local presence plan before a current plan is to expire. Telstra must provide the Minister with a new draft local presence plan 120 days before the end of a current plan. The preparation of the new draft local presence plan by Telstra is to accord with the consultation requirements specified in subclauses (11) and (12).

**Subclause 32(33) – Replacement of an approved local presence plan**

Subclause 32(33) provides that where a local presence plan is in force the new draft local presence plan must be expressed to replace that original plan.

**Subclause 32(34) – New plan to replace existing plan once approved**

Subclause 32(34) provides that a new draft local presence plan will replace an original plan when it becomes an approved local presence plan. Upon approval of the new draft local presence plan, the original plan ceases to operate.

**Subclause 32(35) – Compliance with an approved local presence plan**

Subclause 32(35) provides that Telstra is required to take all reasonable steps to ensure that an approved local presence plan is complied with.

Compliance issues will be dealt with by ACMA in its role in monitoring and enforcement of carrier licence conditions generally under the *Australian Communications and Media Authority Act 2005 (Cth)*.

**Subclause 32(36) – Approved local presence plan to be made available to the public**

Subclause 32(36) provides that copies of an approved local presence plan and extracts of the plan must be made available for inspection and purchase by the public. While publication of an approved local presence plan may be made on Telstra’s website, copies of an approved plan and extracts of that plan are also to be made available at Telstra’s offices and retail outlets.

**Subclause 32(37) – Approved local presence plan to be made available for inspection or purchase on the Internet**

Subclause 32(37) requires Telstra to make its approved local presence plan, or extracts from the approved local presence plan, reasonably accessible for inspection, or inspection and purchase, on the Internet.

**Subclause 32(38) – Reasonable charging for copies of approved local presence plans**

Subclause 32(38) provides that if Telstra charges a price for an approved local presence plan, or extracts from the approved local presence plan, that price must not exceed the reasonable cost incurred in making the copy or extract available for purchase.

**Subclause 32(39) – Annual report on licensee’s compliance with approved local presence plan**

Subclause 32(39) requires Telstra to provide the Minister and ACMA with an annual report on its achievements, activities and strategies against the approved local presence plan. The report is to be provided as soon as practicable or within 60 days of the end of the financial year. The report must set out Telstra’s progress in implementing the commitments made in an approved local presence plan and in force during that financial year.

A summary of the report may be made available to the public. Such a report will provide regional, rural and remote Australians with valuable information about performance by Telstra in their local area.

The report to the Minister and ACMA may contain commercially sensitive information.

**Subclause 32(40) – Public summary need not contain commercially sensitive information**

To ensure that Telstra’s commercially sensitive information is protected, subclause 32(40) provides that the summary report prepared for the public need not contain commercially sensitive information.