

EXPLANATORY STATEMENT

Telecommunications Act 1997

Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 (Amendment No. 1 of 2008)

Issued by the authority of the Minister for Broadband, Communications
and the Digital Economy

1. Background

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 *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997* (the 'Original Declaration') was made on 24 June 1997 and came into force on 1 July 1997. The Original Declaration has since been varied by a number of amending declarations.

The *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 (Amendment No. 1 of 2008)* (the accompanying Declaration) has been made under subsection 63(5) of the Act. Subsection 63(5) of the Act enables the Minister for Broadband, Communications and the Digital Economy (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*.

Clause 12 of the Original Declaration provided for Telstra Corporation Limited's (Telstra's) obligation to provide digital data capability, as part of its obligations as the service provider for general and special digital data services. These obligations are known collectively as the Digital Data Service Obligation (DDSO). Specifically, clause 12 of the Original Declaration required Telstra to be in a position to supply a service that broadly compares to a basic rate 64 kilobits per second Integrated Services Digital Network (ISDN) service to at least 96 per cent of the population.

The universal service regime set out in Part 2 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*, consists of the Universal Service Obligation (USO) and the DDSO. The arrangements are funded by an industry levy imposed under the *Telecommunications (Universal Service Levy) Act 1997*. On 14 October 1999, by way of the *Digital Data Service Provider Declaration 1999 (No.1)*, Telstra was determined to be the general digital data service provider and the special digital data service provider for digital data service areas within Australia.

2. Purpose of the Declaration

The *Digital Data Service Provider Declaration 1999 (No.1)* has been revoked by the *Digital Data Service Provider Declaration Revocation 2008 (No. 1)*. Therefore, the obligation under clause 12 of the Original Declaration is no longer required. As such, the accompanying Declaration is necessary to give effect to the removal of Telstra's digital data service obligation and special digital data service obligations under the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

3. Background

The DDSO was established on 14 October 1999 at a time when consumers, particularly in regional Australia, had limited access to digital data services. Since commencement of the DDSO, demand for digital data services has increased rapidly with consumers requiring increasing amounts of bandwidth and greater upload and download speeds. The commercial supply and range of technologies to provide these services has also grown commensurately.

The DDSO is considered by the Government to no longer be necessary as Australians now have a choice of a range of alternative digital data services available from various service providers including Telstra. Furthermore, the existence of targeted government programs such as the Australian Broadband Guarantee (ABG) program support the view that services can be provided more effectively through a combination of the existing market and Government programs than through a separate obligation on Telstra.

The ABG program is funded by the Australian Government until 30 June 2012. It provides a more flexible and practical safety net for consumers than that which had been provided by the DDSO.

In addition, through the National Broadband Network (NBN) process the Australian Government has committed to providing up to \$4.7 billion and to consider necessary regulatory changes to facilitate the roll-out of a new open access, high-speed, fibre-based broadband network, providing down-link speeds of at least 12 megabits per second to 98 per cent of Australian homes and businesses. The Government is also committed to longer term enhanced broadband solutions being available to the two percent of Australians living in the most remote parts of the country that may not be able to access high speed broadband services through the NBN.

With the range of digital data service products available for consumers and the safety net provided through the ABG program, the access disadvantage that existed for much of regional Australia when the DDSO was originally introduced is no longer evident and renders the DDSO regulations unnecessary.

The revocation of the DDSO will result in the removal of related regulatory and reporting burdens that applied to Telstra as the provider of general and special digital data services. The measure will also lead to a minor reduction in the Australian Communications and

Media Authority's (ACMA's) responsibility to monitor Telstra's performance in meeting its digital data obligations and to oversight and pay DDSO subsidies. The removal of the DDSO is consistent with the Government's policy to reduce unnecessary and superseded regulation.

The accompanying Declaration is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*, and has been registered on the Federal Register of Legislative Instruments.

4. Consultation

Section 64 of the Act provides that before making an instrument under subsection 63(5) of the Act, 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. Consistent with this requirement, the Minister consulted with Telstra in September 2008 regarding the proposed revocation of the general and special DDSO-related licence conditions. Telstra wrote to the Minister on 13 October 2008 agreeing with the proposed revocation of the Service Provider Declaration and the removal of its DDSO-related licence conditions. The Department has also consulted with the ACMA in respect of the removal of the DDSO-related licence condition.

A Best Practice Regulation Preliminary Assessment was prepared by the Department for the Office of Best Practice Regulation on 14 October 2008. The Department has assessed that revocation of the DDSO will have a low impact on business and individuals.

5. Details of the accompanying Declaration

Details of the accompanying Declaration are as follows:

Clause 1 – Name of Declaration

Clause 1 of the accompanying Declaration provides that the name of the accompanying Declaration is the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997(Amendment No. 1 of 2008)*.

Clause 2 – Commencement

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

Clause 3 – Variation

Clause 3 of the accompanying Declaration provides that the accompanying Declaration varies the Original Declaration as set out in the schedule to the accompanying

Declaration. The schedule provides that Clause 12 of the Original Declaration be omitted.