

EXPLANATORY STATEMENT

Telecommunications Act 1997

Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 (Amendment No. 1 of 2011)

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

1. Legislative Basis

Subsection 63(2) of the *Telecommunications Act 1997* (the ‘Act’) provides that the Minister may declare that a particular carrier is subject to licence conditions. 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.

Subsection 63(5) of the Act enables the Minister, by written instrument, to vary an instrument under subsection 63(2) 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*.

This Declaration varies the Original Declaration by removing clause 31. Clause 31 contains provisions requiring Telstra Corporation Limited (‘Telstra’) to provide the Internet Assistance Program as a condition of its carrier licence.

2. Purpose of the Amending Declaration

The purpose of the Amending Declaration is to remove the outdated and unnecessary IAP licence condition currently imposed on Telstra.

3. Background

Clause 31 was introduced in 2003, by the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 (Amendment No. 2 of 2003)*. Clause 31 requires Telstra to provide a service to assist users of dial-up internet to achieve a minimum data speed equivalent to at least 19.2 kilobits per second (kbps), known as the Internet Assistance Program (‘IAP’), as a condition of its carrier licence. The IAP consists of a help desk, a self-help website, technical support and a field program.

The IAP was developed in response to the Telecommunications Service Inquiry Report (2000), which recommended 19.2 kbps as the minimum benchmark for dial-up internet.

The Australian Communications and Media Authority (ACMA) monitors and reports on Telstra’s compliance with the licence condition. The reports show there are few

problems with dial-up internet, particularly in non-metropolitan areas, due to increased broadband adoption, and that there is very little usage of the IAP.

The IAP obligation on Telstra is now outdated and unnecessary due to market competition and the Government's broadband initiatives, such as the Australian Broadband Guarantee (which has provided Australian residential and small business premises with access to broadband services that are reasonably comparable to broadband services available in metropolitan areas) and the National Broadband Network.

The Declaration is a legislative instrument and will be 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 formally consulted with Telstra on 8 April 2011 regarding the proposed repeal of clause 31 of the carrier licence conditions. Telstra wrote to the Minister on 3 May 2011 agreeing with the proposed repeal of clause 31. The Department has also consulted with the ACMA in respect of this matter.

The repeal of the IAP obligation will have a very low impact on business and individuals. The Office of Best Practice Regulation has advised that a regulatory impact statement is not required for this instrument.

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 2011)*.

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. Item 1 of the Schedule provides that clause 31 of the Original Declaration is to be omitted.

Clause 4 – Expiry

Clause 2 provides that the accompanying Declaration, which repeals clause 31 of the Original Declaration, will take effect on the day after it is registered on the Federal Register of Legislative Instruments. After the repeal has taken effect, the repeal instrument itself will essentially have been spent. In other words, once the repeal instrument has come into effect, it will have fulfilled its purpose (ie. removed clause 31 from the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997*) so the repeal instrument can be removed from the Federal Register of Legislative Instruments. Accordingly, a self-expiry provision has been included in the accompanying Declaration at clause 4.

Specifically, clause 4 provides that the accompanying Declaration will expire on the day after it commences. Section 8B of the *Acts Interpretation Act 1901* provides that an expired instrument is taken to be repealed. Section 8B applies by virtue of paragraph section 13(1)(a) of *Legislative Instruments Act 2003*.