

## **EXPLANATORY STATEMENT**

### ***Telecommunications Act 1997***

#### ***Carrier Licence Conditions (Pivit Pty Ltd) Declaration 2013***

Issued by the authority of the Minister for Communications

#### **Legislative Basis**

Subsection 63(2) of the *Telecommunications Act 1997* (the ‘Tel Act’) provides that the Minister may, by written instrument, declare that a particular carrier is subject to licence conditions as specified in the instrument.

#### **Purpose of the Declaration**

The purpose of the Declaration is to impose a new obligation upon the carrier, Pivit Pty Ltd (‘Pivit’), to connect (or arrange for another person on its behalf to connect), upon reasonable request, any premises located within any of Pivit’s four network footprints (as set out in Schedule 1 to the Declaration) to Pivit’s network.

The Declaration is part of the implementation of the ‘adequately served’ policy, in respect of Pivit’s successful applications under that policy (described in further detail below).

#### **Background**

On 27 April 2012 the then Minister released a policy paper, titled ‘*Adequately served: criteria and assessment process to facilitate the rollout of the National Broadband Network (NBN)*’ (the ‘adequately served policy paper’). The ‘adequately served’ policy is designed to prevent unnecessary duplication of fibre-to-the-premises (‘FTTP’) networks, existing in residential estates as at 1 January 2012, which can deliver services that meet the government’s NBN objectives.

Under the policy, NBN Co Limited (NBN Co) will not overbuild telecommunications networks that service residential premises where those networks are assessed by the Minister as meeting the ‘adequately served’ criteria, except in circumstances where not overbuilding a particular area will have a significant impact on NBN Co’s ability to efficiently roll out the network. In such circumstances, NBN Co may seek permission from the Minister to overbuild those networks. If permission is granted by the Minister, overbuild may occur, notwithstanding that the network was granted ‘adequately served’ status.

Pivit applied to have a number of its FTTP networks assessed under the policy. Four FTTP networks (as listed at Schedule 1 to the Declaration) were assessed by the Minister to have met the ‘adequately served’ criteria as set out in the policy paper.

As required under the policy, Pivit has committed to offer a connection for services to all customer premises in each of the specified four network footprints. This

commitment is being implemented through the Declaration, namely by way of a carrier licence condition under section 63(2) of the Tel Act.

The effect of imposing the carrier licence condition and NBN Co being directed not to overbuild in the areas covered by the Declaration is to avoid unnecessary duplication of fibre networks in the same area, whilst ensuring that retail competition for products and services is supported on a non-NBN FTTP network.

All end users within each of Pivit's four nominated network footprints will, upon reasonable request to Pivit, be able to have their premises connected to Pivit's network. The connection obligation imposed upon Pivit via the Declaration does not diminish or otherwise extinguish Telstra's universal service obligation to supply standard telephone services to all people in Australia on request under the *Telecommunications (Consumer Protection and Service Standards) Act 1999* ('TCPSS Act') and its contract with the Telecommunications Universal Service Management Agency (TUSMA).

### **Consultation**

Section 64 of the Tel Act provides that before making an instrument under subsection 63(2) of the Tel 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 then Minister for Broadband, Communications and the Digital Economy consulted with Pivit on 23 July 2013 regarding the proposed carrier licence condition.

On 2 October 2013, Pivit confirmed with the Department agreeing with the proposed carrier licence condition. The Department also consulted with the ACMA in respect of this matter.

The Office of Best Practice Regulation has advised that a regulatory impact statement is not required for this instrument.

### **Details of the accompanying Declaration**

The Declaration is a disallowable instrument for the purposes of the *Legislative Instruments Act 2003*.

Details of the accompanying Declaration are set out in **Attachment 1**.

### **Statement of Compatibility with Human Rights**

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out in **Attachment 2**.

## Attachment 1

### Details of the *Carrier Licence Conditions (Pivit Pty Ltd) Declaration 2013*

#### Clause 1 – Name of Declaration

Clause 1 of the Declaration provides that the name of the instrument is the *Carrier Licence Conditions (Pivit Pty Ltd) Declaration 2013*.

#### Clause 2 – Commencement

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

#### Clause 3 – Definitions

Subclause 3(1) sets out the key definitions used in the Declaration.

The term ***development area*** is used in clause 4 of the Declaration. It covers each of the four real estate developments listed in Schedule 1 to the Declaration (and depicted in the respective maps at Annexure A to Schedule 1). These are the areas: (i) serviced by Pivit Pty Ltd (Pivit) FTTP telecommunications networks; and (ii) that have been determined by the Minister to meet the adequately served criteria under the ‘adequately served policy’. This term is used in defining the ‘Specified Pivit Networks’.

The term ***relevant premises*** has been used to make clear that premises that are occupied or used by an end-user and situated in the project area are taken to be ‘relevant premises’. This term is used in clause 4 of the Declaration which sets out the connection obligation.

The term ***Licensee*** refers to Pivit Pty Ltd.

The term ***Specified Pivit Network*** means each of Pivit’s telecommunications networks which use FTTP architecture and are located in one of the four ‘development areas’ (being the real estate development project areas listed in Schedule 1 to the Declaration and depicted in the respective maps at Annexure A to Schedule 1).

To aid the reader, a note is inserted at the end of clause 3 indicating that the terms ***carriage service***, ***service provider***, and ***telecommunications network*** have the same meaning as in section 7 of the Tel Act.

## **Clause 4 – Obligation to connect relevant premises**

Subclause 4(1) sets out the operative carrier licence condition, namely, the requirement upon Pivit to connect relevant premises to its FTTP network so that a carriage service provider can provide any type of carriage services (e.g. a standard telephone service, broadband internet service) to that end-user.

The obligation is stated to apply ‘upon reasonable request’:

- (a) directly by the end-user; or
- (b) by a service provider on the end-user’s behalf.

Subclause 4(2) clarifies that a request for relevant premises to be connected to the relevant Specified Pivit Network may be made directly by an end-user or by a carriage service provider on that end-user’s behalf. This recognises that an end-user may request connection to the Specified Pivit Network through that end-user’s preferred retail service provider, who will supply that end-user with retail carriage services over that network.

The ‘upon reasonable request’ requirement is included because there may be circumstances in which Pivit is prevented from connecting particular premises. For example, it would not be appropriate to require Pivit to connect relevant premises if doing so would pose (for whatever reason) a risk to the safety or health of Pivit’s employees or contractors. Another example where a request to connect would be unreasonable is where the premises is in a hazardous or dangerous area.

The connection obligation under clause 4(1) of the Declaration does not guarantee that end-users situated in the relevant areas will be supplied services; rather it requires that Pivit make available its network which will then enable a retail service provider to supply carriage services to the end-user.

The universal service obligation (USO), set out in Part 2 of the TCPSS Act, remains the primary regulatory safeguard for ensuring all people in Australia have reasonable access to a standard telephone service on an equitable basis, regardless of where they live or carry on business. Since 1 July 2012, Telstra has also had a contractual obligation to supply standard telephone services, which is overseen by TUSMA. The question of whether Telstra uses any of the four Pivit adequately served networks (which are the subject of the Declaration) or another carrier’s network (including its own) will be a commercial matter for the company to decide.

## **Schedule 1**

Schedule 1 to the Declaration provides a list of four real estate developments (i.e. ‘development areas’) serviced by the Specified Pivit Networks. The maps at Schedule 1 depict the respective geographical limits of the areas serviced by these networks.

## Attachment 2

### Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the  
*Human Rights (Parliamentary Scrutiny) Act 2011*

#### *Carrier Licence Conditions (Pivot Pty Ltd) Declaration 2013*

The *Carrier Licence Conditions (Pivot Pty Ltd) Declaration 2013* (the Declaration) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the declaration**

The Declaration has been made by the Minister for Communications (the Minister) under subsection 63(2) of the *Telecommunications Act 1997*.

The networks owned and operated by Pivot Pty Ltd (Pivot) have been determined to be ‘adequately serving’ the area depicted in the maps annexed to the Declaration, in accordance with the government’s adequately served policy released on 27 April 2012. Under this policy NBN Co Limited (NBN Co) is prevented from overbuilding residential premises passed by networks determined to be adequately served, except in circumstances where NBN Co obtains permission from the Minister to overbuild those premises. If permission is granted, overbuild may occur, notwithstanding that the network met the adequately served criteria.

The Declaration sets out a new carrier licence condition to be complied with by Pivot. This condition has been voluntarily agreed to by Pivot, as part of the adequately served determination process. Under this obligation, Pivot is required to connect (or arrange for another person on its behalf to connect), to its networks, upon reasonable request, premises located within any of the real estate development project areas listed at Schedule 1 to the Declaration.

The obligation under clause 4 does not guarantee that end-user carriage services will be supplied services; rather it requires that Pivot, as the Licensee, makes available its network to enable the supply of such services. The universal service obligation (USO) remains the primary legislative safeguard for ensuring all people in Australia have reasonable access to a standard telephone service on an equitable basis, regardless of where they live or carry on business. Telstra’s supply of services under the USO continues to be governed by the provisions set out in Part 2 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*, as well as its contract with the Telecommunications Universal Service Management Agency.

No human rights issues were raised during consultation on the draft Declaration. The imposition of the new carrier licence condition does not raise any human rights issues.

**Human rights implications**

This legislative instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

This legislative instrument is compatible with human rights as it does not raise any human rights issues.