

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Communications

Telecommunications Act 1997

Carrier Licence Conditions (Optus Mobile Pty Ltd) Declaration 1997 Instrument of Revocation 2014

Legislative authority

Subsection 63(6) of *Telecommunications Act 1997* (the Act) allows the Minister, by written instrument, to revoke a declaration made under subsection 63(1) of the Act.

Subsection 63(13) of the Act provides that an instrument under subsection 63(6) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Purpose

The purpose of the *Carrier Licence Conditions (Optus Mobile Pty Ltd) Declaration 1997 Instrument of Revocation 2014* (the Revocation Instrument) is to revoke the *Carrier Licence Conditions (Optus Mobile Pty Ltd) Declaration 1997* (the Optus Mobile Declaration) as currently in force.

Background

Optus Mobile Pty Limited is currently subject to two classes of carrier licence conditions: standard licence conditions under the Act; and the specific licence conditions under the *Carrier Licence Conditions (Optus Mobile Pty Ltd) Declaration 1997*.

The Optus Mobile Declaration, in its original form, came into force on 1 July 1997. It imposed four specific carrier licence conditions upon Optus Mobile Pty Ltd: two relating to industry development plans (clause 5); a condition relating to network rollout (clause 6); and another condition relating to foreign ownership and control (clause 7). The condition under clause 7 was removed on 18 December 1997 by the *Carrier Licence Conditions (Optus Mobile Pty Ltd) Declaration 1997 (Amendment No. 1 of 1997)* as it was no longer required.

The remaining three carrier licence conditions under the Optus Mobile Declaration (as noted below) are no longer required and therefore, the Optus Mobile Declaration is being revoked in its entirety.

Subclause 5(a) of the Optus Mobile Declaration required Optus Mobile to give a current industry development plan (as defined in clause 3) to the Minister for Industry, Science and Tourism and obtain his or her approval of the plan within 90

days after 1 July 1997. As this carrier licence condition has been met, subclause 5(a) is spent.

Subclause 5(b) of the Optus Mobile Declaration required Optus Mobile to comply with clauses 8, 9, 10, 11, 12, 13 and 14 of Schedule 1 to the Act as if the plan were an industry development plan made under Part 2 of Schedule 1 to the Act. The Productivity Commission report “Telecommunications Competition Regulation”, Report No. 16, 21 September 2001, found that there was no compelling argument for continuing with the operation of industry development plans and recommended that the legal requirement for industry development plans be repealed. Schedule 1 to the *Telecommunications Legislation Amendment (Competition and Consumer Issues) Act 2005* repealed Part 2 of Schedule 1 to the Telecommunications Act, thereby removing the requirement for carriers to have industry development plans. Accordingly, the carrier licence condition imposed upon Optus Mobile under subclause 5(b) is redundant.

Clause 6 required Optus Mobile to have offered, and be able to supply between 1 July and 30 December 1997, public mobile telecommunications services by means of digital facilities in areas in which at least 80% of the Australian population lives. This carrier licence condition was satisfied fully; therefore subclause 6 is spent.

Consultation

Section 64 of the Act provides that before making an instrument under subsection 63(6) 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 wrote to Optus on 13 February 2014 regarding the proposed revocation of the Optus Mobile Declaration. Optus replied to the Minister on 18 February 2014 stating its support for the proposed revocation.

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

Other details

The Revocation Instrument is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* and shall commence on the day after it is registered in the Federal Register of Legislative Instruments.

Notwithstanding the revocation of the Optus Mobile Declaration, Optus Mobile, as a carrier under the Act, continues to be subject to the standard carrier licence conditions under the Act.

The Statement of Compatibility with Human Rights for this Revocation Instrument is set out in Attachment 1.

Details of the accompanying Revocation Instrument are set out in Attachment 2.

Attachment 1***Statement of Compatibility with Human Rights***

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

***Carrier Licence Conditions (Optus Mobile Pty Ltd) Declaration 1997
Instrument of Revocation 2014***

The *Carrier Licence Conditions (Optus Mobile Pty Ltd) Declaration 1997 Instrument of Revocation 2014* (the Revocation Instrument) 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 Revocation Instrument

Optus Mobile Pty Limited (Optus Mobile) is currently subject to two classes of carrier licence conditions: standard licence conditions under the *Telecommunications Act 1997* (the Act); and the specific licence conditions under the *Carrier Licence Conditions (Optus Mobile Pty Ltd) Declaration 1997* (Optus Mobile Declaration). In respect of the latter, there are three specific licence conditions relating to industry development plans and network coverage (described below) which are no longer required, thereby justifying the revocation of the Optus Mobile Declaration in its entirety.

Subclause 5(a) of the Optus Mobile Declaration required Optus Mobile to give a current industry development plan (as defined in clause 3) to the Minister for Industry, Science and Tourism and obtain his or her approval of the plan within 90 days after 1 July 1997. As this carrier licence condition has been met, subclause 5(a) is spent.

Subclause 5(b) of the Optus Mobile Declaration required Optus Mobile to comply with clauses 8, 9, 10, 11, 12, 13 and 14 of Schedule 1 to the Act as if the plan were an industry development plan made under Part 2 of Schedule 1 to the Act. Part 2 of Schedule 1 was repealed by the *Telecommunications Legislation Amendment (Competition and Consumer Issues) Act 2005*. Accordingly, the carrier licence condition imposed upon Optus Mobile under subclause 5(b) is redundant.

Clause 6 required Optus Mobile to have offered, and be able to supply between 1 July and 30 December 1997, public mobile telecommunications services by means of digital facilities in areas in which at least 80% of the Australian population lives. This carrier licence condition was satisfied fully; therefore subclause 6 is now spent.

The effect of the Revocation Instrument is that these three specific carrier licence conditions applying to Optus Mobile are removed. Notwithstanding this, Optus Mobile continues to be subject to the standard carrier licence conditions under the Act.

Human rights implications

The Revocation Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Revocation Instrument is compatible with human rights as it does not raise any human rights issues.

Attachment 2**Details of the Carrier Licence Conditions (Optus Mobile Pty Ltd) Declaration 1997 Instrument of Revocation 2014****Section 1 – Name of instrument**

Section 1 provides that the title of the Instrument is the *Carrier Licence Conditions (Optus Mobile Pty Ltd) Declaration 1997 Instrument of Revocation 2014*.

Section 2 – Commencement

Section 2 provides that the *Carrier Licence Conditions (Optus Mobile Pty Ltd) Declaration 1997 Instrument of Revocation 2014* (Revocation Instrument) commences on the day after it is registered on the Federal Register of Legislative Instruments.

Section 3 – Revocation

Section 3 provides for the revocation of the *Carrier Licence Conditions (Optus Mobile Pty Ltd) Declaration 1997* (Optus Mobile Declaration). Notwithstanding the revocation of the Optus Mobile Declaration, Optus Mobile, as a carrier under the Act, continues to be subject to the standard carrier licence conditions under the Act.

Section 4 – Expiry

Once the Revocation Instrument comes into effect, it will have fulfilled its purpose (i.e. revoked the Original Declaration). Therefore, the Revocation Instrument itself can be removed from the Federal Register of Legislative Instruments. Accordingly, a self-expiry provision has been included at clause 4.