

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Communications

Telecommunications Act 1997

Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 (Amendment No. 1 of 2014)

Legislative authority

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.

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.

Purpose

The purpose of the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 (Amendment No. 1 of 2014)* (the Amending Declaration) is to vary the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997* (Original Declaration) by removing redundant and spent licence conditions, updating superseded references and amending aspects of the priority assistance policy requirements. A number of consequential amendments are also made, including the removal of several definitions at clause 3 and Schedules 2 and 3.

Background

Telstra Corporation Limited (Telstra) is currently subject to two classes of carrier licence conditions: standard licence conditions under the Act; and the specific licence conditions under the Original Declaration.

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 Amending Declaration forms part of the Government's initiative to reduce government red and green tape. The removal of redundant and spent carrier licence conditions will reduce costs incurred by Telstra (and business more generally) in understanding and complying with outdated regulatory requirements. The changes to the priority assistance arrangements will enable Telstra to operate a more efficient priority assistance scheme and align some of the requirements of the scheme with the Communications Alliance Industry Code regarding Priority Assistance for Life Threatening Medical Conditions (C609:2007).

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 Telstra on 13 February 2014 regarding the proposed amendment of the licence conditions. Telstra replied to the Minister on 7 March 2014, stating its support for the proposed amendments. The Department also consulted the Australian Communications and Media Authority (the ACMA) and the Australian Communications Consumer Action Network on the draft instrument.

The amendments to the Original Declaration will have no significant impact on business and individuals. The amendments to the priority assistance scheme will reduce red tape for Telstra by reducing its reporting obligations and enabling it to establish a more flexible approach towards the registration of customers for the scheme, as well as providing a more flexible process for the variation of its priority assistance policy. The Office of Best Practice Regulation has advised that a regulatory impact statement is not required for this Amending Declaration.

Other details

The Amending Declaration is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* and commences on the day after it is registered in the Federal Register of Legislative Instruments.

The Statement of Compatibility with Human Rights for the Amending Declaration is set out in **Attachment 1**.

Details of the accompanying Amending Declaration 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 (Telstra Corporation Limited) Declaration 1997
(Amendment No. 1 of 2014)***

The *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 (Amendment No. 1 of 2014)* (the Amending 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 Amendment Declaration

Telstra Corporation Limited (Telstra) is currently subject to two classes of carrier licence conditions: standard licence conditions under the *Telecommunications Act 1997*; and the specific licence conditions under the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997* (Original Declaration).

There are a number of specific licence conditions which are spent and/or redundant in the Original Declaration as well as references that have been superseded. The effect of the Amending Declaration is that the spent, redundant and superseded carrier licence conditions applying to Telstra are removed and/or amended once the Declaration comes into force. A number of consequential amendments are also made, including the removal of several definitions at clause 3 and Schedules 2 and 3 to the Original Declaration.

The Amending Declaration also amends the priority assistance scheme to reduce red tape by: providing Telstra with greater flexibility regarding the application process in its priority assistance policy; reduce Telstra's reporting obligations; and align some of the requirements of the scheme with the Communications Alliance Industry Code regarding Priority Assistance for Life Threatening Medical Conditions. Any variation to Telstra's priority assistance policy remains subject to Ministerial approval.

Human rights implications

The Amending Declaration does not engage any of the applicable rights or freedoms.

Conclusion

This Amending Declaration is compatible with human rights as it does not raise any human rights issues.

**Details of the Carrier Licence Conditions (Telstra Corporation Limited)
Declaration 1997 (Amendment No. 1 of 2014)**

Section 1 – Name of Declaration

Section 1 provides that the title of the Amending Declaration is the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 (Amendment No. 1 of 2014)*.

Section 2 – Commencement

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

Section 3 – Variation

Section 3 of the Amending Declaration provides that the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997* (Original Declaration) is varied in the terms set out in the Schedule to the Amending Declaration.

Section 4 – Expiry

Once the Amending Declaration has come into effect, it will have fulfilled its purpose (i.e. removed and/or amended the various clauses from the Original Declaration). Therefore, the amending instrument itself can be removed from the Federal Register of Legislative Instruments. Accordingly, a self-expiry provision has been included in the Amending Declaration at clause 4.

Schedule to the Amending Declaration

Item 1 – Clause 3 - definitions

Item 1 of the Schedule removes the following definitions from the Original Declaration:

- Alternative Network;
- call conveyancing costs;
- CDMA;
- CDMA network;
- CDMA site;
- current industry development plan;
- customer transfer costs;
- EVDO service;
- industry development plan;
- Industry Minister;
- local number portability;
- metropolitan area;
- metropolitan CDMA site;

- non-metropolitan area;
- non-metropolitan CDMA site;
- Optus;
- PWC Report;
- the relevant parties;
- USO policy statement; and
- USO standard marketing plan.

These changes are consequential to the removal of substantive clauses (as discussed below).

Item 2 – Clause 5 – industry development plans

Item 2 removes the redundant carrier licence condition under clause 5 relating to industry development plans. Subclause 5(a) of the Original Declaration requires Telstra 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 now spent.

Subclause 5(b) of the Original Declaration requires Telstra 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 IDPs be repealed. Schedule 1 to the *Telecommunications Legislation Amendment (Competition and Consumer Issues) Act 2005* repealed Part 2 of Schedule 1 to the Act, thereby removing the requirement for carriers to have industry development plans. Accordingly, the carrier licence condition imposed upon Telstra under subclause 5(b) is redundant.

Item 3 – Clauses 13 and 14 – local number portability

Item 3 removes clauses 13 and 14 relating to the provision of local number portability. Clause 13 obliges Telstra to provide a range of local number portability services and clause 14 provides for the cessation of clause 13 under certain circumstances. However, since the *Telecommunications Numbering Plan 1997* requires Telstra to provide number portability or limited portability in relation to portable local service numbers (with the terms and conditions for the provision of such services being determined under section 462 of the Act), clauses 13 and 14 are redundant.

Item 4 – Clause 15 – replacement of CDMA network

Item 4 removes the spent CDMA network shutdown condition (clause 15) from the Original Declaration. Clause 15 sets out the various conditions relating to the continued operation of Telstra’s CDMA network and made provision for the shutdown of the entire CDMA network subject to notice from the Minister. Clause 15 in its entirety has been redundant since 15 April 2008, which was when

the then Minister notified Telstra that he was satisfied that the alternative mobile network provided: (a) coverage; and (b) retail services; equivalent to or better than those provided by Telstra's CDMA network.

Item 5 – Clause 17 – provision of information to CUSPs

Item 5 removes the redundant condition under clause 17 pertaining to the provision of information to competing universal service providers (CUSPs) and aspirant CUSPs from the Original Declaration. Item 14 makes a consequential change, by repealing the related Schedule 3.

In accordance with clause 17, Telstra is required to provide certain information to CUSPs and aspirant CUSPs (i.e. persons considering applying to the ACMA under section 13A of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the TCPSS Act) for approval as a CUSP for a contestable area). The information required to be provided includes such information as is specified in Schedule 2. Telstra is only required to provide the information if the CUSP or aspirant CUSP completed, signed and provided to Telstra and the ACMA a deed poll of a kind determined by the ACMA, or if not, of a kind specified in Schedule 3. With the introduction of the concept of alternative contractual arrangements for the delivery of the universal service obligation under Part 2 of the *Telecommunications Universal Service Management Agency Act 2012*, the contestability arrangements for CUSPs are no longer applicable to the universal service regime. Accordingly, clause 17 and related Schedules 2 and 3 have become redundant.

Item 6 – Clause 18 – obligations in respect of Extended Zones

Item 6 removes the spent condition at clause 18. Clause 18 requires Telstra to comply with certain obligations set out in an agreement with the Commonwealth in relation to the extended zones. Extended zones are geographical areas outside of Telstra's standard local call charging zones, predominantly located in rural and remote Australia. In 2001, the Commonwealth and Telstra entered into a 10 year agreement in respect of the extended zones. This is the agreement described in clause 18. This agreement was extended for one year in 2011 but has subsequently expired. Subclause 18(12) provides that the obligation in clause 18 ends at the cessation time (the earlier of, the date of termination of the agreement and 31 May 2011). The cessation time has also expired. Accordingly, clause 18 is spent.

Despite the removal of clause 18, the Minister is still required under section 107 of the TCPSS Act to take all reasonable steps to ensure there are regulations or other arrangements in place that provide customers in the extended zones with access to untimed local calls. It is also a policy objective in the *Telecommunications Universal Service Management Agency Act 2012* that such persons have access to untimed local calls (see subsection 4(1) of the *Telecommunications Universal Service Management Agency Regulation 2012*). In July 2012, the Telecommunications Universal Service Management Agency entered into a one-year agreement with Telstra (which was later extended for a further year) for the delivery of these services in the extended zones.

Item 7 – Subclause 19(7) – priority assistance – USO policy statement and marketing plan

Item 7 repeals subclause 19(7). Clause 19 prescribes the arrangements Telstra must have in relation to priority assistance customers. Subclause 19(7) requires Telstra to provide to the ACMA, following approval of its priority assistance policy, a draft variation of its USO policy statement and USO standard marketing plan which are to include a summary of the priority assistance policy.

The USO policy statement sets out circumstances in which Telstra does not have to supply a universal service obligation service. This has now been made redundant by the *Telecommunications Universal Service Obligation (Standard Telephone Service—Requirements and Circumstances) Determination (No. 1) 2011*, which deals with the same circumstances.

The USO standard marketing plan sets out timeframes for connecting and repairing standard telephone services and payphones. This plan has effectively been made redundant by the *Telecommunications (Customer Service Guarantee) Standard 2011* and the various payphone instruments which cover these requirements.

Since the USO policy statement and the USO marketing plan are no longer required, subclause 19(7) has been made similarly redundant.

Item 8 – Subclause 19(8) – priority assistance – information and record keeping

Item 8 repeals subclause 19(8) and substitutes a new subclause. As indicated above, clause 19 prescribes the arrangements Telstra must have in relation to priority assistance customers. In particular, subclause 19(8) sets out the record keeping and reporting regime in relation to priority service arrangements. New subclause 19(8) reduces and streamlines Telstra’s reporting requirements. It also enables Telstra to report to the ACMA on an annual basis, rather than quarterly.

Item 9 – Subclause 19(9) – priority assistance arrangements – interim arrangements

Item 9 repeals subclause 19(9). As indicated above, clause 19 prescribes the arrangements Telstra must have in relation to priority assistance customers. In particular, subclause 19(9) sets out the interim arrangements in relation to priority assistance which are to apply prior to the priority assistance policy being fully implemented. As Telstra has implemented its priority assistance policy, this provision is now redundant.

Item 10 – Clause 21 – Exemptions from the Customer Service Guarantee

Item 10 repeals clause 21, which provides Telstra with an exemption from certain provisions in the superseded *Telecommunications (Customer Service Guarantee) Standard 2000 (No. 2)* (the 2000 Determination).

Specifically, section 22 of the 2000 Determination, which provides that a carriage service provider is exempt from complying with a performance standard to the extent that non-compliance with the standard is a result of circumstances beyond the control of the carriage service provider, may not be relied on unless Telstra has complied with certain notification requirements, as set out in clause 21. The 2000 Determination has

been revoked by the *Telecommunications (Customer Service Guarantee) Standard 2011* (the 2011 Determination). The 2011 Determination includes similar exemptions from complying with a performance standard (i.e. in circumstances where a carriage service provider is exempt from complying with a performance standard to the extent that non-compliance with the standard is a result of circumstances beyond the control of the carriage service provider) and also specifies the corresponding notification requirements. Therefore, clause 21 has become redundant.

Item 11 – Subclause 24(1) (Network reliability framework – definitions)

Item 12 – Subclause 24(1) (Network reliability framework – definitions)

The definitions of ‘CSG Service’ and ‘fault or service difficulty’ have been amended to refer to the *Telecommunications (Customer Service Guarantee) Standard 2011*, which superseded the 2000 Determination.

Item 13 – Schedule 2 – Format for, and description of, information to be provided to CUSPs and aspirant CUSPs under paragraph 17(2)(a)

Item 14 – Schedule 3 – Deed poll for CUSPs and aspirant CUSPs requesting information relating to contestable universal service areas

As noted in the commentary for Item 5 above, Items 13 and 14 remove Schedules 2 and 3 which are consequential to the repeal of clause 17.

Item 15 – At the end of Item (1) definitions in Schedule 4

Item 15 inserts a definition for the term ‘CSG Standard’ to mean the *Telecommunications (Customer Service Guarantee) Standard 2011* for the purposes of Schedule 4 of the Original Declaration (which sets out the objectives that are to be addressed in Telstra’s priority assistance policy). The term ‘CSG Standard’ is referred to in the amendments made to Schedule 4, as described below.

Item 16 – Subitem (4)(a) in Schedule 4 – priority customer applications

Item 17 – Subitems (4)(k) and (4)(l) in Schedule 4 – priority customer applications and assessments

Item 18 – Item (5) in Schedule 4 – post facto ratification of priority customers

Item (5) in Schedule 4 requires the priority assistance policy to provide for a process whereby customers that claim they qualify as priority assistance customers will be provided with priority assistance but if it is subsequently found the customer does not currently meet the criteria, then Telstra may charge the customer a fee for providing the priority service. Many customers have been provided with priority services for which they have failed to later validate their eligibility. In its *Communications Report* for 2012-13, the ACMA reported that, of 256,549 priority assistance customers as at 30 June 2013, a clear majority (144,435) had not validated their priority assistance status. There has been a significant increase in non-validated customers in the past two years. At 30 June 2011, by contrast, of 134,822 priority assistance customers, only 54,152 had not validated their status.

Item 18 removes the requirement for post facto ratification of priority customers. Telstra will therefore have flexibility to require up-front or post facto registration

depending on individual circumstances. Item 16 clarifies that Telstra will have flexibility to require pre-registration for priority customers and Item 17 clarifies Telstra's ability to charge for priority services provided to customers that subsequently do not meet the eligibility requirements.

Any changes to Telstra's priority assistance policy, including the process by which customers can apply for priority assistance, must be approved by the Minister (as per subclause 19(5) of the Original Declaration).

Item 19 – Item (7) in Schedule 4 – connections

As described above, Telstra's obligation to provide a USO standard marketing plan has been subsumed by the obligations in the *Telecommunications (Customer Service Guarantee) Standard 2011* and the various payphone instruments which cover these requirements. Given this, Item 19 replaces the reference to the standard marketing plan with the defined term 'CSG Standard' (discussed in Item 15 above).

Item 20 – Subitem (9)(a) in Schedule 4 - service reliability

Item 21 – At the end of subitem (9)(b) in Schedule 4 - service reliability

Item 9 in Schedule 4 specifies the licensee's priority assistance policy must satisfy the objective that priority customers are to receive enhanced service reliability and fault rectification. This Item 20 amends subitem (9)(a) to make clear that the objective only applies to priority assistance services supplied using a telecommunications network over which the licensee is in a position to exercise control. Item 21 provides that the rules set out in section 577Q of the Act apply for determining whether the licensee is in a position to exercise control of a telecommunications network.

Item 22 – Item (11) in Schedule 4 - fault rectification

As described above, Telstra's obligation to provide a USO standard marketing plan has been subsumed by the obligations in the *Telecommunications (Customer Service Guarantee) Standard 2011* and the various payphone instruments which cover these requirements. Given this, Item 22 replaces the reference to the standard marketing plan with the defined term 'CSG Standard' (discussed in Item 15 above).

Item 23 – Subitem (13)(a) in Schedule 4 - new connections

Item 24 – Subitem (13)(b) in Schedule 4 - new connections

Items 23 and 24 amend subitems (13)(a) and (b) of Schedule 4 to clarify that an interim service must be supplied within 24 or 48 hours of the interim offer being accepted by the priority assistance customer and not within 24 or 48 hours of Telstra receiving the original priority assistance request. This amendment is consistent with the timeframes provided for regarding priority assistance interim services in the Communications Alliance Industry Code regarding Priority Assistance for Life Threatening Medical Conditions.

Item 25 – Subitem (13)(c) in Schedule 4 - new connections

Item 26 – Note 3 at the end of Item (13) in Schedule 4

As outlined above, the USO standard marketing plan has been superseded by obligations set out in the *Telecommunications (Customer Service Guarantee) Standard 2011*. Given this, these references are redundant and have been removed.

Item 27 – Subitem (14)(a) in Schedule 4 - service faults

Item 28 – Subitem (14)(b) in Schedule 4 - service faults

Items 27 and 28 amend subitems (14)(a) and (b) of Schedule 4 to clarify that where a service fault cannot be rectified within the specified period, an interim service must be supplied within 24 or 48 hours of the interim offer being accepted by the priority assistance customer and not within 24 or 48 hours of Telstra receiving the original priority assistance request. This amendment is consistent with the timeframes provided for regarding priority assistance interim services in the Communications Alliance Industry Code regarding Priority Assistance for Life Threatening Medical Conditions.

Item 29 – Subitem (14)(c) in Schedule 4 - service faults

Item 30 – Note 3 at the end of Item (14) in Schedule 4

As outlined above, the USO standard marketing plan has been superseded by obligations set out in the *Telecommunications (Customer Service Guarantee) Standard 2011*. Given this, these references are redundant and have been removed.