



# **Carrier Licence Conditions (Networks supplying Superfast Carriage Services to Residential Customers) Declaration 2014**

made under subsection 63(2) of the

*Telecommunications Act 1997*

## **Compilation No. 2**

**Compilation date:** 19 June 2018

**Includes amendments up to:** F2018L00787

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Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Carrier Licence Conditions (Networks supplying Superfast Carriage Services to Residential Customers) Declaration 2014* that shows the text of the law as amended and in force on 19 June 2018 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## 1 Name of Instrument

This Declaration is the *Carrier Licence Conditions (Networks supplying Superfast Carriage Services to Residential Customers) Declaration 2014*.

## 3 Expiry

This Declaration expires on 30 June 2020.

## 4 Definitions

In this Declaration:

**ABN** has the meaning given in section 41 of the A New Tax System (Australian Business Number) Act 1999.

**Act** means the Telecommunications Act 1997.

**Amending Instrument** means the *Carrier Licence Conditions (Networks supplying Superfast Carriage Services to Residential Customers) Declaration 2014 (Amendment No.1 of 2016)*.

**associate** of a specified carrier is to be determined in accordance with section 152 of the Act.

**business customer** means a customer that:

- (a) carries on a business or enterprise from a premises, regardless of whether there is any incidental use of the premises for occupation (from time to time) as a place of residence; and
- (b) has an ABN for the business or enterprise.

**declared service** has the same meaning as in Part XIC of the *Competition and Consumer Act 2010*.

**designated telecommunications network** means that part of a fixed-line telecommunications network made up of local access lines or parts of local access lines which:

- (a) is used, or is technically capable of being used, to supply superfast carriage services; and
- (b) is not:
  - (i) subject to either sections 141 or 143 of the Act; or
  - (ii) the subject of a ministerial exemption in force under section 141A or section 144 of the Act; or
  - (iii) any of the following:
    - (A) the national broadband network; or
    - (B) a specified HFC network; or

- (C) any local access lines that are used to supply carriage services to business customers, public bodies or large charity customers; or
  - (D) a fixed-line network (or any part of such a network) in existence immediately before 1 January 2011 which is situated in a real estate development project that is extended on or after 1 January 2011 to an area that was developed as another stage of the project;
  - (E) a fixed-line network (or any part of a such a network) in existence immediately before 1 January 2011 which prior to that date was used to supply carriage services to residential customers and which has not been extended on or after 1 January 2011;
  - (F) a fixed-line network (or any part of such a network) in existence immediately before 1 January 2011 which prior to that date was used to supply carriage services wholly or principally to residential customers and which is extended on or after 1 January 2011 by less than 1 kilometre from any point on the infrastructure of the network (as it stood immediately before 1 January 2011); and
  - (G) a fixed-line network (or any part of such a network) which is:
    - (i) owned by a carrier that is also the primary universal service provider; and
    - (ii) built (including any extensions made to such a network of less than 1 kilometre from any point on the infrastructure of the network) between 1 January 2011 and 31 December 2014 to enable the primary universal service provider to fulfil the universal service obligation; and
- (c) is situated anywhere in Australia.

**eligible service** has the same meaning as in section 152AL of the *Competition and Consumer Act 2010*.

**employee**, in respect of a wholesale or retail company, includes a natural person who is acting as an agent, or is engaged by the company as a consultant or contractor acting in an equivalent role to an employee or carrying out the role of an employee.

**geographic extent** means the physical location of infrastructure.

**large charity customer** means a customer that is an incorporated charitable organisation which employs 15 or more employees at any time.

**Layer 2** has the same meaning as in the Open System Interconnection reference model for data exchange.

**Layer 2 Wholesale Service** means a Layer 2 bitstream service that has all of the following characteristics:

- (a) a downstream data transfer rate of 25 megabits per second (peak information rate); and
- (b) an upstream data transfer rate of 5 megabits per second (peak information rate); and
- (c) is able to be used by a carrier or carriage service provider to supply carriage services, including voice telephony, to an end-user.

**local access line** has the same meaning as in section 141D of the Act.

**multi-dwelling unit** means a building or buildings where multiple separate units for occupation (from time to time) as a place of residence or business are contained within one complex.

**national broadband network** has the same meaning as in section 5 of the *National Broadband Network Companies Act 2011*.

**operational support systems** means any system for service activation, customer support, billing and service fault rectification and similar functions and includes systems for maintaining and recording customer information.

**permitted discrimination grounds** means discrimination against a carrier or carriage service provider by a specified carrier (or wholesale company, as the case may be) where it has reasonable grounds to believe that the particular carrier or carriage service provider would fail, to a material extent, to comply with an obligation that is reasonably necessary to protect the carrier's (or the wholesale company's) legitimate interests.

Note: For the purposes of the definition of permitted discrimination grounds, examples of grounds include evidence of lack of creditworthiness and repeated failures by the particular carrier or carriage service provider to comply with similar terms and conditions offered by the specified carrier (or wholesale company, as the case may be).

**point of interconnection** means a point within a carrier's telecommunications network:

- (a) for the interconnection of facilities by another carrier; and
- (b) which is:
  - (i) located in each State or Territory capital city in which the carrier operates the designated telecommunications network and is reasonably accessible to the other carrier; or
  - (ii) another location as agreed between the carrier and the other carrier.

**primary universal service provider** has the meaning given in section 12A of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

**protected wholesale information** means:

- (a) confidential information obtained by the wholesale company for the purpose of, or in the course of, supplying carriage services to a wholesale

customer that identifies the wholesale customer or a customer of that wholesale customer; or

- (b) information obtained by the wholesale company for the purpose of, or in the course of, supplying carriage services to a wholesale customer that is commercially sensitive to a wholesale customer; or
- (c) any confidential information or commercially sensitive information which is derived from information of the kind described in paragraph (a) or (b) above, whether or not in an aggregate form, that would enable the identity of a:
  - (i) wholesale customer to be ascertained; or
  - (ii) customer of a wholesale customer to be ascertained;

but does not include:

- (d) information of the kind described in subparagraph (c)(i) above where the information is aggregated on a national basis; or
- (e) information which is already public.

**public body** means:

- (a) the Commonwealth, a State or a Territory; or
- (b) a municipal authority or other local governing body; or
- (c) a public authority that is constituted by or under a law of the Commonwealth, a State or a Territory.

**related body corporate** has the same meaning as in section 9 of the *Corporations Act 2001*.

**retail company** means a company which has the following functions:

- (a) selling and supplying eligible services to end-user customers using the designated telecommunications network; and
- (b) negotiating or establishing supply contracts with end-user customers.

**specified broadband service** means a carriage service which has the following characteristics;

- (a) it enables end-users to download communications; and
- (b) its download transmission speed is normally 6 megabits per second or more; and
- (c) it is supplied using a line to premises occupied or used by an end-user.

**specified carrier** means a carrier that either owns or operates a designated telecommunications network at any time on or after the commencement of this Declaration, and where the context permits, includes a wholesale company.

**specified HFC network** means:

- (a) a telecommunications network that is used to supply carriage services and the line component of which consists of optical fibre to connecting nodes, supplemented by coaxial cable connections from the nodes to the premises of end-users; and



- (b) which was in existence prior to 1 January 2011. For the avoidance of doubt, any extensions to such a network made on or after 1 January 2011 are to be treated as forming part of a ‘specified HFC network’ for the purposes of this Determination.

***superfast carriage service*** has the same meaning as in subsection 141(10) of the Act.

***universal service obligation*** has the meaning given in section 9 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

***wholesale company*** means a company which has the following functions:

- (a) selling and supplying eligible services to carriers, carriage service providers and the retail company (wholesale customers) using the designated telecommunications network; and
- (b) where required, providing (or arranging for the provision of) service activation and network provisioning, and fault detection, handling and rectification and similar functions, in respect of the designated telecommunications network; and
- (c) negotiating or establishing access agreements with its wholesale customers. For the avoidance of doubt, additional functions of the wholesale company may include controlling or operating the designated telecommunications network but these are not mandatory functions.

Note: Several other words and expressions used in this Declaration have the same meaning given by the *Telecommunications Act 1997* (paragraph 13(1)(b) of the *Legislation Act 2003*). For example:

- carriage service;
- carriage service provider;
- carrier;
- customer cabling;
- customer equipment;
- facility;
- main distribution frame;
- real estate development project; and
- telecommunications network.

- (2) Where the specified carrier uses a designated telecommunications network to supply carriage services to carriers or carriage service providers, and those carriers and carriage service providers:
- (a) are each:
- (i) related body corporates of the specified carrier; or
  - (ii) within the same company group of companies as the specified carrier;
- and
- (b) supply carriage services to residential customers;

the operations of the designated telecommunications network will not be treated as being on a wholesale-only basis for the purposes of subsections 6(6) and 6(5A) of this Declaration.

## 5 Application

A carrier licence granted to any specified carrier is subject to the conditions set out in section 6 if, at any time, on or after the commencement of this Declaration one or more local access lines forming part of a designated telecommunications network are used by the specified carrier or any of its associates to supply superfast carriage services or specified broadband services to residential customers.

## 6 Class Licence Conditions

- (1) The specified carrier must:
  - (c) from 1 July 2015 until 30 June 2020 comply with each of the conditions set out in subsections (5), (5A), (6), (7), and (8); and
  - (d) within 20 days of the conditions set out in this Declaration applying to the specified carrier in respect of its operations of a designated telecommunications network provide the ACCC with written notice of this.

### *General separation and supply obligations*

- (5) The specified carrier must not use or permit any of its associates to use any local access line forming part of the designated telecommunications network to supply a carriage service unless all the conditions specified in subsection (6) are met.
- (5A) To the extent that the specified carrier's operations of one or more designated telecommunications networks are conducted on a wholesale-only basis, the specified carrier must, within 30 days of the Amending Instrument coming into effect and every 6 months thereafter, provide the ACCC with a statement from two or more of its Directors:
  - (a) setting out the following details:
    - (i) the specified carrier's name and Australian Company Number (ACN);
    - (ii) for each designated telecommunications network in existence as at the date of the statement:
      - A. the technology type of the network;
      - B. the geographic extent of the network
      - C. the total number of carriage services in operation on the network as at the date of the statement; and
      - D. the estimated total number of addressable premises technically capable of being served by the network;
      - E. the names and ACNs (where applicable) of each carriage service provider supplied with one or more eligible services using the designated telecommunications network during:

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- I. the period commencing on 1 January 2017 and ending on date of the statement – for the first statement; and
  - II. the period commencing 6 months before the date of the relevant statement and ending on the date of the statement – for each subsequent statement; and
- (b) declaring that each designated telecommunications network has not been used by the specified carrier to supply eligible services to any of its associates at any time during which section 5 of this Declaration has applied to the specified carrier in respect of those networks.
- (5AA) The statement to be provided in accordance with subsection 6(5A) must be in a form (if any) specified in writing by the ACCC.
- (6) To the extent that the operations of the specified carrier (and its associates) in respect of the designated telecommunications network are not operated on a wholesale-only basis, the specified carrier must ensure that all of the conditions set out in paragraphs (a)-(r) below are satisfied:
- (a) the specified carrier must not supply eligible services using the designated telecommunications network to the retail company unless the specified carrier is also the wholesale company;
  - (b) the wholesale operations of the designated telecommunications network must be conducted through the wholesale company and the retail operations must be conducted through the retail company;
  - (c) the wholesale company and retail company must:
    - (i) each operate separate operational support systems; and
    - (ii) either operate:
      - (A) separate business and communication systems; or
      - (B) shared business and communication systems but only if they are not used by the wholesale company in any manner which has (or potentially has) the effect of discriminating in favour of the retail company in respect of the supply of eligible services or in carrying on any of activities listed at subparagraph (6)(m)(ii);
  - (d) the specified carrier must provide to the ACCC a statutory declaration made in accordance with the Statutory Declarations Act 1959 (Cth) by a director or company secretary of the specified carrier, that the wholesale company (at all relevant times) has operated the systems in accordance the condition in sub-subparagraph (6)(c)(ii)(B) by 30 June and 30 December of each calendar year;
  - (e) the specified carrier must provide (and ensure that the wholesale company provides) all reasonable assistance and responds to any reasonable request made by the ACCC for the purposes of any audits undertaken by the ACCC to verify compliance with sub-subparagraph (6)(c)(ii)(B) by the ACCC;
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- (f) the wholesale company must operate a single business-to-business interface for use by its retail company and other carriers and service providers for ordering eligible services that are to be supplied using the designated telecommunications network;
- (g) the wholesale company must not perform any function of the retail company;
- (h) the retail company must not perform any function of the wholesale company;
- (i) the offer and supply of eligible services using the designated telecommunications network to a person who is a carrier or a carriage service provider using the designated telecommunications network must be effected through the wholesale company;
- (j) in respect of eligible services the retail company acquires directly from the wholesale company for the purposes of its business, the offer and supply of eligible services to end-user customers using the designated telecommunications network must be effected through the retail company;
- (k) the wholesale company must publish in a prominent place on its website and provide to the Australian Competition and Consumer Commission within 5 business days of publication, the terms and conditions (price and non-price) on which it supplies the eligible services (including the Layer 2 Wholesale Service) using the designated telecommunications network;
- (l) the wholesale company must:
  - (i) supply eligible services (including the Layer 2 Wholesale Service) using the designated telecommunications network;
  - (ii) give access to any necessary facilities and permit interconnection of those facilities at a nominated point of interconnection;
  - (iii) offer necessary connectivity to a relevant point of interconnection for the relevant local access line; and
  - (iv) provide information about the types of customer equipment, and supply any proprietary customer equipment, needed for the supply of carriage services to an end-user; and
  - (v) in the case where the service is proposed to be supplied to a premises in a multi-dwelling unit, give access to relevant customer cabling controlled by the wholesale company (or its associate);to the retail company and other carriers and carriage service providers;
- (m) in fulfilling the supply obligations under paragraph (l), the wholesale company must not discriminate:
  - (i) in favour of the retail company in relation to the supply of an eligible service, including in respect of any price and non-price terms and conditions for such supply (other than on permitted discrimination grounds);
  - (ii) in favour of the retail company in carrying on any of the following activities:
    - (A) enhancing an eligible service;
    - (B) developing a new eligible service ;

- (C) extending or enhancing the capability of a facility by means of which an eligible service is supplied;
  - (D) an activity that is preparatory to the supply of an eligible service;
  - (E) an activity that is incidental to the supply of an eligible service; and
  - (F) giving information to carriers and carriage service providers about any of the above activities listed at subparagraphs (6)(m)(ii) ;
- (iii) between wholesale customers (carriers and carriage service providers) requesting services (other than on permitted discrimination grounds) in relation to:
- (A) the supply of an eligible service, including in respect of any price and non-price terms and conditions for such supply; and
  - (B) the carrying on any of activities listed at subparagraph (6)(m)(ii);
- (n) at any given time, a person appointed as director of the wholesale company (or the retail company, as the case may be) must not be appointed as a director of the other company;
- (o) at any given time, a person occupying a senior management position with the wholesale company (or the retail company, as the case may be) must not hold any senior management position with the other company;
- (p) an employee of the wholesale company (or the retail company, as the case may be) must not be employed by the other company;
- (q) the wholesale company (including any of its directors, senior management and employees) must not disclose protected wholesale information to the retail company (including any of its directors, senior management and employees) unless authorised by the respective wholesale customer to do so; and
- (r) where the wholesale company discloses, where permitted, protected wholesale information to an associate of the wholesale company, the associate must not disclose protected wholesale information to the retail company (including any of its directors, senior management and employees) unless authorised by the respective wholesale customer to do so.

#### *Layer 2 Wholesale Service Supply Obligation*

- (7) At all times during which the Layer 2 Wholesale Service is not a declared service, the specified carrier must ensure that the wholesale company offers to supply, upon reasonable request by another carrier or carriage service provider, a Layer 2 Wholesale Service using the designated telecommunications network.
- (8) The price offered for the supply of the Layer 2 Wholesale Service (in accordance with subsection (7)) must not be more than \$27 (exclusive of GST) per service on a monthly basis in relation to the use of the local access line.

## Endnotes

Endnote 1—About the endnotes

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## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

**Endnote 2—Abbreviation key**

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnotes

### Endnote 3—Legislation history

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### Endnote 3—Legislation history

<b>Name</b>	<b>Registration</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Carrier Licence Conditions (Networks supplying Superfast Carriage Services to Residential Customers) Declaration 2014	14 Dec 2014 (F2014L01699)	1 Jan 2015 (s 2)	
Carrier Licence Conditions (Networks supplying Superfast Carriage Services to Residential Customers) Declaration 2014 (Amendment No.1 of 2016)	6 Dec 2016 (F2016L01870)	7 Dec 2016 (s 2)	—
Carrier Licence Conditions (Networks supplying Superfast Carriage Services to Residential Customers) Declaration 2014 (Amendment No.1 of 2018)	18 June 2018 (F2018L00787)	19 June 2018 (s 2)	—



## Endnote 4—Amendment history

## Endnote 4—Amendment history

Provision affected	How affected
s 2.....	rep LA s 48D
s 3.....	am F2016L01870; F2018L00787
s 4.....	am F2016L01870 ed C1
s 6.....	am F2016L01870; F2018L00787