

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 2015)

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 2015)* (the Amending Declaration) is to vary the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997* as currently in force (Original Declaration) by inserting a new requirement for Telstra Corporation Limited (Telstra) to disclose to NBN Co Limited (NBN Co) the location of each premises receiving active copper services from any of Telstra's wholesale customers where those wholesale customers have not consented to such disclosure.

The Amending Declaration sets out the high-level obligation upon Telstra for the provision of the data and provides two alternative mechanisms for satisfying the disclosure obligation. The first is a commercial one which applies if NBN Co and Telstra enter into a contract which governs the disclosure of the relevant information and specific other conditions are satisfied. Under this mechanism, Telstra will be required to disclose the relevant information on the same terms and conditions as set out in the agreement. The second mechanism is a default one set out in the Amending Determination which applies if there is no commercial agreement in force. This essentially is a default regime which requires Telstra to provide the data to NBN Co on a monthly (in arrears) basis.

Background

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 instruments.

Telstra supplies wholesale services over its copper network to other telecommunications companies (i.e. retail service providers). In turn, those retail service providers supply carriage services to consumers. The wholesale carriage services supplied by Telstra generally cover:

- fixed-line wholesale carriage services;
- unconditioned local loop service (ULLS) (i.e. where a third party rents from Telstra the copper line between an exchange and a customer premises); and
- a line sharing service (LSS) (which enables a Telstra competitor to use the high frequency part of the phone line to provide ADSL2+ using its own equipment, while Telstra still provides the normal voice service to the consumer).

As part of the contractual arrangements with its wholesale customer, Telstra obtains end-user location identification data (i.e. the full address of the end-user customer) for all active copper line services in a region able to be connected to the national broadband network (NBN). Telstra then converts this number to the NBN-equivalent number, which is known as the national broadband network location identification number (NBN Loc ID).

The NBN Loc ID is of value to NBN Co and helps to ensure a smooth transition for customers to the NBN. For example, the information can assist with:

- the migration of critical legacy services such as medical alarms, fire alarms and lift phones;
- the case management of vulnerable customers, such as medical alarm users, to reduce the risk of unexpected disconnection that could have potentially life threatening consequences; and
- NBN Co's information campaigns directed at the last 'hard to migrate' segment of consumers, so that such consumers are fully informed of the impending disconnection.

In early rollout regions the NBN Loc ID data was used to send final disconnection letters (on an anonymised basis) to all remaining active copper line customers in NBN rollout areas approaching imminent disconnection and, where necessary, to conduct a door knocking campaign for difficult to reach customers. This reduces the risk of unexpected or inappropriate disconnection. All fixed-line services located in a NBN fixed-line rollout footprint will be subject to disconnection at some point before the NBN rollout is completed.

Telstra has agreed to an interim commercial arrangement with NBN Co to supply data relating to its retail customers and wholesale customers' end users to NBN Co, where the wholesale customer has authorised the disclosure. Not all of Telstra's wholesale customers have provided this consent, meaning that NBN Co receives an incomplete dataset. This greatly hinders NBN Co's efforts to manage the migration of vulnerable customers and those who are yet to migrate their services close to the disconnection date. To address this significant concern, the new carrier licence conditions under the Amending Declaration will compel Telstra to disclose the NBN Loc ID data sourced from those wholesale customers who have not otherwise authorised the disclosure.

It is understood that Telstra will voluntarily provide to NBN Co similar types of information about its retail customers under commercial arrangements, and the scope of the licence condition is suitably limited to ensure a proportional approach to the management of any privacy impacts.

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 licence holder to make a submission to the Minister on the draft. Consistent with this requirement, the Minister formally wrote to Telstra on 25 June 2015 regarding the proposed Amending Declaration. Telstra replied to the Minister on 24 July 2015 with its comments. Telstra indicated that, while its preference was for the proposed information disclosure obligation to be imposed directly on those service providers who possess the relevant information about their customers, Telstra accepted the Minister's proposal to impose the obligation on Telstra and had no further comments on the form of the proposed Amending Declaration. Given Telstra's role in the disconnection of fixed-line services and recognising the commercial arrangement it is expected to have in place with NBN Co for the disclosure of relevant data on a periodic basis for the duration of the network rollout, the approach of imposing the decision on Telstra rather than on its customers is considered appropriate. This approach will also ensure a timely and streamlined reporting for information that is critical to effective migration management, thereby reducing the risk of unexpected or inappropriate disconnection.

As the new licence condition represents a deviation from ordinary principles of preserving commercial confidentiality and privacy, in addition to consulting with Telstra on the development of the draft Amending Declaration, the Department of Communications also consulted with the Commonwealth Attorney-General's Department, the Office of the Australian Privacy Commissioner and NBN Co.

Regulation Impact

The Office of Best Practice Regulation has assessed the regulatory impact of the Amending Declaration to be minor and advised the Department of Communications that a Regulation Impact Statement is not required (refer OBPR ID 18217).

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.

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

The Statement of Compatibility with Human Rights for the Amending Declaration is set out in **Attachment 2**.

Details of the Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 (Amendment No. 1 of 2015)

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 2015)*.

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* as currently in force (the Original Declaration) is varied as 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. inserted a new clause 11 into 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 section 4.

Schedule to the Amending Declaration

Item 1 of the Schedule inserts a new clause 11 (comprising eight subclauses) into the Original Declaration.

Principal obligation – provision of information

New clause 11(1) sets out the core obligation for Telstra to give to NBN Co Limited (NBN Co) on a monthly basis, the NBN Loc ID for 'Eligible Premises' receiving an 'active service' as at the end of a relevant month. The purpose and use by NBN Co is limited to the 'Permitted Purposes' (a defined term).

There are several terms used in this principal clause which are defined in new subclause 11(8), namely 'active service', 'NBN Co', 'Permitted Purpose' and 'Report Date' and 'Specified Premises Location'. These are discussed in further detail at the note on subclause 11(6) - refer below. The term 'licensee' refers to Telstra.

In fulfilling the data supply obligation under new subclause 11(1), there are two possible regimes that may apply to Telstra in fulfilling that obligation. The first is a commercial regime set out in new subclause 11(2) and the second (alternative) regime is a default one set out in subclause 11(3).

Subclause 11(2) - Commercial agreement regime

Subclause 11(2) provides that Telstra is to supply the relevant data on the same terms and conditions as would apply to the supply of information under a commercial agreement it enters into with NBN Co after the amendment comes into effect. This mechanism recognises any legally binding agreement Telstra has or may enter into with NBN Co for the provision of the NBN Loc ID data. Effectively, Telstra must comply with subclause 11(1) by providing the Specified Premises Location Information to NBN Co in accordance with the terms of that commercial agreement.

In order for this commercial regime to apply in fulfilment of the data supply obligation, the commercial agreement must require Telstra to give the Specified Premises Location Information to NBN Co (and the timing for this) and it must govern any:

- limitations or restrictions on the purposes for which NBN Co may use or disclose of the data; and
- other matters the parties commercially agree to include in such an agreement in respect of the provision of the data.

Given that subclause 11(2) effectively provides for Telstra to satisfy the statutory obligation under subclause 11(1) through complying with a private commercial agreement, it is necessary to ensure greater transparency for the regulator and access to law for affected parties. Accordingly, paragraphs 11(2) (b) and (c) set out additional conditions that must be satisfied before subclause (2) is invoked. Specifically, Telstra must have provided a certified copy of the agreement to the Australian Communications and Media Authority (ACMA) and must make available a copy of the agreement to impacted wholesale customers (i.e. those who have not consented to Telstra disclosing the relevant information). These two additional conditions are designed to ensure greater transparency and accessibility to the terms of the commercial agreement. Although the ACMA would have the ability to obtain a copy of the agreement in reliance of its information gathering powers under section 521 of the Act, the inclusion of an express requirement for Telstra to provide a copy is intended to facilitate accessibility and will support compliance oversight.

Subclause 11(3) - Default regime

New subclause 11(3) sets out the default statutory regime. In the circumstances where a legally binding agreement of the kind specified in subclause 11(2) is not in legal force, Telstra is required to provide the data on a monthly basis, specifically, every 10 working days after each month's 'Report Date' (see commentary below in relation to subclause 11(6) for a detailed explanation of this term).

The inclusion of a default regime provides certainty to NBN Co that Telstra will provide the data at a specified time each month, in the absence of a commercial agreement being in force.

Subclause 11(4) – Circumstances in which compliance is not required

Subclause (4) exempts Telstra from the data supply obligation under subclause 11(1) where any of the following apply:

- NBN Co has breached (or will imminently breach) a material term of the commercial agreement referred to in subclause 11(2) - (paragraph 11(4)(a)); or
- if there is no longer a commercial agreement in force, and Telstra has determined on reasonable grounds that NBN Co has used or disclosed (or will imminently use or disclose) the data in an unauthorised way - (paragraph 11(4)(b)); or
- In recognition of relevant IT system changes that Telstra needs to implement to comply with the new supply condition, if there is no agreement in place between NBN Co and Telstra for the reimbursement of such costs - (paragraph 11(4)(c)); or
- where Telstra's compliance with subclause 11(1) is reasonably likely to expose it to any loss or claim arising as a result of any unauthorised use or disclosure by NBN Co of the data (paragraph 11(4)(d)).

Subclause 11(5) – Circumstances in which Telstra will not be in breach

Given the significant penalties that could apply in the event of a breach of a carrier licence condition by Telstra, and the process-intensive work underpinning the provision of the data, it would be unreasonable for Telstra to be considered in breach of the timing obligation under subclause 11(3) where the failure to meet the set timeframe is due to a circumstance beyond Telstra's reasonable control. Accordingly, subclause 11(5) addresses these kinds of scenarios. An example of a circumstance that is intended to be captured is where Telstra is unable to transmit the material on the due date as a result of a power outage.

Subclauses 11(6) and (7) – Permitted Purpose, Restricted Permitted Purposes and exclusions

Subclause 11(6) specifies, in a highly prescriptive way, the permitted uses of the data by NBN Co. Similarly, subclause 11(7) specifies, in a detailed manner, the types of use of the Specified Premises Location Information which are not permitted. Refer to the commentary below under the definition of 'Permitted Purpose' for further information.

Subclauses 11(8)– Key definitions

New subclause 11(8) sets out the key definitions used in subclauses 11(1) to (7) inclusive. These are discussed in detail below.

Active service

The term, 'active service' is central to the concept of Specified Premises Location Information. It is defined to mean a copper-based wholesale carriage service which Telstra supplies to its wholesale customers (who are also retail service providers (RSPs)) where that carriage service is used by those providers to supply services to end-users at the target premises as at that Report

Date and which has not been disconnected from Telstra's copper network.

Australian Consumer Law

This is a term used in subclause 11(7) and simply describes the law by the same name under Schedule 2 to the *Competition and Consumer Act 2010*.

Copper Path

The term 'Copper Path' is used in the definition of 'active service'. It describes the logical path used to provide a carriage service at a premises where that path is over one or more copper lines. A logical path is a virtual circuit or path between two or more line link points. By definition, an active service cannot cover carriage services supplied using the national broadband network (NBN). This clarification is included for the avoidance of doubt; to clearly delineate between wholesale carriage services using Telstra's owned and operated network and the NBN Co operated NBN.

Copper Service

The data which is at the heart of the new licence condition relates to active copper services. The concept of 'copper service' is given the same meaning as in the *Telecommunications (Migration Plan Principles) Determination 2015* (MPPs). In general terms it covers fixed-line copper services supplied by Telstra over its copper network, the unconditioned local loop service, line sharing services and all other wholesale copper-based carriage services.

Definitive Agreements

Definitive Agreements are defined by reference to the MPPs. It is used in paragraph 11(7)(f) of the Declaration. It covers several existing commercial agreements between NBN Co and Telstra and any other future document agreed by the Minister, NBN Co and Telstra to be a 'Definitive Agreement'. The Definitive Agreements comprise a number of separate but interdependent documents signed by Telstra and NBN Co that together with Telstra's Structural Separation Undertaking and Final Migration Plan under Part 33 of the Act, create a framework for Telstra's participation in the rollout of the NBN.

Disconnection date

The term 'disconnection date' is used in the definition of 'Eligible Premises'. It is given the same meaning as given in the MPPs. This is the date when the old fixed-line network in a region declared ready for service by NBN Co will be switched off (and the related services supplied over that old network will be permanently disconnected).

Eligible Premises

'Eligible Premises' is a central concept under the information disclosure requirement in new subclauses 11(1) and (2). It covers a premises which, as at the Report Date, is located in a rollout region specified in the fixed footprint list for a rollout region, being a list published by NBN Co which will be disconnected from Telstra's copper network either:

- 6 months after the particular Report Date; or
- for premises falling outside of the above 6 month time horizon, one which Telstra has determined (and notified NBN Co) to be an Eligible Premises for a Report Date. This additional flexibility is required because there may be instances where NBN Co

requires the active service data to run a particular marketing and information awareness campaign targeting customers receiving copper-based carriage services and over-the-top services in an area which will be disconnected more than 6 months after the Report Date. This will assist NBN Co's forward planning.

In either of the above two circumstances, an additional criterion is that Telstra expects the premises will be an 'Eligible Premises' for the purposes of new clause 11.

Historical footprint list

This term is used in paragraph 11(7)(e) in defining the exclusions to 'Permitted Purpose'. It covers an address list provided by NBN Co to RSPs that details the then current rollout regions, including the address information and the service class for each premises included in that list.

In train order premises and in train order list

'In train order premises' is defined by reference to the MPPs. The related term, 'in train order list' refers to the list of in train order premises prepared by NBN Co and notified to Telstra in accordance with the Definitive Agreements.

Information Campaign and Migration Deed

This term is used in paragraph 11(6)(d) in describing a Restricted Permitted Purpose. It refers to the deed entered into between Telstra and the Commonwealth, as amended in December 2014. This Deed sets out commitments by the Commonwealth relating to the migration of customers to the NBN. Under this Deed, the Commonwealth has agreed to arrange for a public education campaign to be run by NBN Co to inform end users that Telstra may disconnect services from the copper network as part of migration to the NBN and that the end user is responsible for customer migration costs, and conduct a public education campaign regarding NBN migration generally.

Migration

The term, 'migration' is defined by reference to the MPPs and means the process of disconnecting copper services or hybrid fibre-coaxial carriage services at a premises and connection to the NBN Co fixed-line network at the same premises.

NBN based service and NBN Service

These terms are defined by reference to the MPPs. NBN based service covers a carriage service supplied by a retail service provider using an NBN Service. In turn, NBN Service covers any service provided by NBN Co or a related entity of NBN Co over the NBN Co fixed-line network.

NBN Co

NBN Co means NBN Co Limited (ACN 136 533 741) as the company exists, even if there is a change in company name.

NBN Co Communications Policies

These are NBN Co specific business rules, codes of practice and policies relating to marketing and communications with end users.

NBN Connected

The term ‘NBN Connected’ covers: FTTB-Connected Premises; FTTN-Connected Premises; FTTP-Connected Premises; and HFC-Connected Premises. These terms are separately defined in the MPPs and refer to the technology platform by which a premises is (or will be) connected to the NBN.

NBN Co fixed-line network

This term is defined by reference to the MPPs. It is the fixed-line telecommunications network that is owned or controlled by, or operated by or on behalf of, NBN Co or a related entity of NBN Co including via FTTP, FTTB, FTTN and hybrid fibre-coaxial cable access technologies, but excluding any telecommunications network deemed under the MPPs to form part of Telstra’s copper or hybrid fibre-coaxial networks.

national broadband network

The term, ‘national broadband network’ is given the same meaning as in the *National Broadband Network Companies Act 2011* (NBN Companies Act), which means a national telecommunications network for the high speed carriage of communications, where an NBN corporation is involved in the creation or development of the network.

Permitted Purpose

In accordance with the new information disclosure requirement under subclause 11(1), Telstra must disclose the Specified Premises Location Information to NBN Co to enable NBN Co to use it for a *Permitted Purpose*. The definition of ‘Permitted Purpose’ is given the meaning in subclauses 11(6) and covers a range of purposes, including:

- identifying premises that have not migrated to the fixed-line NBN;
- NBN Co’s internal reporting;
- to guide NBN Co’s marketing activities at the rollout region level
- to undertake NBN public information and migration marketing activities (such as sending ‘to the Occupant’ style correspondence) to occupants of premises understood to have medical alarms, fire alarms, lift phones or other over-the-top services; and
- to estimate installation capacity.

Subclause 11(7) explicitly sets out the uses or disclosures of Specified Premises Location Information which are not permitted. These cover a range of purposes, including the following:

- for direct marketing by NBN Co to promote or sell products or services or to promote particular retail service providers (RSPs);
- for use in a non-RSP neutral campaign or ones which are directed at influencing end-users regarding their choice of RSP or which trigger customers moving from their existing RSP to another;
- for communications addressed to specific individuals, except if the individual separately gave NBN Co their contact details;
- by or to any person who is a provider of retail telecommunications services in Australia;
- for any data matching purposes (with some limited exceptions); and

- activities inconsistent with applicable laws (including the Australian Consumer Law (as set out in Schedule 2 to the *Competition and Consumer Act 2010*) and applicable privacy laws).

Privacy Laws

New paragraph 11(7)(e) provides that NBN Co is not permitted (subject to some exceptions) to use the NBN Loc ID data to compare or match, or attempt to compare or match, a premises to an end user's personal details or to any other data (whether or not this constitutes 'personal information' under Australian privacy laws). The laws covered by the term 'Privacy Laws' are the *Privacy Act 1998* (Cth) (including binding guidelines issued under that Act) and also Part 13 of the Act.

proposed fixed footprint list

For the purposes of the Amending Declaration, the term 'proposed fixed footprint list' is defined by reference to the meaning given under the MPPs. It is a list notified by NBN Co to Telstra of premises in a particular rollout region that have been passed or which NBN Co intends to pass at any time prior to the target disconnection date. The list is updated from time to time.

Recipient Entities

This term essentially covers employees and officers of NBN Co, any contractor of NBN Co engaged to undertake on NBN Co's behalf the type of activities (such as marketing) as specified in subclause 11(6). The term is used in subparagraph 11(7)(g)(ii) when defining uses of the data which are not permitted.

region ready for service date

This is defined by reference to the meaning given under the MPPs. It covers:

- for an initial release rollout region and acquired rollout region, the date notified by NBN Co as the disconnection commencement date;
- for a service continuity date, the date which is 6 months before the disconnection date for the parent rollout region (subject to any applicable transitional arrangements); and
- in relation to any other rollout region, the date notified to Telstra by NBN Co under the commercial agreements between NBN Co and Telstra to enable the rollout of the Government's multi-technology mix NBN.

Related Entities and Telstra Representatives

These two terms are used in paragraph 11(7)(g) when describing one of the non-permitted uses (in respect of statements which for example, criticize or defame an entity related to Telstra or a Telstra Representative). 'Related Entities' covers each related body corporate of Telstra and any entity which is controlled by Telstra, from time to time. The term 'Telstra Representatives' is broad and covers Telstra's directors, employees, officers, representatives, delegates, professional or financial advisers, agents, contractors or subcontractors of Telstra (in their capacity as such).

Report Date

The term 'Report Date' means any time from when the Declaration comes into effect and the Rollout Completion Date (the latter term is essentially the date declared by the Communications

Minister, in accordance with the NBN Companies Act, as the date by which the NBN should be treated as built and fully operational).

In effect, the disclosure obligation under new cause 11 will not be required once the NBN is fully built and operational and captures:

- each of the dates that are 6, 5, 4, 3, 2 and 1 calendar months before the disconnection date for a rollout region;
- the disconnection date for a rollout region;
- the date that is 25 Business Days after the disconnection date for a rollout region; and
- any other date Telstra advises NBN Co is a report date.

Restricted Permitted Purpose

This is defined as the purposes set out in clause 11(6)(d). In summary, it covers the activity of sending mail addressed to the ‘Owner’, ‘Occupant’ or ‘Resident’ of a premises or door-knocking, outdoor advertising, or other communications (emails or phone calls) to persons with medical alarms, fire alarms or lift phones or to identify such persons.

Retail service provider

This is another term defined by reference to the MPPs, namely, a carriage service provider who supplies NBN based services over the NBN Co fixed-line network but, for clarity, does not include NBN Co.

Rollout Completion Date

This term is used in defining the Report Date and for the purposes of that definition, represents the last Report Date. It will be the date upon which the Communications Minister declares under the NBN Companies Act that the NBN should be treated as built and fully operational.

NBN Co will not require the information after that time as all active services of interest should have been migrated etc. As such, there will not be any relevant information and the data supply licence condition should fall away.

rollout region

The term, ‘rollout region’ in general terms refers to the geographical areas in which the fixed-line NBN is to be deployed.

SAM

SAM is the acronym for the term Service Area Module. The modules are areas for the deployment of the National Broadband Network as selected by NBN Co and each area covers a maximum of 4,000 premises.

Special service

This term means the fixed-line carriage services which are described in the Schedule to the MPPs and covers a range of retail and wholesale services. These are services currently provided over the Telstra fixed-line copper network which will not be immediately available over the NBN. Special services are able to continue to be delivered via the Telstra copper network after the disconnection date for a rollout region and until such time that the relevant class of services has been exited. A service class will be exited either through a Telstra initiated product exit or

through an NBN Co initiated process that makes an equivalent alternative service available over the NBN.

Specified Premises Location Information

This key concept covers the NBN Loc ID for all Eligible Premises receiving an active service as at the Report Date which is within Telstra's control as at that Report Date.

The concept of 'control' is to be given its ordinary meaning and is intended to have the broadest possible scope of meaning, i.e. to cover both actual and constructive control. In addition to the particular information needing to be within Telstra's control, a further requirement is that the information was given to Telstra by one of its wholesale customers and that person has not consented to Telstra disclosing it to NBN Co for any one or more defined Permitted Purpose.

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 2015)***

The *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 (Amendment No. 1 of 2015)* (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 Amending Declaration

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 *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997* as in force (Original Declaration).

Telstra supplies wholesale services over its copper network to other telecommunications companies /retail service providers. As part of the supply arrangements with its wholesale customers, Telstra obtains end-user location identification data for premises (i.e. the full address of the end-user customer) for all active copper line services in a region able to be connected to the NBN (i.e. an NBN ready for service region). Telstra then converts this number to an NBN-equivalent one, which is known as the national broadband network location identification number (NBN Loc ID).

The NBN Loc ID is of value to NBN Co Limited (NBN Co) in order to ensure a smooth transition to the national broadband network. For example, the information is able to be used by NBN Co:

- in migrating critical legacy services such as medical alarms, fire alarms and lift phones; and
- to assist vulnerable customers, such as medical alarm users, to disconnect their services and where available, migrate to equivalent NBN services
- for information campaigns directed at the last 'hard to migrate' segment of consumers, ensuring that such consumers are fully informed of the impending disconnection.

As not all of Telstra's wholesale customers have given consent for disclosure of their end-user customer's NBN Loc ID, it has meant that NBN Co only receives an incomplete dataset, which hinders its efforts to manage the migration of vulnerable customers and those who are yet to migrate their services close to the disconnection date. To this end, the Amending Declaration will insert a new carrier licence condition into the Original Declaration which compels Telstra to

disclose to NBN Co that data (namely, the ‘Specified Premises Location Information’), subject to certain restrictions.

The Amending Declaration provides two alternative mechanisms for satisfying the disclosure obligation. The first is a commercial one which applies if NBN Co and Telstra enter into a contract which governs the disclosure of the relevant information and specific other conditions are satisfied. Under this mechanism, Telstra will be required to disclose the relevant information on the same terms and conditions as set out in the agreement, and the agreement must be given to the Australian Communications and Media Authority (ACMA) and made available to impacted wholesale customers upon request. The second mechanism is a default one set out in the Amending Determination which applies if there is no commercial agreement in force. This is essentially a default regime which requires Telstra to provide the data to NBN Co on a monthly (in arrears) basis. The obligation will be ongoing until the end of the Rollout Completion Date (being the date when the Communications Minister declares, in accordance with the *National Broadband Network Companies Act 2011*, that, in his or her opinion, the NBN should be treated as built and fully operational).

Human rights implications

The information that Telstra will be required to disclose to NBN Co for the limited and defined purposes will not contain account holders’ names; the information will be the stand-alone physical address that will allow an individual to be contacted (on an anonymised/generic basis) by NBN Co. This address information is potentially personal information.

It is recognised that disclosure of personal information engages the right that ‘no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation’ in Article 17 of *the International Covenant on Civil and Political Rights done at New York on 16 December 1966* [1980] ATS 23.

The new licence condition would not be inconsistent with Article 17 because any resulting interference with privacy would:

- not be unlawful, as it would be required by and authorised under the carrier licence condition contained with the Declaration; and
- not be arbitrary, as any limitation of the right to privacy would be reasonable, necessary and proportionate in pursuit of the objectives of the migration of critical services, and for other customer migration purposes in the public interest.

The Declaration is not an arbitrary limitation on the right to privacy given the context and limitations on the disclosure to, and use by NBN Co of the address information, as discussed more fully below.

Policy rationale for disclosure of information

The address data that Telstra will be required to disclose to NBN Co can be used by NBN Co to send final disconnection letters (on an anonymised basis) to all remaining active copper line customers in NBN rollout areas approaching imminent disconnection and, where necessary, to conduct a door knocking campaign for difficult to reach customers. This reduces the risk of unexpected or inappropriate disconnection which could result in persons including vulnerable

customers (such as those with medical alarms) being at risk of not having access to a communications service in time of need/emergency. All fixed-line services located in the NBN fixed line rollout footprint will be subject to disconnection at some point before the NBN rollout is completed.

Limited circumstances in which information is required to be disclosed by Telstra

The relevant information will only be required to be disclosed by Telstra if the retail carriage service provider (being a wholesale customer of Telstra) who supplies an end-user with a carriage service on Telstra's copper network has not otherwise authorised Telstra's disclosure of the relevant information for the required purposes. It is understood that only a small proportion of Telstra's wholesale customers have withheld consent in the past and most wholesale customers have authorised the disclosure voluntarily in recognition of the value of the NBN Loc ID data being used by NBN Co to assist customers to migrate their services to the NBN.

Retail service providers may otherwise authorise Telstra's disclosure of the relevant information on terms and conditions to be agreed between them. The carrier licence conditions in the Amending Declaration ensure that, where no agreement is made between Telstra and a retail carriage service provider for disclosure of the NBN Loc ID data (i.e. the Specified Premises Location Information) to NBN Co, Telstra is able to provide NBN Co with a complete set of location data on carriage services being supplied over its wholesale copper customer access network for migration purposes.

Limited circumstances in which disclosed information may be used by NBN Co

The relevant information to be disclosed in accordance with the new clause 11 of Telstra's carrier licence may only be used by NBN Co for a 'Permitted Purpose', which includes the following:

- NBN Co's internal reporting;
- to guide NBN Co's marketing activities at the rollout region level;
- to undertake NBN public information and migration marketing activities (such as sending 'to the Occupant' type correspondence) to occupants of premises which have medical alarms, fire alarms, lift phones or other over the-top services; and
- to estimate installation capacity.

Other safeguards protecting disclosed information

The new carrier licence condition has built in protections to ensure that the Specified Premises Location Information which Telstra discloses to NBN Co in accordance with the licence conditions is only used for the Permitted Purposes (as defined). NBN Co is expected to provide Telstra with contractual commitments to ensure that the information is only used for the defined Permitted Purpose.

In addition, any personal information required to be disclosed by the licence condition in the Declaration will be covered by the safeguards provided under Part 13 of the Act and also the *Privacy Act 1988* (Cth). For example, in accordance with that Act, NBN Co will be required to, among other things, take steps to ensure that the individual is aware that NBN Co has collected personal information about them from Telstra and undertake its own privacy impact assessment.

Telstra was consulted on the development of the draft Amending Declaration and no human rights issues were raised. In addition, the Department consulted extensively with the Commonwealth Attorney-General's Department, the Office of the Australian Privacy Commissioner and NBN Co on the draft Amending Declaration.

Conclusion

The Declaration is compatible with human rights because, to the extent that it may limit the right to privacy, it is neither unlawful nor arbitrary, as it is reasonable, necessary and proportionate to the objective of ensuring the migration of copper services (where equivalent services exist), especially critical services, to the NBN.