

Commonwealth of Australia

Telecommunications Act 1997

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

I, MALCOLM BLIGH TURNBULL, Minister for Communications, make the following declaration under subsection 63(5) of the *Telecommunications Act 1997*.

Dated 17 August 2015.

MALCOLM BLIGH TURNBULL
Minister for Communications

1 Name of declaration

This declaration is the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 (Amendment No. 1 of 2015)*.

2 Commencement

This declaration commences on the day after it is registered on the Federal Register of Legislative Instruments.

3 Variation

The *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997* is amended as set out in the Schedule to this declaration.

4 Expiry

This declaration expires on the day after it commences as if it had been repealed by another legislative instrument.

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Schedule Amendments

(Section 3)

**[1] Disclosure of Specified Premises Location Information to NBN Co
(new clause)**

Immediately after clause 10 insert:

**11 Disclosure of Specified Premises Location Information to
NBN Co**

- (1) Subject to subclause 11(4), the licensee must, on a monthly basis, provide Specified Premises Location Information to NBN Co in respect of each Report Date for use or disclosure by NBN Co for the Permitted Purposes.
- (2) If:
 - (a) a legally binding agreement is in force between the licensee and NBN Co which specifies all of the following matters:
 - (i) the timing for the provision of Specified Premises Location Information;
 - (ii) any limitations or restrictions on the purposes for which NBN Co may use or disclose Specified Premises Location Information; and
 - (iii) any other matter agreed between the licensee and NBN Co in respect of the provision of Specified Premises Location Information;
 - (b) a certified copy of the agreement referred to in paragraph (a) has been provided to the ACMA; and
 - (c) the licensee offers to make available, upon reasonable written request by a wholesale customer whose information would otherwise be provided to NBN Co under this clause 11, a copy of the agreement referred to in paragraph (a),
the licensee must comply with subclause 11(1) by providing the Specified Premises Location Information to NBN Co in accordance with the terms of that agreement (except that subclause 11(1) will override any term of such agreement to the extent that such a term would otherwise prevent the licensee from complying with subclause 11(1) because a wholesale customer has not consented to disclosure of the Specified Premises Location Information to NBN Co).
- (3) If a legally binding agreement of the type referred to in subclause 11(2) is not in force, the licensee must provide the Specified Premises

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Location Information in respect of each Report Date to NBN Co by no later than 10 working days after that Report Date.

- (4) The licensee is not required to provide Specified Premises Location Information to NBN Co under subclause 11(1):
- (a) where a legally binding agreement of the type referred to in subclause 11(2) is in force, if and for so long as NBN Co is (or will imminently be) in breach of a material term of that agreement, and as a consequence, the licensee is not required to provide the Specified Premises Location Information to NBN Co under that agreement;
 - (b) where a legally binding agreement of the type referred to in subclause 11(2) is not in force, if and for so long as the licensee, acting reasonably, determines that NBN Co is (or will imminently commence) using or disclosing, the Specified Premises Location Information for a purpose other than a Permitted Purpose, provided the licensee has given NBN Co a reasonable opportunity to cease (or prevent) that use or disclosure;
 - (c) where a legally binding agreement between NBN Co and the licensee under which NBN Co will reimburse the licensee for reasonable, direct and incremental costs associated with modifications to the licensee's IT systems required to enable the licensee to provide the Specified Premises Location Information to NBN Co is not in force;
 - (d) where a legally binding agreement between the licensee and NBN Co (or another person) under which NBN Co (or another person) will indemnify the licensee for losses or claims arising as a result of use or disclosure by NBN Co of the Specified Premises Location Information in a manner inconsistent with subclauses 11(6) and 11(7) is not in force.
- (5) The licensee will not be in breach of subclause 11(1) in circumstances where the breach is a breach of subclause 11(3) and that breach is directly caused by an event or circumstance outside of the licensee's reasonable control provided that (where the breach is reasonably capable of being remedied) the licensee remedies the breach once the relevant event or circumstance ceases.
- (6) NBN Co may only use or disclose the Specified Premises Location Information:
- (a) for internal reporting to employees and officers of NBN Co who are involved in disconnection readiness activities;
 - (b) for the purpose of identifying premises that have not yet migrated to the NBN Co fixed-line network by comparing the

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Eligible Premises contained in Specified Premises Location Information with the premises in respect of which NBN Co has received a serviceable order for the provision to a retail service provider of an NBN Service but which are not yet NBN Connected;

- (c) to guide marketing activities at a rollout region level (e.g. by identifying rollout regions with migrations running behind schedule);
- (d) for NBN Co or its marketing contractors or sub-contractors to undertake activities at a premises level limited to sending mail addressed to the “Owner”, “Occupant” or “Resident” of a premises or door-knocking, outdoor advertising, sending emails to persons receiving services at a premises, telephone communications (including outbound telephone campaigns) with persons at premises which are identified on the medical alarm register, fire alarm register or lift alarm register and such other activities as the licensee and NBN Co may agree:
 - (i) consistent with the public information and education campaign activities described in Schedule 2 to the Information Campaign and Migration Deed; or
 - (ii) to identify premises where any of the following:
 - (A) monitored or non-monitored medical alarm or pendant;
 - (B) elevator phone;
 - (C) monitored or non-monitored fire alarm;
 - (D) monitored or non-monitored security alarm;
 - (E) TTY devices (hearing impaired);
 - (F) EFTPOS machine;
 - (G) automated teller machine;
 - (H) fax machine; or
 - (I) similar device or service to those listed above (other than a device or service that is being supplied using a special service);is used and which may cease to function if a Copper Service to that premises is disconnected; or
- (e) to estimate the installation capacity required to complete any remaining migrations, which may involve NBN Co using Specified Premises Location Information in NBN Co’s existing forecast process (which provides NBN Co’s service delivery partners with an activations forecast by month, by SAM or customer service area) but which must not involve disclosure of Specified Premises Location Information to any person that is not a Recipient Entity.

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- (7) NBN Co must not use or disclose Specified Premises Location Information:
- (a) for direct marketing by NBN Co to promote or sell products or services available over the NBN Co fixed-line network, or to promote any particular retail service providers;
 - (b) in a campaign that does not support the principle of neutrality in relation to specific retail service providers; influences end-users regarding their choice of retail service providers; or that promotes, or provides a trigger for end-users to, churn; except that this does not apply (in the absence of any further conduct) if NBN Co, its marketing contractors or sub-contractors:
 - (i) refers end-users to a website that contains a list of retail service providers and their contact details; or
 - (ii) states that end-users should contact a retail service provider or should contact their preferred retail service provider;
 - (c) for communications addressed to specific individuals (for example, individuals identified by name), except where the individual has separately provided their contact details to NBN Co;
 - (d) by or to any person who is a provider of retail carriage services in Australia, including any retail service provider;
 - (e) 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 Privacy Laws and whether or not this is done by NBN Co or a person acting on behalf of NBN Co), except for:
 - (i) NBN Co comparing Specified Premises Location Information with the historical footprint list, the fixed footprint list, in train order list, the medical alarm register, fire alarm register or the lift alarm register; or
 - (ii) NBN Co matching the Specified Premises Location Information against the following information in NBN Co's marketing campaign databases for the purposes of undertaking the activities described in paragraph 11(6)(d) only:
 - (A) contact details and other information provided by a person to NBN Co;
 - (B) the list of premises which are NBN Connected;
 - (C) for each region, NBN Co's list of retail service providers which are offering NBN based services in that particular region;
 - (D) NBN Co's lists of excluded premises or SAMs placed on-hold due to a lack of capacity or other operational reasons;

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- (E) the list of premises in respect of which an order for an NBN Service has been made but the premises are not yet NBN Connected;
 - (F) Australia Post's Postal Address File and Australian Address Reference File;
 - (G) NBN Co information or information obtained from third parties stating whether a premises is classified as business or residential and related profile information for those premises; and
 - (H) the disconnection date which applies to each premises;
- (f) to compare or match with any other information provided by the licensee in connection with its obligations under the Definitive Agreements; or
- (g) in any marketing campaign that involves any of the following:
- (i) messaging in any communications or marketing materials that refers to the licensee and which it has not approved (such approval not to be unreasonably withheld by the licensee), provided that NBN Co will not require the licensee's approval where:
 - (A) the particular messaging that refers to the licensee has been included in NBN Co's communications or marketing materials prior to the commencement of the Amending Declaration (or the date that a legally binding agreement of the type referred to in subclause 11(2) is entered into where that is later) provided that NBN Co has given the licensee a copy of the relevant messaging (and related content which is reasonably sufficient to enable the licensee to identify the context in which the particular messaging appeared in the previous NBN Co communications or marketing materials) before NBN Co uses the particular messaging after the Amending Declaration comes into effect; or
 - (B) the licensee has previously approved in writing the particular messaging that refers to the licensee, provided that NBN Co must seek the licensee's re-approval (such re-approval not to be unreasonably withheld by the licensee) for any such messaging if NBN Co changes the context in which such messaging refers to the licensee in a material way;

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- (ii) a breach of law by NBN Co or any of its Recipient Entities;
- (iii) statements that defame, disparage or criticise the personal or business reputations, practices or conduct, networks or services of the licensee, its Related Entities or any Telstra Representatives;
- (iv) activities inconsistent with applicable laws (including the Australian Consumer Law and Privacy Laws) and applicable codes published by the ACMA; or
- (v) activities inconsistent with NBN Co Communications Policies, a copy of which will be provided to the licensee by NBN Co where NBN Co determines, acting reasonably, that such NBN Co Communications Policy is relevant to marketing activities and communications with end users to be undertaken by NBN Co using the Specified Premises Location Information.

(8) In this clause 11:

active service means, as at any Report Date, a wholesale carriage service:

- (a) supplied by the licensee at an Eligible Premises as at that Report Date;
- (b) which uses a Copper Path; and
- (c) which, as at that Report Date, according to the licensee's systems, has not been disconnected from any of the licensee's networks.

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

Australian Consumer Law has the meaning given to the term in the *Competition and Consumer Act 2010*.

Copper Path means a logical path built over a copper line or series of copper lines used to provide a carriage service at a premises.

Copper Service has the same meaning as in the *Telecommunications (Migration Plan Principles) Determination 2015*.

Definitive Agreements has the same meaning as in the *Telecommunications (Migration Plan Principles) Determination 2015*.

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disconnection date has the same meaning as in the *Telecommunications (Migration Plan Principles) Determination 2015*.

Eligible Premises means, in respect of a Report Date, a premises that, as at that Report Date:

- (a) is in the fixed footprint list for a rollout region and which has a disconnection date which is on or before the date that is 6 months after that Report Date; or
 - (b) is in the fixed footprint list for a rollout region, which does not fall within subparagraph (a) of this definition but which the licensee (at its discretion) otherwise notifies NBN Co in writing will be an Eligible Premises for that Report Date; and
- in either case, the licensee expects will be required to be disconnected.

fixed footprint list has the same meaning as in the *Telecommunications (Migration Plan Principles) Determination 2015*.

historical footprint list means an address list provided by NBN Co to retail service providers 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 has the same meaning as in the *Telecommunications (Migration Plan Principles) Determination-2015*.

in train order list means the list of in train order premises prepared by NBN Co and notified to the licensee in accordance with the Definitive Agreements.

Information Campaign and Migration Deed means the deed of the same name entered into between the licensee and the Commonwealth, as amended from time to time.

migration has the same meaning as in the *Telecommunications (Migration Plan Principles) Determination 2015*.

NBN based service has the same meaning as in the *Telecommunications (Migration Plan Principles) Determination 2015*.

NBN Co means NBN Co Limited (ACN 136 533 741), as the company exists from time to time (even if its name is later changed).

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NBN Co Communications Policies means business rules, codes of practice and policies of NBN Co relating to marketing and communications with end-users (if any) as these exist from time to time.

NBN Connected means:

- (a) an FTTB-Connected Premises;
- (b) an FTTN-Connected Premises;
- (c) an FTTP-Connected Premises; or
- (d) an HFC-Connected Premises,

in each case, as those terms are defined in the *Telecommunications (Migration Plan Principles) Determination 2015*.

NBN Co fixed-line network has the same meaning as in the *Telecommunications (Migration Plan Principles) Determination 2015*.

NBN Service has the same meaning as in the *Telecommunications (Migration Plan Principles) Determination 2015*.

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

Permitted Purpose means a purpose permitted under subclauses 11(6) and 11(7).

Privacy Laws means the *Privacy Act 1998* (Cth), Part 13 of the Act and any guidelines relating to Personal Information issued by the Office of the Australian Information Commissioner or Privacy Commissioner (or such officer or commissioner, as applicable, as replaces it to assume oversight with respect to the Privacy Laws from time to time).

Recipient Entities means employees and officers of NBN Co, any contractor of NBN Co engaged for the purposes referred to in subclause 11(6) (or any sub-contractors of such a person) and, for disclosures of a campaign list derived using or comprising Specified Premises Location Information only, any marketing contractor (and any sub-contractors of such a person) engaged by NBN Co for the Restricted Permitted Purpose.

region ready for service date has the same meaning as in the *Telecommunications (Migration Plan Principles) Determination 2015*.

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Related Entities means each related body corporate of the licensee and any entity which is controlled by the licensee, from time to time.

Report Date means each of the following dates that occur at any time during the period from and including the date on which the Amending Declaration commences to the Rollout Completion Date:

- (a) each of the dates that are six, five, four, three, two and one calendar months before the disconnection date for a rollout region;
- (b) each disconnection date for a rollout region;
- (c) each date that is 25 working days after the disconnection date for a rollout region; and
- (d) any other date which the licensee (at its discretion) notifies NBN Co in writing will be a Report Date.

Restricted Permitted Purpose means the purposes set out in paragraph 11(6)(d).

retail service provider has the same meaning as in the *Telecommunications (Migration Plan Principles) Determination 2015*.

Rollout Completion Date means the date on which the Minister for Communications declares in accordance with the *National Broadband Network Companies Act 2011* that, in his or her opinion, the national broadband network should be treated as built and fully operational.

rollout region has the same meaning as in the *Telecommunications (Migration Plan Principles) Determination 2015*.

SAM means service area module.

special service has the same meaning as in the *Telecommunications (Migration Plan Principles) Determination 2015*.

Specified Premises Location Information means, in respect of a Report Date, the national broadband network location identification number for Eligible Premises receiving an active service, in each case, determined as at that Report Date where that information:

- (a) is within the licensee's control as at that Report Date; and
- (b) was given to the licensee by one of its wholesale customers and the wholesale customer has not consented to the licensee disclosing that information to NBN Co for the Permitted Purposes (or any one or more of the Permitted Purposes).

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Telstra Representatives means any directors, employees, officers, representatives, delegates, professional or financial advisers, agents, contractors or sub-contractors of the licensee (in their capacity as such).