

EXPLANATORY STATEMENT

Telecommunications Act 1997

Carrier Licence Conditions (Pivit Pty Ltd) Declaration 2013 (Amendment No.1 of 2018)

Issued by the authority of the Minister for Communications

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 legislative instrument, to vary an instrument under subsection 63(2) of the Act.

Purpose

The *Carrier Licence Conditions (Pivit Pty Ltd) Declaration 2013 (Amendment No.1 of 2018)* (the Variation Declaration) varies the *Carrier Licence Conditions (Pivit Pty Ltd) Declaration 2013* (Original Declaration) to remove Coomera Waters, Queensland, from the list of areas where Pivit Pty Ltd ('Pivit') is the infrastructure provider of last resort (IPOLR).

Background

The Original Declaration places obligations on Pivit, to connect (or arrange for another person on its behalf to connect) its network, upon reasonable request, to premises located within any of the four Pivit networks mapped in the Original Declaration. This is known as an infrastructure provider of last resort (IPOLR) obligation. The areas are set out in Schedule 1 to the Original Declaration and the related maps annexed to that Schedule. The areas include Coomera Waters, Queensland.

The ownership of the fibre network in Coomera Waters that was covered by the Original Declaration has been transferred to OPENetworks Pty Ltd. OPENetworks now operates the fibre network in the Coomera Waters area and provides telecommunications services to consumers in its network footprint. Pivit continues to provide retail services to customers in Coomera Waters. In this context, Pivit's IPOLR responsibilities should be wound back to remove Coomera Waters from Pivit's IPOLR areas under the Original Declaration.

Removing Coomera Waters from Pivit's IPOLR area under the Original Declaration would also ensure that Pivit would not become the statutory infrastructure provider (SIP) for the area if the Telecommunications Legislation Amendment (Competition and Consumer) Bill 2017 (the Bill) is passed by Parliament. Under the proposed statutory regime, a SIP for an area will have various connection and service supply obligations. Schedule 3 to the Bill would provide that all areas specified in existing 'adequately served' carrier licence condition determinations, such as Pivit's, will be

deemed to be nominated service areas, resulting in Pivit becoming the SIP for those listed areas.

The Variation Declaration achieves its effect by removing the references to Coomera Waters in the table and the related map at Schedule 1 of the Original Declaration.

Consultation

Section 64 of the Act provides that before making a variation to a carrier licence conditions 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 holder to make a submission to the Minister. Consistent with that requirement, on behalf of the Minister for Communications, the Department consulted with Pivit on the proposal and provided a copy of the draft Variation Declaration for comment. Pivit advised the Department that it had no concerns with the draft Variation Declaration.

Regulation Impact Statement

The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required as the proposal is likely to have no more than minor regulatory impacts (OBPR reference 22851).

Details of the accompanying Declaration

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

Statement of Compatibility with Human Rights

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out in **Attachment 2**.

Attachment 1

Details of the *Carrier Licence Conditions (Pivit Pty Ltd) Declaration 2013 (Amendment No.1 of 2018)*

Section 1 – Name of Declaration

Section 1 of the Declaration provides that the name of the instrument is the *Carrier Licence Conditions (Pivit Pty Ltd) Declaration 2013 (Amendment No.1 of 2018)*.

Section 2 – Commencement

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

Section 3 – Authority

Section 3 sets out the legislative authority under which the Declaration is made.

Section 4 - Variation

Section 4 provides that the *Carrier Licence Conditions (Pivit Pty Ltd) Declaration 2013* is varied according to the terms set out in the Schedule to the Variation Declaration.

Schedule

Item 1 of the Schedule repeals item 1 from the table at Schedule 1 of the Original Declaration - the entry relating to Coomera Waters.

Item 2 of the Schedule repeals the heading specifying *Map 1 - Coomera Waters, Coomera QLD* and the accompanying map for Coomera Waters at Annexure A to Schedule 1 of the Original Declaration.

Attachment 2

Statement of Compatibility with Human Rights

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

Carrier Licence Conditions (Pivit Pty Ltd) Declaration 2013 (Amendment No.1 of 2018)

The *Carrier Licence Conditions (Pivit Pty Ltd) Declaration 2013 (Amendment No.1 of 2018)* (the Variation 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 declaration

The *Carrier Licence Conditions (Pivit Pty Ltd) Declaration 2013* (the Original Declaration) places obligations on Pivit Pty Ltd ('Pivit'), to connect (or arrange for another person on its behalf to connect) Pivit's network, upon reasonable request, to any premises located within any of the four Pivit network footprints set out in Schedule 1 to the Original Declaration and the related maps annexed to that Schedule. This is known as Pivit's infrastructure provider of last resort (IPOLR) obligation.

The ownership of the fibre network in Coomera Waters has been transferred to OPENetworks Pty Ltd. OPENetworks now operates the fibre network in the Coomera Waters area and provides telecommunications services to consumers in its network footprint. Pivit continues to provide retail services to customers in Coomera Waters. In this context, Pivit's IPOLR responsibilities should be wound back to remove Coomera Waters from Pivit's IPOLR areas under the Original Declaration.

The Variation Declaration achieves its effect by removing the references to Coomera Waters in the table and map to Schedule 1 of the Original Declaration.

No human rights issues were raised during consultation on the draft Variation Declaration.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.