

## **Explanatory Statement**

*Telecommunications Act 1997*

### **Carrier Licence Conditions (Networks supplying Superfast Carriage Services to Residential Customers) Declaration 2014 (Amendment No.1 of 2018)**

Issued by the Authority of the Minister for Communications

#### **Authority**

The *Carrier Licence Conditions (Networks supplying Superfast Carriage Services to Residential Customers) Declaration 2014 (Amendment No.1 of 2018)* (the Amending Declaration) is made by the Minister for Communications under subsection 63(5) of the *Telecommunications Act 1997* (the Act). The Amending Declaration is a legislative instrument for the purposes of the *Legislation Act 2003* (paragraph 13(1)(b)).

#### **Purpose**

The purpose of the Amending Declaration is to extend the expiry date of the *Carrier Licence Conditions (Networks supplying Superfast Carriage Services to Residential Customers) Declaration 2014* as currently in force (the Declaration) by 2 years to 30 June 2020.

#### **Background and Reasons**

On 14 December 2014, the then Minister for Communications (the Minister) made the Declaration to impose functional separation and wholesale supply obligations on carriers that extended existing fixed-line networks to supply superfast carriage services to residential customers, but were not subject to similar obligations in Parts 7 and 8 of the *Telecommunications Act 1997* (the Act). The Declaration closed a loophole that allowed carriers to use an exemption in the Act to extend networks by up to 1km. It addressed concerns that vertically integrated networks could create local access bottlenecks that impede effective retail competition and that such operations therefore have an unfair competitive advantage over other networks that are subject to the rules in the Act.

The Declaration was intended to be a transitional measure pending the passage of new legislation announced in the Government's December 2014 *Telecommunications Structural and Regulatory Reform* policy statement. The Declaration was intended to expire on 31 December 2016 on anticipation that the reforms would have been implemented by that time. The Declaration was amended on 6 December 2016 to extend it until 30 June 2018 and several other modifications were made at that time.

The Telecommunications Legislation Amendment (Competition and Consumer) Bill 2018 (the Bill) includes provisions which would remove the expiration date of the Declaration so that it applies indefinitely to applicable networks rolled out between 1 January 2015 and the commencement of new rules in Schedule 2 to the Bill. This is part of the 'grandfathering' of requirements for particular classes of superfast fixed-line networks. The Bill was introduced on 22 June 2017 and debated in the House of Representatives on 9 and 10 May 2018 and third reading was agreed to on 10 May 2018. The Bill is still being considered by Parliament and may not be enacted before 30 June 2018, the date upon which the Declaration is otherwise due to expire. As a safeguard because of the delay in the passage of the Bill, the Amending Declaration will extend the Declaration to 30 June 2020 to avoid a period in which there is no regulatory coverage and to ensure regulatory certainty.

## **Consultation**

Section 64 of the Act requires 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 holder to make a submission to the Minister on the draft.

Consistent with this requirement, the Department of Communications and the Arts, on the Minister's behalf, contacted licensed carriers on 23 April 2018 providing them with a copy of the draft Amending Declaration and invited them to give submissions to the Minister on the draft Amending Declaration. The draft Amending Declaration was also published on the Department's website for public comment. Four submissions were received and none opposed extending the Declaration. All submissions have been considered by the Minister as part of the making of the Amending Declaration. One submitter conveyed its view that the CLCs have so far achieved the objective of facilitating a fair and more competitive fixed services environment at both consumer and wholesale levels.

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**.

## Notes on Sections

### Section 1

Section 1 provides that the name of the instrument is the *Carrier Licence Conditions (Networks supplying Superfast Carriage Services to Residential Customers) Declaration 2014 (Amendment No.1 of 2018)*.

### Section 2

Section 2 provides that the instrument will commence on the day after it is registered on the Federal Register of Legislation.

### Section 3

Section 3 provides the legislative authority for the instrument. The Amending Declaration is made under subsection 63(5) of the *Telecommunications Act 1997*.

### Section 4

Section 4 of the Amending Declaration provides that the Declaration is varied in the terms set out in the Schedule to the Amending Declaration.

## Schedule to the Amending Declaration

### Item 1

Item 1 amends the expiry date set out in section 3 of the Declaration. The date is changed from '30 June 2018' to '30 June 2020'.

### Items 2

Item 2 replaces the reference date of '30 June 2018' at paragraph 6(1)(c) of the Declaration with the date '30 June 2020', for alignment with the change being made by Item 1.

### ***Statement of Compatibility with Human Rights***

#### ***Carrier Licence Conditions (Networks supplying Superfast Carriage Services to Residential Customers) Declaration 2014 (Amendment No.1 of 2018)***

This statement is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The *Carrier Licence Conditions (Networks supplying Superfast Carriage Services to Residential Customers) Declaration 2014 (Amendment No.1 of 2018)* (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**

Licensed carriers are currently subject to two classes of carrier licence conditions: standard licence conditions under the *Telecommunications Act 1997* (the Act); and specific licence conditions made by the Minister under section 63 of the Act. The purpose of the Amending Declaration is to extend the expiry date of the *Carrier Licence Conditions (Networks supplying superfast carriage services to residential customers) Declaration 2014* (Declaration) to 30 June 2020.

The Declaration was made on 14 December 2014 and imposes functional separation, non-discrimination and wholesale supply obligations on carriers that extended existing fixed-line networks to supply superfast carriage services to residential customers, but were not subject to similar obligations in the Act. The Declaration closed a loophole that allowed carriers to use an exemption in the Act to extend networks by up to 1km. The Declaration addressed concerns that vertically integrated networks could create local access bottlenecks that impede effective retail competition and that such operations therefore have an unfair competitive advantage over other networks that are subject to the rules in the Act.

The Declaration was intended to be a transitional measure pending the passage of new legislation announced in the Government's December 2014 *Telecommunications Structural and Regulatory Reform* policy statement. The Declaration was amended on 6 December 2016 to extend the expiry date to 30 June 2018 and several other modifications were also made.

The Telecommunications Legislation Amendment (Competition and Consumer) Bill 2018 (the Bill) includes provisions which would remove the expiry date of the Declaration so that it applies indefinitely to applicable networks rolled out between 1 January 2015 and the commencement of new rules in Schedule 2 to the Bill. This is part of the 'grandfathering' of requirements for several classes of networks. The Bill was introduced on 22 June 2017 and debated in the House of Representatives on 9 and 10 May 2018. The Bill is still being considered by Parliament and may not become law before 30 June 2018. The Amending Declaration will extend the Declaration to 30 June 2020 to avoid a period in which there is no regulatory coverage and to ensure regulatory certainty.

#### **Human rights implications**

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

#### **Conclusion**

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