

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 2018)

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 purpose of the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 (Amendment No. 1 of 2018)* ('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 business special service, in train order, and multi-dwelling premises common area receiving active copper services. This data will be in addition to that provided by Telstra to NBN Co under the Original Declaration.

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 declarations.

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 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 panels and lift phones;
- the migration of services which are subject to an in train order process;
- the migration of complex special services, such as those used by businesses and in multi-dwelling premises common areas;
- the case management of vulnerable customers, such as medical alarm users, to minimise the risk of unexpected disconnection could have potentially life threatening consequences; and
- NBN information campaigns directed at the last 'hard to migrate' segment of consumers, ensuring that such consumers are fully informed of the impending disconnection.

Under the Original Declaration, Telstra discloses to NBN Co the Loc ID data sourced from those wholesale customers who have not otherwise authorised the disclosure. Under the Amending Declaration, this data will be expanded to include special services, in train orders, and multi-dwelling unit common areas.

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 holder to make a submission to the Minister on the draft. Consistent with this requirement, the Department wrote on behalf of the Minister to Telstra on 18 April 2018 including the proposed Amending Declaration. Telstra replied to the Minister on 8 May 2018 with no comments.

Regulation Impact

The Office of Best Practice Regulation has assessed the regulatory impact of the Amending Declaration to be minor and advised that a Regulatory Impact Statement is not required (OBPR ID 23834).

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 Legislation.

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**.

Attachment 1: Notes on Sections

Section 1—Name

Section 1 provides that the Declaration may be cited as the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 (Amendment No. 1 of 2018)*.

Section 2—Commencement

Section 2 provides that the Declaration will commence on the day after it is registered on the Federal Register of Legislation, which may be accessed online at <http://www.legislation.gov.au/>.

Section 3—Authority

Section 3 identifies the power that authorises the making of the Declaration, being subsection 63(5) of the *Telecommunications Act 1997*.

Section 4—Schedules

Section 4 provides for Schedule 1 to amend the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997* (the Principal Declaration).

Schedule 1—Amendments

Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997

Item 1—Subclause 11(1)

Item 1 omits the words “on a monthly basis” from subclause 11(1) of the Principal Declaration. This is done because reports under the amended version of clause 11 are often provided otherwise than on a monthly basis (see the revised definition of Report Date being inserted by item 19, as described below).

Item 2—Subclause 11(1)

Item 2 inserts additional words into subclause 11(1) of the Principal Declaration, to require Telstra to provide the Specified Premises Location Information in relation to each of the following kinds of active services:

- (a) standard active services;
- (b) active services supplied to in train order premises;
- (c) active services supplied to MDU common areas;
- (d) active services that are Eligible Special Services that Telstra expects will be required to be disconnected no later than the date that is 25 working days after the Special Services Disconnection Date for the SS Class the service is in;
- (e) active services that are Eligible Special Services that Telstra expects will be required to be disconnected in relation to a Changed Technology Extension Date;

- (f) active services that are Eligible Special Services that Telstra expects will be required to be disconnected in accordance with the disconnection date for the rollout region of the premises to which the Eligible Special Service is supplied;
- (g) any other kind of active service (not mentioned above) that Telstra has notified NBN Co is a kind of active service.

Standard active services (paragraph 11(1)(a)) were already covered by previous clause 11.

Paragraphs 11(1)(b) to (f) represent the new kinds of active services in relation to which Telstra is required to provide Specified Premises Location Information to NBN Co. Each of these kinds of active services have different associated Report Dates (see the revised definition of that term inserted by item 19, as described below) due to the different disconnection arrangements for each of these kinds of services.

Paragraph 11(1)(g) enables Telstra to specify additional kinds of active service, e.g. if different kinds of special services arrangements arise in the future.

Item 3—At the end of subparagraph 11(2)(a)(iii)

Item 3 adds words at the end of subparagraph 11(2)(a)(iii) of the Principal Declaration, to enable Telstra and NBN Co to deal with matters that can be done by notice by way of a binding agreement that is covered by subclause 11(2). An agreement of this kind deals with the way in which Telstra provides Specified Premises Location Information to NBN Co.

Item 4—Paragraph 11(6)(b)

Item 5—Subparagraph 11(6)(d)(ii)

Item 6—Before paragraph 11(7)(a)

Item 7—At the end of paragraph 11(7)(e)

Item 8—Paragraph 11(7)(f)

Item 9—Sub-subparagraph 11(7)(g)(i)(A)

Item 10—Sub-subparagraph 11(7)(g)(i)(A)

Items 4 to 10 amend subclauses 11(6) and (7) of the Principal Determination.

Subclauses 11(6) and (7) set out the Permitted Purposes for which NBN Co may use the Specified Premises Location Information provided by Telstra. The amendments made by items 4 to 8 are required as a result of the addition of the new kinds of active services in relation to which Telstra is required to report. These amendments generally relate to purposes that refer to the concept of Eligible Special Services that has been added to clause 11.

The amendments made by items 9 and 10 replace conditional references to dates with fixed references to the actual dates that occurred.

Item 11—Subclause 11(8)

Item 11 inserts a definition of *access technology* into subclause 11(8), for the purposes of clause 11. This expression is defined by reference to the *Telecommunications (Migration Plan*

Principles) Determination 2015 (MPP Determination). The MPP Determination defines an access technology as an access technology used by NBN Co to connect a premises or a location to the NBN Co fixed-line network, which may include the following access technologies:

- (a) fibre-to-the-premises;
- (b) fibre-to-the-node;
- (c) fibre-to-the-basement; or
- (d) hybrid fibre-coaxial cable.

This expression is used in the new definition of Changed Technology Extension Date (see item 15, as described below) and the revised definition of Eligible Premises (see item 16, as described below).

Item 12—Subclause 11(8) (paragraph (a) of the definition of *active service*)

Item 13—Subclause 11(8) (paragraph (c) of the definition of *active service*)

Items 12 and 13 omit the words “as at that Report Date” from paragraphs (a) and (c) of the definition of *active service*. Given the other changes to this instrument, these words are now redundant in this definition.

Item 14—Subclause 11(8) (definition of *Amending Declaration*)

Item 14 amends the definition of *Amending Declaration*. This expression previously referred to the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 (Amendment No. 1 of 2015)* (2015 Amending Declaration) that inserted clause 11 into the Principal Declaration. The references to the 2015 Amending Declaration have been removed by items 9 and 10 (as described above). Item 14 amends this definition so that the expression now refers to this instrument (i.e. the one made in 2018), which is used in the revised definition of Report Date (see item 19, as described below).

Item 15—Subclause 11(8)

Item 15 inserts a new definition of *Changed Technology Extension Date* into subclause 11(8), for the purposes of clause 11. This definition relates to the provisions in the migration plan providing for deviation of the disconnection of special services from the special services disconnection date determined by NBN Co’s white paper for disconnection of the relevant class of special services. Where Telstra expects an Eligible Special Service to be disconnected in accordance with those provisions of the migration plan, the relevant Report Dates will differ accordingly (see item 19, as described below).

Item 16—Subclause 11(8) (definition of *Eligible Premises*)

Item 16 inserts a new definition of *Eligible Premises* into subclause 11(8), for the purposes of clause 11. Telstra is only required to report on active services that are supplied to Eligible Premises. This concept ensures that Telstra is only required to report on active services that are expected to be disconnected. This includes the requirement (in paragraph (b)), for Eligible Special

Services, that NBN Co has notified Telstra of the access technology that it has used or intends to use to make the premises NBN Serviceable.

Item 17—Subclause 11(8)

Item 17 inserts several definitions into subclause 11(8), for the purposes of clause 11.

The new definition of ***Eligible Special Service*** sets the classes of special services, and special service inputs, in relation to which Telstra is required to provide Specified Premises Location Information. Broadly speaking, these are special services in relation to which disconnection arrangements have been determined, because they are covered by a white paper (see also paragraph (b) of the definition of ***Eligible Premises***, as described at the previous note).

Each of the three categories covered by paragraph (b) of the definition of ***Eligible Special Service*** are described further in paragraphs (d) to (f) of the note on item 2 (see above).

The new definition of ***migration plan*** is defined as the final migration plan that is in force at the commencement of this instrument. Provisions relating to final migration plans are located in Subdivision B of Division 2 of Part 33 of the Act. The current final migration plan is available on the Australian Competition and Consumer Commission's (ACCC's) website.

The definition of ***migration plan*** inserted into subclause 11(8) includes any variations made to that instrument from time to time. Section 589 of the *Telecommunications Act 1997* allows instruments under that Act to make provision in relation to a matter by applying, adopting or incorporating matter contained in any other instrument as in force or existing from time to time. The migration plan is incorporated as varied from time to time because the relevant provisions of the migration plan referred to in clause 11 are likely to be updated over time, and clause 11 needs to continue to refer to the current version of those provisions. The relevant parties will be aware when changes are made to the migration plan.

The new definition of ***MDU common area*** inserted into subclause 11(8) has the same meaning as in the *Telecommunications (Migration Plan Principles) Determination 2015*. That definition refers to all of the areas within the property boundary of the parcel of land on which an MDU building is located which are outside of the area occupied by the other locations that are separate premises within that MDU building; or a common area within a single dwelling unit that NBN Co has notified to Telstra under and in accordance with the Definitive Agreements as being deemed an MDU common area.

The new definition of ***NBN Serviceable*** inserted into subclause 11(8) also has the same meaning as in the *Telecommunications (Migration Plan Principles) Determination 2015*. This means a premises within the fixed footprint list for a rollout region that NBN Co has determined is serviceable by the NBN Co fixed-line network for the provision of an NBN Service, as shown in the NBN Co service qualification system (for clarity, premises which are identified as "Service Class 0" in the NBN Co service qualification system are not NBN Serviceable).

The new definition of ***premises*** inserted into subclause 11(8) also has the same meaning as in the *Telecommunications (Migration Plan Principles) Determination 2015*. This means:

- (a) an addressable location currently used on an on-going basis for residential, business (whether for profit or not), government, health or educational purposes;
- (b) a school as defined by the Department of Education or any other replacement Commonwealth Department or Agency with responsibility for school policy from time to time;
- (c) a location within a new development at an addressable location for which NBN Co is the wholesale provider of last resort;
- (d) an addressable location for a standard telephone service which is activated in compliance with the universal service obligation;
- (e) a payphone at a location at which Telstra is required to install or maintain a payphone in accordance with an instrument made under section 12EF of the Consumer Protection Act as in force from time to time;
- (f) a location which NBN Co is directed by the Minister to connect to the NBN Co fixed-line network; and
- (g) an MDU common area, where and for so long as it is notified by NBN Co to Telstra as being included in the fixed footprint list for any rollout region.

Item 18—Subclause 11(8) (definition of *region ready for service date*)

Item 18 repeals the definition of *region ready for service date* from subclause 11(8), as it is no longer used in clause 11.

Item 19—Subclause 11(8) (definition of *Report Date*)

Item 19 substitutes a revised definition of *Report Date* in subclause 11(8), for the purposes of clause 11.

The revised definition specifies a range of different dates by which Specified Premises Location Information in respect of different kinds of active services will need to be provided to NBN Co by the licensee for use or disclosure by NBN Co for the Permitted Purpose, in accordance with new subclause 11(1) (see above).

Paragraph (a) specifies that, for standard active services and Eligible Special Services that are covered by subparagraph (b)(iii) of the definition of that expression, each of the following dates that occurs in relation to a rollout region at any time during the period from and including the date on which the Amending Declaration commenced to the Rollout Completion Date is a *Report Date*:

- (i) each date that is 12, 9, 6, 5, 4, 3, 2 or 1 calendar months before the disconnection date for the rollout region;
- (ii) the disconnection date for the rollout region;
- (iii) the date that is 25 working days after the disconnection date for the rollout region.

Paragraph (b) specifies that, for active services supplied to an in train order premises, each date that is 60 or 120 working days after the disconnection date for a rollout region is a *Report Date*.

Paragraph (c) specifies that, for active services supplied to an MDU common area, each of the following dates that occurs in relation to a rollout region is a *Report Date*:

- (i) each 31 May and 30 November that occurs after the disconnection date for the rollout region, but before the first date that occurs for the rollout region under subparagraph (iii);
- (ii) the later to occur of the date that is 24 months after the Rollout Completion Date and the date that is 20 working days after the disconnection date for the rollout region;
- (iii) each date that is 6, 5, 4, 3, 2 or 1 calendar months before the later date mentioned under subparagraph (ii) for the rollout region.

Paragraph (d) specifies that, for active services that are Eligible Special Services covered by subparagraph (b)(i) of the definition of that expression, each date that is 24, 18, 12, 6, 5, 4, 3, 2 or 1 calendar months before the Special Services Disconnection Date for the SS Class of any of those active services is a *Report Date*.

Paragraph (e) specifies that, for active services that are Eligible Special Services covered by subparagraph (b)(ii) of the definition of that expression, each date that is 6, 5, 4, 3, 2 or 1 calendar months before the Changed Technology Extension Date for any of those active services is a *Report Date*.

Paragraph (f) specifies that, in any case, any other date which the licensee (at its discretion) notifies NBN Co in writing will be a Report Date is a *Report Date*.

Item 20—Subclause 11(8)

Item 20 inserts two definitions into subclause 11(8), for the purposes of clause 11.

The new definition of ***Special Service Disconnection Date*** provides that when the term is used in relation to an SS Class, the term means the disconnection date for that SS Class determined in accordance with provisions of the migration plan of the kind referred to in subsection 18(6) of the *Telecommunications (Migration Plan Principles) Determination 2015*.

The new definition of ***special service input*** provides that the term has the same meaning as in the *Telecommunications (Migration Plan Principles) Determination 2015*.

Item 21—Subclause 11(8) (definition of *Specified Premises Location Information*)

Item 21 substitutes a revised definition of ***Specified Premises Location Information*** in subclause 11(8), for the purposes of clause 11.

The revised definition specifies what information in respect of different kinds of active services will need to be provided to NBN Co by the licensee by the Report Date for that kind of active service for use or disclosure by NBN Co for the Permitted Purpose, in accordance with new subclause 11(1) (see above).

The definition provides that, *Specified Premises Location Information*, in respect of a Report Date for a kind of active service mentioned in paragraphs 11(1)(a)-(g), for active services of that kind that:

- (a) if covered by paragraph 11(1)(d)—are in an SS Class with a relevant Special Services Disconnection Date for that Report Date; or

- (b) if covered by paragraph 11(1)(e)—have a relevant Changed Technology Date for that Report Date; or
- (c) if not covered by those paragraphs—are supplied to an Eligible Premises in a relevant rollout region for that Report Date; or
- (d) in any case—are services which the licensee (at its discretion) has otherwise notified NBN Co in writing will be covered by that report date;

means the following information:

- (e) the national broadband network location identification number for each Eligible Premises receiving an active service of that kind; and
- (f) for each of those active services that is an Eligible Special Service—the identity of the white paper for the SS Class in which the service is included that determined the Special Service Disconnection date for that SS Class;

in each case, determined as at that Report Date where that information:

- (g) is within the licensee’s control as at that Report Date; and
- (h) was given to the licensee by one of its wholesale customers, or derived from such information, 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).

Item 22—Subclause 11(8)

Item 22 inserts several definitions into subclause 11(8), for the purposes of clause 11.

The new definition of ***SS Class*** provides that the term means any class comprised of:

- (a) all special services that are included in an SS Class (within the meaning of the migration plan) that relates to one of the services described in the column headed “Access Service” in Table 2 of Schedule 1 to the *Telecommunications (Migration Plan Principles) Determination 2015*; and
- (b) all special service inputs that are used to supply any service that is equivalent to a special service mentioned in paragraph (a).

The new definition of ***standard active service*** provides that the term means an active service that is not:

- (e) supplied to an in train order premises; or
- (f) supplied to an MDU common area; or
- (g) a special service or special service input; or
- (h) an active service of a kind covered by paragraph 11(1)(g).

The new definition of ***white paper*** provides that the term, when used in relation to an SS Class, means a white paper that:

- (h) was published by NBN Co in accordance with the migration plan; and
- (i) has not successfully been disputed in accordance with the migration plan; and
- (j) had determined the Special Service Disconnection Date for that SS Class for the purposes of the migration plan.

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 2018)***

The *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 (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

The purpose of the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 (Amendment No. 1 of 2018)* (‘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 business special service, in train order, and multi-dwelling premises common area receiving active copper services. This data will be in addition to that provided by Telstra to NBN Co under the Original Declaration.

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 declarations.

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 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 panels and lift phones;
- the migration of services which are subject to an in train order process;
- the migration of complex special services, such as those used by businesses and in multi-dwelling premises common areas;
- the case management of vulnerable customers, such as medical alarm users, to minimise the risk of unexpected disconnection could have potentially life threatening consequences; and
- NBN information campaigns directed at the last 'hard to migrate' segment of consumers, ensuring that such consumers are fully informed of the impending disconnection.

Under the Original Declaration, Telstra discloses to NBN Co the Loc ID data sourced from those wholesale customers who have not otherwise authorised the disclosure. Under the Amending Declaration, this data will be expanded to include special services, in train orders, and multi-dwelling unit common areas.

Human rights implications

As with the Original Declaration, under the Amending Declaration 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 essentially be a stand-alone physical address that will allow an individual to be contacted (on an anonymised/generic basis) by NBN Co. In the case of special services, additional information will be provided which identifies the disconnection date of that particular service. 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*.

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 within 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

As with the Original Declaration, under the Amending Declaration the data 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 minimises the risk of unexpected or inappropriate disconnection which could result in persons including vulnerable customers (such as those with medical alarms) and businesses 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) which 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 Original Declaration provided 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. The Amending Declaration expands this data to include special services, in train orders, and multi dwelling unit common areas.

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

The relevant information disclosed under the carrier licence condition in the determination may only be used by NBN Co for the 'Permitted Purposes' which include 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 understood to have medical alarms, fire alarms, lift alarms or other over the-top services; and
- to estimate installation capacity.

Other safeguards protecting disclosed information

The new carrier licence condition has the same built in protections the Original Declaration 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 Permitted Purpose (as defined).

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 *Telecommunications Act 1997* (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.

Conclusion

The Declaration is compatible with human rights because, to the extent that it may limit the right to privacy, this 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.

During consultation, no human rights issues were raised.