

Explanatory Statement

Issued by the Authority of the Minister for Communications and the Arts

Telecommunications Act 1997

*Telecommunications (Carrier Licence Conditions - Telstra Corporation Limited)
Declaration 2019*

Authority

Subsection 63(2) of the *Telecommunications Act 1997* (the Act) confers power on the Minister for Communications and the Arts (the Minister) to declare that a carrier licence is subject to conditions specified in an instrument. Subsection 63(6) of the Act confers power on the Minister to revoke such an instrument.

Purpose

The purpose of the *Telecommunications (Carrier Licence Conditions - Telstra Corporation Limited) Declaration 2019* (the Declaration) is to repeal and remake the current *Telecommunications (Carrier Licence Conditions - Telstra Corporation Limited) Declaration 1997* (the ‘Original Declaration’) with minor changes to update the drafting style. A number of obligations on Telstra from the Original Declaration are redundant and have not been retained. These are:

- the obligation to maintain a local presence in regional, rural and remote parts of Australia, which has been made redundant by an agreement with the Commonwealth (i.e. the Telstra Universal Service Obligation Performance Agreement) that requires Telstra to maintain its copper network in areas outside the National Broadband Network fixed-line footprint from 2012 until 2032; and
- the obligation to provide mobile coverage in selected population centres and highways, which ceased to have effect in 2015; and
- the obligation to develop a Priority Assistance policy, which has been fulfilled (it is important to note that the obligations to maintain the Priority Assistance policy, and to supply Priority Assistance services, remain in the Declaration).

Background

The Original Declaration was made on 24 June 1997 and came into force on 1 July 1997. The Original Declaration was subsequently varied by numerous amending declarations and was due to sunset on 1 April 2019. The Government has reviewed the Declaration and decided that it needs to be remade given the continuing importance of some of the key safeguards and obligations that it contains. The Government also observes that some of the obligations in the Declaration are currently being reviewed, and will make further changes to the Declaration following review if required.

Consultation

Section 64 of the Act provides that before making an instrument under subsection 63(2) 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 (the Department) wrote, on behalf of the Minister, to Telstra on 6 February 2019 inviting it to comment on the proposed Declaration. Telstra provided a submission on 1 March 2019 and the Minister considered the submission.

The Department commenced a public consultation process on 7 February including the proposed Declaration. One submission was received, from the Australian Communications Consumer Action Network (ACCAN) and the Minister also considered this submission.

Both Telstra and ACCAN supported remaking the Declaration. They proposed some minor changes to the draft, which have been adopted, and also proposed further areas for review. These proposals are being considered as part of the current review processes.

Regulation Impact

The Office of Best Practice Regulation has agreed that, given no new regulatory requirements were introduced with this remake of the Original Declaration, a Regulation Impact Statement is not required.

Other details

The Declaration is a legislative instrument for the purposes of the *Legislation Act 2003* and commences on the day after it is registered on the Federal Register of Legislation.

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

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

Attachment 1

Detailed notes on *Telecommunications (Carrier Licence Conditions - Telstra Corporation Limited) Declaration 2019*

Section 1 – Name of Instrument

Section 1 provides that the name of the instrument is the *Telecommunications (Carrier Licence Conditions - Telstra Corporation Limited) Declaration 2019* (the Declaration).

Section 2 – Commencement

Section 2 provides for the Declaration to commence on the day after it is registered on the Federal Register of Legislation.

Section 3 - Authority

Section 3 states that the authority for the Declaration is subsection 63(2) of the *Telecommunications Act 1997* (the Act).

Section 4 – Definitions

Section 4 provides a list of definitions to explain the terminology used in the Declaration.

Section 5 – Repeal

Section 5 provides that each instrument that is specified in Schedule 2 to the Declaration is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms. Item 1 of Schedule 2 specifies the repeal of the *Telecommunications (Carrier Licence Conditions - Telstra Corporation Limited) Declaration 1997*, which was due to sunset on 1 April 2019.

Section 6 – Compliance

This section requires Telstra to comply with its obligations under section 7 to 10 of the Declaration to the extent made possible by the information provided by carriage service providers (CSPs) under clause 10 of Schedule 2 to the Act. Clause 10 of Schedule 2 to the Act provides that if a Carriage Service Provider (CSP) supplies a carriage service to an end-user and the end-user has a public number (i.e. a number specified in the numbering plan as being for use in connection with the supply of carriage services to the public in Australia) then the CSP must give Telstra such information as Telstra reasonably requires in connection with Telstra's fulfilment of its obligation to provide and maintain an integrated public number database.

Section 7 – Operator Services

This section requires Telstra to make operator services available to end-users of its standard telephone services. Part 2 of Schedule 2 to the Act, which establishes standard service provider rules, obliges all CSPs supplying a standard telephone service to make operator services available to end-users of that standard telephone service. The provider may do this by providing the service itself or arranging with another person for the provision of operator services (refer clause 4, Schedule 2 to the Act).

This licence condition will ensure that Telstra provides an operator service itself, enabling other CSPs to seek access to that service in order to fulfil their obligations under the service provider rules (refer clause 5, Schedule 2 to the Act).

Section 67(2) of the Act provides that a condition of a carrier licence may remove or restrict a right or privilege that the carrier would otherwise have under a provision of the Act (whether or not in the carrier's capacity as a carrier).

Section 8 – Directory Assistance Services

This section requires Telstra to make directory assistance services available to end-users of its standard telephone services. Part 3 of Schedule 2 to the Act, which establishes standard service provider rules, obliges all CSPs supplying a standard telephone service to make directory assistance services available to end-users of that standard telephone service. The provider may do this by providing the service itself or arranging with another person for the provision of the directory assistance services (refer clause 7, Schedule 2 to the Act).

This licence condition ensures that Telstra provides a directory assistance service enabling other CSPs to seek access to that service in order to fulfil their obligations under the service provider rules (refer clause 8, Schedule 2 to the Act).

As noted above, subsection 67(2) of the Act provides that a condition of a carrier licence may remove or restrict a right or privilege that the carrier would otherwise have under a provision of the Act (whether or not in the carrier's capacity as a carrier).

Section 9 – Alphabetical public number directory

Subsection 9(1) requires Telstra to produce, publish and distribute an alphabetical telephone or public number directory. Telstra will be required to produce a directory:

- annually;
- on substantially the same basis as it produced and distributed a public number directory in 1997;
- in volumes by geographic area; and
- that includes all customers of CSPs supplied with a standard telephone service, subject to the requirement under subsection 9(7) not to include details of unlisted numbers.

Subsection 9(2) requires Telstra to arrange to publish and distribute the directory to its own customers and the customers of other CSPs (or the nominees of the customers).

Under subsections 9(3) and 9(4), Telstra is required to include, free of charge to the customer, one standard entry for each customer. That standard entry must include a name and address and one public number. The public number may be either the customer's geographic number (i.e. a local telephone number for a service provided across a fixed public network) or, on the customer's request, the customer's mobile number. A note accompanies subsection 9(4) to inform the reader that the Australian Communications and Media Authority (ACMA) may give written directions to Telstra under subsection 581(1) of the Act about complying with subsection 9(4).

Subsection 9(5) requires Telstra to comply with any request by a customer to include in the directory a customer's facsimile number.

Subsection 9(6) requires Telstra to provide entries in the directory, and services for not including details of a customer in the directory, for a customer of another CSP on conditions that are no less favourable than for its own customers.

Subsection 9(7) requires Telstra to ensure, to the greatest extent practicable, that the directory does not include details of a customer whose number is an unlisted number. An unlisted number is a number that has the meaning given in section 4.

Subsection 9(8) requires Telstra to ensure that, to the greatest extent practicable, it does not promote its own carriage services or other goods or services unrelated to the directory entry during any contact it has with a customer of another carriage service provider for purposes related to the provision of services in a directory. This provision is designed to ensure that Telstra cannot use its position as a provider of directories to gain a competitive advantage in relation to other goods or services it provides.

Subsection 9(9) requires that the directory will be provided to customers free of charge as a book or, if the customer agrees, in another form. It is envisaged that customers can choose to access to the directory, for example, as an online service. A note accompanies subsection 9(9) to inform the reader that it is intended that Telstra maintains its White Pages directory and makes this available to its own customers and the customers of other CSPs on substantially the same basis as the White Pages directory has been produced and distributed before Telstra's licence condition came into force.

Section 10 – Integrated public number database

The effect of section 472 of the Act is that Telstra must provide and maintain an integrated public number database (IPND) if required by a condition of a carrier licence to do so.

Subsection 10(1) requires Telstra to establish and maintain an IPND for the purpose of providing information for purposes connected with:

- providing directory assistance services;

- providing operator services or operator-assistance services (as defined in section 4);
- publishing public number directories;
- providing location dependent carriage services (as defined in section 4);
- the operation of emergency call services or assisting emergency services under Part 13 of the Act;
- assisting enforcement agencies under Part 13 of the Act;
- Satisfying its obligations under section 313(3) or (4) of the Act; and
- any other activities specified by the ACMA in writing to Telstra, which provides scope for additional purposes should the need arise.

The note provides that a public number directory includes classified business directories like the Yellow Pages and specialist trade directories.

Subsection 10(2) requires that Telstra is limited to using the IPND and any information derived from the database for only those purposes listed above (subsection 10(1)).

Telstra is required, in accordance with subsection 10(3), to ensure that the IPND includes information relating to each public number of a customer of each CSP. This information comprises:

- the public number;
- the name and address of the customer;
- the service location, if practicable;
- the name of the CSP that provides services for originating and terminating carriage services to the customer or public mobile telecommunications services to the customer;
- whether the telephone is to be used for government, business, charitable or private purposes, if practicable; and
- any other information that the ACMA specifies in a written notice to Telstra.

This subsection describes information that CSPs (including Telstra, in its capacity as a CSP) are reasonably required to provide to Telstra under subclause 10(2) of Part 4 of Schedule 2 to the Act.

In order to meet the purposes specified in subsections 10(1) and 10(6) of the Declaration, the information contained in the IPND must be updated and verified from time to time.

The IPND is also required to include:

- an indication of whether a public number is an unlisted number (subsection 10(4)); and
- information on the public number and location of payphones (subsection 10(5)).

Under subsection 10(6), Telstra is required to provide access to information from the database to any CSP which makes a request for such access where that information is to be used only for the purpose of helping the provider to:

- provide its own directory assistance services;
- provide its own operator services or operator assistance services;
- produce a public number directory;
- provide its own location dependent carriage services;
- provide information for the operation of emergency call services or assisting emergency services or emergency warnings under Part 13 of the Act; or
- to satisfy its obligations under section 313(3) or (4) of Part 14 of the Act.

In addition, Telstra is required to provide access to information to CSPs connected to the matters mentioned in paragraphs 11(7)(a), 11(7)(b), 11(7)(c) and 11(7)(d) of the Declaration that relate to the disclosure of specified premises location information to NBN Co Limited (NBN Co), or undertake any other activities specified by the ACMA by written notice to Telstra.

Subsection 10(7) makes clear that Telstra is required to give information from the database about its own and other CSPs' customers where this is necessary to comply with requirements under subsection 313(3) and (4) of the Act, that is, to give officers and authorities of the Commonwealth, States and Territories reasonably necessary assistance for the purposes of enforcing the criminal law and laws imposing pecuniary penalties; assisting the investigation and prosecution of crimes within the jurisdiction of the International Criminal Court and Tribunal offices within the meaning of the *International War Crimes Tribunals Act 1995*; protecting the public revenue; or safeguarding national security.

Under subsection 10(8), the terms and conditions on which access is provided under subsection 10(6) are to be agreed between the parties or, failing agreement, as determined by an arbitrator or the ACCC. Access to the database is also to be subject to the privacy provisions included in Part 13 and Part 14 of the Act.

Under subsection 10(9), in determining the price or price-related conditions of access under subparagraph 19(8)(a)(ii) or (iii), an arbitrator or the ACCC is required to consider only the direct costs (including labour and direct administration costs) incurred by Telstra in complying with subsection 10(7) and a reasonable contribution to a normal return of the capital expended in establishing and maintaining the database.

Under subsections 10(10) and 10(11), a request for access under subsection 10(6) or assistance under subsection 10(7) may be a single request or part of a continuing arrangement between Telstra and the requesting CSP or officer or authority.

Section 11 – Disclosure of Specified Premises Location Information to NBN Co

Subsection 11(1) sets out the key definitions used in subsections 11(2) to (8) inclusive. These are discussed in detail below.

Access Technology

This expression is defined by reference to the *Telecommunications (Migration Plan Principles) Determination 2015* (MPPs). The MPPs define 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:

- fibre-to-the-premises;
- fibre-to-the-node;
- fibre-to-the-basement; or
- hybrid fibre-coaxial cable.

This expression is used in the definition of ‘Changed Technology Extension Date’ and the definition of ‘Eligible Premises’.

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

Australian Consumer Law

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

Australian Address Reference File

This term means the dataset or addresses, information related to those addresses, and other address’ related information, compiled and maintained by Australia Post.

Changed Technology Extension Date

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.

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 this licence condition relates to active copper services. The concept of 'copper service' is given the same meaning as in the MPPs. In general terms the term 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. The term is used in the definition of 'in train order list'. 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

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 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.

Eligible Special Service

The 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').

Fixed footprint list

This term is defined by reference to the MPPs.

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

‘In train order premises’ is defined by reference to the MPPs.

In train order list

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.

MDU Common Area

The definition of ‘MDU common area’ has the same meaning as in the MPPs. 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.

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.

Migration Plan

The 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 ACCC's website.

The definition of migration plan includes any variations made to that instrument from time to time. Section 589 of the Act allows instruments 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 section 11 are likely to be updated over time, and section 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.

NBN based service and NBN Service

This term is 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 from time to time, 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 premises are (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.

NBN Service

This term is defined by reference to the MPPs. NBN Service covers any service provided by NBN Co or a related entity of NBN Co over the NBN Co fixed-line network.

NBN Serviceable

The definition of ‘NBN Serviceable’ has the same meaning as in the MPPs. 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).

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 information disclosure requirement under subsection 11(2), Telstra must disclose the Specified Premises Location Information to NBN Co to enable NBN Co to use it for a Permitted Purpose. The term ‘Permitted Purpose’ means a purpose permitted under subsection 11(7) 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.

Premises

‘Premises’ is defined by reference to the MPPs.

Privacy Laws

Paragraph 11(8)(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.

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 subsection 11(7). The term is used in subparagraph 11(8)(g)(ii) when defining uses of the data which are not permitted.

Related Entities and Telstra Representatives

These two terms are used in paragraph 11(8)(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 section 11 will not be required once the NBN is built and fully operational and captures:

- each of the dates that are 12, 9, 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(7)(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 CSP 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 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 is defined by reference to the MPPs and 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.

Special Service Disconnection Date

This term is used in relation to an SS Class (a defined term) and means the disconnection date for that SS Class determined in accordance with provisions of the migration plan.

Special service input

‘Special service input’ is defined by reference to the MPPs.

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.

SS Class

The term ‘SS Class’ means any class composed 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 MPPs; and

(b) all special service inputs that are used to supply any service that is equivalent to a special service mentioned in paragraph (a).

Standard active service

‘Standard active service’ means an active service that is not one of the four specified services.

Telstra Representatives

‘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).

White Paper

‘White paper’, in relation to an SS Class (a defined term), means a white paper that:

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

Subsection 11(2) sets out the core obligation for Telstra to give to 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 subsection 11(1), namely ‘active service’, ‘NBN Co’, ‘Permitted Purpose’ and ‘Report Date’ and ‘Specified Premises Location’.

In fulfilling the data supply obligation under subsection 11(2), there are two possible regimes that may apply to Telstra in fulfilling that obligation. The first is a commercial regime set out in subsection 11(3) and the second (alternative) regime is a default one set out in subsection 11(4).

Subsection 11(3) 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 subsection 11(2) 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 subsection 11(3) effectively provides for Telstra to satisfy the statutory obligation under subsection 11(2) 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(3)(b) and 11(3)(c) set out additional conditions that must be satisfied before subsection 11(2) is invoked. Specifically, Telstra must have provided a certified copy of the agreement to the 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.

Subsection 11(4) sets out the default statutory regime. In the circumstances where a legally binding agreement of the kind specified in subsection 11(3) 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'.

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.

Subsection 11(5) exempts Telstra from the data supply obligation under subsection 11(2) where any of the following apply:

- NBN Co has breached (or will imminently breach) a material term of the commercial agreement referred to in subsection 11(3) - (paragraph 11(5)(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(5)(b)); or
- In recognition of relevant IT system changes that Telstra needs to implement to comply with the supply condition, if there is no agreement in place between NBN Co and Telstra for the reimbursement of such costs - (paragraph 11(5)(c)); or
- where Telstra's compliance with subsection 11(2) 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(5)(d)).

Subsection 11(6) refers to the circumstances in which Telstra will not be in breach of subsection 11(2). 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 subsection 11(4) where the failure to meet the set timeframe is due to a circumstance beyond Telstra's reasonable control. Accordingly, subsection 11(6) 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.

Subsection 11(7) specifies, in a highly prescriptive way, the permitted uses of the data by NBN Co. Similarly, subsection 11(8) specifies, in a detailed manner, the types of use of the Specified Premises Location Information which are not permitted. Refer to the commentary in subsection 11(1) above under the definition of 'Permitted Purpose' for further information.

Subsection 11(8) 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 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).

Section 12 – Priority Assistance Arrangements

Priority assistance is a special customer service available to anyone diagnosed with a life-threatening medical condition who depends on a reliable, fixed-line home telephone service to be able to call for assistance at any time. Telstra has been required to provide priority assistance services to its customers as a condition of its licence since 2002. Telstra is required to have an effective policy for offering priority assistance services to anyone with a life-threatening medical condition.

Subsection 12(1) sets out the definitions for key terms used in section 12 and Schedule 1. The terms are:

- alternative service;
- customer;
- interim priority service; and
- priority customer.

A note accompanies subsection 12(1) to remind readers that Schedule 1 to the Declaration sets out the objectives addressed in section 12. Additional notes also accompany the definition of 'interim priority' to clarify certain elements of the definition.

Subsection 12(2) requires Telstra to implement arrangements for maximising service continuity to priority customers, including developing, implementing and maintaining a priority assistance policy; ensuring the policy addresses the objectives set out in Schedule 1; and having processes, systems and practices in place to identify priority customers and provide them with priority assistance in accordance with the policy.

Paragraph 12(3)(a) allows Telstra to vary its priority assistance policy from time to time by providing the Minister with a draft variation to the policy and the Minister or his or her delegate approving that variation. Another avenue available for the variation of the policy is by written notice from the Minister (or his or her delegate) requiring Telstra, within a specified period and in specified terms, to provide the Minister with a draft variation to the policy and the Minister (or the nominated delegate) approving that variation (paragraph 12(3)(b)). Telstra must comply with the written notices for variation (refer subsection 12(4)).

A note accompanies subsection 12(3) to make clear that the intention is for Telstra to be able to make minor, non-substantive changes to the priority assistance policy, such as minor administrative or typographical corrections, without the approval of the Minister. However, these must be recorded and notified to the ACMA.

Subsection 12(5) sets out the record-keeping and reporting regime in relation to priority service arrangements and requires Telstra to report to the ACMA on an annual basis.

Section 13 – Low Income Measures

Subsection 13(1) provides that Telstra must offer products and arrangements to low-income customers that have been endorsed by low-income consumer advocacy groups.

Subsection 13(2) provides that Telstra must comply with the low-income package as in force or existing from time to time.

Subsection 13(3) provides that Telstra must maintain and adequately resource a Low-income Measures Assessment Committee (LIMAC), comprising representatives of low-income consumer advocacy groups that work on behalf of people on a low-income.

Subsection 13(4) provides that LIMAC is responsible for assessing proposed changes to the low-income package or to the marketing plan (as set out in subsection 13(5)) for the package.

Subsection 13(5) provides that Telstra must have in place a marketing plan for making low-income consumers aware of the low-income package, which has been approved by LIMAC.

Subsection 13(6) provides that Telstra must seek and consider the views of LIMAC before making any significant change to the low-income package. A note accompanies this subsection to make clear that the intention is for Telstra to be able to make minor, non-substantive changes to the low-income package, such as minor editorial or typographical corrections, without having to seek and consider LIMAC's views.

Section 14 – Network Reliability Framework – Definitions and General Requirements

Sections 14 to 18 of the Declaration establish the Network Reliability Framework (NRF). The NRF is a safeguard for Telstra residential and small business customers who have up to five fixed telephone services. The framework complements the Customer Service Guarantee (CSG) which ensures that faults with phone services are repaired within reasonable timeframes. The key purposes of the NRF include improvement of consumer awareness of overall telephone service reliability, improvement to the operation of poorly performing parts of, and services in, the Telstra fixed telephone network, and improving community confidence in reliability of Telstra's fixed telephone network

The NRF has three levels of operation. The first level examines the general reliability of fixed telephone services nationally and in different regions of Australia, while the other two levels are concerned with identifying localised areas and individual services that do not meet minimum levels of reliability.

Level 3 of the NRF applies to 'CSG services'. These are telephone services provided by Telstra to residential and small business customers with one to five services. Level 3 of the NRF examines individual service performance. Telstra must act to prevent any service from experiencing more than three faults in any rolling 60-day period or more than four faults in any rolling 365-day period. Telstra is required to report to the ACMA on any services that breach these thresholds. Telstra will undertake remediation work on any service that breaches these thresholds to improve its reliability.

Section 14 sets out key definitions used in the several items in Schedule 1 pertaining to the Network Reliability Framework conditions.

The definition of 'CSG service' is based on the definition of that term, and its scope, under the *Telecommunications (Customer Service Guarantee) Standard 2011* (the CSG Standard). It is intended that the telephone services covered by the third tier of the NRF be the same as those covered by the CSG Standard as the NRF makes use of data collected for CSG purposes.

Under the CSG Standard a 'CSG service' is defined as an 'eligible telephone service' supplied by a CSP (including a reseller) to a customer of the provider. Public mobile telecommunications services, designated basic rate ISDN services, and satellite services are excluded from the definition unless supplied, or offered to be supplied, in fulfilment of the universal service obligation (USO) specified in paragraph 9(1)(a) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (T(CPSS) Act). The USO requires standard telephone services to be reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business.

An 'eligible telephone service' is defined in the CSG Standard as a standard telephone service or a carriage service that would be a standard telephone service but for the fact that it is used for a purpose other than the purpose specified in paragraph 6(1)(a) or (b) of the T(CPSS) Act (i.e. the purpose of voice telephony or an equivalent purpose for disabled end-users). Read

together, the definitions of ‘CSG service’ and ‘eligible telephone service’ in the CSG Standard are intended to ensure that the CSG Standard applies to a voice grade service, although the service may be used by the customer for other purposes.

The definition of ‘CSG service’ excludes services the supply of which is exempt from compliance with the CSG performance standards under section 18 of the CSG Standard. This exemption applies to the services of a customer with more than five services and effectively limits the CSG, and the NRF, to residential and small business customers.

The definition of ‘ESA category’ means a category of an Exchange Service Area (ESA) referred to in Table 1 of subsection 16(1).

The definition of a ‘fault or service difficulty’ also has the same meaning as in the CSG Standard. Under the CSG Standard ‘fault or service difficulty’ in relation to a specified service, means:

- the absence of dial tone or ring tone; or
- inability to make or receive calls; or
- disruption to communications because of excessive noise levels; or
- repetition of service cut offs; or
- another condition that makes the service wholly or partly unusable; or
- in the case of an enhanced call handling feature - if the feature is not operative.

It is understood that that a ‘fault’ refers to a service being wholly unusable, while in the case of a ‘service difficulty’ a service may be partially usable.

The definition of a ‘geographical locator’ refers to the mechanism used by Telstra staff to identify the location of a service, being;

- in the case of a CSG service, the location in Telstra’s database; and
- in the case of an ESA, the ESA code which is a four letter abbreviation for an ESA.

‘Remediation’ refers to work over and above that normally undertaken in relation to fixing a specific fault. As such, ‘remediation’ is distinguished from ‘rectification’. As the NRF is targeting recurrent faults, there is an assumption that recurrent faults often occur due to a failure to address their root cause (i.e. recurrent faults may be repeatedly fixed without addressing their real cause). Remedying a service will involve work to address systematic problems with a service (e.g. the root cause of recurrent problems) with a view to improving the overall reliability of the service and eliminating recurrent faults.

Subsection 14(2) provides a general provision that any information or report that is required to be provided to the ACMA under sections 15, 16 and 17 of the framework must be in a form approved by the ACMA.

Subsection 14(3) specifies that the relative performance of cable runs, which need to be ranked for the purposes of section 16(2) to allow for the selection of the worst performing cable runs, is to be assessed by a method approved in writing by ACMA.

Section 15 – Monitoring and Reporting of the Field Service Area (FSA) Level

Section 15 gives effect to ‘Level 1’ of the NRF, the purpose of which is to provide the public with useful and recent information regarding the reliability of telephone services nationally and in different regions within Australia.

Subsection 15(1) requires Telstra to report to the ACMA on a monthly basis (or such other timeframe as the ACMA agrees in writing) on:

- the percentage of CSG services free from faults or service difficulties nationally and in each FSA; and
- the average availability (in terms of time) of CSG services nationally and in each FSA.

Supporting data is further required to enable the ACMA to validate the licensee’s reports, if necessary, and to collate and analyse trend information over an extended period of time. For example, this supporting data will enable the ACMA to undertake further analysis on average performance in aggregated regions or over specific periods. Subsection 15(2) provides minimum requirements for the supporting data that the licensee must provide to the ACMA. The subsection provides that the supporting data will include the total numbers of CSG services in operation, the numbers of CSG services that have one or more fault or service difficulties for the preceding calendar month as well as a summation of the times required to repair all CSG fault or service difficulties.

Subsection 15(3) requires Telstra to publish the report provided to the ACMA under subsection 15(1) within 20 working days of the end of the calendar month or such other timeframe as the ACMA agrees in writing. The requirement that this information be published on a monthly basis is designed to provide consumers with up-to-date information about service reliability in their region and nationally, as well as allowing consumers to view comparative information regarding service levels in other regions.

Paragraph 15(3)(b) enables the ACMA to independently publish the information provided by Telstra under subsections 15(1) and 15(2) if, following consultation with Telstra, the ACMA considers it appropriate for publication. This provides the public with a possible alternative source of information about performance in their area. This also permits the ACMA to publish the data in conjunction with other performance data it collects, enabling it to provide to the public a more holistic picture of Telstra’s performance. ACMA must consult with Telstra about the publication of this data, providing an opportunity for Telstra to raise any concerns regarding publication (for example, if they consider the information to be commercially sensitive), for consideration by the ACMA.

The publication of data will also enable the ACMA to make available to the public historical and comparative analyses of Telstra’s reliability performance, for example:

- the performance of different FSAs in a particular month;
- the performance of one or more FSAs over time; and

- the performance of FSAs relative to national performance.

Section 16 – Monitoring, Remediation and Reporting at the Cable Run Level

Section 16 gives effect to ‘Level 2’ of the NRF, the purpose of which is to facilitate the identification of poorly performing cable runs, and to provide a mechanism by which Telstra is required to remedy those cable runs to a prescribed standard. Level 2 of the NRF deals with disaggregated parts of the network known as cable runs – sets of 10 or 100 copper wire pairs within a physical cable sheath. Telstra is required to identify the 40 poorest performing cable runs each month and report (see below for more detailed information).

Subsection 16(1) is particularly important as it includes the tables that are used to select the worst performing cable runs from different ESA categories. In combination, Tables 1 and 2 provide that cable runs from category D ESAs will be considered in NRF Level 2 through inclusion of the ‘next worst’ category at Step 5 of Table 2. This means that cable runs in category D ESAs are covered under Level 2 where they are ‘next worst’ performing cable runs, once minimum quotas of cable runs in smaller ESAs (i.e. category A, B and C ESAs) have been met. This will provide a regional focus for Level 2, while also allowing poorly performing cable runs in larger ESAs to be covered.

Table 2 also excludes any cable runs that were included in a previous remediation list from eligibility for a new cable run list, unless that cable run has already been remediated, reached its 90 per cent reduction target under subsection 26(8) and then subsequently become faulty enough again to be included in a new list. This will ensure that poorly performing cable runs that are already being remedied under Level 2 are not ‘double counted’ in subsequent months.

Subsection 16(2) requires Telstra to provide the ACMA with a list of at least 40 cable runs each month. Paragraph 16(2)(a) specifies the information Telstra is required to provide in respect of each cable run on this list. This information includes the average network event volume for each cable run (this information is necessary for the ACMA to monitor the licensee’s performance against the standard provided in subsection 16(9)), unique identification details (to ensure that cable runs can be tracked through the Level 2 process), the ESA code (to allow the ACMA to confirm the licensee’s compliance with the requirements of Table 2) and the performance ranking of each cable run. Paragraph 16(2)(b) provides that the licensee must give the list to the ACMA within 15 working days of the end of each calendar month.

Subsection 16(3) provides the ACMA with the discretion either to approve or refuse to approve a remediation list given to it under subsection 16(2). It is expected that the ACMA will perform this function in a reasonable timeframe. This may involve the agreement of protocols for timeframes with the licensee.

Subsection 16(4) provides that, if the ACMA refuses to approve a remediation list, it must direct the licensee to provide a new list. It is expected that the ACMA will perform this function in a reasonable timeframe. This may involve the agreement of protocols for

timeframes with the licensee. As the relative performance of cable runs is assessed by a method approved in writing by the ACMA, and the remediation list is then prepared using the method in Table 2, the licensee is provided five working days to provide this new list. Subsection 16(4) also limits the ACMA's discretion to the consideration of the requirements of subsection 16(2). For example, the ACMA could refuse to accept a remediation list if it contained less than 40 cable runs in total or less than five cable runs from category A ESAs. However, the ACMA could not refuse to accept a remediation list simply because, for example, none of the cable runs were in a particular state/location.

Subsection 16(5) provides that where the ACMA approves a remediation list, it must notify the licensee of its decision. It is expected that the ACMA will perform this function in a reasonable timeframe. This may involve the agreement of protocols for timeframes with the licensee. As the default, the licensee must complete the remediation of cable runs on the remediation list within six months of receipt of the ACMA's notification, but the ACMA may agree to another timeframe under subsection 16(6). As it is not intended that the ACMA 'micro-manage' Telstra's operations, Telstra does not need to submit a remediation plan to the ACMA for the remediation of cable runs on the approved remediation list. Rather, the method of remediation is first and foremost a matter for the licensee, rather than the regulator, and the licensee's performance is then assessed using the objective criteria set out in subsection 16(9).

Subsection 16(6) provides the ACMA with the discretion to extend or further extend the period for the completion of remediation by a further period of up to six months. While the period of time needed for remediation will vary from cable run to cable run, three to six months is considered a likely timeframe for most remediations. However, this subsection recognises that unforeseeable or unusual events may occur which may impact on the licensee's ability to meet the specified timeframe. In such circumstances, the licensee may request that the ACMA agree to an extension of the proposed timeframe. Paragraphs 16(6)(a) to (c) provide the circumstances under which Telstra may request an extension from the ACMA.

Subsection 16(7) provides time limits before which extensions may be sought by the licensee under subsection 16(6). These time limits will ensure that the licensee applies to the ACMA before the current period expires, and within a reasonable time after the licensee becomes aware that it will not complete, or reasonably expects that it may not complete, the remediation in the specified time. These provisions are intended to place discipline on the licensee in seeking extensions to remediation timeframes.

Subsection 16(8) provides that the ACMA must give the licensee written notice of its decision to extend or not extend the period allowed for remediation, if requested by the licensee under subsection 16(6). The ACMA must provide this written notice within 15 working days of receipt of the licensee's written request.

Subsection 16(9) provides that, after the end of six months following completion of the remediation of a cable run, the licensee must demonstrate a 90 per cent reduction in the

average network event volume for that cable run. This provision will ensure that the licensee's remediation performance is assessed using objective criteria, without micro-managing its internal remediation processes. These reports must be provided to the ACMA by the licensee on a monthly basis, within 10 working days of the end of each calendar month. Each monthly report should include details of all cable runs that reached, during that calendar month, the end of the six month period following the completion of the remediation. The report must include details of any reduction in the average network event volume for each cable run included in the report (i.e. details for individual cable runs rather than aggregate figures). Details of the average network event volume for each cable run will allow the ACMA to verify the 90 per cent reduction for each cable run, by comparing it to the data provided under paragraph 16(2)(a).

Subsection 16(10) provides that there are two options that the licensee can pursue if it has not achieved the 90 per cent reduction in average network event volume for a cable run, as specified in subsection 16(9). The first option, provided at paragraph 16(10)(a), is to provide a fresh remediation plan to the ACMA at the same time that it provides its report under subsection 16(9). Paragraph 16(10)(a) provides the requirements for a fresh remediation plan. The second option, provided at paragraph 16(10)(b), is to provide a written application to the ACMA to waive the requirement for a fresh remediation plan. The licensee would need to pursue one of these options for each cable run that had not reached the 90 per cent reduction.

Subsection 16(11) provides a timeframe (15 working days after receipt of the application) for the ACMA to respond to a waiver application that has been made by the licensee under paragraph 16(10)(b). It is expected that the ACMA discusses the reasons for its response with the licensee, where appropriate.

Subsection 16(12) makes clear that if the ACMA approves a waiver application made by the licensee under paragraph 16(10)(b), then no further remediation of the cable run would be required at that time. However, if that same cable run is included in a future remediation list approved by the ACMA under subsection 16(3), then the licensee must remedy the cable run in the same way as all other cable runs on the future list.

Subsection 16(13) provides that if the ACMA does not approve a waiver application made by the licensee under subsection 16(10), then the licensee must provide the ACMA with a fresh remediation plan that satisfies the requirements of paragraph 16(10)(a) (i.e. the same requirements as for a fresh remediation plan provided by the licensee under subsection 16(10)). Under subsection 16(3), Telstra is provided 30 working days to provide the fresh remediation plan. This will mean that the licensee must prepare a fresh remediation plan, and must also undertake the remediation requirements specified under subsection 16(14), in all cases where the 90 per cent reduction specified in subsection 16(9) has not been met and the ACMA has not provided a waiver.

Subsection 16(14) provides that where the licensee has failed to achieve the required 90 per cent reduction in average network event volume, and the ACMA has not approved a waiver, the licensee must continue to undertake remediation action until there is 90 per cent reduction

in the average network event volume. The licensee is allowed a maximum of 12 calendar months to achieve this reduction, starting from the receipt of the notification under subsection 16(11) or the ACMA's receipt of a fresh remediation plan submitted under paragraph 16(10)(a). This subsection also provides that the licensee must achieve a 90 per cent reduction in the average network event volume across a continuous six month period starting no earlier than the date of completion of the original remediation activity specified in subsection 16(5). This means that if a significant number of faults occur during the six month period following completion of the remediation of the cable run, the licensee could choose to begin further remediation work to reduce the incidence of faults prior to that period expiring, and begin measuring the 90 per cent reduction again from before the end of the six month period if they so chose.

Subsection 16(15) provides that the licensee must provide an annual report to the ACMA on remediation activity conducted under section 16. The report must cover remediation undertaken in that financial year, and be provided within 20 days of the end of the financial year.

Paragraph 16(15)(a) provides that the annual report must include a single figure for the total number of services affected (e.g. either improved, remediated or otherwise benefiting) by either remediation undertaken or by the remediation of other cable runs referred to in paragraph 16(15)(d). This figure will therefore include all services provided by cable runs identified for remediation in a remediation list approved by the ACMA under subsection 16(3), as well as any other cable runs that the licensee remedied in conjunction with remediation under this section. For example, if a 10 pair cable run identified for remediation under subsection 16(3) formed part of an existing 50 pair cable, and as part of the remediation activity the licensee replaced the entire 50 pair cable, then all the services provided by the 50 pair cable would be reported under this paragraph.

Paragraph 16(15)(b) provides that the report must include a summary of the types of network plant remedied and the nature of the remediation work undertaken on those types of plant.

Paragraph 16(15)(c) provides that the report must include the size (i.e. whether it included 10 or 100 copper pairs), the ESA category, and the number of services in operation supplied by each cable run identified for remediation in a remediation list approved by the ACMA under subsection 16(3).

Paragraph 16(15)(d) provides that the report must include details of other cable runs remedied in conjunction with remediation under section 16. This would include cable runs positively affected by remediation undertaken under this section, other than those identified for remediation in a remediation list approved by the ACMA under subsection 16(3). For example, if a 10 pair cable run identified for remediation under subsection 16(3) formed part of an existing 50 pair cable, and as part of the remediation activity the licensee replaced the entire 50 pair cable, then details of this 50 pair cable would be provided under this paragraph.

Section 17 – Monitoring, Prevention, Remediation and Reporting at the CSG Service Level

Section 17 gives effect to ‘Level 3’ of NRF, the purpose of which is to prevent individual CSG services experiencing high numbers of faults or service difficulties and to require the remediation of individual CSG services that exceed specified recurrent fault thresholds. Under section 17, investigation and remediation must be undertaken by the licensee if fault levels exceed specified levels, and this work will be subject to oversight by the AMCA.

Subsection 17(13) provides that in the event that one or more fault or service difficulties occur during the ‘remediation period’ (defined in subsection 17(18)), the licensee is required to review its planned remediation to ensure it addresses the root cause or causes of the new faults (called ‘subsequent faults’). This requirement ensures that the root cause or causes of all fault and service difficulties are addressed during the remediation of a CSG service under this section, and some are not excluded simply because remediation has already been planned or commenced. As the root cause or causes of these faults is required to be addressed by remediation under this subsection, they are not otherwise treated as faults or service difficulties for the purposes of section 17.

Subsection 17(14) establishes a ‘monitoring period’ (defined in subsection 17(18)) for a CSG service during which the licensee must report all fault or service difficulties to the ACMA, and specifies a timeframe for the provision of such reports (within 10 working days after the end of each calendar month in which the difficulties occurred). Similar to subsections 17(13), (14) and (15), the intention of this monitoring period is to ensure that remediation work undertaken under Level 3 has been successful and has raised the reliability of the CSG service to a higher level.

Subsection 17(15) provides that the licensee must provide sufficient information to allow the ACMA to satisfy itself whether a fault or service difficulty that occurs during the monitoring period is or is not a ‘related fault or service difficulty’ (defined at subsection 14(1)). This information would include the licensee’s own assessment, including reasons, as to whether or not a fault or service difficulty that occurs during the monitoring period is a related fault or service difficulty. The licence condition operates on the assumption that each fault or service difficulty that occurs during the monitoring period needs to be considered on its merits as to whether or not it is a ‘related fault or service difficulty’. This is consistent with the ACMA’s role as the regulator in making decisions in the case of disagreement. It is anticipated that operational protocols may be developed between the licensee and the ACMA to streamline the exchange of information under this subsection.

The subsection also provides a timeframe of 15 working days for the licensee to provide sufficient information to the ACMA to determine whether the fault or service difficulty is related. This will ensure that the monitoring period is not circumvented by unnecessary delays. If a fault or service difficulty that occurs in the monitoring period is not a related fault

or service difficulty, then it is to be treated as a fault or service difficulty for the purposes of subsection 17(4) (i.e. a fault in a new Level 3 cycle for that CSG service).

Subsection 17(16) specifies the actions that the licensee must undertake if one or more related fault or service difficulties occur during the monitoring period. Paragraph 17(16)(a) provides that the licensee must re-examine its previous remediation activity and undertake further remediation activity to address the root cause of causes of the new fault or service difficulties. The licensee must undertake these activities within 20 working days after the end of the period mentioned in subsection (15). Paragraph 17(16)(b) provides that the licensee must report to the ACMA on its further remediation activities within 20 working days of their completion.

Subsection 17(17) provides that the monitoring period commences again after the ACMA notifies the licensee that it has received a report under subsection 17(16). This means that the monitoring period will not cease until an entire eight month monitoring period passes without the occurrence of a related fault.

Section 18 – Methodologies and Variations to Methodologies

This section requires Telstra to have in place methodologies for preparing and verifying data for the purposes of sections 15, 16 and 17.

Schedule 1 – Objectives to be Addressed in the Licensees’s Priority Assistance Policy under subsection 12(2)

Schedule 1 sets out several definitions used elsewhere in Schedule 1, and objectives that need to be addressed by Telstra’s Priority Assistance Policy arrangements to meet the obligation under paragraph 12(2)(b).

As noted above, subsection 12(2) requires Telstra to implement arrangements for maximising service continuity to priority customers.

Schedule 1 sets out objectives that Telstra must ensure it adequately addresses when developing its Priority Assistance Policy. These are:

- the process for determining priority customers;
- the application and assessment process for priority customers;
- the level of service and service reliability that must be provided for priority customers;
- fault rectification timeframes and the provision of interim services for priority customers;
- the reduction of risks and impact of disconnection on priority customers;
- supply and repair of services to priority customers in exceptional circumstances; and
- ensuring public awareness as to the existence of the services available under Telstra’s Priority Assistance Policy.

Schedule 2 – Repeals

Schedule 2, in conjunction with section 5, provides for the repeal of the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997*. This instrument was due to sunset on 1 April 2019.

Attachment 2

Statement of Compatibility with Human Rights

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

Telecommunications (Carrier Licence Conditions - Telstra Corporation Limited) Declaration 2019

This 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 Disallowable Legislative Instrument

The purpose of the *Telecommunications (Carrier Licence Conditions - Telstra Corporation Limited) Declaration 2019* (the Declaration) is to remake the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997* (the Original Declaration), which was due to sunset on 1 April 2019.

The Declaration is made under section 63 of the *Telecommunications Act 1997* (the Act).

In its capacity as a carrier under the Act, 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 Original Declaration.

The Original Declaration has been amended several times since it was first made, and imposes carrier licence conditions on Telstra to, among other things:

- establish and maintain an integrated public number database;
- disclose specified premises location information to NBN Co Limited (NBN Co);
- establish and comply with the specified priority assistance arrangements;
- comply with reporting and remediation obligations under the network reliability framework;
- offer products and arrangements to low-income customers that have been endorsed by low-income consumer advocacy groups; and
- provide directory and operator services.

The Declaration remakes the Original Declaration in the same form, but has been redrafted to remove redundant provisions, provide clarity, and update terminology and the drafting style to reflect current conventions.

Establish and maintain an integrated public number database

Section 10 of the Declaration requires Telstra to establish and maintain an integrated public number database (IPND) for a number of purposes which includes the publishing of public number directories. The IPND is a telecommunications industry-wide database containing records of most Australian telephone numbers and associated customer details. The information included in the IPND includes the public number; the name and address of the customer; and other information related to the service provided to the customer. The IPND includes listed and unlisted telephone numbers. A listed number is one the customer has

agreed can be published in phone number directories and directory-related services. An unlisted (or ‘silent’) number is one the customer has not agreed to make available for these services. Telephone providers are required to give customers a choice of a listed or unlisted number. Telstra is required to provide access to information from the database to any CSP making a request for a specified purpose under subsection 10(1). There is a rigorous statutory regime under Part 13 of the Act designed to protect the confidentiality of information contained in the IPND from unauthorised use. For example, under Part 13 of the Act, disclosure or use of protected information is prohibited except in limited circumstances.

Operator and Directory services

Section 7 and section 8 require Telstra to make operator services and directory assistance services available to end-users of its standard telephone services. Other CSPs are also able to seek access to these services from Telstra in order to fulfil their obligations under Schedule 2 to the Act. The fulfilment of these obligations is enabled by the maintenance of the IPND as set out in section 10, which entails disclosure of customer names, addresses and public numbers.

Section 9 requires Telstra to produce, publish and distribute an alphabetical telephone or public number directory and distribute the directory to its own customers and the customers of other CSPs. The directory includes information such as the customer’s name, address and public ‘listed’ number. Unlisted (or ‘silent’) numbers are not published in directories.

Disclosure of Specified Premises Location Information to NBN Co

The Declaration includes a requirement for 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.

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 Declaration, Telstra discloses to NBN Co the Loc ID data sourced from those wholesale customers who have not otherwise authorised the disclosure. This includes special services, in train orders, and multi-dwelling unit common areas.

Human rights implications

This Declaration engages the right to privacy in Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR).

Sections 7, 8 and 9 – Operator assistance services, directory assistance services, and alphabetical public number directory

Sections 7, 8 and 9 of the Declaration require Telstra to maintain, disclose and publish potentially personal information such as the names of natural persons, address information and phone number for limited and defined purposes. 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 ICCPR.

The licence conditions under sections 7, 8 and 9 would not be inconsistent with Article 17 because the 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 providing operator and directory assistance services.

Customers, which includes both natural persons and other legal persons, also have the option of being excluded from the alphabetical public number directory under section 9 by opting for an unlisted number. Telstra is required by section 9 not to include unlisted numbers in its directory.

Section 10 - Integrated public number database

As noted above, section 10 of the Declaration requires Telstra to maintain the IPND. 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 ICCPR.

The licence conditions under section 10 would not be inconsistent with Article 17 because the 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 supported a limited number of purposes, which includes the operation of emergency call services.

In addition, Telstra is required to comply with privacy safeguards contained in Part 13 of the Act.

Section 11- Disclosure of specified premises location information to NBN Co

Section 11 of the Declaration requires Telstra to disclose information to NBN Co for limited and defined purposes, which 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 ICCPR.

The licence condition under section 11 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 does not impose 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 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 CSP (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 provide that where no agreement is made between Telstra and a retail CSP 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. This data includes 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 be have medical alarms, fire alarms, lift alarms or other over the-top services; and
- to estimate installation capacity.

Other safeguards protecting disclosed information

The licence condition under section 11 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 a Permitted Purpose (as defined). NBN Co is expected to provide Telstra with contractual commitments to ensure that the information is only used for a 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.

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 objectives of each of the relevant sections.