

## **EXPLANATORY STATEMENT**

*Telecommunications Act 1997*

*Telecommunications (Carrier Licence Exemption) Determination 2011 (No. 1)*

Issued by the authority of the Minister for Broadband, Communications  
and the Digital Economy

### **Legislative Authority**

Paragraph 51(1)(c) of the *Telecommunications Act 1997* (the Act) enables the Minister to determine that section 42 of the Act does not apply in relation to a specified use of a network.

Section 42 of the Act provides that a network unit must not be used to supply a carriage service to the public without a carrier licence or a nominated carrier declaration (which enables a nominated telecommunications carrier to assume the responsibilities imposed on another telecommunications carrier in relation to specified network units).

### **Purpose**

The purpose of the *Telecommunications (Carrier Licence Exemption) Determination 2011 (No. 1)* (the Determination) is to exempt a specified use of designated radiocommunications facilities owned or operated by Queensland Rail Limited (Queensland Rail) and related bodies corporate of Queensland Rail, from the licensing requirements of section 42 of the Act. The specified use relates to the provision of free wireless internet services for passengers aboard trains owned or operated by Queensland Rail. This exemption is considered necessary to provide Queensland Rail with regulatory certainty to support its investment in infrastructure which will be used to provide wireless internet train services on its passenger rail network. It is a targeted exemption granted to Queensland Rail for the supply of wireless internet services solely on a non-commercial basis as an ancillary or incidental feature of its customers' rail journey.

The Determination provides that, from the date of commencement of the Determination and until 31 December 2021, section 42 of the Act does not apply to the use of a Designated Wireless Train Network (the communications infrastructure from a Queensland Rail train) to provide passengers on trains owned or operated by Queensland Rail with Permitted Wireless Services. The exemption is granted for a ten year period to provide Queensland Rail with regulatory certainty to support its investment.

## **Background**

Queensland Rail is a government owned corporation in Queensland. One of its key functions is the operation of passenger rail services throughout Queensland. In August 2011, Queensland Rail approached the Minister seeking an exemption under section 51 of the Act to provide it with greater regulatory certainty as it rolls out wireless internet services to passengers on its rail network.

In considering whether to grant an exemption, the Minister has taken into account the following:

- the views of the Australian Communications and Media Authority (ACMA);
- the scope and duration of the exemption;
- potential competition and economic effects;
- the impact of not imposing carrier licensing obligations on a particular network unit, or owner or use of a network unit, including revenue losses to the Government and universal service contributions; and
- regulatory compliance costs.

Specifically, the Minister has taken into account that Queensland Rail will supply wireless internet services to passengers as part of their train journey, and will not levy any charge additional to the ticket price for this supply. The Minister does not believe that the provision of these services will have a significant competitive impact on the telecommunications market, nor will regulatory obligations, such as universal service contributions, be impacted.

Therefore, on balance, it is considered appropriate to grant an exemption from licensing under paragraph 51(1)(c) of the Act in respect of Permitted Wireless Services supplied by Queensland Rail using its Designated Wireless Network.

## **Consultation**

The Determination has been prepared in consultation with the ACMA and Queensland Rail. The draft Determination was published on the Department of Broadband, Communications and the Digital Economy's website for consultation. No comments were received.

The Determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Details of the accompanying Determination are set out in the [Attachment](#).

**Details of the *Telecommunications (Carrier Licence Exemption) Determination 2011 (No. 1)***

**Clause 1 – Name of the Determination**

Clause 1 of the Determination provides that the name of the Determination is the *Telecommunications (Carrier Licence Exemption) Determination 2011 (No. 1)*.

**Clause 2 – Commencement**

Clause 2 provides that the Determination commences on the day after it is registered on the Federal Register of Legislative Instruments.

**Clause 3 – Definitions**

Clause 3 establishes the key definitions used in the Determination.

The term *Act* is defined by reference to the *Telecommunications Act 1997* (Cth).

The term *Designated Wireless Train Network* defines those designated radiocommunications facilities situated in Queensland, owned or operated by Queensland Rail, for use to supply the Permitted Wireless Services.

The term *Permitted Wireless Services* is defined by reference to a wireless carriage service that is wholly or principally for use by end-users situated in a train owned or operated by Queensland Rail. This definition recognises the primary purpose of the provision of wireless internet services for passengers aboard Queensland Rail trains. It does not preclude incidental access to Permitted Wireless Services by persons outside a train owned or operated by Queensland Rail.

The term *Queensland Rail* is defined by reference to Queensland Rail Limited (ACN 132 181 090).

The term *Queensland Rail Related Body Corporate* refers to a related body corporate of Queensland Rail (within the meaning of section 50 of the *Corporations Act 2001* (Cth)).

To assist the reader, a note is inserted at the end of the clause identifying that certain terms, such as *carriage service*, have the same meaning as in section 7 of the Act.

#### **Clause 4 – Exemption**

Clause 4 provides an exemption to Queensland Rail or any Queensland Rail Related Body Corporate, from the requirements of section 42 of the Act. The exemption enables Queensland Rail or any Queensland Rail Related Body Corporate to use the Designated Wireless Train Network to supply Permitted Wireless Services in specified circumstances.

Paragraph 4(b) sets out two conditions to the exemption. The supply of the wireless internet services must be provided on a non-commercial basis, at no additional cost to the end-users. In other words, there should be no cost for a passenger aboard a Queensland Rail train wishing to use the wireless internet services, additional to the applicable fare that the passenger pays to travel on the train.

The wireless internet services that Queensland Rail or a Queensland Rail Related Body Corporate supply must also be incidental or ancillary to the primary purpose of services for the transportation of passengers on trains owned or operated by Queensland Rail or any Queensland Rail Related Body Corporate on the Queensland Rail network. This is intended to cover all types of passenger train services (e.g. commuter, regional etc.)

#### **Clause 5 – Cessation**

Clause 5 provides that the Determination will cease on 31 December 2021.