

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Communications, Urban Infrastructure, Cities and the Arts

Telecommunications Act 1997

Telecommunications (Carrier Licence Exemption—Use for specified Queensland rail and electricity services) Determination 2021

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 unit.

Section 42 of the Act prohibits the use of network units to supply carriage services 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 entity in relation to specified network units).

Purpose

The purpose of the *Telecommunications (Carrier Licence Exemption—Use for specified Queensland rail and electricity services) Determination 2021* (the Determination) is to exempt specified uses of network units owned by Aurizon Holdings Limited (Aurizon), Queensland Rail Limited (Queensland Rail), Queensland Treasury Holdings Pty Ltd (QTH), and any related bodies corporate ('the rail-related group of companies'), and Queensland Electricity Transmission Corporation Limited (Powerlink), from section 42 of the Act. The exemption has the technical effect of removing the requirement for these telecommunications infrastructure (network unit) owners to hold a carrier licence or arrange for a nominated carrier declaration to be held in respect of the use of the network units.

The determination continues the exemption that has been in place since 2012 and is considered necessary as subjecting the rail-related group of companies and Powerlink to carrier licence obligations would not contribute to achieving the objectives of the Act.

In reliance of subsection 33(3) of the *Acts Interpretation Act 1901*, the Determination repeals the *Telecommunications (Carrier Licence Exemption) Determination 2012 (No. 1)* (the 2012 Determination) which served the same purpose of granting an exemption. The 2012 Determination was due to expire on 1 July 2021. Unlike the 2012 Determination, the replacement Determination attaches annual reporting conditions to the exemptions to ensure the use of the infrastructure remains within the scope of the exemptions. The exemption has a two year duration. Parliament is considering the *Security Legislation Amendment (Critical Infrastructure) Bill 2020*, and the two year limit will allow for the instrument to be re-evaluated in light of any interactions with that bill if it is passed.

The determination enables Powerlink and the rail-related group of companies to continue the practice of sharing communications network infrastructure for the purpose of carrying on their respective electricity transmission and railway businesses. It eliminates the need to

duplicate costly infrastructure, improves the management and safety of rail and electricity assets and results in financial benefits for the entities involved, and their customers.

Background

The then Communications Minister made the 2012 Determination following the 2010 restructuring of QR Limited into Queensland Rail and QR National.

In making the 2012 Determination, the then Minister considered that it was appropriate for the sharing of infrastructure to continue unhindered, as it would not adversely affect the long-term interests of end-users to grant such an exemption, nor would such an exemption have anti-competitive effects on the supply of telecommunications services in Queensland.

The 2010 restructure split QR Limited into Queensland Passenger (which is now known as 'Queensland Rail') and QR National (which is now known as 'Aurizon Holdings Limited'). The key functions of these companies can be described currently, as follows:

- Queensland Rail operates passenger rail services and fixed rail infrastructure, including network units, throughout Queensland.
- Aurizon and its related bodies corporate own and operate freight rail services throughout Australia and operate fixed rail infrastructure, including network units, leased from Queensland Rail and QTH. Aurizon also owns some network units.

As part of the restructure, network units previously owned by QR Limited and its subsidiaries were divided amongst QR National, Queensland Rail and QTH. That restructure resulted in 2012 Determination being made to reflect the new arrangements. Most of the network units operated by Aurizon or its subsidiaries continue to be owned by QTH. These network units are leased by QTH to a subsidiary of Aurizon pursuant to a lease agreement between the parties. The Determination continues the intention to capture leasing agreements that permit the use of network units for the purposes of section 42 of the Act.

Powerlink is a Queensland government owned corporation that owns, develops, operates and maintains Queensland's high-voltage electricity transmission network.

Powerlink, Queensland Rail and Aurizon operate backhaul fibre optic cable networks that are principally used for communications purposes associated with conducting their respective businesses. However, these companies also use each other's network units for the purposes of their respective businesses. Examples of uses include:

- undertaking monitoring of electricity load and capacity requirements;
- rail signalling; and
- communications for train services.

This shared use removes the need to duplicate costly infrastructure and allows the entities to operate in a cost-effective manner. This cross-utilisation of infrastructure is limited to infrastructure located in Queensland.

In granting this Determination, the Minister has taken into consideration:

- the views of the Australian Communications and Media Authority (ACMA);

- the views of the Department of Home Affairs;
- competition and economic effects;
- the impact of not imposing carrier licensing obligations on a particular network unit, or owner or use of network unit, including revenue losses to the Australian Government and universal service obligation contributions; and
- regulatory compliance costs.

A renewal of the carrier licence exemptions is considered appropriate because the reasons for granting the 2012 Determination have not altered in any significant respect. Further, the continuation of the exemption does not harm the long-term interests of end-users to grant this exemption.

The Determination is a legislative instrument for the purposes of the *Legislation Act 2003* (Cth) (Legislation Act).

Consultation

The Department consulted with the ACMA, the Department of Home Affairs, Powerlink, Aurizon and the rail-related group of companies in the development of this Determination.

Details of the accompanying Determination are set out in Attachment B.

ATTACHMENT A

Statement of Compatibility with Human Rights

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

Telecommunications (Carrier Licence Exemption—Use for specified Queensland rail and electricity services) Determination 2021

This Determination 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 Determination

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

The *Telecommunications (Carrier Licence Exemption—Use for specified Queensland rail and electricity services) Determination 2021* (the Determination) exempts specified uses of network units owned by Aurizon Holdings Limited, Queensland Rail Limited and Queensland Treasury Holdings Pty Ltd (or any related bodies corporate – collectively ‘the rail-related group of companies’), or Electricity Transmission Corporation Limited (Powerlink) from section 42. The specified uses relate to the supply of carriage services for the workings of train services and electricity. The effect of the determination is that these companies will not be required to have a carrier licence or nominated carrier declaration in respect of the inter-company use of their respective network units. The exemptions are made subject to annual reporting obligations, which are designed to assist with compliance and have a two year duration.

The Determination is in substantially the same terms as the *Telecommunications (Carrier Licence Exemption) Determination 2012 (No. 1)* (the 2012 Determination), which was to expire on 1 July 2021. The 2012 Determination is repealed by this Determination.

The Determination is intended to eliminate the need for duplicating infrastructure, and to improve the management and safety of rail and electricity assets, as the carrier licensing obligations are not considered appropriate. The specified exempt uses of network units provide regulatory certainty and do not raise any human rights issues.

Human rights implications

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

Conclusion

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

Details of the *Telecommunications (Carrier Licence Exemption—Use for specified Queensland rail and electricity services) Determination 2021*

Section 1 – Name of the Determination

Section 1 of the Determination provides that the name of the Determination is the *Telecommunications (Carrier Licence Exemption—Use for specified Queensland rail and electricity services) Determination 2021*.

Section 2 – Commencement

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

Section 3 – Authority

Section 3 provides that this instrument is made under paragraph 51(1)(c) of the *Telecommunications Act 1997*.

Section 4 – Repeal of this Instrument

Section 4 provides that this instrument will be repealed on 1 July 2023. This will allow for review of the instrument following the proposed passage of the *Security Legislation Amendment (Critical Infrastructure) Bill 2020*.

Section 5 – Definitions

Section 5 establishes the key definitions used in the Determination.

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

The term *Corporations Act* means the *Corporations Act 2001 (Cth)*.

The term *Designated Communications Infrastructure* is defined by reference to telecommunications infrastructure owned by the rail-related group of companies located in Queensland.

The term *Permitted Electricity-related Services* is defined by reference to carriage services provided to Powerlink, necessary or desirable for managing the generation, transmission, distribution or supply of electricity or the charging for the supply of electricity.

The term *Permitted Rail-related Services* is defined by reference to carriage services to any one or more of Aurizon, Queensland Rail or any of their related bodies corporate where such services are necessary or desirable for the workings of train services. QTH is not included in this definition as it does not operate train services and therefore does not require the use of carriage services provided by Powerlink.

The term ***Powerlink Communications Infrastructure*** is defined by reference to telecommunications infrastructure owned by Powerlink. Powerlink does not conduct operations interstate and accordingly, does not own any communications networks outside the State of Queensland. As such, this term is limited to telecommunications infrastructure within Queensland only.

Aurizon, Powerlink, QTH and Queensland Rail are identified by the legislation under which each is constituted and the respective Australian Company Number (ACN) of each company. Where applicable, the related trading name is also included.

The term ***related body corporate*** is defined as having the same meaning given under section 50 of the *Corporations Act 2001* (Cth).

The term ***report date*** is defined as meaning 30 May of a calendar year. This term is used in section 9 of the Instrument (that section imposes reporting obligations as at the applicable report date).

To aid the reader, a note is inserted at the beginning of the section identifying that the terms ***ACMA*** and ***carriage service*** have the same meaning as in section 7 of the Act.

Section 6 – Schedules

Section 6 affirms that each instrument that is specified in a Schedule to this instrument 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. This enables instruments specified in Schedules to this instrument to be compatible with this instrument.

Section 7 – Exemption: Designated Communications Infrastructure

Section 7 provides an exemption to the rail-related group of companies from the requirements of section 42 of the Act. It enables the rail-related group of companies to supply certain electricity-related carriage services to Powerlink. This exemption is made subject to the conditions set out in subsection 9(1) of the instrument.

Section 8 – Exemption: Powerlink Communication Infrastructure

Section 8 provides an exemption to Powerlink from the requirements of section 42 of the Act. The exemption enables Powerlink to supply the permitted rail-related carriage services to the rail-related group of companies. This exemption is made subject to the conditions set out in subsection 9(2) of the instrument.

Section 9 – Conditions

Section 9 sets out certain conditions of the exemption granted by sections 7 and 8 respectively.

Paragraph 9(1)(a) requires Aurizon to provide a report to ACMA within 30 days of each report date, detailing locations, technology types and users of Designated Communications Infrastructure. The intention is for there to be two annual reports submitted by Aurizon covering the required information as at 30 May 2022 and 30 May 2023 (each being report

dates), and those reports would be required to be submitted to the ACMA by 30 June 2022 and 30 June 2023.

The conditions in paragraph (2)(a) mirror those in paragraph (1)(a), however the reporting obligation is imposed on Powerlink and the reporting items cover the locations, technology types and users of Powerlink Communications Infrastructure as at the applicable report date. The same reporting timeframes apply, namely that the reports must be provided to the ACMA by 30 June 2022 and 30 June 2023.

These conditions assist with compliance and help ensure that the intent of this instrument is not being breached during the exemption period.

Schedule 1 – Repeals

Schedule 1 repeals in full the previous instrument, *Telecommunications (Carrier Licence Exemption) Determination 2012 (No. 1)*.