

## EXPLANATORY STATEMENT

*Telecommunications (Consumer Protection and Service Standards) Act 1999*

### **Telstra Carrier Charges — Price Control Arrangements, Notification and Disallowance Determination No. 1 of 2005 (Amendment No. 1 of 2014)**

Issued by the Authority of the Minister for Communications

#### **Authority**

The *Telstra Carrier Charges – Price Control Arrangements, Notification and Disallowance Determination No. 1 of 2005* (the Principal Determination) is made under subsections 154(1), 155(1) and 157(1) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the Act).

Subsection 154(1) of the Act enables the Minister to determine that specified Telstra Corporation Limited (Telstra) charges are subject to price control arrangements.

Paragraph 155(1)(a) of the Act enables the Minister to determine price-caps and other price controls to be applied in relation to a Telstra charge subject to price control arrangements. Paragraph 155(1)(b) enables the Minister to determine principles in accordance with which Telstra is to make alterations to charges subject to price control arrangements.

Subsection 157(1) of the Act enables the Minister to determine that specified Telstra charges are subject to notification and disallowance.

The *Telstra Carrier Charges — Price Control Arrangements, Notification and Disallowance Determination No. 1 of 2005 (Amendment No. 1 of 2014)* (the Amending Determination) amends certain provisions of the Principal Determination.

Subsection 33(3) of the *Acts Interpretation Act 1901* allows the Minister to amend the Principal Determination.

#### **Purpose**

The Amending Determination extends the expiry date of the price control arrangements made under the Principal Determination by one year, from 30 June 2014 to 30 June 2015. The roll-over provisions under clause 30 of the Principal Determination are similarly extended to apply from the new expiry date.

#### **Background**

The Principal Determination imposes retail price control arrangements on fixed-line services supplied by Telstra. These arrangements are due to expire on 30 June 2014.

In 2011/12, the Department conducted a comprehensive review of the price control framework. The Government concluded that, on balance, there was a valid case for reducing or removing the retail price controls over time but that it should be reviewed in a further two years having regard to the progress of the NBN rollout and the development of competition.

On 26 June 2012, the then Minister for Broadband, Communications and the Digital Economy made the *Telstra Carrier Charges — Price Control Arrangements, Notification and Disallowance Determination No. 1 of 2005 (Amendment No. 1 of 2012)*, amending the Principal Determination. This amendment extended the price control arrangements in force to 30 June 2014, exempting Telstra from price control arrangements over the NBN or equivalent wholesale-only networks and capped individual connection service products, in addition to some other changes.

The future viability of the retail price control arrangements is currently being assessed through three separate processes.

On 12 December 2013, the government announced the terms of reference for the independent cost-benefit analysis and review of regulation of the NBN. The review which is being led by Dr Michael Vertigan AC, included in its terms of reference in the context of NBN Co's pricing structure, an examination of the extent to which retail price controls should be continued. A consultation paper in respect of this report was publicly released on 24 March 2014 and closed on 14 April 2014. The Department is now reviewing submissions.

In addition to the Vertigan Review, the Department appointed a consultant to provide an economic analysis of the components of the retail price controls. The final report was received by the Department on 21 May 2014 and its analysis and recommendations are currently being considered.

The Department also consulted on a range of proposed telecommunications deregulatory measures, including retail price arrangements, via a public consultation paper which was released on 16 April 2014. A telecommunications deregulation stakeholder forum in relation to the proposed measures was subsequently held on 12 May 2014 and was attended by thirty key stakeholders from industry, consumer groups and government agencies. The Department is now assessing stakeholder feedback to progress these deregulatory measures.

In order to enable the conclusion of the above processes and provide the Government with sufficient opportunity to consider the findings of the processes, it is considered appropriate in the interim to extend the current retail price control arrangements for a further one year.

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

The Amending Determination commences on 30 June 2014, immediately before the expiration of the *Telstra Carrier Charges—Price Control Arrangements, Notification and Disallowance Determination No. 1 of 2005*.

## **Consultation**

The Department consulted Telstra, the Australian Competition and Consumer Commission and the Commonwealth Department of Education in respect to this instrument.

## **Regulatory impact**

The Office of Best Practice Regulation (the **OBPR**) has agreed that the regulatory changes arising from the Declaration are of minor regulatory impact and no further regulatory impact analysis is required. The OBPR regulatory impact statement exemption number is ID 2014/16983.

## **Statement of compatibility with human rights**

This statement of compatibility is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The *Telstra Carrier Charges – Price Control Arrangements, Notification and Disallowance Determination No. 1 of 2005* currently in force (the Principal Determination) is made under subsection 154(1), paragraphs 155(1)(a) and (b) and subsection 157(1) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the Act). The Principal Determination sets out price control arrangements for specified Telstra Corporation Limited (Telstra) services.

The *Telstra Carrier Charges – Price Control Arrangements, Notification and Disallowance Determination No. 1 of 2005 (Amendment No. 1 of 2014)* (the Amending Determination) amends the Principal Determination by extending the expiry date of the price control arrangements by one year until the end of 30 June 2015.

No human rights issues were raised during consultation undertaken in developing the draft Amending Determination. The amendments to the Principal Determination do not engage any applicable rights or freedoms.

This Amending 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*. It does not engage any of the applicable rights or freedoms and does not raise any human rights issues.

## **Notes on sections**

### **Section 1 - Name of Determination**

Section 1 provides that the name of the Determination is the *Telstra Carrier Charges — Price Control Arrangements, Notification and Disallowance Determination No. 1 of 2005 (Amendment No. 1 of 2014)*.

### **Section 2 - Commencement**

Section 2 provides that the Amending Determination commences on 30 June 2014, immediately before the Principal Determination expires. This ensures the continuity of the instrument.

### **Section 3 - Variation**

This section provides that the Principal Determination is amended as set out in the Schedule to the Amending Determination.

### **Section 4 - Expiry**

Once the Amending Determination has come into effect, it will have fulfilled its purpose (i.e. amended various provisions of the Principal Determination). Therefore, the amending instrument itself can be removed from the Federal Register of Legislative Instruments. Accordingly, a self-expiry provision has been included in the Amending Determination.

## **Schedule to the Amending Determination**

### ***Item 1 – clause 3 (Expiry)***

In order to give effect to a one year extension to the Principal Determination, Item 1 replaces the date ‘30 June 2014’ at clause 3 with the new date ‘30 June 2015’.

This amendment is consistent with the decision to defer making any changes to the retail price control arrangements until the three concurrent reviews of the retail price controls have been concluded and the Government has had the opportunity to consider the recommendations.

### ***Item 2 – paragraph 20(2)(c)***

Clause 20 of the Principal Determination enables Telstra to wholly or partly defer exercising its price-cap obligations to the following price-cap period. Subclause 20(2) specifies the circumstances in which the election may be made. Item 2 amends paragraph 20(2)(c) replacing reference to the ‘2013/2014 financial year’ with ‘2014/2015’ financial year to reflect the one year extension to the price control arrangements.

### ***Item 3 – subclause 22(2)***

### ***Item 4 – subclause 22(3)***

Clause 22 provides Telstra with credits for the subsequent financial year if it reduces prices by more than required by a price-cap. Subclause 22(2) ensures that no credits are

to carry over after the Principal Determination has expired. Item 3 of the Amending Determination amends the reference to the financial year to reflect the one year extension to the price control arrangements. The amendment to subclause 22(3) ensures that Telstra cannot accrue credits for price reductions in the 2013/2014 or the 2014/2015 financial years in respect of any connection service products.

***Item 5 – subclause 23(2)***

***Item 6 – subclause 23(3)***

Clause 23 of the Principal Determination relates to the reconciliation of price movements above the set price cap. As subclauses 23(2) and 23(3) of the Principal Determination each contain multiple references to relevant dates, for clarity and ease of description, both subclauses are omitted and replaced with new subclauses that incorporate updated date references. Specifically, all occurrences of the ‘2013/2014 financial year’ are updated to refer to the ‘2014/2015 financial year’ and similarly, all occurrences of the ‘2014/2015 financial year’ to the ‘2015/2016 financial year’. These changes are consistent with the one year extension to the price control arrangements. Apart from the date changes in this item, the substantive provisions of these subclauses remain unchanged.

***Item 7 – heading to Part 6***

***Item 8 – heading to clause 30***

Clause 30 of the Principal Determination enables certain provisions to continue to apply in the financial year immediately following the expiry of the Principal Determination as if it had not expired. Items 7 and 8 amend the headings to Part 6 and clause 30 of the Principal Determination respectively, to update references from the ‘2014/2015 financial year’ to the ‘2015/2016 financial year’. These amendments will ensure that the provisions listed in clause 30 will continue to apply in the 2015/16 financial year after expiry of the Principal Determination (as amended).