

## EXPLANATORY STATEMENT

Issued by the authority of the Minister for Communications

*Telecommunications Act 1997*

### ***Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 (Amendment No. 2 of 2014)***

#### **Legislative authority**

Subsection 63(2) of the *Telecommunications Act 1997* (the Act) provides that the Minister may declare that a particular carrier is subject to specified licence conditions.

Subsection 63(5) of the Act enables the Minister, by written instrument, to vary an instrument under subsection 63(2) of the Act. Subsection 63(13) of the Act provides that an instrument under subsection 63(5) is a disallowable instrument.

#### **Purpose**

The purpose of the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 (Amendment No. 2 of 2014)* (Amending Declaration) is to vary the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997* (Original Declaration) by:

- removing the requirement that Telstra Corporation Limited (Telstra) differentiate between certain charges if it supplies a rental telephone handset with a standard telephone service;
- amending aspects of the requirements relating to Telstra's Low-income Measures Assessment Committee (LIMAC) and Telstra's low-income package; and
- amending aspects of the priority assistance policy requirements.

#### **Background**

Telstra is subject to two classes of carrier licence conditions: the conditions specified in Schedule 1 to the Act and the conditions specified in the Original Declaration.

The Original Declaration was made on 24 June 1997 and came into force on 1 July 1997. The Original Declaration has since been varied by a number of amending declarations.

The Amending Declaration forms part of the Government's initiative to cut red tape.

The removal of the requirement that Telstra differentiate between certain charges if it supplies a rental telephone handset with a standard telephone service means that a single regulatory process – set out in *Telecommunications Consumer Protections Code* - applies to Telstra for charging for goods offered with a standard telephone service. (It also means that regulatory obligations in this area apply equally to all carriage service providers.)

The amendments to aspects of the requirements relating to LIMAC and Telstra's low-income package reduce red tape as they streamline a number of processes, such as the selection of new Committee members and certain reporting obligations, and therefore improve efficiency.

The amendments to aspects of the priority assistance policy requirements make clear that Telstra's priority assistance policy objectives only apply where a service is supplied using a local access network over which Telstra is in a position to exercise control. The amendments also streamline some of Telstra's reporting requirements.

### **Consultation**

Section 64 of the Act provides that before making an instrument under subsection 63(5) of the Act, the Minister must arrange for a draft version of the instrument to be provided to the licence holder and invite the holder to make submissions to the Minister on the draft. Consistent with this requirement, the Minister formally wrote to Telstra on 13 May 2014 regarding the proposed amendment of the licence conditions. Telstra replied to the Minister on 28 May 2014, providing input into the proposed amendments. The Department also consulted on the draft instrument with the Australian Communications and Media Authority (ACMA), the Australian Communications Consumer Action Network (ACCAN) and LIMAC.

### **Regulatory impact**

The Office of Best Practice Regulation has agreed that the changes arising from the Amending Declaration are minor and machinery in nature and that no further regulatory impact analysis is required.

### **Other details**

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

The Statement of Compatibility with Human Rights for the Amending Declaration is set out in **Attachment 1**.

Details of the accompanying Amending Declaration are set out in **Attachment 2**.

**Attachment 1****Statement of Compatibility with Human Rights**

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

***Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997  
(Amendment No. 2 of 2014)***

The *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 (Amendment No. 2 of 2014)* (the Amending Declaration) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Amending Declaration**

The carrier licence conditions to which Telstra Corporation Limited (Telstra) is subject include the conditions specified in the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997* (Original Declaration).

The Amending Declaration, which forms part of the Government's initiative to cut red tape, affects Telstra by making changes to the carriers licence conditions to which Telstra is subject under the Original Declaration. Specifically, the Amending Declaration:

- removes the requirement that Telstra differentiate between certain charges if it supplies a rental telephone handset with a standard telephone service so that a single regulatory process – set out in the *Telecommunications Consumer Protections Code* - applies to Telstra (and other carriage service providers) in this area;
- streamlines a number of processes relating to Telstra's Low-income Measures Assessment Committee and Telstra's low-income package, and therefore improves efficiency; and
- makes clear that Telstra's priority assistance policy objectives only apply where a service is supplied using a local access network over which Telstra is in a position to exercise control.

**Human rights implications**

The Amending Declaration does not engage any of the applicable rights or freedoms.

**Conclusion**

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

## Attachment 2

**Details of the Carrier Licence Conditions (Telstra Corporation Limited)  
Declaration 1997 (Amendment No. 2 of 2014)**

**Section 1: Name of Declaration**

Section 1 provides that the title of the Amending Declaration is the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 (Amendment No. 2 of 2014)*.

**Section 2: Commencement**

Section 2 provides that the Amending Declaration commences on the day after it is registered on the Federal Register of Legislative Instruments.

**Section 3: Variation**

Section 3 of the Amending Declaration provides that the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997* (Original Declaration) is amended as set out in the Schedule.

**Section 4: Expiry**

Once the Amending Declaration has come into effect, it will have fulfilled its purpose (i.e. removed and/or amended various provisions of the Original Declaration). Therefore, the Amending Declaration can itself be repealed. Accordingly, a self-repealing provision has been included in the Amending Declaration at section 4.

**Schedule to the Amending Declaration**

***Item 1: Clause 11 (Differential charging conditions)***

Item 1 of the Schedule removes the requirement in clause 11 of the Original Declaration that Telstra differentiate between certain charges if it supplies a rental telephone handset with a standard telephone service.

The original intention of clause 11 was to provide transparency for customers who rent a handset from Telstra to promote competition in the supply of handsets. The requirement was instituted at a time when Telstra had a monopoly on the supply and maintenance of rental handsets. Since that time there has been increased competition in the market and a significant number of customers now choose to purchase, rather than rent, a handset.

The *Telecommunications Consumer Protections Code*, which is an industry code for the purposes of Part 6 of the Act and applies equally to all carriage service providers (CSPs), requires CSPs that offer a good as a mandatory component of a bundle to differentiate between the charge for that good and the other components of the bundle. It is considered that this Code requirement is a sufficiently adequate means of regulatory intervention.

***Item 2: Subclause 19(3) (note) (Priority assistance arrangements)***

Item 2 of the Schedule updates the reference to Telstra's Community, Essential and Emergency Services Policy in the note to subclause 19(3) of the Original Declaration by removing the term 'draft'.

***Item 3: Clause 22 (Low-income measures)***

Clause 22 outlines the requirements relating to LIMAC and Telstra's low-income package. Item 3 of the Schedule repeals each of the current subclauses of clause 22 of the Original Declaration and substitutes new subclauses. The changes involve the removal of: spent provisions, the requirement for the Minister to approve LIMAC membership and certain reporting obligations. The changes do not alter the obligation for Telstra to maintain a low-income package or advisory committee.

New subclause 22(1) continues to require Telstra to offer products and arrangements to low-income consumers that have been endorsed by low-income consumer advocacy groups. It differs from former subclause 22(1) by removing spent reference to Telstra having to offer such a package by a certain date and notify the ACMA of the same, given that Telstra has had a low income package available to customers since 2002. Former subclause 22(3), which is similarly spent, is also removed.

New subclause 22(2) is in the same terms as the former subclause 22(3) and continues to require Telstra to comply with the low-income package as in force or existing from time to time.

New subclause 22(3) requires Telstra to maintain and adequately resource LIMAC, comprising representatives of low-income consumer advocacy groups that work on behalf of people on a low income. There is no longer a requirement that LIMAC membership be approved by the Minister, as was the case under former subclause 22(4).

New subclause 22(4) provides that the role of LIMAC is to assess proposed changes to the low-income package or to the marketing plan for the low-income package. LIMAC is no longer required to report annually to the Minister on the effectiveness of the low-income package and of its marketing by Telstra, as was the case under former paragraph 22(5)(b).

New subclause 22(5), which is to the same effect as former subclause 22(6), requires Telstra to have in place a LIMAC-approved marketing plan for making low-income consumers aware of the low-income package. New subclause 22(6), which requires Telstra to seek and consider the views of LIMAC before it makes any significant change to the low-income package, is in the same terms as former subclause 22(7).

The requirement in former subclause 22(8), that Telstra provide the ACMA with a revised version of the low-income package if significant changes are made, is removed. This requirement is considered no longer necessary given the package is publically available.

***Item 4: After item (1A) of Schedule 4 (Definitions)***

Item 4 of the Schedule inserts new definitions in Schedule 4 to the Original Declaration at new item (1B), which are relevant to the amendments to Schedule 4 made by items 5, 6 and 8 of this Schedule.

Paragraph 1B(a) provides that the rules set out in section 577Q of the Act apply for determining whether Telstra is in a position to exercise control of a local access network. This is not a new definition. It was originally set out in paragraph 9(c) of Schedule 4 but has been moved given that, following the commencement of this Amending Declaration, the application of the definition will extend beyond item 9 of Schedule 4.

Paragraph 1B(b) provides that ‘local access network’ has the meaning generally accepted within the telecommunications industry. A local access network would include drop cables and distribution lines, and would be largely analogous to the current customer access network. It is not intended that backhaul or transmission lines would be considered part of a ‘local access network’.

***Item 5: The words immediately before item (6) of Schedule 4 (Priority assistance – Connections)***

Items 6 to 8 of Schedule 4 to the Original Declaration specify certain objectives Telstra’s priority assistance policy must satisfy in relation to connecting a standard telephone service at a residence of a priority customer. The amendment made by item 5 of the Schedule clarifies that these priority assistance policy objectives only apply where a service is supplied using a local access network over which Telstra is in a position to exercise control.

***Item 6: Paragraph (9)(a) of Schedule 4 (Priority assistance – Service reliability)***  
***Item 7: Paragraph (9)(c) of Schedule 4 (Priority assistance – Service reliability)***

Item 9 of Schedule 4 to the Original Declaration specifies Telstra’s priority assistance policy must satisfy the objective that priority customers are to receive enhanced service reliability and fault rectification. Item 6 of the Schedule amends paragraph 9(a) by omitting the words “telecommunications network” and substituting the words “local access network”. This amendment clarifies that the objective in the paragraph only applies if the standard telephone service of the customer is supplied using a local access network (rather than a “telecommunications network”) over which Telstra is in a position to exercise control.

Item 7 of the Schedule repeals paragraph 9(c) of Schedule 4 to the Original Declaration, which provided a definition of when the licensee is in a position to exercise control of a network. This definition has been inserted into new item (1B) of Schedule 4, together with a definition of ‘local access network’.

***Item 8: The words immediately before item (10) of Schedule 4 (Priority assistance – Fault Rectification)***

Items 10 to 12 of Schedule 4 to the Original Declaration specify objectives Telstra's priority assistance policy must satisfy in relation to fault rectification where all standard telephone services supplied to, and solely for use at, the place of residence of a priority customer are inoperative. The amendment made by item 8 clarifies that these objectives only apply where a service is supplied using a local access network over which Telstra is in a position to exercise control.

***Item 9: Item (20) of Schedule 4 (Priority assistance – To be provided in exceptional circumstances)***

Item 9 of the Schedule amends the priority assistance policy objective in item 20 of Schedule 4 to the Original Declaration by substituting 'the CSG Standard' with reference to 'USO standard marketing plan'. The USO standard marketing plan sets out timeframes for connecting and repairing standard telephone services and payphones. This plan has effectively been made redundant by the *Telecommunications (Customer Service Guarantee) Standard 2011* and the various payphone instruments that cover these requirements.

***Item 10: Subparagraph 20(b)(ii) of Schedule 4 (Priority assistance – To be provided in exceptional circumstances)***

Item 20 of Schedule 4 to the Original Declaration specifies certain objectives the licensee's priority assistance policy must satisfy in relation to the provision of priority assistance in exceptional circumstances, and operates where Telstra's ability to supply and repair a standard telephone service is affected by circumstances beyond its control. Subparagraph 20(b)(ii) requires Telstra to retain certain records where an interim service cannot be provided. Item 10 of the Schedule amends this subparagraph by removing the requirement for Telstra to report to the ACMA quarterly about timeframes that could not be met for service connection and fault repair for priority customers, and the circumstances in which an interim priority service could not be offered to a priority customer.