

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Communications

Telecommunications Act 1997

Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 (Amendment No.3 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 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. 3 of 2014)* (the Amending Declaration) is to vary the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997* (Original Declaration) by removing the requirement for the development of a local presence plan, associated annual reporting requirements and other associated matters, and the spent provisions related to the preliminary requirements about local presence plans.

Background

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 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.

Clause 32 of the Original Declaration came into effect on 4 August 2005 and was introduced in response to the then 2002 *Regional Telecommunications Inquiry* which recommended that a licence condition be imposed on Telstra to maintain a local presence in rural, regional and remote Australia, in recognition of its role as the primary universal service provider. Subclause 32(1) imposes the obligation upon Telstra to maintain an ongoing local presence in regional, rural and remote Australia.

In accordance with the obligation, under subclause 32(1) of the Original Declaration, to maintain a local presence, every three years, Telstra is required to submit a draft

local presence plan to the Minister for Communications for approval before expiration of the old plan. Each replacement plan involves the following activities:

- stakeholder consultations for a minimum of six weeks every three years in order to formulate the local presence plan (subclauses 32 (11)-(12));
- annual reporting to the Minister for Communications and the Australian Communications and Media Authority (ACMA) on progress against the local presence plan (subclauses 32 (39)-(40)); and
- publishing the local presence plan and annual review on Telstra's website and making copies of the plan (or extracts of it) available for inspection, or inspection and purchase) (subclauses 32 (36)-(38)).

The local presence plan under clause 32 of the Original Declaration is subject to the following two caveats that it: (a) must be broadly compatible with Telstra's overall commercial interests; and (b) must not be unduly prescriptive and does not impose undue financial and administrative burdens on Telstra.

No other carrier is bound by these requirements. Over the past decade, Telstra has continued to have the strongest rural and regional presence of any Australian telecommunications provider. The requirements to develop three yearly local presence plans and the reporting requirements under clause 32 of the Original Declaration have not delivered any practical measurable effect on Telstra's services or business model in regional, rural and remote Australia.

Telstra continues to maintain a strong presence in regional, rural and remote Australia as a part of its core business and marketing strategy. For example, Telstra's mobile coverage that covers 99.3% of the Australian population forms part of its competitive strategy in the mobile market. Telstra has also broadened the scope of its 4G network to better cater for increasing mobile use in regional areas. In addition, the legislative requirements imposed on Telstra through the universal service obligation (USO) under Part 2 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and other instruments ensure that regional consumer safeguards are still in place.

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 a submission to the Minister on the draft. Consistent with this requirement, the Minister formally wrote to Telstra on 9 September 2014 regarding the proposed Amending Declaration. Telstra replied to the Minister on 15 September, stating its support for the proposed Amending Declaration.

The Department also consulted the Australian Communications and Media Authority (the ACMA) and the Australian Communications Consumer Action Network, the National Farmer's Federation, the Country Women's Association of New South Wales, the Isolated Children's Parents' Association of Australia, and the Centre for Appropriate Technology, on the draft Amending Declaration.

Regulation Impact

The Office of Best Practice Regulation advised that a Regulation Impact Statement is not 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 in 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. 3 of 2014)***

The *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 (Amendment No. 3 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 Amendment Declaration

Telstra Corporation Limited (Telstra) is currently subject to two classes of carrier licence conditions: standard licence conditions under the *Telecommunications Act 1997*; and the specific licence conditions under the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997* (Original Declaration).

The purpose of the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 (Amendment No. 3 of 2014)* (the Amending Declaration) is to remove from the Original Declaration the requirement for Telstra to develop three-yearly local presence plans and other associated matters. As Telstra continues to maintain a strong presence in regional, rural and remote as part of its core business and marketing strategy, the requirement for three-yearly plans (and associated reporting measures) is considered unduly burdensome and unnecessary. The amendments will not in any way diminish Telstra's requirement to maintain a local presence in all regional, rural and remote Australia which will remain a condition of Telstra's carrier licence.

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. 3 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. 3 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 varied in the terms set out in the Schedule to the Amending Declaration.

Section 4 – Expiry

Once the Amending Declaration has come into effect, it will have fulfilled its purpose (i.e. removed the various clauses from the Original Declaration). 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 Declaration at section 4.

Schedule to the Amending Declaration

Item 1 of the Schedule removes subclauses 32(2) to (10) (inclusive). These provisions dealt with preliminary requirements about local presence plans which are now spent.

Item 2 of the Schedule removes subclauses 32(11) to (12) (inclusive), which dealt with the public consultation requirements on draft local presence plan.

Item 3 of the Schedule removes subclauses 32(13) to (20) (inclusive) that related to the ministerial consideration of draft local presence plan.

Item 4 of the Schedule removes subclauses 32(21) to (23) (inclusive), which related to the notification of the Minister's decision.

Item 5 of the Schedule removes subclauses 32(24) to (29) (inclusive) that dealt with the variation of approved local presence plan.

Item 6 of the Schedule removes subclauses 32(30) and (31) that related to the Minister may direct variation or replacement of approved local presence plan.

Item 7 of the Schedule removes subclause 32(32), which related to the new draft local presence plan to be submitted before expiry of old plan.

Item 8 of the Schedule removes subclauses 32(33) and (34) that dealt with the replacement of approved local presence plan.

Item 9 of the Schedule removes subclause 32(35) that relates to the compliance with approved local presence plan.

Item 10 of the Schedule removes subclauses 32(36) to (38) (inclusive), which related to the approved local presence plan to be made available to the public.

Item 11 of the Schedule removes subclauses 32(39) to (40) (inclusive), which dealt with the requirements related to the annual compliance reports.

Items 2 to 11 of the Schedule form part of the Australian Government's initiative to reduce red tape. Accordingly, Item 2 to 11 of the Schedule will result in the removal of subclauses 32(11) to (40) (inclusive) of the Original Declaration, which means that the administrative costs incurred and burdened by Telstra will be reduced, without diminishing the Australian Government's public policy objective of ensuring that a local presence is maintained by Telstra in regional, rural and remote Australia.

As such, Telstra will remain obligated to maintain an ongoing local presence in regional, rural and remote Australia, as a part of its carrier licence conditions, under subclause 32(1) of the Original Declaration.