

Explanatory Note

Issued by the Authority of the Minister for Communications, Cyber Safety and the Arts

Telecommunications Act 1997

Telecommunications (Network Exemption—Telstra South Brisbane Network) Instrument 2012 (Amendment No.1 of 2020)

Authority

Subsection 141A(1) of the *Telecommunications Act 1997* (the Act) conferred power on the Minister for Communications to exempt specified local access networks from the Layer 2 bitstream requirements of section 141 of the Act¹. The *Telecommunications Legislation Amendment (Competition and Consumer) Act 2020* repealed Part 7 of the Act containing section 141. However, subitem 27(1) of Schedule 1 to the *Telecommunications Legislation Amendment (Competition and Consumer) Act 2020* provides for existing exemption instruments, including their associated conditions, granted under s141A(1) of Part 7 of the Act to continue to have effect as if they had been made under subsection 144(1) of the Act.

Subsection 144(1) of the Act confers power on the Minister to exempt specified local access networks from the wholesale-only requirements of section 143 of the Act.

Subsection 144(4) provides that the related exemption instrument may be unconditional or subject to such conditions (if any) as are specified in the instrument.

This Instrument is not a legislative instrument for the purposes of the *Legislation Act 2003* (see subsection 144(6) of the Act).

Purpose

The purpose of this amendment is to provide an extension to the exemptions granted through the *Telecommunications (Network Exemption—Telstra South Brisbane Network) Instrument 2012* for Telstra Corporation Ltd (ACN 051 775 556) from the requirements of Parts 7 and 8 of the *Telecommunications Act 1997* for its South Brisbane network.

¹ This section was repealed by the *Telecommunications Legislation Amendment (Competition and Consumer) Act 2020* on 26 May 2020. However, subsection 27(1) of Schedule 1 of the *Telecommunications Legislation Amendment (Competition and Consumer) Act 2020* establishes that existing instruments in force under section 141A(1) of the Act continue as if made under section 144(1) of the Act, and that each reference in the instrument to section 141 of the Act were a reference to section 143 of the Act.

Background

Telstra first requested exemptions from Part 7 and Part 8 of the Act for the South Brisbane fibre-to-the-premises network in 2011. Its original request was granted by the then Minister for Broadband, Communications and the Digital Economy on 9 January 2012, taking effect from 12 April 2012 through the *Telecommunications (Network Exemption–Telstra South Brisbane Network) Instrument 2012*.

The original cessation date for the instrument was 31 December 2013. On 18 December 2013, the then Minister for Communications extended Telstra's exemptions from Parts 7 and 8 of the Act until 31 December 2015. On 23 December 2015 the exemptions were further extended by the Minister for Communications until the 'Designated Day' – which at the time was 1 July 2018. At present, the 'Designated Day' is 1 July 2020.

On 8 April 2020, Telstra requested an extension to the Parts 7 and 8 exemptions until 90 days following the completion of transition to any new owner or 1 July 2023 if Telstra still owns the network. In accordance with subsection 144(5) of the Act, the Minister wrote to the Chairs of the Australian Competition and Consumer Commission (ACCC) and the Australian Communications and Media Authority (ACMA) to seek their comments on Telstra's extension request. On 2 June 2020, the ACCC and the ACMA separately provided advice regarding Telstra's request.

In addition, on 20 May 2020, the Department of Infrastructure, Transport, Regional Development and Communications requested public submissions by 5 June 2020 on behalf of the Minister to gauge the views of potentially affected parties.

The Minister subsequently decided to grant exemptions until the earlier of the following:

- 90 days following the completion date of system migrations to any new owner, and
- 1 July 2022, if Telstra still owns the network

The Minister has amended the conditions of the exemption to require Telstra to report to the ACCC and the Minister every six months on the transition of the network to any future owner, including details of the sale process and the numbers of lines that have been transferred to a new owner.

While Telstra's South Brisbane network is exempted from the requirements of the former Part 7 and the current Part 8 of the *Telecommunications Act 1997*, the ACCC Superfast Broadband Access Service (SBAS) declaration and associated active access determination require Telstra to offer a Fibre Access Broadband Service under specific price and non-price terms and conditions.

In deciding to extend the exemption, the Minister noted weak competition on the Telstra South Brisbane network. The decision to grant the exemption reflects that Telstra's continued operation of the network is required to prevent service disruption to end-users in the area. The Minister acknowledged the frustrations about service quality apparent in the public submissions received, noting that maintaining services to end-users was of utmost importance. Telstra will not be in a position to comply with Part 7 and Part 8 by 1 July 2020. Forcing Telstra to comply by this date may force Telstra to cease services, which would represent a poor outcome for end-users.

The limited duration of the exemption is intended to provide Telstra with a final window of opportunity to either become compliant with Part 8 (as amended by the *Telecommunications Legislation Amendment (Competition and Consumer) Act 2020*) or sell the network to an operator who can comply. In this context, the Minister took into account advice from Telstra that it intends to make no more extension requests.

The Statutory Infrastructure Provider (SIP) obligations introduced through the *Telecommunications Legislation Amendment (Competition and Consumer) Act 2020* are relevant to addressing consumer concerns about the exemptions. From 1 July 2020, a carrier which is the sole provider of telecommunications infrastructure in a development may be the SIP for that development. The wholesale services that the SIP is required to offer must meet reference standards and retail providers should be able to supply peak download speeds of at least 25 Megabits per second and peak upload speeds of at least 5 Megabits per second. The Minister will also be able to make standards, rules and benchmarks for SIPs.

Clause 1 – Name of Exemption Instrument

Clause 1 provides that the name of the Instrument is the *Telecommunications (Local Access Lines Exemption—Telstra South Brisbane Network) Instrument 2012 Amendment No.1 of 2020*.

Clause 2 – Commencement

Clause 2 provides that the instrument will commence on the day that it is signed by the Minister.

Clause 3 – Amendments

Clause 3 notes that the *Telecommunications (Network Exemption—Telstra South Brisbane Network) Instrument 2012* is amended as set out in the Schedule to the Instrument.

Schedule – Amendments

Clause 1 of the Schedule replaces the cessation date of the *Telecommunications (Network Exemption—Telstra South Brisbane Network) Instrument 2012*, which had previously been the designated day, with:

- *the day which is 90 days after the last of the customer transition completion date of the Telstra South Brisbane Network; and*
- *1 July 2022, if Telstra owns the Telstra South Brisbane Network on that day.*

Clause 2 of the Schedule omits the reference to the designated day, which is not required given that this cessation date has been removed from the instrument by clause 1 of the Schedule.

Clause 3 of the Schedule amends the definition of ‘Telstra South Brisbane Network’ in the definitions clause to specify that the definition applies to not only the networks owned by Telstra but also to networks which Telstra is in a position to control. This reflects that the exemptions would continue to apply if Telstra transferred ownership of a network to another party and continued to control the network.

Clause 4 of the Schedule introduces definitions for new terms introduced into the *Telecommunications (Network Exemption—Telstra South Brisbane Network) Instrument 2012*.

Specifically, the definition of ‘customer transition completion date’ is in respect of the Telstra South Brisbane Network, the day on which Telstra completes disconnection of all Telstra-Equipped Services supplied to premises connected to the Telstra South Brisbane Network. The new definition of ‘Telstra-Equipped Services’ is carriage services which Telstra, while it is in a position to exercise control of the Telstra South Brisbane Network, supplies to itself or to access seekers at premises connected to the Telstra South Brisbane Network, including the Fibre Access Broadband Service.

Clause 5 of the Schedule amends the note immediately after Clause 3, specifically, the term ‘designated day’ is removed because it is no longer applicable (in accordance with the amendment made by clause 1 of the Schedule), and a new term ‘a person being in a position to exercise control over a network’ is added in its place.

Clause 6 of the Schedule makes a consequential amendment to subclause (1) to recognise there is an additional condition of the exemption inserted by clause 7.

Clause 7 of the Schedule adds a new condition to clause 4. Specifically, the first new condition set out in subclause 4(3) adds a new requirement on Telstra to report to the ACCC and the Minister specific details of its deployment every six months commencing on 15 July 2020 until the cessation of the instrument, and within 30 days of a written request from the ACCC to do so.