

Commonwealth of Australia

Telecommunications Act 1997

**Telecommunications (Network Exemption—
Telstra South Brisbane Network)
Instrument 2012
as amended**

Made under subsection 141A(1) and subsection 144(1) of the
Telecommunications Act 1997.

This compilation was prepared on [7 June 2018] taking into account
amendments made on [31 May 2018].

Prepared by the Department of Communications and the Arts

1 Name of Instrument

This Instrument is the *Telecommunications (Network Exemption— Telstra South Brisbane Network) Instrument 2012*.

2 Cessation

This Instrument ceases to have effect on the:

- (a) designated day subject to subclause (b), the day which is 90 days after the customer transition completion date; or

[*explanatory note of proposed Telstra change: if Telstra is able to complete a sale of the networks, a short ‘run-on’ period after completion of transition from the Telstra systems to the new owner’s systems will enable a winding down of the Telstra involvement in the running of the network, including to resolve any ‘in-flight’ orders and other edge cases.*]

- (b) 1 July 2023, if Telstra owns the Telstra South Brisbane Network at that date.

Note 1 This instrument commenced on 12 April 2012

Note 2 ~~The 'designated day' is 1 January 2020, as specified by the Minister by instrument under paragraph 577A(10)(b) of the Telecommunications Act 1997.~~

3 Definitions

In this Instrument:

Act means the *Telecommunications Act 1997*.

access seeker has the same meaning as in Part XIC of the *Competition and Consumer Act 2010*.

declared service has the same meaning as in Part XIC of the *Competition and Consumer Act 2010*.

Fibre Access Broadband Service means a carriage service that:

- (a) is offered to be supplied on a wholesale basis;
- (b) is supplied by means of an optical fibre line; and
- (c) is offered to be supplied at each of the following maximum transmission speeds:
 - (i) download transmission speed of 8Mbps and upload transmission speed of 384kbps;
 - (ii) download transmission speed of 30Mbps and upload transmission speed of 1Mbps;
 - (iii) download transmission speed of 100Mbps and upload transmission speed of 5Mbps; and
- (d) has the following configurations:
 - (i) a 'best effort' or non-prioritised service, as characterised by the Differentiated Services Code Point Default Forwarding per-hop behaviour; and
 - (ii) connectivity made with static Layer 2 Tunnelling Protocol (L2TP) tunnels and Broadband Virtual Local Area Networks giving direct access to end user sessions; and
 - (iii) end-user sessions are aggregated together in the Telstra network via static L2TP tunnels supplied over Ethernet.

customer transition completion date means the date by which Telstra completes disconnection of all Telstra-Equipped Services supplied to premises connected to the Telstra South Brisbane Network.

Telstra-Equipped Services means 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.

[note explaining the Telstra proposed change: If Telstra is able to complete a sale of the networks, Telstra will be supplying carriage services before and after customer transition: before customer transition as the network operator and after customer transition as a wholesale customer of the new owner. It is therefore important to clearly identify the Telstra services which are to be disconnected by the customer transition completion date, and which will then trigger the exemption falling away. As Telstra will be using its systems and its equipment after customer transition, although at a different service layer of level (in the same way as would any RSP), defining the Telstra services to be disconnected by reference to Telstra-owned equipment or systems does not necessarily provide a clear definition. However, using the defined term 'in a position to control a network' will provide a bright line because, once a technology and system 'swap out' is completed, Telstra will no longer be in a position to control the network but will be in the same position as any other RSP].

Telstra South Brisbane Network means an optical fibre-based telecommunications network:

- (a) that is:
 - (i) owned by Telstra or over which Telstra is in a position to exercise control; and

[explanatory note of proposed Telstra change: If Telstra is able to complete a sale of the networks, there will need to be a transition period post sale during which Telstra will continue to operate the network while Telstra and the new owner 'swap out' the Telstra network equipment and connections to the Telstra OSS for the new owner's network equipment and connections to its own OSS. This continuing level of involvement by Telstra during the transition period is likely to mean that, within the meaning of section 155, Telstra is in a 'position to exercise control' of the network. Accordingly, Part 8 would apply and, as Telstra is vertically integrated, Telstra would be in breach of Part 8 if post sale Telstra continues to operate the network and provide customers with services until the transition to the new owner's network could be completed.

Part 7 does not use a control test but would be triggered in the transition period because the new owner permits the local access lines forming part of the transferred network to be used by Telstra to continue supplying the FAB service until the owner can commence supplying its own compliant layer 2 services.

However, using 'the control test' as a criterion for the eligibility of the network for the exemption under both Parts 7

and 8 will more narrowly confine the exemption to the specific circumstances of the transition period.]

- (b) which comprises:
- (i) a network located in the South Brisbane suburbs of Highgate Hill, West End, Dutton Park and Fairfield (as depicted in the map at Schedule 1 to this Instrument); and
 - (ii) local access lines or parts of local access lines located outside the areas specified in subparagraph (b)(i) necessary for the provision of carriage services to premises located within the areas specified in subparagraph (b)(i); and
- (c) which uses fibre-to-the-premises architecture.

Note By virtue of paragraph 46(1)(b) of the *Acts Interpretation Act 1901*, the following expressions have the same meaning as in the Act:

- *ACCC*
- *carriage service*
- ~~*designated day*~~
- *local access line*
- *optical fibre line*
- *telecommunications network*
- *Telstra*
- *A person being in a position to exercise control over a network*

4 Exemptions

- (1) Subject to the conditions set out in subclauses (2) and (3), and pursuant to subsection 141A(1) of the Act and 144(1) of the Act, the Telstra South Brisbane Network is exempt from sections 141 and 143 of the Act.
- (2) The exemptions are subject to the condition that, if a Fibre Access Broadband Service is not a declared service:
- (a) Telstra must offer and supply to access seekers, upon reasonable request, a Fibre Access Broadband Service over the Telstra South Brisbane Network; and
 - (c) Telstra must:
 - (i) publish on the wholesale section of its website, the terms and conditions (price and non-price) on which it offers and supplies the Fibre Access Broadband Service on the Telstra South Brisbane Network (*reference offer*); and
 - (ii) each time it enters into an agreement with an access seeker for the supply of Fibre Access Broadband Services on the Telstra South Brisbane Network, where the terms and conditions are not the same as those set out in reference offer, Telstra must

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provide to the ACCC within 14 days of entering into the agreement:

- (A) the identity of the parties to the agreement; and
 - (B) the differences between the terms and conditions set out in the agreement and the terms and conditions published on its website;
- (iii) each time it implements a material change to either the reference offer or the product specification for the Fibre Access Broadband Service, provide the following information to the ACCC within 14 days of implementing the change:
- (A) the nature of the change; and
 - (B) the date the change took effect.

Note 1 Paragraph 141A(4)(b) provides that an instrument made under subsection 141A(1) may be subject to such conditions as are specified in the instrument.

Note 2 Paragraph 144(4)(b) provides that an instrument made under subsection 144(1) may be subject to such conditions as are specified in the instrument.

- (3) The customer transition completion date must be no more than:
- (a) 27 months after Telstra ceases to own the Telstra South Brisbane Network; or
 - (b) the further period specified by the Minister.

[explanatory note for Telstra proposed change: Telstra acknowledges that if it is able to complete a sale of the networks, the end date for the exemption is not a fixed date and so there needs to be some certainty about the maximum timeframe within which customer transition is to be completed. Telstra anticipates that a customer transition period could take between 12 and 24 months. However, the customer transition period will very much depend on the resources, capability and development times required by a new owner. Telstra's experience of customer transitions also suggests that unanticipated issues and challenges will arise and that this may result in delays as solutions are developed. Telstra proposes some built-in flexibility by setting a basic period of two and a half years, but if major difficulties arise, the Minister has the power to give a further period.]

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65 Schedule 1 – Map

