

Explanatory Note

Issued by the Authority of the Minister for Communications, Urban Infrastructure, Cities and the Arts

Telecommunications Act 1997

Telecommunications (Network Exemption—TransACT Very Small Scale Networks) Instrument 2012 (Amendment No.1 of 2022)

Authority

Subsection 141A(1) of the *Telecommunications Act 1997* (the Act) conferred power on the Minister to exempt specified local access networks from the wholesale Layer 2 bitstream requirements of section 141 of the Act. The *Telecommunications Legislation Amendment (Competition and Consumer) Act 2020* repealed Part 7 of the Act containing section 141.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 subsection 141A(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 – TransACT Very Small Scale Networks) Instrument 2012* to TPG Telecom Ltd (ACN 096 304 620)(TPG) from the requirements of Part 8 of the *Telecommunications Act 1997* for certain superfast networks located in Canberra, Ballarat, Geelong and Mildura.

Background

TransACT was granted exemptions under Part 7 and Part 8 of the Act for its very small scale networks in 2011 by the then Minister on 10 April 2012, taking effect from 12 April 2012 through the *Telecommunications (Network Exemption – TransACT Very Small Scale Networks) Instrument 2012*. The original cessation date for the instrument was until the

Designated Day (as defined under s577A of the Act), which was 1 July 2018 at the time the exemption was granted. TransACT is now a subsidiary of TPG, and TPG is the ultimate controller of these exempted networks.¹

On 22 June 2020, the Minister extended the duration of the exemptions until the earlier of

- the day immediately after a functional separation undertaking or a deemed standard functional separation undertaking relating to local access lines forming part of a TransACT Very Small Scale Network first comes into force for the purposes of Part 8 of the Act; and
- the second anniversary of the day on which the TLA Act received the Royal Assent (which occurred on 25 May 2020), effectively making the backstop date the 25 May 2022.

On 17 December 2021, TPG requested an extension to the duration of the exemptions. 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 TPG's extension request.

By 4 March 2022, the ACCC and the ACMA separately provided advice regarding TPG's request. Neither the ACCC nor the ACMA opposed the extension. The ACMA noted that it is desirable to enable continuity of service to affected TPG Telecom customers in the period until the Functional Separation Undertaking has been considered. The ACCC supported the proposed 12 month extension and also proposed an alternative structure for extension, that being to extend the period by the lesser of 12 months or 6 months from the date that the ACCC accepts a functional separation undertaking under Part 8 from TPG covering the networks.

These views were considered, however, for administrative simplicity, a simple extension of the backstop date was preferred.

The Department of Infrastructure, Transport, Regional Development and Communications consulted (on behalf of the Minister) on the extension request with the public through a request for submissions through the Department's website. Response to the consultation was limited.

The Minister subsequently decided to extend the maximum duration of the exemptions by a further 12 months (ie. 25 May 2023).

¹ TransACT was acquired by iiNet in 2011. Subsequently, iiNet (and TransACT as its subsidiary) was acquired by TPG telecom in 2015. In July 2020, a merger between TPG and Vodaphone was completed. Each very small scale network extension connects no more than 100 premises to TPG's VDSL networks located in Canberra in the Australian Capital Territory and hybrid fibre-coaxial (HFC) networks located in Geelong, Ballarat and Mildura.

Clause 1 – Name of Exemption Instrument

This clause provides that the name of the Instrument is the *Telecommunications (Local Access Lines Exemption—TransACT Very Small Scale Networks) Instrument 2012 Amendment No.1 of 2022*.

Clause 2 – Commencement

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

Claus 3 – Amendments

Clause 3 notes that the *Telecommunications (Network Exemption—TransACT Very Small Scale Networks) Instrument 2012* (the Instrument) (incorporating amendments up to 22 June 2022) is amended as set out in the Schedule to the Instrument.

Schedule – Amendments

Item 1 of the Schedule replaces the second reference date at paragraph (b) of the cessation clause in the Instrument, which had previously been the 25 May 2022, with a replacement reference date, being 25 May 2023.

The effect of this amendment is that the maximum duration of the exemption Instrument (and the networks covered by it) by a further 12 months. The amended cessation provision now provides for cessation on the earlier of two days occurring in the future, being the earlier of:

- the date when either a functional separation undertaking; or a deemed standard functional separation undertaking covering local access lines forming part of a Victorian Very Small Scale Network or an ACT Very Small Scale Network, first comes into force for the purposes of Part 8 of the Act; and
- the end of 25 May 2023.

Item 2, Item 3 and Item 4 of the Schedule make minor amendments to the Instrument by removing references to the now repealed sections 141 and 141A(1) of the Act). These changes will remove ambiguity on the facts of the instrument relating to repealed Part 7.