

# Deed of Novation

Dated

Telstra Limited ACN 086 174 781 ("**Incoming Party**")

Telstra Corporation Limited ACN 051 775 556 ("**Outgoing Party**")

Australian Competition and Consumer Commission ("**Consenting Party**")

**King & Wood Mallesons**

Level 27, Collins Arch

447 Collins Street, Melbourne VIC 3000

# Deed of Novation

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# Deed of Novation

## Details

<b>Parties</b>		
<b>Incoming Party</b>	Name	<b>Telstra Limited</b> <b>ACN 086 174 781</b>
	Address	242 Exhibition Street Melbourne VIC 3000
<b>Outgoing Party</b>	Name	<b>Telstra Corporation Limited</b> <b>ACN 051 775 556</b>
	Address	242 Exhibition Street Melbourne VIC 3000
<b>Consenting Party</b>	Name	<b>Australian Competition and Consumer Commission</b>
	Address	Level 17, 2 Lonsdale Street Melbourne VIC 3000
<b>Original Document</b>	Undertaking given by the Outgoing Party and accepted by the Consenting Party on 25 November 2020 for the purposes of section 87B of the <i>Competition and Consumer Act 2010</i> (Cth)	
<b>Novation Date</b>	Business Restructure Implementation Time	
<b>Governing law</b>	The laws applicable in the Commonwealth of Australia	
<b>Recitals</b>	<b>A</b>	The Outgoing Party gave and the Consenting Party accepted an undertaking pursuant to section 87B of the <i>Competition and Consumer Act 2010</i> (Cth) being the Original Document.
	<b>B</b>	The parties have agreed to the novation of the Original Document, on the terms of this document.

# General terms

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## 1 Definitions and interpretation

### 1.1 Definitions

Unless the contrary intention appears, these meanings apply:

**Business Restructure Implementation Time** has the same meaning as in the Telstra Corporation Limited Scheme Booklet for the proposed restructure of the Telstra Group dated 23 August 2022.

**Claim** means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent, whether at law, in equity, under statute or otherwise.

**Costs** includes costs, charges and expenses including those incurred in connection with advisers and any legal costs on a full indemnity basis.

**Details** means the section of this document headed Details.

**Novation Date** means the date set out in the Details.

**Original Document** means the document referred to in the Details, a copy of which is as Annexure A.

### 1.2 Interpretation

Unless the contrary intention appears, the following rules of interpretation apply:

- (a) Headings are for convenience only and do not form part of the interpretation of this document.
- (b) The singular includes the plural, and the converse also applies.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (e) A reference to this document includes the agreement recorded by this document.
- (f) A reference to a clause, schedule or annexure is a reference to a clause of, schedule or annexure to this document.
- (g) A reference to a party to this document or another document includes the party's successors, permitted substitutes, permitted assigns, and, where applicable, the party's legal personal representatives.

- (h) A reference to a document is to that document as amended, supplemented, novated or replaced, except to the extent prohibited by that document.
- (i) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (j) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible or tangible form.
- (k) Mentioning anything after **includes, including, for example**, or similar expressions, does not limit what else might be included.
- (l) A reference to any legislation is a reference to that legislation as modified or re-enacted from time to time, and includes all regulations and statutory instruments issued under it.

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## **2 Novation**

### **2.1 Novation**

With effect on and from the Novation Date, the parties agree that the Incoming Party is substituted for the Outgoing Party as a party to the Original Document and is bound by and will perform the obligations and assume the liabilities of the Outgoing Party under the Original Document, including any of those that accrued before the Novation Date.

### **2.2 Obligations and liabilities of Incoming Party**

The Incoming Party acknowledges and agrees that it will be liable to the Consenting Party for:

- (a) the performance of the obligations as if the Incoming Party had complied with the obligations under the Original Document; and
- (b) any act, default or omission of the Outgoing Party under the Original Document prior to the Novation Date as if they were the acts, defaults and omissions of the Incoming Party under the Original Document.

### **2.3 Release of Outgoing Party**

On and from the Novation Date, Consenting Party releases Outgoing Party from:

- (a) any obligation or liability under or in respect of the Original Document; and
- (b) any Claim which it, but for this release, had or may in the future have had against Outgoing Party under or in respect of the Original Document,

arising in connection with the performance of the Original Document before the Novation Date.

### **2.4 Affirmation of Original Document**

The Original Document is to be read subject to this document and in all other respects the provisions of the Original Document are confirmed, and subject to

the novation contained in this document, the Original Document will continue in full force and effect.

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### **3 Representations and warranties**

Each party represents and warrants to each other party that at the time of execution of this document:

- (a) it has capacity to enter into this document, and to comply with its obligations under this document and (if applicable) the Original Document;
- (b) it has taken all necessary action to authorise the execution and delivery of, and the compliance with, its obligations under this document and (if applicable) the Original Document; and
- (c) this document is valid and binding and is enforceable against it by each other party in accordance with its terms.

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### **4 General**

#### **4.1 Governing law and jurisdiction**

The law in force in the place specified in the Details governs this document. The parties submit to the non-exclusive jurisdiction of the courts of that place.

#### **4.2 Costs**

The parties agree to pay their own Costs in connection with the preparation, negotiation, execution and completion of this document.

#### **4.3 Giving effect to this document**

Each party must do anything reasonably required by law or requested by any other party (including executing all documents) to give full effect to this document and the transactions contemplated by it.

#### **4.4 Counterparts**

This document may consist of a number of copies, each signed by one or more parties to it. If so, the signed copies are treated as making up a single document.

#### **4.5 Execution by attorney or authorised representative**

Where an attorney or authorised representative executes this document, that attorney or representative, by executing, declares that they have no notice of revocation, termination or suspension of the power of attorney or authorisation under which they are executing this document.

#### **4.6 Variation and waiver**

A provision of this document, or right, power or remedy created under it, may not be varied or waived except in writing signed by the party to be bound.

**EXECUTED** as a deed

# Deed of Novation

## Signing page

DATED: 19 December 2022

**SIGNED, SEALED AND  
DELIVERED for TELSTRA  
CORPORATION LIMITED** in  
accordance with section 126(1) of the  
*Corporations Act 2001* (Cth):



.....  
Signature of agent

LYNDALL STOYLES

.....  
Name of agent (block letters)

By signing this document, the signatory  
states that they have received no notice  
of revocation of their authority to sign

**SIGNED, SEALED AND  
DELIVERED for TELSTRA LIMITED**  
in accordance with section 126(1) of  
the *Corporations Act 2001* (Cth):



.....  
Signature of agent

LYNDALL STOYLES

.....  
Name of agent (block letters)

By signing this document, the signatory  
states that they have received no notice  
of revocation of their authority to sign

**EXECUTED** for and on behalf of the  
**AUSTRALIAN COMPETITION AND  
CONSUMER COMMISSION** by its duly  
authorised delegate in the presence of



.....  
Signature of witness

.....  
Signature of delegate

.....  
Name of witness (block letters)

SCOTT GREGSON

.....  
Name of delegate (block letters)

# **Deed of Novation**

## **Annexure A - Original Document**

# Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and Consumer Act 2010* (Cth) by Telstra Corporation Limited ACN 051 775 556.

## 1. Person giving the undertaking

- 1.1. This undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Telstra Corporation Limited ACN 051 775 556 (**Telstra**), for the purposes of section 87B of the *Competition and Consumer Act 2010* (Cth) (**CCA**) (the **Undertaking**).

## 2. Background

### **Telstra**

- 2.1. Telstra is a publicly listed company incorporated in Australia. Telstra is Australia's largest retail supplier of mobile telephones and telephony and data services for mobile telephones and tablets.
- 2.2. Telstra offers mobile products and services to consumers as either:
  - (a) post-paid services, where consumers are billed (generally monthly) in arrears (although some charges, for example access fees, may be charged in advance); and
  - (b) pre-paid services, where consumers purchase credit in advance, and the purchased credit is used to pay for mobile services as the services are used.
- 2.3. Between 1 January 2016 and about 27 August 2018 (the **Relevant Period**), Telstra supplied the products and services through stores owned and operated by Telstra, and through Telstra Licensed Stores (**TLS**). The licensees of TLS sold the products and services to the public on behalf of Telstra throughout Australia through Telstra-branded stores.

### **Court proceedings, admissions and acknowledgements**

- 2.4. The ACCC will institute proceedings in November 2020 in the Federal Court of Australia against Telstra (the **Proceedings**). These Proceedings will involve allegations that in the Relevant Period, the conduct of sales staff at TLS in Broome, Casuarina, Palmerston, Alice Springs and Arndale (the **Relevant Stores**) in connection with sales of post-paid goods and services to 108 Indigenous Australian consumers (**Affected Consumers**) was unconscionable in contravention of section 21 of the *Australian Consumer Law* (**ACL**) which is Schedule 2 to the CCA. By reasons of the agreed facts set out in the Statement of Agreed Facts, Telstra admits these allegations and that the relevant conduct of the TLS sales staff is taken to have been engaged in by Telstra pursuant to section 139B(2) of the CCA.
- 2.5. The practices engaged in varied as between the Affected Consumers (not all of whom were subjected to each of the practices listed below), but included TLS sales staff:
  - (a) misrepresenting or failing to adequately explain the nature and potential costs of products and services, including by falsely representing that consumers were receiving products for 'free';
  - (b) manipulating credit assessments, so as to be able to enter into post-paid contracts with consumers who would otherwise have failed Telstra's credit assessment process and not have been approved for credit; and
  - (c) taking advantage of Telstra's substantially stronger bargaining position in relation to the Affected Consumers to sell products that were unsuitable and unaffordable for those consumers.

- 2.6. Telstra did not direct, intend, approve or authorise the improper sales practices referred to in paragraph 1.3 of the Originating Application. However, over the Relevant Period, due to receiving ongoing reports of improper sales conduct, different functional groups within Telstra became increasingly aware of the occurrence of various aspects of the improper sales practices at the Relevant Stores, the detriment to consumers, and that the practices affected Indigenous Australian consumers. Despite this knowledge, as well as Telstra's longstanding awareness that many Indigenous Australian consumers face challenges or have specific needs that are different to other Australians, Telstra did not put in place adequate and necessary controls to guard against the risk of such practices in the Relevant Period. As a result, the improper sales practices continued and caused severe financial hardship and great distress to many of the Affected Consumers. **(Relevant Conduct)**.
- 2.7. The impact of the unconscionable conduct in relation to some of these Affected Consumers was all the more serious because Telstra's processes resulted in them being referred to debt collectors in respect of large debts those consumers accrued for products and services, the sales of which had occurred in circumstances including those set out in paragraph 2.5. The referrals occurred in circumstances in which Telstra had become aware of various aspects of the improper sales practices at the Relevant Stores.
- 2.8. The sales impacting the Affected Consumers represent a small fraction of the tens of millions of sales that Telstra undertakes each year. Telstra's Board and senior executives were not aware of the improper sales practices at the time they occurred. Since the conduct occurred, Telstra has taken steps to fully remediate all Affected Consumers. This has included refunding all amounts paid (with interest), waiving any outstanding debts and ensuring almost all customers were able to retain mobile devices that would otherwise have needed to be returned as unpaid. Telstra has also taken a significant number of steps to reduce the risk of similar conduct occurring in the future.
- 2.9. Since 2017, Telstra has progressively implemented a series of improvements to its management of licensee stores and various remediation activities.
- 2.10. The more significant and wide-ranging steps taken since the Relevant Period to improve customer experience and address mis-selling include major changes to its mobile plans and the removal of excess data charges, adjustments to its remuneration arrangements with TLS licensees, the introduction of tighter credit assessment processes, applying new rules relating to sales to customers who may be vulnerable, and communication of new directions and training to sales staff.
- 2.11. Telstra has agreed to resolve the Proceedings on the basis of the terms of consent orders to be sought from the Court and joint submissions in support of pecuniary penalties totalling \$50,000,000.
- 2.12. As part of the resolution of the Proceedings, Telstra has offered this Undertaking to the ACCC.

### **3. Commencement of this Undertaking**

- 3.1. This Undertaking comes into effect 30 days from the date on which:
- (a) this Undertaking is executed by Telstra;
  - (b) this Undertaking so executed is accepted by the ACCC; and
  - (c) the Court makes consent orders in respect of the Proceedings (the **Commencement Date**).
- 3.2. Unless otherwise stated, this Undertaking has effect for five years after the Commencement Date (the **Term**).
- 3.3. Upon the Commencement Date, Telstra undertakes to assume the obligations set out in paragraphs 4.1 to 4.16 below for the purposes of section 87B of the CCA.

## 4. Undertakings

### **Consumer Remediation**

- 4.1. On 17 September 2019, Telstra commenced delivery of a full remediation program for consumers affected by the Relevant Conduct in connection with the Relevant Stores, supplementing the remediation already provided to some of those consumers in response to complaints.
- 4.2. Telstra commits to the actions set out in paragraph 4.3 for each of the:
- (a) consumers who are identified in confidential Annexure A to the Statement of Agreed Facts (other than to whom Telstra has already provided remediation); and
  - (b) Indigenous Australian consumers who:
    - (i) are not consumers to whom Telstra has already provided remediation in substantially the form set out in sub-paragraphs (c) to (e) of paragraph 4.3; and
    - (ii) who were subjected to substantially similar conduct to the Relevant Conduct (**Similar Conduct**) at the Relevant Stores during the Relevant Period and who seek redress from Telstra in connection with that conduct within 12 months of the Commencement Date by either:
      - (A) calling Telstra's dedicated telephone service for Indigenous Australian consumers (**Indigenous Hotline**) to initiate their claim;
      - (B) engaging a financial counsellor to seek that redress on their behalf, which financial counsellor then contacts Telstra's Specialised Assistance Team about that redress and confirms that the relevant consumer is an Indigenous Australian; or
      - (C) contacting Telstra via its primary service number (132200) and providing identifying information that enables Telstra to verify that the consumer has transacted with one or more of the Relevant Stores in the Relevant Period,
- (collectively **Remediation Consumer/s**).
- 4.3. Telstra will, within:
- (a) six months of the Commencement Date for those Remediation Consumers referred to in paragraph 4.2(a), above; and
  - (b) six months of the contact with Telstra seeking redress by those Remediation Consumers referred to in paragraph 4.2(b), above
- (the **Remediation Timeframe**), use its best endeavours, to provide to each Remediation Consumer:
- (c) written notice that Telstra agrees to waive any relevant current, outstanding debts owed to Telstra by that Remediation Consumer;
  - (d) written notice that Telstra agrees to relinquish, to the Remediation Consumer, relevant goods acquired by the Remediation Consumer pursuant to a Telstra contract(s) that commenced during the Relevant Period; and
  - (e) a financial refund which will comprise all relevant payments made by the Remediation Consumer to Telstra, or a third party debt collector, plus interest calculated at the Federal Court of Australia post-judgment interest rate (**Financial Refunds**),
- where the debt owed, good acquired, or payment made will be relevant if it arose in connection with the Similar Conduct.
- 4.4. Telstra will pay the Financial Refunds, by way of cheque or direct debit payment into the Remediation Consumer's nominated bank account, or another payment method nominated by the Remediation Consumer, excluding cash.

- 4.5. Telstra will utilise its Customer Advocate who will consult with and be assisted by, at Telstra's own expense, suitably qualified, experienced and independent persons such as financial counsellors servicing the areas referenced in paragraph 4.6(a) to oversee the effective implementation of the requirements outlined in paragraph 4.3 and help address any material issues with the remediation approach raised by the Remediation Consumers.
- 4.6. To encourage Remediation Consumers to seek redress from Telstra, it will, at its own expense, promote the take up of consumer remediation by Remediation Consumers by way of:
  - (a) community radio announcements broadcast in the areas of, or near to, the Relevant Stores;
  - (b) hardcopy colour posters no less than A3 in size affixed to recognised community noticeboard(s); and
  - (c) utilising, at Telstra's own expense, the services and assistance of suitably qualified, experienced and independent persons, such as financial counsellors servicing the areas referenced in paragraph 4.6(a), to promote and assist Remediation Consumers with the take up of the remediation and to provide guidance to Telstra on the appropriate content of, and Indigenous language to use for, the announcements and posters referred to in paragraphs 4.6(a) and 4.6(b).
- 4.7. Telstra will ensure the community radio announcements and hardcopy colour posters referred to in paragraph 4.6(a) and 4.6(b) reference Telstra's Indigenous Hotline as a means via which customers can enquire about or initiate claims for the remediation Telstra will provide to Remediation Consumers.
- 4.8. Telstra will provide the ACCC, on a quarterly basis, via the email address of Michael Dowers (michael.dowers@accc.gov.au), the following details in relation to Remediation Consumers remediated in accordance with paragraph 4.3:
  - (a) the total number of such consumers; and
  - (b) their names and the details of the remediation applied (including whether goods were relinquished and/or refunds were provided to each of them and the amount of any such refunds).

### ***Telstra's internal mechanisms***

#### ***Compliance Program***

- 4.9. Telstra has in place a Compliance Program in respect of the CCA, the object of which is to ensure compliance with the CCA by Telstra and relevant officers, employees and agents (**Compliance Program**).
- 4.10. Telstra undertakes to:
  - (a) incorporate the requirements set out in Annexure A (**Updated Compliance Program Requirements**) in its Compliance Program in accordance with the timeframes set out in that Annexure A; and
  - (b) maintain and continue to implement the Updated Compliance Program Requirements for a period of three years from the Commencement Date, in accordance with Annexure A.

#### ***Indigenous Hotline***

- 4.11. Telstra has had in place an Indigenous Hotline since 2002 and will, within six months of the Commencement Date:
  - (a) review and adjust its call centre operations, in order that Indigenous Australian consumers (or their representatives) who seek sales and/or service assistance (including relating to such matters as complaints, bills and financial hardship) by calling:

- (i) the Indigenous Hotline; or
- (ii) Telstra's primary service number (132200) and providing identifying information that enables Telstra to verify that, based on Telstra's records, the consumer resides in a location identified by one of the postcodes as listed in Annexure D (which Annexure Telstra may update from time to time, acting reasonably, to reflect identified changes to demographics), each of which locations are home to one or more remote Indigenous communities.

**(Identified Indigenous Caller)**

are then able to be assisted in relation to those issues by a consultant who:

- (iii) identifies as an Indigenous Australian; or
  - (iv) has completed the Cultural Awareness Training as defined in Annexure A of this Undertaking; and
- (b) review and expand the functions and scope of its Indigenous Hotline, such that, at a minimum, the hotline will:
- (i) facilitate consumers' access to a suitably qualified Indigenous Australian telephone interpreter service;
  - (ii) be operational during the respective business hours of all states and territories within Australia;
  - (iii) be staffed by persons who identify as Indigenous Australians or who have undertaken the Cultural Awareness Training as defined in Annexure A to this Undertaking;
  - (iv) be promoted by Telstra sales staff to any Identified Indigenous Caller; and
  - (v) be promoted by Telstra through the implementation of appropriately worded signage at the 'point of sale' area in the Relevant Stores.

**Community Service Program**

- 4.12. Telstra has in place a number of programs and initiatives that provide direct benefits to Indigenous Australian communities (**Community Services Program**), including training programs aimed at enhancing digital literacy and digital capabilities in those communities.
- 4.13. Telstra will, at its own expense, enhance the existing digital literacy training it runs as part of its Community Services Program (with the new elements then being the **Enhanced Community Services Program Elements**), with the Enhanced Community Service Program Elements to be developed by one or more suitably qualified, experienced and independent persons or organisations. That enhanced digital literacy training will then be offered for delivery in each of the locations contained in Annexure B (each a **Relevant Location**), within 4 months of the Commencement Date and for the Term of this Undertaking, with the actual date of delivery being subject to the consent of, and agreement with, the Indigenous leaders of the communities in the Relevant Locations.
- 4.14. Inclusive of the Enhanced Community Service Program Elements, the digital literacy training Telstra delivers in accordance with paragraph 4.13 will include topics that relate to practical management and usage of mobile phone plans and devices including, but not limited to, the topics contained in Annexure C (each a **Relevant Topic**).
- 4.15. Telstra will ensure that delivery of digital literacy training inclusive of the Enhanced Community Services Program Elements occurs in a way that ensures Indigenous Australians in each Relevant Location are provided with the opportunity during the Term of this Undertaking to participate in such training, which can consist of one or more sessions and may deal with some or all of the Relevant Topics in each session provided that within the Term of this Undertaking all Relevant Topics have been covered in at least one session per Relevant Location;

- 4.16. Telstra undertakes to maintain and continue to implement digital literacy training inclusive of the Enhanced Community Services Program Elements for the Term of this Undertaking.

## **5. ACCC enquiries**

- 5.1. For the purposes of monitoring compliance with this Undertaking, the ACCC may make reasonable enquiries with Telstra, and Telstra will respond to such enquiries within a reasonable period of time.
- 5.2. If requested by the ACCC during the Term of this Undertaking, Telstra will, at its own expense, cause to be produced and provided to the ACCC copies of such documents (excluding any legally privileged documents) in its power, possession or control evidencing Telstra's compliance with the obligations set out in this Undertaking.

## **6. Acknowledgements**

- 6.1. Telstra acknowledges that:
- (a) the ACCC will make this Undertaking publicly available including by publishing it on the ACCC's public register of section 87B undertakings on its website;
  - (b) the ACCC will, from time to time, make public reference to this Undertaking including in news media statements and in ACCC publications; and
  - (c) this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

## Executed as an Undertaking

Executed by Telstra Corporation Limited ACN 051 775 556 pursuant to section 127(1) of the *Corporations Act 2001* by:

Signature of director		Signature of a company secretary
		
Name of director (print)		Name of company secretary (print)
Andrew Penn		Sue Laver
Date 20 November 2020		Date

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) on:

25 November 2020

Date

and signed on behalf of the Commission:



Chair

25 November 2020

Date

## Annexure A

Telstra will comply with all of the following Updated Compliance Program Requirements, which relate to engagement with Indigenous Australian consumers. The actions Telstra takes to comply with these requirements are the **Updated Compliance Program Actions**.

### Appointments

1. Within four months of the Undertaking coming into effect, Telstra will appoint a director or senior manager who Telstra reasonably considers demonstrates Indigenous Australian cultural competency and has suitable qualifications or experience in corporate compliance as a Compliance Officer with responsibility for ensuring the Updated Compliance Program Actions are effectively designed, implemented and maintained (**Indigenous Cultural Compliance Officer**).
2. Within four months of the Undertaking coming into effect, Telstra will appoint a suitably qualified, external, independent compliance professional with expertise in consumer law and who Telstra reasonably considers can demonstrate Indigenous Australian cultural competency (**the Indigenous Cultural Compliance Advisor**).
3. Telstra will instruct the Indigenous Cultural Compliance Advisor to conduct a risk assessment and review of Telstra's progress in implementing the Updated Compliance Program Actions and produce a written report of the outcome of the risk assessment, within six months of being appointed as the Indigenous Cultural Compliance Advisor (**Risk Assessment**).
4. Telstra will use its best endeavours to ensure that the Risk Assessment covers the following matters, to be recorded in a written report (**Risk Assessment Report**):
  - 4.1. identifies relevant sections of the Australian Consumer Law (**ACL**), contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (**CCA**), Telstra is at risk of breaching in the context of how the Updated Compliance Program Actions have been implemented;
  - 4.2. assesses the likelihood of these risks occurring; and
  - 4.3. provides recommendations for any action to be taken by Telstra having regard to the above assessment.
5. Telstra will implement promptly and with due diligence any recommendations made by the Indigenous Cultural Compliance Advisor in the Risk Assessment Report that it, acting reasonably, considers prudent and practical. Where Telstra does not implement a recommendation made by the Indigenous Cultural Compliance Advisor it will document in writing the reasons for doing so and provide those to the Indigenous Cultural Compliance Advisor along with any alternative approach it has decided to take to address the risk issue that was the subject of the recommendation.

### Policy Statement

6. Telstra will, within one month of the Undertaking coming into effect, issue a policy statement outlining Telstra's commitment to effective engagement with Indigenous Australian consumers (the **Policy Statement**).
7. Telstra will ensure that the Policy Statement:
  - 7.1. contains a statement of commitment to effective engagement with Indigenous Australian consumers;
  - 7.2. contains an outline of how commitment to effective engagement with Indigenous Australian consumers will be realised within Telstra;
  - 7.3. contains a requirement for any reports about Compliance Program related issues and concerns regarding Telstra's engagement with Indigenous Australian consumers to be provided to the Indigenous Cultural Compliance Officer; and

- 7.4. contains a clear statement that Telstra will take action internally against any persons who are knowingly or recklessly concerned in a contravention of the CCA and will not indemnify them in the event of any court proceedings in respect of that contravention.

### **Complaints Handling System**

8. Within six months of the Undertaking coming into effect, Telstra will ensure that, as part of the Updated Compliance Program Requirements, it has a complaints handling system specific to complaints made in relation to Telstra's engagement with Indigenous Australian consumers (**the Complaints Handling System**).
9. Telstra will use its best endeavours to ensure this system is consistent with AS/NZS 10002:2014 *Guidelines for complaint management organizations*, tailored as required to Telstra's circumstances.
10. Telstra will make information on its Complaints Handling System and its Indigenous Hotline available to consumers and staff.

### **Staff Training**

11. Telstra has in place cultural awareness training and ACL compliance training. Subject to paragraph 15 below, Telstra will ensure that, as part of the Updated Compliance Program Requirements, it will:
  - 11.1. Review its cultural awareness training and ACL compliance training within three months of the Undertaking coming into effect;
  - 11.2. In respect of cultural awareness training, take input from a suitably qualified, independent and experienced person or organisation and make such updates as may be recommended (with any new elements that are added to the training via this process being the **Updated Cultural Awareness Training Elements**);
  - 11.3. In respect of ACL compliance training, take input from a suitably qualified compliance professional or legal practitioner with expertise in consumer law and make such updates as may be recommended (with any new elements that are added to the training via this process being the **Updated ACL Compliance Training Elements**).
  - 11.4. Ensure, as a mandatory requirement for all Telstra staff (including Telstra's agents and representatives from Telstra branded stores) who have, or who may be likely in fulfilment of their standard Telstra business responsibilities to engage with Indigenous Australian consumers in their capacity as consumers of post-paid products and services (**Relevant Telstra Staff**), that cultural awareness training incorporating the Updated Cultural Awareness Training Elements (which training is then the **Updated Cultural Awareness Training**) is, subject to paragraph 14, undertaken at least once per year; and
  - 11.5. Ensure, as a mandatory requirement for all directors, officers, and Relevant Telstra Staff that ACL compliance training incorporating the Updated ACL Compliance Training Elements (which training is then the **Updated Compliance Training**) is undertaken at least once per year.
12. The training referred to in paragraph 11 may be delivered online by Telstra in the form of pre-recorded or digitised content.
13. Telstra will ensure that, as part of the Updated Compliance Program Requirements:
  - 13.1. The Updated Cultural Awareness Training once developed in full in accordance with paragraph 11.2 (**Updated Cultural Awareness Training Readiness Date**) forms part of the induction process of all new Relevant Telstra Staff within three months of commencing a relevant role and before engaging in transactions with Indigenous Australian consumers; and
  - 13.2. The Updated Compliance Training once developed in full in accordance with paragraph 11.3 (**Updated Compliance Training Readiness Date**) forms part of the

induction process of all new directors, officers, and Relevant Telstra Staff and is completed within three months of commencing a relevant role.

14. Telstra will ensure Updated Cultural Awareness Training is provided:
  - 14.1. within three months of the Updated Cultural Awareness Training Readiness Date to Relevant Telstra Staff who work within the Relevant Stores who have not previously participated in any cultural awareness training by or on behalf of Telstra;
  - 14.2. within three months of the Updated Cultural Awareness Training Readiness Date to staff employed to work on the Indigenous Hotline who have not previously participated in any cultural awareness training by or on behalf of Telstra;
  - 14.3. within 12 months of the Updated Cultural Awareness Training Readiness Date, to all other Relevant Telstra Staff.
15. Updated Cultural Awareness Training will include, but not be limited to, the following matters:
  - 15.1. the prioritisation by some Indigenous Australian persons of oral communication, over written and the relevance of that to commercial interactions;
  - 15.2. highlighting predominant linguistic differences between English and Indigenous Australian languages with relevance to commercial interactions;
  - 15.3. the importance, and use, of silence by some Indigenous Australians in a conversational context; and
  - 15.4. gratuitous concurrence and the importance of avoiding leading questions including in situations involving commercial interactions.
16. Within 1 month of the Cultural Awareness Training Readiness Date, Telstra will engage, at its own expense, a suitably qualified, independent and experienced person or organisation to assess the effectiveness of the Updated Cultural Awareness Training by:
  - 16.1. developing suitable key performance indicators to measure Telstra's performance against that outlined at paragraphs 14 and 15 above;
  - 16.2. conducting discrete 'consumer experience' visits to Telstra stores, to be selected by the relevant person or organisation; and
  - 16.3. providing a report on the outcome of its assessment of the effectiveness of the Updated Cultural Awareness Training, which will form part of the reports described in paragraph 17 and review described in paragraph 18, for the Term of this Undertaking.

#### **Reports to Board/Senior Management**

17. Telstra will ensure that, following appointment of this role, the Indigenous Cultural Compliance Officer reports to the Board and/or senior management every six months on the continuing effectiveness of the Updated Compliance Program Actions.

#### **Compliance Program Review**

18. Telstra will, at its own expense, cause an annual review of its compliance with the Updated Compliance Program Requirements, as it relates to Telstra's engagement with Indigenous Australian consumers, **(the Review)** to be carried out in accordance with each of the following requirements:
  - 18.1. **Scope of Review** – the Review should be broad and rigorous enough to provide Telstra and the ACCC with:
    - 18.1.1. a verification that Telstra has complied with the Updated Compliance Program Requirements; and
    - 18.1.2. the Compliance Reports detailed at paragraph 19 below.

- 18.2. **Independent Reviewer** – Telstra will ensure that each Review is carried out by a suitably qualified, independent compliance professional with expertise in consumer law (**the Reviewer**). The Reviewer will qualify as independent on the basis that he or she:
- 18.2.1. did not design or implement the Updated Compliance Program Actions;
  - 18.2.2. is not a present staff member or director of Telstra, or a person who has been a staff member or director of Telstra in the past 5 years;
  - 18.2.3. has not, in the past 5 years, acted and does not currently act for, and does not currently consult and has not, in the past 5 years, consulted to, Telstra in any consumer law related matters, other than performing Reviews under this Undertaking; and
  - 18.2.4. has no significant direct shareholding or other significant interests in Telstra.
- 18.3. **Evidence** – Telstra will use its best endeavours to ensure that each Review is conducted on the basis that the Reviewer has access to all relevant sources of information in Telstra’s possession or control, including without limitation:
- 18.3.1. the ability to make enquiries of any officers, employees, representatives and agents of Telstra;
  - 18.3.2. documents relating to the Risk Assessment, including the Risk Assessment Report;
  - 18.3.3. documents relating to Telstra’s Updated Compliance Program Actions, including documents relevant to Telstra’s Compliance Policy, Complaints Handling System, Staff Training and induction program; and
  - 18.3.4. any reports made by the Indigenous Cultural Compliance Officer to the Board or senior management regarding Telstra’s Updated Compliance Program Actions.
- 18.4. **Timing of Review** - Telstra will ensure that a Review is completed within one year of this Undertaking coming into effect, and that a subsequent Review is completed within each year for three years.

### **Compliance Reports**

19. Telstra will use its best endeavours to ensure that within 14 business days of the completion of a Review, the Reviewer includes the following findings of the Review in a report provided to Telstra (**the Compliance Report**):
- 19.1. whether the Updated Compliance Program Actions satisfies all of the requirements detailed in paragraphs 1 to 1817 above, and, if not, what elements need to be included or further developed;
  - 19.2. whether the Updated Compliance Program Actions adequately cover the parties and areas identified in the Risk Assessment, and, if not, what needs to be further addressed;
  - 19.3. whether the Staff Training is effective, and, if not, what aspects need to be further developed;
  - 19.4. whether Telstra’s Complaints Handling System is effective, and, if not, what aspects need to be further developed;
  - 19.5. whether Telstra is able to provide confidentiality and security to whistle-blowers who may raise issues with the Updated Compliance Program Actions, and whether such staff are aware of the whistle-blower protection mechanisms; and

- 19.6. whether there is any Material Failure,<sup>1</sup> and, if so, recommendations for rectifying the Material Failure/s.

### **Telstra response to Compliance Reports**

20. Telstra will ensure that the Indigenous Cultural Compliance Officer, within the later of (a) 14 business days of receiving the Compliance Report, or (b) the date of the next scheduled Board meeting:
- 20.1. provides the Compliance Report to the Board or relevant governing body; and
  - 20.2. where a Material Failure has been identified by the Reviewer in the Compliance Report, provides a report to the Board or relevant governing body identifying how Telstra can implement any recommendations made by the Reviewer in the Compliance Report to rectify the Material Failure.
21. Telstra will implement promptly and with due diligence any recommendations made by the Reviewer in the Compliance Report to address a Material Failure that it, acting reasonably, considers prudent and practical. Where Telstra does not implement a recommendation made by the Reviewer in the Compliance Report it will document in writing the reasons for doing so and provide those to the Reviewer along with any alternative approach it has decided to take to address the matter that was the subject of the recommendation.

### **Reporting Material Failures to the ACCC**

22. Where a Material Failure has been identified by the Reviewer in the Compliance Report, Telstra will:
- 22.1. provide a copy of the Compliance Report to the ACCC within five business days of the Board or relevant governing body receiving the Compliance Report; and
  - 22.2. inform the ACCC of any steps that have been taken to implement the recommendations made by the Reviewer in the Compliance Report; or
  - 22.3. otherwise outline the steps Telstra proposes to take to implement the recommendations or otherwise address the matters the subject of those recommendations and will then inform the ACCC once those steps have been implemented.

### **Provision of Compliance Program documents to the ACCC**

23. Telstra will maintain a record of and store those documents relating to the Updated Compliance Program Actions as set out in paragraph 24 for a period not less than the Term of this Undertaking.
24. If requested by the ACCC during the Term of the Undertaking, Telstra will, at its own expense, cause to be produced and provided to the ACCC copies of the following documents relating to the Updated Compliance Program Actions:
- 24.1. the Compliance Policy;
  - 24.2. the Risk Assessment Report;
  - 24.3. an outline of the Complaints Handling System;
  - 24.4. Staff Training-related materials and induction materials (including the Updated Cultural Awareness Training);
  - 24.5. all Compliance Reports that have been completed at the time of the request; and

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<sup>1</sup> Material Failure means a failure, that is non-trivial and which is ongoing or continued for a significant period of time, to:

- comply with any fundamental Updated Compliance Program Requirements, for example if the Complaints Handling System did not provide any mechanism for responding to complaints made in relation to Telstra's engagement with Indigenous Australian consumers, or

if no Staff Training has been conducted within the Annual CP Review period.

- 24.6. copies of the reports to the Board and/or senior management referred to in paragraphs 17 and 20.

**ACCC Recommendations**

25. Telstra will implement promptly and with due diligence any reasonable recommendations that the ACCC may make that the ACCC deems reasonably necessary to ensure that Telstra maintains and continues to implement the Compliance Program in accordance with the requirements of this Undertaking .

## **Annexure B**

### **Digital literacy training locations**

1. Alice Springs;
2. Anangu Pitjantjatjara Yankunytjatjara Land communities of:
  - a. Iwantja (Indulkana);
  - b. Amata;
  - c. Mimili;
  - d. Pukatja (Ernabella);
  - e. Kaltjiti (Fregon);
3. Darwin region;
4. Broome and the greater Kimberley region of Western Australia; and
5. Arnhem Land communities of:
  - a. Ramingining;
  - b. Millingimbi;
  - c. Galiwin'ku;
  - d. Gapuwiyak;
  - e. Yirrkala;
  - f. Milyakburra;
  - g. Groote Eylandt; and
  - h. Gunbalanya,

## **Annexure C**

### **Digital literacy training topics**

1. general mobile phone device usage, including:
  - a. how to make and receive telephone calls;
  - b. how to send and receive short message service (SMS) and multimedia messaging service (MMS);
  - c. data usage, management and cost;
  - d. recharge, by way of adding credit, pre-paid mobile phone plans; and
  - e. mobile phone coverage;
2. considerations to be had when deciding to share a device
3. using the internet, including:
  - a. the use of search engines;
  - b. how to send and receive emails;
  - c. using public wifi;
  - d. e-safety, including online banking, buying or selling goods online, and how to avoid online scams;
  - e. how to protect personal information online including managing an online personal identity and social media accounts;
  - f. connecting with others family and friends who are not local;
  - g. connecting with local communities;
  - h. how to access online medical, education and government services; and
  - i. digital/cyber security, managing a personal online identity and scam awareness
4. post and pre-paid mobile phone plans;
5. how to manage the sales process when obtaining mobile phone plans and devices,
6. managing costs associated with owning a mobile phone;
7. identifying relevant government agencies, and how to contact them, if the consumer has an issue with their telecommunications service provider; and
8. the role of financial counsellors.

## **Annexure D**

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