

Telecommunications (Statutory Infrastructure Providers—Exempt Real Estate Development Projects and Building Redevelopment Projects) Determination (No.1) 2020

made under subsections 360H(3A) and 360H(5A) of the

Telecommunications Act 1997

**Compilation No. 1**

**Compilation date:** 1 January 2023

**Includes amendments up to:** Act No. 140, 2021

**Registered:** 21 February 2023

**About this compilation**

**This compilation**

This is a compilation of the *Telecommunications (Statutory Infrastructure Providers—Exempt Real Estate Development Projects and Building Redevelopment Projects) Determination (No.1) 2020* that shows the text of the law as amended and in force on 1 January 2023 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

**Uncommenced amendments**

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

**Application, saving and transitional provisions for provisions and amendments**

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

**Editorial changes**

For more information about any editorial changes made in this compilation, see the endnotes.

**Modifications**

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

**Self‑repealing provisions**

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Part 1 Introductory

1 Name

This Instrument is the *Telecommunications (Statutory Infrastructure Providers—Exempt Real Estate Development Projects and Building Redevelopment Projects) Determination (No.1) 2020*.

3 Authority

This Instrument is made under subsections 360H(3A) and 360H(5A) of the *Telecommunications Act 1997,* andsubsection 33(3A) of the *Acts Interpretation Act 1901*.

4 Definitions

Note: A number of expressions used in this Instrument are defined in the Act, including the following:

(a) building redevelopment project (section 360Y);

(b) carriage service (section 7);

(ba) designated Telstra successor company (section 581G);

(c) eligible service (section 360A);

(d) hybrid fibre‑coaxial network (section 7);

(e) NBN corporation (section 7);

(f) public mobile telecommunications service (section 32);

(g) qualifying carriage service (section 360A);

(h) qualifying fixed‑line carriage service (section 360A);

(i) real estate development project (section 372Q);

(j) standard telephone service (section 7); and

(k) Telstra (section 7).

(1) In this Instrument:

***Act*** means the *Telecommunications Act 1997*.

***contractual arrangement*** includes a deed, contract, undertaking or any other form of legally binding arrangement.

***mobile network*** means a telecommunications network that is used principally to supply public mobile telecommunications services.

***project area***:

(a) for a building redevelopment project*—*has the same meaning as in section 360A of the Act; and

(b) for a real estate development project*—*has the same meaning as in subsections 372Q(2) and 372Q(6) of the Act.

***radiocommunications fixed voice call*** means a voice call provided using a carriage service:

(a) supplied by means of a telecommunications network other than a fixed‑line telecommunications network; and

(b) marketed to customers, or potential customers as a carriage service that enables end‑users to make and receive voice calls at premises occupied or used by the end‑users.

***Start Date*** means the day upon which Part 1, Division 2 of Schedule 3 to the *Telecommunications Legislation Amendment (Competition and Consumer) Act 2020* comes into effect**.**

(2) For the purposes of this Instrument, telecommunications network infrastructure forming part of a mobile network will be in proximity to a project area only where, once fully deployed and operational, the infrastructure is technically capable of being used to supply carriage services within the whole of the project area.

Part 2 Exempt Real Estate Development Projects

Note 1: Subsection 360H(2) of the Act provides that where a carrier (other than an NBN corporation) has installed telecommunications network infrastructure under a contract for the supply of eligible services to premises in the whole of the project area of a real estate development project, the carrier must declare that all of the project area is a provisional nominated service area within 10 business days after completion of the infrastructure build and that carrier becomes the statutory infrastructure provider for that relevant area.

Note 2: Subsection 360H(3A) provides that the Minister may, by legislative instrument, exempt a specified real estate development project from subsection 360H(2). In cases where a project is exempted under subsection 360H(3A), the project area would remain a general service area of NBN Co until such time (if at all) that area become a nominated service area by declaration made by a carrier.

5 Exempt Real Estate Development Projects (to be served by certain copper networks)

A real estate development project will be exempt from subsection 360H(2), if all of the following apply to the project:

(a) there is telecommunications network infrastructure installed within any part of the project area that will enable the supply of eligible services to premises in the whole of the project area;

(b) the telecommunications network infrastructure referred to in paragraph (a) above:

(i) was fully installed on or after the Start Date;

(ii) was installed in accordance with a contractual arrangement entered into by Telstra or a designated Telstra successor company and the person responsible for the real estate development project, and the contractual arrangement does not require Telstra or the designated Telstra successor company to supply qualifying carriage services within all or any part of the project area;

(iii) at the time of installation, formed part of a fixed‑line telecommunications network owned and operated by Telstra or a designated Telstra successor company, and that network:

A. is not technically capable of being used to supply qualifying fixed‑line carriage services; and

B. is used to supply standard telephone services in fulfilment of the obligation referred to in paragraph 9(1)(a) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

6 Exempt Real Estate Development Projects (to be served by certain HFC networks)

A real estate development project will be exempt from subsection 360H(2), if all of the following apply to the project:

(a) there is telecommunications network infrastructure installed within any part of the project area that will enable the supply of eligible services to premises in the whole of the project area;

(b) the telecommunications network infrastructure referred to in paragraph (a) above:

(i) was fully installed on or after the Start Date;

(ii) was installed in accordance with a contractual arrangement entered into by Telstra or a designated Telstra successor company and the person responsible for the real estate development project;

(iii) forms part of a hybrid fibre‑coaxial telecommunications network that:

A. was, at the time immediately after the installation of the network was completed, owned by Telstra or a designated Telstra successor company; and

B. is the subject of a legally enforceable agreement covered by a determination made under subsection 577BA(9) of the Act, and the agreement provides for the transfer of ownership or control of the network from Telstra or a designated Telstra successor company to an NBN corporation.

7 Exempt Real Estate Development Projects (to be supplied with public mobile telecommunications services)

A real estate development project will be exempt from subsection 360H(2), if all of the following apply to the project:

(a) there is telecommunications network infrastructure installed within any part of, or in proximity to, the project area that will enable the supply of eligible services to premises in the whole of the project area;

(b) the telecommunications network infrastructure referred to in paragraph (a) above:

(i) was fully installed on or after the Start Date;

(ii) was installed in accordance with a contractual arrangement entered into by a carrier and the person responsible for the real estate development project, and that contractual arrangement does not require the carrier to supply qualifying carriage services within all or any part of the project area; and

(iii) at the time of installation, formed part of a mobile network owned or operated by the carrier (referred to in subparagraph (ii) above).

8 Exempt Real Estate Development Projects (to be served by radiocommunications fixed voice calls)

A real estate development project will be exempt from subsection 360H(2), if all of the following apply to the project:

(a) there is telecommunications network infrastructure installed within any part of, or in proximity to, the project area that will enable the supply of eligible services to premises in the whole of the project area;

(b) the telecommunications network infrastructure referred to in paragraph (a) above:

(i) was fully installed on or after the Start Date;

(ii) was installed in accordance with a contractual arrangement entered into by a carrier and the person responsible for the real estate development project, and that contractual arrangement does not require the carrier to supply qualifying carriage services within all or any part of the project area; and

(iii) is capable of being used to supply, to end‑users at premises in the project area, carriage services that enable those end‑users to make and receive radiocommunications fixed voice calls.

Part 3 Exempt Building Redevelopment Projects

Note 1: Subsection 360H(4) of the Act provides that where a carrier (other than an NBN corporation) has installed telecommunications network infrastructure under a contract for the supply of eligible services to premises in the whole of the project area of a building redevelopment project, the carrier must declare that all of the project area is a provisional nominated service area within 10 business days after completion of the infrastructure build and that carrier becomes the statutory infrastructure provider for that relevant area.

Note 2: Proposed subsection 360H(5A) provides that the Minister may, by legislative instrument, exempt a specified building redevelopment project from subsection 360H(4). In cases where a project is exempted under subsection 360H(5A), the project area would remain a general service area of NBN Co until such time (if at all) that area become a nominated service area by declaration made by a carrier.

9 Exempt Building Redevelopment Projects (to be served by certain copper networks)

A building redevelopment project will be exempt from subsection 360H(4), if all of the following apply to the project:

(a) there is telecommunications network infrastructure installed within any part of the project area that will enable the supply of eligible services to premises in the whole of the project area;

(b) the telecommunications network infrastructure referred to in paragraph (a) above:

(i) was fully installed on or after the Start Date;

(ii) was installed in accordance with a contractual arrangement entered into by Telstra or a designated Telstra successor company and the person responsible for the building redevelopment project, and the contractual arrangement does not require Telstra or the designated Telstra successor company to supply qualifying carriage services within all or any part of the project area;

(iii) at the time of installation, formed part of a fixed‑line telecommunications network owned and operated by Telstra or a designated Telstra successor company, and that network:

A. is not technically capable of being used to supply qualifying fixed‑line carriage services; and

B. is used to supply standard telephone services in fulfilment of the obligation referred to in paragraph 9(1)(a) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

10 Exempt Building Redevelopment Projects (to be served by certain HFC networks)

A building redevelopment project will be exempt from subsection 360H(4), if all of the following apply to the project:

(a) there is telecommunications network infrastructure installed within any part of the project area that will enable the supply of eligible services to premises in the whole of the project area;

(b) the telecommunications network infrastructure referred to in paragraph (a) above:

(i) was fully installed on or after the Start Date;

(ii) was installed in accordance with a contractual arrangement entered into by Telstra or a designated Telstra successor company and the person responsible for the building redevelopment project;

(iii) forms part of a hybrid fibre‑coaxial telecommunications network that:

A. was, at the time immediately after the installation of the network was completed, owned by Telstra or a designated Telstra successor company; and

B. is the subject of a legally enforceable agreement covered by a determination made under subsection 577BA(9) of the Act, and the agreement provides for the transfer of ownership or control of the network from Telstra or a designated Telstra successor company to an NBN corporation.

11 Exempt Building Redevelopment Projects (to be supplied with public mobile telecommunications services)

A building redevelopment project will be exempt from subsection 360H(4), if all of the following apply to the project:

(a) there is telecommunications network infrastructure installed within any part of, or in proximity to, the project area that will enable the supply of eligible services to premises in the whole of the project area;

(b) the telecommunications network infrastructure referred to in paragraph (a) above:

(i) was fully installed on or after the Start Date;

(ii) was installed in accordance with a contractual arrangement entered into by a carrier and the person responsible for the building redevelopment project, and that contractual arrangement does not require the carrier to supply qualifying carriage services within all or any part of the project area; and

(iii) at the time of installation, formed part of a mobile network owned or operated by the carrier (referred to in subparagraph (ii) above).

12 Exempt Building Redevelopment Projects (to be served by radiocommunications fixed voice calls)

A building redevelopment project will be exempt from subsection 360H(4), if all of the following apply to the project:

(a) there is telecommunications network infrastructure installed within any part of, or in proximity to, the project area that will enable the supply of eligible services to premises in the whole of the project area;

(b) the telecommunications network infrastructure referred to in paragraph (a) above:

(i) was fully installed on or after the Start Date;

(ii) was installed in accordance with a contractual arrangement entered into by a carrier and the person responsible for the building redevelopment project, and that contractual arrangement does not require the carrier to supply qualifying carriage services within all or any part of the project area; and

(iii) is capable of being used to supply, to end‑users at premises in the project area, carriage services that enable those end‑users to make and receive radiocommunications fixed voice calls.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

**Abbreviation key—Endnote 2**

The abbreviation key sets out abbreviations that may be used in the endnotes.

**Legislation history and amendment history—Endnotes 3 and 4**

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

**Editorial changes**

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

**Misdescribed amendments**

A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.

Endnote 2—Abbreviation key

|  |  |
| --- | --- |
| ad = added or inserted | o = order(s) |
| am = amended | Ord = Ordinance |
| amdt = amendment | orig = original |
| c = clause(s) | par = paragraph(s)/subparagraph(s) |
| C[x] = Compilation No. x | /sub‑subparagraph(s) |
| Ch = Chapter(s) | pres = present |
| def = definition(s) | prev = previous |
| Dict = Dictionary | (prev…) = previously |
| disallowed = disallowed by Parliament | Pt = Part(s) |
| Div = Division(s) | r = regulation(s)/rule(s) |
| ed = editorial change | reloc = relocated |
| exp = expires/expired or ceases/ceased to have | renum = renumbered |
| effect | rep = repealed |
| F = Federal Register of Legislation | rs = repealed and substituted |
| gaz = gazette | s = section(s)/subsection(s) |
| LA = *Legislation Act 2003* | Sch = Schedule(s) |
| LIA = *Legislative Instruments Act 2003* | Sdiv = Subdivision(s) |
| (md) = misdescribed amendment can be given | SLI = Select Legislative Instrument |
| effect | SR = Statutory Rules |
| (md not incorp) = misdescribed amendment | Sub‑Ch = Sub‑Chapter(s) |
| cannot be given effect | SubPt = Subpart(s) |
| mod = modified/modification | underlining = whole or part not |
| No. = Number(s) | commenced or to be commenced |

Endnote 3—Legislation history

| Name | Registration | Commencement | Application, saving and transitional provisions |
| --- | --- | --- | --- |
| Telecommunications (Statutory Infrastructure Providers—Exempt Real Estate Development Projects and Building Redevelopment Projects) Determination (No.1) 2020 | 30 June 2020 (F2020L00856) | 1 July 2020 (s 2) |  |

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
| --- | --- | --- | --- | --- |
| Telstra Corporation and Other Legislation Amendment Act 2021 | 140, 2021 | 13 Dec 2021 | Sch 2 (items 148–162): 1 Jan 2023 (s 2(1) item 3) | — |

Endnote 4—Amendment history

| Provision affected | How affected |
| --- | --- |
| **Part 1** |  |
| s 2 | rep LA s 48D |
| s 4 | am Act No 140, 2021 |
| **Part 2** |  |
| s 5 | am Act No 140, 2021 |
| s 6 | am Act No 140, 2021 |
| **Part 3** |  |
| s 9 | am Act No 140, 2021 |
| s 10 | am Act No 140, 2021 |