

Explanatory Statement

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

Telecommunications Act 1997

Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Declaration (No. 1) 2020

Authority

Section 360L of the *Telecommunications Act 1997* (the Act) enables the Minister, by legislative instrument, to declare that a specified area is a designated service area for the purposes of the statutory infrastructure provider (SIP) regime in Part 19 of the Act, and to declare that a specified carrier is the SIP for the designated service area for the purposes of that Part.

Purpose

The purpose of the *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Declaration (No. 1) 2020* (the Declaration) is to declare designated service areas for the purposes of the SIP regime, and to declare a SIP for each designated service area. These designated service areas are geographic areas of real estate development projects or building redevelopment projects where telecommunications networks have been built by carriers other than NBN Co ('alternative carriers').

By declaring service areas and associated SIPs for those areas under section 360L of the Act, end-users living or working in these areas will have certainty that they will have access to infrastructure that supports the delivery of superfast broadband services, as well as voice services (where fixed-line and fixed-wireless networks are used).

The Declaration is a legislative instrument for the purposes of the *Legislation Act 2003*. The Declaration commences the day after it is registered.

Details of the Declaration are set out in [Attachment A](#).

Background

In December 2017 the Australian Government announced it would develop a new Universal Service Guarantee (USG) for telecommunications covering high-speed broadband as well as more familiar telephone and payphone services.¹ The Government then confirmed its approach to the USG in December 2018.² The USG provides people across Australia with access to broadband and voice services. The SIP regime supports the USG by providing a legislative framework so people in Australia can access broadband. As such, it complements

¹ www.mitchfield.com/2017/12/turnbull-government-to-improve-regional-telecoms-delivery-with-new-universal-service-guarantee/ (accessed 14 August 2020)

² <https://www.mitchfield.com/2018/12/telecommunications-universal-service-guarantee/> (accessed 14 August 2020)

the universal service obligation (USO) in the *Telecommunications Consumer Protection and Service Standards Act 1999*, which provides access to voice services.

The SIP regime is set out in Part 19 of the Act and commenced on 1 July 2020. It provides mechanisms for determining the carriers that must serve different geographic areas of Australia, recognising that there is a competitive market in Australia for the provision of telecommunications networks. Recognising its position in the market, NBN Co is the default wholesale broadband provider for Australia. However, the SIP regime also provides for alternative carriers to be the SIPs for the geographic areas where they deploy networks.

There are two routes by which alternative carriers become the SIPs for service areas.

First, the Minister may declare that a geographic area is a ‘designated service area’ and that a specified carrier is the SIP for that designated service area (see section 360L of the Act). While this power can be applied broadly to existing and future networks, for the purposes of this Declaration, it is being used in relation to networks that have been deployed by carriers in new developments prior to 1 July 2020. This Declaration declares 1,592 designated service areas and 17 alternative carriers as the SIPs for those designated service areas (see below).

Second, from 1 July 2020, if a carrier completes the installation of infrastructure in the project area of a real estate development project or a building redevelopment project, and that installation was carried out under a contract, then that carrier must declare that the whole of the project area is a nominated service area (see section 360H of the Act).

Once declared, the key obligations of SIPs under the SIP regime are to connect premises in their service areas to their networks, and supply wholesale services, on reasonable request from a carriage service provider acting on behalf of an end-user within the designated SIP area. The wholesale services must allow the retail provider to supply ‘qualifying carriage services’, which are broadband services with peak download and upload speeds of at least 25/5 Mbps. On fixed-line or fixed-wireless networks, the wholesale services SIPs supply must also enable retail providers to supply voice services. SIPs must also publish the terms and conditions on which they offer to connect premises and supply eligible services to carriage service providers. Details of the obligations of a SIP under the SIP regime are provided in Division 3 of Part 19 of the Act.

Future instruments may be made from time to time to declare additional designated service areas. The Government envisages that certain fibre-to-the-premises networks operated by Telstra Corporation Ltd, known as ‘Velocity networks’, will also be subject to a subsequent Declaration. There are a small number of other developments for which the Department of Infrastructure, Transport, Regional Development and Communications (the Department) is confirming the details.

Each of the Schedules to the Declaration declares a different alternative carrier as a SIP in respect of the specified areas of the corresponding Schedule. In total 17 alternative carriers are declared:

- Advatel Wireless Pty Ltd
- CIPHERtel Pty Ltd
- CNTCorp Pty Ltd
- CommSol Holdings Pty Ltd
- OMNIconnect Pty Ltd
- OPENetworks Pty Ltd
- Opticomm Ltd
- PIPE Networks Pty Ltd

- Fiber Asset Management Pty Ltd
- Frontier Networks Pty Ltd
- Interphone Pty Ltd
- LBN Co Pty Ltd
- Lynham Networks Pty Ltd
- Real World Networks Pty Ltd
- Reddenet Pty Ltd
- Telair Holdings Pty Ltd
- Transact Capital Communications Pty Ltd

For ease of reference for the reader, CNT Corp Pty Ltd owns the subsidiary RedTrain, which may be more familiar to consumers serviced by it; LBN Co Pty Ltd and OPENetworks Pty Ltd are both subsidiaries of Uniti Group Ltd (formerly Uniti Wireless Pty Ltd); and PIPE Networks Pty Ltd and Transact Capital Communications Pty Ltd are both subsidiaries of TPG Telecom.

The tables in each Schedule list designated service areas serviced by the respective SIP, and together include a total of 1,592 service areas. Column 1 in the table in each Schedule provides the name of the designated service area, and Column 2 provides the geographical coordinates of the designated service area boundary. These coordinates have been derived from consultations with the individual SIPs and from data collected by the Department for the Telecommunications in New Developments (TIND) dataset used to display such areas on the National Map.³

Under section 360LA of the Act, when the Minister declares a designated service area under section 360L, the area must be described in TAB vector format using the GDA94 coordinate system or, if another format is determined by the Australian Communications and Media Authority (ACMA) under subsection 360LA(3), in that other format. The ACMA has not determined another format under that subsection. The term TAB vector format is defined in the Act and means the MapInfo proprietary format that contains a spatial representation of data using points, lines, and polygons. The geographic coordinates set out in Column 2 of the Schedules to the Declaration use TAB vector format and the GDA94 coordinate system, and are tabulated for the purposes of making the Declaration.

Under section 360Z of the Act, the ACMA is required to maintain a register which, amongst other things, must contain the name of each SIP and, for each of those SIPs, the relevant service area or areas. The names and geographical boundaries of the designated service areas declared in the Declaration, and the name of the SIP for each designated service area, will be made publicly viewable by the ACMA on its register.⁴ This data will also be available for display on the National Map.

Consultation

The Department consulted all of the alternative carriers listed in the Schedules to confirm the accuracy of the geographical coordinates in Column 2 for their respective Schedule.

The Department also consulted the alternative carriers listed in the Schedules, along with other industry stakeholders, consumer groups and the ACMA, on a draft of the Declaration.

³ www.data.gov.au/data/dataset/telecommunications-in-new-developments (accessed 14 August 2020)

⁴ www.acma.gov.au/sip-register (accessed 14 August 2020)

The Office of Best Practice Regulation (OBPR) has advised the declaration is covered by the Regulation Impact Statement prepared for the SIP regime as a whole (OBPR ID: 21886).

Statement of compatibility with human rights

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at Attachment B.

Attachment A**Details of the *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Declaration (No. 1) 2020***Section 1 – Name

This section provides that the name of the Declaration is the *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Declaration (No. 1) 2020*.

Section 2 – Commencement

This section provides for the Declaration to commence on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the Declaration is made under section 360L of the *Telecommunications Act 1997* (the Act).

Section 4 – Definitions

This section provides definitions of terms used in the Declaration.

The note in the section indicates that a number of terms used in the Declaration are defined in the Act, including designated service area, GDA94, statutory infrastructure provider, and TAB vector format. These terms have the same meaning in the Instrument as under the Act, pursuant to section 13 of the *Legislation Act 2003*.

Act is defined to mean the *Telecommunications Act 1997*.

Section 5 – Designated service areas and statutory infrastructure providers

This section declares the designated service areas and associated statutory infrastructure provider for the purposes of section 360L of the Act.

Paragraph 5(1)(a) provides that for the purposes of section 360L, each area specified in Column 1 of a table in a Schedule to the instrument is a designated service area.

Paragraph 5(1)(b) provides that each carrier specified in the heading of a Schedule to the instrument is the statutory infrastructure provider for each designated service area specified in Column 1 of the table in that corresponding Schedule. Each Schedule gives the name of a SIP. Each SIP (17 in total) is taken to be the SIP for all the designated service areas listed in its respective Schedule. The obligations of a SIP under the SIP regime are provided in Division 3 of Part 19 of the Act.

A total of 1,592 designated service areas are declared in the Declaration. The names of the designated service areas provided in Column 1 of the table in each Schedule were provided by the SIPs. These generally reflect the names of the developments within which designated service areas are located. Some SIPs provided descriptions of service areas for real estate development projects based on different stages of the development; this is generally done

when segments of a development, including the underlying network, are started or completed at different times.

Paragraph 5(2) provides that each area referred to in Column 1 of a table is to be ascertained using the corresponding GDA94 coordinates set out in Column 2 for that item.

The note to this clause provides that subsection 360LA(1) of the Act requires that an area declared under section 360L must be described in a TAB vector format using the GDA94 coordinate system, or if another format is determined by ACMA under subsection 360LA(3), that other format. The ACMA has not determined another format under that subsection.

The term TAB vector format is defined in the Act and means the MapInfo proprietary format that contains a spatial representation of data using points, lines, and polygons.

The geographical coordinates listed in Column 2 in the table in each Schedule provide the boundaries of the designated service area. These coordinates have been derived from consultations with the designated SIPs and data held in the Telecommunications in New Developments (TIND) map maintained by the Department. The coordinates in Column 2 are listed as longitudinal and latitudinal polygons using the TAB Vector format and the GDA94 standard, and are tabulated for the purposes of making the Declaration. Premises located within these boundaries are taken to be included within the designated service area and must, on reasonable request from a carriage service provider, be connected by the relevant SIP to receive broadband and voice services.

Attachment B**Statement of Compatibility with Human Rights**

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Declaration (No. 1) 2020***Overview***

The purpose of the *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Declaration (No. 1) 2020* (the Declaration) is to declare designated service areas for the purposes of the SIP regime, and to declare a statutory infrastructure provider (SIP) for each designated service area. These designated service areas are geographic areas of real estate development projects or building redevelopment projects where telecommunications networks have been built by carriers other than NBN Co ('alternative carriers').

Once declared, SIPs are required under the SIP regime to connect premises in their designated service areas to their networks, and supply wholesale services, on reasonable request from a carriage service provider acting on behalf of an end-user. The wholesale services must allow the retail provider to supply 'qualifying carriage services', which are broadband services with peak download and upload speeds of at least 25/5 Mbps. On fixed-line or fixed-wireless networks, the wholesale services SIPs supply must also enable retail providers to supply voice services. SIPs must also publish the terms and conditions on which they offer to connect premises and supply eligible services to carriage service providers. The obligations of a SIP under the SIP regime are detailed in Division 3 of Part 19 of the Act.

The Declaration provides certainty that end-users living and working in these areas will have access to infrastructure that supports the delivery of superfast broadband services. Given that all of the areas being designated under the Declaration are serviced by fixed-line or fixed-wireless networks, end-users will also have access to voice services.

The Declaration does not include personal information about any end-user residing or working within a designated service area.

Human rights implications

The Declaration is compatible with the rights and freedoms recognised or declared by the international instruments listed in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* as they apply to Australia.

The Declaration does not engage any of the applicable rights or freedoms.

Conclusion

The Declaration is compatible with human rights as it does not raise any human rights issues.