

# 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) Amendment (No. 1) Declaration 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. This instrument relies on subsection 33(3) of the *Acts Interpretation Act 1901* for its authority to amend the *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Declaration (No. 1) 2020*, made under section 360L of the Act.

### **Purpose**

The purpose of the *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Amendment (No. 1) Declaration 2020* (the Amending 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 Limited (NBN Co).

The Amending Declaration amends the *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Declaration (No. 1) 2020* (the Principal Declaration) to declare 34 additional designated service areas and to declare a SIP for each designated service area. The Principal Declaration was made in August 2020 and declared 1,592 designated service areas and a SIP for each designated service area.

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

Details of the Amending 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<sup>1</sup>. The Government then confirmed its approach to the USG in December 2018<sup>2</sup>. 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 the universal service obligation (USO) in the *Telecommunications Consumer Protection and Service Standards Act 1999*, which provides access to retail 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. In light of 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 the Amending Declaration, it is being used in relation to networks that have been deployed by carriers in new developments prior to 1 July 2020. In August 2020 the Minister declared 1,592 designated service areas and 17 alternative carriers as the SIPs for those designated service areas by making the Principal Declaration. The Amending Declaration declares a further 34 designated service areas operated by six alternative carriers (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 and a SIP for each of those areas.

Schedule 1 to the Amending Declaration declares a different carrier as a SIP in respect of the specified areas of the corresponding Schedule. In total six carriers are declared:

<sup>1</sup> [www.mitchfield.com/2017/12/turnbull-government-to-improve-regional-telecoms-delivery-with-new-universal-service-guarantee/](http://www.mitchfield.com/2017/12/turnbull-government-to-improve-regional-telecoms-delivery-with-new-universal-service-guarantee/) (accessed 1 December 2020)

<sup>2</sup> <https://www.mitchfield.com/2018/12/telecommunications-universal-service-guarantee/> (accessed 1 December 2020)

- CipherTel Pty Ltd
- CNTCorp Pty Ltd
- LBN Co Pty Ltd
- Lynham Networks Pty Ltd
- OPENetworks Pty Ltd
- Opticomm 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, OPENetworks Pty Ltd and Opticomm Ltd are all subsidiaries of Uniti Group Ltd (formerly Uniti Wireless Pty Ltd).

Each item in Schedule 1 lists designated service areas serviced by the respective SIP, and together include a total of 34 service areas. Column 1 in each table to Schedule 1 provides the name of the designated service area, and Column 2 provides the geographical coordinates of the designated service area boundary.

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 Amending Declaration, and the name of the SIP for each designated service area, will be made publicly viewable by the ACMA on its register<sup>3</sup>. The data will also be available for display on the National Map.

### Consultation

The Department consulted all of the carriers listed in Schedule 1 and NBN Co on a draft of the Amending Declaration and to confirm the accuracy of the geographical coordinates in Column 2 for their respective Schedule.

The Office of Best Practice Regulation (OBPR) has advised the Amending 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.

---

<sup>3</sup> [www.acma.gov.au/sip-register](http://www.acma.gov.au/sip-register) (accessed 1 December 2020)

## Attachment A

### ***Details of the Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Amendment (No. 1) Declaration 2020***

#### Section 1 – Name

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

#### Section 2 – Commencement

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

#### Section 3 – Authority

This section provides that the Amending Declaration is made under section 360L of the *Telecommunications Act 1997* (the Act). This instrument relies on subsection 33(3) of the *Acts Interpretation Act 1901* for its authority to amend the *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Declaration (No. 1) 2020* (the Principal Declaration), made under section 360L of the Act.

#### Section 4 – Schedule

This section provides that each instrument (i.e. the Principal Declaration) specified in the Schedule to the instrument (i.e. the Amending Declaration) is amended or repealed as set out in the applicable items in the Schedule concerned, and that any other item in a Schedule to this instrument (i.e. the Amending Declaration) has effect according to its terms.

#### **Schedule 1—Amendments**

Schedule 1 to the Amending Declaration sets out amendments to the Principal Declaration.

Section 5 of the Principal Declaration provides that, for the purposes of s 360L of the Act, each area specified in column 1 of a table in a Schedule to that instrument is a designated service area (to be ascertained using the GDA94 coordinates set out in column 2 for that item), and each carrier specified in the heading of a Schedule is the statutory infrastructure provider (SIP) for that area.

Items 1-27 of Schedule 1 to the Amending Declaration insert new items into the tables in the identified Schedules to the Principal Declaration in order to declare 34 new designated service areas and their associated statutory infrastructure providers (SIPs) for the purposes of section 360L of the Act.

The new designated service areas will be inserted into the relevant tables in the select Schedules to the Principal Declaration. This will list each designated SIP area against its respective SIP, and maintain the alphabetical order of the designated services areas in the Principal Declaration. This will ensure all designated service areas are collated within the one compilation of the instrument.

The names of the designated service areas provided in Column 1 of each table in the 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 are started or completed at different times.

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 Australian Communications and Media Authority (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 tables provided in each clause in Schedule 1 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 Amending 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 Amendment (Designated Service Area and Statutory Infrastructure Provider) Declaration (No. 1) 2020*****Overview***

The purpose of the *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Amendment (No. 1) Declaration 2020* (the Amending Declaration) is to amend the *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Declaration (No. 1) 2020* (the Principal Declaration) to declare additional 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.

Once service areas have been designated, the SIPs for those service areas are required under the *Telecommunications Act 1997* (the Act) 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 Amending 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 Amending Declaration are serviced by fixed-line or fixed-wireless networks, end-users will also have access to voice services.

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

***Human rights implications***

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

***Conclusion***

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