

## 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. 2) 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. 2) 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 127 additional designated service areas and to declare Telstra as SIP for these designated service areas. The Principal Declaration was made in August 2020 and declared 1,592 designated service areas and a SIP for each designated service area. The subsequent *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Amendment (No. 1) Declaration 2020* had the effect of declaring a further 34 designated service areas, and associated SIPs for those areas.

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

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 (and SIP) 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 subsequent *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Amendment (No. 1) Declaration 2020* had the effect of declaring a further 34 designated service areas, and associated SIPs for those areas. This Amending Declaration declares 127 designated service areas for which Telstra will be the SIP.

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 creates a new Schedule (Schedule 16A) to the Principal Declaration to cover Telstra. Each item in the table in the new Schedule 16A lists a designated service area for which Telstra will be the SIP. Column 1 in the table in Schedule 16A 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 will be made publicly viewable by the ACMA on its register,<sup>1</sup> with Telstra listed as the SIP for these designated service areas. The data will also be available for display on the National Map.

### Consultation

The Department consulted with Telstra and NBN Co, as the default SIP for all of Australia, on a draft of the Amending Declaration and to confirm the accuracy of the geographical coordinates in Column 2 of Schedule 1.

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.

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<sup>1</sup> [www.acma.gov.au/sip-register](http://www.acma.gov.au/sip-register) (accessed 8 December 2020)

## Attachment A

### ***Details of the Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Amendment (No. 2) 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. 2) 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 specified in the Schedule (i.e. the Principal Declaration) to the instrument (i.e. the Amending Declaration) is amended or repealed as set out in the applicable item 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.

Item 1 of Schedule 1 to the Amending Declaration inserts a Schedule (Schedule 16A) into the Principal Declaration to declare Telstra as the statutory infrastructure provider (SIP) for the 127 new designated service areas identified in the table in the new Schedule 16A for the purposes of section 360L of the Act.

Section 5 of the Principal Declaration provides that, for the purposes of s 360L of the Act, each area specified in Column 1 of the table in a Schedule to that instrument is a designated service area, and that the carrier specified in the heading of the Schedule is the SIP for that area. The names of the designated service areas provided in Column 1 of the table in new Schedule 16A were provided by Telstra. These generally reflect the names of the developments within which designated service areas are located. The geographical coordinates listed in Column 2 in the table in new Schedule 16A provide the boundaries of the designated service areas.

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 coordinates in Column 2 have been derived from consultations with Telstra, and are listed as longitudinal and latitudinal polygons for the purposes of making the Amending Declaration. Premises located within these boundaries must, on reasonable request from a carriage service provider, be connected by Telstra acting as the 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. 2) 2020*****Overview***

The purpose of the *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Amendment (No. 2) 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 statutory infrastructure provider (SIP) regime, and to declare Telstra the 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.