



Telecommunications (Statutory Infrastructure Providers—Circumstances for Exceptions to Connection and Supply Obligations) Determination 2021

I, PAUL FLETCHER, Minister for Communications, Urban Infrastructure, Cities and the Arts, make the following Instrument.

Dated 22 May 2021.

PAUL FLETCHER
Minister for Communications, Urban Infrastructure, Cities and the Arts

Part 1 Introductory

1 Name

This Instrument is the *Telecommunications (Statutory Infrastructure Providers—Circumstances for Exceptions to Connection and Supply Obligations) Determination 2021*.

2 Commencement

This Instrument commences on the day after it is registered.

3 Authority

This Instrument is made under subsections 360P(3) and 360Q(4) of the *Telecommunications Act 1997*.

4 Definitions

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

- (a) carriage service provider (section 7);
- (b) connected (section 7);
- (c) eligible service (section 360A);
- (d) qualifying carriage service (section 360A);
- (e) qualifying telecommunications network (section 360A);
- (f) relevant service area (section 360A);
- (g) request (section 360A); and
- (h) service area (section 360A).

(1) In this Instrument:

Act means the *Telecommunications Act 1997*.

SIP or *statutory infrastructure provider* means a statutory infrastructure provider within the meaning of section 360A of the Act.

(2) In this Instrument, the reference to end-user in relation to a request for a connection of an end-user at premises, or supply of an eligible service to a carriage service provider (in order that the carriage service provider can provide qualifying carriage services to end-user at premises) is taken to be a reference to the person who has entered into a legally binding arrangement with the carriage service provider for a connection or supply of an eligible service to, specified premises, unless otherwise specified in the request.

(3) In this Instrument, a request for a connection of, or supply of an eligible service to, premises sited at a building lot that has more than one premises is taken to relate to the individual premises specified in the request regardless of the existence of other premises at that building lot.

Part 2 Circumstances

Division 1 Circumstances in which the obligation to connect premises to a qualifying telecommunications network does not arise

- Note 1: Subsection 360P(1) of the Act imposes the obligation on a statutory infrastructure provider for a service area to connect an end-user at premises in the service area, on reasonable request by a carriage service provider on behalf of the end-user, to a qualifying telecommunications network.
- Note 2: Subsection 360P(2) of the Act provides that the obligation to connect premises to a qualifying telecommunications network does not arise under subsection 360P(1) in the circumstances specified in a ministerial determination under subsection 360P(3).
- Note 3: Connection to a qualifying fixed-line telecommunications network is required unless it is not reasonable to do so, and where it is not reasonable to do so, connection must be to another type of qualifying telecommunications network, such as one which uses either a fixed-wireless or satellite technology platform: see paragraphs 360P(1)(a) and (b) of the Act.
- Note 4: A statutory infrastructure provider is not obliged under subsection 360P(1) of the Act to connect premises in order that a carriage service provider can provide qualifying carriage services to an end-user, where those premises are not situated in the provider's service area.

5 Determination of circumstances

For the purposes of subsection 360P(2) of the Act, the following circumstances are determined:

- (a) where, by the day requested for connection, the premises specified in the request:
- (i) is under construction and the SIP has reasonably determined that the building works for the premises will not have sufficiently progressed to a stage that is adequate for the connection to be undertaken; or
 - (ii) is a permanent structure that does not comply with all applicable planning and development laws pertaining to structural safety and integrity; or
 - (iii) is a moveable structure that is not reasonably expected to be continuously located at the particular site where the connection has been requested;
- (b) where the supply of a power source by the end-user is required to adequately support the connection and that power source is not reasonably expected to be available by the date requested for the connection;
- (c) where fulfilment of the connection obligation at the particular premises would constitute a contravention by the SIP of an applicable law of the

Commonwealth, State, Territory or local government and there are no steps reasonably available to the SIP to lawfully avoid the contravention;

- (d) where civil works which are not the responsibility of the SIP are required to adequately support the connection, and have not been supplied or arranged to be supplied by the date requested for the connection;

Note: Part 20A of the Act generally requires developers to arrange for civil works to be undertaken to ensure that fibre-ready facilities (such as pit and pipe) are installed in their real estate development projects.

- (e) where the SIP has already received a request for connection at the same premises, and the SIP is either processing the request or has already connected that premises;
- (f) where the premises is connected to another qualifying telecommunications network (*third party network*) and the SIP is reasonably satisfied, based on documentation obtained from the requesting carriage service provider or other information, that at the time of the request either:
- (i) an end-user or another person is being supplied with a qualifying carriage service using the third party network and that person has not been advised by the provider using the third party network to supply the service, that the service is to be withdrawn within a specified timeframe; or
 - (ii) an end-user or another person is being supplied with a qualifying carriage service using the third party network and that person has not requested or does not intend to request the cancellation of the service within a reasonable timeframe;
- (g) where the installation of equipment necessary for the connection would put the SIP's employees, contractors or agents or members of the public at unreasonable risk of being exposed to health or safety hazards;
- (h) where, in order for the SIP to carry out or complete any part of the connection, the installation of facilities or other equipment (such as customer premises equipment) is necessary for the connection: and
- (i) the SIP requires either or both of the following:
 - A. access to land, premises or areas within premises (including, without limitation, common areas) owned or occupied by a party that are not publicly accessible;
 - B. the consent of a person to attach or install facilities or other equipment to, or within, premises; and
 - (ii) after reasonable endeavours have been undertaken by the SIP to obtain such access or consent (including if requested, informing the requesting carriage service provider of the nature and scope of the works required to be undertaken by the SIP), such access has been refused or not granted within the reasonable timeframe requested by the SIP (as applicable); and

(iii) the SIP has exhausted all lawful available avenues (including any under Commonwealth law) to obtain such access.

Note: Under Schedule 3 to the Act, carriers have some powers to inspect land, install certain telecommunications facilities and maintain existing telecommunications facilities, and have some immunities from some state and territory legislation, such as planning laws. Conditions and notification obligations apply.

(i) where the carriage service provider has not accepted the SIP's terms and conditions for the connection of premises, provided those terms and conditions are not inconsistent with this Instrument;

Note: Subsection 360W(1) of the Act requires each SIP to publish on its website the price and non-price terms and conditions on which it offers to connect premises in the relevant service area.

(j) the SIP has a reasonable need to identify the end-user and adequate information is not available to enable the SIP to identify that end-user;

(k) where the SIP believes, on reasonable grounds, that the request to connect the premises is fraudulent;

(l) where the SIP believes, on reasonable grounds, that the person to whom the request to connect the premises relates does not have the legal right to occupy the premises specified in the request;

(m) where:

(i) after conducting an on-site inspection of, or undertaking other inquiries or analysis of, the location where the premises is sited, the SIP reasonably determines there are particular topographical or other features of the premises or its location that either impact or prevent the connection and/or would render the premises incapable of being supplied with a properly functioning eligible service (the *impediment*); and

(ii) the SIP has notified the requesting carriage service provider in writing of the impediment, and if applicable, details of reasonable adjustments that could be undertaken (with or without any cost to the end-user) within a reasonable timeframe to remove or overcome the impediment to enable the connection to be undertaken and/or render the premises capable of being supplied in the future with a properly functioning eligible service;

(iii) the SIP has asked the requesting carriage service provider to notify the end-user in writing of the information of the impediment (and any other details, if applicable) as referenced in paragraph (ii) above; and

(iv) the end-user has not, within a reasonable timeframe specified by the carriage service provider, removed the impediment or made other reasonable adjustments.

Division 2 Circumstances in which the obligation to supply eligible services does not arise

- Note 1: Paragraph 360Q(1)(a) of the Act imposes the obligation on a statutory infrastructure provider for a service area to supply, on reasonable request by a carriage service provider, an eligible service to the carriage service provider in order that the carriage service provider can provide qualifying carriage services to an end-user at premises in the service area.
- Note 2: Subsection 360Q(3) of the Act provides that the obligation to supply an eligible service does not arise under subsection 360Q(1) in the circumstances specified in a ministerial determination under subsection 360Q(4).
- Note 3: A statutory infrastructure provider is not obliged under subsection 360Q(1) of the Act to supply eligible services in order that a carriage service provider can provide qualifying carriage services to an end-user at premises, where the premises are not situated in the statutory infrastructure provider's service area.

6 Determination of circumstances

For the purposes of subsection 360Q(3) of the Act, the following circumstances are determined:

- (a) where, by the day requested for the supply, the premises specified in the request:
- (i) is not connected to the SIP's qualifying telecommunications network and the SIP is not required under subsection 360P(1) of the Act to connect the premises; or
 - (ii) is under construction and the SIP has reasonably determined that the building works for the premises will not have sufficiently progressed for the commencement of the supply; or
 - (iii) is a permanent structure that does not comply with all applicable planning and development laws pertaining to structural safety and integrity; or
 - (iv) is a moveable structure that is not reasonably expected to be continuously located at the particular site where the supply of the eligible service has been requested;
- (b) where the supply of a power source by the end-user is required to adequately support the supply of the eligible service and that power source is not reasonably expected to be available by the date requested for the commencement of the supply;
- (c) where fulfilment of the supply obligation at the particular premises would constitute a contravention by the SIP of an applicable law of the Commonwealth, State, Territory or local government and there are no steps reasonably available to the SIP to lawfully avoid the contravention;

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- (d) where the SIP has already received a request for supply of an eligible service at the same premises, and the SIP is either processing the request or has already commenced the supply of an eligible service to that premises;
 - (e) where the premises is connected to another qualifying telecommunications network (*third party network*) and the SIP is reasonably satisfied, based on documentation obtained from the requesting carriage service provider or other information, that at the time of the request either:
 - (i) an end-user or other person is being supplied with a qualifying carriage service using the third party network and that person has not been advised by the provider using that third party network to supply the service, that the service is to be withdrawn within a specified timeframe; or
 - (ii) an end-user or other person is being supplied with a qualifying carriage service using the third party network and that person has not requested or does not intend to request the cancellation of the service within a reasonable timeframe;
 - (f) where the installation of equipment necessary for the supply of the eligible service would put the SIP's employees, contractors or agents or members of the public at unreasonable risk of being exposed to health or safety hazards;
 - (g) where, in order for the SIP to commence the supply of an eligible service, the installation of facilities or other equipment (such as customer premises equipment) is necessary; and
 - (i) the SIP requires either or both of the following:
 - A. access to land, premises or areas within premises (including, without limitation, common areas) owned or occupied by a party that are not publicly accessible;
 - B. the consent of a person to attach or install the facilities or other equipment to, or within, premises; and
 - (ii) after reasonable endeavours have been undertaken by the SIP to obtain such access or consent (including if requested, informing the requesting carriage service provider in writing of the nature and scope of the works required to be undertaken by the SIP), such access has been refused or not granted within the reasonable timeframe requested by the SIP (as applicable); and
 - (iii) the SIP has exhausted all lawful available avenues (including any under Commonwealth law) to obtain such access;

Note: Under Schedule 3 to the Act, carriers have some powers to inspect land, install certain telecommunications facilities and maintain existing telecommunications facilities, and have some immunities from some state and territory legislation, such as planning laws. Conditions and notification obligations apply.

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- (h) where the carriage service provider has not accepted the SIP's terms and conditions for the supply, provided those terms and conditions are not inconsistent with this Instrument;

Note: Subsection 360X(1) of the Act requires each SIP to publish on its website the price and non-price terms and conditions on which it offers to supply eligible services in the relevant service area.

- (i) the SIP has a reasonable need to identify the end-user and adequate information is not available to enable the SIP to identify that end-user;
- (j) where the SIP believes, on reasonable grounds, that the request to supply the eligible service is fraudulent;
- (k) where the SIP believes, on reasonable grounds, that the person to whom the request to supply the eligible service relates does not have the legal right to occupy the premises specified in the request;

- (l) where:

- (i) after conducting an on-site inspection of, or undertaking other inquiries or analysis of, the location where the premises is sited, the SIP reasonably determines there are particular topographical or other features of the premises or its location that would render the premises incapable of being supplied with a properly functioning eligible service (the *impediment*); and
- (ii) the SIP has notified the requesting carriage service provider in writing of the impediment, and if applicable, details of reasonable adjustments that could be undertaken (with or without any cost to the end-user) within a reasonable timeframe to remove or overcome the impediment and render the premises capable of being supplied with a properly functioning eligible service; and
- (iii) the SIP has asked the requesting carriage service provider to notify the end-user in writing of the impediment (and any other details, if applicable) as referenced in paragraph (ii) above; and
- (iv) the end-user has not, within a reasonable timeframe specified by the carriage service provider, removed the impediment or made other reasonable adjustments.