

Explanatory Statement

Issued by the Authority of the Minister for Communications,
Urban Infrastructure, Cities and the Arts

Telecommunications Act 1997

Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Amendment (2021 Measures No. 1) Declaration 2021

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 (2021 Measures No. 1) Declaration 2021* (the Amending Declaration) is to amend the *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Declaration (No. 1) 2020* (the Principal Declaration) to:

- declare seven new designated service areas for the purposes of the SIP regime and declare that a specified carrier is the SIP for each designated service area,
- amend five existing designated service areas,
- repeal three existing designated service areas,
- add Australian Company Numbers (ACNs) for each SIP, and
- update the names of two SIPs.

Designated service areas are geographic areas of real estate development projects in which telecommunications networks have been built by carriers other than NBN Co Limited (NBN Co). These carriers are the SIPs for such areas.

The Principal Declaration was made in August 2020 and declared 1,592 designated service areas and specified a SIP for each designated service area. Two subsequent amendments in December 2020 declared a further 161 designated service areas and SIPs for these areas. Each SIP and their service areas are set out in a separate schedule to the Principal Declaration.

Once a service area is designated, people 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 or 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 telecommunications networks.

There are two main 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). To date, this power has been used to designate service areas where networks were built before 1 July 2020. Second, from 1 July 2020, carriers must declare nominated service areas where they have installed telecommunications network infrastructure in a real estate development project, or a building redevelopment project, under a contract (see section 360H of the Act).

The key obligations of SIPs are to connect premises in their service areas to their telecommunications 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.

Schedule 1 to the Amending Declaration describes seven new designated service areas and the SIP for each designated service area. Schedule 1 also amends five existing designated service areas to revise their geographical boundaries. These new service areas and amendments were identified by network audits and reviews undertaken by SIPs.

Schedule 1 to the Amending Declaration also repeals three designated service areas. Two of these designated service areas are being repealed as a result of a notification by the SIP, Frontier Networks, under section 360R of the Act that it no longer services these areas and will no longer be able to fulfil its SIP obligations. A third designated service area is being repealed because the SIP has advised that it provided incorrect geographic coordinates and does not service the area.

As the default SIP for all of Australia, NBN Co will take on the SIP obligations for these three service areas. NBN Co has advised that it already provides services to these three areas.

Finally, Schedule 1 of the Amending Declaration will update the names of two SIPs and add ACNs to the Definitions section of the Principal Declaration. This will ensure that the details

of SIPs are up to date, and that responsible SIPs can be identified even if they change their trading or business names.

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, and LBN Co Pty Ltd and OptiComm Ltd are subsidiaries of Uniti Group Limited (formerly Uniti Wireless Pty Ltd).

Under section 360Z of the Act, the Australian Communications and Media Authority (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 relevant SIP will be made publicly viewable by the ACMA on its register. The data will also be available for display on the National Map.

Consultation

The Department engaged with CNT Corp, Frontier Networks, Interphone, LBN Co, NBN Co and Telstra as the SIPs directly affected by the Amending Declaration, and also consulted all SIPs on a draft of the Amending Declaration. The Department provided mapping files of the proposed amendments to allow SIPs to compare these to their network maps. The Department also consulted the ACMA on the draft Amending Declaration given its role as the regulator.

The Amending Declaration is covered by a standing Regulatory Impact Statement (RIS) exemption issued by the Office of Best Practice Regulation (OBPR), as the regulatory impacts of the Amending Declaration are minor and/or machinery in nature, and were considered and costed as part of the implementation of the wider SIP regime (OBPR ID: 44338).

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) Amendment (2021 Measures No. 1) Declaration 2021

Section 1 – Name

This section provides that the name of the instrument is the *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Amendment (2021 Measures No. 1) Declaration 2021* (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).

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 18 new definitions into Section 4 of the Principal Declaration. The new definitions specify both the name and Australian Company Number (ACN) for each designated SIP. The ACNs have been added at the request of the ACMA as SIPs do change their names from time to time, including as a result of corporate restructures. The new definitions provide certainty that the correct SIP can be identified, including when the ACMA is undertaking compliance activities.

Item 2 inserts a new schedule (Schedule 1A) into the Principal Declaration and designates Australian Communications Group as the SIP for the listed service area. This service area was previously attributed to Telair under Schedule 16 of the Principal Declaration, based on its carrier licence. The ACMA has requested the name Australian Communications Group be used instead to reflect the current ACMA carrier licence registry. In effect, this amendment moves and renames the schedule without amending its contents. Item 16 repeals the original Schedule 16 which was attributed to Telair.

Items 3, 11-13 and 17 amend existing designated service areas in Schedules 3, 8 and 16A of the Principal Declaration. In each case SIPs have provided amended geographic coordinates after identifying errors in the coordinates they originally provided for the Principal Declaration.

Items 4, 7, 8 and 9 insert new items into the tables in Schedules 3, 7 and 8 to the Principal Declaration in order to specify seven new designated service areas and their respective SIPs. These new service areas have been identified in data reviews undertaken by SIPs.

Items 5 and 6 repeal two designated service areas following advice from Frontier Networks, as required under section 360R of the Act, that it no longer services these areas. Item 10 of Schedule 1 to the Amending Declaration repeals one designated service area following advice from LBN Co that it provided incorrect geographic coordinates and does not service this area. As the default SIP, NBN Co will take responsibility for meeting the SIP obligations in these areas.

Items 14 and 15 update the name of PIPE Networks Pty Limited in the Principal Declaration.

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) Amendment (2021 Measures No. 1) Declaration 2021

Overview

The purpose of the *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Amendment (2021 Measures No. 1) Declaration 2021* (the Amending Declaration) is to amend the *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Declaration (No. 1) 2020* (the Principal Declaration) to:

- declare seven new designated service areas for the purposes of the SIP regime and declare that a specified carrier is the SIP for each designated service area,
- amend five existing designated service areas,
- repeal three existing designated service areas,
- add Australian Company Numbers (ACNs) for each SIP, and
- update the names of two SIPs.

Designated service areas are geographic areas of real estate development projects in which telecommunications networks have been built by carriers other than NBN Co Limited (NBN Co).

Once a service area is designated, 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 or fixed wireless networks are used).

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.