

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 Declaration (No. 1) 2022

Authority

This instrument is made under section 360L of the *Telecommunications Act 1997* and subsection 33(3) of the *Acts Interpretation Act 1901*.

Purpose

The purpose of the Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Amendment Declaration (No. 1) 2022 (the Amending Declaration) is to amend the *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Declaration (No. 1) 2020* (the Principal Declaration) to provide for an expected change in the control of network assets from Telstra Corporation Limited (ACN 051 775 556) to Telstra Limited (ACN 086 174 781).

Background

On 18 December 2020 the Minister for Communications, Urban Infrastructure, Cities and the Arts, the Hon Paul Fletcher MP, made a legislative instrument to designate 127 Telstra fibre-to-the-premises network areas (known as Velocity networks and including its network in South Brisbane) as service areas for the purposes of Part 19 of the *Telecommunications Act 1997* (the Act).

Telstra Corporation Limited (TCL) was designated as the statutory infrastructure provider (SIP) for those service areas. The Minister's instrument amended the Principal Declaration by inserting a new Schedule (Schedule 16A) for the TCL areas.

As the SIP for these 127 designated service areas, TCL must connect premises in the service areas to its telecommunications 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 carriage service 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.

On 24 December 2020 TCL announced that it had sold the South Brisbane and Velocity fibre-to-the-premises networks to Uniti, but would retain operational control of the networks. From July 2022 it would commence a process (expected to take 12-15 months) to transfer control of the networks to Uniti. Given TCL retains operational control of the networks pending their transfer, it remains the SIP for the network service areas.

TCL has announced that it is undertaking a legal restructure (Proposed Restructure). As a result of this Proposed Restructure, the interim control of the Velocity and South Brisbane networks will be transferred from TCL to Telstra Limited, which is a separate company within Telstra's corporate group that will be responsible for the supply of wholesale and retail services. Legislation relating to the Proposed Restructure was passed by the Parliament in November 2021 (the *Telstra Corporation and Other Legislation Amendment Act 2021*, or the Telstra Amendment Act).

The Amending Declaration anticipates the Proposed Restructure by providing for the SIP obligations to be moved to the entity within Telstra's corporate group (TL) that Telstra wishes to be responsible for fulfilling those obligations. The Proposed Restructure is expected to take effect during 2022. The Amending Declaration will not commence until the Proposed Restructure takes effect, and will not commence at all if the Proposed Restructure does not occur.

Consultation

The Department of Infrastructure, Transport, Regional Development and Communications consulted TCL, TL, consumer representatives and industry representatives on a draft of the Amending Declaration. The Department also consulted the Australian Communications and Media Authority on the draft Amending Declaration given its role as the regulator. No concerns were raised during the consultation, noting that the instrument is essentially mechanical.

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 mechanical 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](#).

Details of the *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Amendment Declaration (No. 1) 2022*

Section 1 – *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Amendment Declaration (No. 1) 2022*

This section provides that the name of the instrument is the *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Declaration (No. 1) 2022* (the Amending Declaration).

Section 2 – Commencement

Section 2 provides that the Amending Declaration commences when Schedules 2 and 3 of the *Telstra Corporation and Other Legislation Amendment Act 2021* (the Telstra Amendment Act) commence. However, the Amending Declaration does not commence at all if those Schedules do not commence.

Schedules 2 and 3 of the Telstra Amendment Act commence when any of the property of Telstra Corporation Limited is transferred to, and vested in, Telstra Limited by virtue of an order of the Federal Court of Australia made in accordance with section 413 of the *Corporations Act 2001*. The order is expected to apply generally to property of Telstra Corporation Limited that is transferred, and Telstra has indicated that one effect of the order would be that control of the networks specified in the Schedule to the Amending Declaration would be transferred from Telstra Corporation Limited to Telstra Limited.

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 a Schedule to the instrument 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 has effect according to its terms.

Schedule 1 - Amendments

Schedule 1 to the Amending Declaration sets out amendments to the *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Declaration (No. 1) 2020* (the Principal Declaration).

Item 1 of Schedule 1 changes the statutory infrastructure provider (SIP) for the service areas currently specified in Schedule 16A of the Principal Declaration from Telstra Corporation Limited (ACN 051 775 556) to Telstra Limited (ACN 086 174 781).

Item 2 of Schedule 1 amends the heading of Schedule 16A to replace ‘Telstra Corporation Limited’ with ‘Telstra Limited’.

Item 3 of Schedule 1 amends the heading of the table in Schedule 16A to provide that Telstra Limited will be the specified carrier to which the declaration applies, and therefore, from the commencement of the Amending Declaration, the SIP for the service areas.

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) 2022**

Overview

The purpose of the *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Declaration (No. 1) 2022* (the Amending Declaration) is to amend the *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Declaration (No. 1) 2020* (the Principal Declaration) to provide for a change in the control of network assets from Telstra Corporation Limited (ACN 051 775 556) to Telstra Limited (ACN 086 174 781).

The Amending Declaration has been made because of Telstra's proposal to restructure its corporate arrangements. As part of that restructure, Telstra Corporation Limited will transfer operational control of 127 fibre-to-the-premises networks to Telstra Limited. Those networks, known as Velocity Networks, and including Telstra's South Brisbane Network, were designated under the statutory infrastructure provider (SIP) regime in Part 19 of the *Telecommunications Act 1997* by the Minister for Communications in December 2020. The Amending Declaration provides for the SIP obligations to be moved to the entity within Telstra's corporate group that Telstra wants to be responsible for fulfilling those obligations.

SIPs are responsible for connecting premises within their service areas to high-speed broadband networks on reasonable request from a retail provider. They must also supply wholesale services that allow retail providers to supply broadband services to end-users at the premises with peak download and upload speeds of at least 25/5 Mbps. On fixed-line networks, such as the Velocity networks, the wholesale services SIPs supply must also enable retail providers to supply voice services to end-users.

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.