

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Telecommunications Act 1997

Telecommunications (Listed Infringement Notice Provisions) Declaration 2022

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Telecommunications (Listed Infringement Notice Provisions) Declaration 2022* (**the Declaration**) under subsection 572E(7) of the *Telecommunications Act 1997* (**the Act**) and subsection 33(3) of the *Acts Interpretation Act 1901* (**the AIA**).

Subsection 572E(7) of the Act provides that the ACMA may, by legislative instrument, declare that a specified provision of:

- the Act;
- a declaration in force under section 63 of the Act; or
- a determination in force under section 99 of the Act;

is a listed infringement notice provision for the purposes of section 572E of the Act.

Section 572E allows the ACMA to give an infringement notice in relation to a contravention of a civil penalty provision. Sections 68 and 101 of the Act require carriers and carriage service providers (**CSPs**) to comply with licence conditions and service provider rules, respectively, and includes civil penalty provisions that apply to a carrier or carriage service provider that contravenes another provision of the Act. Subsections 572E(5) and (6) provide that an infringement notice may only be given in relation to a contravention of section 68 or 101 of the Act if the other provision contravened is listed in the legislative instrument made under subsection 572E(7) of the Act, and has been so listed for at least three months before the alleged contravening conduct takes place.

Subsection 33(3) of the AIA relevantly provides that where an Act confers a power to make a legislative instrument, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

This Declaration replaces the *Telecommunications (Listed Infringement Notice Provisions) Declaration 2011* (**the 2011 Declaration**).

A provision-by-provision description of the instrument is set out in the notes at **Attachment A**.

The instrument is a disallowable legislative instrument for the purposes of the *Legislation Act 2003* (**the LA**).

Purpose and operation of the instrument

The ACMA has made the Declaration for the purpose of specifying particular provisions in certain Acts and legislative instruments as “listed infringement notice provisions” for the purposes of section 572E of the Act. If a provision has been breached and that conduct also constitutes a contravention of section 68 or 101 of the Act, the ACMA may, if that provision is

a listed infringement notice provision, and providing that certain criteria are met, give an infringement notice under Part 31B of the Act in relation to that contravention.

Part 31B of the Act establishes a scheme under which the Chair of the ACMA and certain authorised ACMA officers (authorised infringement notice officers) may give infringement notices in respect of contraventions of civil penalty provisions in the Act, the *Telecommunications (Consumer Protection and Service Standards) Act 1999 (the TCPSS Act)* and Chapter 5 of the *Telecommunications (Interception and Access) Act 1979 (the TIA Act)*.

Subsection 572E(1) of the Act provides that an authorised infringement notice officer may, if they have reasonable grounds to believe that a person has contravened a particular civil penalty provision, give the person an infringement notice relating to the contravention. If the person pays the penalty specified in the infringement notice within 28 days (or such longer period allowed by the ACMA) and the infringement notice is not withdrawn by the ACMA, any liability of the person for the contravention alleged in the infringement notice is discharged and civil penalty proceedings may not be brought against the person for the alleged contravention (section 572J).

As such, the infringement notice scheme is intended to provide a more efficient means of dealing with contraventions of certain civil penalty provisions as an alternative to instituting civil penalty proceedings.

In the case of contraventions of sections 68 or 101 of the Act, where that contravention consists of a contravention of another provision of the Act, an infringement notice may only be given in relation to a contravention of a provision which is declared by the ACMA to be listed infringement notice provisions (subsections 572E(5) and (6)).

Section 68 of the Act provides, among other things, that a carrier must not contravene a condition of the carrier licence held by the carrier. Carrier licence conditions are set out in Schedule 1 to the Act and in Ministerial declarations made under section 63 of the Act. Clause 1 of Schedule 1 to the Act provides that a carrier must comply with the Act, the TCPSS Act and regulations under that Act, and Chapter 5 of the TIA Act.

Similarly, section 101 of the Act provides, amongst other things, that “service providers” (namely CSPs and content service providers) must comply with the service provider rules that apply to the provider. Service provider rules are set out in Schedule 2 to the Act and in service provider determinations made by the ACMA, or the Minister, under section 99 of the Act. Clause 1 of Schedule 2 to the Act provides that a service provider must comply with the Act, the TCPSS Act and regulations made under that Act, and Chapter 5 of the TIA Act.

Subsections 572E(5) and (6) provide that an infringement notice may only be given in respect of a contravention of section 68 or 101 if the alleged contravention consists of a breach of a provision that is a “listed infringement notice provision” and has been a listed infringement notice provision for at least 3 months prior to the date of the alleged contravention.

The ACMA has made the Declaration under subsection 572E(7) of the Act in order to specify those provisions that are listed infringement notice provisions for the purposes of section 572E.

Background

Part 31B was inserted into the Act as part of a package of legislative reforms contained in the *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act 2010*. Those reforms sought to enhance competitive outcomes in the telecommunications industry and strengthen consumer safeguards relating to the universal service obligation (**USO**) and the customer service guarantee (**CSG**) by ensuring consumers were protected and service standards were maintained in the transition to the National Broadband Network.

The ACMA's power to give infringement notices assists the ACMA in enforcing compliance with these service performance standards and benchmarks imposed as part of those consumer safeguards. In addition, these powers enable the ACMA to take regulatory action for breaches of civil penalty provisions across the broader telecommunications regime by issuing infringement notices.

Listed infringement notice provisions

In making the Declaration, the ACMA has included provisions that were previously listed in the 2011 Declaration, excepting provisions that no longer exist. The ACMA has also identified some other provisions drawn from primary and subordinate legislation as suitable to include in the Declaration, including certain provisions of:

- Part 19 of the Act which established the Statutory Infrastructure Provider (SIP) regime to ensure that all Australians can access broadband services;
- the *Telecommunications (Interception and Access) Act 1979*; and
- the *Telecommunications (Service Provider – Identity Checks for Prepaid Mobile Carriage Services) Determination 2017*.

Details of new and continued provisions are at **Attachment B**.

In selecting appropriate provisions to be listed, the ACMA consulted with the Department of Infrastructure, Transport, Regional Development and Communications and the Attorney General's Department and gave consideration to the relevant criteria drawn from the Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers 2011 which provides that infringement notices may be appropriate:

- for strict or absolute liability offences/civil penalties;
- where the physical elements of an offence/contravention are clear cut—for example, breaches do not involve significant forensic enquiry or subjective elements such as state of mind or fault;
- for relatively minor offences/contraventions;
- where there has been a high number of contraventions; or
- where a penalty must be imposed immediately to be effective.

The ACMA considers that each of the identified obligations is suitable for enforcement via the infringement notice regime under this Declaration because the physical elements of the contraventions are considered to be clear cut, and compliance is readily ascertainable.

The provisions now included in the Declaration are discussed below:

Provisions of the *Telecommunications Act 1997*

Explanatory Statement to the *Telecommunications (Listed Infringement Notice Provisions) Declaration 2022*

Contravention of a remedial direction – subsections 69(4) and 102(4) of the Act

The ACMA may issue a remedial direction to a carrier or a service provider in circumstances where that carrier or provider has contravened, or is contravening, a carrier licence condition or a service provider rule, respectively.

The ACMA may give the carrier or provider a written direction requiring the licensee or provider to take specified action directed towards ensuring that the licensee or provider does not contravene the licence condition or service provider rule, or is unlikely to contravene the licence condition or service provider rule, in the future. For example, the ACMA may issue a remedial direction to an eligible CSP who has not joined the Telecommunications Industry Ombudsman scheme (**the TIO Scheme**), contrary to the requirement in subsection 128(1) of the TCPSS Act, directing the provider to join the TIO scheme.

Subsection 69(4) provides that a carrier must not contravene a direction given by the ACMA under subsection 69(2).

Subsection 102(4) provides that a service provider must not contravene a direction given by the ACMA under subsection 102(2).

Annual reports to the ACMA by carriers, CSP or number-database operators

Section 308 of the Act requires that carriers, CSP and number data base operators must within 2 months after the end of the financial year give the ACMA a report on the disclosure of information.

Provisions in Part 19 relating to obligations under the Statutory Infrastructure Provider regime

Part 19 was added to the Act to ensure that consumers in all premises around Australia can be connected to a superfast broadband service over a fixed line network (in most cases), or over fixed wireless or satellite networks outside the fixed line network footprint. The SIP for a service area must, on reasonable request by a CSP on behalf of an end-user at premises in the service area, connect the premises to a qualifying telecommunications network in order for the CSP to provide qualifying carriage services to the end-user at the premises.

SIPs are telecommunications carriers that are obliged to provide baseline wholesale broadband services in the areas that they service, and support voice services where they operate fixed line and fixed wireless networks. NBN Co is the default SIP across Australia, however carriers other than NBN Co, which install telecommunications network infrastructure in real estate developments or building redevelopment project areas, have obligations to declare these areas (as discussed below) and make this known publicly and to the ACMA.

Such carrier declarations are used by the ACMA to fulfil a legislative requirement to maintain a register of SIPs and the areas in which they operate. The ACMA also administers compliance with the SIP regime.

There are a number of provisions under Part 19 of the Act that have been selected to be included as listed infringement notice provisions in Schedule 1 to the Declaration. These include requirements for SIPs to make written declarations within specified timeframes, to publish documents on their website, to provide documents to the ACMA, the Department and CSPs, to take action such as connecting or supplying premises and to comply with their

published terms and conditions. Each of these provisions is considered suitable to be included as an infringement notice provision because it is considered that compliance with the provision will be a matter that is relatively clear cut and readily ascertainable. The following is a summary of the requirements for each of the provisions from Part 19 of the Act, that have been included in Schedule 1 to the Declaration:

Subsections 360H(2) and (4) set out avenues by which carriers nominate service areas, and themselves as SIPs for those areas. When a carrier, other than NBN Co, installs telecommunications network infrastructure under a contract that will enable the supply of eligible services to premises in the whole of the project area of a real estate development project or a building redevelopment project, the carrier must declare that the whole of the real estate development project or a building redevelopment project area is a provisional nominated service area (paragraphs 360H(2)(d) and 360H(4)(d)). The declaration must be made in writing within 10 days of completing the installation (paragraphs 360H(2)(e) and 360H(4)(e)).

Subsection 360H(8) provides that a carrier must publish on its website a copy of a provisional nominated service area declaration made under section 360H and a carrier must give a copy of a declaration made under section 360H to the ACMA (subsection 360H(9)).

Section 360HA sets out a process for carriers who enter into contracts for real estate development projects or building redevelopment projects to give notices to the ACMA about the contracts.

Within 10 business days after entering the contract the carrier must give the ACMA an anticipatory notice in writing, specifying that the carrier has entered into the contract, the project area, the telecommunications network infrastructure to be installed and the likely completion date (paragraphs 360HA(1)(c), (1)(d), (3)(c) and (3)(d)).

Subsection 360LA(1) and (2) provides that service areas must be described by carriers in the specified format.

Subsection 360P(1) provides that SIPs have an obligation to connect premises to a qualifying network upon a reasonable request by a CSP. Subsection 360P(8) provides clarity about terms and conditions in relation to the connection of premises in a service area. If a SIP has an obligation to connect the premises and has published on its website the terms and conditions on which it will do so, and a CSP requests connection on the published terms and conditions, then the SIP has an obligation to enter into an agreement on the same terms and conditions if requested to do so by the CSP. When there is no agreement between the parties, subsection 360P(9) requires a SIP to connect the premises on the same terms as the terms and conditions published on its website.

Subsection 360P(11A) provides that a SIP must respond to a CSP's request to connect premises within 10 business days.

Paragraphs 360P(12)(c) and (d) provide, respectively, that the SIP must provide written notice to a CSP of any refusal to connect the premises within 5 days, and the CSP must provide a copy of the written notice to an end-user within 5 days of receiving it.

Subsection 360Q(1) provides that SIPs have an obligation to supply eligible services upon a reasonable request by a CSP. Subsection 360Q(9) provides that where a SIP has published the terms and conditions of supply on its website and the SIP has an obligation to supply an

eligible service in response to a request from a CSP, if a CSP asks the SIP to enter into an agreement that sets out terms and conditions that are the same as those published by the SIP, then the SIP must comply with the request. If the supply of the eligible service is not covered by an agreement between the SIP and the CSP, subsection 360Q(10) requires a SIP to supply eligible services on the same terms as the terms and conditions published on its website at the time when the request was made.

Subsection 360R(2) provides that where a carrier becomes aware that it will be unable to fulfil its SIP obligations under section 360P or 360Q, it must give written notice to the ACMA and the Secretary of the Department as soon as practicable after becoming aware.

Subsection 360R(3) provides that if a carrier becomes aware it is unable to fulfil its SIP obligations in accordance with subsection 360R(2) and knows that another carrier is willing to become the SIP for the area, it must give written notice of the matter to the ACMA and the Secretary of the Department.

Subsections 360W(1) and (2) provide that a SIP must publish the terms and conditions on which it offers to connect premises on its website, including terms relating to price and maximum connection period. Subsections 360X(1) and (2) provide that a SIP must publish its wholesale terms and conditions on its website, including the maximum period to begin to supply services and rectify faults.

Compliance with the numbering plan

The Act sets out requirements for the availability, allocation and portability of telephone numbers in Australia (including their use, transfer and withdrawal), and the storage, maintenance and disclosure of all listed and unlisted public numbers. The ACMA is required under section 455 of the Act to make an instrument called the numbering plan that deals with the numbering of carriage services in Australia and the use of numbers in connection with the use of those services. Subsection 462(1) requires compliance by carriers and CSPs with the numbering plan.

Information gathering powers and record-keeping

Section 521 enables the ACMA to obtain information and documents from carriers and services providers if the ACMA has reason to believe that the carrier or service provider has information relevant to its powers and functions. Subsection 521(2) enables the ACMA to specify the manner and time period within which information and documents must be provided. Subsection 521(3) provides that a carrier or service provider must comply with a requirement under subsection 521(2) to provide information and documents to the ACMA.

The Act also empowers the ACMA to make rules requiring specified carriers and CSPs to keep and retain records. Section 530 requires compliance with record-keeping rules.

Provision of information to the Integrated Public Number Database

Part 4 of Schedule 2 to the Act requires a CSP which supplies a carriage service to an end user who has a public number to supply the Integrated Public Number Database (IPND) manager with such information as it reasonably requires to provide and maintain the IPND.

Subclause 10(2) of Schedule 2 to the Act requires this information to be given to Telstra Corporation Limited if it is the IPND Manager, while subclause 11(2) requires the information to be given to another entity, if they are obliged to provide and maintain the IPND.

Provisions of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*

Lodgement of returns of eligible revenue

Subsection 43(1) of the TCPSS Act requires that a participating person must lodge a return of the person's eligible revenue within the period specified in an instrument made under subsection 43(5).¹

Consumer Service Guarantee and Universal Service Obligation

The TCPSS Act enables the Minister for Infrastructure, Transport, Regional Development and Communications (**the Minister**) to determine performance standards and benchmarks for services covered by the CSG and the provision of services under the USO.

The annual performance benchmarks and standards set requirements for connections, fault repairs, appointments and reliability of services under the CSG standard and the USO. Enforceable benchmarks and standards are intended to provide additional incentives for carriers and CSPs to meet the CSG standard, and for the primary universal service provider to satisfy obligations under the USO.

Subsections 117C(2), 117F(2), 12EB(4), 12EC(9), 12ED(4) and 12EE(9) relate to ministerial standards and benchmarks. Subsections 12EF(2), 12EG(3), 12EH(2) and 12EI(6) relate to obligations on the primary universal service provider relating to the location, removal and complaints handling in the provision of payphone services and empowers the ACMA to direct the primary universal service provider not to reinstall or remove payphones. Subsections 117A(1), 117A(3), 117A(4) and 117A(5) relate to timeframes for payment of damages for breach of performance standards.

The TIO scheme

The TIO scheme is a free and independent alternative dispute resolution scheme for consumers in Australia who have complaints about their telephone or internet services. Subsection 128(4) of the TCPSS Act states that the TIO scheme must provide for the TIO to (a) investigate; (b) make determinations relating to; and (c) give directions relating to; complaints about carriage services by end-users of those services.

Subsection 128(1) of the TCPSS Act requires each carrier (as defined in section 7 of the Act) and each eligible CSP (as defined in section 127 of the TCPSS Act), in association with other carriers and other eligible CSPs, to enter into a scheme providing for a TIO.

Subsection 130(1) provides that the ACMA may give a CSP a written notice directing the provider to enter into the TIO scheme. This section applies to CSPs that are not eligible CSPs. Subsection 130(2), which is declared in the Declaration to be a listed infringement notice provision, states that a provider must comply with a direction under subsection 130(2) to enter into the TIO scheme.

Section 132 requires providers to comply with the TIO scheme.

Provisions of the *Telecommunications (Interception and Access) Act 1979*

¹ As at the date this Declaration was made, the instrument specifying the period for the purpose of subsection 43(1) was the *Telecommunications (Eligible Revenue) Determination 2015*.

The TIA Act sets out requirements relating to the interception of communications.

Subsection 187A(1) of the TIA Act requires that service providers keep certain information and documents.

Subsections 196(1) and 196(3) specify when a carrier must give an Interception Capability Plan (ICP) to the Communications Access Co-ordinator (CAC), while subsections 197(1) and (3) specify when those plans must be provided to the CAC.

Subsections 198(4) and (7) relate to requests to amend plans and submission of those plans to the CAC.

Section 200 requires a carrier to ensure that its business activities are consistent with its ICP and subsection 201(1) requires a carrier to prepare a new ICP and submit it to the CAC if there are material changes to business plans.

Provisions of the *Telecommunications (Service Provider – Identity Checks for Prepaid Mobile Carriage Services) Determination 2017*

The *Telecommunications (Service Provider – Identity Checks for Prepaid Mobile Carriage Services) Determination 2017 (the Prepaid Determination)* is made under section 99 of the Act and sets out service provider rules relating to the requirements that CSPs must follow when verifying the identity of a customer of a pre-paid mobile carriage service, prior to activating the service.

Subsection 2.3(1) of the Prepaid Determination requires that a prepaid mobile service must not be activated unless the customer's identity has been verified in accordance with the Prepaid Determination while subsections 6.1(1) and (2) require CSPs to keep records that demonstrate compliance with the Prepaid Determination for as long as the service is activated. Further, section 6.3 requires that a CSP must keep a written description of the arrangements that it has in place to comply with the Determination.

Subsections 6.4(1) and (4) require that, when verifying the identity of a customer, the CSP must not record and keep the identifying number of a government document or of a category A or category B document, nor should they keep a copy or reproduction of those documents.

Provisions of the *Telecommunications Service Provider (NBN Service Migration) Determination 2018*

The *Telecommunications Service Provider (NBN Service Migration) Determination 2018 (the Service Migration Determination)* is part of a suite of ACMA regulatory measures, introduced to improve the experience of consumers moving to and using the National Broadband Network (NBN). The other instruments made under the Act for this purpose are the:

- *Telecommunications (Consumer Complaints Handling) Industry Standard 2018*;
- *Telecommunications (Consumer Complaints) Record-Keeping Rules 2018*;
- *Telecommunications (NBN Continuity of Service) Industry Standard 2018*; and
- *Telecommunications (NBN Consumer Information) Industry Standard 2018*.

The enforcement options currently available to the ACMA in relation to contraventions of these instruments include:

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- issuing formal warnings;
- issuing remedial directions;
- accepting enforceable undertakings;
- in relation to most of the instruments, giving an infringement notice; and
- initiating civil penalty proceedings.

By exercising its power under subsection 572E(7) of the Act to include provisions of the Service Migration Determination as listed infringement notice provisions, the ACMA is able to align the enforcement options across these instruments to ensure that there is a range of consistent remedies available and allows the ACMA to more fully assure improved outcomes for consumers migrating to the NBN.

Subsections 7(2), (3) and (4) of the Service Migration Determination require service providers to test services that have been migrated to the NBN to ensure that they are operational, and if they are found not to be operational, to repeat that testing until they are.

Subsections 9(1), 10(1), 10(2), 10(3) and section 11 each relate to the provision of an interim service, in circumstances when a customer is left without a working internet service. Subsection 9(1) specifies when a customer should be provided with the interim service while subsections 10(1) and (2) ensure that consumers are charged reasonably for interim services and that they operate as expected. Section 11 requires service providers to advise a customer about relevant performance details and the cost of using an interim service.

Subsection 12(1) and section 13 detail the timeframes for the initial and continued supply of interim services to consumers, until such time as the NBN service is operational.

Subsections 14(2) and (3) require service providers to assess the capability of a customer's NBN service and to advise that customer of that capability, within specified timeframes. Additionally, subsection 15(1) details the circumstances when a service provider must not charge a customer for an NBN service.

Subsections 16(2), (4), (5) and (6) deal with situations where a consumer has been left without a working NBN service for 23 days. In those circumstances, a provider must prepare a plan directed at providing the customer with an operational service and give the customer a copy of that plan. The plan must contain information as specified in the Service Migration Determination. If, after a further 20 days, the customer's NBN service is not operational, the service provider must arrange a technical audit.

Subsections 17(2) and (3) detail information that must be provided to a customer who wishes to use a non-proprietary modem when connecting to the NBN.

Section 18 requires service providers to keep records demonstrating compliance with the Service Migration Determination and to provide those records to the ACMA.

Subsections 19(2), (3), (4), (5) and (6) each deal with the provision of reasonable assistance with regards to post-migration testing, the supply of interim services and line capability assessment.

Subsection 20(1) requires that service providers nominate a contact person responsible for ensuring the provision of reasonable assistance under the Service Migration Determination.

By including these provisions in the Declaration, the ACMA may, subject to Part 31B of the Act, give an infringement notice to a carrier or a service provider who does not comply with these provisions of the Service Migration Determination.

Documents incorporated by reference

The Declaration incorporates by reference the following Acts and legislative instruments:

- the Telecommunications Act;
- the TCPSS Act;
- the TIA Act;
- the Prepaid Determination;
- the Service Migration Determination.

The Declaration incorporates those Acts and legislative instruments as in force from time to time.

The Acts and legislative instruments listed above can be accessed, free of charge, from the Federal Register of Legislation: <http://www.legislation.gov.au>.

Consultation

Subsection 572E(8) of the Act sets out requirements for consultation to be undertaken by the ACMA prior to making a declaration under subsection 572E(7). In accordance with the requirements of subsection 572E(8), on 21 December 2021 the ACMA published on its website a consultation paper outlining its proposal to make the instrument, and inviting persons to make submissions to the ACMA about the proposal (consultation 47/2021). Submissions closed on 31 January 2022.

The ACMA received feedback from the Australian Communications Consumer Action Network (**ACCAN**) in relation to the draft instrument. ACCAN's submission was endorsed by the Consumer Action Law Centre, the Isolated Children's Parents' Association, and the Consumer Policy Research Centre. ACCAN was strongly supportive of the Declaration being remade. It raised a number of other issues for consideration, relating to expanding the scope of the Declaration² and the IN scheme more broadly.

Communications Alliance Limited provided feedback on a proposal in the consultation paper to include provisions from the draft *Telecommunications Service Provider (Customer Identity Verification) Determination 2022*, which, at the time of consultation, had not been finalised. That proposed instrument is as yet not made and so it does not feature in the final Declaration that has been made.

Before the instrument was made, the ACMA was satisfied that consultation was undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the LA.

² ACCAN suggested including provisions of the *Telecommunications Service Provider (International Mobile Roaming) Determination 2019*. In order to comply with legislative consultation requirements, provisions from this instrument will be considered for a future revision of the Declaration.

Regulatory impact assessment

The Office of Best Practice Regulation (**OBPR**) has considered the matter and formed an opinion that the regulatory changes arising from the Declaration are minor in nature and that no further regulatory impact analysis is required.

The OBPR reference number is OBPR 22-01411.

Statement of compatibility with human rights

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires the rule-maker in relation to a legislative instrument to which section 42 (disallowance) of the *Legislation Act 2003* applies to cause a statement of compatibility with human rights to be prepared in respect of that legislative instrument.

The statement of compatibility set out below has been prepared to meet that requirement.

Overview of the instrument

The *Telecommunications (Listed Infringement Notice Provisions) Declaration 2022 (the Declaration)* is made under subsection 572E(7) of the *Telecommunications Act 1997 (the Act)*.

Section 572E allows the ACMA to give an infringement notice in relation to a contravention of a civil penalty provision. Sections 68 and 101 of the Act require carriers and carriage service providers to comply with licence conditions and service provider rules, respectively, and include civil penalty provisions that apply to a carrier or carriage service provider that contravenes another provision of the Act. Subsections 572E(5) and (6) provide that an infringement notice may only be given in relation to a contravention of section 68 or 101 of the Act if the other provision contravened is listed in a legislative instrument made under subsection 572E(7) of the Act, and has been so listed for at least three months before the alleged contravening conduct takes place.

The purpose of the Declaration is to declare that certain provisions are to be 'listed infringement notice provisions' for the purposes of section 572E of the Act, thereby enabling the ACMA to give an infringement notice for a contravention of those provisions. The giving of an infringement notice is an alternative to instituting civil penalty provisions in the Federal Court. There is no requirement that a person pay an infringement notice. The recipient of such a notice acquires an option which they would not otherwise have. If they choose to pay the notice, any liability they might otherwise have for the alleged contravention is discharged. So, for example the matter cannot be pursued in the Federal Court. Having a range of enforcement tools available, particularly ones that may avoid the need for lengthy and expensive court proceedings, is considered desirable.

Human rights implications

The ACMA has assessed whether the instrument is compatible with human rights, being 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.

Having considered the likely impact of the instrument and the nature of the applicable rights and freedoms, the ACMA has formed the view that the instrument does not engage any of those rights or freedoms.

Conclusion

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

Notes to the *Telecommunications (Listed Infringement Notice Provisions) Declaration 2022*

Part 1–Preliminary

Section 1 Name

This section provides for the instrument to be cited as the *Telecommunications (Listed Infringement Notice Provisions) Declaration 2022*.

Section 2 Commencement

This section provides for the instrument to commence at the start of the day after the day it is registered on the Federal Register of Legislation.

[Note: The Federal Register of Legislation may be accessed free of charge at www.legislation.gov.au.

Section 3 Authority

This section identifies the provision of the Act that authorises the making of the instrument, namely 572E(7) of the *Telecommunications Act 1997 (the Act)*.

Section 4 Repeal of the *Telecommunications (Listed Infringement Notice Provisions) Declaration 2011*

This section provides that the *Telecommunications (Listed Infringement Notice Provisions) Declaration 2011* (Registration No. F2011L02374) is repealed.

Section 5 References to other instruments

This section provides that in the instrument, unless the contrary intention appears:

- a reference to any other legislative instrument is a reference to that other legislative instrument as in force from time to time; and
- a reference to any other kind of instrument is a reference to that other instrument as in force from time to time.

Part 2–Declarations

Section 6 Declaration – Act provisions

This section provides that for paragraph 572E(7)(a) of the *Telecommunications Act 1997*, each provision specified in Schedule 1 is a listed infringement notice provision.

Section 7 Declaration – Determination provisions

This section provides that for paragraph 572E(7)(c) of the *Telecommunications Act 1997*, each provision specified in Schedule 2 is a listed infringement notice provision.

Schedule 1 Act provisions

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Item [1] specifies provisions of the Act that, by operation of section 6 of the Declaration, are listed infringement notice provisions.

Item [2] specifies provisions of the TCPSS Act that, by operation of section 6 of the Declaration, are listed infringement notice provisions.

Item [3] specifies provisions of the TIA Act that, by operation of section 6 of the Declaration, are listed infringement notice provisions.

Schedule 2 Determination provisions

Item [1] specifies provisions of the *Telecommunications (Service Provider – Identity Checks for Prepaid Mobile Carriage Services) Determination 2017* that, by operation of section 7 of the Declaration, are listed infringement notice provisions.

Item [2] specifies provisions of the *Telecommunications Service Provider (NBN Service Migration) Determination 2018* that, by operation of section 7 of the Declaration, are listed infringement notice provisions.

Table 1: Existing and new provisions in the *Telecommunications (Listed Infringement Notice Provisions) Declaration 2022*.

Acts

Telecommunications Act 1997

Existing provisions	New provisions
(a) subsection 102(4); (b) section 308; (ze) subsection 462(1); (zg) section 530; (zh) subclause 10(2) of Schedule 2; (zi) subclause 11(2) of Schedule 2.	(c) subsection 69(4); (d) paragraph 360H(2)(d); (e) paragraph 360H(2)(e); (f) paragraph 360H(4)(d); (g) paragraph 360H(4)(e); (h) subsection 360H(8); (i) subsection 360H(9); (j) paragraph 360HA(1)(c); (k) paragraph 360HA(1)(d); (l) paragraph 360HA(3)(c); (m) paragraph 360HA(3)(d); (n) subsection 360LA(1); (o) subsection 360LA(2); (p) subsection 360P(1); (q) subsection 360P(8); (r) subsection 360P(9); (s) subsection 360P(11A); (t) paragraph 360P(12)(c); (u) paragraph 360P(12)(d); (v) subsection 360Q(1); (w) subsection 360Q(9); (x) subsection 360Q(10); (y) subsection 360R(2); (z) subsection 360R(3); (za) subsection 360W(1); (zb) subsection 360W(2); (zc) subsection 360X(1); (zd) subsection 360X(2); (zf) subsection 521(3)

Telecommunications (Consumer Protection and Service Standards) Act 1999

Existing provisions	New provisions
(a) subsection 12EB(4); (b) subsection 12EC(9); (c) subsection 12ED(4); (d) subsection 12EE(9); (e) subsection 12EF(2); (f) subsection 12EG(3); (g) subsection 12EH(2); (h) subsection 12EI(6); (i) subsection 43(1); (n) subsection 117C(2); (o) subsection 117F(2); (p) subsection 130(2); (q) section 132.	(j) subsection 117A(1); (k) subsection 117A(3); (l) subsection 117A(4); (m) subsection 117A(5);

Telecommunications (Interception and Access) Act 1979

Existing provisions	New provisions
(d) subsection 197(1); (e) subsection 197(3);	(a) subsection 187A(1); (b) subsection 196(1); (c) subsection 196(3); (f) subsection 198(4); (g) subsection 198(7); (h) section 200; (i) subsection 201(1).

Determinations

Telecommunications (Service Provider – Identity Checks for Prepaid Mobile Carriage Services) Determination 2017

Existing provisions	New provisions
None	(a) subsection 2.3(1); (b) subsection 6.1(1); (c) subsection 6.1(2); (d) section 6.3; (e) subsection 6.4(1); (f) subsection 6.4(4).

Telecommunications Service Provider (NBN Service Migration) Determination 2018

Existing provisions	New provisions
(a) subsection 7(2); (b) subsection 7(3); (c) subsection 7(4); (d) subsection 9(1); (e) subsection 10(1); (f) subsection 10(2); (g) subsection 10(3); (h) section 11; (i) subsection 12(1); (j) section 13; (k) subsection 14(2); (l) subsection 14(3); (m) subsection 15(1); (n) subsection 16(2); (o) subsection 16(4); (p) subsection 16(5); (q) subsection 16(6); (r) subsection 17(2); (s) subsection 17(3); (t) section 18; (u) subsection 19(2); (v) subsection 19(3); (w) subsection 19(4); (x) subsection 19(5); (y) subsection 19(6); (z) subsection 20(1).	None