

Explanatory Statement

Issued by the Authority of the Minister for Communications.

Telecommunications Act 1997

Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Amendment Declaration (No.2) 2022

Authority

The *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Amendment Declaration (No. 2) 2022* (the Amending Declaration) is made under section 360L of the *Telecommunications Act 1997* (the Act) and subsection 33(3) of the *Acts Interpretation Act 1901*.

Purpose

The purpose of the Amending Declaration is to amend the *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Declaration (No. 1) 2020* (the Principal Declaration) to add 17 new service areas and revise or repeal 259 existing service areas.

Background

The statutory infrastructure provider (SIP) regime is set out in Part 19 of the Act and commenced on 1 July 2020. It aims to ensure that all people in Australia can access high speed broadband services. Under the Act, NBN Co is the default SIP for Australia, reflecting its role in the market. However, the SIP regime provides for alternative carriers to be the SIPs for the geographic areas where they deploy telecommunications networks. This recognises that there is a competitive market in Australia for the provision of telecommunications networks.

There are three main routes by which alternative carriers become the SIPs for service areas:

- First, a small number of geographic areas were specified in carrier licence conditions made during 2013-14. These areas were deemed as SIP areas in the statute (section 360J of the Act), and Opticomm or LBN Co are the SIPs.
- Second, 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). Eighteen SIPs have been designated.
- Third, 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). Carriers must provide a copy of the declaration to the Australian Communications and Media Authority (ACMA). Six carriers have become SIPs through this process.

Since 2020 about 1,770 SIP service areas have been designated through the Principal Declaration and amendments made to it.

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.

Summary of the Amending Declaration

Schedule 1 to the Amending Declaration provides the amendments to the Principal Declaration. The amendments include a number of revisions to Opticomm and LBN Co service area boundaries, either to better align boundaries or to amalgamate adjacent service areas (which in turn results in the repeal of some existing designated service areas). Finally, the amendments include 17 new designated service areas (four LBN Co, six Opticomm and seven TransACT).

The amendments have been determined following reviews by the SIPs of their network areas.

Under section 360Z of the Act, 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 ACMA on its register. The data will also be available for display on the National Map.

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](#).

Consultation

During 2021-22, the Department of Infrastructure, Transport, Regional Development, Communications and the Arts liaised extensively with LBN Co, Opticomm and TransACT on the proposed changes to service areas and also provided them and other SIPs with a draft of the Amending Declaration. All stated that their respective service area boundaries were correct. NBN Co, as the default SIP for Australia, confirmed that it accepted the service area boundaries. The Department also consulted the Australian Communications Consumer Action Network, Communications Alliance and ACMA, on the draft Amending Declaration. No concerns were raised by these organisations.

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](#).

Details of the *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Amendment Declaration (No.2) 2022*

Section 1 – *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Amendment Declaration (No. 2) 2022*

This section provides that the name of the instrument is the *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Amendment Declaration (No. 2) 2022* (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) and subsection 33(3) of the *Acts Interpretation Act 1901*.

Section 4 – Schedule

This section provides that each instrument specified in the Schedule to 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 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).

Items 1 to 18 of Schedule 1 amend Schedule 8 of the Principal Declaration, which relates to LBN Co. The items insert four new area designations (items 1-3, 18), amend nine area designations (items 4-10, 15, 17), and repeal five area designations as a result of amalgamations of service areas proposed by LBN Co (items 11-14, 16).

Item 19 of Schedule 1 repeals Schedule 12 of the Principal Declaration, which relates to Opticomm, and replaces it with a new Schedule 12 containing six new designated service areas and 217 revisions to existing designated service areas. Twenty-eight service areas will be removed from the current Schedule 12. The revisions have been made to better align area boundaries with network boundaries and remove some minor errors. The 28 service areas have been removed as a result of amalgamations proposed by Opticomm.

Item 20 of Schedule 1 repeals Schedule 17 of the Principal Declaration, which relates to TransACT, and replaces it with a new Schedule 17 that contains seven new designated service areas as well as the original six areas in Schedule 17 of the Principal Declaration.

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 Declaration (No. 2) 2022**

Overview

The purpose of the *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Amendment Declaration (No. 2) 2022* (the Amending Declaration) is to amend the *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Declaration (No. 1) 2020* (the Principal Declaration) to add 17 new service areas and revise or repeal 259 existing service areas.

The amendments are being made to existing schedules for LBN Co, Opticomm and TransACT. The changes are being made following reviews of existing network areas by these carriers, which identified a number of revisions to better align area boundaries with network boundaries and remove some minor errors, and also identified some new areas to be designated.

Designated service areas are geographic areas 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 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). Such services are important for social, economic, political and cultural activity.

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.