

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. 1) 2023

Authority

The *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Amendment Declaration (No. 1) 2023* (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 one new schedule and to amend five other schedules in the Principal Declaration.

New Schedule 6A will designate two service areas, with Gtelecom Pty Ltd (Gtelecom) as the Statutory Infrastructure Provider (SIP). This follows a request from Gtelecom to the Government.

The Amending Declaration also amends Schedule 6 (Frontier Networks Pty Ltd), Schedule 8 (LBN Co Pty Ltd), Schedule 11 (OPENetworks Pty Ltd), Schedule 12 (Opticomm Pty Ltd), and Schedule 16A (Telstra Limited and Opticomm Pty Ltd) to correct geographic coordinates for some service areas or repeal some service areas based on advice from the SIPs and the Australian Communications and Media Authority (ACMA).

Background

The 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.

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.

Under section 360Z of the Act, the 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: nationalmap.gov.au.

Gtelecom designations

Gtelecom is a carrier that provides fibre networks in multi-dwelling unit developments, retirement communities and commercial development projects. Gtelecom has requested the designation of two of its network areas in Victoria and the Minister has agreed to designate these two areas.

Frontier Networks Pty Ltd (Frontier Networks) amendments

Frontier Networks advised the government that it no longer services five areas. Consequently, the Principal Declaration is being amended to repeal these areas. NBN Co will become the SIP for the areas.

LBN Co Pty Ltd (LBN Co) amendments

LBN Co has been auditing its service areas and provided updated information to the Government. The Amending Declaration corrects the coordinates for 21 service areas, repeals 8 service areas, and adds 24 service areas. The 8 service areas being repealed are duplicate areas, so LBN Co remains the SIP for the areas.

OPENetworks Pty Ltd (OPEN Networks) amendment

OPENetworks requested the repeal of one of its service areas, on the basis that it no longer services it. This Amending Declaration repeals the area, which is now being serviced by Gigafy Pty Ltd (Gigafy) as the SIP. Gigafy has published a provisional nominated service area declaration for the area, reflecting the fact that it entered into a contract to service the area.

Opticomm amendments

Opticomm provided corrected coordinates for two service areas. The Amending Declaration corrects these two areas.

Telstra and Opticomm amendment

One service area in South Brisbane has been amended to exclude a new building within the existing designated service area that is now being serviced by Gigafy as the SIP.

The Amending Declaration is a legislative instrument for the purposes of the *Legislation Act 2003* and is subject to the default sunseting requirements and disallowance. The Amending Declaration commences the day after it is registered.

Details of the Amending Declaration are set out in [Attachment A](#).

Consultation

The Department consulted NBN Co, as the default SIP for Australia, on the proposed amendments and also consulted Gtelecom, Frontier Networks, LBN Co, OPENetworks, Opticomm, Telstra, the Australian Communications Consumer Action Network, Communications Alliance and the ACMA on the draft Amending Declaration. No concerns were raised about the draft Amending Declaration.

The Amending Declaration is covered by a standing Regulatory Impact Statement (RIS) exemption issued by the Office of Impact Analysis (OIA), 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 (OIA 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) 2023*

Section 1 – *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Amendment Declaration (No. 1) 2023*

This section provides that the name of the instrument is the *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Amendment Declaration (No. 1) 2023* (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 – Schedules

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 the 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 in Schedule 1 inserts the definition of Gtelecom Pty Ltd.

Item 2 repeals 5 items (3, 7, 11, 22 and 24) in Schedule 6 (Frontier Networks Pty Ltd).

Item 3 inserts Schedule 6A (Gtelecom Pty Ltd), designating two service areas.

Items 4 – 51 amend Schedule 8, which relates to LBN Co. The amendments repeal and replace 21 items (18, 106, 108, 388, 389, 528, 550, 657, 708, 761, 816, 827, 832, 840, 923, 959, 989, 998, 1003, 1010 and 1073), insert 24 items (108A, 116A, 124A, 296A, 349A, 524A, 526A, 549A & B, 565AA, 658A, 720, 807A & B, 810A & B, 818A, 820A, 833A, 835A, 982A, 986A, 989A and 1015A), and repeal 8 items (34, 545, 656, 786, 844, 845, 1004 and 1005).

Item 52 of Schedule 1 repeals item 14 in Schedule 11 (OPENetworks Pty Ltd).

Item 53 and 54 of Schedule 1 repeal and replace items 190 and 238 in Schedule 12 (Opticomm Pty Ltd).

Item 55 of Schedule 1 repeals and replaces item 101 in Schedule 16A (Telstra and Opticomm Pty Ltd).

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. 1) 2023

Overview

The purpose of the *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Amendment Declaration (No. 1) 2023* (the Amending Declaration) is to amend the *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Declaration (No. 1) 2020* (the Principal Declaration) to specify new designated service areas and statutory infrastructure providers (SIPs) for those areas, and amend or repeal some existing designated service areas.

The SIP regime provides a framework for people in Australia to access high-speed broadband wherever they live or work. 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.

The Amending Declaration adds a new Schedule 6A to the Principal Declaration, specifying two designated service areas with Gtelecom Pty Ltd as the SIP. The Amending Declaration also repeals, amends or inserts 62 other service areas whose SIPs are Frontier Networks Pty Ltd, LBN Co Pty Ltd, OPENetworks Pty Ltd, Opticomm Pty Ltd and Telstra and Opticomm Pty Ltd.

Designated service areas are geographic areas in which telecommunications networks have been built by carriers other than NBN Co and the Minister has determined that those carriers, rather than NBN Co, should fulfil SIP obligations. Once a service area is designated, end-users living or working in such 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). Access to telecommunications services is important for social, economic, political and cultural participation.

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.