

Explanatory Statement

Issued by the Authority of the Minister for Communications

Telecommunications Act 1997

Telecommunications (Statutory Infrastructure Providers – Exempt Real Estate Development Projects and Building Redevelopment Projects) Amendment Determination (No. 1) 2024

Authority

The instrument is made under subsections 360H(3A) and 360H(5A) of the *Telecommunications Act 1997* (the Act) and subsection 33(3) of the *Acts Interpretation Act 1901*.

Purpose

The purpose of the *Telecommunications (Statutory Infrastructure Providers – Exempt Real Estate Development Projects and Building Redevelopment Projects) Amendment Determination (No. 1) 2024* (the Determination) is to amend the *Telecommunications (Statutory Infrastructure Providers – Exempt Real Estate Development Projects and Building Redevelopment Projects) Determination (No. 1) 2020* (the current Determination) to remove three classes of exemptions from the requirements under section 360H of the Act for carriers to declare provisional nominated 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 or carriage service providers 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 (CSP) acting on behalf of an end-user within the service area. The wholesale services must allow the CSP 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 CSPs to supply voice services. SIPs must also publish the terms and conditions on which they offer to connect premises and supply wholesale services to CSPs.

Where a carrier or a CSP (other than NBN Co) has, under a contract with a developer, installed telecommunications infrastructure in a real estate development project or a building redevelopment project, then under the Act that person must declare that the project is a ‘provisional nominated service area’. The person must provide the geographic coordinates of

the nominated service area to the Australian Communications and Media Authority (ACMA), which places the nominated service area on a SIP register.

There are powers for the Minister to exempt carriers and CSPs from the nomination requirements (subsections 360H(3A), 360H(5A), 360HB(4) and 360HB(8)). If a person is exempted from the nomination requirement, it is then in turn exempted from complying with SIP connection and supply obligations (sections 360P and 360Q), and with Ministerial standards and rules (sections 360U and 360V), in relation to the specific exemption.

The current Determination sets out four exemptions for real estate development projects and four exemptions for building redevelopment projects (together, ‘projects’), each relating to the following classes of networks:

- a) networks that Telstra Limited (Telstra) installs using copper to supply Universal Service Obligation (USO) voice services to projects;
- b) extensions of hybrid-fibre coaxial (HFC) networks Telstra installs to service projects but then may transfer to NBN Co under the Definitive Agreements;
- c) mobile network extensions that carriers install, under contract with a developer, to provide mobile coverage to a project; and
- d) radiocommunications networks that carriers may install under a contract with a developer to supply fixed voice services (but not high-speed broadband) to a project.

The *Telecommunications Legislation Amendment (Enhancing Consumer Safeguards and Other Measures) Act 2024* brought across exemption classes (c) and (d) above to the statute. As a result, the Determination removes the exemptions.

During consultation, Telstra confirmed to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts that it no longer requires exemption class (b), as it no longer controls any HFC networks. However, it also confirmed that, as it continues to use copper in limited circumstances, it requires exemption class (a).

The Determination will therefore amend the current Determination to remove exemption classes (b), (c) and (d).

The copper exemptions

Exemption class (a) is set out in sections 5 and 9 of the current Determination, which will remain in the instrument after it is amended by this Determination. The sections exempt copper networks installed by Telstra in order to supply voice services under the USO. In many areas of Australia Telstra uses the National Broadband Network (NBN) to supply USO voice services. However, where it is not able to use the NBN, it needs to provide the required infrastructure. This is typically outside NBN Co’s fixed-line footprint. Until 2021, Telstra would enter into contracts with developers to provide copper networks to new developments outside that footprint. Telstra would supply both broadband and voice over the networks, but typically the broadband operates at a lower speed than the peak speed of at least 25/5 Mbps envisaged by the SIP regime. Accordingly, Telstra can use the networks to supply voice services, but cannot use them to meet SIP requirements.

Telstra has confirmed that, while it no longer enters into contracts with developers to provide new copper networks in project areas, it may still extend existing copper networks to connect new buildings in its current project areas in some limited circumstances.

Retaining the current exemption for these services will allow Telstra to continue to use its copper networks to provide incidental connections within existing copper networks, to support its USO activities, without becoming subject to SIP obligations.

People living or working in exempt project areas will still be able to access high-speed broadband as NBN Co, as the default SIP, is required to supply this. The copper exemption provides end-users in exempt project areas with certainty that they can receive voice services over copper where this is required.

The Determination

The Determination is a legislative instrument for the purposes of the *Legislation Act 2003*. The Determination commences the day after it is registered.

Details of the Determination are set out in Attachment A.

Consultation

The Department of Infrastructure, Transport, Regional Development and Communications, and the Arts (the Department) consulted interested stakeholders, including consumer and industry representatives, on the approach and on a draft of the instrument. They did not have any comments or concerns.

The Office of Impact Analysis (OIA) has determined that a regulatory impact statement is not required (reference number OIA24-07534).

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 (Statutory Infrastructure Providers – Exempt Real Estate Development Projects and Building Redevelopment Projects) Amendment Determination (No. 1) 2024*

Part 1—Introductory

Section 1 – Name

This section provides that the name of the Determination is the *Telecommunications (Statutory Infrastructure Providers—Exempt Real Estate Development Projects and Building Redevelopment Projects) Amendment Determination (No.1) 2024*.

Section 2 – Commencement

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

Section 3 – Authority

This section provides that the Instrument is made under subsections 360H(3A) and 360H(5A) of the *Telecommunications Act 1997* (the Act), and subsection 33(3A) of the *Acts Interpretation Act 1901*.

Section 4 – Schedules

This section provides that each instrument specified in a Schedule to the Determination is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Determination has effect according to its terms.

Schedule 1 – Amendments

Schedule 1 makes 9 amendments to the *Telecommunications (Statutory Infrastructure Providers – Exempt Real Estate Development Projects and Building Redevelopment Projects) Determination (No. 1) 2020* (the current Determination). The effect of the amendments is to remove three of the four classes of exemption from the current Determination.

Item 1 removes the definition of ***mobile network*** from the current Determination. This was used for exemptions in sections 7 and 11 of the current Determination, which are being repealed by items 5 and 8 of Schedule 1. The definition is therefore no longer required.

Item 2 removes the definition of ***radiocommunications fixed voice call*** from the current Determination. This was used for exemptions in sections 8 and 12 of the current Determination, which are being repealed by items 6 and 9 of Schedule 1. The definition is therefore no longer required.

Item 3 repeals subsection 4(2) of the current Determination. Subsection 4(2) served to define the meaning of ***proximity*** as used in sections 7, 8, 11 and 12. As those sections are being repealed by items 5, 6, 8 and 9 of Schedule 1, subsection 4(2) is no longer required.

Items 4-9 repeal sections 6, 7, 8, 10, 11 and 12 from the current Determination. Together these constitute exemptions for Telstra when it services project areas using hybrid-fibre coaxial (HFC) networks that are to be transferred to an NBN corporation, exemptions for carriers supplying project areas with public mobile telecommunications services under a contract with a developer, and exemptions for carriers supplying project areas with radiocommunications fixed voice services under a contract with a developer. The exemption for project areas serviced by HFC networks is no longer required as Telstra no longer controls any HFC networks. The exemptions for areas being serviced by contracts for public mobile telecommunications services and radiocommunications fixed voice calls are no longer required because these exemptions have now been transferred to the statute.

Attachment B**Statement of Compatibility with Human Rights**

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Telecommunications (Statutory Infrastructure Providers – Exempt Real Estate Development Projects and Building Redevelopment Projects) Amendment Determination (No. 1) 2024

Overview

The purpose of the *Telecommunications (Statutory Infrastructure Providers – Exempt Real Estate Development Projects and Building Redevelopment Projects) Amendment Determination (No. 1) 2024* (the Determination) is to amend an existing instrument, the *Telecommunications (Statutory Infrastructure Providers – Exempt Real Estate Development Projects and Building Redevelopment Projects) Determination (No. 1) 2020* (the current Determination). The amendments remove three of four classes of exemptions from requirements under the statutory infrastructure provider (SIP) regime for carriers to declare provisional nominated service areas when they have installed telecommunications network infrastructure in a project area of a new development.

One of the classes of exemptions, which allows Telstra Limited to service project areas using hybrid-fibre coaxial networks that are to be transferred to an NBN corporation, is no longer required as Telstra no longer controls any such networks. Two other exemptions, which allow carriers to supply new developments with mobile coverage or with radiocommunications fixed voice calls, have now been transferred into the statute, and therefore are no longer required in the current Determination.

Following amendment, one class of exemption will remain in the current Determination. This allows Telstra to service new developments with copper networks installed in order to meet its universal service obligation requirements (i.e., to supply standard telephone services on request). While Telstra no longer installs such networks in new developments, it may make minor extensions to existing copper networks to service new premises.

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 (CSP) acting on behalf of an end-user within the service area. The wholesale services must allow the CSP 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 CSPs to

supply voice services. SIPs must also publish the terms and conditions on which they offer to connect premises and supply eligible services to CSPs.

People living or working in exempt project area that Telstra continues to supply using copper networks would still be able to access high-speed broadband as NBN Co, as the default SIP, would be required to supply this. The exemption provides the people in the exempt areas that they can receive voice services supplied over copper networks where this is required.

Human rights implications

The Instrument 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 Instrument does not engage any of the applicable rights or freedoms.

Conclusion

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