

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) 2024

Authority

The *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Amendment Declaration (No. 1) 2024* (the Amending Declaration) is made under sections 360L, 360P and 360Q 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 amend, designate or repeal a small number of service areas under the statutory infrastructure provider (SIP) regime, repeal obligations on Telstra in the Principal Declaration, and repeal an associated instrument that set out obligations on Telstra as part of the transition of customers from its Velocity networks to Opticomm.

Telstra ceased operating as a SIP on 31 July 2024, and the obligations on it in the Principal Declaration and associated instrument (the *Telecommunications (Exceptions to Statutory Infrastructure Provider Obligations – Telstra and Opticomm Pty Ltd) Determination 2022*) are therefore redundant.

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 providers to be the SIPs for the geographic areas where they deploy telecommunications networks or facilities. This recognises that there is a competitive market in Australia for the provision of this infrastructure.

The key obligations of SIPs are to connect premises in their service areas to their infrastructure, 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 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 Commsco, Uniti, 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) 2024*

Section 1 – *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Amendment Declaration (No. 1) 2024*

This section provides that the name of the instrument is the *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Amendment Declaration (No. 1) 2024* (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 sections 360L, 360P and 360Q 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

Item 1 repeals the definitions of Telstra, Telstra Corporation Limited, Telstra Limited, Telstra-Equipped Services, Transition Period and Transition End Date. It also repeals subsection 4(2) of the Principal Declaration, which established when Telstra Limited was the SIP rather than Telstra Corporation Limited, following Telstra’s restructure in 2021. These clauses are no longer required given Telstra Limited has ceased to be a SIP.

Item 2 repeals subsection 5(3), which established a transition of SIP responsibilities from Telstra to Opticomm. As the transition is now complete the subsection is no longer operative.

Item 3 sets out changes to Commsco’s SIP responsibilities. Currently, Schedule 3A includes 11 service areas. The Amending Declaration introduces another five service areas with Commsco as the SIP. The Amending Declaration achieves this by repealing the current Schedule 3A and replacing it with a new schedule 3A that sets out all of the service areas in alphabetical order.

Item 4 repeals item 561 from Schedule 8 (LBN Co), to remove a service area that is no longer being serviced by LBN Co.

Item 5 repeals items 6, 9, 10, 13, 27, 39, 40, 45, 46, 47, 48, 49, 50, 54, 55, 56, 58, 66, 67, and 84 from Schedule 11 (OPENetworks). These areas are all being removed as the original data supplied by Uniti included a number of overlaps and duplications.

Items 6-9 repeal and replace items 57, 69, 71A and 83 in Schedule 11 (OPENetworks). These items are all being amended as a result of boundary corrections.

Item 10 inserts a new Schedule 12A after Schedule 12 (Opticomm), titled Opticomm Pty Ltd (former Telstra Designated Service Areas). This replaces the former Schedule 16A and establishes that Opticomm is now the sole SIP for the service areas.

As a consequential amendment, item 11 repeals Schedule 16A, which previously established that both Opticomm and Telstra were the SIPs for the Velocity network areas during the period of migration from Telstra to Opticomm in those areas.

Schedule 2 – Repeals

Item 1 of Schedule 2 repeals the *Telecommunications (Exceptions to Statutory Infrastructure Provider Obligations – Telstra and Opticomm Pty Ltd) Determination 2022* instrument. The instrument is now redundant as Telstra is no longer a SIP and the migration of Velocity network customers to Opticomm has been completed.

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) 2024

Overview

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 amend, designate or repeal a small number of service areas under the statutory infrastructure provider (SIP) regime, repeal obligations on Telstra in the Principal Declaration, and repeal an associated instrument that set out obligations on Telstra as part of the transition of customers from its Velocity networks to Opticomm.

Telstra ceased operating as a SIP on 31 July 2024, and the obligations on it in the Principal Declaration and associated instrument (the *Telecommunications (Exceptions to Statutory Infrastructure Provider Obligations – Telstra and Opticomm Pty Ltd) Determination 2022*) are therefore redundant.

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 infrastructure, 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 majority of the changes proposed by the Amending Declaration are to amend or repeal some existing SIP service areas where LBN Co or OPENetworks have been designated as SIPs. Some of the areas had been found to need boundary corrections, or to be duplicated by other SIP areas. The instrument also adds five new service areas to those for which Commsco has been designated as the SIP. Finally, the Amending Declaration removes obligations on Telstra and repeals the *Telecommunications (Exceptions to Statutory Infrastructure Provider Obligations – Telstra and Opticomm Pty Ltd) Determination 2022*.

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.