



DRAFT

**Telecommunications (Statutory Infrastructure
Providers—Exempt Real Estate Development
Projects and Building Redevelopment Projects)
Instrument (No.1) 2020**

I, PAUL FLETCHER, Minister for Communications, Cyber Safety and the Arts, make the following Instrument.

Dated 2020

PAUL FLETCHER **DRAFT ONLY—NOT FOR SIGNATURE**
Minister for Communications, Cyber Safety and the Arts

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Part 1 Introductory

1 Name

This Instrument is the *Telecommunications (Statutory Infrastructure Providers—Exempt Real Estate Development Projects and Building Redevelopment Projects) Determination (No.1) 2020*.

2 Commencement

This Instrument commences on the day after it is registered.

3 Authority

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

4 Definitions

Note: A number of expressions used in this Instrument are defined in the Act, including the following:

- (a) building redevelopment project (section 360Y);
- (b) carriage service (section 7);
- (c) eligible service (section 360A);
- (d) hybrid fibre-coaxial network (section 7);
- (e) NBN corporation (section 7);
- (f) public mobile telecommunications service (section 32);
- (g) qualifying carriage service (section 360A);
- (h) qualifying fixed-line carriage service (section 360A);
- (i) real estate development project (section 372Q);
- (j) standard telephone service (section 7); and
- (k) Telstra (section 7).

(1) In this Instrument:

Act means the *Telecommunications Act 1997*.

contractual arrangement includes a deed, contract, undertaking or any other form of legally binding arrangement.

mobile network means a telecommunications network that is used principally to supply public mobile telecommunications services.

project area:

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- (a) for a building redevelopment project—has the same meaning as in section 360A of the Act; and
 - (b) for a real estate development project—has the same meaning as in subsection 372Q(6) of the Act.

radiocommunications fixed voice call means a voice call provided using a carriage service:

- (a) supplied by means of a telecommunications network other than a fixed-line telecommunications network; and
- (b) marketed to customers, or potential customers as a carriage service that enables end-users to make and receive voice calls at premises occupied or used by the end-users.

Start Date means the day upon which Part 1, Division 2 of Schedule 3 to the *Telecommunications Legislation Amendment (Competition and Consumer) Act 2020* comes into effect.

- (2) For the purposes of this Instrument, telecommunications network infrastructure forming part of a mobile network will be in proximity to a project area only where, once fully deployed and operational, the infrastructure is technically capable of being used to supply carriage services within the whole of the project area.

Part 2

Exempt Real Estate Development Projects

- Note 1: Subsection 360H(2) of the Act provides that where a carrier (other than an NBN corporation) has installed telecommunications network infrastructure under a contract for the supply of eligible services to premises in the whole of the project area of a real estate development project, the carrier must declare that all of the project area is a provisional nominated service area within 10 business days after completion of the infrastructure build and that carrier becomes the statutory infrastructure provider for that relevant area.
- Note 2: Subsection 360H(3A) provides that the Minister may, by legislative instrument, exempt a specified real estate development project from subsection 360H(2). In cases where a project is exempted under subsection 360H(3A), the project area would remain a general service area of NBN Co until such time (if at all) that area become a nominated service area by declaration made by a carrier.

5 Exempt Real Estate Development Projects (to be served by Telstra copper networks)

A real estate development project will be exempt from subsection 360H(2), if all of the following apply to the project:

- (a) there is telecommunications network infrastructure installed within any part of the project area that will enable the supply of eligible services to premises in the whole of the project area;
- (b) the telecommunications network infrastructure referred to in paragraph (a) above:
 - (i) was fully installed on or after the Start Date;
 - (ii) was installed in accordance with a contractual arrangement entered into by Telstra and the person responsible for the real estate development project, and the contractual arrangement does not require Telstra to supply qualifying carriage services within all or any part of the project area;
 - (iii) at the time of installation, formed part of a fixed-line telecommunications network owned and operated by Telstra, and that network:
 - A. is not technically capable of being used to supply qualifying fixed-line carriage services; and
 - B. is used to supply standard telephone services in fulfilment of the obligation referred to in paragraph 9(1)(a) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

6 Exempt Real Estate Development Projects (to be served by Telstra HFC networks)

A real estate development project will be exempt from subsection 360H(2), if all of the following apply to the project:

- (a) there is telecommunications network infrastructure installed within any part of the project area that will enable the supply of eligible services to premises in the whole of the project area;
- (b) the telecommunications network infrastructure referred to in paragraph (a) above:
 - (i) was fully installed on or after the Start Date;
 - (ii) was installed in accordance with a contractual arrangement entered into by Telstra and the person responsible for the real estate development project;
 - (iii) forms part of a hybrid fibre-coaxial telecommunications network that:
 - A. was, at the time immediately after the installation of the network was completed, owned by Telstra; and
 - B. is the subject of a legally enforceable agreement covered by a determination made under subsection 577BA(9) of the Act, and the agreement provides for the transfer of ownership or control of the network from Telstra to an NBN corporation.

7 Exempt Real Estate Development Projects (to be supplied with public mobile telecommunications services)

A real estate development project will be exempt from subsection 360H(2), if all of the following apply to the project:

- (a) there is telecommunications network infrastructure installed within any part of, or in proximity to, the project area that will enable the supply of eligible services to premises in the whole of the project area;
- (b) the telecommunications network infrastructure referred to in paragraph (a) above:
 - (i) was fully installed on or after the Start Date;
 - (ii) was installed in accordance with a contractual arrangement entered into by a carrier and the person responsible for the real estate development project, and that contractual arrangement does not require the carrier to supply qualifying carriage services within all or any part of the project area; and

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- (iii) at the time of installation, formed part of a mobile network owned or operated by the carrier (referred to in subparagraph (ii) above).

8 Exempt Real Estate Development Projects (to be served by radiocommunications fixed voice calls)

A real estate development project will be exempt from subsection 360H(2), if all of the following apply to the project:

- (a) there is telecommunications network infrastructure installed within any part of, or in proximity to, the project area that will enable the supply of eligible services to premises in the whole of the project area;
- (b) the telecommunications network infrastructure referred to in paragraph (a) above:
 - (i) was fully installed on or after the Start Date;
 - (ii) was installed in accordance with a contractual arrangement entered into by a carrier and the person responsible for the real estate development project, and that contractual arrangement does not require the carrier to supply qualifying carriage services within all or any part of the project area; and
 - (iii) is capable of being used to supply, to end-users at premises in the project area, carriage services that enable those end-users to make and receive radiocommunications fixed voice calls.

Part 3

Exempt Building Redevelopment Projects

Note 1: Subsection 360H(4) of the Act provides that where a carrier (other than an NBN corporation) has installed telecommunications network infrastructure under a contract for the supply of eligible services to premises in the whole of the project area of a building redevelopment project, the carrier must declare that all of the project area is a provisional nominated service area within 10 business days after completion of the infrastructure build and that carrier becomes the statutory infrastructure provider for that relevant area.

Note 2: Proposed subsection 360H(5A) provides that the Minister may, by legislative instrument, exempt a specified building redevelopment project from subsection 360H(4). In cases where a project is exempted under subsection 360H(5A), the project area would remain a general service area of NBN Co until such time (if at all) that area become a nominated service area by declaration made by a carrier.

9 Exempt Building Redevelopment Projects (to be served by Telstra copper networks)

A building redevelopment project will be exempt from subsection 360H(4), if all of the following apply to the project:

- (a) there is telecommunications network infrastructure installed within any part of the project area that will enable the supply of eligible services to premises in the whole of the project area;
- (b) the telecommunications network infrastructure referred to in paragraph (a) above:
 - (i) was fully installed on or after the Start Date;
 - (ii) was installed in accordance with a contractual arrangement entered into by Telstra and the person responsible for the building redevelopment project, and the contractual arrangement does not require Telstra to supply qualifying carriage services within all or any part of the project area; and
 - (iii) at the time of installation, formed part of a fixed-line telecommunications network owned and operated by Telstra, and that network:
 - A. is not technically capable of being used to supply qualifying fixed-line carriage services; and
 - B. is used to supply standard telephone services in fulfilment of the obligation referred to in paragraph 9(1)(a) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

10 Exempt Building Redevelopment Projects (to be served by Telstra HFC networks)

A building redevelopment project will be exempt from subsection 360H(4), if all of the following apply to the project:

- (a) there is telecommunications network infrastructure installed within any part of the project area that will enable the supply of eligible services to premises in the whole of the project area; and
- (b) the telecommunications network infrastructure referred to in paragraph (a) above:
 - (i) was fully installed on or after the Start Date;
 - (ii) was installed in accordance with a contractual arrangement entered into by Telstra and the person responsible for the building redevelopment project; and
 - (iii) forms part of a hybrid fibre-coaxial telecommunications network that:
 - A. was, at the time immediately after the installation of the network was completed, owned by Telstra; and
 - B. is the subject of a legally enforceable agreement covered by a determination made under subsection 577BA(9) of the Act, and the agreement provides for the transfer of ownership or control of the network from Telstra to an NBN corporation.

11 Exempt Building Redevelopment Projects (to be supplied with public mobile telecommunications services)

A building redevelopment project will be exempt from subsection 360H(4), if all of the following apply to the project:

- (a) there is telecommunications network infrastructure installed within any part of, or in proximity to, the project area that will enable the supply of eligible services to premises in the whole of the project area;
- (b) the telecommunications network infrastructure referred to in paragraph (a) above:
 - (i) was fully installed on or after the Start Date;
 - (ii) was installed in accordance with a contractual arrangement entered into by a carrier and the person responsible for the building redevelopment project, and that contractual arrangement does not require the carrier to supply qualifying carriage services within all or any part of the project area; and

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- (iii) at the time of installation, formed part of a mobile network owned or operated by the carrier (referred to in subparagraph (ii) above).

12 Exempt Building Redevelopment Projects (to be served by radiocommunications fixed voice calls)

A building redevelopment project will be exempt from subsection 360H(4), if all of the following apply to the project:

- (a) there is telecommunications network infrastructure installed within any part of, or in proximity to, the project area that will enable the supply of eligible services to premises in the whole of the project area;
- (b) the telecommunications network infrastructure referred to in paragraph (a) above:
 - (i) was fully installed on or after the Start Date;
 - (ii) was installed in accordance with a contractual arrangement entered into by a carrier and the person responsible for the building redevelopment project, and that contractual arrangement does not require the carrier to supply qualifying carriage services within all or any part of the project area; and
 - (iii) is capable of being used to supply, to end-users at premises in the project area, carriage services that enable those end-users to make and receive radiocommunications fixed voice calls.