



Telecommunications
Industry
Ombudsman

Submission to the
Department's
consultation on
reasonable
connection and
supply requests for
Statutory
Infrastructure
Providers
December 2020

Introduction from the Ombudsman, Judi Jones

I welcome the opportunity to provide further comment on the Department's draft of the *Telecommunications (Statutory Infrastructure Providers – Circumstances for Exceptions to Connection and Supply Obligations) Determination 2020* (the **draft Determination**).

As I outlined in my submission to the Department in September 2020, I support the Department's proposal to provide guidance on what could be a reasonable request from a carriage service provider (CSP), to a Statutory Infrastructure Provider (SIP), for the connection or supply of wholesale services.

This submission offers three recommendations to improve the draft Determination:

1. The Determination could clarify three of the exceptions
2. The Determination could include clearer notification rules and complaint pathways
3. The Determination would benefit from a separate plain-language summary.

I look forward to seeing the results of this consultation, and the development of the SIP regime more broadly.

1. The Determination could clarify three of the exceptions

We support the Department's proposal to publish a legislative instrument which offers guidance on what would constitute a 'reasonable request' from a CSP to a SIP to connect premises and supply wholesale services to an end user. This legislative instrument adds further clarity, consistency and enforceability to the SIP regime by formalising a series of 'exceptions' for when a SIP is not required to complete a connection or supply a service.

We agree with the intention of the exceptions listed in the Determination. We are also pleased to see the Department has amended the exception for end users under 18 years of age.¹

To help CSPs and end users understand when an exception may apply, the Department could make three of the exceptions clearer.

1.1. Add further guidance for the exception for types of premises²

The draft determination's broad definition of 'designated private residence' raises some ambiguity about which premises the exception includes and excludes. For example, the exception could clarify whether it applies to premises which are not the end user's principal place of residence. It could also clarify whether it applies to multiple connections requests for shared living spaces (which may or may not fall under the definition of a distinct flat or self-contained structure).

The exception could also be improved by enshrining guidance from the draft's 'notes box' in the main text of the Determination. For example, the notes box says a resident of an 'independent

¹ Draft Determination s 5(1)(k)(iii); s 6(1)(h)(iii).

² Draft Determination s 5(1)(a)(iii); s 6(1)(iv).

private residency' is expected to have access to sanitation and cooking facilities, and these facilities may be shared with other residencies. This information is important to the interpretation of the section and could be included in the draft Determination's definitions section.

1.2. Add timeframes to the exception for moveable structures³

The requirement for a moveable structure to be 'not reasonably expected to be continuously located at the particular site' could be improved by further guidance. The draft Determination could include timeframes by which a SIP can measure a reasonable expectation of continuous location. This may clarify the exception and ensure consistency in its application. This timeframe could be based on existing measures, such as the Universal Service Obligation's 183 days of expected occupancy.⁴

1.3. Add more details to the exception for civil works⁵

The draft Determination could further clarify the exception for circumstances when civil works are required. It is unclear whose obligation it is to complete the civil works, and at what point the obligations to complete the connection shifts from the CSP or end user to the SIP.

2. The Determination could include clearer notification rules and complaint pathways

To further support the clarity and utility of these new exceptions, the draft Determination could benefit from improvements to the notice requirements for SIPs listed in the *Telecommunications Act 1997 (the Act)*.⁴

When a SIP refuses a connection request under this regime, it is required to provide written notice to the CSP within five business days of refusing. The Act and draft Determination do not provide any guidance about the details to be included in the notice and do not explicitly require the SIP to explain the reason for refusing.

The notification rules could be updated to require SIPs to explain:

- (1) The reasons for refusing, including the specific exceptions relied upon, and
- (2) The complaint pathways available to the end user to dispute the SIP's refusal.

These changes would allow CSPs and end users to better understand why the SIP has declined to connect a service. Improved notice requirements may also help CSPs and end users remediate the issues delaying the connection or dispute the refusal if they believe the SIP has made an error.

Consumer complaints about SIP obligations will need clear pathways. While we are well placed to handle these complaints, an instrument would provide clarity for SIPs, CSPs, end users, and regulators. We welcome the opportunity to comment on such an instrument.

³ Draft Determination s 5(1)(a)(v); s 6(1)(a)(v).

⁴ *Telecommunications Universal Service Obligation (Standard Telephone Service – Requirements and Circumstances) Determination (No. 1) 2011* s 3(3)(f); s 3(3)(h).

⁵ Draft determination s 5(1)(d).

⁴ *Telecommunications Act 1997* s 360P(12).

3. The Determination would benefit from a separate plain-language summary

We encourage the Department to consider supplementing this instrument with a plain-language 'Frequently Asked Questions' style document. A simplified guiding document would help improve the quality of requests made by CSPs and end users and reduce the likelihood of requests being declined. This document would also assist end users in rectifying the issue causing a connection delay or disputing a refused connection request.