

EXPLANATORY STATEMENT

Telecommunications Act 1997

Telecommunications (National Broadband Network—Designated Information) Determination 2008 (No. 1)

Issued by the authority of the Minister for Infrastructure, Transport, Regional Development and Local Government, on behalf of the Minister for Broadband, Communications and the Digital Economy in accordance with an authorisation under section 18C of the *Acts Interpretation Act 1901*

The *Telecommunications (National Broadband Network—Designated Information) Determination 2008 (No. 1)* (the Determination) is made by the Minister for Infrastructure, Transport, Regional Development and Local Government under section 531C of the *Telecommunications Act 1997* (the Act). Section 531C of the Act is contained in Part 27A of the Act, which was inserted into the Act by the *Telecommunications Legislation Amendment (National Broadband Network) Act 2008*.

Background and legislative basis

Part 27A of the Act sets out a mechanism for specified information to be provided by telecommunications carriers to the Commonwealth so that such information can be provided to companies that are considering making or intending to make a submission in response to a request for proposals issued by the Commonwealth for the creation or development of a new open access, high speed broadband network, known as the National Broadband Network. A Request for Proposals in respect of the National Broadband Network was released by the Commonwealth on 11 April 2008.

In order to maximise the competitive tension in the assessment process for the development of the National Broadband Network, it is essential to make available to proponents certain network information held by carriers so that they can design and cost their proposals. Part 27A was inserted into the Act to address this issue. Part 27A sets out a scheme for both the provision of information by carriers and for the protection of that information.

Under section 531C of the Act, the Minister has the power to make a disallowable non-legislative instrument specifying particular information to be provided by specified carriers to relevant Commonwealth personnel, referred to in the Act as “authorised information officers”. Information provided by carriers in compliance with Part 27A is “protected carrier information” for the purposes of that Part.

An authorised information officer may then disclose protected carrier information to persons who are “entrusted company officers” of companies that are considering making or intend to make a submission in response to the Request for Proposals for the National Broadband Network (which is a “designated requested for proposal notice” for the purposes of Part 27A of the Act).

Protected carrier information will complement information otherwise available to proponents in the public domain, through commercial sources, and through their own commercial activities.

Division 3 of Part 27A of the Act prohibits recipients of protected carrier information from disclosing and using protected carrier information, except as permitted by Part 27A.

Section 531C of the Act – Designated Information

Subsection 531C(1) of the Act enables the Minister to make a disallowable non-legislative instrument specifying the particular information to be provided by specified carriers to an authorised information officer. Information specified in the instrument is “designated carrier information” for the purposes of the application of the Act to the specified carriers. Subsection 531C(1) also enables the Minister to specify in the instrument the manner and form in which the information is to be provided by the specified carriers and the time limit for providing the information to an authorised information officer, which must not be less than 10 business days (see paragraphs 531C(1)(b), (c) and (d) of the Act).

The commencement of an instrument made under proposed section 531C triggers an obligation under section 531F of the Act on a specified carrier to provide the designated information to an authorised information officer in the manner and form specified in the instrument, and within the period specified in the Minister’s instrument. Such information would become “protected carrier information” for the purposes of Division 3 of Part 27A. The term “authorised information officer” is defined in section 531B of the Act to mean the Secretary of the Department, a Deputy Secretary of the Department, an SES employee of the Department whose duties relate to the National Broadband Network Taskforce or a person appointed by the Minister under section 531M to be an authorised information officer.

Consultation

NBN proponents were consulted on the information to be sought from carriers for the purposes of the NBN process, prior to the release of a draft of the Determination. A range of carriers also provided their views on the information that should be sought, prior to the release of a draft of the Determination.

The Attorney-General’s Department and national security agencies were consulted during the development of this Determination and are broadly supportive of the Determination. These agencies were consulted with regard to the nature and scope of the network information specified as designated information in the instrument and which carriers will be obliged to provide to the Commonwealth, with a view to addressing any national security risks that may arise with the disclosure of the information provided by carriers to proponents participating in the National Broadband Network Request for Proposals process.

In accordance with subsection 531C(4) of the Act, affected carriers were consulted on a draft of this Determination. A draft of the Determination was also published on the

Department of Broadband, Communications and the Digital Economy's website on 18 July 2008, and formal consultation for the purposes of the consultation period specified in subsection 531C(4) was initiated with affected carriers on 21 July 2008. Affected carriers' comments on the draft of the Determination were taken into account by the Minister for Infrastructure, Transport, Regional Development and Local Government before the making the Determination on behalf of the Minister for Broadband, Communications and the Digital Economy.

Publication of the Determination

This Determination is a disallowable instrument for the purposes of section 46B of the *Acts Interpretation Act 1901*, and it is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. The making of the Determination has been notified in the Gazette. The Determination is not published on the Federal Register of Legislative Instruments but a copy of the Determination has been published on the website of the Department of Broadband, Communications and the Digital Economy (www.dbcde.gov.au) in accordance with the requirement in subsection 531C(5) that a copy of the Determination be published on the Internet.

Details of the Determination

Details of the accompanying Determination are set out in the [Attachment](#).

ATTACHMENT**Details of the Telecommunications (National Broadband Network—Designated Information) Determination 2008 (No. 1)**Clause 1 – Name of Determination

Clause 1 provides that the title of the Determination is the *Telecommunications (National Broadband Network—Designated Information) Determination 2008 (No. 1)*.

Clause 2 – Commencement

Clause 2 provides that the Determination commences on the day on which it is notified in the *Gazette*.

Clause 3 – Definitions

Clause 3 defines the terms used in the Determination.

Subclause 3(1) defines a number of technical terms used in the Determination.

Note 1 to subclause 3(1) specifies that a number of terms which are used in the Determination and are defined in the Act have the same meaning in the Determination as they have in the Act. Note 2 to subclause 3(1) provides that the term ‘payphone’, which is used in this Determination and is defined in the *Telecommunications (Consumer Protection and Service Standards) Act 1999*, has the same meaning in the Determination as it has in that Act.

Subclause 3(2) contains a table setting out the service location categories used in the Determination and the demographic sizes of each of these categories.

Subclause 3(3) contains a table setting out the Unconditioned Local Loop Service (ULLS) Band categories used in the Determination and descriptions for each of these categories.

Clause 4 – Designated information

In accordance with paragraph 531C(1)(a) of the Act, subclause 4(1) provides that the information specified in clauses 5, 6 and 7 of the Determination is designated information for the purposes of the application of the Act to specified carriers. Following commencement of the Determination, specified carriers will have an obligation under section 531F of the Act to provide the information specified in clauses 5, 6 and 7 to an authorised information officer.

Subclause 4(1)(a) provides that the information mentioned in clause 5 of the Determination is specified as designated information for the purposes of the application to the Act to nominated carriers. The term “nominated carrier” is defined in clause 3 to mean a carrier specified in Schedule 1 to the Determination. Thirteen carriers are specified in Schedule 1 as nominated carriers. The nominated carriers

were selected because they have significant infrastructure, knowledge of which could assist proponents in developing their proposals for the National Broadband Network. Subclause 4(1)(b) provides that the information mentioned in clause 6 of the Determination is specified as designated information for the purposes of the application to the Act to Telstra.

Subclause 4(1)(c) provides that the information mentioned in clause 7 of the Determination is specified as designated information for the purposes of the application to the Act to TransACT.

Both Telstra and TransACT are specified as nominated carriers in Schedule 1 to the Determination. Therefore, the designated information for Telstra in clause 6 and the designated information for TransACT in clause 7 is in addition to the designated information in clause 5 for all nominated carriers.

Subclause 4(2) deals with circumstances where information has been provided voluntarily by a nominated carrier prior to the commencement of the Determination in circumstances where that information is the subject of an undertaking given for the purposes of paragraph (aa) of the definition of 'protected carrier information' in section 531B before or after the making of the Determination (given the requirement in section 531F that the designated information be provided within the approved period, the undertaking could not be given after the expiration of this period). Where this has occurred, the effect of subclause 4(2) is to exclude the information provided voluntarily from the information designated in relation to the carrier in the Determination to the extent the voluntarily provided information is substantially the same as the information designated in relation to the carrier and has been provided in substantially the same manner and form as specified in clauses 8 and 9. To the extent that these conditions are not satisfied in relation to the voluntarily provided information, the nominated carrier would be obliged to provide information, or to provide information in the approved manner and form, in order to comply with section 531F of the Act.

Clause 5 – Network information – Nominated carriers

Clause 5 specifies designated information for the purposes of the application of the Act to carriers specified as nominated carriers in Schedule 1 to the Determination.

The designated information relates to three aspects of the nominated carriers' networks. These are the carriers' core transmission networks, points of interconnection and the Hybrid Fibre Coaxial (HFC) networks.

Subclause 5(1) specifies information on the topology of nominated carriers' fibre and microwave core transmission networks. For mobile networks the core transmission network does not include any links between mobile base stations that are used for base station to base station communications. The information can be provided as a network schematic diagram, a geographic representation or in a tabular format (see subclause 9(1) and Schedules 3 and 4). This information is specified because it will show the extent of all significant core transmission networks throughout Australia.

Subclause 5(2) specifies as designated information a description of design, dimensioning and deployment of optical fibre in the carriers' core transmission network. The description is to be of a general nature. The matters to be covered in the description are set out in Schedule 5 to the Determination. This information will complement the information designated in subclause 5(1) and will provide guidance as to the likely capacity of the significant core transmission networks throughout Australia.

The information specified in subclauses 5(1) and 5(2) as designated information is required by NBN proponents to assist in the development of the backhaul elements of their proposals. Information on the extent of existing core transmission networks and the likely capacity of the links is intended to assist proponents in determining the most efficient method of deployment (i.e. whether to build or buy). A note to subclause 5(1) makes it clear that information designated in relation to nominated carriers under subclause 5(1) is information in relation to the transmission networks that they own or in relation to which they are the nominated carrier for the purposes of section 81 of the Act (that is, transmission infrastructure in relation to which the Act requires the carrier to hold a carrier licence).

Subclauses 5(3) and 5(4) specify as designated information the location of nominated carriers' standard commercial points of interconnection for telephony and Internet services, including a list of the services that can be interconnected at each site. This information is to be provided in a tabular format (see subclause 9(3) and Schedule 6). For points of interconnection for telephony services, the information requested only relates to the carrier's sites where other carriers can exchange telephony traffic with the carrier and does not include any customer premises where the interconnection may occur. Similarly, for points of interconnection (or points of presence) for Internet services, the information requested only relates to the carrier's sites where other carriers can exchange Internet traffic with the carrier and does not include any customer premises where the interconnection may occur.

Subclause 5(5) specifies as designated information the technical descriptions of the interface and protocols for each type of carriage service mentioned in subclause 5(3) for which interconnection is offered.

The information required to be provided by nominated carriers (by operation of subclauses 5(3), 5(4) and 5(5) and section 531F of the Act) is required by proponents in the National Broadband Network Request for Proposals process to assist in the development of the backhaul elements of their proposals. Knowing the locations of sites where they can interconnect with other carriers' networks and the protocols required for interconnection will assist proponents in designing their backhaul networks.

Subclause 5(6) specifies the boundaries of nominated carriers' HFC service areas in a geospatial format. The information about boundaries to be provided should show the geographical extent of each carrier's HFC network.

Paragraph 5(7)(a) specifies the location of the optical fibre source distribution points (which are to be provided in a geospatial format – see subclause 9(5)).

Paragraph 5(7)(b) requires carriers to provide the number of optical fibre end points in each service area. Optical fibre end points are the points in the HFC network where coaxial distribution cables are connected to optical fibre cables main cables. This information is to be provided in a tabular format (see subclause 9(6) and Schedule 7).

The information required to be provided (by operation of subclauses 5(6) and 5(7) and section 531F of the Act) is required because there is a potential that proponents may want to make use of the existing fibre cables in the HFC networks. The information to be provided gives the proponents guidance as to where optical fibre is located in these areas.

Clause 6 – Network information – Telstra

Clause 6 specifies designated information for the purposes of the application of the Act to Telstra.

The designed information relates to a sample of 143 exchange serving areas, which are listed in Schedule 2 to the Determination and are referred to as “nominated exchange serving areas” in the Determination. The actual sample exchange serving areas (ESAs) were randomly selected by the Department of Broadband, Communications and the Digital Economy. The number of sample ESAs required for a legitimate sample size was chosen using a 95 per cent confidence interval.

The designated information for Telstra includes statistical information about Telstra’s customer access network, its core transmission network and its main network, its distribution customer access network, technical descriptions of some elements of its networks and certain services. The designated information for Telstra also includes certain information relating to the current version of its Telstra Efficient Access (TEA) Model.

Subclause 6(1) specifies as designated information for Telstra statistical information on selected parts of its customer access network. This information is required for the nominated exchange serving areas and is to be supplied in a tabular format (see subclause 9(7) and Schedule 8). Information on the following network items are requested on a per ESA basis:

- small pair gain systems located in the PSTN;
- cable from the exchange to all pillars and all large pair gain systems;
- cable from each pillar and each large pair gain system to the network boundary point of each customer’s premises;
- cable from the exchange to the network boundary point of each customer’s premises, where the customer’s premises are fed directly from the exchange; and
- services in operation serviced directly from the exchange and services in operation serviced by pillars and large pair gain systems.

Subclause 6(1) will provide proponents with statistical information on key elements of Telstra’s existing customer access network. One of the major costs involved in building a FTTN network would be the installation of cable from the exchange to the

node and this information should assist proponents in determining the amount of cable required.

Subclause 6(2) specifies as designated information for Telstra to provide information on the number and type of pillars, large pair gain systems and cabinets. The information is required for each distribution area in the nominated exchange serving areas and the information is to be provided in a tabular format (see subclause 9(8) and Schedule 9).

Subclause 6(3) specifies as designated information for Telstra information on the number and type of pillars, cabinets, large pair gain systems and small pair gain systems. The information is to be provided on a nationally aggregated basis broken up by ULLS Band and service location category. The information is to be provided in a tabular format (see subclause 9(9) and Schedule 10). The information provided in the form specified in Schedule 10 would be drawn from information held by Telstra on an exchange serving area basis. The categorisation of this information into service location categories will be based on the largest township/community within the exchange serving area. Within the exchange serving area there may be other townships/communities that would not fall into the same category as the largest township/community. For example, an exchange serving area with one town of 8000 people and eight towns of 150 people would be classified as a Major Rural exchange serving area.

Subclauses 6(2) and 6(3) will provide proponents with information about the size and type of pillars and large pair gain systems likely to be found in Telstra's existing customer access network. Pillars and large pair gain systems are the most likely locations where proponents may seek to gain access to Telstra's copper distribution network as part of their proposals. This information is intended to assist proponents in determining which pillars and large pair gain systems could be used and which may need to be replaced.

Subclauses 6(4) and 6(5) specify as designated information for Telstra information about its main conduit network for the nominated exchange serving areas, including information on the location and amount of conduit in the main network and details of cables contained within this conduit. The information is to be provided in a geospatial format (see subclause 9(10) and Schedule 11).

Subclauses 6(4) and 6(5) will provide proponents with information on the amount of available conduit between Telstra's exchanges and Telstra's pillars and large pair gain systems. Pillars and large pair gain systems are the most likely locations where proponents may propose to install a node as part of their proposals and proponents would most likely be required to install a new optical fibre cable from a Telstra exchange to this location. Information on the extent of available conduit is intended assist proponents in determining the most efficient method of deployment (i.e. build or buy) for the purposes of developing their proposals.

Subclause 6(6) specifies as designated information for Telstra a description of the design, dimensioning and deployment of its distribution customer access network. The description is to be of a general nature. The matters to be covered in the description are set out in Schedule 12 to the Determination. This information will

provide guidance as to the overall characteristics of Telstra's copper distribution network, including conduit deployment and capacity.

Subclause 6(7) specifies as designated information for Telstra a generic technical description of each type of large pair gain system and small pair gain system used in its network. This information is intended to assist proponents in determining the cost of removing or utilising the existing pair gain infrastructure.

Subclause 6(8) specifies as designated information for Telstra technical descriptions of its key non-standard services offered over its existing copper network. This information is sought on the basis that appropriate methods for continuing to provide these or substitute services need to be considered by NBN proponents.

Subclause 6(9) specifies as designated information for Telstra the complete set of underlying data tables (for ULLS Band 2 and ULLS Band 3) for the current version of its TEA model. The information contained in these data tables relates to Telstra's copper network from the exchange to customers' premises. This information will provide proponents with information about the likely amount of cable they would be required to install from the exchange to the node. It will also provide information on the cable distance from the pillar and large pair gain system to customers' premises, which is intended to assist proponents in determining the number of customers that they will be able to service.

Subclause 6(10) specifies as designated information for Telstra documentation relating to the underlying data tables for the current version of its TEA model. This information sets out the contents of the data provided and how the tables are linked together, which will allow proponents to more easily extract the required data.

Clause 7 – Network information – TransACT

Clause 7 specifies designated information for the purposes of the application of the Act to TransACT. The designated information relates to the boundaries of each of its Fibre-to-the-Node (FTTN) services.

This information is designated because there is a potential that proponents will seek to utilise the existing fibre cables in TransACT's FTTN network as part of their proposals. This kind of information is intended to give the proponents some guidance as to where optical fibre is utilised in these areas.

Clause 8 – Approved manner in which designated information is to be given to an authorised information officer

Clause 8 specifies, for the purposes of paragraph 531C(1)(b) of the Act, the approved manner in which designated information is to be given to an authorised information officer. Clause 8 provides that the designated information is to be given in a Microsoft compatible format on CD-ROM or DVD-ROM that is PC formatted. In addition, nominated carriers must provide an index of all electronic documents contained in the CD-ROM or DVD-ROM. The CD-ROM or DVD-ROM and the accompanying index must be sent to the authorised information officer to the address

specified in clause 8, which is the current address of the Department of Broadband, Communications and the Digital Economy in the Australian Capital Territory.

Clause 9 – Approved form in which designated information is to be given to an authorised information officer

Clause 9 specifies, for the purposes of paragraph 531C(1)(c) of the Act, the approved form in which designated information specified in clauses 5, 6 and 7 of the Determination is to be given to an authorised information officer. Where the designated information is to be provided in a specific format, such format is set out or illustrated in Schedules 3 to 12 to the Determination.

Clause 10 – Approved period in which designated information is to be given to an approved information officer

Clause 10 specifies, for the purposes of paragraph 531C(1)(d) of the Act, 10 business days as the approved period within which nominated carriers must give to an authorised information officer the designated information specified in this Determination.

A note to clause 10 provides that carriers should give the designated information to an authorised information officer as soon as practicable, but in any case no later than 10 business days from the commencement of the Determination.

This is to ensure that the network information specified in the Determination is given to the Commonwealth and, in turn, may be disclosed (in accordance with Part 27A of the Act) to proponents in the National Broadband Network competitive assessment process in a timely manner.

Schedule 1

Schedule 1 lists the carriers that are nominated carriers for the purposes of the Determination.

Schedule 2

Schedule 2 lists the nominated exchange serving areas for the purposes of the Determination.

Schedules 3 to 12

Schedules 3 to 12 sets out particular forms in which designated information is to be provided, as specified by clause 9.