



## **Telecommunications (Superfast Broadband Network Class Exemption) Determination 2020**

made under subsections 142BD(2), 143A(1) and 143A(2) of the *Telecommunications Act 1997*.

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**Compilation No.** 1

**Compilation date:** 21 January 2021

**Includes amendments up to:** *Telecommunications (Superfast Broadband Network Class Exemption) Amendment Determination 2021 (No. 1)* [F2021L00054]

Prepared by the Australian Competition and Consumer Commission, Sydney.

## About this compilation

### This compilation

This is a compilation of the *Telecommunications (Superfast Broadband Network Class Exemption) Determination 2020* that shows the text of the law as amended and in force on 12 February 2021 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Federal Register of Legislation ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Federal Register of Legislation for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Federal Register of Legislation for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

## 1 Name

This is the *Telecommunications (Superfast Broadband Network Class Exemption) Determination 2020*.

## 3 Authority

This Determination is made under subsections 142BD(2), 143A(1) and 143A(2) of the *Telecommunications Act 1997*.

## 3A Expiry

This Determination expires, as if it had been repealed by another instrument, five years from the day this Determination commences.

## 4 Definitions

In this Determination, unless the contrary intention appears:

*Act* means the *Telecommunications Act 1997*.

*associated group* has the same meaning as in subsection 143A(10) of the Act.

*designated carriage service* has the meaning given by section 142BD of the Act.

*eligible service* has the same meaning as in section 152AL of the *Competition and Consumer Act 2010*.

*fixed-line carriage service* has the meaning given by section 142A of the Act.

*LBAS* means a service defined under the service description in an annexure to any declaration made by the ACCC under subsection 152AL(3) of the *Competition and Consumer Act 2010* in respect of the Local Bitstream Access Service, as in force from time to time.

*regulations* mean any regulations made for the purpose of paragraphs 143A(1)(d)(ii) or 143A(1)(e)(ii) of the Act.

*residential customer* has a meaning affected by section 161 of the Act.

*SBAS* means a service defined under the service description in an annexure to any declaration made by the ACCC under subsection 152AL(3) of the *Competition and Consumer Act 2010* in respect of the Superfast Broadband Access Service, as in force from time to time.

Note 1: A number of terms used in this instrument are defined in the Act, including:

- ACCC;
- facility; and
- telecommunications network.

Note 2: Declarations made by the ACCC under subsection 152AL(3) of the *Competition and Consumer Act 2010* in respect of the Local Bitstream Access Service and the Superfast Broadband Access Service may be accessed free of charge from the ACCC's website at [www.accc.gov.au](http://www.accc.gov.au).

## 5 Reference to other instruments

In this instrument, unless the contrary intention appears:

- (a) a reference to any other legislative instrument is a reference to that other legislative instrument as in force from time to time; and
- (b) a reference to any other kind of instrument or writing is a reference to that other instrument or writing as in force or in existence from time to time.

Note 1: For references to Commonwealth Acts, see section 10 of the *Acts Interpretation Act 1901*; and see also subsection 13(1) of the *Legislation Act 2003* for the application of the *Acts Interpretation Act 1901* to legislative instruments.

Note 2: All Commonwealth Acts and legislative instruments are registered on the Federal Register of Legislation.

Note 3: For paragraph (b), see subsection 589(2) of the Act.

## **6 Specification of designated carriage service**

The SBAS and the LBAS are designated carriage services for the purposes of Part 8 of the Act.

## **7 Exemption**

In circumstances where a person:

- (a) is not a member of an associated group and who supplies fixed-line carriage services to the higher of no more than:
  - (i) 2,000 residential customers; or
  - (ii) the number of residential customers (not exceeding 12,000) specified in regulations made for the purpose of subparagraph 143A(1)(d)(ii) of the Act, as in force from time to time; or
- (b) is a member of an associated group, and the members of that associated group, in aggregate, supply fixed-line carriage services to the higher of no more than:
  - (i) 2,000 residential customers; or
  - (ii) the number of residential customers (not exceeding 12,000) specified in regulations made for the purpose of subparagraph 143A(1)(e)(ii) of the Act, as in force from time to time;and that person:

- (c) has, by written notice to the ACCC, elected to be bound by this Determination; and
- (d) has not, by written notice to the ACCC, cancelled the election;

the person is exempt from sections 142C or 143 of the Act, subject to the conditions and limitations set out in section 8.

## **8 Conditions and limitations**

For the purpose of section 7, the conditions and limitations are:

- (a) the person must ensure that the LBAS and/or the SBAS is available for supply to wholesale customers, or prospective wholesale customers, of the person;
- (b) the person must not discriminate between the person's wholesale customers, or the person's prospective wholesale customers, in relation to the supply of the LBAS and/or the SBAS;
- (c) the person must not discriminate in favour of itself in relation to the supply of the LBAS and/or the SBAS;
- (d) the person must not, in carrying on any of the following activities, discriminate between the person's wholesale customers or the person's prospective wholesale customers:
  - (i) developing a new eligible service;
  - (ii) enhancing an eligible service;
  - (iii) extending or enhancing the capability of a facility or telecommunications network by means of which an eligible service is, or is to be, supplied;

- (iv) planning for a facility or telecommunications network by means of which an eligible service is, or is to be, supplied;
  - (v) an activity that is preparatory to the supply of an eligible service;
  - (vi) an activity that is ancillary or incidental to the supply of an eligible service;
  - (vii) giving information to service providers about any of the above activities;
- (e) the person must not discriminate in favour of itself in relation to the carrying on of any of the following activities:
- (i) developing a new eligible service;
  - (ii) enhancing an eligible service;
  - (iii) extending or enhancing the capability of a facility or telecommunications network by means of which an eligible service is, or is to be, supplied;
  - (iv) planning for a facility or telecommunications network by means of which an eligible service is, or is to be, supplied;
  - (v) an activity that is preparatory to the supply of an eligible service;
  - (vi) an activity that is ancillary or incidental to the supply of an eligible service;
  - (vii) giving information to service providers about any of the above activities;
- (f) if the person is not a member of an associated group, the person must notify the ACCC, in writing, within 30 days after 30 June each year, of the number of residential customers to whom the person supplied fixed-line carriage services as at 30 June of that year;
- (g) if the person is a member of an associated group, the person must notify the ACCC, in writing, within 30 days after 30 June each year, of the total number of residential customers to whom the members of that associated group supplied fixed-line carriage services as at 30 June of that year;
- (h) in the event that a person is not a member of an associated group and the person supplies fixed-line carriage services to a number of residential customers that exceeds the higher of the number of customers specified at subparagraphs 7(a)(i) and 7(a)(ii), the person must notify the ACCC, in writing, of that event within 14 days of that event occurring; and
- (i) in the event that a person is a member of an associated group and the members of that associated group, in aggregate, supply fixed-line carriage services to a number of residential customers that exceeds the higher of the number of customers specified at subparagraphs 7(b)(i) and 7(b)(ii), the person must notify the ACCC, in writing, of that event within 14 days of that event occurring.

## Endnotes

### Endnote 1 – About the endnotes

The endnotes provide information about this compilation and the compiled law.

Endnote 2 (Abbreviation key) sets out abbreviations that may be used in the endnotes.

Endnote 3 (Legislation history) provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

Endnote 4 (Amendment history) provides information about the amendments at the provision (generally section or equivalent) level and includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

It also includes information about any misdescribed amendment (that is, an amendment that does not accurately describe the amendment to be made). If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history. If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

### Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

par = paragraph(s)/subparagraph(s)  
/sub-subparagraph(s)

Pt = Part(s)

r = regulation(s)/rule(s)

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

underlining = whole or part not commenced or to be commenced

**Endnote 3—Legislation history**

<b>Name</b>	<b>Registration</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
<i>Telecommunications (Superfast Broadband Network Class Exemption) Determination 2020</i>	26 August 2020 (see F2020L01061)	27 August 2020	
<i>Telecommunications (Superfast Broadband Network Class Exemption) Amendment Determination 2021 (No. 1)</i>	20 January 2021 (see F2021L00054)	21 January 2021	

**Endnote 4—Amendment history**

<b>Provision affected</b>	<b>How affected</b>
s.2.....	rep.s.48D LA
s.3A.....	ad. F2021L00054