



Telecommunications Legislation Amendment (Fibre Deployment) Act 2011

No. 107, 2011

**An Act to amend legislation relating to
telecommunications, and for other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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Telecommunications Legislation Amendment (Fibre Deployment) Act 2011

No. 107, 2011

An Act to amend legislation relating to telecommunications, and for other purposes

[Assented to 26 September 2011]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Telecommunications Legislation
Amendment (Fibre Deployment) Act 2011*.

Telecommunications Legislation Amendment (Fibre Deployment) Act 2011 No. 107, 2011

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2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	26 September 2011
2. Schedule 1, Part 1	The later of: (a) the day after this Act receives the Royal Assent; and (b) 1 July 2011.	27 September 2011
3. Schedule 1, Part 2	The later of: (a) immediately after the commencement of the provision(s) covered by table item 2; and (b) immediately after the commencement of Part 1 of Schedule 1 to the <i>Telecommunications Legislation Amendment (National Broadband Network Measures—Access Arrangements) Act 2011</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	27 September 2011

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—General amendments

Telecommunications Act 1997

1 Section 7

Insert:

building lot has the meaning given by section 372Q.

2 Section 7

Insert:

building unit has the meaning given by section 372S.

3 Section 7

Insert:

fibre-ready facility has the meaning given by section 372W.

4 Section 7

Insert:

fixed-line facility has the meaning given by section 372V.

5 Section 7

Insert:

project area for a real estate development project has the meaning given by section 372Q.

6 Section 7

Insert:

real estate development project has the meaning given by section 372Q.

7 Section 7

Insert:

sell:

- (a) when used in relation to a building lot—has the meaning given by section 372T; or
- (b) when used in relation to a building unit—has the meaning given by section 372U.

8 Section 7

Insert:

subdivision of an area of land has a meaning affected by section 372R.

9 Subsections 22(1) and (4)

Omit “and 30”, substitute “, 30, 372B, 372C and 372V”.

10 After Part 20

Insert:

Part 20A—Deployment of optical fibre etc.

Division 1—Simplified outline

372A Simplified outline

The following is a simplified outline of this Part:

- If a real estate development project is specified in a legislative instrument made by the Minister, a person must not install a line in the project area unless the line is an optical fibre line.
- A person must not install a fixed-line facility in the project area for a real estate development project unless the facility is a fibre-ready facility.
- The rule about the installation of a fixed-line facility does not apply if NBN Co has issued a statement to the effect that neither it nor any other NBN corporation has installed, is

installing, or proposes to install, optical fibre lines in the project area.

- If the developer of a real estate development project is a constitutional corporation, the developer must not, in the course of carrying out the project, sell or lease a building lot or building unit unless a fibre-ready facility is installed in proximity to the lot or unit.
- The rule about selling or leasing a building lot or building unit does not apply if NBN Co has issued a statement to the effect that neither it nor any other NBN corporation has installed, is installing, or proposes to install, optical fibre lines in the project area.
- These rules are subject to any exemptions specified in a legislative instrument made by the Minister.
- A third party access regime applies to fixed-line facilities owned or operated by a person other than a carrier.

Division 2—Deployment of optical fibre lines

372B Deployment of optical fibre lines to building lots

Scope

- (1) This section applies to the installation of a line in the project area, or any of the project areas, for a real estate development project if:
 - (a) the project involves the subdivision of one or more areas of land into building lots; and
 - (b) the project is specified in, or ascertained in accordance with, a legislative instrument made by the Minister; and
 - (c) the line is wholly or primarily used, or wholly or primarily for use, to supply one or more carriage services to either or both of the following:
 - (i) one or more end-users in one or more building units;
 - (ii) one or more prospective end-users in one or more building units; and

- (d) those building units have been, are being, are to be, or may be, constructed on any of those building lots; and
- (e) the line is not on the customer side of the boundary of a telecommunications network; and
- (f) the line is used, or for use, to supply a carriage service to the public; and
- (g) the installation occurs after the commencement of this section.

Note 1: For *real estate development project*, see section 372Q.

Note 2: For *subdivision* of an area of land, see section 372R.

Note 3: For *building lot*, see section 372Q.

Note 4: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

Note 5: For *building unit*, see section 372S.

Note 6: For *boundary of a telecommunications network*, see section 22.

Note 7: For *supply to the public*, see section 372ZA.

Note 8: For exemption of certain projects, see section 372P.

Requirement

- (2) A person must not install a line in the project area, or any of the project areas, for a real estate development project, unless:
 - (a) the line is an optical fibre line; and
 - (b) the conditions (if any) specified in an instrument under subsection (4) are satisfied.

Note: For exemptions, see section 372D.

Ancillary provisions

- (3) For the purposes of paragraph (1)(c), it is immaterial whether the end-users or prospective end-users are capable of being identified.

Conditions

- (4) The Minister may, by legislative instrument, specify conditions for the purposes of paragraph (2)(b).

Functions and powers

- (5) An instrument under paragraph (1)(b) may confer functions or powers on the ACMA.

Ancillary contraventions

- (6) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (2); or
 - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (2); or
 - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2); or
 - (d) conspire with others to effect a contravention of subsection (2).

Civil penalty provisions

- (7) Subsections (2) and (6) are ***civil penalty provisions***.

Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

372C Deployment of optical fibre lines to building units

Scope

- (1) This section applies to the installation of a line in the project area, or any of the project areas, for a real estate development project if:
- (a) the project involves the construction of one or more building units on one or more areas of land; and
 - (b) the project is specified in, or ascertained in accordance with, a legislative instrument made by the Minister; and
 - (c) the line is wholly or primarily used, or wholly or primarily for use, to supply one or more carriage services to either or both of the following:
 - (i) one or more end-users in those building units;
 - (ii) one or more prospective end-users in those building units; and
 - (d) the line is not on the customer side of the boundary of a telecommunications network; and

- (e) the line is used, or for use, to supply a carriage service to the public; and
- (f) the installation occurs after the commencement of this section.

Note 1: For *real estate development project*, see section 372Q.

Note 2: For *building unit*, see section 372S.

Note 3: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

Note 4: For *boundary of a telecommunications network*, see section 22.

Note 5: For *supply to the public*, see section 372ZA.

Note 6: For exemption of certain projects, see section 372P.

Requirement

- (2) A person must not install a line in the project area, or any of the project areas, for a real estate development project, unless:
 - (a) the line is an optical fibre line; and
 - (b) the conditions (if any) specified in an instrument under subsection (4) are satisfied.

Note: For exemptions, see section 372D.

Ancillary provisions

- (3) For the purposes of paragraph (1)(c), it is immaterial whether the end-users or prospective end-users are capable of being identified.

Conditions

- (4) The Minister may, by legislative instrument, specify conditions for the purposes of paragraph (2)(b).

Functions and powers

- (5) An instrument under paragraph (1)(b) may confer functions or powers on the ACMA.

Ancillary contraventions

- (6) A person must not:
 - (a) aid, abet, counsel or procure a contravention of subsection (2); or

- (b) induce, whether by threats or promises or otherwise, a contravention of subsection (2); or
- (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2); or
- (d) conspire with others to effect a contravention of subsection (2).

Civil penalty provisions

- (7) Subsections (2) and (6) are ***civil penalty provisions***.

Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

372D Exemptions—Ministerial instrument

- (1) The Minister may, by legislative instrument, exempt:
 - (a) conduct specified in the instrument; or
 - (b) conduct ascertained in accordance with the instrument;from the scope of either or both of the following provisions:
 - (c) subsection 372B(2);
 - (d) subsection 372C(2).
- (2) An exemption under subsection (1) may be unconditional or subject to such conditions (if any) as are specified in the exemption.
- (3) An instrument under subsection (1) may confer functions or powers on the ACMA.

Division 3—Installation of fibre-ready facilities

Subdivision A—Installation obligations

372E Installation of fibre-ready facilities—building lots

Scope

- (1) This section applies to the installation of a fixed-line facility in the project area, or any of the project areas, for a real estate development project if:

- (a) the project involves the subdivision of one or more areas of land into building lots; and
- (b) the installation occurs after the commencement of this section; and
- (c) sewerage services, electricity or water is, are, or will be, supplied to those lots.

Note 1: For *fixed-line facility*, see section 372V.

Note 2: For *real estate development project*, see section 372Q.

Note 3: For *subdivision* of an area of land, see section 372R.

Note 4: For *building lot*, see section 372Q.

Note 5: For *supply* of sewerage services, electricity or water, see section 372Z.

Note 6: For exemptions, see section 372K.

Note 7: For exemption of certain projects, see section 372P.

Requirement

- (2) A person must not install a fixed-line facility in the project area, or any of the project areas, for a real estate development project, unless:
 - (a) the facility is a fibre-ready facility; and
 - (b) the conditions (if any) specified in an instrument under subsection (4) are satisfied.

Note 1: For *fibre-ready facility*, see section 372W.

Note 2: For exemptions, see section 372K.

- (3) Subsection (2) does not apply if NBN Co has issued a statement under section 372J to the effect that neither it nor any other NBN corporation has installed, is installing, or proposes to install, optical fibre lines in the project area, or any of the project areas, for the project.
- (4) The Minister may, by legislative instrument, specify conditions for the purposes of paragraph (2)(b).

Ancillary contraventions

- (5) A person must not:
 - (a) aid, abet, counsel or procure a contravention of subsection (2); or

- (b) induce, whether by threats or promises or otherwise, a contravention of subsection (2); or
- (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2); or
- (d) conspire with others to effect a contravention of subsection (2).

Civil penalty provisions

- (6) Subsections (2) and (5) are ***civil penalty provisions***.

Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

372F Installation of fibre-ready facilities—building units

Scope

- (1) This section applies to the installation of a fixed-line facility in the project area, or any of the project areas, for a real estate development project if:
- (a) the project involves the construction of one or more building units on one or more areas of land; and
 - (b) the installation occurs after the commencement of this section; and
 - (c) sewerage services, electricity or water is, are, or will be, supplied to those units.

Note 1: For ***fixed-line facility***, see section 372V.

Note 2: For ***real estate development project***, see section 372Q.

Note 3: For ***building unit***, see section 372S.

Note 4: For ***supply*** of sewerage services, electricity or water, see section 372Z.

Note 5: For exemptions, see section 372K.

Note 6: For exemption of certain projects, see section 372P.

Requirement

- (2) A person must not install a fixed-line facility in the project area, or any of the project areas, for a real estate development project, unless:
- (a) the facility is a fibre-ready facility; and

(b) the conditions (if any) specified in an instrument under subsection (4) are satisfied.

Note 1: For *fibre-ready facility*, see section 372W.

Note 2: For exemptions, see section 372K.

- (3) Subsection (2) does not apply if NBN Co has issued a statement under section 372J to the effect that neither it nor any other NBN corporation has installed, is installing, or proposes to install, optical fibre lines in the project area, or any of the project areas, for the project.
- (4) The Minister may, by legislative instrument, specify conditions for the purposes of paragraph (2)(b).

Ancillary contraventions

- (5) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (2); or
 - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (2); or
 - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2); or
 - (d) conspire with others to effect a contravention of subsection (2).

Civil penalty provisions

- (6) Subsections (2) and (5) are *civil penalty provisions*.

Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

Subdivision B—Sale of building lots and building units

372G Sale of building lots and building units—subdivisions

Scope

- (1) This section applies if:
- (a) a real estate development project involves the subdivision of one or more areas of land into building lots; and

- (b) the project involves either or both of the following:
 - (i) the making available of one or more of those lots for sale or lease, where it would be reasonable to expect that one or more building units would be subsequently constructed on the lots;
 - (ii) the construction of one or more building units on any of the lots and the making available of any of those building units for sale or lease; and
- (c) if subparagraph (b)(i) applies—sewerage services, electricity or water is, are, or will be, supplied to those lots; and
- (d) if subparagraph (b)(ii) applies—sewerage services, electricity or water is, are, or will be, supplied to those units.

Note 1: For *subdivision* of an area of land, see section 372R.

Note 2: For *building lot*, see section 372Q.

Note 3: For *building unit*, see section 372S.

Note 4: For *sale* of building lots, see section 372T.

Note 5: For *sale* of building units, see section 372U.

Note 6: For *supply* of sewerage services, electricity or water, see section 372Z.

Note 7: For exemptions, see section 372K.

Note 8: For exemption of certain projects, see section 372P.

Requirements—building lots

- (2) If subparagraph (1)(b)(i) applies to a building lot, a constitutional corporation must not, in the course of carrying out, or carrying out an element of, the project, sell or lease the lot unless a fibre-ready facility is installed in proximity to the lot.

Note 1: For *fibre-ready facility*, see section 372W.

Note 2: For *proximity*, see section 372Y.

Note 3: For exemptions, see section 372K.

- (3) Subsection (2) does not apply if NBN Co has issued a statement under section 372J to the effect that neither it nor any other NBN corporation has installed, is installing, or proposes to install, optical fibre lines in the project area, or any of the project areas, for the project.

Requirements—building units

- (4) If subparagraph (1)(b)(ii) applies to a building unit, a constitutional corporation must not, in the course of carrying out, or carrying out an element of, the project, sell or lease the unit unless a fibre-ready facility is installed in proximity to the unit.

Note 1: For *fibre-ready facility*, see section 372W.

Note 2: For *proximity*, see section 372Y.

Note 3: For exemptions, see section 372K.

- (5) Subsection (4) does not apply if NBN Co has issued a statement under section 372J to the effect that neither it nor any other NBN corporation has installed, is installing, or proposes to install, optical fibre lines in the project area, or any of the project areas, for the project.

Ancillary contraventions

- (6) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (2) or (4); or
 - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (2) or (4); or
 - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2) or (4); or
 - (d) conspire with others to effect a contravention of subsection (2) or (4).

Civil penalty provisions

- (7) Subsections (2), (4) and (6) are *civil penalty provisions*.

Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

Validity of transactions

- (8) A contravention of subsection (2) or (4) does not affect the validity of any transaction.

372H Sale of building units—other projects

Scope

- (1) This section applies if:
- (a) a real estate development project involves:
 - (i) the construction of one or more building units on one or more areas of land; and
 - (ii) the making available of any or all of those building units for sale or lease; and
 - (b) sewerage services, electricity or water is, are, or will be, supplied to those units.

Note 1: For *building unit*, see section 372S.

Note 2: For *sale* of building units, see section 372U.

Note 3: For *supply* of sewerage services, electricity or water, see section 372Z.

Note 4: For exemptions, see section 372K.

Note 5: For exemption of certain projects, see section 372P.

Requirements

- (2) A constitutional corporation must not, in the course of carrying out, or carrying out an element of, the project, sell or lease such a building unit unless a fibre-ready facility is installed in proximity to the unit.

Note 1: For *fibre-ready facility*, see section 372W.

Note 2: For *proximity*, see section 372Y.

Note 3: For exemptions, see section 372K.

- (3) Subsection (2) does not apply if NBN Co has issued a statement under section 372J to the effect that neither it nor any other NBN corporation has installed, is installing, or proposes to install, optical fibre lines in the project area, or any of the project areas, for the project.

Ancillary contraventions

- (4) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (2); or

- (b) induce, whether by threats or promises or otherwise, a contravention of subsection (2); or
- (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2); or
- (d) conspire with others to effect a contravention of subsection (2).

Civil penalty provisions

- (5) Subsections (2) and (4) are ***civil penalty provisions***.

Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

Validity of transactions

- (6) A contravention of subsection (2) does not affect the validity of any transaction.

Subdivision C—NBN Co may issue statement about the non-installation of optical fibre lines

372J NBN Co may issue statement about the non-installation of optical fibre lines

- (1) NBN Co may issue a written statement to the effect that neither it nor any other NBN corporation has installed, is installing, or proposes to install, optical fibre lines in the project area, or any of the project areas, for a specified real estate development project.
- (2) NBN Co may exercise the power conferred by subsection (1):
 - (a) at the request of a person; or
 - (b) on NBN Co's own initiative.
- (3) A statement issued under subsection (1) is not a legislative instrument.

372JA Register of Statements about the Non-installation of Optical Fibre Lines

- (1) NBN Co must keep a register, to be known as the Register of Statements about the Non-installation of Optical Fibre Lines, that sets out each statement issued under subsection 372J(1).
- (2) The register is to be maintained by electronic means.
- (3) The register is to be made available for inspection on NBN Co's website.

Subdivision D—Exemptions

372K Exemptions—Ministerial instrument

Real estate development projects

- (1) The Minister may, by legislative instrument, exempt:
 - (a) a real estate development project specified in the instrument;
or
 - (b) a real estate development project ascertained in accordance with the instrument;from the scope of any or all of the following provisions:
 - (c) section 372E;
 - (d) section 372F;
 - (e) section 372G;
 - (f) section 372H.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

- (2) An exemption under subsection (1) may be unconditional or subject to such conditions (if any) as are specified in the exemption.

Installations

- (3) The Minister may, by legislative instrument, exempt:
 - (a) conduct specified in the instrument; or
 - (b) conduct ascertained in accordance with the instrument;from the scope of either or both of the following provisions:

- (c) subsection 372E(2);
- (d) subsection 372F(2).

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

- (4) An exemption under subsection (3) may be unconditional or subject to such conditions (if any) as are specified in the exemption.

Building lots

- (5) The Minister may, by legislative instrument, exempt:
 - (a) a building lot specified in the instrument; or
 - (b) a building lot ascertained in accordance with the instrument;from the scope of subsection 372G(2).

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

- (6) An exemption under subsection (5) may be unconditional or subject to such conditions (if any) as are specified in the exemption.

Building units

- (7) The Minister may, by legislative instrument, exempt:
 - (a) a building unit specified in the instrument; or
 - (b) a building unit ascertained in accordance with the instrument;from the scope of either or both of the following provisions:
 - (c) subsection 372G(4);
 - (d) subsection 372H(2).

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

- (8) An exemption under subsection (7) may be unconditional or subject to such conditions (if any) as are specified in the exemption.

Functions and powers

- (9) An instrument under subsection (1), (3), (5) or (7) may confer functions or powers on the ACMA.

Division 4—Third party access regime

372L Third party access regime

Scope

- (1) This section applies to a fixed-line facility installed in Australia if:
 - (a) the installation occurs after the commencement of this section; and
 - (b) the facility is owned or operated by a person other than a carrier.

Note 1: For *fixed-line facility*, see section 372V.

Note 2: For exemptions, see section 372N.

Access to facility

- (2) The owner or operator of the facility must, if requested to do so by a carrier, give the carrier access to the facility.
- (3) The owner or operator of the facility is not required to comply with subsection (2) unless:
 - (a) the access is provided for the sole purpose of enabling the carrier:
 - (i) to provide facilities and carriage services; or
 - (ii) to establish its own facilities; and
 - (b) the carrier gives the owner or operator of the facility reasonable notice that the carrier requires the access.
- (4) The owner or operator of the facility is not required to comply with subsection (2) in relation to the facility if there is in force a written certificate issued by the ACCC stating that, in the ACCC's opinion, compliance with subsection (2) in relation to the facility is not technically feasible.
- (5) In determining whether compliance with subsection (2) in relation to a facility is technically feasible, the ACCC must have regard to:
 - (a) whether compliance is likely to result in significant difficulties of a technical or engineering nature; and
 - (b) whether compliance is likely to result in a significant threat to the health or safety of persons who operate, or work on, the facility; and

- (c) if compliance is likely to have a result referred to in paragraph (a) or (b)—whether there are practicable means of avoiding such a result, including (but not limited to):
 - (i) changing the configuration or operating parameters of the facility; and
 - (ii) making alterations to the facility; and
- (d) such other matters (if any) as the ACCC considers relevant.
- (6) Before issuing a certificate under subsection (4), the ACCC may consult the ACMA.
- (7) If the ACCC receives a request to make a decision about the issue of a certificate under subsection (4), the ACCC must use its best endeavours to make that decision within 10 business days after the request was made.
- (8) Subsection (2) does not impose an obligation to the extent (if any) to which the imposition of the obligation would have the effect of depriving any person of a right under a contract that was in force at the time the request was made.

Ancillary contraventions

- (9) A person must not:
 - (a) aid, abet, counsel or procure a contravention of subsection (2); or
 - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (2); or
 - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2); or
 - (d) conspire with others to effect a contravention of subsection (2).

Civil penalty provisions

- (10) Subsections (2) and (9) are ***civil penalty provisions***.

Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

372M Terms and conditions of access

- (1) The owner or operator of a fixed-line facility must comply with subsection 372L(2) on such terms and conditions as are:
 - (a) agreed between the following parties:
 - (i) the owner or operator of the facility;
 - (ii) the carrier who made the request under that subsection;or
 - (b) failing agreement, determined by an arbitrator appointed by the parties.

If the parties fail to agree on the appointment of an arbitrator, the ACCC is to be the arbitrator.

- (2) The regulations may make provision for and in relation to the conduct of an arbitration under this section.
- (3) The regulations may provide that, for the purposes of a particular arbitration conducted by the ACCC under this section, the ACCC may be constituted by a single member, or a specified number of members, of the ACCC. For each such arbitration, that member or those members are to be nominated in writing by the Chairperson of the ACCC.
- (4) Subsection (3) does not, by implication, limit subsection (2).
- (5) If:
 - (a) an agreement mentioned in paragraph (1)(a) is in force; and
 - (b) the agreement is in writing;a determination under this section has no effect to the extent to which it is inconsistent with the agreement.

372N Exemptions—Ministerial instrument

- (1) The Minister may, by legislative instrument, exempt:
 - (a) a fixed-line facility specified in the instrument; or
 - (b) a fixed-line facility ascertained in accordance with the instrument;from the scope of section 372L.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

- (2) An exemption under subsection (1) may be unconditional or subject to such conditions (if any) as are specified in the exemption.
- (3) An instrument under subsection (1) may confer functions or powers on the ACCC.
- (4) The ACCC may, by writing, delegate any or all of the functions or powers conferred on it by an instrument under subsection (1) to a member of the Commission (within the meaning of the *Competition and Consumer Act 2010*).

372NA Code relating to access

- (1) The ACCC may, by legislative instrument, make a Code setting out conditions that are to be complied with in relation to the provision of access under this Division.
- (2) The owner or operator of a fixed-line facility must comply with the Code.
- (3) This section does not, by implication, limit a power conferred by or under this Act to make an instrument.
- (4) This section does not, by implication, limit the matters that may be dealt with by codes or standards referred to in Part 6.
- (5) Subsections (3) and (4) do not, by implication, limit subsection 33(3B) of the *Acts Interpretation Act 1901*.

Ancillary contraventions

- (6) A person must not:
 - (a) aid, abet, counsel or procure a contravention of subsection (2); or
 - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (2); or
 - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2); or
 - (d) conspire with others to effect a contravention of subsection (2).

Civil penalty provisions

- (7) Subsections (2) and (6) are *civil penalty provisions*.

Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

Division 5—Exemption of certain projects

372P Exemption of certain projects

- (1) A real estate development project is exempt from the scope of Division 2 if, before the commencement of this section, a person who carries out, or carries out an element of, the project:
 - (a) began to install lines in the project area, or any of the project areas, for the project; or
 - (b) entered into a contract with another person for the installation of lines in the project area, or any of the project areas, for the project.
- (2) A real estate development project is exempt from the scope of Division 3 if, before the commencement of this section, a person who carries out, or carries out an element of, the project:
 - (a) began to install fixed-line facilities in the project area, or any of the project areas, for the project; or
 - (b) entered into a contract with another person for the installation of fixed-line facilities in the project area, or any of the project areas, for the project.
- (3) A real estate development project is exempt from the scope of Division 3 if, before the commencement of this section:
 - (a) civil works associated with the project began to be carried out; or
 - (b) a person who carries out, or carries out an element of, the project entered into a contract with another person for the carrying out of civil works associated with the project.

Division 6—Miscellaneous

372Q Real estate development projects etc.

Subdivisions

- (1) For the purposes of this Act, a project is a ***real estate development project*** if:
- (a) the project involves the subdivision of one or more areas of land in Australia into lots (however described); and
 - (b) the project involves either or both of the following:
 - (i) the making available of one or more of those lots for sale or lease, where it would be reasonable to expect that one or more building units would be subsequently constructed on the lots;
 - (ii) the construction of one or more building units on any of the lots and the making available of any of those building units for sale or lease; and
 - (c) the conditions (if any) specified in an instrument under subsection (4) are satisfied.

Note 1: For ***subdivision*** of an area of land, see section 372R.

Note 2: For ***sale*** of building lots, see section 372T.

Note 3: For ***building unit***, see section 372S.

Note 4: For ***sale*** of building units, see section 372U.

- (2) For the purposes of this Act, an area of land mentioned in subsection (1) is a ***project area*** for the real estate development project.
- (3) For the purposes of this Act, a lot mentioned in subsection (1) is a ***building lot***.
- (4) The Minister may, by legislative instrument, specify conditions for the purposes of paragraph (1)(c).

Building units

- (5) For the purposes of this Act, a project is a ***real estate development project*** if:
- (a) the project involves:

- (i) the construction of one or more building units on one or more areas of land in Australia; and
- (ii) the making available of any or all of those building units for sale or lease; and
- (b) the conditions (if any) specified in an instrument under subsection (7) are satisfied.

Note 1: For *building unit*, see section 372S.

Note 2: For *sale* of building units, see section 372U.

- (6) For the purposes of this Act, an area of land mentioned in subsection (5) is a *project area* for the real estate development project.
- (7) The Minister may, by legislative instrument, specify conditions for the purposes of paragraph (5)(b).

Application

- (8) For the purposes of subsections (1) and (5), it is immaterial whether:
 - (a) the project has been, is being, or will be, implemented in stages; or
 - (b) different elements of the project have been, are being, or will be, carried out by different persons; or
 - (c) one or more approvals are given, are required, or will be required, under a law of the Commonwealth, a State or Territory, for the project, or any element of the project; or
 - (d) in a case where the project relates to 2 or more areas of land—those areas of land are under common ownership.

372R Subdivision of an area of land

For the purposes of this Act, if an area of land has been subdivided into lots (however described) it is immaterial whether, after the subdivision, a part of the area of land (for example, a road) is not included in any of those lots.

372S Building units

Scope

- (1) This section applies to a building that has been, is being, or is to be, constructed.

Building units

- (2) For the purposes of this Act, if the whole of the building is, or is to be, for single occupation or use, the building is a **building unit**.
- (3) For the purposes of this Act, if the whole or a part of the building is, or is to be, held as a unit under a strata title system (or a similar system) established under a law of a State or Territory, the whole or the part, as the case may be, of the building is a **building unit**.
- (4) For the purposes of this Act, if a part of the building is, or is to be, for separate lease, that part of the building is a **building unit**.

372T Sale of building lots

For the purposes of this Act, a person **sells** a building lot if:

- (a) in a case where the person holds a freehold interest in the land concerned—the person transfers the whole or a part of the freehold interest in the land; or
- (b) in a case where the person holds a leasehold interest in the land concerned—the person transfers the whole or a part of the leasehold interest in the land.

372U Sale of building units

For the purposes of this Act, a person **sells** a building unit if:

- (a) in a case where:
 - (i) the building unit is covered by subsection 372S(2), but is not covered by subsection 372S(3); and
 - (ii) the person holds a freehold interest in the land on which the building unit is situated;the person transfers the whole or a part of the freehold interest; or
- (b) in a case where:

- (i) the building unit is covered by subsection 372S(2), but is not covered by subsection 372S(3); and
- (ii) the person holds a leasehold interest in the land on which the building unit is situated;
the person transfers the whole or a part of the leasehold interest; or
- (c) in a case where:
 - (i) the building unit is covered by subsection 372S(3); and
 - (ii) the person holds an interest in the unit;
the person transfers the whole or a part of the interest in the unit.

372V Fixed-line facilities

For the purposes of this Act, a *fixed-line facility* is a facility (other than a line) used, or for use, in connection with a line, where the line:

- (a) is not on the customer side of the boundary of a telecommunications network; and
- (b) is used, or for use, to supply a carriage service to the public.

Note 1: For *boundary of a telecommunications network*, see section 22.

Note 2: For *supply to the public*, see section 372ZA.

372W Fibre-ready facility

For the purposes of this Act, each of the following is a *fibre-ready facility*:

- (a) an underground fixed-line facility that:
 - (i) is used, or for use, in connection with an optical fibre line; and
 - (ii) satisfies such conditions (if any) as are specified in a legislative instrument made by the Minister;
- (b) a fixed-line facility that:
 - (i) is used, or for use, in connection with an optical fibre line; and
 - (ii) is specified in a legislative instrument made by the Minister; and
 - (iii) satisfies such conditions (if any) as are specified in a legislative instrument made by the Minister.

372X Installation of a facility

For the purposes of this Part, *install*, in relation to a facility, includes:

- (a) construct the facility on, over or under any land; and
- (b) attach the facility to any building or other structure.

372Y Installation of a fibre-ready facility in proximity to a building lot or building unit

Building lot

- (1) For the purposes of this Part, a fibre-ready facility used, or for use, in connection with a line is installed in *proximity* to a building lot if, and only if, it is installed:
 - (a) in, on or under the lot, so as to enable the line to be readily connected to a building unit that has been, is being, is to be, or may be, constructed on the lot; or
 - (b) in sufficient proximity to the lot as to enable the line to be readily connected to a building unit that has been, is being, is to be, or may be, constructed on the lot.

Building unit

- (2) For the purposes of this Part, a fibre-ready facility used, or for use, in connection with a line is installed in *proximity* to a building unit if, and only if, it is installed in sufficient proximity to the building unit as to enable the line to be readily connected to the building unit.

372Z Sewerage services, electricity or water supplied to a building lot or building unit

Sewerage services

- (1) For the purposes of this Part, sewerage services are *supplied* to a building lot if, and only if:
 - (a) a sewerage pipeline is installed:
 - (i) under the lot; or
 - (ii) in sufficient proximity to the lot as to enable sewerage services to be readily connected to a building unit that

has been, is being, is to be, or may be, constructed on the lot; and

- (b) the pipeline is part of a public sewerage system.
- (2) For the purposes of this Part, sewerage services are *supplied* to a building unit if, and only if:
- (a) a sewerage pipeline is installed in sufficient proximity to the building unit as to enable sewerage services to be readily connected to the building unit; and
 - (b) the pipeline is part of a public sewerage system.

Electricity

- (3) For the purposes of this Part, electricity is *supplied* to a building lot if, and only if:
- (a) an electricity cable is installed:
 - (i) over or under the lot; or
 - (ii) in sufficient proximity to the lot as to enable electricity to be readily connected to a building unit that has been, is being, is to be, or may be, constructed on the lot; and
 - (b) the cable is part of an electricity supply grid.
- (4) For the purposes of this Part, electricity is *supplied* to a building unit if, and only if:
- (a) an electricity cable is installed in sufficient proximity to the building unit as to enable electricity to be readily connected to the building unit; and
 - (b) the cable is part of an electricity supply grid.

Water

- (5) For the purposes of this Part, water is *supplied* to a building lot if, and only if:
- (a) a water pipeline is installed:
 - (i) under the lot; or
 - (ii) in sufficient proximity to the lot as to enable water to be readily connected to a building unit that has been, is being, is to be, or may be, constructed on the lot; and
 - (b) the pipeline is part of a reticulated water supply system.

- (6) For the purposes of this Part, water is *supplied* to a building unit if, and only if:
- (a) a water pipeline is installed in sufficient proximity to the building unit as to enable water to be readily connected to the building unit; and
 - (b) the pipeline is part of a reticulated water supply system.

372ZA Supply to the public

- (1) For the purposes of this Part, if:
- (a) a line consists of, or forms part of, a network unit; and
 - (b) under section 44, the network unit is taken, for the purposes of section 42, to be used to supply a carriage service to the public;
- the line is taken to be used, or for use, to supply a carriage service to the public.
- (2) For the purposes of this Part, if:
- (a) a line neither consists of, nor forms part of, a network unit; and
 - (b) assuming that the line were a network unit, then, under section 44, the network unit would be taken, for the purposes of section 42, to be used to supply a carriage service to the public;
- the line is taken to be used, or for use, to supply a carriage service to the public.

372ZB Concurrent operation of State and Territory laws

This Part is not intended to exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Part.

372ZC Optical fibre line

For the purposes of this Part, an *optical fibre line* is a line that consists of, or encloses, optical fibre.

372ZD NBN Co

In this Part:

NBN Co means NBN Co Limited (ACN 136 533 741), as the company exists from time to time (even if its name is later changed).

372ZE NBN corporation

In this Part:

NBN corporation has the same meaning as in section 577BA.

11 After paragraph 376(2)(d)

Insert:

- (da) ensuring, for the purpose of the supply of a carriage service using:
 - (i) the national broadband network; or
 - (ii) any other superfast telecommunications network; the interoperability of customer equipment with such a network; or
- (db) ensuring that customer equipment or customer cabling that is, or is proposed to be, connected to:
 - (i) the national broadband network; or
 - (ii) any other superfast telecommunications network; meets particular performance requirements; or
- (dc) ensuring that customer equipment or customer cabling that is, or is proposed to be, connected to:
 - (i) the national broadband network; or
 - (ii) any other superfast telecommunications network; has particular design features; or

12 At the end of section 376

Add:

- (7) In this section:

national broadband network has the same meaning as in section 577BA.

superfast carriage service means a carriage service, where:

- (a) the carriage service enables end-users to download communications; and

- (b) the download transmission speed of the carriage service is normally more than 25 megabits per second; and
- (c) the carriage service is supplied using a line to premises occupied or used by an end-user.

superfast telecommunications network means a telecommunications network that is capable of being used to supply a superfast carriage service.

13 After section 376

Insert:

376A ACMA must make technical standards if directed by the Minister

- (1) The Minister may, by legislative instrument, direct the ACMA to:
 - (a) make a technical standard under section 376 that deals with one or more specified matters; and
 - (b) do so within a specified period.
- (2) The Minister must not give the ACMA a direction under section 14 of the *Australian Communications and Media Authority Act 2005* requiring the ACMA to make a technical standard under section 376 of this Act that deals with one or more specified matters.

14 Subsection 440(1)

After “may”, insert “, by legislative instrument,”.

15 Subsection 440(2)

Repeal the subsection, substitute:

- (2) A direction under subsection (1) may require the ACMA to make cabling provider rules that deal with one or more specified matters.
- (2A) Subsection (2) does not limit subsection (1).

Part 2—Other amendments

Telecommunications Act 1997

16 Sections 372ZC and 372ZE

Repeal the sections.

*[Minister's second reading speech made in—
House of Representatives on 23 March 2011
Senate on 6 July 2011]*

(38/11) *Telecommunications Legislation Amendment (Fibre Deployment) Act 2011* No. 107,
2011