EXPLANATORY STATEMENT

**Select Legislative Instrument 2011 No. 209**

Issued by the Authority of the Minister for Broadband, Communications

and the Digital Economy

# Telecommunications Act 1997

# Telecommunications Amendment Regulations 2011 (No. 1)

Subsection 594(1) of the *Telecommunications Act 1997* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

On 7 April 2009, the Australian Government announced that it would establish a new company NBN Co Limited (NBN Co) to build and operate a new high-speed national broadband network (NBN). The NBN has an objective of connecting up to 93 per cent of all Australian homes, schools and businesses to a high-speed optical fibre network, capable of providing broadband speeds up to 1 gigabit per second. Other premises in Australia will be connected with next generation wireless and satellite broadband services.

The *Telecommunications Amendment Regulations 2011 (No. 1)* (the Amending Regulations) amend the *Telecommunications Regulations 2001* (the Principal Regulations) to enable overhead lines with an external cross section not exceeding 30 mm to be specified by the Minister as ‘low-impact facilities’ for the purposes of Schedule 3 to the Act. Low-impact facilities are defined in the *Telecommunications (Low-impact Facilities) Determination 1997* (the LIF Determination).

Schedule 3 of the Act affords carriers with powers and immunities to roll-out certain types of telecommunications infrastructure, the most common of which are low-impact facilities. Low-impact facilities may be installed without being subject to a number of state and territory laws, including planning laws. If required, low-impact facilities can be installed without the agreement of the landowner or occupier, although carriers must notify landowners and occupiers prior to installing a low-impact facility and there are mechanisms under the operation of the Act for making objections to the installation.

Clause 6(3) of Schedule 3 to the Act provides that the Minister may, by written instrument, determine that a specified facility is a ‘low-impact facility’. The current low-impact facilities are set out in the LIF Determination. However, under Clause 6(4) of the Act, a cable may not be added to the LIF Determination if the maximum external cross-section of any part exceeds 13mm, or another distance specified in the Regulations.

The Amending Regulations enable overhead lines with an external cross-section not exceeding 30 mm to be specified by the Minister as ‘low-impact facilities’ for the purposes of Schedule 3 to the Act. This is achieved by inserting a new regulation 11.2 into the Principal Regulations, which specifies 30 mm as the maximum external cross-section distance of any part of an overhead line.

It is expected that aerial deployment of these maximum dimensions would only be used in exceptional circumstances as the majority of overhead cabling is expected to be of much lesser cross-section. Moreover, the use of overhead cabling is expected to be limited to where overhead cabling is the only efficient or feasible option. Under NBN Co’s Corporate Plan for the period 2011-2013, it is assumed that 75 per cent of fibre in brownfield developments would be deployed underground.

All facilities installed under the LIF Determination are subject to requirements relating to installation set out in the Act, the LIF Determination itself, and in Chapter 4 of the *Telecommunications Code of Practice 1997.* These requirements include the notification and objection processes for landowners and occupiers where a facility is proposed to be installed, as well as a number of other requirements, such as doing as little damage as is practicable and restoring work sites.

The Act specifies no conditions that need to be satisfied before the power to make the Amending Regulations may be exercised.

The Amending Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

The Amending Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (LIA) (see paragraph 6(a) of the LIA).

Details of the accompanying Amending Regulations are set out in the Attachment.

**Consultation**

On 10 August 2011 the Minister released for public comment proposed changes to the Principal Regulations and the Determination. These proposed changes relevantly included a proposal to allow specification of overhead lines with a maximum external cross-section of up to 30 mm. There were few comments in respect of the Amending Regulations.

Authority: Section 594 of the

*Telecommunications Act 1997*

**ATTACHMENT**

# **Details of the Telecommunications Amendment Regulations 2011 (No. 1)**

**Regulation 1 – Name of Regulations**

# This regulation provides that the title of the Regulations is the Telecommunications Amendment Regulations 2011 (No. 1).

**Regulation 2 – Commencement**

This regulation provides for the Regulations to commence on the day after they are registered on the Federal Register of Legislative Instruments.

**Regulation 3 – Amendment of *Telecommunications Regulations 2001***

This regulation provides that the *Telecommunications Regulations 2001* (the Principal Regulations) are amended as set out in Schedule 1.

**Schedule 1 – Amendments**

**Item [1] – After regulation 11.1**

Part 11 of the Principal Regulations prescribes relevant matters for carriers’ powers and immunities under Schedule 3 of the *Telecommunications Act 1997* (the Act).

Item 1 inserts new regulation 11.2 into the Principal Regulations.

New regulation 11.2 specifies, for the purposes of subparagraph 3(b)(ii) of Schedule 3 to the Act, the distance of 30 mm.