

Telecommunications (Fibre-Ready Facilities in Real Estate Development Projects and Other Matters) Instrument 2011

Telecommunications Act 1997

I, STEPHEN CONROY, Minister for Broadband, Communications and the Digital Economy, make this Instrument under paragraphs 372K(1)(e) and (f), subsections 372K(3) and (4), and subparagraph 372W(b)(ii) of the *Telecommunications Act 1997*.

Dated 22 December 2011

STEPHEN MICHAEL CONROY
Minister for Broadband, Communications and the Digital Economy

Part 1 Preliminary

1 Name of Instrument

This Instrument is the *Telecommunications (Fibre-Ready Facilities in Real Estate Development Projects and Other Matters) Instrument 2011*.

2 Commencement

This Instrument commences on the day after it is registered on the Federal Register of Legislative Instruments.

3 Definitions

In this Instrument:

pipe includes a conduit or other tube that physically accommodates cables.

pit means a manhole, pit or any other access hole or chamber in the ground.

Note 1: Several other words and expressions used in this Instrument have the meaning given by section 7 of the Act (see subsection 13(1) of the *Legislative Instruments Act 2003*). For example:

- building lot
- building unit
- facility
- fibre-ready facility
- fixed-line facility
- hybrid fibre-coaxial network
- line
- optical fibre line
- project area
- real estate development project.

Note 2: The term 'proximity' has the same meaning as in section 372Y of the Act (subsection 13(1) of the *Legislative Instruments Act 2003*).

Part 2 Fibre-ready facility

4 Specification of above ground fixed-line facilities that are fibre-ready facilities

- (1) A fixed-line facility specified in this clause is specified for the purpose of subparagraph 372W(b)(ii) of the Act.
- (2) The fixed-line facility is so specified where it satisfies one or more of the following:
 - (a) is suspended above the surface of land or a body of water; or
 - (b) is placed or attached, on or above the surface of land or a body of water;
 - (c) is placed or attached, on or within a building, structure or other thing located on, or above the surface of land or a body of water; or
 - (d) is protruding from the surface of land or a body of water; or
 - (e) is otherwise located above the surface of land or a body of water.

Part 3 Exemption from requirement to install fibre-ready facilities

Subdivision A – Exempt conduct

5 Exemptions

Exempt conduct – installation of fixed-line facilities related to copper or hybrid fibre-coaxial

- (1) Pursuant to subsection 372K(3) of the Act, the installation of fixed-line facilities (other than fibre-ready facilities) for use in connection with either or both of the following:

- (a) a copper-based telecommunications network;
- (b) a hybrid fibre-coaxial network;

is exempt from the requirements in subsections 372E(2) and 372F(2) of the Act, subject to the conditions specified in subclause (2) below being satisfied.

- (2) For the purposes of subclause (1), the following conditions are specified:

- (a) unless paragraph (b) applies:
 - (i) underground fibre-ready facilities (comprising predominantly of pits and pipes) have already been installed in proximity to each building lot or building unit situated in the project area; or
 - (ii) underground fibre-ready facilities (comprising predominantly of pits and pipes) are installed at the same time in proximity to each building lot or building unit situated in the project area; or
 - (iii) both of the following apply:
 - (A) the person installing the fixed-line facilities mentioned in subclause (1) has a reasonable belief that underground fibre-ready facilities (comprising predominantly of pits and pipes) will be installed within 12 months of the installation of the fixed-line facility in proximity to each building lot or building unit situated in the project area; and
 - (B) all of the fixed-line facilities mentioned in subclause (1) are to be installed in proximity to connect no more than 10 building lots or building units;

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- (b) in the case where it is not reasonably practical to install underground fibre-ready facilities (comprising predominantly of pits and pipes) in the project area (having regard to the nature and composition of the land in the project area and the direct cost associated with such an installation):
- (i) above ground fibre-ready facilities have already been installed in proximity to each building lot or building unit situated in the project area; or
 - (ii) above ground fibre-ready facilities are installed at the same time in proximity to each building lot or building unit situated in the project area; or
 - (iii) both of the following apply:
 - (A) the person installing the fixed-line facilities mentioned in subclause (1) has a reasonable belief that above ground fibre-ready facilities will be installed within 12 months of the installation of the fixed-line facility in proximity to each building lot or building unit situated in the project area; and
 - (B) all of the fixed-line facilities mentioned in subclause (1) are to be installed in proximity to connect no more than 10 building lots or building units.

Note: The term 'proximity' has the same meaning as in section 372Y of the Act (subsection 13(1) of the *Legislative Instruments Act 2003*).

Exempt conduct – installation of minor supplementary fixed-line facilities etc.

- (3) Pursuant to subsection 372K(3) of the Act, the installation of fixed-line facilities (other than fibre-ready facilities) in a real estate development project is exempt from the requirements in subsections 372E(2) and 372F(2) of the Act, subject to all of the conditions specified in subclause (4) below being satisfied.
- (4) For the purposes of subclause (3), the following conditions are specified:
 - (a) prior to 27 September 2011, fixed-line facilities (other than fibre-ready facilities) were installed and for use, in connection with a line (other than an optical fibre line) in the project area; and
 - (b) the installation of the fixed-line facilities constitutes, with respect to the facilities mentioned in paragraph (a) above, one or more of the following:
 - (i) a minor supplementation (for this purpose supplementation does not include any form of extension);
 - (ii) an ancillary extension of no more than 30 metres;

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- (iii) a minor replacement;
 - (iv) a minor modification;
 - (v) the relocation to a new location; and
- (c) it is not either:
- (i) reasonably practical (having regard to the direct cost associated with such an installation); or
 - (ii) technically feasible;
- to supplement, extend, replace, modify, or relocate the facilities mentioned in paragraph (a) with fibre-ready facilities.

Note 1: Subsection 13(3) of the *Legislative Instruments Act 2003* allows specification of matters or things by class.

Note 2: Part 20A of the Act commenced on 27 September 2011.

6 Reasonable belief in relation to installation of fibre-ready facilities

- (1) For clause 5, a person is taken to have a reasonable belief that installation of a particular type of fibre-ready facilities will occur in the project area within the following 12 months if:
- (a) the project area is identified in information published by any carrier, carriage service provider, or other telecommunications infrastructure provider, as an area in which the particular type of fibre-ready facilities will be installed within the following 12 months; or
 - (b) any carrier, carriage service provider, person responsible for a real estate development project, or other telecommunications infrastructure provider, has entered into a legally enforceable agreement for the type of fibre-ready facilities to be installed within the following 12 months.
- (2) Subclause (1) does not limit the circumstances in which a person could form a reasonable belief that installation of fibre-ready facilities will be installed within the following 12 months.

Subdivision B – Exemption for real estate development projects from sale and lease limitation

7 Exemption from requirements of section 372G – Subdivisions

Pursuant to paragraph 372K(1)(e) of the Act, a real estate development project specified in, or ascertained in accordance with, the following table is exempt from the requirements in section 372G of the Act.

Item	Exemption
1	<p>Any real estate development project in which (at the relevant time) fixed-line facilities (other than fibre-ready facilities) have been installed in accordance with an exemption granted under subsection 372K(3) of the Act from the requirements of either or both of the following provisions:</p> <ul style="list-style-type: none">(a) subsection 372E(2);(b) subsection 372F(2). <p>as specified in, or ascertained in accordance with clause 5.</p> <p><i>Note 1:</i> Subsection 13(3) of the <i>Legislative Instruments Act 2003</i> allows specification of matters or things by class.</p> <p><i>Note 2:</i> Clause 5 of this Instrument provides for exemptions granted under subsection 372K(3) of the Act, subject to specified conditions.</p>
2	<p>Any real estate development project in the circumstance that:</p> <ul style="list-style-type: none">(a) prior to 27 September 2011, fixed-line facilities (other than fibre-ready facilities) were installed and for use in connection with a line (other than an optical fibre line) in the project area; and(b) prior to sale or lease of a building lot or building unit, no other fixed line facilities are installed in the project area, and the facilities mentioned in paragraph (a) are for use, or re-use, in connection with a line (other than an optical fibre line) in the project area, without any material change. <p><i>Note 1:</i> Subsection 13(3) of the <i>Legislative Instruments Act 2003</i> allows specification of matters or things by class.</p> <p><i>Note 2:</i> Part 20A of the Act commenced on 27 September 2011.</p>

8 Exemption from requirements of section 372H – Other projects

Pursuant to paragraph 372K(1)(f) of the Act, a real estate development project specified in, or ascertained in accordance with, the following table is exempt from the requirements in section 372H of the Act.

Item	Exemption
1	<p>Any real estate development project in which (at the relevant time) fixed-line facilities (other than fibre-ready facilities) have been installed in accordance with an exemption granted under subsection 372K(3) of the Act from the requirements of subsection 372F(2) as specified in, or ascertained in accordance with clause 5.</p> <p>Note 1: Subsection 13(3) of the <i>Legislative Instruments Act 2003</i> allows specification of matters or things by class.</p> <p>Note 2: Clause 5 of this Instrument provides for exemptions granted under subsection 372K(3) of the Act, subject to specified conditions.</p>
2	<p>Any real estate development project in the circumstance that:</p> <ul style="list-style-type: none">(a) prior to 27 September 2011, fixed-line facilities (other than fibre-ready facilities) were installed and for use in connection with a line (other than an optical fibre line) in the project area; and(b) prior to sale or lease of a building unit, no other fixed line facilities are installed in the project area, and the facilities mentioned in paragraph (a) are for use, or re-use, in connection with a line (other than an optical fibre line) in the project area, without any material change. <p>Note 1: Subsection 13(3) of the <i>Legislative Instruments Act 2003</i> allows specification of matters or things by class.</p> <p>Note 2: Part 20A of the Act commenced on 27 September 2011.</p>
