EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Communications

Telecommunications Act 1997
Acts Interpretation Act 1901

Telecommunications (*Low-impact Facilities*) *Determination 1997*
(*Amendment No. 3 of 2015*)

Legislative authority

Subclause 6(3) of Schedule 3 of the *Telecommunications Act 1997* (the Act) allows the Minister to determine that specified facilities are low-impact facilities for the purpose of clause 6 of the Schedule 3 to the Act.

On 29 June 1997 the then Minister for Communications, Information Technology and the Arts made the *Telecommunications (Low-impact Facilities) Determination 1997*, and it was subsequently amended on 12 August 1999, 13 December 2011, 20 November 2012, 30 March 2015, and 8 July 2015 (the Principal Determination).

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Purpose

Schedule 3 to the Act provides carriers with power to inspect land to determine whether the land is suitable for the carrier's purpose; install certain types of facilities (primarily low-impact facilities) on the land; and maintain a facility that is situated on the land; without seeking state, territory or local government planning approval or land owner consent.

The overarching purpose of the *Telecommunications (Low-impact Facilities) Determination 1997 (Amendments No.3 of 2015)* (the Amending Determination) is to amend the Principal Determination to support the rollout of the multi-technology mix (MTM) National Broadband Network (NBN) and other next-generation broadband networks. The amendments:

- make definitions of fixed-line communications facilities technology neutral, so that they cover hybrid fibre-coaxial (HFC), fibre-to-the-node (FTTN), optical fibre, and fibre-to-the-basement (FTTB) technology platforms;
- provide for a small number of new types of facilities on an ongoing basis;
- allow thicker overhead communications cabling to be classed a low-impact facilities;
- permit some facilities to be attached to the outside of multi-unit buildings and allow some larger facilities to be installed inside multi-unit buildings;
- remove temporary amendments to permit HFC trials and FTTB rollout until April 2016 made in the *Telecommunications (Low-impact Facilities) Determination*

1997 (Amendment No. 1 of 2015) and the *Telecommunications (Low-impact Facilities) Determination 1997 (Amendment No. 2 of 2015)*; and
- other minor consequential changes.

Following commencement of regulation 11.2 of the *Telecommunications Regulations 2001* as amended by the *Telecommunications Amendment (Designated Overhead Lines) Regulation 2015*, the Minister is now able to specify overhead lines with an external cross-section not exceeding 48 millimetres as 'low-impact facilities' for the purposes of Schedule 3 to the Act.

Background

The Australian Government is committed to the delivery of better broadband to Australians and is doing this through the rollout of the NBN. The Strategic Review of the NBN in December 2013 recommended that the NBN should be completed using a multi-technology mix to deliver fast broadband sooner and at less cost to taxpayers. In light of this, the Government issued a new Statement of Expectations to NBN Co on 8 April 2014. The Statement instructs NBN Co to build the network in a cost-effective way using the technology best matched to each area of Australia. The technologies that may be used by NBN Co include FTTN, fibre-to-the-premises (FTTP), FTTB, HFC, fixed wireless and satellite.

In the absence of Schedule 3 powers, carriers operating national, wholesale-only, non-discriminatory broadband networks would need to comply with state and territory planning laws and obtain land owner consent to inspect, install and maintain HFC and some FTTB and FTTN facilities. This would mean a long and costly process for these carriers to install facilities that are by definition, low-impact, and which, if fibre, carriers could install under Schedule 3. Given the variations in rules for overhead and other telecommunications facilities under state, territory and local government planning regimes, inclusion of these facilities in the LIFD will streamline national rollouts of these facilities. The Government has therefore amended the Principal Determination to support the rollout of the MTM NBN and other next-generation broadband networks.

These amendments replace temporary amendments made in April 2015 and July 2015 to the Principal Determination. The temporary changes allowed NBN Co and other comparable carriers to more readily deploy high-speed broadband technologies, connect premises, and locate and install equipment in multi-unit buildings. The temporary amendments were made on a 12 month basis and were mostly limited to specified trial locations for the NBN MTM rollout, following targeted consultation processes.

The amendments permit the facilities to be installed in commercial, industrial, residential and rural areas, as defined in Part 2 of the Principal Determination.

Powers under Schedule 3 will help with the installation of the facilities on utility distribution network infrastructure such as power poles. Carriers installing facilities using Schedule 3 powers and immunities must, among other things, comply with requirements at Clause 12 of Schedule 3 in the Act. Specifically, the installation must meet relevant industry standards, including any applicable standards for the installation of telecommunications facilities on public utility infrastructure. In addition, carriers must make reasonable efforts to enter into agreements with public utilities when engaging in activities that are likely to affect the

operations of the utility, such as installing facilities on their infrastructure in accordance with Clause 11 of Schedule 3 to the Act.

Consultation

On Friday, 12 June 2015, the Minister published a copy of the draft Amending Determination and related proposed amendments to the LIFD for public comment. The public consultation closed on Friday, 10 July 2015. Fifteen submissions were received. The submissions were from electricity companies, state government agencies, local governments, community members and groups, the ACCC and Telstra. The submissions were mostly concerned about the greater use of overhead cabling, its visual impact, the use of electrically conductive overhead cabling, and the introduction of thicker overhead cabling.

The engineering and safety concerns raised by electricity companies are similar to those previously raised during consultation on the temporary amendments to the LIFD in March 2015. As the Act requires carriers to follow good engineering and health and safety practices, these do not warrant any revisions to the draft Amending Determination. The Department of Communications will work with electricity companies and carriers to address these concerns.

The concerns raised about the visual impact of thicker aerial cabling are expected to be mitigated by the Government's expectation that NBN Co and comparable carriers use the smallest cable and bundle size feasible for each area. In addition, 48 mm cable bundles are only expected to be rolled out in areas with existing cable bundles, so the change to the visual amenity of affected areas is not expected to be significant.

Regulatory Impact Statement

The Office of Best Practice Regulation advised that a Regulation Impact Statement was not required (OBPR ID 19038).

Notes on Amendments and Attachments

The Amending Determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Details of the accompanying Amending Determination are set out in the Attachment 1 and the Statement of Compatibility with Human Rights for the Amending Determination is set out in Attachment 2.

ATTACHMENT 1

Details of the *Telecommunications (Low-impact Facilities) Determination 1997 (Amendment No. 3 of 2015)*

Section 1 – Name of Determination

Section 1 provides that the title of the Determination is the *Telecommunications (Low-impact Facilities) Determination 1997 (Amendment No. 3 of 2015)* (the Amending Determination).

Section 2 – Commencement

Section 2 provides that the Amending Determination commences on the day after it is registered on the Federal Register of Legislative Instruments.

Section 3 – Variation

Section 3 provides that the *Telecommunications (Low-impact Facilities) Determination 1997* (the Principal Determination) is amended as set out in the Schedule to the Amending Determination.

Section 4 – Expiry

Once the Amending Determination has come into effect, it will have fulfilled its purpose (i.e. amending the Principal Determination) which will have ongoing effect for the period specified in relation to the amendment. Therefore, the amending instrument itself can be removed from the Federal Register of Legislative Instruments. Accordingly, a self-expiry provision has been included in the Amending Determination at section 4.

Schedule – Amendments

The Schedule to the Amending Determination sets out the specific amendments being made to the Principal Determination.

Item 1 – Section 1.3, after the definition of *Aboriginal person*

Item 1 inserts the technology neutral term, 'access terminal'. This item is intended to be technology neutral and relates to the facility described at new item 4 of Part 4A (refer Item 20). An access terminal is a connector device that allows a line link (distribution network cable) to be connected to a drop cable (a cable that connects to premises). The definition of 'optical fibre access terminal' has been retained in the Principal Determination as that term is specific for item 5 of Part 4 (underground cable facilities) of the Schedule.

Item 2 – Section 1.3, after the definition of *Act*

Item 2 inserts the technology neutral term, 'amplifier'. Amplifiers are devices which amplify the signal strength on a cable.

Item 3 – Section 1.3, definition of *building connection equipment*
Item 3 removes the definition of 'building connection equipment'. This term is replaced by 'external building connection equipment' at Item 5 and 'internal building connection equipment' at Item 7 of the Amending Determination.

Item 4 – Section 1.3, definition of *Designated Installation Period*

Item 4 removes the term 'Designated Installation Period' as it was added in the temporary amendments to the LIFD in April 2015 and is no longer required. It is intended that all fixed-line facilities will be able to be installed on an ongoing basis, rather than limited to a 12 month period, as had been implemented by the April 2015 amendments.

Item 4 also adds the technology neutral term, 'drop cable'. These cables are lead-ins used to connect the main distribution cabling of the network to the premises. This replaces the technology specific 'optical fibre drop cable' which is removed by Item 10 of the Amending Determination.

Item 5 – Section 1.3, definition of *HFC Trial Region*

Item 5 removes the term 'HFC Trial Region', which was added in the temporary amendments to the LIFD in April 2015. Its removal is consistent with the amendments being put in place on an ongoing basis and applying in all areas of Australia.

Item 5 also inserts the term 'external building connection equipment'. This is a facility that is installed on, or attached to an external wall or other exterior surface of a multi-unit building, which is used, or is intended for future use by end users located in the building or a related building nearby.

This change makes the temporary amendments made in April 2015 to permit building connection equipment to be installed on the outside of buildings ongoing. Inclusion of this type of facility is necessary as older style apartment complexes (for example, those without basement parking or a communications room) may not have enough suitable internal space to install building connection equipment necessary for FTTB deployments. As a result, critical equipment may need to be installed outside the building in some instances.

As a matter of general industry practice, it is expected that where there is space inside a multi-unit building for the equipment, it would be installed in that interior location.

An example of this type of facility would be a micronode enclosure that houses FTTB equipment, which is attached to the outside of a multi-unit building for use by end-users located inside the building, or a nearby building.

External and internal building connection equipment are listed as separate facilities because they have different volumetric limits (see Item 7 of the Amending Determination).

Item 6 – Section 1.3, definition of *IEEE 1222-2011*

Item 6 removes the term 'IEEE 1222-2011 Standard' which was used in defining optical fibre cabling, but is no longer needed in the technology neutral approach.

Item 7 – Section 1.3, after the note accompanying the definition of installation

Item 7 inserts the term 'internal building connection equipment'. This is a facility that is installed in, or attached to, any interior part of a multi-unit building, which is used, or is intended for future use by end users located in the building or a related building nearby.

An example of this type of facility would be a micronode enclosure or a rack cabinet that houses FTTB equipment, which is installed inside a multi-unit building for use by end-users located inside the building, or a nearby building. It permits similar facilities to those permitted by 'in-building subscriber connection equipment' when installed by NBN Co and comparable carriers, but additionally allows the installation to occur inside a building near the building or buildings in which subscribers are located.

Item 8 – Section 1.3, definition of *network termination unit*

Item 8 removes the term 'network termination unit' and replaces it with 'network termination device'. This is a technology neutral term that is used to describe devices that terminate a carrier's network and provide a connection point between a carrier's network and customer cabling or customer equipment such as a router.

Item 9 – Section 1.3, definition of *optical fibre drop cable*

Item 9 removes the term 'optical fibre drop cable' which is replaced by the technology neutral term 'drop cable' at Item 4 of the Amending Determination.

Item 9 also inserts the term 'optical node' which is used in high speed fixed-line communications networks including HFC and FTTN. It is used to convert between optical and electrical signals along cables.

Item 10 – Section 1.3, definition of *optical fibre termination box (Type A)*
Item 11 – Section 1.3, definition of *optical fibre termination box (Type B)*

Items 10 and 11 remove the terms 'optical fibre termination box (Type A)' and 'optical fibre termination box (Type B)', which are replaced by the technology neutral term 'premises connection device' at Item 12 of the Amending Determination.

Item 12 – Section 1.3, definition of *power supply*

Item 12 broadens the definition of 'power supply'. It is used to power equipment that is part a high-speed communications network, including network termination devices, optical nodes and amplifiers.

Item 12 also inserts the technology neutral term, 'premises connection device', which replaces optical fibre termination box (Type A) and (Type B), which are removed by Items 10 and 11 of the Amending Determination. A premises connection device is a device used to terminate a drop cable from the network at a premises for connection to in-building cabling or equipment at the premises. It is typically a small box attached to the outside of a building.

Item 13 – Section 1.3, after definition of *significant environmental disturbance*

Item 13 inserts the technology neutral term 'splice enclosure'. These are devices in which a line link is spliced to another line link, an access terminal or a drop cable. They are used in connecting the main cabling of a communications network to a premises. The definition of 'optical fibre spice enclosure' has been retained in the Principal Determination as that term is specific for item 4 of Part 4 (underground cable facilities) of the Schedule.

Item 14 – Section 1.3, after the note accompanying the definition of *tower*

Item 14 inserts the generic, technology neutral definition 'underground network equipment' to cover most facilities that are part of a network for the high-speed carriage of communications and placed in underground pits and conduit.

Item 15 – Column 2, Item 8 of Part 3 of the Schedule

Item 15 omits 'building connection equipment' and adds the new facility, 'external building connection equipment' (defined at Item 5 of the Amending Determination), to the Schedule of the LIFD. As explained at Item 5, the equipment provides a service to end-users either within the multi-unit building to which the equipment is attached, or end-users who are located in another nearby multi-unit building.

The maximum permissible substantive volume for this facility is 0.59 cubic metres. This permits the installation of equipment such as micronode enclosures for FTTB rollouts. Such an enclosure could, for example, measure 1940mm x 770mm x 790mm.

Item 16 – Column 2, Item 9 of Part 3 of the Schedule

Item 16 omits 'in-building network equipment' as currently defined. (The facility is re-inserted in a modified form by Item 17.)

Item 16 also adds the new facility, 'internal building connection equipment' (defined at Item 7 of the Amending Determination), to the Schedule of the LIFD. As explained at Item 7, the equipment provides a service to either end-users within the multi-unit building in which the equipment is installed, or end-users who are located in another nearby multi-unit building.

The maximum permissible substantive volume for this facility is 1.3 cubic metres. This permits the installation of equipment such as FTTB rack cabinets. Such a cabinet could, for

example, measure 1360mm x 1040mm x 380mm. Schedule 3 to the Act requires carriers to act in accordance with good engineering practice, protect the safety of people and property, interfere with other users of the land as little as practicable, and protect the environment. Carriers are expected to use the smallest equipment feasible for the available space inside each building, and to install facilities inside dedicated communications rooms whenever possible.

Item 17 – After Item 9 of Part 3 of the Schedule

Item 17 re-inserts 'in-building network equipment' as Item 10 in Part 3 of the Schedule, in a modified form. The maximum permissible substantive volume for this facility is increased to 1.3 cubic metres, and installation is no longer limited to the Designated Installation Period.

This equipment covers a broad class of equipment deployed in a multi-unit building for a purpose other than directly supplying carriage services to end-users. This could include purposes such as providing broader network functions or providing services to non-addressable locations in the future (e.g. traffic lights, bus stops, and private payphones). Given the need to cover a wider range of operational scenarios, the permissible volume of such equipment has been increased. The maximum permissible substantive volume of 1.3 cubic metres matches that for internal building connection equipment, because the same equipment may need to be under this category of facility.

Item 18 – Part 4 of the Schedule, heading

Item 18 replaces the heading of Part 4 'Underground cable facilities', with 'Underground facilities (for fixed-line networks)', which better reflects the facilities listed in the amended Part 4 of the Schedule.

Item 19 – Item 6, Part 4 of the Schedule

Item 19 replaces existing HFC-specific underground facilities with a single generic, technology neutral category of facilities, so that underground facilities for optical fibre, HFC, FTTN, FTTB, and any future fixed-line broadband technologies are included in the LIFD.

Because such facilities are located underground, they have little or no visual impact, and their installation in existing pits and conduits causes minimal disturbance to the community. The maximum substantive volume of this facility type is 0.23 cubic metres. Some examples of this facility type include optical nodes, amplifiers, and access terminals. Consistent with the previous Item 6 of Part 4 of the Schedule, this replacement item relates to underground network equipment whichmust be part of a national high speed wholesale-only, non-discriminatory communications network.

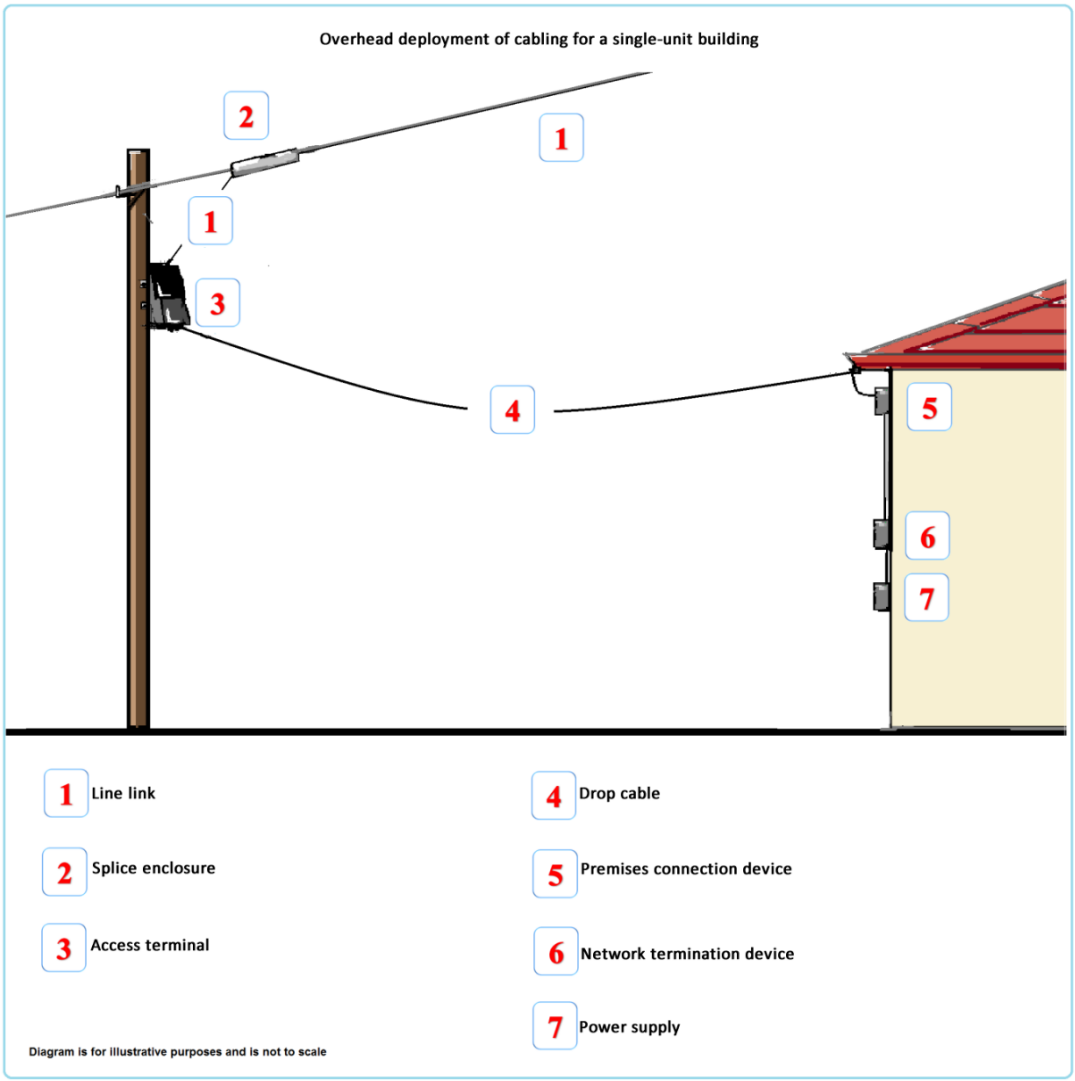
No change is made to existing Items 4 and 5 of Part 4 of the Schedule which relate to underground optical fibre specific facilities.

Item 20 – Part 4A of the Schedule

Item 20 omits the current Part 4A of the Schedule and replaces it with an updated Part 4A because of the breadth of the changes to the Part.

The updated Part 4A of the Schedule replaces existing above ground fibre specific facilities with generic, technology neutral ones so that overhead facilities for optical fibre, HFC, FTTN, FTTB, and any future fixed-line technologies are included in the LIFD, and are covered by one part of the Schedule. The new approach will make it easier for industry and the public to understand the rules for these facilities, and aid carrier compliance.

To help explain the amendments, the following diagram illustrates an overhead fixed-line network installation to serve a single unit building.



The amendments combine existing facilities listed in Part 4A, 'Above ground optical fibre facilities', and the facilities listed in Part 4B, 'Above ground hybrid fibre-coaxial facilities', as a result of the temporary amendments to the LIFD in April 2015.

All of the facilities listed in updated Part 4A are only low-impact facilities if they are, or are to be, part of a national network used, or for use, for the high speed carriage of communications, on a wholesale-only and non-discriminatory basis. arriers that are unable to meet these criteria must seek approval under relevant State and Territory laws to install such facilities.

Like all facilities listed in the LIFD, these facilities are not low-impact when carriers intend to install them in areas of environmental significance, as defined in the LIFD. Carriers cannot

use the LIFD to install facilities in such areas, and must seek approval under relevant Commonwealth, State and Territory planning laws.

Powers under Schedule 3 relating to above ground facilities will help with the installation of the facilities on utility distribution network infrastructure such as power poles. However, carriers installing facilities using Schedule 3 powers and immunities must comply with a range of strict requirements. Under clause 11 of Schedule 3 to the Act, carriers must make reasonable efforts to enter into agreements with public utilities when engaging in Schedule 3 activities that are likely to affect the operations of the utility, such as installing facilities on their infrastructure. Under clause 12 of Schedule 3 installations must meet relevant industry standards. There are also requirements in relation to standards, good engineering practice and safety in the *Telecommunications Code of Practice 1997*. These telecommunications-specific requirements are additional to other generic or sectoral requirements relevant to carriers using such infrastructure.

Item 1 – single line links

Item 1 of updated Part 4A of the Schedule covers the aerial deployment of telecommunications cabling. Specifically, Item 1 covers above ground line links (single or bundles) deployed or attached to a public utility structure, building or other structure. This item is intended to cover the distribution component of an above ground fixed-line network and is separate to drop cables. This facility type is analogous to the optical fibre line link in a FTTP deployment, which is permitted in the current version of the LIFD. Consistent with amendments to regulation 11.2 of the *Telecommunications Regulations 2001*, the maximum permissible external cross-section of any single line link or cable bundle is 48 mm.

While it is expected that generally a single overhead cable would be strung between poles in any one location, to provide flexibility the instrument does not prevent two or more overhead cables in any one location. If two or more communications cables are bundled, the bundle as a whole, not the individual cables would need to be within the maximum permissible external cross-section, which is 48 mm.

NBN Co and comparable carriers are expected to use the smallest cable diameter feasible for above ground line links in an area. It is therefore expected that there will not be widespread overhead deployment of thicker cabling or bundles. For example, it is expected such cabling or bundles will be used will be used in limited circumstances to improve capacity on networks where existing cabling exists.

These provisions do not permit carriers to install new additional structures such as poles to support overhead cabling without seeking development approval under relevant State and Territory planning laws.

Additionally, clause 51 of Schedule 3 to the Act requires carriers to remove overhead lines installed using carrier powers and immunities in the event that all of the non-communications cables such as electricity cables are permanently removed from the poles to which they are attached.

Item 2 – optical node

Item 2 of updated Part 4A of the Schedule covers optical node devices. They convert optical signals to electrical signals for transmission over cables, and electrical signals to optical signals for transmission over cables. The device is usually clamped to, strung from, or otherwise mounted on, a cable or structure.

The maximum permissible volume for an optical node device is 0.21 cubic metres. This facility type is usually enclosed in a rectangular shaped container.

Item 3 – splice enclosure

Item 3 of updated Part 4A of the Schedule covers splice enclosures. These are devices in which a line link is spliced to another line link, an access terminal or a drop cable. They are used in connecting the main cabling of a communications network to a premises. The device is usually integrated with a cable or clamped to, strung from, or otherwise mounted on, a cable or structure.

The maximum permissible volume for a splice enclosure is 0.046 cubic metres. This facility type is analogous to the optical fibre splice enclosure in a FTTP deployment, which is permitted in the current version of the LIFD.

Item 4 – access terminal

Item 4 of updated Part 4A of the Schedule covers access terminals. An access terminal is a connector device that allows a line link to be connected to a drop cable. Some examples of this type of facility are an HFC tap or a cross connect for copper cables. The device is usually clamped to, strung from, or otherwise mounted on, a cable or structure.

The maximum permissible volume for an access terminal is 0.035 cubic metres. This facility type is analogous to the optical fibre access terminal in a FTTP deployment.

Item 5 – drop cable/s

Item 5 of updated Part 4A of the Schedule covers a single aerial drop cable or a bundle of aerial drop cables. These cables are lead-ins used to connect the main distribution cabling of the network to premises. The maximum permissible external cross-section of a drop cable is 13 mm where the drop cable is attached to a single-unit building, and 30 mm when attached to a multi-unit building. They are analogous to optical fibre drop cables in a FTTP deployment. The technology neutral approach used here enables other types of drop cables to be used including coaxial and copper.

If two or more overhead drop cables are bundled, the bundle as a whole, not the individual cables, would need to be within the maximum permissible external cross-section of 13mm for single-unit buildings and 30mm for multi-unit buildings.

Item 6 – premises connection device

Item 6 of updated Part 4A of the Schedule covers above-ground facilities used to connect drop cables to premises, similar to the device already used to connect fibre lead-in cables to premises in FTTP areas. Basically it is a rectangular enclosure attached to the exterior of a premises, in which a connector and any spare cable can be housed.

As the box can store the end of a drop cable, including any pre-installed connector and spare cable, pending the provision of a service, it is not necessary for the actual occupant of the building at which the box is installed to actually be, or intending to be, a subscriber to a telecommunications service supplied by means of the facility.

The maximum permissible substantive volume for the premises connection devices installed is 0.04 cubic metres. This facility type includes but is not limited to square and rectangular shapes.

Item 7 – network termination device

Item 7 of updated Part 4A of the Schedule covers network termination devices (NTDs). These are devices that terminate a carrier's network and provide a connection point between a carrier's network and customer cabling or customer equipment such as a router. The new definition is intended to be technology neutral.

The inclusion of NTDs is intended to facilitate their installation where it is required on the outside of buildings or in other publicly accessible areas. NTDs are often installed inside premises, including residences. While inclusion in the LIFD would technically allow installation of such devices without the consent of the owner and/or occupier, in reality, the installation of an NTD in a premises would require a customer to order a service and give their consent to the installation of an NTD.

The maximum permissible substantive volume for network termination devices is 0.02 cubic metres. This facility type is analogous to the network termination unit in a FTTP deployment, which is permitted in the current version of the LIFD.

Item 8 – power supply

Item 8 of updated Part 4A of the Schedule covers power supply equipment. They are cabinets that are installed above ground, typically mounted on a utility pole, or are attached to a building or other structure. The cabinets contain a transformer that steps down mains voltage and injects this power into cable, which is used to power equipment that is part a communications network. Equipment powered by a power supply includes NTDs, optical nodes and amplifiers. The cabinets may contain backup batteries to maintain service for a limited period in the event of a power outage.

Where power supply equipment is connected to an NTD, the maximum permissible substantive volume for this facility is 0.005 cubic metres. Where it is connected to an optical node or amplifier, the maximum permissible substantive volume for this unit is 0.15 cubic metres. This facility could, for example, measure 622mm x 615mm x 355mm.

Item 9 – amplifier

Item 9 of updated Part 4A of the Schedule covers amplifiers. These are devices which amplify the signal strength on a cable. The maximum permissible substantive volume for the specified amplifier is proposed to be 0.02 cubic metres. This facility type is usually enclosed in a rectangular shaped container. These items are typically clamped to, strung from or mounted on a cable or other structure (such as a pole).

Item 10 – auxiliary network equipment

Item 10 (a) of updated Part 4A of the Schedule covers devices such as directional couplers and line splitters which connect, isolate or split a cable. They allow signals to be shared across multiple cables. Item 10 (b) covers devices such as line power inserters and equalisers which inject power into cable, or balance the distribution of power and radio frequency budget of a network or actively manage the operational elements of a network.

These facilities are usually affixed to a cable or a structure. The maximum permissible volume for auxiliary network equipment is proposed to be 0.002 cubic metres. This facility could, for example, measure 122mm x 145mm x 86mm.

Item 21 – Part 4B of the Schedule

This item removes Part 4B of the Schedule relating to above ground hybrid fibre-coaxial facilities. This part has been replaced by technology neutral facilities listed new Part 4A inserted by Item 20. Part 4B listed HFC-specific facilities relating to aerial deployment of hybrid-fibre coaxial deployments forming part of the national broadband network or any other national network used, or for use, for the high speed carriage of communications, on a wholesale-only and non-discriminatory basis. It also only covered the installation of such facilities during the Designated Installation Period.

ATTACHMENT 2

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Telecommunications (Low-impact Facilities) Determination 1997 (Amendment No. 3 of 2015)

The *Telecommunications (Low-impact Facilities) Determination 1997 (Amendment No. 3 of 2015)* (the Amending Determination) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Amending Determination

The *Telecommunications (Low-impact Facilities) Determination 1997* (the Principal Determination) is made under subclause 6(3) of Schedule 3 to the *Telecommunications Act 1997* (the Act). Schedule 3 provides carriers with the power to inspect land to determine whether the land is suitable for the carrier's purpose; install certain types of facilities (primarily low-impact facilities) on the land; and maintain a facility that is situated on the land; without seeking state, territory or local government planning approval or land owner consent.

Schedule 3 to the Act requires carriers to notify land owners of intended activities enabled by the Principal Determination. The *Telecommunications Code of Practice 1997* requires carriers to make reasonable efforts to resolve valid objections from land owners or occupiers. If the land owner or occupier is not satisfied with the carrier's proposed resolution, and no agreement can be reached, they may ask the carrier, in writing, to refer the objection to the Telecommunications Industry Ombudsman (TIO) for resolution if it wishes to continue with the activity. The carrier must comply with the request to refer the matter to the TIO. Carriers must comply with any direction made by the TIO.

The purpose of the Amending Determination is to amend the Principal Determination to support the rollout of the multi-technology mix National Broadband Network (NBN) and other next-generation broadband networks. The amendments:

- make definitions of fixed-line communications facilities technology neutral, so that they cover hybrid fibre-coaxial (HFC), fibre-to-the-node , optical fibre, and fibre-to-the-basement (FTTB) technology platforms;
- provide for a small number of new types of facilities on an ongoing basis;
- allow thicker overhead communications cabling to be classed a low-impact facilities;
- permit some facilities to be attached to the outside of multi-unit buildings and allow some larger facilities to be installed inside multi-unit buildings;
- remove temporary amendments to permit HFC trials and FTTB rollout until April 2016 made in the *Telecommunications (Low-impact Facilities) Determination 1997 (Amendment No. 1 of 2015)* and the *Telecommunications (Low-impact Facilities) Determination 1997 (Amendment No. 2 of 2015)*; and
- other minor consequential changes.

No human rights issues were raised during the public consultation undertaken in developing the draft Amending Determination.

Human rights implications

The Amending Determination does not engage any of the applicable rights or freedoms.

Conclusion

This Amending Determination is compatible with human rights as it does not raise any human rights issues.