

EXPLANATORY STATEMENT

Telecommunications Act 1997

Acts Interpretation Act 1901

Telecommunications (Low-impact Facilities) Determination 2018 (Amendment No. 1 of 2018)

Issued by the Authority of the Minister for Communications

Authority

Part 1 of Schedule 3 to the *Telecommunications Act 1997* (the Act) provides authority for telecommunications carriers to inspect land, maintain facilities, connect subscribers to an existing network or install low-impact facilities or temporary defence facilities.

Subclause 6(3) of Schedule 3 to the Act allows the Minister to determine that specified facilities are low-impact facilities for the purpose of clause 6 of Schedule 3 to the Act. This specification power includes the power to determine particular classes of facilities to be low-impact facilities. Subsection 33(3) of the *Acts Interpretation Act 1901* allows the Minister to amend the Principal Determination.

On 20 February 2018 the Minister for Communications and the Arts made the *Telecommunications (Low-impact Facilities) Determination 2018* (the Principal Determination), which remade the *Telecommunications (Low-impact Facilities) Determination 1997* (1997 Determination).

The *Telecommunications (Low-impact Facilities) Determination 2018 (Amendment No. 1 of 2018)* (the Amending Determination) amends the Schedule to the Principal Determination to correct two typographical errors.

Purpose and operation

Schedule 3 to the Act provides telecommunications carriers with powers to enter land for inspection, and to install and maintain certain types of facilities. It also provides certain immunities, including from a range of state and territory laws when carrying out those activities, such as those laws relating to land use, planning, design, construction, siting, tenancy, environmental assessments and protection.

The Principal Determination contains a list of low-impact telecommunications facilities that can be installed under carrier powers and immunities. The low-impact list does not include free-standing towers. The installation of these facilities is governed by State and Territory laws.

The Principal Determination has three Parts and one Schedule:

- Part 1 is introductory, containing matters such as commencement, definitions and principal designated use (for the purposes of clarifying the zoning category).
- Part 2 identifies the areas in which a facility may be installed, by reference to zoning arrangements under State and Territory planning laws.
- Part 3 and the Schedule identify the circumstances under which named facilities are to be taken to be low-impact.

The Principal Determination has two typographical errors in Part 8 of the Schedule, which relate to co-location requirements. In remaking the Principal Determination, some of the Part numbers in the Schedule were updated:

- Part 4A (Above ground facilities (for fixed-line networks)) became Part 5;
- Part 5 (Public payphones) became Part 6;

- Part 6 (Emergency services) became Part 7; and
- Part 7 (Co-located facilities) became Part 8.

Items 1 and 2 in Part 8 of the Schedule to the Principal Determination erroneously refer to Parts 5 and 6 - those references should be to Parts 6 and 7, to reflect the numbering changes. The Amending Determination corrects these references.

Consultation

No consultation has been undertaken on this Amending Determination as the two changes are minor and constitute technical corrections.

Regulatory Impact

The Office of Best Practice Regulation (OBPR) has advised that a Regulation Impact Statement is not required for the changes consulted on in 2017 as they will not have a more than minor regulatory impact (OBPR references 20695 and 23118). The changes in the Amending Determination were intended to be reflected in the Principal Determination. The changes ensure that the Principal Determination is consistent with the 1997 Determination in regards the co-location requirements, which was the Government's intention when making the Principal Determination.

Statement of Compatibility with Human Rights

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out in Attachment B.

Notes on the *Telecommunications (Low-impact Facilities) Determination 2018 (Amendment No.1 of 2018)*

Detailed notes on the *Telecommunications (Low-impact Facilities) Determination 2018 (Amendment No. 1 of 2018)*

Section 1 Name of Determination

This section provides that the Amending Determination may be referred to as the *Telecommunications (Low-impact Facilities) Determination 2018 (Amendment No. 1 of 2018)*.

Section 2 Commencement

The Amending Determination commences on the day it is registered on the Federal Register of Legislation.

Section 3 Authority

This section provides that the Amending Determination is made under subclause 6(3) of Schedule 3 to the Act and subsection 33(3) of the *Acts Interpretation Act 1901*.

Section 4 Variation

This provides that the *Telecommunications (Low-impact Facilities) Determination 2018* is amended as set out in the Amending Determination

SCHEDULE – Amendments

Items 1 and 2 – Items 1 and 2, Part 8 of the Schedule

Items 1 and 2 in the Amending Determination correct two typographical errors in the Schedule to the Principal Determination. These items amend paragraph (a) in items 1 and 2 of Part 8 of the Schedule so that they correctly reference Part 6 (Public payphones) and Part 7 (Emergency facilities), in addition to Part 1 (Radio facilities).

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 2018 (Amendment No. 1 of 2018)

The *Telecommunications (Low-Impact Facilities) Determination 2018 (Amendment No. 1 of 2018)* (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 Determination

Part 1 of Schedule 3 to the *Telecommunications Act 1997* (the Act) provides authority for carriers to inspect land, maintain facilities, connect subscribers to an existing network or install any declared low-impact facilities or temporary defence facilities. Subclause 6(3) of Schedule 3 to the Act allows the Minister to determine that specified facilities are low-impact facilities for the purpose of clause 6 of Schedule 3 to the Act.

Schedule 3 to the Act provides telecommunications carriers with powers to enter land for inspection, and to install and maintain certain types of facilities. It also provides certain immunities, including from a range of state and territory laws when carrying out those activities, such as those laws relating to land use, planning, design, construction, siting, tenancy, environmental assessments and protection. These powers and immunities are critical to the efficient construction and maintenance of telecommunications networks.

Following public consultation on possible amendments to carrier powers and immunities in 2017, the *Telecommunications (Low-Impact Facilities) Determination 2018* (the Principal Determination) remade the *Telecommunications (Low-Impact Facilities) Determination 1997*, including seven of the possible amendments. No applicable human rights issues were raised during the public consultation.

The Principal Determination has two typographical errors in items 1 and 2 of Part 8 of the Schedule, which relate to co-location requirements. In remaking the Principal Determination, some of the Part numbers in the Schedule were updated - Part 4A became Part 5, Part 5 became Part 6, etc. Items 1 and 2 in Part 8 of the Principal Determination erroneously refer to Parts 5 and 6 - they should refer to Parts 6 and 7 to reflect the numbering changes. The Amending Determination corrects the references.

The Principal Determination itself is technical and operational in nature and does not invoke any of the human rights or freedoms recognised or declared in the treaties listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Human rights implications

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

Conclusion

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