



# **Telecommunications (Fibre-Ready Facilities in Real Estate Development Projects and Other Matters) Instrument 2022**

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I, Paul Fletcher, Minister for Communications, Urban Infrastructure, Cities and the Arts, make the following instrument.

Dated 10 March 2022

Paul Fletcher  
Minister for Communications, Urban Infrastructure, Cities and the Arts

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## Part 1—Preliminary

### 1 Name

This instrument is the *Telecommunications (Fibre-Ready Facilities in Real Estate Development Projects and Other Matters) Instrument 2022*.

### 2 Commencement

- (1) Each provision of this instrument 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
Provisions	Commencement	Date/Details
1. The whole of this instrument.	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made.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

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

### 3 Authority

This instrument is made under paragraphs 372K(1)(e) and (f), subsection 372K(3) and subparagraph 372W(1)(b)(ii) of the *Telecommunications Act 1997*.

### 4 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) building lot (section 7);
- (b) building unit (section 7);
- (c) carriage service provider (section 7);
- (d) carrier (section 7);
- (e) facility (section 7);
- (f) fibre-ready facility (section 7);
- (g) fixed-line facility (section 7);
- (h) hybrid fibre-coaxial network (section 7);
- (i) line (section 7);
- (j) optical fibre line (section 7);
- (k) project area (section 7);
- (l) proximity (section 372Y);
- (m) real estate development project (section 7).

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In this instrument:

*Act* means the *Telecommunications Act 1997*.

## **5 Schedules**

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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## **Part 2—Fibre-ready facility**

### **6 Specification of above ground fixed-line facilities that are fibre-ready facilities**

A fixed-line facility is specified for the purposes of subparagraph 372W(1)(b)(ii) of the Act if 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; or
- (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.

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### **3—Exemption from requirement to install fibre-ready facilities**

#### **Division 1—Exempt conduct**

##### **7 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, if the conditions specified in subsection (2) or (3) (as applicable) are satisfied.

- (2) Subject to subsection (3), the following conditions are specified for the purposes of subsection (1):

- (a) underground fibre-ready facilities have already been installed in proximity to each building lot or building unit situated in the project area; or
- (b) underground fibre-ready facilities are installed at the same time in proximity to each building or building unit situated in the project area; or
- (c) both of the following apply:
  - (i) the person installing the fixed-line facilities has a reasonable belief that underground 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
  - (ii) all of the fixed-line facilities are to be installed in proximity to connect no more than 10 building lots or building units.

- (3) Where it is not reasonably practical to install underground fibre-ready facilities 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, the following conditions are specified for the purposes of subsection (1):

- (a) above ground fibre-ready facilities have already been installed in proximity to each building lot or building unit situated in the project area; or
- (b) 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
- (c) both of the following apply:
  - (i) the person installing the fixed-line facilities 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

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- (ii) all of the fixed-line facilities are to be installed in proximity to connect no more than 10 building lots or building units.

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

- (4) 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 subsection (5) being satisfied.
  - (5) The following conditions are specified for the purposes of subsection (4):
    - (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 one or more of the following:
      - (i) a minor supplementation that does not include any form of extension;
      - (ii) an ancillary extension of no more than 30 metres;
      - (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.

## **8 Reasonable belief in relation to the installation of fibre-ready facilities**

For the purposes of section 7, circumstances in which 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 include (without limitation) where:

- (a) the project area is identified as an area in which the particular type of fibre-ready facilities will be installed within the following 12 months, in information published by any of the following:
  - (i) a carrier;
  - (ii) a carriage service provider;
  - (iii) any other telecommunications infrastructure provider; or
- (b) a legally enforceable agreement for the type of fibre-ready facilities to be installed within the following 12 months has been entered into by any of the following :
  - (i) a carrier;
  - (ii) a carriage service provider;
  - (iii) a person responsible for a real estate development project;
  - (iv) any other telecommunications infrastructure provider.

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## **Division 2—Exemption for real estate development projects from sale and lease limitation**

### **9 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:

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#### **Real estate development projects exempt from requirements in section 372G**

<b>Item</b>	<b>Exemption</b>
1	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, as specified in, or ascertained in accordance with section 7: (a) subsection 372E(2) of the Act; (b) subsection 372F(2) of the Act.
2	Any real estate development project where: (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.

### **10 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:

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#### **Real estate development projects exempt from requirements in section 372H**

<b>Item</b>	<b>Exemption</b>
1	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 section 7.
2	Any real estate development project where: (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.

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6 *Telecommunications (Fibre-Ready Facilities in Real Estate Development Projects and Other Matters) Instrument 2022*

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## **Schedule 1—Repeals**

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

#### **1 The whole of the instrument**

Repeal the instrument.