Telecommunications Legislation Amendment Bill 2018

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Economics Section

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Date introduced: 25 June 2018
House: Senate
Portfolio: Communications and the Arts
Commencement: The day after Royal Assent

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill's home page, or through the Australian Parliament website.

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the Federal Register of Legislation website.

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Purpose of the Bill

The purpose of the Telecommunications Legislation Amendment Bill 2018 (the Bill) is:

• to amend the National Broadband Network Companies Act 2011 (the NBN Act) to permit NBN corporations to provide eligible persons, such as emergency service organisations, with access in certain circumstances to telecommunication towers and associated sites and facilities and

• to amend the Telecommunications Act 1997 (the Tel Act) to minimise the regulatory burden on the installation of temporary communications towers for use during periods of high demand.

Structure of the Bill

This Bill is comprised of two Schedules.

Schedule 1 seeks to amend the existing line of business restrictions in the NBN Act to allow NBN corporations to provide eligible persons access to telecommunication towers and associated sites in certain circumstances. Eligible persons are defined to include police, fire and ambulance services, and state and territory emergency services.\(^1\)

Schedule 2 seeks to minimise additional regulatory burden on carriers to allow them to quickly and cost effectively meet temporary community telecommunication requirements for certain high demand periods such as emergencies, maintenance, peak holiday periods, and major sporting, cultural and other events. It proposes to provide immunities from a range of state and territory laws, such as laws pertaining to land use, planning, design, construction, siting, tenancy, environmental assessments and protection for the installation of temporary communication facilities. To achieve this purpose, the Bill gives additional powers to the Minister of Communications to determine when a temporary telecommunications tower is a low-impact facility.\(^2\)

Background

**Schedule 1—Access to towers owned or operated by an NBN corporation**

As stated in the Explanatory Memorandum of the Bill:

> In recent times, several police services have requested access to towers owned or operated by NBN corporations, however NBN corporations have been unable to provide this access because of line of business restrictions in the NBN Act.\(^3\)

‘Line of business restrictions’ are restraints placed on the provision of services by NBN corporations, which are designed to ensure competition in the telecommunications market.\(^4\) One line of business restriction, at section 9 of the NBN Act, prohibits an NBN corporation from supplying an **eligible service** to anyone other than a carrier or a service provider. As discussed further in the ‘Key issues and provisions’ part of this Digest, a telecommunications transmission tower is an eligible service and therefore access cannot be provided to emergency services organisations as they are neither carriers nor service providers.

The Bill proposes to amend:

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2. Ibid., p. 3.
3. Ibid.
... the existing line of business restrictions applying to NBN corporations so that such access can be supplied to eligible persons without breaching those restrictions. Access in general would include enabling a person to install, maintain, operate or remove equipment.  

**Schedule 2—Low–impact facilities**

Approval for the majority of telecommunications facilities, including overhead cables and most telecommunications towers, are the responsibility of state and territory governments and are usually dealt with by the relevant local government authority. However, carriers can install a limited range of facilities without seeking state, territory or local government planning approval.

The power to install a facility may only be exercised with respect to certain types of infrastructure, such as a facility defined in the Ministerial *Telecommunications (Low-impact Facilities) Determination 2018* (the Determination), or a temporary defence facility, or if the carrier holds a *Facility Installation Permit* (FIP).

Schedule 3 to the *Tel Act* gives the Minister for Communications the ability to specify facilities as low-impact facilities, which can be installed using Schedule 3 carrier powers and immunities. The immunities provided by the *Tel Act* allow a carrier to engage in an authorised activity without needing to comply with a law of a state or territory dealing with:

(a) the assessment of the environmental effects of engaging in the activity; or
(b) the protection of places or items of significance to Australia's natural or cultural heritage; or
(c) town planning; or
(d) the planning, design, siting, construction, alteration or removal of a structure; or
(e) the powers and functions of a local government body; or
(f) the use of land; or
(g) tenancy; or
(h) the supply of fuel or power, including the supply and distribution of extra-low voltage power systems; or
(i) a matter specified in the regulations.

A facility is only a low-impact facility if it is installed, or to be installed, in the area/s designated by the Determination. An area is generally designated by its principal use, as follows:

- **commercial areas**

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5. Ibid., p. 2.
8. Subclause 37(3) of Schedule 3 to the *Telecommunications Act 1997* provides that this exemption ‘does not apply to a law in so far as the law provides for the protection of places or items of significance to the cultural heritage of Aboriginal persons or Torres Strait Islanders’.
9. Subclause 37(3) of Schedule 3 to the *Telecommunications Act 1997* provides that this exemption ‘does not apply to a law in so far as the law deals with the supply of electricity at a voltage that exceeds that used for ordinary commercial or domestic requirements’.
• industrial areas
• residential areas and
• rural areas.\textsuperscript{12}

A facility cannot be a low-impact facility if it is in an area of environmental significance, which includes places listed on a Commonwealth, state or territory heritage register.\textsuperscript{13}

The schedule of facilities, which also designates applicable areas to each facility, includes the following:\textsuperscript{14}

1. radio facilities, small radio communications antennae and dishes erected on existing towers or buildings and designed to be unobtrusive. Some of these facilities are low-impact facilities in industrial and rural areas only.\textsuperscript{15}

2. underground housing, for example, pit, manhole or underground equipment shelters\textsuperscript{16}

3. above ground housing, for example, pillars, cabinets, pedestals, shelters, solar panels and connectors\textsuperscript{17}

4. underground facilities for fixed line networks, for example, conduits and cables, marking signs or posts, access terminals and underground network equipment\textsuperscript{18}

5. above ground facilities for fixed line networks, for example, suspended links, nodes, splices, access terminals, and other equipment\textsuperscript{19}

6. public payphones\textsuperscript{20}

7. emergency services as a temporary facility installed in an emergency or to provide assistance to an emergency services organisation\textsuperscript{21}

8. co–located services with separate requirements for industrial and rural areas, and for residential and commercial areas.\textsuperscript{22}

The Determination specifies the maximum dimension of most facility types.

Carriers installing low-impact facilities have to follow the \textit{Telecommunications Code of Practice 2018}.\textsuperscript{23} This includes providing notice to the Director of National Parks and the Environmental Secretary of likely impact on a national park or an environmental site of importance.\textsuperscript{24}

By allowing the Minister to determine that temporary telecommunications towers used to meet additional demand/maintain coverage can be low-impact facilities, Schedule 2 allows the above carrier powers and immunities to be extended to these facilities.

\begin{itemize}
\item \textsuperscript{12} Ibid., sections 2.1–2.4.
\item \textsuperscript{13} Ibid., section 2.5, subsection 3.1(2).
\item \textsuperscript{14} Ibid., section 3.1.
\item \textsuperscript{15} Ibid., section 3.1, Part 1–Radio facilities.
\item \textsuperscript{16} Ibid., section 3.1, Part 2–Underground housing.
\item \textsuperscript{17} Ibid., section 3.1, Part 3–Above ground housing.
\item \textsuperscript{18} Ibid., section 3.1, Part 4–Underground facilities (for fixed line networks).
\item \textsuperscript{19} Ibid., section 3.1, Part 5–Above ground facilities (for fixed line networks).
\item \textsuperscript{20} Ibid., section 3.1, Part 6–Public payphones.
\item \textsuperscript{21} Ibid., section 3.1, Part 7–Emergency facilities.
\item \textsuperscript{22} Ibid., section 3.1, Part 8–Co–located facilities.
\item \textsuperscript{23} Sections 4.1 and 4.2, \textit{Telecommunications Code of Practice 2018}.
\item \textsuperscript{24} Sections 4.16 and 4.17, \textit{Telecommunications Code of Practice 2018}.
\end{itemize}
Committee consideration

**Senate Environment and Communications Legislation Committee**

On 13 August 2018 the Bill was referred to the Senate Environment and Communications Legislation Committee. The Senate Committee’s report was originally due by 31 August 2018. However, on 28 August 2018, the Committee presented a progress report recommending that the Senate grant an extension of time to report, to 10 September 2018. The Committee’s report was released on that date and recommended that the Senate pass the Bill, but that the Department ‘examine, and if necessary, strengthen drafting of the Bill’ to provide greater certainty:

- that carriers will not be able to relocate temporary facilities as a means to avoid the maximum time limits imposed by the Bill and
- over the protections that will apply for heritage areas, including places of cultural and environmental significance.

The Australian Greens issued a dissenting report, expressing support for Schedule 1 and the components of Schedule 2 that relate to emergencies and unplanned outages. The Greens do not support the measures in Schedule 2 that provide ‘carrier immunity to local planning rules and processes for events, seasonal demand, and scheduled maintenance’. Accordingly the Greens recommended passage of Schedule 1 and the amendment of Schedule 2 to remove the opposed provisions.

**Senate Standing Committee for the Scrutiny of Bills**

The Senate Standing Committee for the Scrutiny of Bills had no comment on the Bill.

**Policy position of non-government parties/independents**

**Australian Labor Party**

The Australian Labor Party supports Schedule 1 to the Bill. While viewing the measures in Schedule 2 as ‘sensible and proposed in good faith’, Labor considered:

... that it is in the public interest to ensure that this Bill is scrutinised by the Senate through a short inquiry process to identify any potential risks or practicalities which at this present time are not well understood. The community expects us to be responsible custodians of any changes to law where local requirements are overridden. The laws are designed to strike the right balance between the community's need to access reliable, affordable telecommunication services and ensuring that property owners, local governments and communities have a say in the deployment of infrastructure that affects them.

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27. The maximum time limits for low-impact temporary facilities are discussed in the 'Key issues and provisions' section of this Digest.
29. Ibid., p. 17.
30. Ibid., p. 19.
33. Ibid., p. 97.
**Australian Greens**

As discussed above, the Australian Greens’ support Schedule 1 to the Bill. In relation to Schedule 2, the Greens indicated support for exempting temporary telecommunications facilities from state and territory requirements where necessary ‘for genuine emergencies and natural disasters’, but consider:

... [t]here is no reason to skirt these regulations for major events, holiday periods and scheduled maintenance, which should be subject to local government approval to ensure that there is no interference with other infrastructure and services, as well as environmental, heritage and cultural sites.  

The Greens supported referral of the Bill to committee for inquiry:

... so that local governments and councils can carefully scrutinise the many local planning rules this legislation seeks to stomp on and the potential long-term impacts of these so-called temporary measures.

**Liberal Democrats**

The Liberal Democrats oppose Schedule 2 of the Bill on the grounds that it goes ‘against the wishes of local councils’.

**Position of major interest groups**

Stakeholder responses to the Department of Communications and the Arts Consultation on possible amendments to telecommunications carrier powers and immunities (DOCA) that led to the repeal of the Telecommunications (Low-impact Facilities) Determination 1997, illustrate in certain circumstances the views of important interest groups towards the features of the Bill. More recently, submissions to the Senate Standing Committee on Environment and Communications largely reinforce the views raised in the DOCA stakeholder consultation.

**Schedule 1—Access to towers owned or operated by an NBN corporation**

Stakeholders broadly supported the proposed changes in Schedule 1 of the Bill, however, the Queensland Law Society is concerned:

... the Bill and accompanying Explanatory Memorandum do not provide a reasonable degree of detail with respect to outlining the relevant policy considerations, necessity, and conditions regarding the proposed access to National Broadband Network (NBN) towers [and] ...as drafted section 19 provides little detail regarding who, or under what circumstances, a person or persons identifying as, for example, emergency services, ought to be granted access as requested...

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35. Ibid.
37. Department of Communications and the Arts (DCA), ‘Consultation on possible amendments to telecommunications carrier powers and immunities’, DCA website.
There is little information in the Explanatory Memorandum or in the Bill regarding adherence to, or what mechanisms will be in place to, ensure that the use of any information collected or obtained in the course of this access will be managed in accordance with information privacy principles.  

Schedule 2—Temporary facilities

Local and state/territory governments generally did not support the widening scope of low-impact facilities, as reflected in the Australian Local Government Association submissions:

... communities through their local governments have also expressed significant concerns over the Low Impact Facilities Determination (LIFD), specifically adequate consultation with local government, as well as adequate remediation following the installation of infrastructure.

It is not surprising that carriers will continue to push to speed up approval processes, reduce their costs and reduce timeframes. This purely commercial interest needs to be balanced with planning laws which are designed to protect public safety and limit impacts on the environment, whilst ensuring that the community has a say in the planning process...  

In a submission to the Committee inquiry into the Bill the Australian Local Government Association stated:

... temporary communication equipment should be exempt from state and territory planning and council approvals only in the case of emergencies or natural disasters. In other cases, it should be subject to approvals to ensure that there is no interference with other infrastructure or services, heritage, environmentally significant areas, or no increase in the local risk profile. (Emphasis added.)

Although largely in response to the co-location of telecommunications equipment with essential services infrastructure, most essential service providers (for example rail, roads and water service providers) did not generally support widening the scope of low-impact facilities. These organisations pointed out the trade-off as:

• increased health and safety risks, which would result in additional costs to essential service providers and

• potential negative impacts on the environmental and community.

For example, the Australian Railway Association pointed out:

The rail industry understands and accepts the need for reasonable access, however, it must be on terms which comply with national and state rail safety law and do not compromise safety of those undertaking the works, as well as all other affected parties in and around the corridor. This includes passengers, drivers and other track workers.

The Office of the National Rail Safety Regulator (ONRSR) highlighted similar concerns:

40. Australian Local Government Association (ALGA), Submission to the Department of Communications and the Arts, Consultation paper on possible amendments to telecommunications carrier powers and immunities, 20 July 2017, pp. 1–2.
42. Australian Railway Association, Submission to the Department of Communications and the Arts, Consultation on possible amendments to telecommunications carrier powers and immunities, 21 July 2017, p. 2.
Third party accesses to the rail corridor without sufficient notification or outside of any reasonable direction given by the RIM [Rail infrastructure Managers], may impact the ability to ensure safety... [and]...have the potential to present significant safety risks.43

NSW Transport, Roads and Maritime Services asserted that categorising telecommunications installations on sensitive infrastructure as low-impact facilities:

... could affect the operation, efficiency and safety of roads and maritime networks and any proposed activity on these types of structures require a higher level of assessment than that which is proposed.44

The NSW Water Directorate Incorporated is concerned about the widened scope of low-impact facilities and stated:

... the proposed amendments do not properly consider the cost implications for a local water utility or indicate how they will work in practice on a site by site basis...The proposed amendments must consider a local water utility's obligations to operate, maintain and repair its facilities. It is uncertain to our members how this can be achieved if by and large unfettered site access is given to a carrier's staff and/or contractors with the resultant loss of control over a site, or if a blanket approval is given for the installation of equipment regardless of location and structural suitability, without the proper capacity for a local water utility to object, and with little coordination between carriers and local water utilities.45

In addition the Water Services Association of Australia stated:

The proposed amendments to telecommunications carrier powers and immunities pose significant security and potential downstream water quality health risks.46

The Telecommunications Industry Ombudsman raised several concerns with the Bill. It considered that the proposed amendments treat temporary facilities as semi-permanent because they will allow a facility to:

... remain indefinitely while an existing Sch 3 facility is being maintained or replaced...[and]...and remain at a location for up to six months in a calendar year to bolster service coverage for one event and multiple events.47

The Ombudsman’s view is that a facility should only be regarded as temporary if it cannot remain in place after a specified time limit (the Ombudsman suggests that 30 days may be reasonable).48

With regard to temporary, or semi-permanent, facilities the Ombudsman expressed concern over the proposed significant increase in allowable height, the absence of limits on the number of temporary facilities on the same land, and noise concerns.49

The Ombudsman called for clarifications to assist in handling objections with regard to:

- the meaning of installation 'in the vicinity of the venue' of the event and 'in the vicinity of the other facility'

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43. Office of the National Rail Safety Regulator (ONRSR), Submission to the Department of Communications and the Arts, Consultation on possible amendments to telecommunications carrier powers and immunities, 21 July 2017, pp. 1–2.
44. NSW Transport, Roads and Maritime Services, Submission to the Department of Communications and the Arts, Consultation on possible amendments to telecommunications carrier powers and immunities, 21 July 2017, p. 1.
45. NSW Water Directorate, Submission to the Department of Communications and the Arts, Consultation on possible amendments to telecommunications carrier powers and immunities, 21 July 2017, pp. 4–5.
46. Water Services Association of Australia (WSAA), Submission to the Department of Communications and the Arts, Consultation on possible amendments to telecommunications carrier powers and immunities, July 2017, p. 3.
48. Ibid.
49. Ibid., pp. 3–4.
• the types of 'event' for which installation of a temporary facility is not permitted and
• the public and school holidays which are covered.⁵⁰

Telecommunication companies mainly supported the widening scope of low-impact facility determinations because it lowers costs and eases access.⁵¹

Financial implications

The Explanatory Memorandum states that none of the measures in the Bill will have any financial impact on the Australian Government Budget.⁵²

Statement of Compatibility with Human Rights

As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible.⁵³

Parliamentary Joint Committee on Human Rights

The Parliamentary Joint Committee on Human Rights considers that the Bill does not raise human rights concerns.⁵⁴

Key issues and provisions

Schedule 1–Access to towers owned or operated by an NBN corporation

Section 9 of the NBN Act provides that an NBN corporation must not supply an eligible service to another person unless the other person is a carrier or a service provider. An eligible service is a listed carriage service (which includes telephone or internet services⁵⁵) or a service that facilitates the supply of a listed carriage service.⁵⁶ Thus ‘eligible service’ is a very broad concept that includes, as relevant for the purposes of Schedule 1 to the Bill, a telecommunications transmission tower (tower). The restrictions on the provision of services by NBN corporations are often referred to as ‘line of business restrictions’. They are designed to ensure competition in the telecommunications market.⁵⁷ As emergency services organisations are neither carriers nor service providers, an NBN corporation is currently not permitted to provide such organisations with access to its towers. Other line of business restrictions set out in the NBN Act include prohibitions on an NBN corporation providing non-communication services (section 18) or goods that are not for use in connection with the supply, or prospective supply, of an eligible service (section 19). Item 2 of Schedule 1 of the Bill proposes to add new Subdivision BA to Division 2 of Part 2 to the NBN Act to

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⁵⁰ Ibid., pp. 4–5.
⁵¹ For example, Australian Mobile Telecommunications Association and Communications Alliance, Submission to the Department of Communications and the Arts, Consultation on possible amendments to telecommunications carrier powers and immunities, July 2017, p. 2.
⁵³ The Statement of Compatibility with Human Rights can be found at page 4 of the Explanatory Memorandum to the Bill.
⁵⁵ ‘Carriage service’ is defined at section 7 of the Telecommunications Act 1997 as ‘a service for carrying communications by means of guided and/or unguided electromagnetic energy’, such as telephone services and internet access services.
⁵⁶ See the definition of eligible service at section 5 of the NBN Act, where it is defined to have the same meaning as in section 152AL of the Competition and Consumer Act 2010.
⁵⁷ Revised Explanatory Memorandum, National Broadband Network Companies Bill 2011.
providing a new access regime which will allow eligible persons to access NBN towers and other related facilities. The new subdivision consists of proposed sections 19A to 19K.

**Eligible person** is defined at proposed section 19H to cover:

- a police force or service (proposed paragraph 19H(1)(a))
- a fire service (proposed paragraph 19H(1)(b))
- an ambulance service (proposed paragraph 19H(1)(c))
- state or territory emergency services (proposed paragraph 19H(1)(d))
- any person included in a class of persons specified by the Minister in a legislative instrument under proposed paragraph 19H(2). 59

Proposed section 19A requires an NBN corporation to provide an eligible person with access to a tower owned or operated by the NBN corporation if the access is for the sole purpose of:

- installing equipment or
- maintaining, operating or removing equipment previously installed by the eligible person. 60

If access is sought to install equipment, the NBN corporation must be satisfied that the installation of the equipment is technically feasible. Proposed subsection 19A(7) provides that in determining whether the proposed installation is technically feasible, an NBN corporation must have regard to:

(a) whether the installation of the equipment is likely to result in significant difficulties of a technical or engineering nature

(b) whether the installation of the equipment is likely to result in a significant threat to the health or safety of people who operate, or work on, the tower and

(c) any other relevant matters.

In circumstances where the NBN corporation considers that the results set out in either or both (a) or (b) are likely, it must also consider whether there are practicable means of avoiding that result, including changing the configuration or operating parameters of a facility situated on the tower or making alterations to the tower. 62

In addition, where access is sought to install equipment and there is another tower in the vicinity that is not owned or operated by the NBN corporation, the NBN corporation will only be required to provide access to its tower if it is reasonably satisfied that it would not be reasonable for the

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58. Item 1 of Schedule 1 to the Bill proposes to insert a new term **telecommunications transmission tower** into section 5 of the **NBN Act**, which would have the same meaning as in Part 5 of Schedule 1 to the **Telecommunications Act 1997**, where it is defined as a tower, a pole, a mast, or a similar structure used to supply a carriage service by means of radiocommunications. ‘Carriage service’ is defined at section 7 of the **Telecommunications Act 1997** as ‘a service for carrying communications by means of guided and/or unguided electromagnetic energy’, such as telephone services and internet access services.

59. Proposed subsection 19H(2) (item 2 of Schedule 1 of the Bill) provides that the Minister may, by legislative instrument, specify one or more classes of persons who can seek access to NBN corporations’ towers and also declare specified limitations or restrictions that are applicable to that class of persons.

60. Proposed paragraph 19A(1)(a) of the **NBN Act**. **Equipment** is defined at proposed section 19G as: a facility (within the meaning of the **Telecommunications Act 1997**), that is, any part of the infrastructure of a telecommunications network or anything used in connection with a network, including lines, equipment, masts or poles; an antenna; a measuring device; an apparatus; or a thing specified by the Minister in a legislative instrument.

61. Proposed paragraph 19A(1)(b) of the **NBN Act**.

62. Proposed paragraph 19A(7)(c) of the **NBN Act**. In this provision ‘facility’ has the same meaning as in the **Telecommunications Act 1997**, where it is defined as any part of the infrastructure of a telecommunications network or anything used in connection with a network, including lines, equipment, masts or poles (section 7).
eligible person to install the equipment on the other tower. Proposed section 19C allows the Minister to set out, in a legislative instrument, a condition that, if satisfied, will be determinative of whether it is reasonable (or not reasonable) for an eligible person to install the equipment on a tower.

If an NBN corporation gives an eligible person access to a tower in line with the requirements set out above, proposed subsection 19A(2) provides that sections 9, 18 and 19 of the NBN Act (the line of business restrictions discussed above) do not apply to the access or the supply of goods incidental to that access. Proposed section 19K provides that ‘goods’ include electricity.

However, even if all the requirements set out above are met, the NBN corporation is not obliged to provide access to a tower if the requested access would:

- prevent an NBN corporation from reserving sufficient space on the tower to be able to meet its reasonably anticipated requirements in relation to the installation of equipment
- prevent a person (other than an NBN corporation) who has already installed equipment on the tower, from accessing enough space on the tower to meet the person’s reasonably anticipated requirements in relation to the installation of equipment
- deprive a person of a right under a contract that is in force when the Bill commences
- allow an eligible person specified in a Ministerial determination under proposed paragraph 19H(2)(a) (discussed above) to access the tower in a way that would be inconsistent with a limitation or restriction imposed on that person in the determination or
- meet the conditions set out in a Ministerial determination.

To promote transparency and non-discrimination, an NBN corporation that owns or operates a tower must publish the standard terms and conditions on which it offers to provide an eligible person with access to the tower in compliance with proposed subsection 19A(1). The published information must include the price, or a method of ascertaining the price. The published terms and conditions must be complied with in any access agreement made with an eligible person. An NBN corporation must not discriminate between eligible persons seeking access to a tower in determining the terms and conditions on which access will be granted.

Section 37 of the NBN Act provides that certain sections in that Act must be complied with by an NBN corporation as a condition of its carrier licence. Item 3 of Schedule 1 to the Bill will insert references to proposed sections 19A—19B and 19D to 19F, so that compliance with the requirements of those sections (that is, the provision of access to towers by eligible persons on a non-discriminatory basis) will be a condition of the NBN corporation’s carrier license. Under section 68 of the Telecommunications Act, breach of a condition of a carrier licence may result in a civil penalty.

Section 98 of the Telecommunications Act sets out service provider rules, breach of which can result in a civil penalty. Section 38 of the NBN Act provides that certain sections in that Act must be complied with as service provider rules. Item 4 of Schedule 1 to the Bill will insert references to proposed sections 19A—19B and 19D to 19F, so that compliance with those sections will be required under the service provider rules.

63. Proposed paragraph 19A(1)(c) of the NBN Act.
64. Proposed subsections 19A(3) to (6) of the NBN Act.
65. Proposed subsection 19D(1) of the NBN Act.
66. Proposed subsections 19D(2) and (3) of the NBN Act.
**Schedule 2—Temporary facilities**

As discussed above, *Schedule 2* to the Bill will amend Schedule 3 to the *Tel Act*, which allows certain activities, including the installation of a telecommunications facility, to be undertaken without needing to comply with state or territory laws dealing with matters such as planning, land use and environmental assessments. The power to install a telecommunications facility may only be exercised if there is an installation permit for the facility, if it is a low-impact facility or if it is temporary facility for defence purposes. The amendments in Schedule 2 are concerned with what qualifies as a ‘low-impact facility’.

Subclause 6(3) of Schedule 3 to the *Tel Act* allows the Minister to determine, by legislative instrument, that a specified facility is a low-impact facility. However, this power is constrained by subclause 6(5), which provides that a tower must not be specified as a low-impact facility unless the tower is attached to a building and the height of the tower does not exceed five metres.

Item 2 of Schedule 2 to the Bill will repeal and replace subclause 6(5) of Schedule 3 to the *Tel Act*. The proposed provision will retain the current requirements, but also allow a tower to be designated as a low-impact facility if the tower is a temporary facility installed to:

- minimise disruption while another facility is undergoing maintenance *(proposed paragraph 6(5)(b))*
- minimise disruption while another facility is being replaced *(proposed paragraph 6(5)(c))*
- provide additional capacity to supply services to people attending an event, or two or more events, at a venue *(proposed paragraphs 6(5)(d) and (e)) *
- provide additional capacity to supply services to people present in an area during a high demand holiday period *(proposed paragraph 6(5)(f)) *
- provide capacity to supply services to emergency services organisations to allow them to respond to an emergency or natural disaster *(proposed paragraph 6(5)(g))*

In addition, in each of the above scenarios (other than in relation to emergencies or natural disasters), additional requirements will also need to be met in order for a temporary tower to be eligible to be designated as a low-impact facility, as illustrated in the table below:

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69. Ibid., subclause 6(1) of Schedule 3.
70. Proposed subsection 6(5A) (item 3 of Schedule 2 to the Bill) provides that maintenance has the same meaning as in clause 7 of Schedule 3 to the Tel Act, where it is defined to include altering, removing or repairing a facility, ensuring the proper functioning of the facility and clearing vegetation that may obstruct the operation of the facility.
71. Proposed subsection 6(5B) (item 3 of Schedule 2 to the Bill) provides that examples of an event include sporting, musical and cultural events.
72. If there are two or more events, the interval between them must not be longer than 28 days *(proposed subparagraph 6(5)(e)(ii))*.
73. Item 1 of Schedule 2 to the Bill defines high demand holiday period as a single day or two or more consecutive days that are public holidays, or public school holidays in any state or internal territory; or a weekend immediately preceding or following such a public holiday or public school holiday.
### Table: Additional requirements for temporary facilities

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Facility undergoing maintenance (6(5)(b))</th>
<th>Facility being replaced (6(5)(c))</th>
<th>Event(s) (6(5)(d)-(e))</th>
<th>High demand holiday period (6(5)(f))</th>
<th>Emergency or natural disaster (6(5)(g))</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum tower height - rural area</td>
<td>The higher of 30 metres or the height of the tower being maintained</td>
<td>The higher of 30 metres or the height of the tower being replaced</td>
<td>30 metres</td>
<td>30 metres</td>
<td>N/A</td>
</tr>
<tr>
<td>Maximum tower height - non-rural area</td>
<td>30 metres</td>
<td>30 metres</td>
<td>30 metres</td>
<td>30 metres</td>
<td>N/A</td>
</tr>
<tr>
<td>Maximum period of placement</td>
<td>Period to complete maintenance plus 28 days</td>
<td>Period to complete replacement plus 28 days</td>
<td>No more than 183 days per year</td>
<td>No more than 90 days per year</td>
<td>Period during which facility needed plus 28 days</td>
</tr>
<tr>
<td>Location – option 1</td>
<td>Land where other tower situated</td>
<td>Land where other tower situated</td>
<td>Land where venue located</td>
<td>Public land</td>
<td>N/A</td>
</tr>
</tbody>
</table>

---

74. **Proposed subclause 6(5C)** (item 3 of Schedule 2 to the Bill) provides that the height of a tower is the distance between the top of the tower and ground level. **Rural** is not defined, so would have its ordinary meaning.

75. **Proposed subclause 8A(1)** (item 5 of Schedule 2 to the Bill, discussed below).

76. **Proposed subclause 8A(2)** (item 5 of Schedule 2 to the Bill, discussed below).

77. **Proposed clause 8B** (item 5 of Schedule 2 to the Bill).

78. **Proposed clause 8C** (item 5 of Schedule 2 to the Bill).

79. **Proposed subclause 8A(5)** (item 5 of Schedule 2 to the Bill, discussed below).
<table>
<thead>
<tr>
<th>Scenario</th>
<th>Facility undergoing maintenance (6(5)(b))</th>
<th>Facility being replaced (6(5)(c))</th>
<th>Event(s) (6(5)(d)-(e))</th>
<th>High demand holiday period (6(5)(f))</th>
<th>Emergency or natural disaster (6(5)(g))</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location – option 2 (if option 1 not appropriate)</td>
<td>Public land⁸⁰</td>
<td>Public land</td>
<td>Public land</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Location – option 3 (if options 1 and 2 not appropriate)</td>
<td>Vicinity of the other tower⁸¹</td>
<td>Vicinity of the other tower</td>
<td>Vicinity of the venue</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

In addition to the requirements set out above, **proposed clauses 8A** and **9A** of Schedule 3 to the *Tel Act* (at items 5 and 7 of Schedule 2 to the Bill) impose requirements on carriers to remove temporary facilities and restore the land on which the facilities were located.

**Proposed clause 8A** requires temporary facilities to be removed within 28 days of them ceasing to be necessary to achieve the aim for which they were originally installed (for example, in the case of a temporary tower installed to provide additional capacity to supply services to people attending two or more events, the temporary facilities must be removed with 28 days after the end of the last event).⁸²

**Proposed clause 9A** requires the carrier to take all reasonable steps to restore the land ‘to a condition that is similar to its condition before the installation began’. The restoration must start within ten business days of the removal of that facility (unless a different timeframe is agreed with the owner or occupier of the land).⁸³

Clause 7 of Schedule 3 to the *Tel Act* provides that a carrier may, at any time, maintain a facility and may do anything necessary or desirable for this purpose, including entering or occupying land and removing or erecting a gate. Subclause 7(3) provides that *maintenance* includes altering, removing or repairing a facility, ensuring the proper functioning of the facility and clearing vegetation that may obstruct the operation of the facility. **Item 4** of Schedule 2 to the Bill inserts **proposed subclause 7(3A)** which will provide that maintenance in that clause also includes a reference to the installation of a temporary facility, other than a temporary tower covered by

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⁸⁰. Item 1 of Schedule 2 to the Bill defines *public land* as land that is the property of a government, government body or authority, which is a public place. *Public place* is defined at clause 2 of Schedule 3 to the *Tel Act* to include ‘a place to which members of the public have ready access’.

⁸¹. *Vicinity* is not defined and ‘is intended to have its ordinary meaning’. See *Explanatory Memorandum*, Telecommunications Legislation Amendment Bill 2018, p. 21.

⁸². **Proposed subclause 8A(4)** of Schedule 3 to the *Tel Act*, at item 5 of Schedule 2 to the Bill.

⁸³. **Proposed clause 9A** of Schedule 3 to the *Tel Act*, at item 7 of Schedule 2 to the Bill.
subclause 6(5), if the temporary facility is installed to minimise disruption to service supply while a facility is being maintained. The temporary facility must be installed on the land occupied by the facility that is being maintained, or if that is not appropriate, on public land, or, if neither of those two options are appropriate, in the vicinity of the facility being maintained. The Explanatory Memorandum to the Bill explains that this amendment:

... removes any doubt about the ability for carriers to temporarily install facilities, such as mobile exchanges on wheels, as part of maintenance activities undertaken by a carrier in accordance with Division 4 of Part 1 of Schedule 3. 84

Subclause 17(1) of Schedule 3 to the Tel Act provides that before engaging in an activity under Division 2, 3 or 4 of Part 1 of Schedule 3 (which encompass clauses 5 to 7) in relation to any land, the carrier must give the owner or occupier of the land written notice. Item 8 of Schedule 2 to the Bill inserts proposed subclause 8(8) which will provide that such notice is not required in relation to the installation of a low impact facility covered by proposed paragraph 6(5)(g)—that is, a temporary tower installed to provide capacity to supply services to emergency services organisations to allow them to respond to an emergency or natural disaster.

Telecommunications Legislation Amendment Bill 2018

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