

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument No. 139, 2015**

Issued by the Authority of the Minister for Communications

*Telecommunications Act 1997*

*Acts Interpretation Act 1901*

*Telecommunications Amendment (Designated Overhead Lines) Regulation 2015*

#### **Authority**

Subsection 594(1) of the *Telecommunications Act 1997* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

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**

The purpose of the *Telecommunications Amendment (Designated Overhead Lines) Regulation 2015* (the Amending Regulation) is to amend the *Telecommunications Regulations 2001* (the Principal Regulations) to enable the Minister to specify overhead lines with an external cross section not exceeding 48 millimetres (mm) as 'low-impact facilities' in the *Telecommunications (Low-impact Facilities) Determination 1997* (the LIFD). Low-impact facilities can be installed with benefit of the carrier powers and immunities set out in Schedule 3 to the Act.

#### **Background**

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 (such as '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 the land owner's consent. The broad powers and immunities available to carriers provide a nationally consistent regime that helps carriers roll out facilities to provide services to the community more quickly and at lower cost than would otherwise be the case.

Clause 6(3) of Schedule 3 to the Act provides that the Minister may, by written instrument, determine that a specified facility is a 'low-impact facility'. The current low-impact facilities are set out in the LIFD. However, under clause 6(4) of Schedule 3, an overhead line may not be added to the LIFD if the maximum external cross-

section of any part exceeds 13 mm, or another distance specified in the Regulations. The Regulations currently specify the distance of 30 mm.

The Amending Regulation enables overhead lines and bundles of overhead lines with an external cross-section not exceeding 48 mm to be specified by the Minister as 'low-impact facilities'. This is achieved by amending existing Regulation 11.2 to specify 48 mm as the maximum external cross-section distance of any part of an overhead line or bundle of overhead lines.

Following a Strategic Review in late 2013, NBN Co, the company established to build and operation the National Broadband Network (NBN) advised the Australian Government that the NBN could be rolled out faster and at lower cost to taxpayers using a multi-technology mix (MTM). The Australian Government agreed with this advice. The MTM employs the most cost-effective technology for each particular locality and makes use of pre-existing infrastructure such existing copper and hybrid-fibre coaxial (HFC) cabling, some of which is deployed aerially.

NBN Co is expected to use the smallest cable and cable bundles feasible for aerial cabling in an area. However, in some instances, NBN Co will need to deploy thicker copper cabling than is currently covered by the LIFD and will need to add additional cabling to existing HFC cable bundles, meaning they may have a diameter of up to 48 mm. For example, some new cabling will piggy-back on existing HFC cables and cable bundles in order to transit through existing coverage areas to reach areas that were missed during previous HFC network rollouts.

NBN Co and other carriers operating national networks for the high-speed carriage of communications, on a wholesale-only and non-discriminatory basis, would be able to benefit from the change to the Regulation once the specification of aerial cabling in the LIFD is amended.

All facilities covered by the LIFD are subject to requirements set out in the Act, any specifications in the LIFD itself, and the *Telecommunications Code of Practice 1997*. These requirements include notification and objection processes for landowners and occupiers where a facility is proposed to be installed, doing as little damage as is practicable and restoring work sites. The Act specifies no conditions that need to be satisfied before the power to make the Amending Regulation may be exercised.

## **Consultation**

On Friday, 12 June 2015, the Minister published a copy of the draft Amending Regulation 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 does not warrant any revisions to the draft Amending Regulation. 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.

### **Other matters**

The Amending Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments.

The Amending Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (LIA) (see paragraph 6(a) of the LIA).

Details of the accompanying Amending Regulation is set out in the [Attachment 1](#).

The Statement of Compatibility with Human Rights for the Amending Regulation is set out in [Attachment 2](#).

**ATTACHMENT 1****Details of the *Telecommunications Amendment (Designated Overhead Lines) Regulation 2015*****Section 1 – Name**

This section provides that the title of the Regulation is the *Telecommunications Amendment (Designated Overhead Lines) Regulation 2015*.

**Section 2 – Commencement**

This section provides for the Regulation to commence on the day after they are registered on the Federal Register of Legislative Instruments.

**Section 3 – Authority**

This section provides that the authority for making the Regulation is the *Telecommunications Act 1997* (the Act).

**Section 4 – Schedules**

This section provides that the *Telecommunications Regulations 2001* (the Principal Regulations) are amended as set out in Schedule 1.

**Schedule 1 – Amendments****Item [1] – After regulation 11.1**

Part 11 of the Principal Regulation currently prescribes relevant matters for carriers' powers and immunities under Schedule 3 to the Act.

Item 1 amends regulation 11.2 of the Principal Regulation to specify, for the purposes of subparagraph 3(b)(ii) of Schedule 3 to the Act, the distance of 48 millimetres (mm). This amendment will enable overhead lines and bundles of overhead lines with an external cross-section not exceeding 48 mm to be specified by the Minister as 'low-impact facilities' for the purposes of Schedule 3 to the Act.

**ATTACHMENT 2*****Statement of Compatibility with Human Rights***

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

*Telecommunications Amendment (Designated Overhead Lines) Regulation 2015*

The *Telecommunications Amendment (Designated Overhead Lines) Regulation 2015* (the Amending Regulation) 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 Instrument**

The Amending Regulation is made under subsection 594(1) of the *Telecommunications Act 1997* (the Act).

The Amending Regulation will enable the Minister to specify overhead lines with an external cross section not exceeding 48 millimetres (mm) as ‘low-impact facilities’ in the *Telecommunications (Low-impact Facilities) Determination 1997* (the LIFD). Low-impact facilities can be installed with benefit of the carrier powers and immunities set out in Schedule 3 to the Act. This is achieved by increasing the distance given at Regulation 11.2 for the maximum external cross-section distance of any part of an overhead line or bundle of overhead lines, from 30 mm to 48 mm.

Low-impact facilities are specified in the LIFD. The Amending Regulation together with any future amendment to the specification of aerial cabling in the LIFD will help expedite the aerial deployment of the National Broadband Network and other networks for the high-speed carriage of communications, on a wholesale-only and non-discriminatory basis, involving cables of up to 48 mm in diameter. Carriers are expected to use the smallest cable and cable bundles feasible for aerial cabling in an area.

No human rights issues were raised during consultation undertaken in developing the draft Amending Regulation

**Human rights implications**

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

**Conclusion**

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