

2001

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

EXPLANATORY MEMORANDUM

**UTILITIES (TELECOMMUNICATIONS INSTALLATIONS)
BILL 2001**

MAY 2001

**CIRCULATED BY THE AUTHORITY OF
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TREASURER**

General

The Utilities (Telecommunications Installations) Bill 2001 seeks to facilitate the installation of telecommunications facilities. To the extent permitted, it supplements the provisions of the *Telecommunications Act 1997* (Commonwealth) relating to the installation of telecommunications infrastructure, particularly facilities such as overhead cabling.

The Bill imposes rights and obligations on telecommunications carriers who wish to install telecommunications facilities using the access provisions detailed in the Bill. The rights bestowed include facilitating access to land in particular circumstances to install telecommunications facilities on utility network facilities.

Specific obligations imposed on carriers include provision for prior notification of landholders and a requirement to minimise disruption, damage and inconvenience whilst installing the telecommunications facilities on utility network facilities.

The provisions in the Bill are not specific to any particular telecommunications carrier or utility. The provisions are available equally to any interested carriers licensed under the Commonwealth Telecommunications Act 1997 which has the relevant planning approvals under other existing ACT legislation.

PART 1 PRELIMINARY

Clause 1 Name of Act

This clause provides that the Act is named the *Utilities (Telecommunications Installations) Act 2001*.

Clause 2 Commencement

This clause provides that the Act commences on 1 July 2001. This commencement date ensures that there is no duplication with the provisions of the *Building and Services Regulations 2000*. Those Regulations currently provide similar entry powers to those in the proposed Act. The Regulations will expire on 30 June 2001 with the repeal of the *Building and Services Act 1924*, in accordance with the provisions of the *Utilities Act 2000*.

Clause 3 Dictionary

This clause provides that the Dictionary at the end of the Act is a part of the Act. The Dictionary defines certain words and expressions used in the Act and includes references to other words and expressions defined elsewhere in this Act or in other Australian Capital Territory or Commonwealth legislation.

Clause 4 Notes

This clause provides that any notes included in the Act are explanatory and not part of the Act.

PART 2 INSTALLATION OF TELECOMMUNICATIONS FACILITIES

Clause 5 Land to which Act applies

This clause provides that the Act applies to defined land. In the first instance the defined land is Territory land. This includes both leased and unleased Territory land.

The clause also provides that the Act may apply to further land that is the subject of an agreement or arrangement between the Territory and the Commonwealth for the application of this Act to the land. Such agreements are contemplated under Section 37 (c) of the *Self Government Act 1988*.

Clause 6 Installations to which Act applies

This clause provides for the Act to apply to the installation of a telecommunications facility on a utility network facility on defined land in certain circumstances. Utility network facilities include electricity, gas, water and sewerage infrastructure. Relevant infrastructure includes pipes and poles and utility networks ducts. Installations are defined by example and include placing any part of the telecommunications facility on, over or under land. The specific circumstances, referred to above, include:

- the installation being for a reticulated service within the meaning of the Land (Planning and Environment) Regulations 1992;
- relevant planning approvals having been received;
- the installation being consistent with relevant planning standards or guidelines; and
- any defined notice having been given.

Clause 7 Installation on utility network facilities

This clause defines the rights of the carrier in relation to the installation of a telecommunications facility under Part 3 of the Act. Specific rights include the power to enter defined land, inspect the land and carry out any work that is necessary or desirable for installing a telecommunications facility on a utility network facility, such as power poles. Non-exclusive examples are provided of what the carrier may do. The clause also provides that the particular rights and powers may be exercised by a person authorised by the carrier.

Clause 8 Consent by utility etc to installation

4 This clause confirms that the Act does not confer automatic rights on carriers to install telecommunications facilities on utility network facilities. It effectively requires carriers to obtain the consent of the relevant utility or utility network facility owner, prior to seeking to use the provisions of the Act to install telecommunications facilities on a utility network facility.

The clause does not provide a statutory right for a carrier to install a telecommunications facility on a utility network facility. Individual carriers and utilities may negotiate these matters and make their own contractual arrangements, noting the constraints and opportunities embodied in existing Commonwealth trade practices and competition law.

Clause 9 Ownership of telecommunications equipment

This clause makes it clear that the mere installation of a telecommunications facility on a utility network facility does not give the owner of the utility network facility a proprietary interest in the telecommunications facility.

Clause 10 Carrier's continuing rights concerning installations

This clause provides that carriers have continuing rights for the telecommunications facility to remain in place whilst it is used, or for use, in a telecommunications network and continuing rights to use the facility. The clause also provides that these continuing rights are subject to any agreement between the carrier and the responsible utility or owner of the relevant utility network facility. The clause does not limit the nature of the agreement between the parties which for example, may cover any charges payable by the carrier and responsibility for maintenance of the facilities, including when the utility network facilities are replaced.

PART 3 CARRIER'S OBLIGATIONS

Clause 11 Notice to land-holder

This clause provides that carriers must give prior written notice to landholders before entering land and the purpose of the entry. In relation to unleased land, the landholder is defined as the chief executive of the administrative unit in the public service whose responsibilities include managing the use of the land.

Exclusions from the requirement for notice are given in urgent circumstances where it is necessary to protect the integrity of the facility, the health or safety of anyone, property or the environment.

• **Clause 12 Service of notices**

This clause provides non-limiting examples of the manner in which a notice under section 11 may be given.

Clause 13 Carrier to minimise disruption, inconvenience and damage

This clause provides that the carrier must take all reasonable steps to ensure that as little disruption, inconvenience and damage as is practicable is caused when installing telecommunications facilities under section 7.

Clause 14 Carrier to act reasonably etc

This clause provides that the carrier must act reasonably and in particular ensure that any property on the land, including any domestic animal, is kept secure. The clause also provides that the carrier must act in accordance with any work method approved by the responsible utility. Such approved work methods may help to protect the integrity of the utility network and/or safety of people working on the utility network or telecommunications facilities.

Clause 15 Carrier to restore land and structures

This clause provides that the carrier must take all reasonable steps to ensure that land is restored as soon as practicable to its prior condition before the carrier acted and that any structure that is damaged by the carrier is also restored. Restoration is not required to a condition that would involve an interference with a telecommunications facility or a network facility or a contravention of a law of the Territory. The clause also provides that the carrier's obligation under this clause may be changed by agreement between the landholder and the responsible utility or carrier.

Clause 16 Installation costs

This clause provides that the carrier must bear the cost of things done by the carrier under section 7.

Clause 17 Compensation

This clause provides that a person may claim reasonable compensation from a carrier if the person suffers loss or expense because of anything done by the carrier under section 7. The clause specifies how compensation may be claimed and factors the court of competent jurisdiction may take into account in considering whether to make an order under this section.

PART 4 AUTHORISED PEOPLE

Clause 18 Authorised people

This clause provides that the carrier may appoint authorised persons for the purposes of the Act and that any authorised person must act in accordance with any conditions of appointment and any direction given to the person by the carrier.

Clause 19 Identity cards

This clause provides that authorised persons must be given an identity card and specifies the information that the card must show, including the person's name, appointment as an authorised person, a recent photograph of the person and the issue and expiry dates of the card.

Clause 20 Production of identity cards

This clause provides that authorised persons may only exercise a power under the Act in relation to a person only if the authorised person first shows the person his or her identity card. The clause also provides that the authorised person may not remain on land entered under section 7 if, on request by the landholder or person apparently in charge of the land, the authorised person does not produce their identity card.

PART 5 MISCELLANEOUS

Clause 21 Compensation – safety net

This clause provides a safety net to ensure that where any acquisitions of property that may occur under the Act occur on other than just terms, they are subject to compensation arrangements, thereby protecting the validity of the Act.

Clause 22 Operation of other Territory laws

This clause provides that the Act does not affect the operation of any other Territory law.

Clause 23 Regulation-making power

This clause provides that the executive may make regulations for the purpose of the Act, including in relation to prescribing offences for contraventions of the regulations and prescribing maximum penalties of not more than 10 penalty units for offences against the regulations.

Dictionary

As provided for by section 3, definitions are provided for certain words and expressions used in the Act. The definitions include references to other words and expressions defined elsewhere in this Act or in other Australian Capital Territory or Commonwealth legislation.