2019‑2020

The Parliament of the

Commonwealth of Australia

HOUSE OF REPRESENTATIVES

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| **EXPOSURE DRAFT** |

Telecommunications Legislation Amendment (Infrastructure in New Developments) Bill 2020

No. , 2020

(Communications, Cyber Safety and the Arts)

A Bill for an Act to amend legislation relating to telecommunications, and for other purposes

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A Bill for an Act to amend legislation relating to telecommunications, and for other purposes

The Parliament of Australia enacts:

1 Short title

This Act is the *Telecommunications Legislation Amendment (Infrastructure in New Developments) Act 2020*.

2 Commencement

(1) Each provision of this Act 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. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent. |  |
| 2. Schedule 1, Parts 1 and 2 | The day after this Act receives the Royal Assent. |  |
| 3. Schedule 1, Part 3 | The later of:  (a) immediately after the commencement of the provisions covered by table item 2; and  (b) the commencement of the *Federal Circuit and Family Court of Australia Act 2020*.  However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur. |  |
| 4. Schedule 1, Part 4 | The day after this Act receives the Royal Assent. |  |

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—General amendments

Telecommunications Act 1997

1A Section 7 (definition of *fibre‑ready facility*)

Omit “section 372W”, substitute “subsection 372W(1)”.

1 Section 7

Insert:

***fibre‑ready facility disclosure notice*** has the meaning given by section 372YA.

***functional fibre‑ready facility*** has the meaning given by subsection 372W(2).

2 Section 372A

Omit:

• If the developer of a real estate development project is a constitutional corporation, the developer must not, in the course of carrying out the project, sell or lease a building lot or building unit unless a fibre‑ready facility is installed in proximity to the lot or unit.

substitute:

• If the developer of a real estate development project is a constitutional corporation:

(a) the developer must not, in the course of carrying out the project, sell or lease a building lot or building unit unless a functional fibre‑ready facility is installed in proximity to the lot or unit; and

(b) the developer must give a prospective purchaser or lessee a fibre‑ready facility disclosure notice; and

(c) compensation may be payable if a functional fibre‑ready facility is not installed.

• If the developer of a real estate development project in a Territory is not a constitutional corporation:

(a) the developer must not, in the course of carrying out the project, sell or lease a building lot or building unit unless a functional fibre‑ready facility is installed in proximity to the lot or unit; and

(b) the developer must give a prospective purchaser or lessee a fibre‑ready facility disclosure notice; and

(c) compensation may be payable if a functional fibre‑ready facility is not installed.

• If the developer of a real estate development project in a State is not a constitutional corporation:

(a) the developer must not, in the course of carrying out the project, sell or lease a building lot or building unit unless a functional fibre‑ready facility is installed in proximity to the lot or unit; and

(b) the developer must give a prospective purchaser or lessee a fibre‑ready facility disclosure notice; and

(c) compensation may be payable if a functional fibre‑ready facility is not installed.

3 Subsections 372G(2) and (4)

Repeal the subsections, substitute:

Requirements—building lots

(2) If subparagraph (1)(b)(i) applies to a building lot, a constitutional corporation must not, in the course of carrying out, or carrying out an element of, the project, sell or lease the lot unless a functional fibre‑ready facility is installed in proximity to the lot.

Note 1: For ***functional fibre-ready facility***, see section 372W.

Note 2: For ***proximity***, see section 372Y.

Note 3: For exemptions, see section 372K.

(2A) If:

(a) subparagraph (1)(b)(i) applies to a building lot; and

(b) the lot is in a Territory;

a person (other than a constitutional corporation) must not, in the course of carrying out, or carrying out an element of, the project, sell or lease the lot unless a functional fibre‑ready facility is installed in proximity to the lot.

Note 1: For ***functional fibre-ready facility***, see section 372W.

Note 2: For ***proximity***, see section 372Y.

Note 3: For exemptions, see section 372K.

(3) If:

(a) subparagraph (1)(b)(i) applies to a building lot; and

(b) the lot is in a State;

a person (other than a constitutional corporation) must not, in the course of carrying out, or carrying out an element of, the project, sell or lease the lot unless a functional fibre‑ready facility is installed in proximity to the lot.

Note 1: For ***functional fibre-ready facility***, see section 372W.

Note 2: For ***proximity***, see section 372Y.

Note 3: For exemptions, see section 372K.

Requirements—building units

(4) If subparagraph (1)(b)(ii) applies to a building unit, a constitutional corporation must not, in the course of carrying out, or carrying out an element of, the project, sell or lease the unit unless a functional fibre‑ready facility is installed in proximity to the unit.

Note 1: For ***functional fibre-ready facility***, see section 372W.

Note 2: For ***proximity***, see section 372Y.

Note 3: For exemptions, see section 372K.

(4A) If:

(a) subparagraph (1)(b)(ii) applies to a building unit; and

(b) the unit is in a Territory;

a person (other than a constitutional corporation) must not, in the course of carrying out, or carrying out an element of, the project, sell or lease the unit unless a functional fibre‑ready facility is installed in proximity to the unit.

Note 1: For ***functional fibre-ready facility***, see section 372W.

Note 2: For ***proximity***, see section 372Y.

Note 3: For exemptions, see section 372K.

(5) If:

(a) subparagraph (1)(b)(ii) applies to a building unit; and

(b) the unit is in a State;

a person (other than a constitutional corporation) must not, in the course of carrying out, or carrying out an element of, the project, sell or lease the unit unless a functional fibre‑ready facility is installed in proximity to the unit.

Note 1: For ***functional fibre-ready facility***, see section 372W.

Note 2: For ***proximity***, see section 372Y.

Note 3: For exemptions, see section 372K.

5 Subsection 372G(6)

Omit “subsection (2) or (4)” (wherever occurring), substitute “subsection (2), (2A), (3), (4), (4A) or (5)”.

6 Subsection 372G(7)

Omit “subsections (2), (4) and (6)”, substitute “subsections (2), (2A), (3), (4), (4A), (5) and (6)”.

7 Subsection 372G(8)

Omit “subsection (2) or (4)”, substitute “subsection (2), (2A), (3), (4), (4A) or (5)”.

8 Subsection 372H(2)

Repeal the subsection, substitute:

Requirements

(2) A constitutional corporation must not, in the course of carrying out, or carrying out an element of, the project, sell or lease such a building unit unless a functional fibre‑ready facility is installed in proximity to the unit.

Note 1: For ***functional fibre-ready facility***, see section 372W.

Note 2: For ***proximity***, see section 372Y.

Note 3: For exemptions, see section 372K.

(3) If such a building unit is in a Territory, a person (other than a constitutional corporation) must not, in the course of carrying out, or carrying out an element of, the project, sell or lease the unit unless a functional fibre‑ready facility is installed in proximity to the unit.

Note 1: For ***functional fibre-ready facility***, see section 372W.

Note 2: For ***proximity***, see section 372Y.

Note 3: For exemptions, see section 372K.

(3A) If such a building unit is in a State, a person (other than a constitutional corporation) must not, in the course of carrying out, or carrying out an element of, the project, sell or lease the unit unless a functional fibre‑ready facility is installed in proximity to the unit.

Note 1: For ***functional fibre-ready facility***, see section 372W.

Note 2: For ***proximity***, see section 372Y.

Note 3: For exemptions, see section 372K.

9 Subsection 372H(4)

Omit “subsection (2)” (wherever occurring), substitute “subsection (2), (3) or (3A)”.

10 Subsection 372H(5)

Omit “subsections (2) and (4)”, substitute “subsections (2), (3), (3A) and (4)”.

11 Subsection 372H(6)

Omit “subsection (2)”, substitute “subsection (2), (3) or (3A)”.

12 At the end of Subdivision B of Division 3 of Part 20A

Add:

372J Fibre‑ready facility disclosure notice—subdivisions

Scope

(1) This section applies if:

(a) a real estate development project involves the subdivision of one or more areas of land into building lots; and

(b) the project involves either or both of the following:

(i) the making available of one or more of those lots for sale or lease, where it would be reasonable to expect that one or more building units would be subsequently constructed on the lots;

(ii) the construction of one or more building units on any of the lots and the making available of any of those building units for sale or lease; and

(c) if subparagraph (b)(i) applies—sewerage services, electricity or water is, are, or will be, supplied to those lots; and

(d) if subparagraph (b)(ii) applies—sewerage services, electricity or water is, are, or will be, supplied to those units.

Note 1: For ***subdivision*** of an area of land, see section 372R.

Note 2: For ***building lot***, see section 372Q.

Note 3: For ***building unit***, see section 372S.

Note 4: For ***sale*** of building lots, see section 372T.

Note 5: For ***sale*** of building units, see section 372U.

Note 6: For ***supply*** of sewerage services, electricity or water, see section 372Z.

Note 7: For exemption of certain projects, see section 372P.

Requirements

(2) If:

(a) subparagraph (1)(b)(i) applies to a building lot; or

(b) subparagraph (1)(b)(ii) applies to a building unit;

a constitutional corporation must not, in the course of carrying out, or carrying out an element of, the project, enter into a contract to sell the lot or unit to another person unless, at least 48 hours before entering into the contract, the constitutional corporation gave the other person a fibre‑ready facility disclosure notice that related to the prospective sale of the lot or unit (as the case requires).

Note: For ***fibre-ready facility disclosure notice***, see section 372YA.

(3) If:

(a) subparagraph (1)(b)(i) applies to a building lot; or

(b) subparagraph (1)(b)(ii) applies to a building unit;

a constitutional corporation must not, in the course of carrying out, or carrying out an element of, the project, lease the lot or unit to another person unless, at least 48 hours before entering into the lease, the constitutional corporation gave the other person a fibre‑ready facility disclosure notice that related to the prospective lease of the lot or unit (as the case requires).

Note: For ***fibre-ready facility disclosure notice***, see section 372YA.

(4) If:

(a) subparagraph (1)(b)(i) applies to a building lot in a Territory; or

(b) subparagraph (1)(b)(ii) applies to a building unit in a Territory;

a person (the ***developer***) other than a constitutional corporation must not, in the course of carrying out, or carrying out an element of, the project, enter into a contract to sell the lot or unit to another person unless, at least 48 hours before entering into the contract, the developer gave the other person a fibre‑ready facility disclosure notice that related to the prospective sale of the lot or unit (as the case requires).

Note: For ***fibre-ready facility disclosure notice***, see section 372YA.

(5) If:

(a) subparagraph (1)(b)(i) applies to a building lot in a Territory; or

(b) subparagraph (1)(b)(ii) applies to a building unit in a Territory;

a person (the ***developer***) other than a constitutional corporation must not, in the course of carrying out, or carrying out an element of, the project, lease the lot or unit to another person unless, at least 48 hours before entering into the lease, the developer gave the other person a fibre‑ready facility disclosure notice that related to the prospective lease of the lot or unit (as the case requires).

Note: For ***fibre-ready facility disclosure notice***, see section 372YA.

(6) If:

(a) subparagraph (1)(b)(i) applies to a building lot in a State; or

(b) subparagraph (1)(b)(ii) applies to a building unit in a State;

a person (the ***developer***) other than a constitutional corporation must not, in the course of carrying out, or carrying out an element of, the project, enter into a contract to sell the lot or unit to another person unless, at least 48 hours before entering into the contract, the developer gave the other person a fibre‑ready facility disclosure notice that related to the prospective sale of the lot or unit (as the case requires).

Note: For ***fibre-ready facility disclosure notice***, see section 372YA.

(7) If:

(a) subparagraph (1)(b)(i) applies to a building lot in a State; or

(b) subparagraph (1)(b)(ii) applies to a building unit in a State;

a person (the ***developer***) other than a constitutional corporation must not, in the course of carrying out, or carrying out an element of, the project, lease the lot or unit to another person unless, at least 48 hours before entering into the lease, the developer gave the other person a fibre‑ready facility disclosure notice that related to the prospective lease of the lot or unit (as the case requires).

Note: For ***fibre-ready facility disclosure notice***, see section 372YA.

Ancillary contraventions

(8) A person must not:

(a) aid, abet, counsel or procure a contravention of subsection (2), (3), (4), (5), (6), or (7); or

(b) induce, whether by threats or promises or otherwise, a contravention of subsection (2), (3), (4), (5), (6), or (7); or

(c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2), (3), (4), (5), (6), or (7); or

(d) conspire with others to effect a contravention of subsection (2), (3), (4), (5), (6), or (7).

Civil penalty provisions

(9) Subsections (2), (3), (4), (5), (6), (7) and (8) are ***civil penalty provisions***.

Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

Validity of transactions

(10) A contravention of subsection (2), (3), (4), (5), (6) or (7) does not affect the validity of any transaction.

372JA Fibre‑ready facility disclosure notice—other projects

Scope

(1) This section applies if:

(a) a real estate development project involves:

(i) the construction of one or more building units on one or more areas of land; and

(ii) the making available of any or all of those building units for sale or lease; and

(b) sewerage services, electricity or water is, are, or will be, supplied to those units.

Note 1: For ***building unit***, see section 372S.

Note 2: For ***sale*** of building units, see section 372U.

Note 3: For ***supply*** of sewerage services, electricity or water, see section 372Z.

Note 4: For exemption of certain projects, see section 372P.

Requirements

(2) A constitutional corporation must not, in the course of carrying out, or carrying out an element of, the project, enter into a contract to sell such a building unit to another person unless, at least 48 hours before entering into the contract, the constitutional corporation gave the other person a fibre‑ready facility disclosure notice that related to the prospective sale of the unit.

Note: For ***fibre-ready facility disclosure notice***, see section 372YA.

(3) A constitutional corporation must not, in the course of carrying out, or carrying out an element of, the project, lease such a building unit to another person unless, at least 48 hours before entering into the lease, the constitutional corporation gave the other person a fibre‑ready facility disclosure notice that related to the prospective lease of the unit.

Note: For ***fibre-ready facility disclosure notice***, see section 372YA.

(4) If such a building unit is in a Territory, a person (the ***developer***) other than a constitutional corporation must not, in the course of carrying out, or carrying out an element of, the project, enter into a contract to sell the unit to another person unless, at least 48 hours before entering into the contract, the developer gave the other person a fibre‑ready facility disclosure notice that related to the prospective sale of the unit.

Note: For ***fibre-ready facility disclosure notice***, see section 372YA.

(5) If such a building unit is in a Territory, a person (the ***developer***) other than a constitutional corporation must not, in the course of carrying out, or carrying out an element of, the project, lease the unit to another person unless, at least 48 hours before entering into the lease, the developer gave the other person a fibre‑ready facility disclosure notice that related to the prospective lease of the unit.

Note: For ***fibre-ready facility disclosure notice***, see section 372YA.

(6) If such a building unit is in a State, a person (the ***developer***) other than a constitutional corporation must not, in the course of carrying out, or carrying out an element of, the project, enter into a contract to sell the unit to another person unless, at least 48 hours before entering into the contract, the developer gave the other person a fibre‑ready facility disclosure notice that related to the prospective sale of the unit.

Note: For ***fibre-ready facility disclosure notice***, see section 372YA.

(7) If such a building unit is in a State, a person (the ***developer***) other than a constitutional corporation must not, in the course of carrying out, or carrying out an element of, the project, lease the unit to another person unless, at least 48 hours before entering into the lease, the developer gave the other person a fibre‑ready facility disclosure notice that related to the prospective lease of the unit.

Note: For ***fibre-ready facility disclosure notice***, see section 372YA.

Ancillary contraventions

(8) A person must not:

(a) aid, abet, counsel or procure a contravention of subsection (2), (3), (4), (5), (6), or (7); or

(b) induce, whether by threats or promises or otherwise, a contravention of subsection (2), (3), (4), (5), (6), or (7); or

(c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2), (3), (4), (5), (6), or (7); or

(d) conspire with others to effect a contravention of subsection (2), (3), (4), (5), (6), or (7).

Civil penalty provisions

(9) Subsections (2), (3), (4), (5), (6), (7) and (8) are ***civil penalty provisions***.

Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

Validity of transactions

(10) A contravention of subsection (2), (3), (4), (5), (6) or (7) does not affect the validity of any transaction.

372JB Compensation orders etc.

Failure to install functional fibre‑ready facility

(1) If:

(a) in the course of carrying out, or carrying out an element of, a real estate development project, a person (the ***developer***) sells or leases a building lot or building unit; and

(b) the sale or lease contravened any of the following provisions:

(i) subsection 372G(2);

(ii) subsection 372G(2A);

(iii) subsection 372G(3);

(iv) subsection 372G(4);

(v) subsection 372G(4A);

(vi) subsection 372G(5);

(vii) subsection 372H(2);

(viii) subsection 372H(3);

(ix) subsection 372H(3A);

a relevant court may:

(c) on the application of a person (the ***injured person***) who has suffered, or is likely to suffer, loss or damage because of the contravention; or

(d) on the application of the ACMA on behalf of one or more such injured persons;

make such order or orders as the relevant court thinks appropriate against the developer.

Orders

(2) An order under subsection (1) must be an order that the relevant court considers will:

(a) compensate the injured person, or any such injured persons, in whole or in part for the loss or damage; or

(b) prevent or reduce the loss or damage suffered, or likely to be suffered, by the injured person or any such injured persons.

Applications

(3) An application under subsection (1) may be made at any time within 6 years after the sale or lease of the lot or unit (as the case requires).

(4) The ACMA must not make an application under paragraph (1)(d) on behalf of one or more persons unless those persons have consented in writing to the making of the application.

Relevant court

(5) For the purposes of this section, each of the following is a ***relevant court***:

(a) the Federal Court;

(b) the Federal Circuit Court of Australia;

(c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

372JC Acquisition of property

This Subdivision does not apply to the extent that the operation of this Subdivision would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph).

13 Subsection 372K(5)

Omit “from the scope of subsection 372G(2).”, substitute:

from the scope of any or all of the following provisions:

(c) subsection 372G(2);

(d) subsection 372G(2A);

(e) subsection 372G(3).

14 Subsection 372K(7)

Omit “either or both”, substitute “any or all”.

15 After paragraph 372K(7)(c)

Insert:

(ca) subsection 372G(4A);

(cb) subsection 372G(5);

16 After paragraph 372K(7)(d)

Insert:

; (e) subsection 372H(3);

(f) subsection 372H(3A).

17 Section 372W

Before “For”, insert “(1)”.

17A At the end of section 372W

Add:

(2) For the purposes of this Act, a ***functional fibre‑ready facility*** is a fibre‑ready facility that is technically capable of being used in connection with an optical fibre line.

(3) For the purposes of subsection (2), in determining whether a fibre‑ready facility is technically capable of being used in connection with an optical fibre line, regard must be had to applicable industry codes registered, or applicable industry standards determined, under Part 6 (if any).

19 After section 372Y

Insert:

372YA Fibre‑ready facility disclosure notice

For the purposes of this Act, ***fibre‑ready facility disclosure notice***:

(a) in relation to the prospective sale of a building lot—means a written notice that:

(i) in a case where a functional fibre‑ready facility will, before the prospective sale occurs, be installed in proximity to the lot—states that the functional fibre‑ready facility will be installed in proximity to the lot before the prospective sale occurs; or

(ii) in a case where a functional fibre‑ready facility has already been installed in proximity to the lot—states that the functional fibre‑ready facility has already been installed in proximity to the lot; or

(iii) otherwise—states that, as a result of an exemption under section 372K, no functional fibre‑ready facility has been, or will be, installed in proximity to the lot; or

(b) in relation to the prospective sale of a building unit—means a written notice that:

(i) in a case where a functional fibre‑ready facility will, before the prospective sale occurs, be installed in proximity to the unit—states that the functional fibre‑ready facility will be installed in proximity to the unit before the prospective sale occurs; or

(ii) in a case where a functional fibre‑ready facility has already been installed in proximity to the unit—states that the functional fibre‑ready facility has already been installed in proximity to the unit; or

(iii) otherwise—states that, as a result of an exemption under section 372K, no functional fibre‑ready facility has been, or will be, installed in proximity to the unit; or

(c) in relation to the prospective lease of a building lot—means a written notice that:

(i) in a case where a functional fibre‑ready facility will, before the prospective lease is entered into, be installed in proximity to the lot—states that the functional fibre‑ready facility will be installed in proximity to the lot before the prospective lease is entered into; or

(ii) in a case where a functional fibre‑ready facility has already been installed in proximity to the lot—states that the functional fibre‑ready facility has already been installed in proximity to the lot; or

(iii) otherwise—states that, as a result of an exemption under section 372K, no functional fibre‑ready facility has been, or will be, installed in proximity to the lot; or

(d) in relation to the prospective lease of a building unit—means a written notice that:

(i) in a case where a functional fibre‑ready facility will, before the prospective lease is entered into, be installed in proximity to the unit—states that the functional fibre‑ready facility will be installed in proximity to the unit before the prospective lease is entered into; or

(ii) in a case where a functional fibre‑ready facility has already been installed in proximity to the unit—states that the functional fibre‑ready facility has already been installed in proximity to the unit; or

(iii) otherwise—states that, as a result of an exemption under section 372K, no functional fibre‑ready facility has been, or will be, installed in proximity to the unit.

Part 2—Application and transitional provisions

19A Application—sale or lease of building lots or building units

Sections 372G, 372H, 372J, 372JA and 372JB of the *Telecommunications Act 1997*, as amended by this Schedule, apply in relation to a real estate development project any element of which is carried out after the commencement of this item unless, before that commencement:

(a) a person who carries out, or carries out an element of, the project began to install fixed‑line facilities in the project area, or any of the project areas, for the project; or

(b) a person who carries out, or carries out an element of, the project entered into a contract with another person for the installation of fixed‑line facilities in the project area, or any of the project areas, for the project; or

(c) civil works associated with the project began to be carried out; or

(d) a person who carries out, or carries out an element of, the project entered into a contract with another person for the carrying out of civil works associated with the project.

19B Transitional—constitutional corporations

(1) This item applies in relation to a real estate development project if, before the commencement of this item:

(a) a person who carries out, or carries out an element of, the project began to install fixed‑line facilities in the project area, or any of the project areas, for the project; or

(b) a person who carries out, or carries out an element of, the project entered into a contract with another person for the installation of fixed‑line facilities in the project area, or any of the project areas, for the project; or

(c) civil works associated with the project began to be carried out; or

(d) a person who carries out, or carries out an element of, the project entered into a contract with another person for the carrying out of civil works associated with the project.

(2) Despite the amendments of sections 372G and 372H of the *Telecommunications Act 1997* made by this Schedule, those sections continue to apply in relation to the real estate development project as if the amendments had not been made.

Part 3—Amendment contingent on the commencement of the Federal Circuit and Family Court of Australia Act 2020

Telecommunications Act 1997

20 Paragraph 372JB(5)(b)

Omit “Federal Circuit Court of Australia”, substitute “Federal Circuit and Family Court of Australia”.

Part 4—Technical correction

Telecommunications Act 1997

21 Paragraph 372G(1)(d)

Omit “is” (first occurring), substitute “if”.