

Passed by both Houses



New South Wales

Government Telecommunications Amendment Bill 2022

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2022



New South Wales

Government Telecommunications Amendment Bill 2022

Act No _____, 2022

An Act to amend the *Government Telecommunications Act 2018* to provide for the functions of the New South Wales Government Telecommunications Authority and emergency telecommunications network operators in relation to telecommunications infrastructure; and for other purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Government Telecommunications Amendment Act 2022*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Government Telecommunications Act 2018 No 67

[1] Section 3 Definitions

Insert in alphabetical order in section 3(1)—

authorised officer means an authorised officer appointed under section 43A.
emergency telecommunications network operator, or *ETNO*, means an emergency services organisation within the meaning of the *State Emergency and Rescue Management Act 1989* that—

- (a) establishes or uses an alternative telecommunications network for operational communications, or
- (b) establishes a telecommunications network under section 42.

premises, for Part 5A—see section 34B.

tree, for Part 5A—see section 34B.

[2] Section 34 Access to Authority's infrastructure

Omit “agent of the Authority” wherever occurring.

Insert instead “authorised officer”.

[3] Section 34A

Insert after section 34—

34A Deemed access to government-owned infrastructure

- (1) This section applies to—
 - (a) land—
 - (i) on which infrastructure owned or operated by a government sector agency or State owned corporation is located, and
 - (ii) that is not subject to an agreement with the Authority or an ETNO for access to the infrastructure, and
 - (b) land adjoining land specified in paragraph (a).
- (2) An authorised officer may enter and occupy the land and a building on the land—
 - (a) during daylight hours, or
 - (b) in an emergency—at any time.
- (3) The power conferred by this section may be used only—
 - (a) for the purposes of installing telecommunications equipment on infrastructure owned or operated by a government sector agency or State owned corporation, and
 - (b) in accordance with the site assessment process in the Property and Infrastructure Management Strategy.
- (4) The authorised officer must not exercise a power under this section unless—
 - (a) reasonable written notice of the authorised officer's intention to exercise the power has been given to the occupier of the land, or
 - (b) the authorised officer reasonably believes the giving of notice would cause undue delay having regard to the urgency of the reason for exercising the power.

- (5) Nothing in this section authorises an authorised officer to—
- (a) enter part of a building used for residential purposes without the consent of the occupier of that part, or
 - (b) occupy a classified road within the meaning of the *Roads Act 1993* without the consent of—
 - (i) Transport for NSW, constituted under the *Transport Administration Act 1988*, or
 - (ii) the roads authority, within the meaning of the *Roads Act 1993*.

[4] Part 5A

Insert before Part 6—

Part 5A Powers and duties of Authority and ETNOs

Division 1 Interpretation

34B Definitions

In this Part—

premises includes the following—

- (a) a building or part of a building,
- (b) a structure or part of a structure,
- (c) land, whether or not built on,
- (d) a river, lake or other waters.

tree includes a shrub or other plant.

Division 2 Powers and duties relating to telecommunications infrastructure

34C Interference with telecommunications infrastructure by trees

- (1) This section applies if the Authority or an ETNO reasonably believes that a tree situated on premises could—
- (a) destroy, damage or interfere with the Authority's or the ETNO's telecommunications infrastructure, or
 - (b) make the Authority's or the ETNO's telecommunications infrastructure become—
 - (i) a potential cause of bush fire, or
 - (ii) a potential risk to public safety.
- (2) The Authority or the ETNO—
- (a) may serve a written notice on the owner of the premises requiring the owner to trim or remove the tree (a *tree removal notice*), or
 - (b) in an emergency—may, at the Authority's or the ETNO's own expense, trim or remove the tree.
- (3) A tree removal notice must specify—
- (a) the work to be carried out, and
 - (b) a reasonable time within which the work must be carried out.

- (4) A tree removal notice must include an undertaking by the Authority or the ETNO to pay the reasonable costs of carrying out the work unless—
- (a) an owner or occupier of the premises planted the tree, or permitted the tree to be planted—
 - (i) after the telecommunications infrastructure was installed, and
 - (ii) in circumstances in which the owner or occupier should have known that destruction of, damage to or interference with the infrastructure would result, or
 - (b) when the tree was planted, the premises in or on which the tree is located, and on or over which the infrastructure is located, was the subject of an easement for the benefit of—
 - (i) the Authority or the ETNO, or
 - (ii) a predecessor of the Authority or the ETNO.
- (5) If the work is not carried out as required by the tree removal notice, the Authority or the ETNO may carry out the work.
- (6) The cost of the work carried out by the Authority or the ETNO may be recovered by the Authority or the ETNO in a court of competent jurisdiction as a debt owed to the Authority or the ETNO by the owner of the premises on which the tree is located, but only in the circumstances referred to in subsection (4).
- (7) This section applies despite the existence of—
- (a) a tree preservation order in relation to the tree, or
 - (b) an environmental planning instrument relating to the land on which the tree is located, other than a State environmental planning policy.
- (8) Nothing done for the purpose of carrying out the work required by a tree removal notice constitutes an offence against a law under which a tree preservation order or environmental planning instrument, other than a State environmental planning policy, relating to the land is made.

34D Protected trees not to be removed

- (1) Section 34C does not apply to a tree—
- (a) within a protected area, or
 - (b) that is the subject of or is within an area the subject of—
 - (i) an interim heritage order, or a listing on the State Heritage Register, under the *Heritage Act 1977*, or
 - (ii) an order in force under the *Heritage Act 1977*, section 136, or
 - (iii) an interim protection order under the *National Parks and Wildlife Act 1974*, or
 - (iv) a protection conferred by a similar law.
- (2) In this section—
- indigenous protected area*** means an area—
- (a) the subject of a voluntary agreement with traditional owners or custodians of the land in the area, and
 - (b) recognised by the Commonwealth as part of Australia’s National Reserve System.
- protected area*** means an area within—
- (a) an indigenous protected area, or

- (b) land reserved or zoned for environmental protection purposes under the *Environmental Planning and Assessment Act 1979*, or
- (c) a flora reserve within the meaning of the *Forestry Act 2012*, or
- (d) a public reserve within the meaning of the *Local Government Act 1993*, or
- (e) land reserved under the *National Parks and Wildlife Act 1974*, section 30A.

34E Obstruction of telecommunications infrastructure by structures

- (1) This section applies if the Authority or an ETNO reasonably believes—
 - (a) structures or things situated in, on or near the Authority's or the ETNO's telecommunications infrastructure could—
 - (i) destroy, damage or interfere with the functioning of the infrastructure, or
 - (ii) make the infrastructure become—
 - (A) a potential cause of bush fire, or
 - (B) a potential risk to public safety, or
 - (b) structures or things could—
 - (i) cause interference to radio frequency transmissions to or from the Authority's or the ETNO's telecommunications infrastructure, or
 - (ii) obstruct transmission paths to or from the infrastructure.
- (2) The Authority or the ETNO may serve a written notice on the owner of the structure or thing requiring the owner to modify or remove the structure or thing.
- (3) The cost of work carried out in accordance with a requirement in the written notice is to be paid by the person served with the notice.
- (4) The Authority or the ETNO may, in an emergency, modify or remove the structure or thing itself, instead of serving a written notice.
- (5) The written notice—
 - (a) must specify the work to be carried out, and
 - (b) must specify a reasonable time within which the work must be carried out, and
 - (c) may require that vegetation near the structure or thing is managed in accordance with the *Standards for Asset Protection Zones* published on the website of the NSW Rural Fire Service from time to time.
- (6) If the owner fails to carry out the work as required by the notice, the Authority or the ETNO may carry out the work.
- (7) The Authority or the ETNO may apply for an injunction to prevent a structure or thing being placed in, on or near the Authority's or the ETNO's telecommunications infrastructure.

34F Recovery of costs of removing obstructions of telecommunications infrastructure

- (1) The following costs (the *recoverable costs*) may be recovered by the Authority or an ETNO, as appropriate, in a court of competent jurisdiction as a debt owed to the Authority or the ETNO by the owner of the structure or thing—

- (a) the costs of carrying out work after serving a notice under section 34E(2),
 - (b) the costs of repairing damage done to the Authority's or the ETNO's telecommunications infrastructure by the structure or thing.
- (2) The Authority or the ETNO may take action under this section even if the person having control of the structure or thing owns or occupies the land in, on or over which the Authority's or the ETNO's telecommunications infrastructure is situated.
- (3) The Authority or the ETNO is not authorised to recover recoverable costs from a person referred to in subsection (2) if the structure or thing was lawfully in place—
 - (a) before the installation of the telecommunications infrastructure, or
 - (b) with the agreement of the Authority or the ETNO.
- (4) If subsection (3) applies—
 - (a) the recoverable costs are to be paid by the Authority or the ETNO, and
 - (b) the Authority or the ETNO is liable to the owner of the structure or thing for any loss or damage suffered by the owner as a consequence of the work referred to in section 34E(6).

34G Excavation work affecting telecommunications infrastructure

- (1) This section applies if the Authority or an ETNO reasonably believes that the carrying out, or proposed carrying out, of excavation work in, on or near the Authority's or the ETNO's telecommunications infrastructure could—
 - (a) destroy, damage or interfere with the infrastructure, or
 - (b) make the infrastructure become—
 - (i) a potential cause of bush fire, or
 - (ii) a potential risk to public safety.
- (2) The Authority or the ETNO may serve a written notice on the person carrying out or proposing to carry out the excavation work requiring the person—
 - (a) to modify the excavation work, or
 - (b) not to carry out the excavation work, if the Authority or the ETNO reasonably believes that modifying the excavation work will not be effective in—
 - (i) preventing the destruction or damage of, or interference with, the telecommunications infrastructure, or
 - (ii) preventing the infrastructure becoming a potential cause of bush fire or a potential risk to public safety.
- (3) The notice must specify the excavation work to be modified or not carried out.
- (4) The Authority or the ETNO may recover the following costs in a court of competent jurisdiction as a debt owed to the Authority or the ETNO by the person who carried out excavation work the subject of the notice other than in accordance with the notice—
 - (a) the costs incurred in replacing the telecommunications infrastructure destroyed by the excavation work,
 - (b) the costs incurred in repairing damage to the telecommunications infrastructure caused by the excavation work,

- (c) the costs incurred in remedying or mitigating interference with the telecommunications infrastructure caused by the excavation work.
- (5) The Authority or an ETNO may apply for an injunction to prevent the carrying out of excavation work in, on or near the Authority's or the ETNO's telecommunications infrastructure.
- (6) The Authority or an ETNO may take action under this section even if the person carrying out the excavation work owns or occupies the land in, on or over which the telecommunications infrastructure is situated.

Division 3 Powers of entry relating to telecommunications infrastructure

34H Powers of entry

- (1) An authorised officer may enter premises for the purpose of exercising a function conferred or imposed on the Authority or an ETNO under this or another Act or law, including—
 - (a) carrying out preliminary investigations in connection with the proposed installation or extension of telecommunications infrastructure, or
 - (b) installing, extending, maintaining, repairing or removing telecommunications infrastructure, or
 - (c) ascertaining whether an offence against this Act or the regulations has been committed, or
 - (d) inspecting or disconnecting telecommunications infrastructure that the Authority or the ETNO is required or permitted to inspect or disconnect under this or another Act or law, or
 - (e) exercising a function conferred on the Authority or the ETNO under Division 2.
- (2) An authorised officer may, with necessary vehicles, plant and equipment, enter public or private premises, including adjacent and connecting premises, for the following operational purposes relating to telecommunications infrastructure—
 - (a) inspection,
 - (b) installation,
 - (c) maintenance, including generator refuelling,
 - (d) repair,
 - (e) decommissioning,
 - (f) another purpose prescribed by the regulations.
- (3) An authorised officer may only exercise a power of entry under this section—
 - (a) during daylight hours, or
 - (b) in an emergency—at any time.

34I Notice of entry

- (1) Before an authorised officer exercises a power of entry under this Division, the Authority or an ETNO must give the owner or occupier of the premises written notice of the intention to enter the premises.
- (2) The notice must—
 - (a) state the purpose for which the power is to be exercised, and

- (b) specify the day on which the authorised officer intends to enter the premises, and
 - (c) be given to the owner or occupier of the premises before that day.
- (3) Notice is not required to be given to the owner or occupier of the premises if—
- (a) the owner or occupier consents to the entry, or
 - (b) entry is required for an emergency.

34J Certificates of authority to enter premises

- (1) A power of entry under this Division may not be exercised by an authorised officer unless the authorised officer—
- (a) has a certificate of authority issued by the Authority or an ETNO, and
 - (b) produces the certificate if requested by the owner or occupier of the premises.
- (2) The certificate of authority must—
- (a) state that the certificate is issued under this Act, and
 - (b) state the name of the person to whom the certificate is issued, and
 - (c) describe the nature of the powers conferred on the person and the source of the powers, and
 - (d) state the date, if any, on which the certificate expires, and
 - (e) describe the kind of premises to which the power extends, and
 - (f) be issued under the authority of—
 - (i) for an authorised officer for the Authority—the Managing Director, or
 - (ii) for an authorised officer for an ETNO—the principal officer of the ETNO.

34K Use of force

- (1) An authorised officer may use reasonable force for the purpose of gaining entry to premises, other than part of a building being used for residential purposes, under a power conferred by this Division.
- (2) Reasonable force may only be used with the written approval of the Authority or an ETNO.
- (3) The approval must—
- (a) be given in relation to the particular entry, and
 - (b) specify the circumstances that must exist before reasonable force may be used.

34L Notification of use of force or urgent entry

- (1) An authorised officer must promptly advise the Authority or the ETNO if the authorised officer—
- (a) uses force for the purpose of gaining entry to premises, or
 - (b) enters premises in an emergency without giving written notice to the owner or occupier of the premises.
- (2) Following entry under subsection (1), the Authority or the ETNO must give notice of the entry to the person who appears to the Authority or the ETNO to be appropriate in the circumstances.

34M Care to be taken

- (1) In the exercise of a power under this Division, an authorised officer must do as little damage as possible.
- (2) As far as practicable, entry onto fenced land must—
 - (a) be made through an existing opening in the enclosing fence, or
 - (b) if entry through an existing opening is not practicable—through a new opening.
- (3) A new opening made under this section must be properly closed when the need for entry ends.
- (4) If, in the exercise of a power under this Division, a pit, trench, hole or bore is made, the Authority or the ETNO must, if the owner or occupier of the land requires—
 - (a) fence the pit, trench, hole or bore, and
 - (b) keep the pit, trench, hole or bore securely fenced for as long as it remains open or not sufficiently sloped down, and
 - (c) without unnecessary delay, fill up, level or sufficiently slope down the pit, trench, hole or bore.

34N Recovery of cost of entry and inspection

- (1) This section applies if an authorised officer enters premises to carry out an inspection and, as a result of the inspection, the Authority or an ETNO requires work to be carried out on the premises.
- (2) The Authority or the ETNO may recover the reasonable costs of the entry and inspection from the owner or occupier of the premises.

34O Compensation

- (1) The Authority or an ETNO must pay compensation to the owner or occupier of premises over which a power has been exercised under this Division for loss or damage arising from the exercise of the power.
- (2) However, the Authority or the ETNO is not liable to the extent to which the loss or damage arises from work done for the purposes of an inspection which reveals there has been a contravention by the owner or occupier of a provision of this Act or the regulations.

34P Entry to residential premises

A power of entry under this Division is not exercisable in relation to a part of a building used for residential purposes except—

- (a) with the consent of the occupier of that part of the premises, or
- (b) under the authority conferred by a warrant of entry issued under section 34Q.

34Q Warrants of entry

- (1) The Authority or an ETNO may apply to an issuing officer if the Authority or the ETNO reasonably believes that it is necessary for an authorised officer to enter and inspect premises, including a building used for residential purposes, for the purposes of this Act.
- (2) An issuing officer to whom the application is made may, if satisfied there are reasonable grounds for doing so, issue a warrant of entry authorising an

authorised officer named in the warrant to enter and inspect the premises for the purposes of this Act.

- (3) The *Law Enforcement (Powers and Responsibilities) Act 2002*, Part 5, Division 4 applies to a warrant of entry under this section in the same way it applies to a search warrant under that Act.
- (4) In this section—
issuing officer means an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

[5] Sections 43A and 43B

Insert after section 43—

43A Authorised officers

- (1) The Authority or an ETNO may appoint authorised officers for the purposes of this Act.
- (2) An authorised officer has the functions specified in this Act, including the following—
 - (a) to carry out inspections in connection with the proposed installation or extension of telecommunications equipment and infrastructure,
 - (b) to install, extend, inspect, maintain, repair and disconnect telecommunications equipment and infrastructure,
 - (c) to investigate compliance with the requirements imposed by or under this Act.

43B Obstruction or impersonation of authorised officers

A person must not—

- (a) prevent an authorised officer from exercising a function conferred or imposed on the authorised officer under this Act, or
- (b) hinder or obstruct an authorised officer in the exercise of a function, or
- (c) impersonate an authorised officer.

Maximum penalty—

- (a) for a corporation—200 penalty units, or
- (b) otherwise—50 penalty units.

Schedule 2 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Schedule 2 Search warrants under other Acts

Insert in alphabetical order—

Government Telecommunications Act 2018, section 34Q