

# Government Telecommunications Act 2018 No 67

[2018-67]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

### Responsible Minister

- Minister for Customer Service and Digital Government

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Government Telecommunications Act 2018 No 67



New South Wales

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# Government Telecommunications Act 2018 No 67



New South Wales

An Act to establish and maintain a Government telecommunications network; to constitute the New South Wales Government Telecommunications Authority to manage and operate that network; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Government Telecommunications Act 2018*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Definitions

(1) In this Act—

**Advisory Board** means the Government Telecommunications Authority Advisory Board established by section 10.

**alternative telecommunications network** means a telecommunications network authorised under section 17.

**authorised officer** means an authorised officer appointed under section 43A.

**Authority** means the New South Wales Government Telecommunications Authority constituted by section 4.

**corporate plan** means the corporate plan for the Authority prepared under section 7.

**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.

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

**government sector agency** has the same meaning as in the [Government Sector Employment Act 2013](#) and includes any public or local authority prescribed by the regulations.

**Government telecommunications network** means the telecommunications network owned or operated by the Authority to facilitate operational communications of government sector agencies, and includes the lines, equipment and other infrastructure used, or intended for use, in that network.

**Managing Director** means the person employed in the Public Service as the Managing Director of the Authority.

**operational communications** means communications to facilitate the exercise of functions by a government sector agency—

(a) in connection with preventing, preparing for, responding to or recovering from, an emergency, public safety incident or other incident posing a risk of harm to any person or property (including training activities in relation to the exercise of those functions), and

(b) in relation to the NSW Police Force—in connection with law enforcement and compliance,

but does not include communications of a kind prescribed by the regulations.

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

**property** includes land.

**Property and Infrastructure Management Strategy** means the strategy approved by the Minister under section 8.

**telecommunications network** means a radiocommunications network or mobile broadband network.

**tree**, for Part 5A—see section 34B.

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

(2) Notes included in this Act do not form part of this Act.

## Part 2 New South Wales Government Telecommunications Authority

### 4 Constitution of New South Wales Government Telecommunications Authority

- (1) There is constituted by this Act a body corporate with the corporate name of the New South Wales Government Telecommunications Authority.
- (2) The Authority may also be called the NSW Telco Authority and the use of that name has the same effect for all purposes as the use of its corporate name.
- (3) The Authority is a NSW Government agency.
- (4) The Authority is, in the exercise of its functions, subject to the control and direction of the Minister.

### 5 Functions of Authority

The Authority has the following functions—

- (a) to identify, develop and deliver upgrades and enhancements to the Government telecommunications network to improve operational communications for government sector agencies,
- (b) to develop policies, standards and guidelines for operational communications using telecommunications networks,
- (c) to facilitate, manage and administer applications on behalf of government sector agencies to the Australian Communications and Media Authority for, or in relation to, spectrum licences under the *Radiocommunications Act 1992* of the Commonwealth and, at the request of an agency, to manage and hold spectrum licences on behalf of the agency,
- (d) to co-ordinate the provision of telecommunications services, being a functional area within the meaning of the *State Emergency and Rescue Management Act 1989*, as required in accordance with that Act,

**Note—**

A functional area, within the meaning of the *State Emergency and Rescue Management Act 1989*, means a category of services involved in the prevention of, preparation for, responses to or recovery from an emergency.

- (e) to acquire or dispose of infrastructure and other facilities for or in connection with the exercise of its functions,
- (f) to ensure the Government telecommunications network is utilised to the best commercial advantage,
- (g) to do anything supplementary or incidental to the exercise of its functions and, in particular, to the control, management and operation of the Government



telecommunications network,

(h) any other functions conferred or imposed on it by or under this Act or another Act.

**Note—**

The Authority has functions conferred or imposed under other provisions of this Act, including sections 15 (Authority to establish, maintain and operate Government telecommunications network) and 22 (Authority may enter into agreements for use of Government telecommunications network (other than government sector agencies)).

## **6 Managing Director**

- (1) The Managing Director is responsible for managing and controlling the activities of the Authority, subject to its corporate plan and any directions of the Minister under this Act.
- (2) Any act, matter or thing done in the name of, or on behalf of, the Authority by the Managing Director is taken to have been done by the Authority.

## **7 Corporate plan**

- (1) The Authority is required to prepare and deliver to the Minister, at least 3 months before the beginning of each financial year, a draft corporate plan for the financial year.
- (2) The Authority must—
  - (a) consider any comments on the draft corporate plan made by the Minister within 2 months after delivery of the plan to the Minister, and
  - (b) deliver the completed corporate plan to the Minister before the beginning of the financial year concerned.
- (3) The corporate plan must specify—
  - (a) the objectives of the activities of the Authority for the financial year concerned and for future financial years, and
  - (b) the strategies, policies and budgets for achieving those objectives, and
  - (c) targets and criteria for assessing the Authority's performance.
- (4) The Authority is, as far as practicable, to exercise its functions in accordance with its corporate plan.
- (5) This section is subject to the requirements of any directions of the Minister.

## **8 Property and Infrastructure Management Strategy**

- (1) The Authority is, at the request of the Minister, to prepare and submit for the Minister's approval a strategy outlining the way in which the Authority is to manage

infrastructure and property matters in connection with the exercise of its functions.

- (2) The Property and Infrastructure Management Strategy must, without limiting any other matter that may be required to be included by the Minister, make provision for or with respect to—
  - (a) the way in which the Authority is to negotiate with government sector agencies and other persons in relation to the acquisition or use of, or access to, infrastructure and property by the Authority, and
  - (b) the making of transfer orders under section 28.
- (3) The Authority must comply with the Property and Infrastructure Management Strategy as approved by the Minister.
- (4) The Authority may, with the approval of the Minister, amend or replace the Property and Infrastructure Management Strategy.

## **9 Employment of staff**

Persons may be employed in the Public Service under the [Government Sector Employment Act 2013](#) to enable the Authority to exercise its functions.

### **Note—**

Section 59 of the [Government Sector Employment Act 2013](#) provides that the persons so employed (or whose services the Authority makes use of) may be referred to as officers or employees, or members of staff, of the Authority. Section 47A of the [Constitution Act 1902](#) precludes the Authority from employing staff unless expressly authorised by legislation.

## **Part 3 New South Wales Government Telecommunications Authority Advisory Board**

### **10 Establishment of Advisory Board**

The New South Wales Government Telecommunications Authority Advisory Board is established.

### **11 Function of Advisory Board**

The function of the Advisory Board is to advise the Authority and the Minister on any matter relating to the telecommunications requirements of government sector agencies and on any other matter relating to the functions of the Authority.

### **12 Charter of Advisory Board**

- (1) The Advisory Board is, at its first meeting, to create a charter with respect to the procedure of the Advisory Board.
- (2) The charter may, subject to this Act and the regulations, make provision for or with respect to the following—

- (a) the deputies for appointed members,
- (b) the procedure of the Advisory Board,
- (c) quorum for meetings,
- (d) the presiding member at meetings of the Advisory Board,
- (e) any other matter relating to the conduct of the business of the Advisory Board.

### 13 Membership of Advisory Board

- (1) The members of the Advisory Board are—
  - (a) the Managing Director, and
  - (b) the following members appointed by the Governor (**appointed members**)—
    - (i) a person nominated by the Minister administering the *Police Act 1990*,
    - (ii) a person nominated by the Minister administering the *State Emergency and Rescue Management Act 1989*,
    - (iii) at least 6 (but not more than 8) persons nominated by the Minister who, in the opinion of the Minister, together have the skills, experience and expertise that are appropriate to enable the Advisory Board to exercise its function.
- (2) **Terms of office for appointed members** An appointed member of the Advisory Board holds office for such period (not exceeding 5 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (3) **Remuneration** An appointed member is entitled to be paid the remuneration (including travelling and subsistence allowances) the Minister determines from time to time in respect of the member.
- (4) **Vacancy in office of appointed member** The office of an appointed member becomes vacant if the member—
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Governor, or
  - (d) is removed from office by the Governor under this section, or
  - (e) is absent from 4 consecutive meetings of the Advisory Board of which reasonable notice has been given to the member, except on leave granted by the Advisory Board or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Advisory Board for having been absent from those

meetings, or

- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (g) becomes a mentally incapacitated person, or
- (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(5) The Governor may remove an appointed member from office at any time.

(6) **Filling of vacancy in office of appointed member** If the office of any appointed member becomes vacant a person is, subject to this Act, to be appointed to fill the vacancy.

(7) **Effect of certain other Acts** The provisions of the [Government Sector Employment Act 2013](#) relating to the employment of Public Service employees do not apply to an appointed member.

(8) If by or under any Act provision is made—

- (a) requiring a person who is the holder of a specified office to devote the whole of the person's time to the duties of that office, or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of an appointed member or from accepting and retaining any remuneration payable to the person under this Act as an appointed member.

#### **14 Disclosure of pecuniary interests by members**

(1) If—

- (a) a member of the Advisory Board has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Advisory Board, and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Advisory Board.

(2) A disclosure by a member at a meeting of the Advisory Board that the member—

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person that may arise after the date of the disclosure and that is required to be disclosed under subsection (1).

- (3) Particulars of any disclosure made under this section must be recorded by the Advisory Board in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Advisory Board.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Advisory Board otherwise determines—
  - (a) be present during any deliberation of the Advisory Board with respect to the matter, or
  - (b) take part in any decision of the Advisory Board with respect to the matter.
- (5) For the purposes of the making of a determination by the Advisory Board under subsection (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not—
  - (a) be present during any deliberation of the Advisory Board for the purpose of making the determination, or
  - (b) take part in the making by the Advisory Board of the determination.
- (6) A contravention of this section does not invalidate any decision of the Advisory Board.

## **Part 4 Government telecommunications network**

### **15 Authority to establish, maintain and operate Government telecommunications network**

- (1) The Authority is responsible for the establishment, control, management, maintenance and operation of the Government telecommunications network.
- (2) The Authority may, in accordance with the Property and Infrastructure Management Strategy, enter into an agreement with any person or body for or with respect to the establishment, control, management, maintenance and operation of the Government telecommunications network.

## **16 Government sector agencies to use Government telecommunications network**

- (1) Government sector agencies are required to use the Government telecommunications network for operational communications requiring the use of a telecommunications network.
- (2) Despite subsection (1), a government sector agency is not required to use the Government telecommunications network for operational communications if—
  - (a) the Minister has authorised the use of an alternative telecommunications network for operational communications and the network is used for that purpose in accordance with any conditions specified in that authorisation, or
  - (b) the agency is authorised under this Act or another Act or law to establish or operate a telecommunications network, however described, and has advised the Authority of the establishment or operation of that network, or
  - (c) the agency has established a telecommunications network for purposes other than operational communications, and the use of the network for operational communications is ancillary to the primary purpose of that network.

## **17 Minister may authorise alternative telecommunications networks**

- (1) The Minister may authorise a government sector agency to establish or use an alternative telecommunications network for operational communications if the Minister is satisfied that—
  - (a) the Government telecommunications network is not available to the agency due to geographical or technological limitations, or
  - (b) the government sector agency has a need to establish local telecommunications networks for short periods for events or recurring circumstances or situations, or
  - (c) the total cost of the alternative telecommunications network will not exceed \$500,000, or
  - (d) the alternative telecommunications network is for an event or circumstance, or class of events or circumstances, prescribed by the regulations.
- (2) In authorising the establishment or use of an alternative telecommunications network, the Minister may impose the conditions the Minister considers appropriate.
- (3) A government sector agency must, before asking the Minister to authorise the establishment or use of an alternative telecommunications network, consult with the Authority to ensure the proposed alternative telecommunications network will not interfere with, or otherwise affect the operation of, the Government telecommunications network.

- (4) A request by a government sector agency that the Minister authorise the establishment or use of an alternative telecommunications network must be in the form approved by the Minister and must contain the information the Minister requires.
- (5) Before authorising the establishment or use of an alternative telecommunications network, the Minister is to consult with the Authority and any other person the Minister thinks fit in relation to the proposed alternative telecommunications network, the purposes for which it may be used and conditions to which the authorisation should be subject.
- (6) It is a condition of an authorisation granted to a government sector agency under this section that the government sector agency must not cause or permit an upgrade, expansion or other enhancement to an alternative telecommunications network unless—
  - (a) the upgrade, expansion or other enhancement is permitted in accordance with the terms of the authorisation, or
  - (b) a request is made to the Minister to authorise the upgrade, expansion or other enhancement and the request is approved by the Minister.
- (7) If a request is made to upgrade, expand or otherwise enhance an alternative telecommunications network, the Minister is to consider the request, and this section applies in relation to the request, as if it were a request to approve an alternative telecommunications network comprising the existing alternative telecommunications network together with the proposed upgrade, expansion or other enhancement.

#### **18 Authority may enter into agreements with third parties for use of infrastructure**

The Authority may, for or in connection with the operation of the Government telecommunications network, enter into an agreement with any person (including a government sector agency) for the use of infrastructure or other facilities owned or operated by that person.

#### **19 Authority may remove or relocate any part of Government telecommunications network infrastructure**

The Authority may relocate, remove, disconnect, transfer or reconnect any part of the infrastructure of the Government telecommunications network if the Authority is satisfied—

- (a) the relocation, removal, disconnection, transfer or reconnection is required for the efficient and economical operation of that network, and
- (b) the infrastructure is not required to be maintained under a contract or arrangement with a government sector agency.

## **20 Government sector agencies not to alter Government telecommunications network**

A government sector agency must not alter, move, replace, add to or otherwise interfere with infrastructure comprising part of the Government telecommunications network without the written consent of the Authority.

## **21 Authority may charge for use of Government telecommunications network**

- (1) Government sector agencies that use the Government telecommunications network are required to pay to the Authority the charges determined by the Authority.
- (2) The Authority must prepare and publish, in a manner approved by the Minister, a document outlining the basis on which the Authority will determine charges payable under this section.
- (3) The charges must not exceed the maximum charges fixed by the Minister with the approval of the Treasurer.

## **22 Authority may enter into agreements for use of Government telecommunications network**

- (1) The Authority may enter into an agreement with any person or body (other than a government sector agency) for or with respect to the use by that person or body of any part of the Government telecommunications network.
- (2) The Authority must not enter into an agreement under this section unless the Authority is satisfied the use of the Government telecommunications network under the agreement (having regard to any other agreements that may also have been entered into) will not prevent or interfere with the use of the network by a government sector agency.
- (3) The power of the Authority under this section is subject to the requirements of the [Telecommunications Act 1997](#) of the Commonwealth relating to the rights of carriers licensed under that Act.

## **23 Offences relating to damage to Government telecommunications network**

- (1) A person is guilty of an offence if—
  - (a) the person intentionally or recklessly damages or interferes with the whole or part of the Government telecommunications network, and
  - (b) the damage or interference is not trivial or negligible.

Maximum penalty—

- (a) in the case of an individual—200 penalty units, and
- (b) in the case of a corporation—400 penalty units.



- (2) A person is guilty of an offence if the person damages or interferes with the whole or part of the Government telecommunications network.

Maximum penalty—

- (a) in the case of an individual—20 penalty units, and
  - (b) in the case of a corporation—40 penalty units.
- (3) If, in proceedings for an offence under subsection (1), the court is not satisfied the accused is guilty of an offence under that subsection, but is satisfied the accused is guilty of an offence under subsection (2), the court may find the accused not guilty of the offence charged but guilty of an offence under subsection (2).

#### **24 Compensation for damage to property—where person convicted of offence**

- (1) This section applies if a court convicts a person of an offence under section 23.
- (2) The court may order the offender to pay the following to the Authority—
  - (a) if it appears to the court that the Authority has suffered loss or damage—an amount specified in the order as compensation for the loss or damage,
  - (b) if it appears to the court that the Authority incurred costs and expenses in preventing or mitigating loss or damage, or attempting to do so—an amount specified in the order as compensation for the costs and expenses incurred.
- (3) A court may not make an order under subsection (2) for the payment of an amount that exceeds the amount for which an order may be made by the court when exercising jurisdiction under the [Civil Procedure Act 2005](#).
- (4) An order made by the court is enforceable as if it were an order made by the court when exercising jurisdiction under that Act.
- (5) An order may be made under this section in addition to any penalty that may be imposed or any other action that may be taken in relation to the offence concerned.

#### **25 Compensation for damage to property—where no person convicted of offence**

- (1) Without limiting section 23, a person who, without the consent of the Authority, carries out an activity that causes damage to, or interferes with, the whole or part of the Government telecommunications network in circumstances in which the person should have known that the damage or interference would result from the carrying out of the activity, is liable to compensate the Authority for all loss or damage suffered by the Authority as a result.
- (2) The Authority is entitled to compensation under this section whether or not a person has been convicted of an offence in relation to the activity that caused damage to, or interfered with, the whole or part of the Government telecommunications network.

- (3) The Authority is not entitled to compensation both under this section and another provision of this Act for the same damage or interference.
- (4) A reference in this section to a person extends to any person—
  - (a) who caused the carrying out of the activity, or
  - (b) who ordered or directed that the activity be carried out, or
  - (c) who aided, assisted, counselled or procured the carrying out of the activity.
- (5) The Authority may proceed against a person for recovery of its loss or compensation for its damage under this section whether or not the Authority has proceeded against the person principally responsible for the loss or damage or any other person involved in the carrying out of the activity that caused the loss or damage.

## **Part 5 Consolidation of infrastructure into Government telecommunications network**

### **Division 1 Acquisition of infrastructure by Authority**

#### **26 Authority may enter into agreements relating to infrastructure**

- (1) The Authority may, in accordance with the Property and Infrastructure Management Strategy and in connection with the exercise of its functions, enter into an agreement with a person or body for or with respect to the following—
  - (a) the acquisition, installation or use of infrastructure,
  - (b) the acquisition or use of property (including land).
- (2) Without limiting subsection (1), the Authority may enter into agreements to enable the Authority to access infrastructure located on the land of another person.
- (3) The Authority may, at the request of the owner of land on which infrastructure owned by the Authority is located, enter into agreements for or with respect to the relocation of that infrastructure.
- (4) An agreement referred to in subsection (3) may require the land owner to pay the whole or part of the reasonable costs incurred by the Authority in connection with the relocation of the infrastructure.

#### **27 Acquisition of land and construction of works by Authority**

- (1) The Authority may, for the purposes of the Government telecommunications network, acquire land (including an interest in land) by agreement or, if there is no agreement, by compulsory process in accordance with the [Land Acquisition \(Just Terms Compensation\) Act 1991](#).

- (2) For the purposes of the *Public Works and Procurement Act 1912*, the acquisition is taken to be for an authorised work and the Authority is, in relation to the work, taken to be the Constructing Authority within the meaning of that Act.
- (3) Sections 34, 35, 36 and 37 of the *Public Works and Procurement Act 1912* do not apply to the construction of works under this Act.

## **Division 2 Minister may order transfer of telecommunications network infrastructure of government sector agencies**

### **28 Minister may order transfer of government sector agency's infrastructure to Authority**

- (1) The Minister may, by written order (a **transfer order**), transfer ownership of, or an interest in, the infrastructure of a telecommunications network of a government sector agency to the Authority.
- (2) When the transfer order takes effect, the infrastructure becomes the property of the Authority.
- (3) In this Division, a reference to infrastructure of a telecommunications network includes a reference to infrastructure of the government sector agency that has been disconnected by the government sector agency from its telecommunications network.

### **29 Transfer orders**

- (1) A transfer order is to describe the telecommunications network infrastructure that is to be transferred.
- (2) Infrastructure may be described by reference to one or more of the following—
  - (a) the government sector agency having an interest in the infrastructure,
  - (b) the location of the infrastructure or the area of the telecommunications network of which the infrastructure is part,
  - (c) the kind of telecommunications for which the infrastructure is used.
- (3) A transfer order may make provision with respect to the transfer of the following—
  - (a) the infrastructure of more than one government sector agency,
  - (b) part of an item of any infrastructure of a government sector agency,
  - (c) access rights relating to the infrastructure that is transferred.
- (4) The Authority is required to maintain a register of transfer orders and make that register available for inspection by any government sector agency or other person affected by a transfer order.

### **30 Authorised alternative telecommunications networks exempt from transfer order**

The Minister may not make a transfer order in relation to any infrastructure owned by a government sector agency if the infrastructure is used by the agency for a telecommunications network that the agency is authorised under any other Act or law to operate.

### **31 Right of government sector agencies to use infrastructure**

If a transfer order is made in relation to the infrastructure of a government sector agency, the agency retains the right to use that infrastructure as part of an alternative telecommunications network, but only if—

- (a) the transfer order provides for that use, or
- (b) the Authority or the Minister approves that use.

**Note—**

Section 16 requires government sector agencies to use the Government telecommunications network, rather than the agency's own telecommunications network, for operational communications.

### **32 Compensation for infrastructure subject to transfer order**

- (1) Compensation is not payable to a government sector agency for any infrastructure of a telecommunications network of the agency that is transferred to the Authority under this Division.
- (2) For the purposes of the financial accounts of the government sector agency and the audit of the accounts, any rights that the agency retains under section 31 may be treated by the agency as a non-capital asset equal in value to the value from time to time of the infrastructure transferred to the Authority. The valuation of the infrastructure is taken to have been made in accordance with current accounting standards and practices.

### **33 Existing interests in transferred infrastructure**

- (1) If infrastructure of a telecommunications network is transferred to the Authority under this Division, any charge or other interest in the infrastructure existing immediately before the transfer is, subject to the transfer order, extinguished.
- (2) Compensation is payable by the Authority to a person (other than a government sector agency) who had a charge or other interest in the infrastructure and who suffers any loss as a result of the extinguishing of the charge or interest.
- (3) If a government sector agency has an interest in infrastructure (other than infrastructure owned by the agency) that is subject to a transfer order, the interest is transferred to the Authority.

## **Division 3 Access to infrastructure where no access agreement**

### **34 Access to Authority's infrastructure**

- (1) This section applies in relation to land—
  - (a) on which infrastructure owned or operated by the Authority is located (and includes the land adjoining that land), and
  - (b) that is not subject to an agreement for access to the Authority's infrastructure.
- (2) The Authority or an authorised officer may enter and occupy land to which this section applies and any building on that land—
  - (a) at any time during daylight hours, and
  - (b) in the event of an emergency, at any time.
- (3) The power conferred by this section may be used only for the purpose of obtaining access to the Authority's infrastructure to carry out works in connection with the infrastructure.
- (4) The Authority must not exercise a power under this section unless—
  - (a) reasonable notice in writing of its intention to exercise the power has been given to the occupier of the land, or
  - (b) the Authority forms the opinion the giving of the notice would cause undue delay having regard to the urgency of the reason for exercising the power.
- (5) Nothing in this section authorises the Authority or an authorised officer—
  - (a) to enter or occupy any land or building unless it is reasonably necessary to do so for the purpose of accessing infrastructure owned or operated by the Authority, or
  - (b) to enter any part of a building that is used for residential purposes without the consent of the occupier, or
  - (c) to occupy a classified road within the meaning of the [Roads Act 1993](#) without the consent of Transport for NSW constituted under the [Transport Administration Act 1988](#) or the relevant roads authority.

### **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](#).

## **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*.

## **Part 6 Finance**

### **35 New South Wales Government Telecommunications Authority Fund**

- (1) There is established in the Special Deposits Account in the Treasury an account to be called the New South Wales Government Telecommunications Authority Fund.
- (2) There is payable into the Fund—

- (a) all money received by or on account of the Authority (including the charges for use of the Government telecommunications network), and
  - (b) all interest received in respect of the investment of money belonging to the Fund, and
  - (c) all money borrowed by the Authority or appropriated by Parliament for the purposes of the Authority, and
  - (d) all money directed to be paid into the Fund by this Act or another Act.
- (3) There is payable from the Fund—
- (a) all payments made on account of the Authority or otherwise required to meet the expenditure incurred in relation to the functions of the Authority (including costs incurred in the operation of the Government telecommunications network), and
  - (b) all money directed to be paid from the Fund by this Act or another Act.

### **36 Dividend contribution by Authority to Consolidated Fund**

- (1) The Authority is required to pay to the Treasurer for payment into the Consolidated Fund, by way of dividend contribution in respect of each financial year to which this section applies, the amount determined by the Treasurer.
- (2) The amount determined by the Treasurer may be based on the value of the Government telecommunications network, on the income derived by the Authority from the operation of that network or on any other basis the Treasurer considers appropriate.
- (3) The Treasurer must consult with the Minister and the Authority in connection with a determination to be made by the Treasurer under this section.
- (4) This section applies in respect of the financial years of the Authority determined by the Treasurer.
- (5) Nothing in this section affects section 5.4 (Payment of financial distributions to Treasurer) of the *Government Sector Finance Act 2018*.

### **37 Investment**

The Authority may invest money in the Fund—

- (a) if the Authority is a GSF agency for the purposes of Part 6 of the *Government Sector Finance Act 2018*—in a way that the Authority is permitted to invest money under that Part, or
- (b) if the Authority is not a GSF agency for the purposes of Part 6 of the *Government Sector Finance Act 2018*—in accordance with the *Trustee Act 1925* or in another way



approved by the Minister with the concurrence of the Treasurer.

## **Part 7 Miscellaneous**

### **38 Act to bind Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

### **39 Service of documents**

- (1) A document may be served on the Authority by any of the following methods—
  - (a) by post to the address specified by the Authority for the service of documents of that kind,
  - (b) by post to an office of the Authority or by leaving it at any such office with a person apparently over the age of 16 years,
  - (c) by email to an email address specified by the Authority for the service of documents of that kind,
  - (d) by any other method authorised by the regulations for the service of documents of that kind.
- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person or the Authority by any other method.
- (3) In this section, **serve** includes give or send.

### **40 Recovery of amounts due to the Authority**

Any charge, fee or other money due to the Authority may be recovered by the Authority as a debt in a court of competent jurisdiction.

### **41 Personal liability**

- (1) A matter or thing done or omitted to be done by the Managing Director, a member of the Advisory Board or a person acting under the direction of the Authority, the Managing Director, the Advisory Board or a member of the Advisory Board does not, if the matter or thing was done or omitted to be done in good faith for the purpose of exercising a function under this Act, subject the Managing Director, the member of the Advisory Board or person so acting personally to any action, liability, claim or demand.
- (2) However, the liability attaches instead to the Crown.

### **42 Telecommunications networks established by Police Force**

- (1) Despite section 16, the NSW Police Force is not required to use the Government

telecommunications network for or in respect of a telecommunications network for operational communications if—

- (a) the communications relate to a particular law enforcement activity or compliance operation, and
- (b) the police officer responsible for establishing the network is satisfied the operation or activity should utilise a temporary telecommunications network established solely for that purpose.

(2) A telecommunications network may be established under this section without—

- (a) advising the Authority, or
- (b) the consent of the Authority.

### **43 Nature of proceedings for offences**

Proceedings for an offence under this Act or the regulations may be dealt with summarily before the Local Court.

#### **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.

#### **44 Delegation**

- (1) The Minister may delegate the exercise of any function of the Minister under this Act (other than this power of delegation) to—
  - (a) the Authority, or
  - (b) any member of staff of the Authority, or
  - (c) any person, or any class of persons, authorised for the purposes of this section by the regulations.
- (2) Despite subsection (1), the Minister cannot delegate functions of the Minister under sections 8, 21 (3) and 28 (1).
- (3) The Authority may delegate the exercise of any function of the Authority under this Act (other than this power of delegation) to—
  - (a) any member of staff of the Authority, or
  - (b) any person, or any class of persons, authorised for the purposes of this section by the regulations.

#### **45 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

#### **46 (Repealed)**

### **Schedule 1 Savings, transitional and other provisions**

#### **Part 1 General**

##### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision—
  - (a) may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date, and
  - (b) has effect despite anything to the contrary in this Schedule.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.
- (4) Without limiting subclauses (1) and (2), regulations made for the purposes of this clause may amend this Schedule to provide for additional or different savings and transitional provisions instead of including the provisions in the regulations.

## **Part 2 Provisions consequent on enactment of this Act**

### **2 Definitions**

In this Part—

**former Act** means the *Government Telecommunications Act 1991* as in force immediately before its repeal.

### **3 The Authority continuation of former Authority**

The Authority is a continuation of, and is the same legal entity as, New South Wales Government Telecommunications Authority constituted by the former Act.

### **4 New South Wales Government Telecommunications Authority Fund continuation of former Fund**

The New South Wales Government Telecommunications Authority Fund is a continuation of the New South Wales Government Telecommunications Authority Fund established by the former Act.

## **Part 3**

### **5-7 (Repealed)**