

## CLAUSE NOTES

### National Broadband Network (Tasmania) Bill 2010

#### CLAUSE 1 – SHORT TITLE

This clause provides the short title to be used when citing the proposed Act for any legal purpose.

#### CLAUSE 2 – COMMENCEMENT

The proposed Act commences on the day it receives Royal Assent.

#### CLAUSE 3 – INTERPRETATION

This clause defines key terms used in the proposed Act, including 'adjoining land', 'authorised officer', 'install', 'installer' and 'owner', for the purposes of the Act.

It also defines 'cable work', 'connection cable' and 'project' for the purposes of the Act:

- 'cable work' means the installation and removal of the fibre optic cable (and associated infrastructure) that is attached from the distribution network to the premises and any other work necessary to carry out the installation or removal of the fibre optic cable. For example, pruning and removal of vegetation, shutting off or adjusting electricity or water supply, remediation works, or other works that may, from time to time, be contained in regulations.
- 'connection cable' means the fibre optic cable attached from the distribution network, as defined in clause 4, to the premises. It also includes other infrastructure necessary or incidental to the connection of that fibre optic cable.
- 'project' means the installation of fibre optic cable from the distribution network to the premises at the same time that the distribution network is being constructed in the area in which the premises, to which the fibre is being connected, is situated.

#### CLAUSE 4 – MEANING OF DISTRIBUTION NETWORK

This clause defines the term 'distribution network' as that infrastructure installed or constructed (either above or below ground) along any street, road, lane, thoroughfare, footpath, bridge, or place open to or used by the public, or to which the public have or are permitted to have access, for the purposes of delivering high speed broadband telecommunications services by means of fibre optic cable, to premises in the area in which the street, road, lane etc., is located.

#### CLAUSE 5 – ACT BINDS THE CROWN

This clause provides that the Act binds the Crown in Right of Tasmania.

## CLAUSE 6 – AUTHORITY OF AUTHORISED OFFICER

Clause 6 provides that a person authorised by the installer to carry out the installation of fibre optic cable and associated activities, for the purposes of the Act, has those powers provided to him or her by the Act and also those powers provided by the Act to installers.

## CLAUSE 7 – AUTHORISED OFFICER TO HAVE IDENTITY CARD

This clause requires that the installer, or the installer's agent or sub-contractor, must provide an identity card to each individual authorised by the installer to carry out the installation of fibre optic cable and associated activities.

It also establishes the specification for the identity card, and requires that a person must return the identity card to the card issuer within 21 days of ceasing to be a person authorised to carry out the installation of fibre optic cable and associated activities, for the purposes of the Act.

## CLAUSE 8 – PRODUCTION OF IDENTITY CARD

This clause requires that a person authorised by the installer to carry out the installation of fibre optic cable and associated activities must show the identity card, specified in clause 7, if requested by an owner or occupier of premises.

The clause forbids a person from continuing to carry out the installation of fibre optic cable and associated activities under this Act, until he or she has complied with a request to produce the identity card.

## CLAUSE 9 – OFFENCES IN RELATION TO AUTHORISED OFFICER, &C.

This clause establishes a number of offences in relation to persons authorised to carry out the installation of fibre optic cable and associated activities, and those accompanying or assisting the person so authorised.

Offences include obstructing or refusing entry to land of those authorised persons and threatening or assaulting those persons.

The clause also establishes a process by which a court, in determining that an offence has been committed, may make an order that allows persons authorised to carry out the installation of fibre optic cable and associated activities and persons accompanying them, to enter or remain on land or require that an offender not obstruct, hinder, assault, etc. those persons.

The clause also makes it an offence to impersonate a person authorised to carry out the installation of fibre optic cable and associated activities.

## CLAUSE 10 – NOTICE OF INTENTION TO INSTALL CONNECTION CABLE

This clause establishes a requirement that an installer, who wishes to undertake the installation of fibre optic cable and associated infrastructure from the distribution network to premises, pursuant to this Act, must provide a notice to the owner or owners of the premises of that intention.

The clause sets out the requirements as to the form of the notice and how it is to be given, including that it must be made in writing and must indicate the process and timing (being not less than 28 days) by which an owner may elect not to have an installation proceed and provides the owner with an invitation to comment on the route of the fibre optic cable and placement of the associated infrastructure.

## CLAUSE 11 – NOTICE TO OWNER OF ADJOINING LAND

This clause establishes a requirement that, where an installer intends to pass fibre optic cable either over or under land belonging to a third party, in order for it to be connected to a premises, the installer must provide a notice to the owner or owners of the land of that intention. A notice of intention may be served on the owners of one or more pieces of land.

The clause sets out the requirements as to the form of the notice and how it is to be given, including that it must be made in writing, must indicate the process and timing (being not less than 28 days) by which an owner of the other land may elect not to have the fibre optic cable traverse his or her land and provide the owner of land with an invitation to comment on the route of the fibre optic cable.

## CLAUSE 12 – ELECTION NOT TO HAVE CONNECTION CABLE INSTALLED OR PASS OVER OR UNDER ADJOINING LAND

This clause provides the owner of premises who has received a notice informing him or her of the intention of the installer to install fibre optic cable and associated infrastructure to his or her premises, with the right to inform the installer that he or she does not wish to have the fibre optic cable and associated infrastructure installed.

It also allows the owner of any other land that the installer intends the fibre optic cable to traverse in order to connect up premises, to inform the installer that he or she does not wish to have the fibre optic cable traverse his or her land.

The rights of an owner of premises or of land set out in this clause extend to any person to whom ownership of the premises or the land has been transferred after the installer has provided a notice to the original owner.

Information provided to the installer pursuant to this clause must be in writing; provided within the time specified in the notice provided by the installer; and delivered in the manner specified in the notice from the installer.

## CLAUSE 13 – EFFECT OF ELECTION NOT TO HAVE CONNECTION CABLE INSTALLED

This clause provides that the installer cannot install fibre optic cable to premises where the owner of premises, or any person to whom the ownership of the premises has been transferred, has informed the installer that they do not wish to have that fibre optic cable installed, pursuant to clause 12.

This clause also provides that where the owner of premises has informed the installer that he or she does not wish to have the fibre optic cable installed, and ownership of the premises is transferred to a new owner, the installer cannot install the optic fibre to the premises unless the new owner informs the installer, in writing, that he or she now wishes the fibre optic cable to be installed and the installer agrees to proceeding with the installation.

## CLAUSE 14 – EFFECT OF ELECTION NOT TO HAVE CONNECTION CABLE PASS OVER OR UNDER ADJOINING LAND

This clause provides that the installer cannot install fibre optic cable over or under the land of a third party, for the purposes of attaching it to premises, where the owner of that land has informed the installer that they do not wish to have that fibre optic cable installed, pursuant to clause 12.

The election of a land owner is binding on any person to whom the property is subsequently transferred, unless the subsequent owner notifies the installer, in writing, that he or she consent to the installation proceeding.

In such circumstances the installer may either:

- proceed to install fibre optic cable over or under any other land on which the installer has previously served a notice, pursuant to clause 11, where it has the consent of the owner of that land; or
- decide not to install fibre optic cable.

Where the owner of premises to which the fibre optic cable is to be attached is taken to have consented, for the purposes of this Act, to fibre optic cable being attached to the premises but the installer subsequently decides not to proceed with installation, the installer must notify the owner of premises of that fact.

## CLAUSE 15 – EFFECT OF NO ELECTION UNDER SECTION 12

This clause provides that where an installer has informed an owner of premises that they intend attaching fibre optic cable and associated infrastructure to premises, and the owner has not informed the installer that he or she does not wish to have the fibre optic cable so installed, then the owner of premises, or any subsequent person to whom ownership has been transferred, is taken to have agreed to installation of the fibre optic cable to the premises.

The clause also provides that where an installer has informed the owner of any other land that fibre optic cable may need to traverse in order to reach the premises, that it intends passing a cable over or under that land, and the owner of that land has not informed the installer that he or she does not wish the fibre optic cable to traverse his or her land then the owner of that land, or any subsequent person to whom ownership has been transferred, is taken to have agreed to installation of the fibre optic cable and associated infrastructure.

Where the installer, after taking all reasonable steps, has been unable to identify the owner of premises to which fibre optic cable is to be attached, or the owner of other land that fibre optic cable may need to traverse in order to reach premises to which fibre optic cable is to be attached, then the owner is taken to have agreed to the installation of the fibre optic cable to those premises or over or under that other land.

Where, for the purposes of this clause, the owner of premises, or the owner of other land that fibre optic cable may need to pass over or under in order to reach premises, is taken to have agreed to installation of the fibre optic cable, the installer may proceed with the installation.

Installation should only commence once the installer has provided the occupier of the premises, and occupier of any other land that the fibre optic cable will traverse to reach those premises, with at least 10 days written notice of the date and approximate time of the installation.

A failure of the installer to provide that notice does not affect the power of the installer to install the fibre optic cable.

## CLAUSE 16 – EFFECT OF SUBMISSIONS AS TO THE INSTALLATION PLACE OR ROUTE OF CONNECTION CABLE

This clause provides that before connecting fibre optic cable to premises, or installing fibre optic cable over or under land through which the fibre optic cable will pass to reach those premises, the installer must take account of any preference the owner of premises or the owner of other land may have expressed regarding the placement and/or route of the fibre optic cable.

A failure by the installer to take account of any preference so expressed will not affect the power of the installer to install the fibre optic cable.

## CLAUSE 17 – OWNER MAY REQUIRE REMOVAL OF WRONGLY CONNECTED CONNECTION CABLE

This clause provides the owner of premises to which the fibre optic cable has been connected or owner of other land through which the fibre optic cable has passed to reach those premises, to require the installer to remove fibre optic cable installed in circumstances where:

- the installer was unable to serve a notice of intention to install the fibre optic cable on the owner of premises or the owner of other land over or under which the fibre

- optic cable has passed, because the installer was unable to determine the name or address of the owner;
- the installer has otherwise failed to serve a notice on the owner of intention to install (for example, if it is lost in the mail);
  - the installer mistakenly installed fibre optic cable, despite an owner electing not to have it installed; or
  - an owner can satisfy the installer that he or she was not resident at his or her normal address when the notice of intention to install the fibre optic cable was served and did not receive the notice in time to make an election not to have the fibre optic cable installed (for example, because he or she was overseas).

A requirement to remove a wrongly installed connection cable must be exercised within six months of the installation.

This clause also provides the installer with the power to remove the fibre optic cable, if such an election is made, and requires that it must do so within 60 days of receiving the election.

The installer must provide occupiers of land from which fibre optic cable is to be removed with 10 days notice in writing of the date and approximate time at which removal will take place.

A failure of the installer to provide that notice does not affect the power of the installer to remove the fibre optic cable.

## CLAUSE 18 – INSTALLER NOT OBLIGED TO INSTALL CONNECTION CABLE

This clause provides that nothing in the Act obliges an installer to install fibre optic cable to premises.

## CLAUSE 19 – POWERS OF AUTHORISED OFFICER TO ENTRY TO LAND

This clause provides that where individuals authorised to undertake installation of the fibre optic cable, are provided by this Act with the power to enter and remain on land that power includes:

- a power to enter and remain on land to undertake the installation and associated activities;
- a power to be accompanied by assistants; and
- a power to take vehicles and equipment onto land.

## CLAUSE 20 – AUTHORISED OFFICER TO LEAVE LAND IF ENTRY REFUSED



This clause provides that where an owner or occupier of land refuses entry to an individual who is authorised by the Act to enter or remain on land, that individual so authorised is to leave the land.

## CLAUSE 21 – WARRANT TO ENTER LAND IF CABLE WORKS UNSAFE

This clause provides that where an individual authorised by the Act to enter or remain on land leaves the land pursuant to clause 20, that individual may seek a warrant from a justice to enter and remain on land for the purposes of making the land safe, if he or she is of the view that fibre optic cable or associated infrastructure already installed poses a risk to persons, property or the ongoing supply of broadband services.

The clause also sets out how the justice is to determine whether or not a warrant should be issued, the process to be followed in issuing a warrant and the form of the warrant.

## CLAUSE 22 – PROTECTION FOR INSTALLER AND AUTHORISED OFFICER IF ENTRY ON LAND REFUSED

This clause provides that where a person authorised by this Act to enter and remain on land leaves land pursuant to clause 20, that person is not liable for resulting damage or failure to remove a fibre optic cable unless the authorised officer should reasonably have known that there was a risk to the safety of persons, property or broadband services and failed to take reasonable steps to warn the owner or occupier of that risk.

## CLAUSE 23 – DUTY OF AUTHORISED OFFICER IN CARRYING OUT CABLE WORK

This clause outlines the obligations of individuals authorised under the Act to undertake installation of the fibre optic cable and associated activities in carrying out that installation, including obligations: to follow industry and safe work practices; to minimise damage to land and property; and to minimise the impact of any work on other people on the land on which the work is being undertaken.

## CLAUSE 24 – NOTIFYING OF DAMAGE OR DESTRUCTION

This clause outlines the obligations of the installer to advise the occupier and owner of land in writing if land or property is damaged or destroyed during the installation of fibre optic cable and associated infrastructure.

## CLAUSE 25 – DUTY OF INSTALLER TO MAKE GOOD, OR COMPENSATE FOR, DAMAGE OR DESTRUCTION

This clause outlines the obligations of the installer to make good, or pay compensation for, any damage to, or destruction of, land or property.

The clause also provides that a dispute as to the amount of compensation to be paid for damage or destruction is to be determined either by the Magistrates Court (Civil Division) or as if it were a dispute under the *Land Acquisition Act 1993*.

## CLAUSE 26 – OFFENCE TO INTERFERE WITH A CONNECTION CABLE

This clause makes it an offence for an individual to interfere, destroy or damage a connection cable where the interference, destruction or damage is done maliciously.

## CLAUSE 27 – FALSE OR MISLEADING INFORMATION

This clause makes it an offence for an individual to knowingly provide false or misleading information to a person authorised, under this Act, to install fibre optic cable and undertake associated works.

## CLAUSE 28 – APPLICATION OF PLANNING LAWS

This clause provides that this Act does not override Tasmanian planning legislation.

## CLAUSE 29 – OWNERSHIP OF CONNECTION CABLE

This clause provides that nothing done under this Act alters the ownership of fibre optic cable installed pursuant to the Act.

## CLAUSE 30 – REGULATIONS

This clause provides that the Governor may make regulations for the purposes of this Act