



**Telecommunications and Other  
Legislation Amendment (Protection of  
Submarine Cables and Other Measures)  
Act 2005**

**No. 104, 2005**

**An Act to provide for the protection of submarine  
cables, and for other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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## Contents

1	Short title.....	2
2	Commencement .....	2
3	Schedule(s).....	3
<b>Schedule 1—Protection of submarine cables</b>		4
Part 1—Amendments to protect submarine cables		4
<i>Submarine Cables and Pipelines Protection Act 1963</i>		4
<i>Telecommunications Act 1997</i>		4
Part 2—Amendments required if the Australian Communications and Media Authority Act 2005 commences before this Act		45
<i>Telecommunications Act 1997</i>		45
<b>Schedule 2—Other measures</b>		54
<i>Telecommunications Act 1997</i>		54





# **Telecommunications and Other Legislation Amendment (Protection of Submarine Cables and Other Measures) Act 2005**

**No. 104, 2005**

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**An Act to provide for the protection of submarine  
cables, and for other purposes**

*[Assented to 23 August 2005]*

**The Parliament of Australia enacts:**

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## 1 Short title

This Act may be cited as the *Telecommunications and Other Legislation Amendment (Protection of Submarine Cables and Other Measures) Act 2005*.

## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	23 August 2005
2. Schedule 1, Part 1	The 28th day after the day on which this Act receives the Royal Assent.	20 September 2005
3. Schedule 1, Part 2	Immediately after the commencement of the provisions in Part 1 of Schedule 1 to this Act.  However, if Part 1 of Schedule 1 to this Act commences before section 6 of the <i>Australian Communications and Media Authority Act 2005</i> , the provision(s) do not commence at all.	20 September 2005
4. Schedule 2	The day after this Act receives the Royal Assent.	24 August 2005

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

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### **3 Schedule(s)**

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

## Schedule 1—Protection of submarine cables

### Part 1—Amendments to protect submarine cables

#### *Submarine Cables and Pipelines Protection Act 1963*

##### **1 Subsection 5(1)**

Repeal the subsection, substitute:

- (1) This Act applies only to a submarine cable or pipeline, or that part of a submarine cable or pipeline:
  - (a) that is beneath the high seas or in the exclusive economic zone; and
  - (b) that is not a submarine cable (within the meaning of Schedule 3A to the *Telecommunications Act 1997*) in a protection zone (within the meaning of that Schedule).

#### *Telecommunications Act 1997*

##### **2 After Part 24**

Insert:

### **Part 24A—Submarine cables**

#### **484A Schedule 3A**

Schedule 3A has effect.

##### **3 Clause 2 of Schedule 3 (at the end of the definition of *land*)**

Add “(but does not include submerged land that is beneath Australian waters within the meaning of Schedule 3A)”.

##### **4 After subclause 6(4) of Schedule 3**

Insert:

- (4A) A submarine cable (within the meaning of Schedule 3A) must not be specified in an instrument under subclause (3).

## 5 At the end of subclause 15(1) of Schedule 3

Add “or by Part 3 of Schedule 3A”.

## 6 After Schedule 3

Insert:

# Schedule 3A—Protection of submarine cables

Note: See section 484A.

## Part 1—Preliminary

### 1 Simplified outline

The following is a simplified outline of this Schedule:

- The ACA may declare protection zones in relation to submarine cables. In a protection zone, certain activities are prohibited and restrictions may be imposed on other activities.
- A carrier who intends to install a submarine cable in Australian waters must apply for a permit to do so from the ACA.

### 2 Definitions

(1) In this Schedule, unless the contrary intention appears:

**Aboriginal person** means a person of the Aboriginal race of Australia.

**advisory committee** means an advisory committee established under section 51 of the *Australian Communications Authority Act 1997*.

**Australia**, when used in a geographical sense, includes all of the external Territories.

Note: **Australia** has a different meaning in this Schedule from the meaning it has elsewhere in this Act.

***Australian waters*** means:

- (a) the waters of the territorial sea (within the meaning of the *Seas and Submerged Lands Act 1973*) of Australia; and
- (b) the waters of the exclusive economic zone of Australia; and
- (c) the sea above that part of the continental shelf of Australia that is beyond the limits of the exclusive economic zone.

Note: ***Australia***, when used in this definition, includes all of the external territories.

***cetacean*** has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*.

***coastal waters***:

- (a) of a State, means that part of the sea that is included in the coastal waters of the State within the meaning of the *Coastal Waters (State Powers) Act 1980*; and
- (b) of the Northern Territory, means that part of the sea that is included in the coastal waters of the Territory within the meaning of the *Coastal Waters (Northern Territory Powers) Act 1980*.

***Commonwealth marine area*** has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*.

***conduct*** means an act, an omission to perform an act or a state of affairs.

***continental shelf*** has the same meaning as in the *Seas and Submerged Lands Act 1973*.

***declared Ramsar wetland*** has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*.

***declared World Heritage property*** has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*.

***ecological character*** has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*.

***ecological community*** has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*.

***engage in conduct*** means to do an act or omit to do an act.

**environment** has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*.

**Environment Secretary** means the Secretary of the Department administered by the Minister who is for the time being responsible for administering the *Environment Protection and Biodiversity Conservation Act 1999*.

**exclusive economic zone** has the same meaning as in the *Seas and Submerged Lands Act 1973*.

**installation**, in relation to a submarine cable, includes:

- (a) the laying of the cable on or beneath the seabed; and
- (b) the attachment of the cable to any other cable or thing; and
- (c) any activity that is ancillary or incidental to the installation of the cable (for this purpose, **installation** includes an activity covered by paragraph (a) or (b)).

**international agreement** means:

- (a) a convention to which Australia is a party; or
- (b) an agreement or arrangement between Australia and a foreign country;

and includes, for example, an agreement, arrangement or understanding between a Minister and an official or authority of a foreign country.

**listed international agreement** means any of the following:

- (a) an agreement that is a listed international agreement for the purposes of Schedule 3;
- (b) an international agreement specified in regulations made for the purposes of this definition.

**listed marine species** has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*.

**listed migratory species** has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*.

**listed threatened species** has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*.

**National Heritage List** has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*.

***National Heritage value*** has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*.

***non-protection zone installation permit*** means a permit under Division 3 of Part 3 of this Schedule.

***protection zone*** means a protection zone declared by the ACA under clause 4.

***protection zone installation permit*** means a permit under Division 2 of Part 3 of this Schedule.

***ship*** means any kind of vessel used in navigation by water, however propelled or moved.

***submarine cable*** means that part of a line link (within the meaning of section 30):

- (a) that it is laid on or beneath the seabed that lies beneath Australian waters; and
- (b) that is laid for purposes that include connecting a place in Australia with a place outside Australia (whether or not the cable is laid via another place in Australia);

and includes any device attached to that part of the line link, if the device is used in or in connection with the line link.

Note: Any part of a line link that is laid elsewhere than on or beneath the Australian seabed, and any device attached to such part of a line link, is not a submarine cable for the purposes of this Schedule.

***threatened ecological community*** means an ecological community that is included in the list of threatened ecological communities kept under Division 1 of Part 13 of the *Environment Protection and Biodiversity Conservation Act 1999*.

***threatened species*** means a species that is included in one of the following categories of the list of threatened species kept under Division 1 of Part 13 of the *Environment Protection and Biodiversity Conservation Act 1999*:

- (a) extinct in the wild;
- (b) critically endangered;
- (c) endangered;
- (d) vulnerable.

**Torres Strait Islander** means a descendant of an indigenous inhabitant of the Torres Strait Islands.

**world heritage values** has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*.

- (2) A reference in this Schedule to the location of a submarine cable includes, in relation to a submarine cable that is not yet installed, a reference to the proposed location of the submarine cable.

## **Part 2—Protection zones**

### **Division 1—Simplified outline**

#### **3 Simplified outline**

The following is a simplified outline of this Part:

- The ACA may declare a protection zone in relation to a submarine cable installed in Australian waters.
- The ACA must consult with an advisory committee, with the Environment Secretary and with the public before it declares a protection zone.
- Certain activities are prohibited in the zone and restrictions may be imposed on other activities in the zone.
- It is an offence for a person to damage a submarine cable in a protection zone, to engage in an activity that is prohibited in a protection zone, or to contravene any restrictions imposed on an activity in a protection zone.

### **Division 2—Declaration of protection zones**

#### **Subdivision A—Declarations**

##### **4 ACA may declare a protection zone**

- (1) The ACA may, by legislative instrument, declare a protection zone in relation to one or more submarine cables, or one or more

submarine cables that are proposed to be installed, in Australian waters.

- (2) Before the ACA declares a protection zone, the ACA must comply with Subdivision B.

Note: Subdivision B requires the ACA to develop a proposal for the protection zone and to consult about the proposal, and to satisfy other prerequisites.

## **5 Declaration on ACA's initiative or in response to request**

A declaration of a protection zone may be made:

- (a) on the ACA's own initiative; or
- (b) at the request of a person.

## **6 Response to a request to declare a protection zone**

*ACA decides to develop a proposal*

- (1) If:
- (a) a person requests the ACA to declare a protection zone; and
  - (b) the ACA decides to develop a proposal for a protection zone in response to the request;
- the ACA must give the person a copy of its proposal.

*ACA decides not to develop a proposal*

- (2) If:
- (a) a person requests the ACA to declare a protection zone; and
  - (b) the ACA decides not to develop a proposal for a protection zone in response to the request;
- the ACA must notify the person in writing of the ACA's decision and the reasons for the decision.

## **7 Decision not to declare a requested protection zone or to declare a different protection zone**

*No declaration*

- (1) If:
- (a) a person requests the ACA to declare a protection zone; and

- (b) the ACA develops a proposal for the protection zone in response to the request; and
  - (c) the ACA decides not to declare the protection zone;
- the ACA must notify the person in writing of the ACA's decision and the reasons for the decision.

*Declaration different from proposal*

- (2) If:
    - (a) a person requests the ACA to declare a protection zone; and
    - (b) the ACA develops a proposal for the protection zone in response to the request; and
    - (c) the ACA declares a protection zone that is different from the proposed protection zone;
- the ACA must give the person a copy of the declaration.

## **8 Location of submarine cable to be specified in declaration**

- (1) A declaration of a protection zone:
  - (a) must specify a nominal location for the cable or cables in all Australian waters in which the cable is installed; and
  - (b) must not specify a location for the cable or cables outside Australian waters.
- (2) The location must be expressed in geographic coordinates and must include the geodetic datum to which the coordinates refer.

## **9 Area of a protection zone**

*Area is as set out in this clause unless declaration specifies otherwise*

- (1) Unless the ACA specifies otherwise in the declaration of a protection zone, the protection zone in relation to:
  - (a) one submarine cable—is the area set out in subclause (2); and
  - (b) more than one submarine cable—is the area set out in subclause (4).

*Protection zone in relation to only one submarine cable*

- (2) The protection zone in relation to one submarine cable:

**Schedule 1** Protection of submarine cables  
**Part 1** Amendments to protect submarine cables

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- (a) consists of so much of the following as is Australian waters:
  - (i) the area within one nautical mile either side of the points on the surface of the sea above the nominal location of the cable; and
  - (ii) the waters beneath that area;
- (b) the seabed and subsoil beneath that area.

Note: If a cable leaves one area of Australian waters and subsequently enters another area of Australian waters, subclause (2) has the effect that the protection zone in relation to that cable covers both areas of Australian waters.

- (3) A declaration of a protection zone in relation to one submarine cable has no effect to the extent that it covers an area outside the area described in subclause (2).

*Protection zone in relation to more than one submarine cable*

- (4) The protection zone in relation to more than one submarine cable:
  - (a) consists of so much of the following as is Australian waters:
    - (i) the area between the nominal location of the cables; and
    - (ii) the area within one nautical mile from the outside edge of the points on the surface of the sea above the nominal location of each of the two outermost cables; and
    - (iii) the waters beneath those areas; and
  - (b) the seabed and subsoil beneath those areas.

Note: If a cable leaves one area of Australian waters and subsequently enters another area of Australian waters, subclause (4) has the effect that the protection zone in relation to that cable covers both areas of Australian waters.

- (5) A declaration of a protection zone in relation to more than one submarine cable has no effect to the extent that it covers an area outside the area described in subclause (4).

*Nominal location*

- (6) In this clause:

***nominal location***, of a submarine cable or cables, means the nominal location specified in the declaration of the protection zone in relation to the cable or cables.

## **10 Prohibited activities**

- (1) A declaration of a protection zone may specify activities that are prohibited in the protection zone.
- (2) If a declaration of a protection zone does not specify activities that are prohibited in the protection zone, the activities specified in subclause (4) are prohibited.
- (3) An activity which is specified in a declaration of a protection zone must be an activity that is covered by subclause (4).
- (4) This subclause covers the following activities:
  - (a) the use of:
    - (i) trawl gear that is designed to work on or near the seabed (for example, a demersal trawl); or
    - (ii) a net anchored to the seabed and kept upright by floats (for example, a demersal gillnet); or
    - (iii) a fishing line that is designed to catch fish at or near the seabed (for example, a demersal line); or
    - (iv) a dredge; or
    - (v) a pot or trap; or
    - (vi) a squid jig; or
    - (vii) a seine; or
    - (viii) a structure moored to the seabed with the primary function of attracting fish for capture (for example, a fish aggregating device);
  - (b) towing, operating, or suspending from a ship:
    - (i) any item mentioned in paragraph (a); or
    - (ii) a net, line, rope, chain or any other thing used in connection with fishing operations;
  - (c) lowering, raising or suspending an anchor from a ship;
  - (d) sand mining;
  - (e) exploring for or exploiting resources (other than marine species);
  - (f) mining or the use of mining techniques;
  - (g) any activity that involves a serious risk that an object will connect with the seabed, if a connection between the object and a submarine cable would be capable of damaging the cable;

- (h) an activity specified in the regulations, being an activity that, if done near a submarine cable, would involve a serious risk of damaging the cable.

## **11 Restricted activities**

- (1) A declaration of a protection zone may specify restrictions that are imposed in the protection zone on activities in the protection zone.
- (2) An activity on which restrictions are imposed must be an activity that is covered by subclause (3).
- (3) This subclause covers the following activities:
  - (a) the use of:
    - (i) a net that is above the seabed at all times; or
    - (ii) lures or baits attached to a line towed behind a ship;
  - (b) towing, operating, or suspending from a ship:
    - (i) any item mentioned in paragraph (a); or
    - (ii) a net, line, rope, chain or any other thing used in connection with fishing operations;
  - (c) fishing using a line;
  - (d) installing, maintaining or removing an electricity cable, an oil or gas pipeline, any like cables or pipelines and any associated equipment;
  - (e) constructing, maintaining or removing an installation for the use of ships;
  - (f) constructing or maintaining navigational aids;
  - (g) any activity that involves a risk that an object will connect with the seabed, if a connection between the object and a submarine cable would be capable of damaging the cable;
  - (h) an activity specified in the regulations, being an activity that, if done near a submarine cable, could involve a risk of damaging the cable.

## **12 Conditions**

- (1) A declaration of a protection zone may be subject to any conditions that the ACA considers appropriate.
- (2) Those conditions must be specified in the declaration.

### **13 When a declaration takes effect**

- (1) A declaration of a protection zone takes effect at the time specified by the ACA.
- (2) If a declaration relates only to a submarine cable or cables that are not yet installed, the ACA must not specify a time before the time that the ACA is satisfied that installation of the cable or cables will begin.

### **14 Duration of declaration**

- (1) A declaration of a protection zone continues in effect until the ACA revokes it.
- (2) To avoid doubt, a declaration continues in effect even if the submarine cable or cables in the protection zone have ceased to operate.

### **Subdivision B—Prerequisites to declaration of a protection zone**

#### **15 ACA to develop a proposal for a protection zone**

- (1) Before the ACA declares a protection zone in relation to one or more submarine cables, or one or more submarine cables that are proposed to be installed, the ACA must develop a proposal for the protection zone.
- (2) The proposal must include:
  - (a) the nominal location of the submarine cable or cables in Australian waters; and
  - (b) if the area of the proposed protection zone is different from the area under clause 9—details of the location and dimensions of the proposed protection zone; and
  - (c) details of the activities to be prohibited in the proposed protection zone; and
  - (d) details of the restrictions that are to be imposed on activities in the proposed protection zone.
- (3) A proposal developed under subsection (1) is not a legislative instrument.

## **16 ACA to refer proposal to advisory committee**

- (1) The ACA must refer a proposal developed under clause 15 to an advisory committee.  
Note: See clause 49 for requirements that relate to advisory committees.
- (2) The advisory committee may make recommendations in relation to the proposal.
- (3) If the advisory committee does not make recommendations in relation to the proposal, the committee must give the ACA a statement setting out the opinion of each committee member in relation to the proposal.

## **17 ACA to publish proposal**

- (1) The ACA must publish a proposal developed under clause 15 and invite public submissions about the proposal.
- (2) The proposal must be published:
  - (a) in the *Gazette*; and
  - (b) on a website maintained by the ACA on the Internet; and
  - (c) in a newspaper circulating generally in each State, the Australian Capital Territory and the Northern Territory; and
  - (d) if an external Territory is affected by the proposal—in a newspaper circulating generally in that external Territory.

## **18 Cable must be a submarine cable of national significance**

The ACA must not declare a protection zone in relation to one or more submarine cables unless the ACA is satisfied that the cable, or each cable, is or will be a cable of national significance.

## **19 Consultation with Environment Secretary**

- (1) The ACA must not declare a protection zone in relation to one or more submarine cables unless the ACA has consulted with the Environment Secretary in relation to the proposal for the protection zone.
- (2) The ACA must have regard to any advice or recommendations provided by the Environment Secretary in relation to the proposal.

## **20 Matters the ACA must have regard to**

In deciding whether to declare a protection zone in relation to one or more submarine cables, the ACA must have regard to:

- (a) the recommendations or statement of opinions of the advisory committee that considered the proposal for the protection zone; and
- (b) any submissions received from the public about the proposal for the protection zone; and
- (c) the objective of facilitating the supply of efficient, modern and cost-effective carriage services to the public; and
- (d) if the proposed protection zone relates to a submarine cable that is not yet installed—the impact of the installation on the environment; and
- (e) if the proposed protection zone relates to a submarine cable that is not yet installed—any relevant technical and economic aspects of the installation; and
- (f) if the proposed protection zone relates to a submarine cable that is not yet installed—whether the submarine cable is to be co-located with an existing submarine cable or cables; and
- (g) if the proposed protection zone relates to a submarine cable that is not yet installed—the economic and social benefits that are likely to result from the installation of the cable; and
- (h) any other matters that the ACA considers relevant.

## **21 Environment and heritage considerations**

For the purposes of paragraph 20(d), the ACA must have regard to:

- (a) whether the installation, maintenance or operation of the submarine cable:
  - (i) is inconsistent with Australia's obligations under a listed international agreement; or
  - (ii) could have an adverse effect on a listed threatened species or threatened ecological community, or impede the recovery of a listed threatened species or threatened ecological community; or
  - (iii) could have an adverse effect on a listed marine species; or

- (iv) could have an adverse effect on the environment, including the environment within a Commonwealth marine area; or
  - (v) could have an adverse effect on cetaceans; or
  - (vi) could have an adverse effect on a listed migratory species; or
  - (vii) could have an adverse effect on the National Heritage values of a place included in the National Heritage List; or
  - (viii) could have an adverse effect on the ecological character of a declared Ramsar wetland; or
  - (ix) could have an adverse effect on the world heritage values of a declared World Heritage property; or
  - (x) could have an adverse effect on a place that Australia is required to protect by the terms of a listed international agreement; or
  - (xi) could have an adverse effect on an area that, under the law of the Commonwealth, a State or a Territory, is reserved wholly or principally for marine conservation purposes (however described); or
  - (xii) could have an adverse effect on an area that, under a law of the Commonwealth, a State or a Territory, is protected from significant environmental disturbance; and
- (b) whether the submarine cable is to be installed at or near an area or thing that is of particular significance to Aboriginal persons, or Torres Strait Islanders, in accordance with their traditions; and
- (c) such other matters (if any) as the ACA considers relevant.

## **22 Deadline for final decision about protection zone**

If the ACA publishes a proposal for a protection zone under clause 17, the ACA's decision whether or not to declare the protection zone must be made as soon as practicable, and in any event within 12 months, after the day on which the proposal was published.

## **Division 3—Varying or revoking a declaration of a protection zone**

### **Subdivision A—Variation or revocation**

#### **23 ACA may vary or revoke a declaration of a protection zone**

- (1) The ACA may, by legislative instrument, vary or revoke a declaration of a protection zone.

Note: Clause 48 requires a carrier to notify the ACA if a submarine cable ceases to be used.

- (2) Before the ACA varies or revokes a declaration of a protection zone, the ACA must comply with Subdivision B.

Note: Subdivision B requires the ACA to develop a variation or revocation proposal and to consult about the proposal.

#### **24 Variation or revocation on ACA's initiative or in response to request**

A variation or revocation of a declaration of a protection zone may be made:

- (a) on the ACA's own initiative; or
- (b) at the request of a person.

#### **25 ACA to notify affected carrier of request to vary or revoke a declaration**

If a person requests the ACA to vary or revoke a declaration of a protection zone, the ACA must, as soon as practicable, give details of the request to each carrier who is responsible for a submarine cable or cables in the protection zone.

#### **26 Response to a request to vary or revoke a declaration**

*ACA decides to develop a variation or revocation proposal*

- (1) If:
- (a) a person requests the ACA to vary or revoke a declaration of a protection zone; and

- (b) the ACA decides to develop a variation or revocation proposal in response to the request;
- the ACA must:
- (c) give the person a copy of its proposal; and
  - (d) if the proposal differs from what the person requested—  
notify the person in writing of the reasons for the difference.

*ACA decides not to develop a variation or revocation proposal*

- (2) If:
- (a) a person requests the ACA to vary or revoke a declaration of a protection zone; and
  - (b) the ACA decides not to develop a proposal to vary or revoke a declaration of a protection zone in response to the request;
- the ACA must notify the person in writing of the ACA's decision and the reasons for the decision.

## **27 Decision not to vary or revoke a declaration after a request to do so**

If, after developing a proposal to vary or revoke a declaration of a protection zone in response to a request by a person, the ACA:

- (a) decides not to vary or revoke the declaration; or
- (b) decides to vary the declaration in a way different from that requested; or
- (c) decides to vary the declaration when revocation was requested; or
- (d) decides to revoke the declaration when variation was requested;

the ACA must notify the person in writing of the ACA's decision and the reasons for the decision.

## **28 When a variation or revocation takes effect**

A variation or revocation of a declaration of a protection zone takes effect at the time specified by the ACA.

## **29 Protection zone as varied must not exceed permitted area**

Subclauses 9(3) and (5) (about the area of a protection zone) continue to apply in relation to a declaration of a protection zone that is varied under this Division.

## **Subdivision B—Prerequisites to variation or revocation of declaration**

### **30 ACA to develop a variation or revocation proposal**

- (1) Before the ACA varies or revokes a declaration of a protection zone, the ACA must develop a proposal to vary or revoke the declaration.
- (2) A proposal developed under subsection (1) is not a legislative instrument.

### **31 ACA to refer proposal to advisory committee**

- (1) The ACA must refer a proposal developed under clause 30 to an advisory committee.  
Note: See clause 49 for requirements that relate to advisory committees.
- (2) The advisory committee may make recommendations in relation to the proposal.
- (3) If the advisory committee does not make recommendations in relation to the proposal, the committee must give the ACA a statement setting out the opinion of each committee member in relation to the proposal.

### **32 ACA to publish proposal**

- (1) The ACA must publish a proposal developed under clause 30 and invite public submissions about the proposal.
- (2) The proposal must be published:
  - (a) in the *Gazette*; and
  - (b) on a website maintained by the ACA on the Internet; and
  - (c) in a newspaper circulating generally in each State, the Australian Capital Territory and the Northern Territory; and

- (d) if an external Territory is affected by the proposal—in a newspaper circulating generally in that external Territory.

### **33 Consultation with Environment Secretary**

- (1) The ACA must not vary or revoke a declaration of a protection zone unless the ACA has consulted with the Environment Secretary in relation to the proposal to vary or revoke the declaration.
- (2) The ACA must have regard to any advice or recommendations provided by the Environment Secretary in relation to the proposal.

### **34 Matters the ACA must have regard to**

In deciding whether to vary or revoke a declaration of a protection zone, the ACA must have regard to:

- (a) the recommendations or statement of opinions of the advisory committee that considered the variation or revocation proposal; and
- (b) any submissions received from the public about the variation or revocation proposal; and
- (c) the legitimate commercial interests of:
  - (i) the owner of each submarine cable in the protection zone; and
  - (ii) if the carrier responsible for a cable in the protection zone is not the owner of the cable—that carrier; and
- (d) any other matters that the ACA considers relevant.

### **35 Deadline for final decision about varying or revoking a protection zone**

If the ACA publishes a proposal to vary or revoke a declaration of a protection zone under clause 32, the ACA must decide whether to vary or revoke the declaration within 180 days after the day on which the proposal was published.

## **Division 4—Offences in relation to a protection zone**

### **Subdivision A—Damaging a submarine cable**

#### **36 Damaging a submarine cable**

- (1) A person commits an offence if:
  - (a) the person engages in conduct; and
  - (b) the conduct results in damage to a submarine cable, or to a part of a submarine cable; and
  - (c) the cable, or the part of the cable, is in a protection zone.

Penalty: Imprisonment for 10 years or 600 penalty units, or both.

- (2) Strict liability applies to paragraph (1)(c).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

#### **37 Negligently damaging a submarine cable**

- (1) A person commits an offence if:
  - (a) the person engages in conduct; and
  - (b) the conduct results in damage to a submarine cable, or to a part of a submarine cable; and
  - (c) the person is negligent as to the fact that the conduct results in that damage; and
  - (d) the cable, or the part of the cable, is in a protection zone.

Penalty: Imprisonment for 3 years or 180 penalty units, or both.

- (2) Strict liability applies to paragraph (1)(d).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

#### **38 Defence to offences of damaging a submarine cable**

Subclauses 36(1) and 37(1) do not apply if:

- (a) the conduct that resulted in damage to the submarine cable, or to a part of the submarine cable, was necessary to save a life or a ship; or
- (b) the conduct that resulted in damage to the submarine cable, or to a part of the submarine cable, was necessary to prevent pollution; or

- (c) the defendant took all reasonable steps to avoid causing damage to the submarine cable; or
- (d) the defendant is the carrier who owns or operates the submarine cable; or
- (e) when the conduct occurred, the defendant was acting on behalf of the carrier who owns or operates the submarine cable.

Note: The defendant bears an evidential burden in relation to the matters in this clause. See subsection 13.3(3) of the *Criminal Code*.

### **39 Master or owner of ship used in offence of damaging a submarine cable**

- (1) A person (the *first person*) commits an offence if:
  - (a) the first person is the owner or master of a ship; and
  - (b) the first person permits another person to use the ship; and
  - (c) the other person commits an offence against clause 36; and
  - (d) the ship is used in the commission of the offence and the first person is reckless as to that fact.

Penalty: Imprisonment for 10 years or 600 penalty units, or both.

- (2) Strict liability applies to paragraph (1)(c).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **Subdivision B—Engaging in prohibited or restricted activities**

#### **40 Engaging in prohibited or restricted activities**

A person commits an offence if:

- (a) the person engages in conduct; and
- (b) the conduct occurs in a protection zone; and
- (c) the conduct:
  - (i) is prohibited in the protection zone; or
  - (ii) contravenes a restriction imposed on an activity in the protection zone; and
- (d) the conduct is not engaged in by the carrier who owns or operates the cable, or a person acting on behalf of such a carrier, for the purpose of maintaining or repairing a submarine cable for which the carrier is responsible; and

- (e) the conduct is not engaged in by a carrier who holds a protection zone installation permit, or a person acting on such a carrier's behalf, in, or in the course of, the installation of a submarine cable in accordance with the permit.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

#### **41 Aggravated offence of engaging in prohibited or restricted activities**

A person commits an offence if:

- (a) the person engages in conduct; and
- (b) the conduct occurs in a protection zone; and
- (c) the conduct:
  - (i) is prohibited in the protection zone; or
  - (ii) contravenes a restriction imposed on an activity in the protection zone; and
- (d) the person engages in the conduct with the intention of making a commercial gain; and
- (e) the conduct is not engaged in by the carrier who owns or operates the cable, or a person acting on behalf of such a carrier, for the purpose of maintaining or repairing a submarine cable for which the carrier is responsible; and
- (f) the conduct is not engaged in by a carrier who holds a protection zone installation permit, or a person acting on such a carrier's behalf, in, or in the course of, the installation of a submarine cable in accordance with the permit.

Penalty: Imprisonment for 7 years or 420 penalty units, or both.

#### **42 Defences to offences of engaging in prohibited or restricted activities**

Clauses 40 and 41 do not apply if:

- (a) the conduct was necessary to save a life or ship; or
- (b) the conduct was necessary to prevent pollution; or
- (c) the defendant took all reasonable steps to avoid engaging in the conduct.

Note: The defendant bears an evidential burden in relation to the matters in this clause. See subsection 13.3(3) of the *Criminal Code*.

### **43 Alternative verdict if aggravated offence not proven**

If, on a trial for an offence against clause 41:

- (a) the arbiter of fact is not satisfied that the defendant engaged in the activity with the intention of making a commercial gain; and
- (b) the arbiter of fact is otherwise satisfied that the defendant has committed an offence against clause 40;

the arbiter may find the defendant not guilty of the offence against clause 41 but guilty of an offence against clause 40, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

### **44 Master or owner of ship used in offence of engaging in prohibited or restricted activities**

- (1) A person (the *first person*) commits an offence if:
  - (a) the first person is the owner or master of a ship; and
  - (b) the first person permits another person to use the ship; and
  - (c) the other person commits an offence against clause 40 or 41; and
  - (d) the ship is used in the commission of the offence and the first person is reckless as to that fact.

Penalty:

- (a) if the other person committed an offence against clause 40—imprisonment for 5 years or 300 penalty units, or both; or
- (b) if the other person committed an offence against clause 41—imprisonment for 7 years or 420 penalty units, or both.

- (2) Strict liability applies to paragraph (1)(c).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

## **Division 5—Miscellaneous**

### **45 Person may claim damages**

- (1) A person who suffers, directly or indirectly, loss or damage:
  - (a) because a submarine cable in a protection zone is damaged by conduct of another person; or

- (b) because another person engages in conduct that is prohibited in a protection zone; or
  - (c) because another person engages in conduct that contravenes a restriction imposed on an activity in a protection zone;
- may recover the amount of the loss or damage:
- (d) against that other person; or
  - (e) against any person involved in the contravention (whether or not a person is convicted of an offence in respect of the contravention).
- (2) An action under subclause (1) may be commenced at any time within 6 years after the day on which the cause of action that relates to the conduct accrued.
- (3) A reference in subclause (1) to a person who is involved in a contravention is a reference to a person who has:
- (a) aided, abetted, counselled or procured the contravention; or
  - (b) induced, whether by threats or promises or otherwise, the contravention; or
  - (c) been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or
  - (d) conspired with others to effect the contravention.
- (4) Jurisdiction is conferred on the Federal Court in any matter arising under this clause in respect of which a civil proceeding is instituted under this clause.

#### **46 Indemnity for loss of anchor etc.**

- (1) If:
- (a) after all reasonable precautionary measures have been taken, an anchor, a net or any other fishing gear belonging to a ship is sacrificed in order to avoid damaging a submarine cable in a protection zone; and
  - (b) at the time the sacrifice is made, no person on board the ship is engaging in conduct:
    - (i) that is prohibited in the protection zone; or
    - (ii) that contravenes a restriction imposed on an activity in the protection zone;
- the owner of the ship is entitled to be indemnified for that loss by the carrier responsible for the submarine cable.

- (2) Jurisdiction is conferred on the Federal Court in any matter arising under this clause in respect of which a civil proceeding is instituted under this clause.

**47 ACA to notify relevant authorities of declaration, variation etc. of protection zone**

- (1) If the ACA declares a protection zone under clause 4, or varies or revokes a declaration under clause 23, the ACA must notify the authorities mentioned in subclause (2) as soon as practicable of the details of the ACA's decision to declare the protection zone or vary or revoke the declaration.
- (2) The authorities are the following:
- (a) the Australian Fisheries Management Authority;
  - (b) the Australian Hydrographic Service;
  - (c) the Australian Maritime Safety Authority;
  - (d) the authority administering the business carried on at a port or ports of a State or the Northern Territory, if the port or ports are directly affected by the declaration.

**48 Notice if carrier decommissions a submarine cable**

If:

- (a) a declaration of a protection zone in relation to a submarine cable has effect; and
  - (b) the cable ceases to be in use (other than temporarily);
- the carrier who is responsible for the cable must notify the ACA in writing of the cessation, as soon as practicable after the cessation happens.

**49 Composition of advisory committee**

- (1) An advisory committee established for the purposes of clause 16 or 31 must have no more than 12 members.
- (2) Without limiting the persons who may be appointed as members of an advisory committee established for the purposes of clause 16 or 31, the ACA may appoint persons who, in the opinion of the ACA, represent the concerns of any of the following:
- (a) the Commonwealth;

- (b) an interested State;
  - (c) an interested authority or instrumentality of the Commonwealth or a State;
  - (d) an interested industry;
  - (e) an interested group.
- (3) In this clause:

*interested*, in relation to a State, authority, instrumentality, industry or group, means having concerns or interests that are affected by the proposal that the committee is to consider, or that are likely to be so affected should the ACA declare the protection zone proposed in the proposal.

*State* includes the Northern Territory.

## **Part 3—Permits to install submarine cables**

### **Division 1—Simplified outline**

#### **50 Simplified outline**

The following is a simplified outline of this Part:

- A carrier may apply to the ACA to install a submarine cable:
  - (a) in a protection zone; or
  - (b) in Australian waters (other than Australian waters that are in a protection zone or that are coastal waters).
- There is a streamlined process for applications for permits to install submarine cables in protection zones. Also, a carrier who installs a submarine cable in a protection zone in accordance with a permit is exempt from certain State and Territory laws.
- It is an offence for a person to install a submarine cable without a permit in a protection zone, or in Australian waters

that are not in a protection zone and that are not coastal waters.

- It is also an offence for a person who holds a permit to breach a condition of the permit.

## **Division 2—Protection zone installation permits**

### **51 Application for a permit to install a submarine cable in a protection zone**

A carrier may apply to the ACA for a permit to install one or more submarine cables in a protection zone (a *protection zone installation permit*).

### **52 Form of application etc.**

An application must be:

- (a) in writing; and
- (b) in the form approved in writing by the ACA.

### **53 Application to be accompanied by charge**

An application must be accompanied by the charge (if any) imposed on the application by a determination under section 53 of the *Australian Communications Authority Act 1997*.

### **54 Withdrawal of application**

This Division does not prevent the withdrawal of an application and the submission of a fresh application.

### **55 Further information**

- (1) The ACA may request the applicant to give the ACA further information about the application.
- (2) The ACA may refuse to consider the application until the applicant gives the ACA the information.

## **56 Grant or refusal of permit**

### *Grant*

- (1) After considering the application, the ACA may grant the applicant a protection zone installation permit authorising the installation, in the protection zone, of the submarine cable or cables specified in the application.
- (2) The ACA may grant the permit subject to conditions specified by the ACA in relation to the installation of the cable or cables.

### *Refusal*

- (3) After considering the application, the ACA may refuse to grant a protection zone installation permit.
- (4) If the ACA refuses to grant the permit, it must notify the applicant in writing of the ACA's decision and the reasons for the decision.

## **57 Automatic refusal**

### *Automatic refusal if no grant before deadline day*

- (1) If:
  - (a) a carrier applies for a protection zone installation permit; and
  - (b) the ACA neither grants, nor refuses to grant, the permit before the end of the deadline day worked out under this clause;then the ACA is taken, at the end of that day, to have refused to grant the permit.

### *No request for further information*

- (2) If the ACA has not requested further information about the application under clause 55, the **deadline day** is the 20th business day after the day on which the application was made.

### *Request for further information complied with*

- (3) If the ACA requested further information about the application under clause 55 and the applicant complied with the request, the

*deadline day* is the tenth business day after the day on which the request was complied with.

*Request for further information not complied with*

- (4) If the ACA requested further information about the application under clause 55 and the applicant has not complied with the request, the *deadline day* is the tenth business day after the end of the period specified in the request for compliance with the request.

*Business day*

- (5) In this clause:

*business day* means a day on which the ACA is open for business in both Victoria and the Australian Capital Territory.

## **58 Refund of application charge if automatic refusal**

- (1) If:
- (a) an application for a protection zone installation permit is accompanied by a charge mentioned in clause 53; and
  - (b) the ACA is taken to have refused to grant the permit under clause 57;
- the ACA, on behalf of the Commonwealth, must refund the charge to the applicant.
- (2) The Consolidated Revenue Fund is appropriated for payments under this section.

## **59 Duration of permit**

A protection zone installation permit is in force for a period of 18 months from the day the permit is granted.

## **60 Surrender of permit**

The holder of a protection zone installation permit may, at any time, surrender the permit by written notice given to the ACA.

## **61 Extension of permit**

- (1) Before a protection zone installation permit expires, the holder of the permit may apply to the ACA to extend the duration of the permit for a further 180 days.
- (2) The holder must give the ACA reasons for requesting to extend the duration of the permit.
- (3) If the ACA refuses the application, the ACA must give the holder written notice of the ACA's decision and the reasons for the decision.

## **62 Suspension or cancellation of permit**

- (1) The ACA may suspend or cancel a protection zone installation permit by written notice to the holder of the permit, if the ACA is satisfied that:
  - (a) the holder has breached a condition to which the permit is subject; or
  - (b) the holder has not complied with a condition of the Code of Practice in force under clause 15 of Schedule 3 that applies to the installation of submarine cables.
- (2) Before a permit is suspended or cancelled under subclause (1):
  - (a) the ACA must give the holder 30 days' written notice of the ACA's intention to suspend or cancel the permit and the ground or grounds on which the ACA intends to do so; and
  - (b) the ACA must give the holder an opportunity to submit to the ACA any matters that the holder wishes the ACA to take into account in deciding whether to suspend or cancel the permit; and
  - (c) the ACA must take into account any matters submitted by the holder under paragraph (b) and any action taken by the holder to address the ACA's concerns or to prevent the recurrence of similar circumstances.

## **63 Exemption from State and Territory laws**

- (1) This clause applies to the installation of a submarine cable in accordance with a protection zone installation permit.

- (2) A carrier may install, or cause to be installed, a cable despite a law of a State or Territory about:
  - (a) the assessment of the environmental effects of engaging in the activity; or
  - (b) the protection of places or items of significance to Australia's natural or cultural heritage; or
  - (c) the powers and functions of a local government body; or
  - (d) the supply of fuel or power, including the supply and distribution of extra-low voltage power systems; or
  - (e) a matter specified in the regulations.
- (3) Paragraph (2)(b) does not apply to a law in so far as the law provides for the protection of places or items of significance to the cultural heritage of Aboriginal persons or Torres Strait Islanders.
- (4) Paragraph 2(d) does not apply to a law in so far as the law deals with the supply of electricity at a voltage that exceeds that used for ordinary commercial or domestic requirements.
- (5) If subclause (2) entitles a person to engage in activities despite particular laws of a State or Territory, nothing in this clause affects the operation of any other law of a State or Territory, so far as that other law is capable of operating concurrently.
- (6) This clause does not affect the liability of a carrier to taxation under a law of a State or Territory.

### **Division 3—Non-protection zone installation permits**

#### **64 Application for a permit to install a submarine cable in Australian waters (otherwise than in a protection zone or coastal waters)**

A carrier may apply to the ACA for a permit to install one or more submarine cables in Australian waters that are not in a protection zone and that are not coastal waters of a State or the Northern Territory (a *non-protection zone installation permit*).

#### **65 Form of application etc.**

An application must be:

- (a) in writing; and
-

(b) in the form approved in writing by the ACA.

## **66 Application to be accompanied by charge**

An application must be accompanied by the charge (if any) imposed on the application by a determination under section 53 of the *Australian Communications Authority Act 1997*.

## **67 Withdrawal of application**

This Division does not prevent the withdrawal of an application and the submission of a fresh application.

## **68 Further information**

- (1) The ACA may request the applicant to give the ACA, within the period specified in the request, further information about the application.
- (2) The ACA may refuse to consider the application until the applicant gives the ACA the information.

## **69 Grant or refusal of permit**

### *Grant*

- (1) After:
  - (a) considering the application; and
  - (b) complying with clause 70 (about consultation); and
  - (c) complying with clause 71 (about the matters the ACA must have regard to);

the ACA may grant the applicant a non-protection zone installation permit authorising the installation, in Australian waters that are not in a protection zone and that are not coastal waters of a State or the Northern Territory, of the submarine cable or cables specified in the application.

- (2) The ACA may grant the permit subject to conditions specified by the ACA in relation to the installation of the cable or cables.

*Refusal*

- (3) After considering the application, the ACA may refuse to grant a non-protection zone installation permit.
- (4) If the ACA refuses to grant the permit, it must notify the applicant in writing of the ACA's decision and the reasons for the decision.

**70 Consultation before the ACA makes a decision about a permit**

The ACA must not grant a non-protection zone installation permit unless it has consulted with:

- (a) the Environment Secretary; and
  - (b) any other persons the ACA considers relevant;
- in relation to the application for the permit.

**71 Matters the ACA must have regard to before it makes a decision about a permit**

In deciding whether to grant a non-protection zone installation permit, the ACA must have regard to:

- (a) the objective of facilitating the supply of efficient, modern and cost-effective carriage services to the public; and
- (b) the impact of the installation on the environment; and
- (c) any relevant technical and economic aspects of the installation; and
- (d) whether the installation involves co-location of the submarine cable or cables to which the application relates with one or more other submarine cables; and
- (e) any other matters that the ACA considers relevant.

**72 Environment and heritage considerations**

For the purposes of paragraph 71(b), the ACA must have regard to:

- (a) whether the installation, maintenance or operation of the submarine cable:
  - (i) is inconsistent with Australia's obligations under a listed international agreement; or
  - (ii) could have an adverse effect on a listed threatened species or threatened ecological community, or impede

- the recovery of a listed threatened species or threatened ecological community; or
- (iii) could have an adverse effect on a listed marine species; or
  - or
  - (iv) could have an adverse effect on the environment, including the environment within a Commonwealth marine area; or
  - (v) could have an adverse effect on cetaceans; or
  - (vi) could have an adverse effect on a listed migratory species; or
  - (vii) could have an adverse effect on the National Heritage values of a place included in the National Heritage List; or
  - (viii) could have an adverse effect on the ecological character of a declared Ramsar wetland; or
  - (ix) could have an adverse effect on the world heritage values of a declared World Heritage property; or
  - (x) could have an adverse effect on a place that Australia is required to protect by the terms of a listed international agreement; or
  - (xi) could have an adverse effect on an area that, under the law of the Commonwealth, a State or a Territory, is reserved wholly or principally for marine conservation purposes (however described); or
  - (xii) could have an adverse effect on an area that, under a law of the Commonwealth, a State or a Territory, is protected from significant environmental disturbance; and
- (b) whether the submarine cable is to be installed at or near an area or thing that is of particular significance to Aboriginal persons, or Torres Strait Islanders, in accordance with their traditions; and
- (c) such other matters (if any) as the ACA considers relevant.

### **73 Time limit on decision about a permit**

- (1) The ACA must decide whether to grant, or refuse to grant, a non-protection zone installation permit within 180 days after the day on which the application for the permit was made.

- (2) The ACA may extend, or further extend, the 180 day period by giving written notice to the applicant only if:
  - (a) the extension or further extension is for a period of not more than 90 days; and
  - (b) the notice includes a statement explaining why the ACA has been unable to make a decision about the application within the 180 day period, or the 180 day period as previously extended.
- (3) If the ACA has requested further information about the application under clause 68, a day on which the request for information remains unfulfilled, or partly unfulfilled, is disregarded for the purposes of calculating the 180 day period or the 180 day period as extended.

#### **74 Duration of permit**

A non-protection zone installation permit is in force for a period of 18 months from the day the permit is granted.

#### **75 Surrender of permit**

The holder of a non-protection zone installation permit may, at any time, surrender the permit by written notice given to the ACA.

#### **76 Extension of permit**

- (1) Before a non-protection zone installation permit expires, the holder of the permit may apply to the ACA to extend the duration of the permit for a further 180 days.
- (2) The holder must give the ACA reasons for requesting to extend the duration of the permit.
- (3) If the ACA refuses the application, the ACA must give the holder written notice of the ACA's decision and the reasons for the decision.

#### **77 Suspension or cancellation of permit**

- (1) The ACA may suspend or cancel a non-protection zone installation permit by written notice to the holder of the permit, if the ACA is satisfied that:
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- (a) the holder has breached a condition to which the permit is subject; or
  - (b) the holder has not complied with a condition of the Code of Practice in force under clause 15 of Schedule 3 that applies to the installation of submarine cables.
- (2) Before a permit is suspended or cancelled under subclause (1):
- (a) the ACA must give the holder 30 days' written notice of the ACA's intention to suspend or cancel the permit and the ground or grounds on which the ACA intends to do so; and
  - (b) the ACA must give the holder an opportunity to submit to the ACA any matters that the holder wishes the ACA to take into account in deciding whether to suspend or cancel the permit; and
  - (c) the ACA must take into account any matters submitted by the holder under paragraph (b) and any action taken by the holder to address the ACA's concerns or to prevent the recurrence of similar circumstances.

## **Division 4—Conditions applicable to the installation of submarine cables**

### **78 Application of this Division**

This Division applies to the installation of a submarine cable:

- (a) in a protection zone; or
- (b) in Australian waters, other than coastal waters of a State or Territory;

by or on behalf of a carrier.

Note: A Code of Practice made under subclause 15(1) of Schedule 3 may impose conditions in addition to the conditions imposed in this Division.

### **79 Installation to do as little damage as practicable**

The carrier must ensure that all reasonable steps are taken to ensure that the installation causes as little detriment and inconvenience, and as little damage, as is practicable.

## **80 Management of installation activities**

The carrier must ensure that all reasonable steps are taken:

- (a) to act in accordance with good engineering practice; and
- (b) to protect the safety of persons and property; and
- (c) to protect the environment.

## **81 Compliance with industry standards**

The carrier must ensure that the installation is done in accordance with any standard that:

- (a) relates to installation; and
- (b) is recognised by the ACA as a standard for use in the telecommunications industry; and
- (c) is likely to reduce a risk to the safety of the public if the carrier complies with the standard.

## **82 Compliance with international agreements**

The carrier must ensure that the installation is done in a manner that is consistent with Australia's obligations under a listed international agreement that is relevant to the installation.

## **83 Conditions specified in the regulations**

The carrier must ensure that the installation complies with any conditions that are specified in the regulations.

## **Division 5—Offences in relation to installation of submarine cables**

### **84 Installing a submarine cable without a permit**

- (1) A person commits an offence if:
  - (a) the person installs, or causes to be installed, a submarine cable; and
  - (b) the cable is installed:
    - (i) in Australian waters that are not in a protection zone and that are not coastal waters of a State or the Northern Territory; or

- (ii) in a protection zone; and
- (c) the person does not have a permit under this Part authorising the installation of the cable in the place in which it is installed.

Penalty: 200 penalty units.

- (2) Strict liability applies to paragraph (1)(b).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) Subclause (1) does not apply to a person who installs a submarine cable on behalf of a carrier, if the carrier has a permit authorising the installation of the cable.

Note: The defendant bears an evidential burden in relation to the matters in subclause (3). See subsection 13.3(3) of the *Criminal Code*.

### **85 Breaching conditions of a permit**

A carrier commits an offence if:

- (a) the carrier holds a permit under this Part authorising the installation of a submarine cable; and
- (b) the carrier, or a person acting on behalf of the carrier, engages in conduct; and
- (c) the conduct breaches a condition of the permit.

Penalty: 100 penalty units.

### **86 Failing to comply with ACA direction to remove an unlawfully installed cable**

- (1) The ACA may direct a carrier to remove a submarine cable if:
- (a) the carrier installed the submarine cable, or caused it to be installed, in a protection zone or in Australian waters without a permit under this Part authorising the installation; or
  - (b) the carrier is installing the submarine cable, or causing it to be installed, in a protection zone or in Australian waters without a permit under this Part authorising the installation.
- (2) A carrier who does not comply with a direction under subclause (1) commits an offence.

Penalty: 200 penalty units.

- (3) The ACA must not give a direction to a carrier under subclause (1) in relation to a submarine cable that the carrier installed, or began to install, before the commencement of this Schedule.

## **Part 4—Compensation**

### **87 Compensation**

- (1) If a person suffers financial loss or damage because of anything done by a carrier under this Schedule in relation to:
- (a) any property owned by the person; or
  - (b) any property in which the person has an interest;
- there is payable to the person by the carrier such reasonable amount of compensation;
- (c) as is agreed between them; or
  - (d) failing agreement—as is determined by a court of competent jurisdiction.
- (2) Compensation payable under subclause (1) includes, without limitation, compensation in relation to:
- (a) damage of a temporary character as well as of a permanent character; and
  - (b) the taking of sand, soil, water and other things.
- (3) In this clause:
- court of competent jurisdiction*, in relation to property, includes the Federal Court.

### **88 Compensation for acquisition of property**

- (1) If:
- (a) either of the following would result in an acquisition of property from a person:
    - (i) anything done by a carrier under, or because of, this Schedule;
    - (ii) the existence of rights conferred on a carrier under, or because of, this Schedule in relation to a submarine cable; and

- (b) the acquisition of property would not be valid, apart from this section, because a particular person had not been compensated;  
the carrier must pay that person:
  - (c) a reasonable amount of compensation agreed on between the person and the carrier; or
  - (d) failing agreement—a reasonable amount of compensation determined by a court of competent jurisdiction.
- (2) In assessing compensation payable under this clause arising out of an event, the following must be taken into account:
  - (a) any compensation obtained by the person as a result of an agreement between the person and the carrier otherwise than under this clause but arising out of the same event;
  - (b) any damages or compensation recovered by the person from the carrier, or other remedy given, in a proceeding begun otherwise than under this clause but arising out of the same event.
- (3) This clause does not limit the operation of clause 87.
- (4) In this clause:

*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

## **Part 5—Miscellaneous**

### **89 Review of operation of this Schedule**

- (1) The ACA must conduct a review of, and report to the Minister on, the operation of this Schedule within 5 years after the day on which this Schedule commences.
- (2) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after receiving the report.

### **7 At the end of clause 1 of Schedule 4**

Add:

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**Schedule 1** Protection of submarine cables  
**Part 1** Amendments to protect submarine cables

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- ; (za) a decision under clause 56 of Schedule 3A to refuse to grant a protection zone installation permit, or to grant such a permit subject to conditions;
- (zb) a decision under clause 61 of Schedule 3A to refuse to extend the duration of a protection zone installation permit;
- (zc) a decision under clause 62 of Schedule 3A to suspend or cancel a protection zone installation permit;
- (zd) a decision under clause 69 of Schedule 3A to refuse to grant a non-protection zone installation permit, or to grant such a permit subject to conditions;
- (ze) a decision under clause 76 of Schedule 3A to refuse to extend the duration of a non-protection zone installation permit;
- (zf) a decision under clause 77 of Schedule 3A to suspend or cancel a non-protection zone installation permit.

## **Part 2—Amendments required if the Australian Communications and Media Authority Act 2005 commences before this Act**

### *Telecommunications Act 1997*

#### **8 Clause 1 of Schedule 3A**

Omit “ACA” (wherever occurring), substitute “ACMA”.

#### **9 Subclause 2(1) of Schedule 3A (definition of *advisory committee*)**

Repeal the definition, substitute:

*advisory committee* means an advisory committee established by section 58 of the *Australian Communications and Media Authority Act 2005*.

#### **10 Subclause 2(1) of Schedule 3A (definition of *protection zone*)**

Omit “ACA”, substitute “ACMA”.

#### **11 Clause 3 of Schedule 3A**

Omit “ACA” (wherever occurring), substitute “ACMA”.

#### **12 Subclause 4(1) of Schedule 3A**

Omit “ACA”, substitute “ACMA”.

Note: The heading to clause 4 is altered by omitting “ACA” and substituting “ACMA”.

#### **13 Subclause 4(2) of Schedule 3A (including the note)**

Omit “ACA” (wherever occurring), substitute “ACMA”.

#### **14 Paragraph 5(a) of Schedule 3A**

Omit “ACA’s”, substitute “ACMA’s”.

Note: The heading to clause 5 is altered by omitting “ACA’s” and substituting “ACMA’s”.

#### **15 Subclause 6(1) of Schedule 3A**

**Schedule 1** Protection of submarine cables

**Part 2** Amendments required if the Australian Communications and Media Authority Act 2005 commences before this Act

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Omit “ACA” (wherever occurring), substitute “ACMA”.

Note: The heading to subclause 6(1) is altered by omitting “ACA” and substituting “ACMA”.

**16 Subclause 6(2) of Schedule 3A**

Omit “ACA” (wherever occurring), substitute “ACMA”.

Note: The heading to subclause 6(2) is altered by omitting “ACA” and substituting “ACMA”.

**17 Subclause 6(2) of Schedule 3A**

Omit “ACA’s”, substitute “ACMA’s”.

**18 Subclause 7(1) of Schedule 3A**

Omit “ACA” (wherever occurring), substitute “ACMA”.

**19 Subclause 7(1) of Schedule 3A**

Omit “ACA’s”, substitute “ACMA’s”.

**20 Subclause 7(2) of Schedule 3A**

Omit “ACA” (wherever occurring), substitute “ACMA”.

**21 Subclause 9(1) of Schedule 3A**

Omit “ACA”, substitute “ACMA”.

**22 Subclause 12(1) of Schedule 3A**

Omit “ACA”, substitute “ACMA”.

**23 Subclause 13(1) of Schedule 3A**

Omit “ACA”, substitute “ACMA”.

**24 Subclause 13(2) of Schedule 3A**

Omit “ACA” (wherever occurring), substitute “ACMA”.

**25 Subclause 14(1) of Schedule 3A**

Omit “ACA”, substitute “ACMA”.

**26 Subclause 15(1) of Schedule 3A**

Omit “ACA” (wherever occurring), substitute “ACMA”.

Note: The heading to clause 15 is altered by omitting “ACA” and substituting “ACMA”.

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**27 Subclauses 16(1) and (3) of Schedule 3A**

Omit “ACA”, substitute “ACMA”.

Note: The heading to clause 16 is altered by omitting “ACA” and substituting “ACMA”.

**28 Subclause 17(1) of Schedule 3A**

Omit “ACA”, substitute “ACMA”.

Note: The heading to clause 17 is altered by omitting “ACA” and substituting “ACMA”.

**29 Paragraph 17(2)(b) of Schedule 3A**

Omit “ACA”, substitute “ACMA”.

**30 Clause 18 of Schedule 3A**

Omit “ACA” (wherever occurring), substitute “ACMA”.

**31 Subclauses 19(1) and (2) of Schedule 3A**

Omit “ACA” (wherever occurring), substitute “ACMA”.

**32 Clause 20 of Schedule 3A**

Omit “ACA” (wherever occurring), substitute “ACMA”.

Note: The heading to clause 20 is altered by omitting “ACA” and substituting “ACMA”.

**33 Clause 21 of Schedule 3A**

Omit “ACA” (wherever occurring), substitute “ACMA”.

**34 Clause 22 of Schedule 3A**

Omit “ACA”, substitute “ACMA”.

**35 Clause 22 of Schedule 3A**

Omit “ACA’s”, substitute “ACMA’s”.

**36 Subclauses 23(1) and (2) of Schedule 3A (including the notes)**

Omit “ACA” (wherever occurring), substitute “ACMA”.

Note: The heading to clause 23 is altered by omitting “ACA” and substituting “ACMA”.

**37 Paragraph 24(a) of Schedule 3A**

Omit “ACA’s”, substitute “ACMA’s”.

**Schedule 1** Protection of submarine cables

**Part 2** Amendments required if the Australian Communications and Media Authority Act 2005 commences before this Act

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Note: The heading to clause 24 is altered by omitting “ACA’s” and substituting “ACMA’s”.

**38 Clause 25 of Schedule 3A**

Omit “ACA” (wherever occurring), substitute “ACMA”.

Note: The heading to clause 25 is altered by omitting “ACA” and substituting “ACMA”.

**39 Subclauses 26(1) and (2) of Schedule 3A**

Omit “ACA” (wherever occurring), substitute “ACMA”.

Note: The headings to subclauses 26(1) and (2) are altered by omitting “ACA” and substituting “ACMA”.

**40 Subclause 26(2) of Schedule 3A**

Omit “ACA’s”, substitute “ACMA’s”.

**41 Clause 27 of Schedule 3A**

Omit “ACA” (wherever occurring), substitute “ACMA”.

**42 Clause 27 of Schedule 3A**

Omit “ACA’s”, substitute “ACMA’s”.

**43 Clause 28 of Schedule 3A**

Omit “ACA”, substitute “ACMA”.

**44 Subclause 30(1) of Schedule 3A**

Omit “ACA” (wherever occurring), substitute “ACMA”.

Note: The heading to clause 30 is altered by omitting “ACA” and substituting “ACMA”.

**45 Subclauses 31(1) and (3) of Schedule 3A**

Omit “ACA”, substitute “ACMA”.

Note: The heading to clause 31 is altered by omitting “ACA” and substituting “ACMA”.

**46 Subclause 32(1) of Schedule 3A**

Omit “ACA”, substitute “ACMA”.

Note: The heading to clause 32 is altered by omitting “ACA” and substituting “ACMA”.

**47 Paragraph 32(2)(b) of Schedule 3A**

Omit “ACA”, substitute “ACMA”.

**48 Subclauses 33(1) and (2) of Schedule 3A**

Omit “ACA” (wherever occurring), substitute “ACMA”.

**49 Clause 34 of Schedule 3A**

Omit “ACA” (wherever occurring), substitute “ACMA”.

Note: The heading to clause 34 is altered by omitting “ACA” and substituting “ACMA”.

**50 Clause 35 of Schedule 3A**

Omit “ACA” (wherever occurring), substitute “ACMA”.

**51 Subclause 47(1) of Schedule 3A**

Omit “ACA” (wherever occurring), substitute “ACMA”.

Note: The heading to clause 47 is altered by omitting “ACA” and substituting “ACMA”.

**52 Subclause 47(1) of Schedule 3A**

Omit “ACA’s”, substitute “ACMA’s”.

**53 Clause 48 of Schedule 3A**

Omit “ACA”, substitute “ACMA”.

**54 Subclause 49(2) of Schedule 3A**

Omit “ACA” (wherever occurring), substitute “ACMA”.

**55 Subclause 49(3) of Schedule 3A (definition of *interested*)**

Omit “ACA”, substitute “ACMA”.

**56 Clause 50 of Schedule 3A**

Omit “ACA”, substitute “ACMA”.

**57 Clause 51 of Schedule 3A**

Omit “ACA”, substitute “ACMA”.

**58 Paragraph 52(b) of Schedule 3A**

Omit “ACA”, substitute “ACMA”.

**59 Clause 53 of Schedule 3A**

**Schedule 1** Protection of submarine cables

**Part 2** Amendments required if the Australian Communications and Media Authority Act 2005 commences before this Act

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Omit “section 53 of the *Australian Communications Authority Act 1997*”, substitute “section 60 of the *Australian Communications and Media Authority Act 2005*”.

**60 Subclauses 55(1) and (2) of Schedule 3A**

Omit “ACA” (wherever occurring), substitute “ACMA”.

**61 Subclause 56(1) of Schedule 3A**

Omit “ACA”, substitute “ACMA”.

**62 Subclause 56(2) of Schedule 3A**

Omit “ACA” (wherever occurring), substitute “ACMA”.

**63 Subclauses 56(3) and (4) of Schedule 3A**

Omit “ACA”, substitute “ACMA”.

**64 Subclause 56(4) of Schedule 3A**

Omit “ACA’s”, substitute “ACMA’s”.

**65 Subclause 57(1) of Schedule 3A**

Omit “ACA” (wherever occurring), substitute “ACMA”.

**66 Subclauses 57(2), (3) and (4) of Schedule 3A**

Omit “ACA”, substitute “ACMA”.

**67 Subclause 57(5) of Schedule 3A (definition of *business day*)**

Omit “ACA”, substitute “ACMA”.

**68 Clause 58 of Schedule 3A**

Omit “ACA” (wherever occurring), substitute “ACMA”.

**69 Clause 60 of Schedule 3A**

Omit “ACA”, substitute “ACMA”.

**70 Subclauses 61(1) and (2) of Schedule 3A**

Omit “ACA”, substitute “ACMA”.

**71 Subclause 61(3) of Schedule 3A**

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Omit “ACA” (wherever occurring), substitute “ACMA”.

**72 Subclause 61(3) of Schedule 3A**

Omit “ACA’s”, substitute “ACMA’s”.

**73 Subclause 62(1) of Schedule 3A**

Omit “ACA” (wherever occurring), substitute “ACMA”.

**74 Paragraph 62(2)(a) of Schedule 3A**

Omit “ACA” (wherever occurring), substitute “ACMA”.

**75 Paragraph 62(2)(a) of Schedule 3A**

Omit “ACA’s”, substitute “ACMA’s”.

**76 Paragraph 62(2)(b) of Schedule 3A**

Omit “ACA” (wherever occurring), substitute “ACMA”.

**77 Paragraph 62(2)(c) of Schedule 3A**

Omit “ACA”, substitute “ACMA”.

**78 Paragraph 62(2)(c) of Schedule 3A**

Omit “ACA’s”, substitute “ACMA’s”.

**79 Clause 64 of Schedule 3A**

Omit “ACA”, substitute “ACMA”.

**80 Paragraph 65(b) of Schedule 3A**

Omit “ACA”, substitute “ACMA”.

**81 Clause 66 of Schedule 3A**

Omit “section 53 of the *Australian Communications Authority Act 1997*”, substitute “section 60 of the *Australian Communications and Media Authority Act 2005*”.

**82 Subclauses 68(1) and (2) of Schedule 3A**

Omit “ACA” (wherever occurring), substitute “ACMA”.

**83 Subclause 69(1) of Schedule 3A**

Omit “ACA” (wherever occurring), substitute “ACMA”.

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**84 Subclause 69(2) of Schedule 3A**

Omit “ACA” (wherever occurring), substitute “ACMA”.

**85 Subclauses 69(3) and (4) of Schedule 3A**

Omit “ACA”, substitute “ACMA”.

**86 Subclause 69(4) of Schedule 3A**

Omit “ACA’s”, substitute “ACMA’s”.

**87 Clause 70 of Schedule 3A**

Omit “ACA” (wherever occurring), substitute “ACMA”.

Note: The heading to clause 70 is altered by omitting “ACA” and substituting “ACMA”.

**88 Clause 71 of Schedule 3A**

Omit “ACA” (wherever occurring), substitute “ACMA”.

Note: The heading to clause 71 is altered by omitting “ACA” and substituting “ACMA”.

**89 Clause 72 of Schedule 3A**

Omit “ACA” (wherever occurring), substitute “ACMA”.

**90 Subclauses 73(1) and (2) of Schedule 3A**

Omit “ACA”, substitute “ACMA”.

**91 Paragraph 73(2)(b) of Schedule 3A**

Omit “ACA”, substitute “ACMA”.

**92 Subclause 73(3) of Schedule 3A**

Omit “ACA”, substitute “ACMA”.

**93 Clause 75 of Schedule 3A**

Omit “ACA”, substitute “ACMA”.

**94 Subclauses 76(1) and (2) of Schedule 3A**

Omit “ACA”, substitute “ACMA”.

**95 Subclause 76(3) of Schedule 3A**

Omit “ACA” (wherever occurring), substitute “ACMA”.

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**96 Subclause 76(3) of Schedule 3A**

Omit “ACA’s”, substitute “ACMA’s”.

**97 Subclause 77(1) of Schedule 3A**

Omit “ACA” (wherever occurring), substitute “ACMA”.

**98 Paragraph 77(2)(a) of Schedule 3A**

Omit “ACA” (wherever occurring), substitute “ACMA”.

**99 Paragraph 77(2)(a) of Schedule 3A**

Omit “ACA’s”, substitute “ACMA’s”.

**100 Paragraph 77(2)(b) of Schedule 3A**

Omit “ACA” (wherever occurring), substitute “ACMA”.

**101 Paragraph 77(2)(c) of Schedule 3A**

Omit “ACA”, substitute “ACMA”.

**102 Paragraph 77(2)(c) of Schedule 3A**

Omit “ACA’s”, substitute “ACMA’s”.

**103 Paragraph 81(b) of Schedule 3A**

Omit “ACA”, substitute “ACMA”.

**104 Subclauses 86(1) and (3) of Schedule 3A**

Omit “ACA”, substitute “ACMA”.

Note: The heading to clause 86 is altered by omitting “ACA” and substituting “ACMA”.

**105 Subclause 89(1) of Schedule 3A**

Omit “ACA”, substitute “ACMA”.

## Schedule 2—Other measures

### *Telecommunications Act 1997*

#### **1 Clause 2 of Schedule 3 (definition of *environment*)**

Repeal the definition, substitute:

*environment* has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*.

#### **2 At the end of Schedule 3**

Add:

## **Part 3—Compensation for acquisition of property**

### **62 Compensation for acquisition of property**

(1) If:

(a) either of the following would result in an acquisition of property from a person:

- (i) anything done by a carrier under, or because of, this Schedule;
- (ii) the existence of rights conferred on a carrier under, or because of, this Schedule in relation to a building, structure or facility owned or operated by the carrier; and

(b) the acquisition of property would not be valid, apart from this clause, because a particular person had not been compensated;

the carrier must pay that person:

- (c) a reasonable amount of compensation agreed on between the person and the carrier; or
- (d) failing agreement—a reasonable amount of compensation determined by a court of competent jurisdiction.

(2) In assessing compensation payable under this clause arising out of an event, the following must be taken into account:

- (a) any compensation obtained by the person as a result of an agreement between the person and the carrier otherwise than under this clause but arising out of the same event;
  - (b) any damages or compensation recovered by the person from the carrier, or other remedy given, in a proceeding begun otherwise than under this clause but arising out of the same event.
- (3) This clause does not limit the operation of clause 42.
- (4) In this clause:

*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

### **63 Application of this Part**

This Part applies in relation to:

- (a) anything done by a carrier under, or because of, this Schedule after the commencement of Schedule 2 to the *Telecommunications and Other Legislation Amendment (Protection of Submarine Cables and Other Measures) Act 2005*; and
- (b) the existence of rights:
  - (i) in relation to a building, structure or facility owned or operated by a carrier; and
  - (ii) that are conferred on a carrier under, or because of, this Schedule on or after the commencement of Schedule 2 to the *Telecommunications and Other Legislation Amendment (Protection of Submarine Cables and Other Measures) Act 2005*.

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*[Minister's second reading speech made in—  
House of Representatives on 23 June 2005  
Senate on 11 August 2005]*

(41/05)