

Commonwealth of Australia

Telecommunications Act 1997

Telecommunications Code of Practice 1997

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**Schedule—Dictionary**

**Commonwealth of Australia**

*Telecommunications Act 1997*

**Telecommunications Code of Practice 1997**

I, RICHARD KENNETH ROBERT ALSTON, Minister for Communications and the Arts, acting under Schedule 3 to the *Telecommunications Act 1997* and section 4 of the *Acts Interpretation Act 1901*, make the following Code of Practice.

Dated 29 June 1997.

(SIGNED)

RICHARD ALSTON  
Minister for Communications and the Arts

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**Chapter 1—Preliminary**

**1.1 Citation**

This Code of Practice may be cited as the Telecommunications Code of Practice 1997.

**1.2 Commencement**

This Code commences on 1 July 1997.

## Chapter 1—Preliminary

**Background to code of practice**

Part 1 of Schedule 3 to the *Telecommunications Act 1997* authorises a carrier to enter on land and exercise any of the following powers:

- inspect the land—see Division 2 of Part 1 of the Schedule
- install a facility—see Division 3 of Part 1
- maintain a facility—see Division 4 of Part 1.

In exercising a power, a carrier must comply with the conditions specified in the Part, including:

- doing as little damage as practicable
- acting in accordance with good engineering practice
- complying with recognised industry standards.

Under clause 15 of the Schedule, the Minister may make a Code of Practice setting out conditions to be complied with by carriers in relation to any or all of the activities covered by the Divisions (other than activities covered by a facility installation permit).

Carriers must comply with the Code as well as the conditions specified in Part 1.

**Simplified outline of code**

The Code has 6 Chapters.

The Chapters deal with the following activities:

- Chapter 2—inspection of land
- Chapter 3—subscriber connection
- Chapter 4—low-impact facilities
- Chapter 5—temporary defence facilities
- Chapter 6—maintenance of facilities.

Definitions for words and expressions used in the Chapters are to be found in the dictionary in the Schedule at the end of the Code.

## Chapter 1—Preliminary

**1.3 Definitions—the dictionary**

- (1) The dictionary in the Schedule defines particular words and expressions.
- (2) A relevant definition found elsewhere in this Code is indicated by a signpost definition in the dictionary.

*Example:*

The signpost definition

***land entry activity*** see section 2.2.

indicates that the expression is defined in section 2.2 of this Code.

*Note:* A signpost definition of a word or expression is included only if the definition is used outside the section defining the word or expression.

- (3) The dictionary also includes certain words and expressions relevant to this Code that are defined in the *Telecommunications Act 1997*.

*Notes:*

- 1 These definitions are indicated by 1 or 2 asterisks (\* or \*\*).
  - 2 One asterisk (\*) indicates that the definition has been taken from clause 2 of Schedule 3 to the Act. Two asterisks (\*\*) indicate that the definition has been taken from section 7 of the Act.
  - 3 These definitions have been included for information only to assist readers of the Code.
- (4) A definition outside the Act and this Code that is applied to this Code is also indicated by a signpost definition in the dictionary.

*Example:*

The signpost definition

***ecological community*** see subsection 4 (1) of the *Endangered Species Protection Act 1992*.

indicates that the expression is defined in subsection 4 (1) of the *Endangered Species Protection Act 1992* and that the definition applies to this Code.

- (5) A definition in or applying to this Code applies to each use of the word or expression in the Code unless the contrary intention appears.

## Chapter 1—Preliminary

**1.4 Notification procedures**

- (1) A notice posted to an address in Australia is taken to have been given on the second business day after being posted.

*Note:* For the ways in which notice may be given, see *Acts Interpretation Act 1901*, s 28A. For the way in which a notice must be posted in order to be properly given, see *Acts Interpretation Act 1901*, ss 28A and 29.

- (2) A notice left at the residence of the person to whom it is addressed is taken to have been given on the second business day after it was left at the residence.
- (3) A notice mentioned in this Code may be combined with another notice mentioned in this Code.



## Chapter 2—Inspection of Land

### Simplified outline of Chapter 2

Under Division 2 of Part 3 of Schedule 3 to the *Telecommunications Act 1997*, a carrier may, for the purposes of determining whether any land is suitable for its purposes:

- enter on, and inspect, the land; and
- do anything on the land that is necessary or desirable for that purpose.

A carrier may also, for the purpose of surveying or obtaining information in relation to any land that, in the carrier's opinion, is or may be suitable for its purposes:

- enter on any land; and
- do anything on the entered land that is necessary or desirable for that purpose.

This Chapter sets out conditions to be complied with by a carrier in exercising powers under Division 2 of Part 3.

The Chapter has 5 Parts.

The Parts deal with the following matters:

- Part 1—introduction
- Part 2—conditions in the Act for carrier conduct
- Part 3—additional carrier conditions
- Part 4—Nature Conservation Director, Heritage Chairperson and Environment Secretary
- Part 5—general notification arrangements and objections to land entry activities.

## Chapter 2—Inspection of Land

**Part 1—Introduction****2.1 Purpose of Chapter 2**

- (1) Under the Act, if a carrier engages, or proposes to engage, in a land entry activity, the carrier must comply with:
  - (a) the conditions specified in Part 1 of Schedule 3 to the Act; and
  - (b) the conditions specified in the regulations; and
  - (c) the conditions set out in this Code.
- (2) Part 2 and Division 2 of Part 5 set out some of the carrier conditions in the Act, in simplified form, to assist the reader of the Code.
- (3) Parts 3 and 4, and the other Divisions of Part 5, set out the Code conditions.

**2.2 Land entry activity**

- (1) A *land entry activity* of a carrier is any of the following activities of the carrier:
  - (a) entering on, or inspecting, land for the purposes of determining whether any land is suitable for its purposes;
  - (b) doing anything on the land that is necessary or desirable for that purpose, including, for example, making surveys, taking levels, sinking bores, taking samples, digging pits and examining the soil.
- (2) A *land entry activity* of a carrier is also any of the following activities of the carrier:
  - (a) entering on land for the purposes of surveying or obtaining information in relation to any land that, in the carrier's opinion, is or may be suitable for its purposes;
  - (b) doing anything on the entered land that is necessary or desirable for that purpose, including, for example, making surveys and taking levels.

*Note:* See Act, Schedule 3, clause 5.

Chapter 2—Inspection of Land

**Note on definitions**

A number of words and expressions used in this Chapter are to be found in the dictionary in the Schedule, including:

- ACA (the Australian Communications Authority)
- carrier
- environment
- Environment Secretary
- Heritage Chairperson
- industry standard
- installation
- listed international agreement
- Nature Conservation Director
- Telecommunications Industry Ombudsman.

## Chapter 2—Inspection of Land

**Part 2—Conditions in the Act for carrier conduct**

*Note:* Part 2 is provided for information only: see subsection 2.1 (2). The provisions of the Act should be consulted to decide rights and obligations.

**2.3 Carrier to do as little damage as practicable**

In engaging in a land entry activity, a carrier must take all reasonable steps to ensure that the carrier causes as little detriment and inconvenience, and does as little damage, as is practicable.

*Note:* See Act, Schedule 3, clause 8.

**2.4 Carrier to restore land**

- (1) If a carrier engages in a land entry activity in relation to any land, the carrier must take all reasonable steps to ensure that the land is restored to a condition similar to its condition before the activity began.
- (2) The carrier must take all reasonable steps to ensure that the restoration starts within 10 business days after the completion of the land entry activity.
- (3) Subsection (2) does not apply if the carrier agrees with:
  - (a) the owner of the land; and
  - (b) if the land is occupied by someone other than the owner—the occupier;to start restoration at a later time.

*Note:* See Act, Schedule 3, clause 9.

**2.5 Management of activities**

A carrier must, in connection with carrying out a land entry activity, take all reasonable steps:

- (a) to act in accordance with good engineering practice; and
- (b) to protect the safety of persons and property; and
- (c) to ensure that the activity interferes as little as practicable with:
  - (i) the operations of a public utility; and
  - (ii) public roads and paths; and

## Chapter 2—Inspection of Land

- (iii) the movement of traffic; and
- (iv) the use of land; and
- (d) to protect the environment.

*Note:* See Act, Schedule 3, clause 10, and also Schedule 1, clauses 42 to 44.

### **2.6 Agreements with public utilities**

- (1) If a land entry activity of a carrier is likely to affect the operations of a public utility, the carrier must make reasonable efforts to enter into an agreement with the utility that makes provision for the manner in which the carrier will engage in the activity.
- (2) The carrier must comply with the agreement.

*Note:* See Act, Schedule 3, clause 11.

### **2.7 Compliance with industry standards**

A carrier must engage in a land entry activity in accordance with any standard that:

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

*Notes:*

- 1 See Act, Schedule 3, clause 12.
- 2 Examples of standards are:
  - Australian Standard AS 2772.1 (1990) Radiofrequency Radiation (Part 1): Maximum Exposure Level-100kHz-300GHz
  - A relevant standard or code under Part 6 of the Act.

### **2.8 Compliance with listed international agreements**

A carrier must engage in a land entry activity in a manner consistent with Australia's obligations under a listed international agreement relevant to the activity.

*Note:* See Act, Schedule 3, clause 13.

## Chapter 2—Inspection of Land

**2.9 Notice to roads authorities, utilities etc.**

- (1) Before engaging in an activity mentioned in subclause 19 (1) of Schedule 3 to the Act as part of a land entry activity, a carrier must give written notice of its intention to do so to the person or authority responsible for the care and management of the thing affected by the activity.

## Chapter 2—Inspection of Land

*Note:* The activities mentioned in subclause 19 (1) are:

- 1 closing, diverting or narrowing a road or bridge
- 2 installing a facility on, over or under a road or bridge
- 3 altering the position of a water, sewerage or gas main or pipe
- 4 altering the position of an electricity cable or wire.

- (2) However, the carrier is not required to give the notice in a circumstance mentioned in subclauses 19 (2) and (3) of Schedule 3 to the Act.

**2.10 Records for certain facilities**

- (1) If a carrier owns or operates designated overhead lines, the carrier must keep and maintain records of the kind and location of the lines.
- (2) If a carrier owns or operates telecommunications transmission towers, the carrier must keep and maintain records of the kind and location of the towers.
- (3) If a carrier owns or operates underground facilities, the carrier must keep and maintain records of:
  - (a) the kind and location of the facilities; and
  - (b) if any of the facilities is an eligible underground facility—the capacity of the facility to hold further lines.

*Note:* See Act, Schedule 1, clause 41, which defines the terms *designated overhead line*, *telecommunications transmission tower* and *eligible underground facility*.

## Chapter 2—Inspection of Land

**Part 3—Additional carrier conditions****2.11 Best practice**

- (1) In engaging in a land entry activity, a carrier must ensure that the design, planning and installation of facilities (the *carrier's facilities*) is in accordance with best practice.
- (2) For subsection (1), *best practice* is conduct of the carrier complying with:
  - (a) an industry code, registered by the ACA under Part 6 of the Act, applying to the activity; or
  - (b) a standard, made by the ACA under Part 6 of the Act, applying to the activity.
- (3) However, if there is no code or standard in force for the activity, best practice is conduct regarded by people constructing facilities substantially similar to the carrier's facilities as using the best available design, planning and location practices to minimise the potential degradation of the environment and the visual amenity associated with the facilities.

**2.12 Noise**

- (1) In engaging in a land entry activity at any time between 10 pm and 7 am, a carrier must not make noise at a level greater than the level of noise allowed to be made at that time under State or Territory law applying to similar activities carried out by a person other than a carrier.
- (2) However, if there is no level of noise applying under State or Territory law for that time, the carrier must not make noise that is audible by a person in a nearby home or business unless the carrier is allowed to make the noise under an agreement with the relevant local government body.

**2.13 Compliance with standards and codes**

A carrier must engage in a land entry activity in accordance with any standard or code under Part 6 of the Act applying to the activity.



Chapter 2—Inspection of Land

*Note:* Section 2.13 complements section 2.7, which deals with complying with standards to reduce a risk to the safety of the public.

## Chapter 2—Inspection of Land

**Part 4—Nature Conservation Director, Heritage Chairperson and Environment Secretary***Division 1—Purpose of Part 4***2.14 Purpose**

- (1) Under clause 55 of Schedule 3 to the Act, a carrier must give written notice to the Environment Secretary of its intention to engage in a land entry activity if:
  - (a) the carrier, for purposes connected with the supply of a carriage service, proposes to commence to carry out the installation of a facility before 1 January 1999; and
  - (b) neither Division 3 of Part 1 of Schedule 3 (which deals with the installation of facilities), nor Part 7 of the *Telecommunications Act 1991* (which applies to activities started before Schedule 3 commences), will authorise the carrying out of the installation; and
  - (c) any of the conditions set out in subclause 55 (2) of Schedule 3 is satisfied.
- (2) If a land entry activity includes the installation of a facility, the carrier must comply with clause 55.
- (3) For a land entry activity that does not include the installation of a facility, Divisions 2 and 3 set out arrangements about notification of the Nature Conservation Director, Heritage Chairperson and Environment Secretary.

*Division 2—Notification requirements***2.15 Notice to Nature Conservation Director**

- (1) The Nature Conservation Director is responsible for certain areas under the *Endangered Species Protection Act 1992* and the *National Parks and Wildlife Conservation Act 1975*.

Chapter 2—Inspection of Land

- (2) If a proposed land entry activity of a carrier is likely to be undertaken in, or have an effect on, any of the areas for which the Director is responsible, the carrier must notify the Director in writing of the activity.
- (3) The Director must be notified at least 10 business days before the start of the activity.
- (4) However, the carrier and Director may agree, in writing, for alternative notification arrangements.

**2.16 Notice to Heritage Chairperson**

- (1) The Heritage Chairperson is responsible for areas included in the Register of the National Estate and the Interim List for the Register.
- (2) If a proposed land entry activity of a carrier is likely to be undertaken in, or have an effect on, any of the areas for which the Chairperson is responsible, the carrier must notify the Chairperson in writing of the activity.
- (3) The Chairperson must be notified at least 10 business days before the start of the activity.
- (4) However, the carrier and Chairperson may agree, in writing, for alternative notification arrangements.

**2.17 Notice to Environment Secretary**

- (1) Before engaging in a land entry activity, a carrier must take all reasonable steps to find out whether the carrier would be required to notify the Environment Secretary of the activity under this section.
- (2) However, the carrier and the Environment Secretary may agree, in writing, on how the carrier is to find out whether the carrier would be required to notify the Environment Secretary.
- (3) The carrier must notify the Environment Secretary, in writing, of a proposed land entry activity, at least 10 business days before starting the activity, if subsection (4), (5) or (6) applies to the activity.
- (4) The carrier must notify the Environment Secretary if the activity:
  - (a) is, or is likely to be, inconsistent with Australia's obligations under a listed international agreement; or

## Chapter 2—Inspection of Land

- (b) could threaten with extinction, or significantly impede the recovery of, a threatened species; or
  - (c) could put a species of flora or fauna at risk of becoming a threatened species; or
  - (d) could have an adverse effect on a threatened species of flora or fauna; or
  - (e) could damage the whole or a part of a habitat of a threatened species of flora or fauna; or
  - (f) could damage the whole or a part of a place, or an ecological community, essential to the continuing existence of a threatened species of flora or fauna; or
  - (g) could threaten with extinction, or significantly impede the recovery of, an endangered ecological community; or
  - (h) could have an adverse effect on an endangered ecological community; or
  - (i) could damage the whole or a part of the habitat of an endangered ecological community.
- (5) The carrier must notify the Environment Secretary if the carrier proposes to engage in the activity at any of the following places:
- (a) an identified property (within the meaning of section 3A of the *World Heritage Properties Conservation Act 1983*);
  - (b) a place that Australia is required to protect by the terms of a listed international agreement;
  - (c) an area that, under a law of the Commonwealth, is reserved wholly or principally for nature conservation purposes (however described);
  - (d) an area that, under a law of the Commonwealth, is protected from significant environmental disturbance.
- (6) The carrier must notify the Environment Secretary if the carrier proposes to engage in the activity at or near an area or thing:
- (a) entered in the Register of the National Estate; or
  - (b) entered in the Interim List for that Register; or
  - (c) of particular significance to Aboriginal persons, or Torres Strait Islanders, in accordance with their traditions.
- (7) However, the carrier and the Environment Secretary may agree, in writing, for alternative notification arrangements.
- (8) Subsection (9) applies if:

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- (a) a carrier must notify the Environment Secretary of a proposed land entry activity; and
  - (b) the carrier must also notify the Nature Conservation Director or Heritage Chairperson of the proposed activity; and
  - (c) the carrier has an agreement with the Director or Chairperson under section 2.15 or 2.16 for alternative notification arrangements; and
  - (d) the agreement applies to the proposed activity.
- (9) The carrier must:
- (a) tell the Secretary, when notifying the Secretary, that the carrier has the agreement with the Director or Chairperson; and
  - (b) give the Secretary a copy of any notification the carrier has already given to the Director or Chairperson under the agreement.

**2.18 Notification agreements**

- (1) A carrier must give a copy of each agreement entered into by the carrier under sections 2.15 to 2.17 to the ACA within 30 business days after entering into the agreement.
- (2) The carrier must comply with the agreement.

*Division 3—Response by Environment Secretary*

**2.19 Interim notice stopping land entry activity**

- (1) The Environment Secretary may give a carrier a notice requiring the carrier not to engage, or continue to engage, in a land entry activity.
- (2) The notice must invite the carrier to give the Secretary information that will help the Secretary to consider the form of the final notice under section 2.20.
- (3) The carrier must comply with the requirements of the notice.

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**2.20 Final notice**

- (1) This section applies if the Environment Secretary has given a carrier a notice under section 2.19 about a land entry activity.
- (2) The Secretary must consider any information given to the Secretary by the carrier in response to the notice (and any other relevant matters), and give a carrier a final notice, within a reasonable time:
  - (a) confirming the original notice; or
  - (b) revoking the original notice; or
  - (c) revoking the original notice, but imposing conditions about how the carrier should engage, or continue to engage, in the activity.
- (3) In making a decision under subsection (2), the Secretary must consider:
  - (a) the impact of the activity on the environment (including heritage and cultural values); and
  - (b) the impact of the activity on the carrier, and on customers of the carrier who would be directly affected by the decision.
- (4) Subsection (3) does not limit the issues that the Secretary can consider.
- (5) In engaging in the activity, the carrier must comply with any conditions imposed by the Secretary.

## Chapter 2—Inspection of Land

**Part 5—General notification arrangements and objections to land entry activities****Simplified outline of Part 5**

This Part sets out rules for notifying owners and occupiers of land about a land entry activity. It also sets out rules for the owners and occupiers to object to the activity.

The effect of this Part is that:

- The carrier must notify owners and occupiers about land entry activities in accordance with the Act and this Code
- An owner or occupier has an opportunity to object to the activity
- The carrier must try to resolve the objection by agreement
- If there is no agreement, the objection can be referred to the Telecommunications Industry Ombudsman.

*Division 1—Introduction***2.21 Purpose of Part 5**

- (1) Under clause 17 of Schedule 3 to the Act, a carrier must give written notice to the owner (and, if the land is occupied by someone other than the owner, the occupier) of its intention to engage in a land entry activity.
- (2) Clause 54 of Schedule 3 to the Act sets out arrangements for a carrier to serve notice on an owner or occupier of land if the owner or occupier cannot be found after diligent inquiry.
- (3) Division 2 sets out, in simplified form, the notification requirements of clauses 17 and 54 of Schedule 3 as they apply to land entry activities.
- (4) Divisions 3 to 5 set out additional arrangements for notification, and arrangements for the owner or occupier to object to the activity.

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**2.22 Application of Divisions 3, 4 and 5 of Part 5**

- (1) Divisions 3, 4 and 5 of this Part do not apply to a land entry activity if the carrier engages in it as a response to a disaster declaration.
- (2) Divisions 3, 4 and 5 of this Part do not apply to a land entry activity if the carrier engages in it in other circumstances in which the safety of life or property is endangered.
- (3) Divisions 3, 4 and 5 of this Part do not apply to a land entry activity if the owner or occupier of the land has asked the carrier to engage in it as part of the installation of a facility.

*Division 2—Notification requirements of clauses 17 and 54 of Schedule 3*

*Note:* This Division is provided for information only: see subsection 2.1 (2). The provisions of the Act should be consulted to decide rights and obligations.

**2.23 Notice to owner and occupier of land**

- (1) Before engaging in a land entry activity, a carrier must give written notice of its intention to do so to:
  - (a) the owner of the land; and
  - (b) if the land is occupied by someone other than the owner—the occupier.
- (2) The notice must specify the purpose for which the carrier intends to engage in the activity.
- (3) The notice must also contain a statement to the effect that, if a person suffers financial loss or damage in relation to property because of anything done by the carrier in engaging in the activity, compensation may be payable under clause 42 of Schedule 3 to the Act.
- (4) The notice must be given:
  - (a) at least 10 business days before the carrier begins to engage in the activity; or
  - (b) at least 2 business days before the carrier begins to engage in the activity if:
    - (i) no part of the land affected by the land entry activity is, or is included in, a sensitive area; and



## Chapter 2—Inspection of Land

- (ii) engaging in the activity does not involve any material disturbance to the land.

*Note:* Sensitive areas are described in subclause 17 (8) of Schedule 3 to the Act and subsections 2.17 (3) and (4).

- (5) However, the carrier is not required to give the notice in circumstances mentioned in subclauses 17 (5) to (7) of Schedule 3 to the Act.

*Note:* See Act, Schedule 3, clause 17.

### **2.24 Serving notices if owner unknown**

- (1) If a carrier is unable, after diligent inquiry, to find out who owns particular land, the carrier may serve a notice on the owner of the land by publishing a copy of the notice in a newspaper circulating in a district in which the land is situated and:
  - (a) if the land is occupied—serving a copy of the notice to the occupier; or
  - (b) if the land is not occupied—attaching, if practicable, a copy of the notice to a conspicuous part of the land.
- (2) If a carrier is unable to serve a notice on the owner of land either personally, or by post, in accordance with section 1.4, the carrier may serve a notice on the owner of the land by publishing a copy of the notice in a newspaper circulating in a district in which the land is situated and:
  - (a) if the land is occupied—serving a copy of the notice to the occupier; or
  - (b) if the land is not occupied—attaching, if practicable, a copy of the notice to a conspicuous part of the land.

*Note:* See Act, Schedule 3, clause 54.

### **2.25 Serving notices if occupier unknown**

- (1) If a carrier is unable to serve a notice on the occupier of land either personally, or by post, in accordance with section 1.4, the carrier may serve a notice on the occupier by publishing a copy of the notice in a newspaper circulating in the district in which the land is situated and:
  - (a) publishing a copy of the notice in a newspaper circulating in a district in which the land is located; and

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- (b) attaching, if practicable, a copy of the notice in a conspicuous place on the land.
- (2) If a carrier is unable, after diligent inquiry, to find out whether particular land is occupied, or who occupies particular land, the carrier may treat the land as unoccupied.

*Note:* See Act, Schedule 3, clause 54.

*Division 3—Additional notification arrangements***2.26 Notice to owner and occupier of land: additional requirements**

- (1) A carrier must include in a notice mentioned in section 2.23:
  - (a) details of the actions that the carrier expects to take, as part of the land entry activity, on land affected by the activity; and
  - (b) a statement explaining the arrangements under this Chapter for making objections to the activity.
- (2) If the Telecommunications Industry Ombudsman has issued a document setting out how the carrier is to explain the arrangements for making objections to the land entry activity, the carrier must comply with the document.

**2.27 Agreement on alternative notification arrangements**

- (1) A carrier may agree in writing with an owner or occupier of land affected by a land entry activity for alternative notification arrangements.
- (2) The carrier must comply with an agreement.

**2.28 Additional arrangements for serving notices**

- (1) If a carrier serves a notice under section 2.24 or 2.25, the carrier must, if practicable after engaging in the land entry activity, attach to a conspicuous part of the land a copy of another notice that:
  - (a) states the date when the carrier entered the land; and
  - (b) describes the activity.

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- (2) However, the carrier is not required to fix the notice on occupied land if the carrier has been able to give the occupier a notice about the activity either personally, or by post, in accordance with section 1.4.

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## Division 4—Objection made to carrier

**2.29 Objection to land entry activity**

- (1) If a carrier gives notice to an owner or occupier of land of its intention to engage in a land entry activity, the owner or occupier (the *objector*) may give the carrier a written objection to the activity.
- (2) The objection must include reasons for the objection.

**2.30 Reasons for objection**

The reasons for the objection may relate only to all or any of the following matters:

- (a) using the objector's land to engage in the activity;
- (b) the location of a facility on the objector's land;
- (c) the date when the carrier proposes to start the activity, engage in it or stop it;
- (d) the likely effect of the activity on the objector's land;
- (e) the carrier's proposals to minimise detriment and inconvenience, and to do as little damage as practicable, to the objector's land.

*Note:* The carrier is required to take all reasonable steps to ensure that the carrier causes as little detriment and inconvenience, and does as little damage, as practicable in engaging in the activity: see Act, Schedule 3, clause 8.

**2.31 Time for giving objection to carrier**

- (1) For a notice to which paragraph 2.23 (4) (a) applies, the objection must be given to the carrier within 9 business days after the notice is received.
- (2) For a notice to which paragraph 2.23 (4) (b) applies, the objection must be given to the carrier within 1 business day after the notice is received.

*Notes:*

- 1 Sensitive areas are described in subclause 17 (8) of Schedule 3 to the Act and subsections 2.17 (3) and (4).
- 2 Under the Act, a carrier must notify the owner or occupier at least 10 business days before engaging in a land entry activity: see Act, Schedule 3, subclause 17 (4). However, if no sensitive area is involved, and the activity does not involve any material disturbance to the land, the carrier must notify the owner or occupier at least 2 business days before engaging in the activity.

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The periods of 9 business days and 1 business day in section 2.31 reflect these notification requirements.

### 2.32 Activity after objection

If the objection complies with sections 2.29 to 2.31, the carrier may only engage in the land entry activity if 1 of the following situations happens:

**Situation 1** The objection is resolved by an agreement between the carrier and objector.

**Situation 2** A request to refer the objection to the Telecommunications Industry Ombudsman is not received by the carrier within the 9 business days mentioned in section 2.36.

**Situation 3** The Telecommunications Industry Ombudsman deals with the objection without giving a direction to the carrier, and the Ombudsman informs the carrier in writing of that outcome.

**Situation 4** The Telecommunications Industry Ombudsman gives a direction to the carrier.

### 2.33 Consultation

- (1) The carrier must make reasonable efforts to consult the objector about the objection within 5 business days after receiving the objection.
- (2) The carrier must also make reasonable efforts to resolve the objection by agreement with the objector within 20 business days after receiving the objection.

*Note:* An agreement with the objector allows the carrier to engage in the land entry activity: see s 2.32, situation 1.

- (3) The carrier must comply with any agreement made with the objector.

### 2.34 Changes to land entry activity

- (1) If the objection is not resolved by agreement within 20 business days after receiving the objection, the carrier must consider whether to change the land entry activity.

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- (2) The carrier is not required to change the activity in a way that:
- (a) is not economically feasible; or
  - (b) is not technically practicable; or
  - (c) is likely to have a greater adverse effect on the environment than engaging in the activity as originally proposed; or
  - (d) is inconsistent with a recognised industry standard or practice relevant to the activity.

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- (3) Within 25 business days after receiving the objection, the carrier must tell the objector, in writing:
  - (a) whether the carrier proposes to change the activity, and, if so, how; and
  - (b) if the carrier does not propose to change the activity—why the carrier will engage in the activity as originally proposed.

*Division 5—Objection made to Telecommunications Industry Ombudsman***2.35 Application of Division 5**

This Division applies if:

- (a) the objection is not resolved by agreement between the carrier and objector; and
- (b) the objector is not satisfied with the carrier's response to the objection; and
- (c) the objection comes, in whole or part, within the jurisdiction of the Telecommunications Industry Ombudsman.

**2.36 Request to refer objection to Telecommunications Industry Ombudsman**

- (1) Within 9 business days after the objector receives the carrier's response to the objection, the objector may ask the carrier, in writing, to refer the objection to the Telecommunications Industry Ombudsman.
- (2) The carrier must comply with the request.

*Note:* If the objector does not ask the carrier to refer the objection, the carrier may engage in the land entry activity: see s 2.32, situation 2.

**2.37 Compliance with directions of Telecommunications Industry Ombudsman**

If the Telecommunications Industry Ombudsman gives a direction to the carrier about the way in which the carrier should engage in the land entry activity, the carrier must comply with the direction.

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*Notes:*

- 1 If the Telecommunications Industry Ombudsman deals with the objection without giving a direction to the carrier, and the Ombudsman informs the carrier in writing of that outcome, the carrier may engage in the land entry activity: see s 2.32, situation 3.
- 2 If the Telecommunications Industry Ombudsman gives a direction to the carrier, the carrier may engage in the land entry activity: see s 2.32, situation 4.



## **Chapter 3—Subscriber connection**

### **Simplified outline of Chapter 3**

Division 3 of Schedule 3 to the *Telecommunications Act 1997* authorises a carrier to enter on land and install facilities, including a subscriber connection.

This Chapter sets out conditions to be complied with by a carrier in installing a subscriber connection.

The Chapter has 7 Parts.

The Parts deal with the following matters:

- Part 1—introduction
- Part 2—conditions in the Act for carrier conduct
- Part 3—additional carrier conditions
- Part 4—installing a subscriber connection underground: no third parties
- Part 5—installing a subscriber connection underground: third parties
- Part 6—Nature Conservation Director, Heritage Chairperson and Environment Secretary
- Part 7—general notification arrangements.

## Chapter 3—Subscriber connection

**Part 1—Introduction****3.1 Purpose of Chapter 3**

- (1) Under the Act, if a carrier engages in, or proposes to engage in, a subscriber connection activity, the carrier must comply with:
  - (a) the conditions specified in Part 1 of Schedule 3 to the Act; and
  - (b) the conditions specified in the regulations; and
  - (c) the conditions set out in this Code.
- (2) Part 2 and Division 2 of Part 7 set out some of the carrier conditions in the Act, in simplified form, to assist the reader of the Code.
- (3) Parts 3 to 6, and the other Divisions of Part 7, set out the Code conditions.

**3.2 Subscriber connection activity**

A *subscriber connection activity* of a carrier is any of the following activities:

- (a) installing a subscriber connection;
- (b) carrying out an activity for purposes in connection with the installation of a subscriber connection.

Chapter 3—Subscriber connection

**Note on definitions**

A number of words and expressions used in this Chapter are to be found in the dictionary in the Schedule, including:

- ACA (the Australian Communications Authority)
- aerial cabling
- carrier
- environment
- Environment Secretary
- Heritage Chairperson
- industry standard
- installation
- listed international agreement
- Nature Conservation Director
- subscriber connection.

## Chapter 3—Subscriber connection

**Part 2—Conditions in the Act for carrier conduct**

*Note:* Part 2 is provided for information only: see subsection 3.1 (2). The provisions of the Act should be consulted to decide rights and obligations.

**3.3 Carrier to do as little damage as practicable**

In engaging in a subscriber connection activity, a carrier must take all reasonable steps to ensure that the carrier causes as little detriment and inconvenience, and does as little damage, as is practicable.

*Note:* See Act, Schedule 3, clause 8.

**3.4 Carrier to restore land**

- (1) If a carrier engages in a subscriber connection activity in relation to any land, the carrier must take all reasonable steps to ensure that the land is restored to a condition similar to its condition before the activity began.
- (2) The carrier must take all reasonable steps to ensure that the restoration starts within 10 business days after the completion of the activity.
- (3) Subsection (2) does not apply if the carrier agrees with:
  - (a) the owner of the land; and
  - (b) if the land is occupied by someone other than the owner—the occupier;to start restoration at a later time.

*Note:* See Act, Schedule 3, clause 9.

**3.5 Management of activities**

A carrier must, in connection with carrying out a subscriber connection activity, take all reasonable steps:

- (a) to act in accordance with good engineering practice; and
- (b) to protect the safety of persons and property; and
- (c) to ensure that the activity interferes as little as practicable with:
  - (i) the operations of a public utility; and
  - (ii) public roads and paths; and
  - (iii) the movement of traffic; and

## Chapter 3—Subscriber connection

- (iv) the use of land; and
- (d) to protect the environment.

*Note:* See Act, Schedule 3, clause 10, and also Schedule 1, clauses 42 to 44.

### **3.6 Agreements with public utilities**

- (1) If a subscriber connection activity of a carrier is likely to affect the operations of a public utility, the carrier must make reasonable efforts to enter into an agreement with the utility that makes provision for the manner in which the carrier will engage in the activity.
- (2) The carrier must comply with the agreement.

*Note:* See Act, Schedule 3, clause 11.

### **3.7 Compliance with industry standards**

A carrier must engage in a subscriber connection activity in accordance with any standard that:

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

*Notes:*

- 1 See Act, Schedule 3, clause 12.
- 2 An example of a standard is a relevant standard or code under Part 6 of the Act.

### **3.8 Compliance with listed international agreements**

A carrier must engage in a subscriber connection activity in a manner consistent with Australia's obligations under a listed international agreement relevant to the activity.

*Note:* See Act, Schedule 3, clause 13.

### **3.9 Notice to roads authorities, utilities etc**

- (1) Before engaging in an activity mentioned in subclause 19 (1) of Schedule 3 to the Act as part of a subscriber connection activity, a carrier must give written notice of its intention to do so to the person or authority

## Chapter 3—Subscriber connection

responsible for the care and management of the thing affected by the activity.

*Notes:* The activities mentioned in subclause 19 (1) are:

- 1 closing, diverting or narrowing a road or bridge
- 2 installing a facility on, over or under a road or bridge
- 3 altering the position of a water, sewerage or gas main or pipe
- 4 altering the position of an electricity cable or wire.

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- (2) However, the carrier is not required to give the notice in a circumstance mentioned in subclauses 19 (2) and (3) of Schedule 3 to the Act.

**3.10 Records for certain facilities**

- (1) If a carrier owns or operates designated overhead lines, the carrier must keep and maintain records of the kind and location of the lines.
- (2) If a carrier owns or operates telecommunications transmission towers, the carrier must keep and maintain records of the kind and location of the towers.
- (3) If a carrier owns or operates underground facilities, the carrier must keep and maintain records of:
  - (a) the kind and location of the facilities; and
  - (b) if any of the facilities is an eligible underground facility—the capacity of the facility to hold further lines.

*Note:* See Act, Schedule 1, clause 41, which defines the terms *designated overhead line*, *telecommunications transmission tower* and *eligible underground facility*.

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**Part 3—Additional carrier conditions****3.11 Best practice**

- (1) In engaging in a subscriber connection activity, a carrier must ensure that the design, planning and installation of facilities (the *carrier's facilities*) is in accordance with best practice.
- (2) For subsection (1), *best practice* is conduct of the carrier complying with:
  - (a) an industry code, registered by the ACA under Part 6 of the Act, applying to the activity; or
  - (b) a standard, made by the ACA under Part 6 of the Act, applying to the activity.
- (3) However, if there is no code or standard in force for the activity, best practice is conduct regarded by people constructing facilities substantially similar to the carrier's facilities as using the best available design, planning and location practices to minimise the potential degradation of the environment and the visual amenity associated with the facilities.

**3.12 Noise**

- (1) In engaging in a subscriber connection activity at any time between 10 pm and 7 am, a carrier must not make noise at a level greater than the level of noise allowed to be made at that time under State or Territory law applying to similar activities carried out by a person other than a carrier.
- (2) However, if there is no level of noise applying under State or Territory law for that time, the carrier must not make noise that is audible by a person in a nearby home or business unless the carrier is allowed to make the noise under an agreement with the relevant local government body.



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**3.13 Co-location**

- (1) Before engaging in a subscriber connection activity, a carrier must take all reasonable steps to find out whether any of the following things (*existing facilities*) is available for the activity:
  - (a) cabling, conduits or other facilities of the carrier or another carrier; or
  - (b) a facility of a public utility; or
  - (c) an easement attaching to the land for a public purpose.
- (2) The carrier must take all reasonable steps to use existing facilities for the activity.

**3.14 Cooperation about activities**

Before engaging in a subscriber connection activity, a carrier (the *first carrier*) must take all reasonable steps:

- (a) to find out whether another carrier, or a public utility, is engaging in, or proposing to engage in, a similar activity for the same land; and
- (b) to consider whether it is practicable to work with the other carrier or the utility to allow the first carrier:
  - (i) to cause as little detriment and inconvenience as is practicable; and
  - (ii) to do as little damage as is practicable.

*Note:* The carrier is required to take all reasonable steps to ensure that the carrier causes as little detriment and inconvenience, and does as little damage, as practicable in engaging in the activity: see Act, Schedule 3, clause 8.

**3.15 Compliance with standards and codes**

A carrier must engage in a subscriber connection activity in accordance with any standard or code under Part 6 of the Act applying to the activity.

*Note:* Section 3.15 complements section 3.7, which deals with complying with standards to reduce a risk to the safety of the public.

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**3.16 Height of subscriber connections**

- (1) A carrier must ensure that the minimum height of a subscriber connection from the ground complies with this section.
- (2) If a standard or code under Part 6 of the Act applying to the activity specifies the minimum height of a subscriber connection, the minimum height of the connection must comply with the standard or code.
- (3) If no standard or code specifies the minimum height of a subscriber connection for an area in which there is no vehicle traffic, the minimum height of the connection must be 2.4 metres.
- (3) If no standard or code specifies the minimum height of a subscriber connection for a driveway not normally used by a vehicle regarded as a tall commercial vehicle, the minimum height of the connection must be 3.7 metres.
- (4) If no standard or code specifies the minimum height of a subscriber connection for any other area in which there is vehicle traffic, the minimum height of the connection must be 4.9 metres.

*Note:* The minimum heights in this section are derived from the current AUSTEL Technical Standard TS 009—Installation Requirements for Customer Cabling (Wiring Rules).

## Chapter 3—Subscriber connection

**Part 4—Installing a subscriber connection underground: no third parties****Simplified outline of Part 4**

The rules for installing a subscriber connection that would not cross land owned by a third party are:

- The carrier must offer to install the connection underground
- The subscriber has an opportunity to pay for underground installation, based on a quote given by the carrier
- The carrier must install the connection underground if the subscriber or authority agrees to pay for it
- The carrier is not required to install the connection underground if the subscriber refuses to pay for it.

**3.17 Application of Part 4**

This Part applies if:

- (a) a carrier proposes to install aerial cabling connecting a subscriber's premises with its network; and
- (b) the cabling will only cross land owned by the subscriber or the carrier.

**3.18 Offer to install subscriber connection underground**

- (1) The carrier must offer:
  - (a) to install a subscriber connection underground if the subscriber agrees to pay for underground installation; and
  - (b) to give the subscriber an indicative price or quote for underground installation.
- (2) The carrier is only required to make the offer in writing if the subscriber asks the carrier.
- (3) If a relevant local government authority has told the carrier that it has proposals for paying any of the cost of a subscriber connection activity, the carrier must include a statement about the proposals in the offer.

## Chapter 3—Subscriber connection

**3.19 Indicative price**

- (1) If the subscriber asks the carrier for an indicative price for underground installation, the carrier must give the subscriber an indicative price.
- (2) The carrier is only required to give the indicative price in writing if the subscriber asks the carrier.
- (3) The price must be based on the carrier's estimate of the average difference in cost between aerial and underground installation.

**3.20 Installation quote**

- (1) If the subscriber asks the carrier for a quote to install underground installation, the carrier must give the subscriber a quote.
- (2) The carrier is only required to give the quote in writing if the subscriber asks the carrier.
- (3) The quote must be based on the carrier's estimate of the difference in cost between aerial and underground installation.
- (4) The quote may specify the way in which underground installation would be carried out.

**3.21 Aerial or underground connection**

- (1) If the subscriber accepts the carrier's quote, the carrier must install the subscriber connection underground.
- (2) If the subscriber agrees to aerial cabling, the carrier is not required to install the subscriber connection underground.
- (3) If the subscriber refuses to accept the carrier's quote, or does not accept the carrier's quote in writing within 10 business days after being given the quote, the carrier is not required to install the subscriber connection underground.

## Chapter 3—Subscriber connection

**Part 5—Installing a subscriber connection underground:  
third parties****Simplified outline of Part 5**

The rules for installing a subscriber connection that would cross land owned by a third party are:

- The carrier must offer to install the connection underground
- The subscriber has an opportunity to pay for underground installation for the subscriber and all affected third parties, based on a quote given by the carrier
- If the subscriber refuses to pay for underground installation, each third party has an opportunity to pay for installation under the third party's land
- The carrier must install the connection under all land affected if the subscriber agrees to pay for it
- The carrier must install the connection under a third party's land if the third party agrees to pay for it
- The carrier is not required to install the connection under land if neither the subscriber nor a third party agrees to pay for it.

**3.22 Application of Part 5**

This Part applies if:

- (a) a carrier proposes to install aerial cabling connecting a subscriber's premises with its network; and
- (b) the cabling will cross land owned by a person other than the subscriber or the carrier (a *third party*).

## Chapter 3—Subscriber connection

**3.23 Offer to install subscriber connection underground**

- (1) The carrier must offer:
  - (a) to install a subscriber connection underground if the subscriber agrees to pay for underground installation for all land that would be affected by the installation; and
  - (b) to give the subscriber an indicative price or quote for underground installation.
- (2) The carrier is only required to make the offer in writing if the subscriber asks the carrier.
- (3) If a relevant local government authority has told the carrier that it has proposals for paying any of the cost of a subscriber connection activity, the carrier must include a statement about the proposals in the offer.

**3.24 Indicative price to subscriber**

- (1) If the subscriber asks the carrier for an indicative price for underground installation, the carrier must give the subscriber an indicative price.
- (2) The carrier is only required to give the indicative price in writing if the subscriber asks the carrier.
- (3) The price must be based on the carrier's estimate of the average difference in cost between aerial and underground installation for all land that would be affected by the installation.

**3.25 Installation quote to subscriber**

- (1) If the subscriber asks the carrier for a quote to install a subscribed connection underground, the carrier must give the subscriber a quote.
- (2) The carrier is only required to give the quote in writing if the subscriber asks the carrier.
- (3) The quote must be based on the carrier's estimate of the difference in cost between aerial and underground installation for all land that would be affected by the installation.
- (4) The quote may specify the way in which the connection would be installed.

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**3.26 Offer to third party**

- (1) This section applies if the subscriber:
  - (a) refuses in writing to accept the carrier's quote; or
  - (b) does not agree in writing, within 10 business days after the subscriber was given the quote, to accept the quote for all land that would be affected by the installation.
- (2) The carrier must offer:
  - (a) to install a subscriber installation underground for the third party's land; and
  - (b) to give the third party an indicative price or quote for underground installation.
- (3) The carrier is only required to make the offer in writing if the third party asks the carrier.
- (4) If a relevant local government authority has told the carrier that it has proposals for paying any of the cost of a subscriber connection activity, the carrier must include a statement about the proposals in the offer.

**3.27 Indicative price to third party**

- (1) If the third party asks the carrier for an indicative price for installing the subscriber connection under the third party's land, the carrier must give the third party an indicative price in writing.
- (2) The carrier is only required to give the indicative price in writing if the third party asks the carrier.
- (3) The price must be based on the carrier's estimate of the average difference in cost between aerial and underground installation for the third party's land.

**3.28 Installation quote to third party**

- (1) If the third party asks the carrier for a quote for installing the subscriber connection under the third party's land, the carrier must give the third party a written quote.
- (2) The carrier is only required to give the quote in writing if the third party asks the carrier.

## Chapter 3—Subscriber connection

- (3) The quote must be based on the carrier's estimate of the difference in cost between aerial and underground installation for the third party's land.
- (4) The quote may specify the way in which the connection would be installed.

**3.29 Aerial or underground installation: subscriber's land**

- (1) If the subscriber accepts the carrier's quote for all land that would be affected by the installation, the carrier must install the subscriber connection under the subscriber's land.
- (2) If the subscriber refuses to accept the carrier's quote, or does not accept the quote in writing within 10 business days after being given the quote, the carrier is not required to install the connection under the subscriber's land.

**3.30 Aerial or underground installation: third party's land**

- (1) If the subscriber accepts the carrier's quote for all land that would be affected by the installation, the carrier must install the subscriber connection under each third party's land.
- (2) If a third party accepts the carrier's quote for installation under the third party's land, the carrier must install the connection under the third party's land.
- (3) If the third party agrees to aerial cabling for the third party's land, the carrier is not required to install the connection under the land.
- (4) If subsection (1) does not apply, and the third party refuses to accept the carrier's quote, or does not accept the carrier's quote in writing within 10 business days after being given the quote, the carrier is not required to install the connection under the third party's land.



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**Part 6—Nature Conservation Director, Heritage Chairperson and Environment Secretary****3.31 Notice to Nature Conservation Director**

- (1) The Nature Conservation Director is responsible for certain areas under the *Endangered Species Protection Act 1992* and the *National Parks and Wildlife Conservation Act 1975*.
- (2) If a proposed subscriber connection activity of a carrier is likely to be undertaken in, or have an effect on, any of the areas for which the Director is responsible, the carrier must notify the Director in writing of the activity.
- (3) The Director must be notified at least 10 business days before the start of the activity.
- (4) However, the carrier and Director may agree, in writing, for alternative notification arrangements.

**3.32 Notice to Heritage Chairperson**

- (1) The Heritage Chairperson is responsible for areas included in the Register of the National Estate and the Interim List for the Register.
- (2) If a proposed subscriber connection activity of a carrier is likely to be undertaken in, or have an effect on, any of the areas for which the Chairperson is responsible, the carrier must notify the Chairperson in writing of the activity.
- (3) The Chairperson must be notified at least 10 business days before the start of the activity.
- (4) However, the carrier and Chairperson may agree, in writing, for alternative notification arrangements.

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**3.33 Notice to Environment Secretary**

- (1) Before engaging in a subscriber connection activity, a carrier must take all reasonable steps to find out whether the carrier would be required to notify the Environment Secretary of the activity under this section.
- (2) However, the carrier and the Environment Secretary may agree, in writing, on how the carrier is to find out whether the carrier would be required to notify the Environment Secretary.
- (3) A carrier must notify the Environment Secretary, in writing, of a proposed subscriber connection activity, at least 10 business days before the start of the activity, if subsection (4), (5) or (6) applies to the activity.
- (4) The carrier must notify the Environment Secretary if the activity:
  - (a) is, or is likely to be, inconsistent with Australia's obligations under a listed international agreement; or
  - (b) could threaten with extinction, or significantly impede the recovery of, a threatened species; or
  - (c) could put a species of flora or fauna at risk of becoming a threatened species; or
  - (d) could have an adverse effect on a threatened species of flora or fauna; or
  - (e) could damage the whole or a part of a habitat of a threatened species of flora or fauna; or
  - (f) could damage the whole or a part of a place, or an ecological community, essential to the continuing existence of a threatened species of flora or fauna; or
  - (g) could threaten with extinction, or significantly impede the recovery of, an endangered ecological community; or
  - (h) could have an adverse effect on an endangered ecological community; or
  - (i) could damage the whole or a part of the habitat of an endangered ecological community.
- (5) The carrier must notify the Environment Secretary if the carrier proposes to engage in the activity at any of the following places:
  - (a) an identified property (within the meaning of section 3A of the *World Heritage Properties Conservation Act 1983*);

## Chapter 3—Subscriber connection

- (b) a place that Australia is required to protect by the terms of a listed international agreement;
  - (c) an area that, under a law of the Commonwealth, is reserved wholly or principally for nature conservation purposes (however described);
  - (d) an area that, under a law of the Commonwealth, is protected from significant environmental disturbance.
- (6) The carrier must notify the Environment Secretary if the carrier proposes to engage in the activity at or near an area or thing:
  - (a) entered in the Register of the National Estate; or
  - (b) entered in the Interim List for that Register; or
  - (c) of particular significance to Aboriginal persons, or Torres Strait Islanders, in accordance with their traditions.
- (7) However, the carrier and the Environment Secretary may agree, in writing, for alternative notification arrangements.
- (8) Subsection (9) applies if:
  - (a) a carrier must notify the Environment Secretary of a proposed subscriber connection activity; and
  - (b) the carrier must also notify the Nature Conservation Director or Heritage Chairperson of the proposed activity; and
  - (c) the carrier has an agreement with the Director or Chairperson under section 3.31 or 3.32 for alternative notification arrangements; and
  - (d) the agreement applies to the proposed activity.
- (9) The carrier must:
  - (a) tell the Secretary, when notifying the Secretary, that the carrier has the agreement with the Director or Chairperson; and
  - (b) give the Secretary a copy of any notification the carrier has already given to the Director or Chairperson under the agreement.

**3.34 Notification agreements**

- (1) A carrier must give a copy of each agreement entered into by the carrier under sections 3.31 to 3.33 to the ACA within 30 business days after entering into the agreement.
- (2) The carrier must comply with the agreement.

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**3.35 Interim notice stopping subscriber connection activity**

- (1) The Environment Secretary may give a carrier a notice requiring the carrier not to engage, or continue to engage, in a subscriber connection activity.
- (2) The notice must invite the carrier to give the Secretary information that will help the Secretary to consider the form of the final notice under section 3.36.
- (3) The carrier must comply with the requirements of the notice.

**3.36 Final notice**

- (1) This section applies if the Environment Secretary has given a carrier a notice under section 3.35 about a subscriber connection activity.
- (2) The Secretary must consider any information given to the Secretary by the carrier in response to the notice (and any other relevant matters), and give a carrier a final notice, within a reasonable time:
  - (a) confirming the original notice; or
  - (b) revoking the original notice; or
  - (c) revoking the original notice, but imposing conditions about how the carrier should engage, or continue to engage, in the activity.
- (3) In making a decision under subsection (2), the Secretary must consider:
  - (a) the impact of the activity on the environment (including heritage and cultural values); and
  - (b) the impact of the activity on the carrier, and on customers of the carrier who would be directly affected by the decision.
- (4) Subsection (3) does not limit the issues that the Secretary can consider.
- (5) In engaging in the activity, the carrier must comply with any conditions imposed by the Secretary.

## Chapter 3—Subscriber connection

**Part 7—General notification arrangements****Simplified outline of Part 7**

This Part sets out rules for notifying owners and occupiers of land about a subscriber connection activity.

The effect of this Part is that the carrier must notify owners and occupiers about subscriber connection activities in accordance with the Act and this Code.

*Division 1—Introduction***3.37 Purpose of Part 7**

- (1) Under clause 17 of Schedule 3 to the Act, a carrier must give written notice to the owner (and, if the land is occupied by someone other than the owner, the occupier) of its intention to engage in a subscriber connection activity.
- (2) Clause 54 of Schedule 3 to the Act sets out arrangements for a carrier to serve notice on an owner or occupier of land if the owner or occupier cannot be found after diligent inquiry.
- (3) Division 2 sets out, in simplified form, the notification requirements of clauses 17 and 54 of Schedule 3 as they apply to subscriber connection activities.
- (4) Division 3 sets out additional arrangements for notification.

**3.38 Application of Division 3 of Part 7**

- (1) Division 3 of this Part does not apply to a subscriber connection activity if the carrier engages in it as a response to a disaster declaration.
- (2) Division 3 of this Part does not apply to a subscriber connection activity if the carrier engages in it in other circumstances in which the safety of life or property is endangered.

## Chapter 3—Subscriber connection

- (3) Division 3 of this Part does not apply to a subscriber connection activity if the owner or occupier of the land has asked the carrier to engage in it as part of the installation of a facility.
- (4) Division 3 of this Part does not apply to a subscriber connection activity to the extent that the activity involves a public street, nature strip or other public land in proximity to:
  - (a) the land to which it is reasonably necessary for a carrier to have access in order to install the subscriber connection (the *relevant land*); and
  - (b) the point at which the connection meets the telecommunications network (whether that point is above, on or below the surface of the land) (the *network point*).
- (5) Divisions 2 and 3 of this Part do not apply to a subscriber connection activity to the extent that the activity involves public land between the relevant land and the network point.

*Division 2—Notification requirements of clauses 17 and 54 of Schedule 3*

*Note:* This Division is provided for information only: see subsection 3.1 (2). The provisions of the Act should be consulted to decide rights and obligations.

**3.39 Notice to owner and occupier of land**

- (1) Before engaging in a subscriber connection activity, a carrier must give written notice of its intention to do so to:
  - (a) the owner of the land; and
  - (b) if the land is occupied by someone other than the owner—the occupier.
- (2) The notice must specify the purpose for which the carrier intends to engage in the activity.
- (3) The notice must also contain a statement to the effect that, if a person suffers financial loss or damage in relation to property because of anything done by the carrier in engaging in the activity, compensation may be payable under clause 42 of Schedule 3 to the Act.
- (4) The notice must be given at least 10 business days before the carrier begins to engage in the activity.

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- (5) However, the carrier is not required to give the notice in circumstances mentioned in subclauses 17 (5) to (7) of Schedule 3 to the Act.

*Note:* See Act, Schedule 3, clause 17.

## Chapter 3—Subscriber connection

**3.40 Serving notices if owner unknown**

- (1) If a carrier is unable, after diligent inquiry, to find out who owns particular land, the carrier may serve a notice on the owner of the land by publishing a copy of the notice in a newspaper circulating in a district in which the land is situated and:
  - (a) if the land is occupied—serving a copy of the notice to the occupier; or
  - (b) if the land is not occupied—attaching, if practicable, a copy of the notice to a conspicuous part of the land.
- (2) If a carrier is unable to serve a notice on the owner of land either personally, or by post, in accordance with section 1.4, the carrier may serve a notice on the owner of the land by publishing a copy of the notice in a newspaper circulating in a district in which the land is situated and:
  - (a) if the land is occupied—serving a copy of the notice to the occupier; or
  - (b) if the land is not occupied—attaching, if practicable, a copy of the notice to a conspicuous part of the land.

*Note:* See Act, Schedule 3, clause 54.

**3.41 Serving notices if occupier unknown**

- (1) If a carrier is unable to serve a notice on the occupier of land either personally, or by post, in accordance with section 1.4, the carrier may serve a notice on the occupier by publishing a copy of the notice in a newspaper circulating in the district in which the land is situated and:
  - (a) publishing a copy of the notice in a newspaper circulating in a district in which the land is located; and
  - (b) attaching, if practicable, a copy of the notice in a conspicuous place on the land.
- (2) If a carrier is unable, after diligent inquiry, to find out whether particular land is occupied, or who occupies particular land, the carrier may treat the land as unoccupied.

*Note:* See Act, Schedule 3, clause 54.



## Chapter 3—Subscriber connection

### *Division 3—Additional notification arrangements*

#### **3.42 Notice to owner and occupier of land: additional requirements**

A carrier must include in a notice mentioned in section 3.40 details of the actions that the carrier expects to take, as part of the subscriber connection activity, on land affected by the activity.

#### **3.43 Agreement on alternative notification arrangements**

- (1) A carrier may agree in writing with an owner or occupier of land affected by a subscriber connection activity for alternative notification arrangements.
- (2) The carrier must comply with an agreement.

#### **3.44 Additional arrangements for serving notices**

- (1) If a carrier serves a notice under section 3.40 or 3.41, the carrier must, if practicable after engaging in the subscriber connection activity, attach to a conspicuous part of the land a copy of another notice that:
  - (a) states the date when the carrier entered the land; and
  - (b) describes the activity.
- (2) However, the carrier is not required to fix the notice on occupied land if the carrier has been able to give the occupier a notice about the activity either personally, or by post, in accordance with section 1.4.

## **Chapter 4—Low-impact Facilities**

### **Simplified outline of Chapter 4**

Division 3 of Schedule 3 to the *Telecommunications Act 1997* authorises a carrier to enter on land and install facilities, including low-impact facilities.

Low-impact facilities are specified in the *Telecommunications (Low-impact Facilities) Determination 1997*.

This Chapter sets out conditions to be complied with by a carrier in installing a low-impact facility.

The Chapter has 5 Parts.

The Parts deal with the following matters:

- Part 1—introduction
- Part 2—conditions in the Act for carrier conduct
- Part 3—additional carrier conditions
- Part 4—Nature Conservation Director, Heritage Chairperson and Environment Secretary
- Part 5—general notification requirements and objections to low-impact facility activities.

## Chapter 4—Low-impact Facilities

**Part 1—Introduction****4.1 Purpose of Chapter 4**

- (1) If a carrier engages, or proposes to engage, in a low-impact facility activity, the carrier must comply with:
  - (a) the conditions specified in Part 1 of Schedule 3 to the Act; and
  - (b) the conditions specified in the regulations; and
  - (c) the conditions set out in this Code.
- (2) Part 2 and Division 2 of Part 5 set out some of the carrier conditions in the Act, in simplified form, to assist the reader of the Code.
- (3) Parts 3 and 4, and the other Divisions of Part 5, set out the Code conditions.

**4.2 Low-impact facility activity**

A *low-impact facility activity* of a carrier is any of the following activities of the carrier:

- (a) installing a low-impact facility;
- (b) carrying out an activity for purposes in connection with the installation of a low-impact facility.

*Note:* Low-impact facilities are specified in the Telecommunications (Low-impact Facilities) Determination 1997.

## Chapter 4—Low-impact Facilities

**Note on definitions**

A number of words and expressions used in this Chapter are to be found in the dictionary in the Schedule, including:

- ACA (the Australian Communications Authority)
- carrier
- environment
- Environment Secretary
- Heritage Chairperson
- industry standard
- installation
- listed international agreement
- low-impact facility
- Nature Conservation Director
- Telecommunications Industry Ombudsman.

## Chapter 4—Low-impact Facilities

**Part 2—Conditions in the Act for carrier conduct**

*Note:* Part 2 is provided for information only: see subsection 4.1 (2). The provisions of the Act should be consulted to decide rights and obligations.

**4.3 Carrier to do as little damage as practicable**

In engaging in a low-impact facility activity, a carrier must take all reasonable steps to ensure that the carrier causes as little detriment and inconvenience, and does as little damage, as is practicable.

*Note:* See Act, Schedule 3, clause 8.

**4.4 Carrier to restore land**

- (1) If a carrier engages in a low-impact facility activity in relation to any land, the carrier must take all reasonable steps to ensure that the land is restored to a condition similar to its condition before the activity began.
- (2) The carrier must take all reasonable steps to ensure that the restoration starts within 10 business days after the completion of the low-impact activity.
- (3) Subsection (2) does not apply if the carrier agrees with:
  - (a) the owner of the land; and
  - (b) if the land is occupied by someone other than the owner—the occupier;to start restoration at a later time.

*Note:* See Act, Schedule 3, clause 9.

**4.5 Management of activities**

A carrier must, in connection with carrying out a low-impact facility activity, take all reasonable steps:

- (a) to act in accordance with good engineering practice; and
- (b) to protect the safety of persons and property; and
- (c) to ensure that the activity interferes as little as practicable with:
  - (i) the operations of a public utility; and
  - (ii) public roads and paths; and

## Chapter 4—Low-impact Facilities

- (iii) the movement of traffic; and
- (iv) the use of land; and
- (d) to protect the environment.

*Note:* See Act, Schedule 3, clause 10, and also Schedule 1, clauses 42 to 44.

**4.6 Agreements with public utilities**

- (1) If a low-impact facility activity of a carrier is likely to affect the operations of a public utility, the carrier must make reasonable efforts to enter into an agreement with the utility that makes provision for the manner in which the carrier will engage in the activity.
- (2) The carrier must comply with the agreement.

*Note:* See Act, Schedule 3, clause 11.

**4.7 Compliance with industry standards**

A carrier must engage in a low-impact facility activity in accordance with any standard that:

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

*Notes:*

- 1 See Act, Schedule 3, clause 12.
- 2 Examples of standards are:
  - Australian Standard AS 2772.1 (1990) Radiofrequency Radiation (Part 1): Maximum Exposure Level-100kHz-300GHz
  - A relevant standard or code under Part 6 of the Act.

**4.8 Compliance with listed international agreements**

A carrier must engage in a low-impact facility activity in a manner consistent with Australia's obligations under a listed international agreement relevant to the activity.

*Note:* See Act, Schedule 3, clause 13.

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**4.9 Notice to roads authorities, utilities etc**

- (1) Before engaging in an activity mentioned in subclause 19 (1) of Schedule 3 to the Act as part of a low-impact facility activity, a carrier must give written notice of its intention to do so to the person or authority responsible for the care and management of the thing affected by the activity.

## Chapter 4—Low-impact Facilities

*Notes:* The activities mentioned in subclause 19 (1) are:

- 1 closing, diverting or narrowing a road or bridge
- 2 installing a facility on, over or under a road or bridge
- 3 altering the position of a water, sewerage or gas main or pipe
- 4 altering the position of an electricity cable or wire.

- (2) However, the carrier is not required to give the notice in a circumstance mentioned in subclauses 19 (2) and (3) of Schedule 3 to the Act.

**4.10 Records for certain facilities**

- (1) If a carrier owns or operates designated overhead lines, the carrier must keep and maintain records of the kind and location of the lines.
- (2) If a carrier owns or operates telecommunications transmission towers, the carrier must keep and maintain records of the kind and location of the towers.
- (3) If a carrier owns or operates underground facilities, the carrier must keep and maintain records of:
  - (a) the kind and location of the facilities; and
  - (b) if any of the facilities is an eligible underground facility—the capacity of the facility to hold further lines.

*Note:* See Act, Schedule 1, clause 41, which defines the terms *designated overhead line*, *telecommunications transmission tower* and *eligible underground facility*.



## Chapter 4—Low-impact Facilities

**Part 3—Additional carrier conditions****4.11 Best practice**

- (1) In engaging in a low-impact facility activity, a carrier must ensure that the design, planning and installation of facilities (the *carrier's facilities*) is in accordance with best practice.
- (2) For subsection (1), *best practice* is conduct of the carrier complying with:
  - (a) an industry code, registered by the ACA under Part 6 of the Act, applying to the activity; or
  - (b) a standard, made by the ACA under Part 6 of the Act, applying to the activity.
- (3) However, if there is no code or standard in force for the activity, best practice is conduct regarded by people constructing facilities substantially similar to the carrier's facilities as using the best available design, planning and location practices to minimise the potential degradation of the environment and the visual amenity associated with the facilities.

**4.12 Noise**

- (1) In engaging in a low-impact facility activity at any time between 10 pm and 7 am, a carrier must not make noise at a level greater than the level of noise allowed to be made at that time under State or Territory law applying to similar activities carried out by a person other than a carrier.
- (2) However, if there is no level of noise applying under State or Territory law for that time, the carrier must not make noise that is audible by a person in a nearby home or business unless the carrier is allowed to make the noise under an agreement with the relevant local government body.

**4.13 Co-location**

- (1) Before engaging in a low-impact facility activity, a carrier must take all reasonable steps to find out whether any of the following things (*existing facilities*) is available for the activity:

## Chapter 4—Low-impact Facilities

- (a) cabling, conduits or other facilities of the carrier or another carrier;  
or
  - (b) a facility of a public utility; or
  - (c) an easement attaching to the land for a public purpose.
- (2) The carrier must take all reasonable steps to use existing facilities for the activity.

**4.14 Cooperation about activities**

Before engaging in a low-impact facility activity, a carrier (the *first carrier*) must take all reasonable steps:

- (a) to find out whether another carrier, or a public utility, is engaging in, or proposing to engage in, a similar activity for the same land; and
- (b) to consider whether it is practicable to work with the other carrier or the utility to allow the first carrier:
  - (i) to cause as little detriment and inconvenience as is practicable; and
  - (ii) to do as little damage as is practicable.

*Note:* The carrier is required to take all reasonable steps to ensure that the carrier causes as little detriment and inconvenience, and does as little damage, as practicable in engaging in the activity: see Act, Schedule 3, clause 8.

**4.15 Compliance with standards and codes**

A carrier must engage in a low-impact facility activity in accordance with any standard or code under Part 6 of the Act applying to the activity.

*Note:* Section 4.15 complements section 4.7, which deals with complying with standards to reduce a risk to the safety of the public.

## Chapter 4—Low-impact Facilities

**Part 4—Nature Conservation Director, Heritage Chairperson and Environment Secretary****4.16 Notice to Nature Conservation Director**

- (1) The Nature Conservation Director is responsible for certain areas under the *Endangered Species Protection Act 1992* and the *National Parks and Wildlife Conservation Act 1975*.
- (2) If a proposed low-impact facility activity of a carrier is likely to be undertaken in, or have an effect on, any of the areas for which the Director is responsible, the carrier must notify the Director in writing of the activity.
- (3) The Director must be notified at least 10 business days before the start of the activity.
- (4) However, the carrier and Director may agree, in writing, for alternative notification arrangements.

**4.17 Notice to Heritage Chairperson**

- (1) The Heritage Chairperson is responsible for areas included in the Register of the National Estate and the Interim List for the Register.
- (2) If a proposed low-impact facility activity of a carrier is likely to be undertaken in, or have an effect on, any of the areas for which the Chairperson is responsible, the carrier must notify the Chairperson in writing of the activity.
- (3) The Chairperson must be notified at least 10 business days before the start of the activity.
- (4) However, the carrier and Chairperson may agree, in writing, for alternative notification arrangements.

**4.18 Notice to Environment Secretary**

- (1) Before engaging in a low-impact facility activity, a carrier must take all reasonable steps to find out whether the carrier would be required to notify the Environment Secretary of the activity under this section.

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- (2) However, the carrier and the Environment Secretary may agree, in writing, on how the carrier is to find out whether the carrier would be required to notify the Environment Secretary.
- (3) The carrier must notify the Environment Secretary, in writing, of a proposed low-impact facility activity, at least 10 business days before the start of the activity, if subsection (4), (5) or (6) applies to the activity.
- (4) The carrier must notify the Environment Secretary if the activity:
  - (a) is, or is likely to be, inconsistent with Australia's obligations under a listed international agreement; or
  - (b) could threaten with extinction, or significantly impede the recovery of, a threatened species; or
  - (c) could put a species of flora or fauna at risk of becoming a threatened species; or
  - (d) could have an adverse effect on a threatened species of flora or fauna; or
  - (e) could damage the whole or a part of a habitat of a threatened species of flora or fauna; or
  - (f) could damage the whole or a part of a place, or an ecological community, essential to the continuing existence of a threatened species of flora or fauna; or
  - (g) could threaten with extinction, or significantly impede the recovery of, an endangered ecological community; or
  - (h) could have an adverse effect on an endangered ecological community; or
  - (i) could damage the whole or a part of the habitat of an endangered ecological community.
- (5) The carrier must notify the Environment Secretary if the carrier proposes to engage in the activity at any of the following places:
  - (a) an identified property (within the meaning of section 3A of the *World Heritage Properties Conservation Act 1983*);
  - (b) a place that Australia is required to protect by the terms of a listed international agreement;
  - (c) an area that, under a law of the Commonwealth, is reserved wholly or principally for nature conservation purposes (however described);
  - (d) an area that, under a law of the Commonwealth, is protected from significant environmental disturbance.

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- (6) The carrier must notify the Environment Secretary if the carrier proposes to engage in the activity at or near an area or thing:
  - (a) entered in the Register of the National Estate; or
  - (b) entered in the Interim List for that Register; or
  - (c) of particular significance to Aboriginal persons, or Torres Strait Islanders, in accordance with their traditions.
  
- (7) However, the carrier and the Environment Secretary may agree, in writing, for alternative notification arrangements.

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- (8) Subsection (9) applies if:
- (a) a carrier must notify the Environment Secretary of a proposed low-impact facility activity; and
  - (b) the carrier must also notify the Nature Conservation Director or Heritage Chairperson of the proposed activity; and
  - (c) the carrier has an agreement with the Director or Chairperson under section 4.17 or 4.18 for alternative notification arrangements; and
  - (d) the agreement applies to the proposed activity.
- (9) The carrier must:
- (a) tell the Secretary, when notifying the Secretary, that the carrier has the agreement with the Director or Chairperson; and
  - (b) give the Secretary a copy of any notification the carrier has already given to the Director or Chairperson under the agreement.

**4.19 Notification agreements**

- (1) A carrier must give a copy of each agreement entered into by the carrier under sections 4.16 to 4.18 to the ACA within 30 business days after entering into the agreement.
- (2) The carrier must comply with the agreement.

**4.20 Interim notice stopping low-impact facility activity**

- (1) The Environment Secretary may give a carrier a notice requiring the carrier not to engage, or continue to engage, in a low-impact facility activity.
- (2) The notice must invite the carrier to give the Secretary information that will help the Secretary to consider the form of the final notice under section 4.21.
- (3) The carrier must comply with the requirements of the notice.

## Chapter 4—Low-impact Facilities

**4.21 Final notice**

- (1) This section applies if the Environment Secretary has given a carrier a notice under section 4.20 about a low-impact facility activity.
- (2) The Secretary must consider any information given to the Secretary by the carrier in response to the notice (and any other relevant matters), and give a carrier a final notice, within a reasonable time:
  - (a) confirming the original notice; or
  - (b) revoking the original notice; or
  - (c) revoking the original notice, but imposing conditions about how the carrier should engage, or continue to engage, in the activity.
- (3) In making a decision under subsection (2), the Secretary must consider:
  - (a) the impact of the activity on the environment (including heritage and cultural values); and
  - (b) the impact of the activity on the carrier, and on customers of the carrier who would be directly affected by the decision.
- (4) Subsection (3) does not limit the issues that the Secretary can consider.
- (5) In engaging in the activity, the carrier must comply with any conditions imposed by the Secretary.

## Chapter 4—Low-impact Facilities

**Part 5—General notification arrangements and objections to low-impact facility activities****Simplified outline of Part 5**

This Part sets out rules for notifying owners and occupiers of land about a low-impact facility activity. It also sets out rules for the owners and occupiers to object to the activity.

The effect of this Part is that:

- The carrier must notify owners and occupiers about low-impact facility activities in accordance with the Act and this Code
- An owner or occupier has an opportunity to object to the activity
- The carrier must try to resolve the objection by agreement
- If there is no agreement, the objection can be referred to the Telecommunications Industry Ombudsman.

*Division 1—Introduction***4.22 Purpose of Part 5**

- (1) Under clause 17 of Schedule 3 to the Act, a carrier must give written notice to the owner (and, if the land is occupied by someone other than the owner, the occupier) of its intention to engage in a low-impact facility activity.
- (2) Clause 54 of Schedule 3 to the Act sets out arrangements for a carrier to serve notice on an owner or occupier of land if the owner or occupier cannot be found after diligent inquiry.
- (3) Division 2 sets out, in simplified form, the notification requirements of clauses 17 and 54 of Schedule 3 as they apply to low-impact facility activities.
- (4) Divisions 3 to 5 set out additional arrangements for notification, and arrangements for the owner or occupier to object to the activity.



## Chapter 4—Low-impact Facilities

**4.23 Application of Part 5**

- (1) Divisions 3, 4 and 5 of this Part do not apply to a low-impact facility activity if the carrier engages in it as a response to a disaster declaration.
- (2) Divisions 3, 4 and 5 of this Part do not apply to a low-impact facility activity if the carrier engages in it in other circumstances in which the safety of life or property is endangered.
- (3) Divisions 3, 4 and 5 of this Part do not apply to a low-impact facility activity if the owner or occupier of the land has asked the carrier to engage in the activity as part of the installation of another facility.
- (4) For this Part, the *occupier* of public land is:
  - (a) the person authorised to occupy the land; or
  - (b) if no person is authorised—the authority, Department or person responsible for the care and management of the land.

*Division 2—Notification requirements of clauses 17 and 54 of Schedule 3*

*Note:* This Division is provided for information only: see subsection 4.1 (2). The provisions of the Act should be consulted to decide rights and obligations.

**4.24 Notice to owner and occupier of land**

- (1) Before engaging in a low-impact facility activity, a carrier must give written notice of its intention to do so to:
  - (a) the owner of the land; and
  - (b) if the land is occupied by someone other than the owner—the occupier.
- (2) The notice must specify the purpose for which the carrier intends to engage in the activity.
- (3) The notice must also contain a statement to the effect that, if a person suffers financial loss or damage in relation to property because of anything done by the carrier in engaging in the activity, compensation may be payable under clause 42 of Schedule 3 to the Act.
- (4) The notice must be given at least 10 business days before the carrier begins to engage in the activity.

## Chapter 4—Low-impact Facilities

- (5) However, the carrier is not required to give the notice in circumstances mentioned in subclauses 17 (5) to (7) of Schedule 3 to the Act.

*Note:* See Act, Schedule 3, clause 17.

## Chapter 4—Low-impact Facilities

**4.25 Serving notices if owner unknown**

- (1) If a carrier is unable, after diligent inquiry, to find out who owns particular land, the carrier may serve a notice on the owner of the land by publishing a copy of the notice in a newspaper circulating in a district in which the land is situated and:
  - (a) if the land is occupied—serving a copy of the notice to the occupier; or
  - (b) if the land is not occupied—attaching, if practicable, a copy of the notice to a conspicuous part of the land.
- (2) If a carrier is unable to serve a notice on the owner of land either personally, or by post, in accordance with section 1.4, the carrier may serve a notice on the owner of the land by publishing a copy of the notice in a newspaper circulating in a district in which the land is situated and:
  - (a) if the land is occupied—serving a copy of the notice to the occupier; or
  - (b) if the land is not occupied—attaching, if practicable, a copy of the notice to a conspicuous part of the land.

*Note:* See Act, Schedule 3, clause 54.

**4.26 Serving notices if occupier unknown**

- (1) If a carrier is unable to serve a notice on the occupier of land either personally, or by post, in accordance with section 1.4, the carrier may serve a notice on the occupier by publishing a copy of the notice in a newspaper circulating in the district in which the land is situated and:
  - (a) publishing a copy of the notice in a newspaper circulating in a district in which the land is located; and
  - (b) attaching, if practicable, a copy of the notice in a conspicuous place on the land.
- (2) If a carrier is unable, after diligent inquiry, to find out whether particular land is occupied, or who occupies particular land, the carrier may treat the land as unoccupied.

*Note:* See Act, Schedule 3, clause 54.

## Chapter 4—Low-impact Facilities

*Division 3—Additional notification arrangements***4.27 Notice to owner and occupier of land: additional requirements**

- (1) A carrier must include in a notice mentioned in section 4.24:
  - (a) details of the actions that the carrier expects to take, as part of the low-impact facility activity, on land affected by the activity; and
  - (b) a statement explaining the arrangements under this Chapter for making objections to the activity.
- (2) If the Telecommunications Industry Ombudsman has issued a document setting out how the carrier is to explain the arrangements for making objections to the activity, the carrier must comply with the document.

**4.28 Agreement on alternative notification arrangements**

- (1) A carrier may agree in writing with an owner or occupier of land affected by a low-impact facility activity for alternative notification arrangements.
- (2) A carrier may agree in writing with the manager of public land affected by a low-impact facility activity for alternative notification arrangements.
- (3) The carrier must comply with an agreement.
- (4) The carrier must give a copy of an agreement with the manager of public land to the ACA within 30 business days after making the agreement.

**4.29 Additional arrangements for serving notices**

- (1) If a carrier serves a notice under section 4.25 or 4.26, the carrier must, if practicable after engaging in the low-impact facility activity, attach to a conspicuous part of the land a copy of another notice that:
  - (a) states the date when the carrier entered the land; and
  - (b) describes the low-impact facility activity.
- (2) However, the carrier is not required to fix the notice on occupied land if the carrier has been able to give the occupier a notice about the activity either personally, or by post, in accordance with section 1.4.

## Chapter 4—Low-impact Facilities

### Division 4—Objection made to carrier

#### 4.30 Objection to low-impact facility activity

- (1) If a carrier gives notice to an owner or occupier of land of its intention to engage in a low-impact facility activity, the owner or occupier (the *objector*) may give the carrier a written objection to the activity.
- (2) The objection must include reasons for the objection.

#### 4.31 Reasons for objection

The reasons for the objection may relate only to all or any of the following matters:

- (a) using the objector's land to engage in the activity;
- (b) the location of a facility on the objector's land;
- (c) the date when the carrier proposes to start the activity, engage in it or stop it;
- (d) the likely effect of the activity on the objector's land;
- (e) the carrier's proposals to minimise detriment and inconvenience, and to do as little damage as practicable, to the objector's land.

*Note:* The carrier is required to take all reasonable steps to ensure that the carrier causes as little detriment and inconvenience, and does as little damage, as practicable in engaging in the activity: see Act, Schedule 3, clause 8.

#### 4.32 Time for giving objection to carrier

The objection must be given to the carrier at least 5 business days before the carrier proposes to engage in the low-impact facility activity.

#### 4.33 Activity after objection

If the objection complies with sections 4.30 to 4.32, the carrier must not engage in the low-impact facility activity unless 1 of the following situations happens:

**Situation 1** The objection is resolved by an agreement between the carrier and objector.

**Situation 2** A request to refer the objection to the Telecommunications Industry Ombudsman is not received

## Chapter 4—Low-impact Facilities

by the carrier within the 5 business days mentioned in section 4.37.

## Chapter 4—Low-impact Facilities

**Situation 3** The Telecommunications Industry Ombudsman deals with the objection without giving a direction to the carrier, and the Ombudsman informs the carrier in writing of that outcome.

**Situation 4** The Telecommunications Industry Ombudsman gives a direction to the carrier.

**4.34 Consultation**

- (1) The carrier must make reasonable efforts to consult the objector about the objection within 5 business days after receiving the objection.
- (2) The carrier must also make reasonable efforts to resolve the objection by agreement with the objector within 20 business days after receiving the objection.

*Note:* An agreement with the objector allows the carrier to engage in the low-impact facility activity: see s 4.33, situation 1.

- (3) The carrier must comply with any agreement made with the objector.

**4.35 Changes to low-impact facility activity**

- (1) If the objection is not resolved by agreement within 20 business days after receiving the objection, the carrier must consider whether to change the low-impact facility activity.
- (2) The carrier is not required to change the activity in a way that:
  - (a) is not economically feasible; or
  - (b) is not technically practicable; or
  - (c) is likely to have a greater adverse effect on the environment than engaging in the activity as originally proposed; or
  - (d) is inconsistent with a recognised industry standard or practice relevant to the activity.
- (3) Within 25 business days after receiving the objection, the carrier must tell the objector, in writing:
  - (a) whether the carrier proposes to change the activity, and, if so, how; and
  - (b) if the carrier does not propose to change the activity—why the carrier will engage in the activity as originally proposed.

## Chapter 4—Low-impact Facilities

*Division 5—Objection made to Telecommunications Industry Ombudsman***4.36 Application of Division 5**

This Division applies if:

- (a) the objection is not resolved by agreement between the carrier and objector; and
- (b) the objector is not satisfied with the carrier's response to the objection; and
- (c) the objection comes, in whole or part, within the jurisdiction of the Telecommunications Industry Ombudsman.

**4.37 Request to refer objection to Telecommunications Industry Ombudsman**

- (1) Within 5 business days after the objector receives the carrier's response to the objection, the objector may ask the carrier, in writing, to refer the objection to the Telecommunications Industry Ombudsman.
- (2) The carrier must comply with the request.

*Note:* If the objector does not ask the carrier to refer the objection, the carrier may engage in the low-impact facility activity: see s 4.33, situation 2.

**4.38 Compliance with directions of Telecommunications Industry Ombudsman**

If the Telecommunications Industry Ombudsman gives a direction to the carrier about the way in which the carrier should engage in the low-impact facility activity, the carrier must comply with the direction.

*Notes:*

- 1 If the Telecommunications Industry Ombudsman deals with the objection without giving a direction to the carrier, and the Ombudsman informs the carrier in writing of that outcome, the carrier may engage in the low-impact facility activity: see s 4.33, situation 3.
- 2 If the Telecommunications Industry Ombudsman gives a direction to the carrier, the carrier may engage in the low-impact facility activity: see s 4.33, situation 4.



## **Chapter 5—Temporary Defence Facilities**

### **Simplified outline of Chapter 5**

Division 3 of Schedule 3 to the *Telecommunications Act 1997* authorises a carrier to enter on land and install facilities, including temporary defence facilities.

This Chapter sets out conditions to be complied with by a carrier in installing a temporary defence facility.

The Chapter has 4 Parts.

The Parts deal with the following matters:

- Part 1—introduction
- Part 2—conditions in the Act for carrier conduct
- Part 3—additional carrier condition
- Part 4—Nature Conservation Director, Heritage Chairperson and Environment Secretary
- Part 5—general notification arrangements.

## Chapter 5—Temporary Defence Facilities

**Part 1—Introduction****5.1 Purpose of Chapter 5**

- (1) If a carrier engages, or proposes to engage, in a temporary defence facility activity, the carrier must comply with:
  - (a) the conditions specified in Part 1 of Schedule 3 to the Act; and
  - (b) the conditions specified in the regulations; and
  - (c) the conditions set out in this Code.
- (2) Part 2 and Division 2 of Part 5 set out some of the carrier conditions in the Act, in simplified form, to assist the reader of the Code.
- (3) Part 3 and the other Divisions of Part 5 set out the Code conditions.

**5.2 Temporary defence facility activity**

A *temporary defence facility activity* of a carrier is any of the following activities of the carrier:

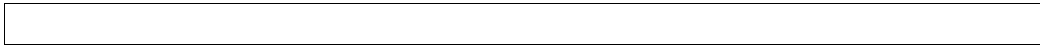
- (a) installing a temporary defence facility;
- (b) carrying out an activity for purposes in connection with the installation of a temporary defence facility.

**Note on definitions**

A number of words and expressions used in this Chapter are to be found in the dictionary in the Schedule, including:

- ACA (the Australian Communications Authority)
- carrier
- environment
- Environment Secretary
- Heritage Chairperson
- industry standard
- installation
- listed international agreement
- Nature Conservation Director
- temporary defence facility.

Chapter 5—Temporary Defence Facilities



## Chapter 5—Temporary Defence Facilities

**Part 2—Conditions in the Act for carrier conduct**

*Note:* Part 2 is provided for information only: see subsection 5.1 (2). The provisions of the Act should be consulted to decide rights and obligations.

**5.3 Carrier to do as little damage as practicable**

In engaging in a temporary defence facility activity, a carrier must take all reasonable steps to ensure that the carrier causes as little detriment and inconvenience, and does as little damage, as is practicable.

*Note:* See Act, Schedule 3, clause 8.

**5.4 Carrier to restore land**

- (1) If a carrier engages in a temporary defence facility activity in relation to any land, the carrier must take all reasonable steps to ensure that the land is restored to a condition similar to its condition before the activity began.
- (2) The carrier must take all reasonable steps to ensure that the restoration starts within 10 business days after the completion of the defence facility activity.
- (3) Subsection (2) does not apply if the carrier agrees with:
  - (a) the owner of the land; and
  - (b) if the land is occupied by someone other than the owner—the occupier;to start restoration at a later time.

*Note:* See Act, Schedule 3, clause 9.

**5.5 Management of activities**

A carrier must, in connection with carrying out a temporary defence facility activity, take all reasonable steps:

- (a) to act in accordance with good engineering practice; and
- (b) to protect the safety of persons and property; and
- (c) to ensure that the activity interferes as little as practicable with:
  - (i) the operations of a public utility; and

## Chapter 5—Temporary Defence Facilities

- (ii) public roads and paths; and
  - (iii) the movement of traffic; and
  - (iv) the use of land; and
- (d) to protect the environment.

*Note:* See Act, Schedule 3, clause 10, and also Schedule 1, clauses 42 to 44.

### 5.6 Agreements with public utilities

- (1) If a temporary defence facility activity of a carrier is likely to affect the operations of a public utility, the carrier must make reasonable efforts to enter into an agreement with the utility that makes provision for the manner in which the carrier will engage in the activity.
- (2) The carrier must comply with the agreement.

*Note:* See Act, Schedule 3, clause 11.

### 5.7 Compliance with industry standards

A carrier must engage in a temporary defence facility activity in accordance with any standard that:

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

*Notes:*

1 See Act, Schedule 3, clause 12.

2 Examples of standards are:

- Australian Standard AS 2772.1 (1990) Radiofrequency Radiation (Part 1): Maximum Exposure Level-100kHz-300GHz
- A relevant standard or code under Part 6 of the Act.

### 5.8 Compliance with listed international agreements

A carrier must engage in a temporary defence facility activity in a manner consistent with Australia's obligations under a listed international agreement relevant to the activity.

*Note:* See Act, Schedule 3, clause 13.

## Chapter 5—Temporary Defence Facilities

**5.9 Notice to roads authorities, utilities etc**

- (1) Before engaging in an activity mentioned in subclause 19 (1) of Schedule 3 to the Act as part of a temporary defence facility activity, a carrier must give written notice of its intention to do so to the person or authority responsible for the care and management of the thing affected by the activity.

## Chapter 5—Temporary Defence Facilities

*Notes:* The activities mentioned in subclause 19 (1) are:

- 1 closing, diverting or narrowing a road or bridge
- 2 installing a facility on, over or under a road or bridge
- 3 altering the position of a water, sewerage or gas main or pipe
- 4 altering the position of an electricity cable or wire.

- (2) However, the carrier is not required to give the notice in a circumstance mentioned in subclauses 19 (2) and (3) of Schedule 3 to the Act.

### 5.10 Records for certain facilities

- (1) If a carrier owns or operates designated overhead lines, the carrier must keep and maintain records of the kind and location of the lines.
- (2) If a carrier owns or operates telecommunications transmission towers, the carrier must keep and maintain records of the kind and location of the towers.
- (3) If a carrier owns or operates underground facilities, the carrier must keep and maintain records of:
  - (a) the kind and location of the facilities; and
  - (b) if any of the facilities is an eligible underground facility—the capacity of the facility to hold further lines.

*Note:* See Act, Schedule 1, clause 41, which defines the terms *designated overhead line*, *telecommunications transmission tower* and *eligible underground facility*.

## Part 3—Additional carrier condition

### 5.11 Requirements of defence agencies

A carrier must engage in a temporary defence facility activity in accordance with any standard or other requirement that:

- (a) relates to the activity; and
- (b) is notified to the carrier, in writing, by:
  - (i) the Chief of the Defence Force; or
  - (ii) the Secretary to the Department of Defence.

## Chapter 5—Temporary Defence Facilities

**Part 4—Nature Conservation Director, Heritage Chairperson and Environment Secretary****5.12 Notice to Nature Conservation Director**

- (1) The Nature Conservation Director is responsible for certain areas under the *Endangered Species Protection Act 1992* and the *National Parks and Wildlife Conservation Act 1975*.
- (2) If a proposed temporary defence facility activity of a carrier is likely to be undertaken in, or have an effect on, any of the areas for which the Director is responsible, the carrier must notify the Director in writing of the activity before starting the activity, if practicable.

**5.13 Notice to Heritage Chairperson**

- (1) The Heritage Chairperson is responsible for areas included in the Register of the National Estate and the Interim List for the Register.
- (2) If a proposed temporary defence facility activity of a carrier is likely to be undertaken in, or have an effect on, any of the areas for which the Chairperson is responsible, the carrier must notify the Chairperson in writing of the activity before starting the activity, if practicable.



## Chapter 5—Temporary Defence Facilities

**Part 5—General notification arrangements***Division 1—Introduction***5.14 Purpose of Part 5**

- (1) Under clause 17 of Schedule 3 to the Act, a carrier must give written notice to the owner (and, if the land is occupied by someone other than the owner, the occupier) of its intention to engage in a temporary defence facility activity.
- (2) Clause 54 of Schedule 3 to the Act sets out arrangements for a carrier to serve notice on an owner or occupier of land if the owner or occupier cannot be found after diligent inquiry.
- (3) Division 2 sets out, in simplified form, the notification requirements of clauses 17 and 54 of Schedule 3 as they apply to temporary defence facility activities.
- (4) Division 3 sets out additional arrangements for notification.

*Division 2—Notification requirements of clauses 17 and 54 of Schedule 3*

*Note:* This Division is provided for information only: see subsection 5.1 (2). The provisions of the Act should be consulted to decide rights and obligations.

**5.15 Notice to owner and occupier of land**

- (1) Before engaging in a temporary defence facility activity, a carrier must give written notice of its intention to do so to:
  - (a) the owner of the land; and
  - (b) if the land is occupied by someone other than the owner—the occupier.
- (2) The notice must specify the purpose for which the carrier intends to engage in the activity.
- (3) The notice must also contain a statement to the effect that, if a person suffers financial loss or damage in relation to property because of

## Chapter 5—Temporary Defence Facilities

anything done by the carrier in engaging in the activity, compensation may be payable under clause 42 of Schedule 3 to the Act.

- (4) The notice must be given at least 10 business days before the carrier begins to engage in the activity.
- (5) However, the carrier is not required to give the notice in circumstances mentioned in subclauses 17 (5) to (7) of Schedule 3 to the Act.

*Note:* See Act, Schedule 3, clause 17.

**5.16 Serving notices if owner unknown**

- (1) If a carrier is unable, after diligent inquiry, to find out who owns particular land, the carrier may serve a notice on the owner of the land by publishing a copy of the notice in a newspaper circulating in a district in which the land is situated and:
  - (a) if the land is occupied—serving a copy of the notice to the occupier; or
  - (b) if the land is not occupied—attaching, if practicable, a copy of the notice to a conspicuous part of the land.
- (2) If a carrier is unable to serve a notice on the owner of land either personally, or by post, in accordance with section 1.4, the carrier may serve a notice on the owner of the land by publishing a copy of the notice in a newspaper circulating in a district in which the land is situated and:
  - (a) if the land is occupied—serving a copy of the notice to the occupier; or
  - (b) if the land is not occupied—attaching, if practicable, a copy of the notice to a conspicuous part of the land.

*Note:* See Act, Schedule 3, clause 54.

**5.17 Serving notices if occupier unknown**

- (1) If a carrier is unable to serve a notice on the occupier of land either personally, or by post, in accordance with section 1.4, the carrier may serve a notice on the occupier by publishing a copy of the notice in a newspaper circulating in the district in which the land is situated and:
  - (a) publishing a copy of the notice in a newspaper circulating in a district in which the land is located; and

## Chapter 5—Temporary Defence Facilities

- (b) attaching, if practicable, a copy of the notice in a conspicuous place on the land.
- (2) If a carrier is unable, after diligent inquiry, to find out whether particular land is occupied, or who occupies particular land, the carrier may treat the land as unoccupied.

*Note:* See Act, Schedule 3, clause 54.

*Division 3—Additional notification arrangements***5.18 Agreement on alternative notification arrangements**

- (1) A carrier may agree in writing with an owner or occupier of land affected by a temporary defence facility activity for alternative notification arrangements.
- (2) The carrier must give a copy of an agreement to the ACA before acting under the agreement.
- (3) The carrier must comply with an agreement.

**5.19 Additional arrangements for serving notices**

- (1) If a carrier serves a notice under section 5.16 or 5.17, the carrier must, if practicable after engaging in the temporary defence facility activity, attach to a conspicuous part of the land a copy of another notice that:
  - (a) states the date when the carrier entered the land; and
  - (b) describes the activity.
- (2) However, the carrier is not required to fix the notice on occupied land if the carrier has been able to give the occupier a notice about the activity either personally, or by post, in accordance with section 1.4.

## **Chapter 6—Maintenance of Facilities**

### **Simplified outline of Chapter 6**

Under Division 4 of Schedule 3 to the *Telecommunications Act 1997*, a carrier may maintain a facility at any time.

The carrier may do anything necessary or desirable for that purpose, including:

- entering on, and occupying, land; and
- removing, or erecting a gate in, a fence.

This Chapter sets out conditions to be complied with by a carrier in maintaining a facility.

The Chapter has 5 Parts.

The Parts deal with the following matters:

- Part 1—introduction
- Part 2—conditions in the Act for carrier conduct
- Part 3—additional carrier conditions
- Part 4—Nature Conservation Director, Heritage Chairperson and Environment Secretary
- Part 5—general notification arrangements and objections to maintenance activities.

## Chapter 6—Maintenance of Facilities

**Part 1—Introduction****6.1 Purpose of Chapter 6**

- (1) If a carrier engages, or proposes to engage, in a maintenance activity, the carrier must comply with:
  - (a) the conditions specified in Part 1 of Schedule 3 to the Act; and
  - (b) the conditions specified in the regulations; and
  - (c) the conditions set out in this Code.
- (2) Part 2 and Division 2 of Part 5 set out some of the carrier conditions in the Act, in simplified form, to assist the reader of the Code.
- (3) Parts 3 and 4, and the other Divisions of Part 5, set out the Code conditions.

**6.2 Maintenance activity**

A *maintenance activity* of a carrier is any of the following activities of the carrier:

- (a) maintaining a facility;
- (b) carrying out an activity for purposes in connection with the maintenance of a facility.

**Note on definitions**

A number of words and expressions used in this Chapter are to be found in the dictionary in the Schedule, including:

- ACA (the Australian Communications Authority)
- carrier
- environment
- Environment Secretary
- Heritage Chairperson
- industry standard
- installation
- listed international agreement
- Nature Conservation Director

## Chapter 6—Maintenance of Facilities

- Telecommunications Industry Ombudsman.

## Chapter 6—Maintenance of Facilities

**Part 2—Conditions in the Act for carrier conduct**

*Note:* Part 2 is provided for information only: see subsection 6.1 (2). The provisions of the Act should be consulted to decide rights and obligations.

**6.3 Carrier to do as little damage as practicable**

In engaging in a maintenance activity, a carrier must take all reasonable steps to ensure that the carrier causes as little detriment and inconvenience, and does as little damage, as is practicable.

*Note:* See Act, Schedule 3, clause 8.

**6.4 Carrier to restore land**

- (1) If a carrier engages in a maintenance activity in relation to any land, the carrier must take all reasonable steps to ensure that the land is restored to a condition similar to its condition before the activity began.
- (2) The carrier must take all reasonable steps to ensure that the restoration starts within 10 business days after the completion of the maintenance activity.
- (3) Subsection (2) does not apply if the carrier agrees with:
  - (a) the owner of the land; and
  - (b) if the land is occupied by someone other than the owner—the occupier;to start restoration at a later time.

*Note:* See Act, Schedule 3, clause 9.

**6.5 Management of activities**

A carrier must, in connection with carrying out a maintenance activity, take all reasonable steps:

- (a) to act in accordance with good engineering practice; and
- (b) to protect the safety of persons and property; and
- (c) to ensure that the activity interferes as little as practicable with:
  - (i) the operations of a public utility; and
  - (ii) public roads and paths; and
  - (iii) the movement of traffic; and

## Chapter 6—Maintenance of Facilities

- (iv) the use of land; and
- (d) to protect the environment.

*Note:* See Act, Schedule 3, clause 10, and also Schedule 1, clauses 42 to 44.

**6.6 Agreements with public utilities**

- (1) If a maintenance activity of a carrier is likely to affect the operations of a public utility, the carrier must make reasonable efforts to enter into an agreement with the utility that makes provision for the manner in which the carrier will engage in the activity.
- (2) The carrier must comply with the agreement.

*Note:* See Act, Schedule 3, clause 11.

**6.7 Compliance with industry standards**

A carrier must engage in a maintenance activity in accordance with any standard that:

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

*Notes:*

- 1 See Act, Schedule 3, clause 12.
- 2 Examples of standards are:
  - Australian Standard AS 2772.1 (1990) Radiofrequency Radiation (Part 1): Maximum Exposure Level-100kHz-300GHz
  - A relevant standard or code under Part 6 of the Act.

**6.8 Compliance with listed international agreements**

A carrier must engage in a maintenance activity in a manner consistent with Australia's obligations under a listed international agreement relevant to the activity.

*Note:* See Act, Schedule 3, clause 13.



Chapter 6—Maintenance of Facilities

**6.9 Notice to roads authorities, utilities etc.**

- (1) Before engaging in an activity mentioned in subclause 19 (1) of Schedule 3 to the Act as part of a maintenance activity, a carrier must give written notice of its intention to do so to the person or authority responsible for the care and management of the thing affected by the activity.

## Chapter 6—Maintenance of Facilities

*Notes:* The activities mentioned in subclause 19 (1) are:

- 1 closing, diverting or narrowing a road or bridge
- 2 installing a facility on, over or under a road or bridge
- 3 altering the position of a water, sewerage or gas main or pipe
- 4 altering the position of an electricity cable or wire.

- (2) However, the carrier is not required to give the notice in a circumstance mentioned in subclauses 19 (2) and (3) of Schedule 3 to the Act.

**6.10 Records for certain facilities**

- (1) If a carrier owns or operates designated overhead lines, the carrier must keep and maintain records of the kind and location of the lines.
- (2) If a carrier owns or operates telecommunications transmission towers, the carrier must keep and maintain records of the kind and location of the towers.
- (3) If a carrier owns or operates underground facilities, the carrier must keep and maintain records of:
  - (a) the kind and location of the facilities; and
  - (b) if any of the facilities is an eligible underground facility—the capacity of the facility to hold further lines.

*Note:* See Act, Schedule 1, clause 41, which defines the terms *designated overhead line*, *telecommunications transmission tower* and *eligible underground facility*.

## Chapter 6—Maintenance of Facilities

**Part 3—Additional carrier conditions****6.11 Best practice**

- (1) In engaging in a maintenance activity, a carrier must ensure that the design, planning and installation of facilities (the *carrier's facilities*) is in accordance with best practice.
- (2) For subsection (1), *best practice* is conduct of the carrier complying with:
  - (a) an industry code, registered by the ACA under Part 6 of the Act, applying to the activity; or
  - (b) a standard, made by the ACA under Part 6 of the Act, applying to the activity.
- (3) However, if there is no code or standard in force for the activity, best practice is conduct regarded by people constructing facilities substantially similar to the carrier's facilities as using the best available design, planning and location practices to minimise the potential degradation of the environment and the visual amenity associated with the facilities.

**6.12 Noise**

- (1) In engaging in a maintenance activity at any time between 10 pm and 7 am, a carrier must not make noise at a level greater than the level of noise allowed to be made at that time under State or Territory law applying to similar activities carried out by a person other than a carrier.
- (2) However, if there is no level of noise applying under State or Territory law for that time, the carrier must not make noise that is audible by a person in a nearby home or business unless the carrier is allowed to make the noise under an agreement with the relevant local government body.

## Chapter 6—Maintenance of Facilities

**6.13 Compliance with standards and codes**

A carrier must engage in a maintenance activity in accordance with any standard or code under Part 6 of the Act applying to the activity.

*Note:* Section 6.13 complements section 6.7, which deals with complying with standards to reduce a risk to the safety of the public.

## Chapter 6—Maintenance of Facilities

**Part 4—Nature Conservation Director, Heritage Chairperson and Environment Secretary***Division 1—Purpose of Part 4***6.14 Purpose**

- (1) Under clause 55 of Schedule 3 to the Act, a carrier must give written notice to the Environment Secretary of its intention to engage in a maintenance activity if:
  - (a) the carrier, for purposes connected with the supply of a carriage service, proposes to commence to carry out the installation of a facility before 1 January 1999; and
  - (b) neither Division 3 of Part 1 of Schedule 3 (which deals with the installation of facilities), nor Part 7 of the *Telecommunications Act 1991* (which applies to activities started before Schedule 3 commences), will authorise the carrying out of the installation; and
  - (c) any of the conditions set out in subclause 55 (2) of Schedule 3 is satisfied.
- (2) If a maintenance activity includes the installation of a facility, the carrier must comply with clause 55.
- (3) For a maintenance activity that does not include the installation of a facility, Divisions 2 and 3 set out arrangements about notification of the Nature Conservation Director, Heritage Chairperson and Environment Secretary.

*Division 2—Notification requirements***6.15 Notice to Nature Conservation Director**

- (1) The Nature Conservation Director is responsible for certain areas under the *Endangered Species Protection Act 1992* and the *National Parks and Wildlife Conservation Act 1975*.

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- (2) If a proposed maintenance activity of a carrier is likely to be undertaken in, or have an effect on, any of the areas for which the Director is responsible, the carrier must notify the Director in writing of the activity.
- (3) The Director must be notified at least 10 business days before the start of the activity.
- (4) However, the carrier and Director may agree, in writing, for alternative notification arrangements.

**6.16 Notice to Heritage Chairperson**

- (1) The Heritage Chairperson is responsible for areas included in the Register of the National Estate and the Interim List for the Register.
- (2) If a proposed maintenance activity of a carrier is likely to be undertaken in, or have an effect on, any of the areas for which the Chairperson is responsible, the carrier must notify the Chairperson in writing of the activity.
- (3) The Chairperson must be notified at least 10 business days before the start of the activity.
- (4) However, the carrier and Chairperson may agree, in writing, for alternative notification arrangements.

**6.17 Notice to Environment Secretary**

- (1) A carrier must notify the Environment Secretary, in writing, of a proposed maintenance activity, at least 10 business days before starting the activity, if subsection (2), (3) or (4) applies to the activity.
- (2) The carrier must notify the Environment Secretary if the activity:
  - (a) is, or is likely to be, inconsistent with Australia's obligations under a listed international agreement; or
  - (b) could threaten with extinction, or significantly impede the recovery of, a threatened species; or
  - (c) could put a species of flora or fauna at risk of becoming a threatened species; or
  - (d) could have an adverse effect on a threatened species of flora or fauna; or
  - (e) could damage the whole or a part of a habitat of a threatened species of flora or fauna; or

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- (f) could damage the whole or a part of a place, or an ecological community, essential to the continuing existence of a threatened species of flora or fauna; or
- (g) could threaten with extinction, or significantly impede the recovery of, an endangered ecological community; or
- (h) could have an adverse effect on an endangered ecological community; or
- (i) could damage the whole or a part of the habitat of an endangered ecological community.

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- (3) The carrier must notify the Environment Secretary if the carrier proposes to engage in the activity at any of the following places:
  - (a) an identified property (within the meaning of section 3A of the *World Heritage Properties Conservation Act 1983*);
  - (b) a place that Australia is required to protect by the terms of a listed international agreement;
  - (c) an area that, under a law of the Commonwealth, is reserved wholly or principally for nature conservation purposes (however described);
  - (d) an area that, under a law of the Commonwealth, is protected from significant environmental disturbance.
- (4) The carrier must notify the Environment Secretary if the carrier proposes to engage in the activity at or near an area or thing:
  - (a) entered in the Register of the National Estate; or
  - (b) entered in the Interim List for that Register; or
  - (c) of particular significance to Aboriginal persons, or Torres Strait Islanders, in accordance with their traditions.
- (5) However, the carrier and the Environment Secretary may agree, in writing, for alternative notification arrangements.
- (6) Subsection (7) applies if:
  - (a) a carrier must notify the Environment Secretary of a proposed maintenance activity; and
  - (b) the carrier must also notify the Nature Conservation Director or Heritage Chairperson of the proposed activity; and
  - (c) the carrier has an agreement with the Director or Chairperson under section 6.15 or 6.16 for alternative notification arrangements; and
  - (d) the agreement applies to the proposed activity.
- (7) The carrier must:
  - (a) tell the Secretary, when notifying the Secretary, that the carrier has the agreement with the Director or Chairperson; and
  - (b) give the Secretary a copy of any notification the carrier has already given to the Director or Chairperson under the agreement.



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**6.18 Notification agreements**

- (1) A carrier must give a copy of each agreement entered into by the carrier under sections 6.15 to 6.17 to the ACA within 30 business days after entering into the agreement.
- (2) The carrier must comply with the agreement.

*Division 3—Response by Environment Secretary***6.19 Interim notice stopping maintenance activity**

- (1) The Environment Secretary may give a carrier a notice requiring the carrier not to engage, or continue to engage, in a maintenance activity.
- (2) The notice must invite the carrier to give the Secretary information that will help the Secretary to consider the form of the final notice under section 6.20.
- (3) The carrier must comply with the requirements of the notice.

**6.20 Final notice**

- (1) This section applies if the Environment Secretary has given a carrier a notice under section 6.19 about a maintenance activity.
- (2) The Secretary must consider any information given to the Secretary by the carrier in response to the notice (and any other relevant matters), and give a carrier a final notice, within a reasonable time:
  - (a) confirming the original notice; or
  - (b) revoking the original notice; or
  - (c) revoking the original notice, but imposing conditions about how the carrier should engage, or continue to engage, in the activity.
- (3) In making a decision under subsection (2), the Secretary must consider:
  - (a) the impact of the activity on the environment (including heritage and cultural values); and
  - (b) the impact of the activity on the carrier, and on customers of the carrier who would be directly affected by the decision.

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- (4) Subsection (3) does not limit the issues that the Secretary can consider.
- (5) In engaging in the activity, the carrier must comply with any conditions imposed by the Secretary.

## Chapter 6—Maintenance of Facilities

**Part 5—General notification arrangements and objections to maintenance activities****Simplified outline of Part 5**

This Part sets out rules for notifying owners and occupiers of land about a maintenance activity. It also sets out rules for the owners and occupiers to object to the activity.

The effect of this Part is that:

- The carrier must notify owners and occupiers about maintenance activities in accordance with the Act and this Code
- An owner or occupier has an opportunity to object to the activity
- The carrier must try to resolve the objection by agreement
- If there is no agreement, the objection can be referred to the Telecommunications Industry Ombudsman.

*Division 1—Introduction***6.21 Purpose of Part 5**

- (1) Under clause 17 of Schedule 3 to the Act, a carrier must give written notice to the owner (and, if the land is occupied by someone other than the owner, the occupier) of its intention to engage in a maintenance activity.
- (2) Clause 54 of Schedule 3 to the Act sets out arrangements for a carrier to serve notice on an owner or occupier of land if the owner or occupier cannot be found after diligent inquiry.
- (3) Division 2 sets out, in simplified form, the notification requirements of clauses 17 and 54 of Schedule 3 as they apply to maintenance activities.
- (4) Divisions 3 to 5 set out additional arrangements for notification, and arrangements for the owner or occupier to object to the activity.

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**6.22 Application of Divisions 3, 4 and 5 of Part 5**

- (1) Divisions 3, 4 and 5 of this Part do not apply to a maintenance activity if the carrier engages in it as a response to a disaster declaration.
- (2) Divisions 3, 4 and 5 of this Part do not apply to a maintenance activity if the carrier engages in it in other circumstances in which the safety of life or property is endangered.
- (3) Divisions 3, 4 and 5 of this Part do not apply to a maintenance activity if the owner or occupier of the land has asked the carrier to engage in the activity as part of the installation of another facility.

*Division 2—Notification requirements of clauses 17 and 54 of Schedule 3*

*Note:* This Division is provided for information only: see subsection 6.1 (2). The provisions of the Act should be consulted to decide rights and obligations.

**6.23 Notice to owner and occupier of land**

- (1) Before engaging in a maintenance activity, a carrier must give written notice of its intention to do so to:
  - (a) the owner of the land; and
  - (b) if the land is occupied by someone other than the owner—the occupier.
- (2) The notice must specify the purpose for which the carrier intends to engage in the activity.
- (3) The notice must also contain a statement to the effect that, if a person suffers financial loss or damage in relation to property because of anything done by the carrier in engaging in the activity, compensation may be payable under clause 42 of Schedule 3 to the Act.
- (4) The notice must be given at least 10 business days before the carrier begins to engage in the activity.
- (5) However, the carrier is not required to give the notice in circumstances mentioned in subclauses 17 (5) to (7) of Schedule 3 to the Act.

*Note:* See Act, Schedule 3, clause 17.

## Chapter 6—Maintenance of Facilities

**6.24 Serving notices if owner unknown**

- (1) If a carrier is unable, after diligent inquiry, to find out who owns particular land, the carrier may serve a notice on the owner of the land by publishing a copy of the notice in a newspaper circulating in a district in which the land is situated and:
  - (a) if the land is occupied—serving a copy of the notice to the occupier; or
  - (b) if the land is not occupied—attaching, if practicable, a copy of the notice to a conspicuous part of the land.
- (2) If a carrier is unable to serve a notice on the owner of land either personally, or by post, in accordance with section 1.4, the carrier may serve a notice on the owner of the land by publishing a copy of the notice in a newspaper circulating in a district in which the land is situated and:
  - (a) if the land is occupied—serving a copy of the notice to the occupier; or
  - (b) if the land is not occupied—attaching, if practicable, a copy of the notice to a conspicuous part of the land.

*Note:* See Act, Schedule 3, clause 54.

**6.25 Serving notices if occupier unknown**

- (1) If a carrier is unable to serve a notice on the occupier of land either personally, or by post, in accordance with section 1.4, the carrier may serve a notice on the occupier by publishing a copy of the notice in a newspaper circulating in the district in which the land is situated and:
  - (a) publishing a copy of the notice in a newspaper circulating in a district in which the land is located; and
  - (b) attaching, if practicable, a copy of the notice in a conspicuous place on the land.
- (2) If a carrier is unable, after diligent inquiry, to find out whether particular land is occupied, or who occupies particular land, the carrier may treat the land as unoccupied.

*Note:* See Act, Schedule 3, clause 54.

## Chapter 6—Maintenance of Facilities

*Division 3—Additional notification arrangements***6.26 Notice to owner and occupier of land: additional requirements**

- (1) A carrier must include in a notice mentioned in section 6.23:
  - (a) details of the actions that the carrier expects to take, as part of the activity, on land affected by the activity; and
  - (b) a statement explaining the arrangements under this Chapter for making objections to the activity.
- (2) If the Telecommunications Industry Ombudsman has issued a document setting out how the carrier is to explain the arrangements for making objections to the activity, the carrier must comply with the document.

**6.27 Additional arrangements for serving notices**

- (1) If a carrier serves a notice under section 6.24 or 6.25, the carrier must, if practicable after engaging in the maintenance activity, attach to a conspicuous part of the land a copy of another notice that:
  - (a) states the date when the carrier entered the land; and
  - (b) describes the activity.
- (2) However, the carrier is not required to fix the notice on occupied land if the carrier has been able to give the occupier a notice about the activity either personally, or by post, in accordance with section 1.4.

**6.28 Agreement on alternative notification arrangements**

- (1) A carrier may agree in writing with an owner or occupier of land affected by a maintenance activity for alternative notification arrangements.
- (2) The carrier must comply with an agreement.

## Chapter 6—Maintenance of Facilities

**Division 4—Objection made to carrier****6.29 Objection to maintenance activity**

- (1) If a carrier gives notice to an owner or occupier of land of its intention to engage in a maintenance activity, the owner or occupier (the *objector*) may give the carrier a written objection to the activity.
- (2) The objection must include reasons for the objection.

**6.30 Reasons for objection**

The reasons for the objection may relate only to all or any of the following matters:

- (a) using the objector's land to engage in the activity;
- (b) the location of a facility on the objector's land;
- (c) the date when the carrier proposes to start the activity, engage in it or stop it;
- (d) the likely effect of the activity on the objector's land;
- (e) the carrier's proposals to minimise detriment and inconvenience, and to do as little damage as practicable, to the objector's land.

*Note:* The carrier is required to take all reasonable steps to ensure that the carrier causes as little detriment and inconvenience, and does as little damage, as practicable in engaging in the activity: see Act, Schedule 3, clause 8.

**6.31 Time for giving objection to carrier**

The objection must be given to the carrier at least 5 business days before the carrier proposes to engage in the maintenance activity.

**6.32 Activity after objection**

If the objection complies with sections 6.29 to 6.31, the carrier may only engage in the maintenance activity if 1 of the following situations happens:

**Situation 1** The objection is resolved by an agreement between the carrier and objector.

**Situation 2** A request to refer the objection to the Telecommunications Industry Ombudsman is not received

## Chapter 6—Maintenance of Facilities

by the carrier within the 5 business days mentioned in section 6.36.

**Situation 3** The Telecommunications Industry Ombudsman deals with the objection without giving a direction to the carrier, and the Ombudsman informs the carrier in writing of that outcome.

**Situation 4** The Telecommunications Industry Ombudsman gives a direction to the carrier.



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**6.33 Consultation**

- (1) The carrier must make reasonable efforts to consult the objector about the objection within 5 business days after receiving the objection.
- (2) The carrier must also make reasonable efforts to resolve the objection by agreement with the objector within 20 business days after receiving the objection.

*Note:* An agreement with the objector allows the carrier to engage in the maintenance activity: see s 6.32, situation 1.

- (3) The carrier must comply with any agreement made with the objector.

**6.34 Changes to maintenance activity**

- (1) If the objection is not resolved by agreement within 20 business days after receiving the objection, the carrier must consider whether to change the maintenance activity.
- (2) The carrier is not required to change the activity in a way that:
  - (a) is not economically feasible; or
  - (b) is not technically practicable; or
  - (c) is likely to have a greater adverse effect on the environment than engaging in the activity as originally proposed; or
  - (d) is inconsistent with a recognised industry standard or practice relevant to the activity.
- (3) Within 25 business days after receiving the objection, the carrier must tell the objector, in writing:
  - (a) whether the carrier proposes to change the activity, and, if so, how; and
  - (b) if the carrier does not propose to change the activity—why the carrier will engage in the activity as originally proposed.
- (4) If the Telecommunications Industry Ombudsman has issued a document explaining how the carrier is to deal with the objector under subsection (3), the carrier must comply with the document.

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*Division 5—Objection made to Telecommunications Industry Ombudsman***6.35 Application of Division 5**

This Division applies if:

- (a) the objection is not resolved by agreement between the carrier and objector; and
- (b) the objector is not satisfied with the carrier's response to the objection; and
- (c) the objection comes, in whole or part, within the jurisdiction of the Telecommunications Industry Ombudsman.

**6.36 Request to refer objection to Telecommunications Industry Ombudsman**

- (1) Within 5 business days after the objector receives the carrier's response to the objection, the objector may ask the carrier, in writing, to refer the objection to the Telecommunications Industry Ombudsman.
- (2) The carrier must comply with the request.

*Note:* If the objector does not ask the carrier to refer the objection, the carrier may engage in the maintenance activity: see s 6.32, situation 2.

**6.37 Compliance with directions of Telecommunications Industry Ombudsman**

If the Telecommunications Industry Ombudsman gives a direction to the carrier about the way in which the carrier should engage in the maintenance activity, the carrier must comply with the direction.

*Notes:*

- 1 If the Telecommunications Industry Ombudsman deals with the objection without giving a direction to the carrier, and the Ombudsman informs the carrier in writing of that outcome, the carrier may engage in the maintenance activity: see s 6.32, situation 3.
- 2 If the Telecommunications Industry Ombudsman gives a direction to the carrier, the carrier may engage in the maintenance activity: see s 6.32, situation 4.

## Schedule

Section 1.3

### Dictionary

*Note:* Definitions marked \*\* are taken from section 7 of the *Telecommunications Act 1997*. Definitions marked \* are taken from clause 2 of Schedule 3 to the Act. See subsection 1.3 (3).

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

\* **ACA** means the Australian Communications Authority.

**Act** means the *Telecommunications Act 1997*.

**aerial cabling** means a cable:

- (a) used, or intended for use, in or in connection with a telecommunications network; and
- (b) suspended, or intended to be suspended, above the surface of:
  - (i) land (other than submerged land); or
  - (ii) a river, lake, tidal inlet, estuary, harbour or other body of water.

\* **business day** means a day that is not a Saturday, a Sunday or a public holiday in the place concerned.

\*\* **carrier** means the holder of a carrier licence.

\* **defence organisation** means:

- (a) the Department of Defence; or
- (b) the Australian Defence Force; or
- (c) an organisation of a foreign country, so far as the organisation:
  - (i) has functions corresponding to the functions of, or of a part of, the Department of Defence or the Australian Defence Force; and
  - (ii) is authorised by the Commonwealth to operate or train in Australia or an external Territory; or
- (d) a part of such an organisation or body.

**disaster declaration** means a declaration of a disaster, emergency or similar event made by:

- (a) the Commonwealth, or a State or Territory; or
- (b) a Commonwealth, State or Territory authority that is responsible for managing the public response to an event of that kind.

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***earth station*** means a base station forming part of a satellite network.

\* ***ecological community*** see the *Endangered Species Protection Act 1992*.

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\* **endangered ecological community** see the *Endangered Species Protection Act 1992*.

\* **enter on land** includes enter on a public place.

\* **environment** includes all aspects of the surroundings of human beings, whether affecting human beings as individuals or in social groupings.

\* **Environment Secretary** means the Secretary to the Department responsible for the administration of the *Environment Protection (Impact of Proposals) Act 1974*.

\*\* **facility** means:

- (a) any part of the infrastructure of a telecommunications network; or
- (b) any line, equipment, apparatus, tower, mast, antenna, tunnel, duct, hole, pit, pole or other structure or thing used, or for use, in or in connection with a telecommunications network.

**Heritage Chairperson** means the Chairperson of the Australian Heritage Commission under the *Australian Heritage Commission Act 1975*.

**industry standard** means a standard generally recognised by the Australian telecommunications industry as a standard for use in the industry.

\* **installation**, in relation to a facility, includes:

- (a) the construction of the facility on, over or under any land; and
- (b) the attachment of the facility to any building or other structure; and
- (c) any activity that is ancillary or incidental to the installation of the facility (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.

\* **land** includes submerged land.

**land entry activity** see section 2.2.

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**\*\* line** means a wire, cable, optical fibre, tube, conduit, waveguide or other physical medium used, or for use, as a continuous artificial guide for or in connection with carrying communications by means of guided electromagnetic energy.

\* **listed international agreement** means an international agreement specified in the regulations.

**low-impact facility** means a facility determined by the Minister under subclause 6 (3) of Schedule 3 to the Act to be a low-impact facility.

*Notes:*

- 1 For specification by class, see subsection 46 (2) of the *Acts Interpretation Act 1901*.
- 2 Low-impact facilities are specified in the Telecommunications (Low-impact Facilities) Determination 1997.

**low-impact facility activity** see section 4.2.

\* **maintenance**, for a facility, see clause 7 of Schedule 3 to the Act.

**maintenance activity** see section 6.2.

**Nature Conservation Director** means the Director of National Parks and Wildlife under the *National Parks and Wildlife Conservation Act 1975*.

**objector** see:

- (a) for Chapter 2—section 2.29;
- (b) for Chapter 4—section 4.30;
- (c) for Chapter 6—section 6.29.

**premises** includes a building, structure, caravan and mobile home.

\* **public place** includes a place to which members of the public have ready access.

\* **public utility** means a body that provides to the public:

- (a) reticulated products or services, such as electricity, gas, water, sewerage or drainage; or
- (b) carriage services (other than carriage services supplied by a carriage service provider); or
- (c) transport services; or
- (d) a product or service of a kind that is similar to a product or service covered by paragraph (a), (b) or (c).

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**relevant local government authority**, for an activity in a State or Territory, means an authority of the State or Territory responsible for the local government of the area where the activity happens or is to happen.

\* **sensitive area** see subclause 17 (8) of Schedule 3 to the Act.

**station** see regulation 3 of the Radiocommunications Regulations.

**street** means:

- (a) a place where general vehicle traffic occurs; or
- (b) a place where general vehicle traffic would happen except for the construction of barriers to traffic;

but does not include a driveway, a bicycle path or a parking lot.

*Examples of streets:*

- A place described as a lane, crescent, avenue, street, road or highway
- A pedestrian mall
- A road that has been closed to traffic.

**subscriber**, for a carrier, includes a proposed or potential subscriber.

**subscriber connection** means an installation for the sole purpose of connecting premises to a line forming part of a telecommunications network.

**subscriber connection activity** see section 3.2.

\*\* **Telecommunications Industry Ombudsman** means the Telecommunications Industry Ombudsman appointed under the Telecommunications Industry Ombudsman scheme (mentioned in section 246 of the Act).

**telecommunications transmission tower**, or **tower**, means a tower, pole or mast used for telecommunications transmissions.

**temporary defence facility** means a temporary facility for use by, or on behalf of, a defence organisation for defence purposes.

**temporary defence facility activity** see section 5.2.

**third party** see section 3.22.

\* **threatened species** means:

- (a) an endangered species (within the meaning of the *Endangered Species Protection Act 1992*); or

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- (b) a vulnerable species (within the meaning of that Act).

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

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