

EXPLANATORY STATEMENT

TELECOMMUNICATIONS (LOW-IMPACT FACILITIES) DETERMINATION 1997 (AMENDMENT NO. 1 OF 1999)

OUTLINE

Subclause 6(3) of Schedule 3 to the *Telecommunications Act 1997* (the Act) provides that the Minister for Communications, Information Technology and the Arts may, by disallowable instrument, determine a facility to be a 'low-impact facility'.

The Minister made the Telecommunications (Low-impact Facilities) Determination 1997 (the Determination) on 29 June 1997 and this instrument came into effect on 1 July 1997.

The Determination was drafted following a public inquiry by AUSTEL (now the Australian Communications Authority (ACA)) and a short period of public comment on exposure drafts by the then Department of Communications and the Arts.

The Determination has now been in operation for approximately two years. It facilitates environmentally sensitive network rollout, which is becoming increasingly important with the continuing rise in the number of new entrants to the telecommunications industry.

The Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts, Senator the Hon Ian Campbell, requested the Department of Communications, Information Technology and the Arts (the Department) on 17 December 1998 to undertake a review of the Determination in order to clarify the objectives of the Determination.

In response, the Department issued a Discussion Paper and invited stakeholder comment on the Determination's operation. The 21 submissions to the first stage of the Review addressed issues underlined in this departmental Discussion Paper or focussed specifically upon matters of local concern. Second round submissions provided useful feedback on proposed changes to the Determination and some amendments have been redrafted accordingly.

In summary, amendments address the following issues:

- defining 'co-located facilities' while continuing to minimise their visual impact;
- clarification of *areas of environmental significance*;
- limited extension to provisions for advertising on public payphones;
- broadening of provisions for undergrounding of cables while ensuring disruption is minimised;
- inclusion of ancillary facilities, in-building subscriber connection equipment, internal equipment shelters and Yagi (or other like antenna) as low-impact facilities;
- broadening of provisions for radio facilities in Rural and Industrial areas.

REGULATION IMPACT STATEMENT

BACKGROUND

The purpose of the Telecommunications (Low-impact Facilities) Determination 1997 (the Determination) is to specify when a carrier can enter land and install a low-impact telecommunications facility without seeking approval under State and Territory laws. The Determination also ensures that such installations are subject to the processes for negotiation and dispute resolution set out in the Code of Practice 1997 (the Code).

The Minister made the Determination on 29 June 1997 and this instrument came into effect on 1 July 1997.

A. PROBLEM IDENTIFICATION

The *Telecommunications Act 1997* (the Act) came into operation on 1 July 1997. The Act provides for the approval of most telecommunications facilities, such as broadband overhead cable and the majority of mobile telecommunications towers, to be dealt with by relevant State and Territory authorities, usually at the local level. There are limited exceptions to this rule, including for the installation of 'low-impact' facilities as described under the Telecommunications (Low-Impact Facilities) Determination 1997 (the Determination).

The Determination contains a list of telecommunications facilities and activities that are essential to maintaining telecommunications networks and are unlikely to cause significant community disruption during their installation or operation. Adherence to provisions under the Determination facilitates rollout of sensitively designed carrier infrastructure which benefits the end-user.

The Determination has now been in operation for approximately two years. During this period, however, carriers, local governments and the ACA have identified definitional problems within the Determination, which create uncertainty for carriers and local government as to whether particular telecommunications facilities are being installed in compliance with regulatory arrangements.

Co-location in Residential and Commercial areas

Co-location is actively encouraged under the current regulatory regime. For example, under Part 5 of Schedule 1 to the Act, carriers are required to co-operate with other carriers to share sites and eligible underground facilities when planning future carriage services. More specifically, the Telecommunications Code of Practice 1997 (the Code) requires:

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:

- (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.

Despite this proactive approach to co-location, neither the term ‘co-location’ nor ‘co-located facility’ is specifically defined and this ambiguity acts as a disincentive to co-location. For example, carriers will often opt to install individual low-impact facilities, particularly in Residential and Commercial areas, rather than seek local planning approvals to co-locate (co-location in Residential and Commercial areas is not ‘low-impact’ under Part 7 of the existing Determination). In some cases, installation of a new facility will have a greater impact upon visual amenity in these zoning areas than co-location with an existing facility or public utility structure. This is increasingly the case in high density areas, such as CBDs, where carriers are seeking to increase coverage through the installation of several smaller facilities (such as microcells) rather than making use of its own or another carrier’s existing facility. As a result, streetscapes are becoming increasingly cluttered.

Underground facilities

The current dimensions required under the Determination have been described as restrictive and imposing excessive technical difficulty when placing cables underground. In some instances, this may inhibit the installation of underground cables given that carriers generally will not choose to submit to a local approval process, which is often quite rigorous for this type of infrastructure.

Carriers opting to obtain local approval for undergrounding are sometimes experiencing delays of up to 12 months, depending upon the jurisdiction. These delays often are the result of requirements under local approval processes, which may involve securing land access, rights of ongoing occupation and in addition to adherence to the specific requirements of that local regime.

In-building subscriber equipment and internal equipment shelters

Carriers, particularly new-entrants wishing to connect new subscribers to their networks require access to multi-tenant buildings to install equipment to service their customers. Access by competing telecommunications service providers in such multi-tenant environments is critical to the successful development of competition in the telecommunications market and is important if residents and businesses are to benefit from choice of carrier and access to the full range of information and telecommunications services available. Carriers who operated prior to the commencement of competition (ie. prior to the introduction of the Telecommunications Act 1997) are at an advantage as they were permitted to install such equipment under the previous legislative regime. Further, in-building subscriber equipment is unobtrusive, has no affect upon visual amenity and does not alter the use of a building structure.

B. OBJECTIVES

Co-location in Residential and Commercial areas

It is the Government's long-standing policy to encourage carriers to co-locate by installing new communications facilities (eg. a new mobile base station or associated infrastructure) adjacent to or on or within existing facilities (eg. an existing mobile station). This is generally regarded as providing a superior-planning outcome in the vast majority of cases, particularly in Residential and Commercial areas as affect upon visual amenity is minimised.

Underground facilities

The Putting Cables Underground Working Group (PCUWG) has found that arrangements under the existing Determination may have the effect of inhibiting the installation of underground cables due to restrictions on cable lengths and widths. These arrangements are described under Part 4 of the Determination and require that trenches be not more than 150mm wide and 150 metres long in Residential and Commercial areas and that cable deployed by direct burial be not more than 300mm wide in Industrial and Rural zones.

The PCUWG argues that, within these limits, any significant undergrounding program (ie any project which does not fall under Part 4) would require compliance with State, Territory or Local Government planning laws. This could discourage undergrounding, because, although many councils support undergrounding in principle, these laws vary from State to State, planning policies vary from council to council, and the associated processes are sometimes lengthy and complex. A number of State Governments have suggested (as participants in the PCUWG, and independently the Western Australian Government have specifically requested) that all underground cables should be treated as low-impact facilities.

In-building subscriber equipment and internal equipment shelters

It is the Government's aim to promote open and fair competition in the telecommunications industry. Paragraph 6(d) of Schedule 3 to the Act permits carriers with networks in existence before the end of 30 June 1997 to install facilities for the sole purpose of connecting a building, structure, caravan or mobile home to that network. However, new entrants to the telecommunications industry will not necessarily have had a network in place prior to 30 June 1997 and it can be argued that these provisions place new carriers at a competitive disadvantage, which is contrary to Government policy objectives.

C. IDENTIFICATION OF ALTERNATIVES

Co-location in Residential and Commercial areas

- (i) No change to current Determination

There will be no clarification of policy objectives in relation to co-location and there will be no incentive for carriers to seek opportunities to co-locate in Residential and Commercial areas. Carriers will therefore continue high-risk network rollout without clear Government policy objectives in relation to co-location.

- (ii) Co-location allowed in any case

Carriers would be able to co-locate low-impact facilities in all zoning areas without restriction, which would be equivalent to removing existing provisions relating to co-location altogether. Accordingly, there would be no need to clarify the meaning of co-location because, under this option, co-location would not be subject to restrictions. As a consequence, this type of activity would proceed depending upon a carrier's interpretation of what constitutes co-location. Such an interpretation may vary from two facilities located in proximity to one another to the view that each individual component of a facility is co-located.

- (iii) Inclusion of Amendments 3.1 and 10

Carrier access to customers in Residential and Commercial areas will be facilitated and coverage (particularly mobile coverage) in these zoning areas will be more reliable. Limits will be placed upon the volume of any addition to any existing facility and noise levels in these zoning areas. Further, the meaning of co-location will be clarified to mean placing an additional low-impact facility on or within an existing telecommunications facility or public utility structure.

Underground facilities

- (i) No change to current Determination

It is unlikely that carriers will seek opportunities to underground facilities if required to submit to a sometimes lengthy and complex local approval process. In some instances, this may act as disincentive to undergrounding which will operate contrary to Government policy objectives and findings made by the PCUWG.

- (ii) Underground facilities allowed in any case

It is recognised that placing facilities underground does result in some disruption to existing users of the area. Under this option, carriers would be allowed to underground without restriction in any zoning area, possibly to the detriment of business operations in affected areas.

(iii) Inclusion of Amendment 8

This amendment incorporates restrictions upon the length of excavations open at any one time and ensures that commercial and residential premises are not unduly inconvenienced during undergrounding. It is also recognised that suggested times reserved for undergrounding activity may differ from those imposed by local councils and this amendment therefore allows for negotiation of alternative timeframes for installation.

In-building subscriber equipment and internal equipment shelters

(i) No change to current Determination

New carriers will continue to experience difficulty in accessing multi-tenant buildings and, in some cases, will be unable to provide services at all to residents and businesses wishing to obtain those services. Carriers that had networks in place under the previous regime will continue to be at an advantage and there will be no clear process for negotiation between new carriers wishing to access properties and property owners.

(ii) inclusion of Amendments 3.2, 7.1 and 7.2

The procedures described under Chapter 4 of the Code would apply where no provision for negotiation of access between carriers and building-owners currently exists.

D. IMPACT ANALYSIS

Commonwealth

There is unlikely to be a significant change to the current cost of regulating telecommunications infrastructure through the implementation of these amendments.

Co-location in Residential and Commercial areas

(i) No change to current Determination

The current provisions in the instrument concerning co-location of telecommunications facilities contain ambiguities which have caused uncertainty. There would be no clarification of policy objectives and less incentive for carriers to seek to co-locate in Residential and Commercial areas. Carriers would need to continue rollout in an unclear policy environment, and telecommunications end-users may have access to fewer service choices if carriers choose to avoid uncertainty by not installing facilities.

(ii) Co-location allowed in any case

Carriers would be able to co-locate low-impact facilities in all zoning areas without restriction, which could potentially have a major impact on visual amenity. Residents with property near co-location facilities would be most negatively affected as they could suffer a loss of property values, although carriers and consumers may benefit as unrestricted network roll-out improves telecommunications infrastructure.

(iii) Inclusion of Amendments 3.1 and 10

Costs

While co-location is to be promoted, cumulative co-location beyond a certain point can result in a greater impact on the urban environment than installation of a new facility. The 25% volume-based limit emulates provisions relating to the maintenance of facilities (see clause 7 of Schedule 3 to the Act) and will operate to minimise visual and audible effect of co-location (including sequential co-locations on an original facility).

Residents

Co-location in Residential and Commercial areas may have a marginal effect upon visual amenity and may subsequently affect property values in these areas. However, it is anticipated that this cost will be minimised by the 25% volume limit imposed upon co-location in these zoning areas and any possible financial impact would therefore be reduced.

Benefits

Telecommunications carriers

It is likely that carriers will experience moderate commercial benefits from the introduction of these amendments, in particular through an improved ability to meet the needs of a customer base in Residential and Commercial areas. This reflects one of the main objectives of the Act, which is to implement a policy framework that promotes the efficiency and competitiveness of the telecommunications industry while benefiting the end-user.

Consumers

Facilitating network rollout will also mean telecommunications carriers' customers in Residential and Commercial areas will benefit from improved responsiveness to consumer demand. This in turn may have a positive effect upon business operations while maximising consumer choice in relation to telecommunications services.

Underground facilities

(i) No change to current Determination

Whilst the current Determination controls rollout, it sets arbitrary limits on the undergrounding of cables. This has distorted carrier infrastructure rollout activities, as they try to work within the existing legislative framework.

(ii) Underground facilities allowed in any case

Installing cables and other facilities underground is generally regarded as preferable to installing overhead cable given the limited impact upon visual amenity. Hence, it is long-standing government policy that undergrounding be promoted where practicable. However, if these facilities are allowed in any case, carriers would be able to install underground cables in all zoning areas without restriction. Although carriers and consumers may benefit from unrestricted network roll-out, the wider residential and property-owning community may suffer from the disruption caused by widespread underground cabling.

(iii) Inclusion of Amendment 8

Costs

Commercial premises

Commercial premises and/or retailers may experience a limited level of disruption to operations by the broadening of arrangements for undergrounding. Such disruption may temporarily affect turnover through, for example, customers experiencing difficulty in accessing those properties adjacent to undergrounding activity. However, if these parties are able to demonstrate a negative commercial impact as a result of carrier activity carried out under this amendment, compensation may be payable under clause 42 of Schedule 3 of the *Telecommunications Act 1997*.

Residents

Residents may experience a restriction in access to their property while undergrounding is taking place. However, this disruption will be limited under this amendment and it is not anticipated that undergrounding will adversely affect a residential property's value.

Carriers

In some instances, undergrounding of facilities will represent a greater cost to the carrier than installing overhead cabling. However, because overhead cabling requires approval, carriers are provided with the incentive to cover this cost while completing rollout in a manner which minimises environmental impact.

Benefits

Carriers

Under this Amendment, carriers will be better able to meet the needs of consumers through removal of often-restrictive local planning approval processes, and they will experience moderate commercial benefits through access to a broader consumer base.

Property owners

The installation of cables underground will have a positive effect upon visual amenity and therefore, in some instances, may lead to an increase in property values. As indicated by the PCUWG Report, in the longer term undergrounding is of lower visual impact than overhead cabling.

In-building subscriber equipment and internal equipment shelters

(i) No change to current Determination

Under the current Determination, it has been suggested that in-building consumers experience a restriction of access to alternative services because carriers have a limited ability to enter buildings and install new infrastructure. Building owners currently retain unregulated control of carrier entry to install competitive infrastructure. There is the potential for building owners to engage in conduct which unreasonably exploits this control, and there is some suggestion that this may have already taken place. Such conduct can have a negative impact on the overarching Commonwealth policy framework that aims to promote the efficiency and competitiveness of the telecommunications industry while benefiting the end-user.

(ii) inclusion of Amendments 3.2, 7.1 and 7.2

Costs

Property owners

Building owners may lose some control over access to their buildings if a dispute arises. This will depend upon the outcome of negotiations between the building owner and the carrier or the Telecommunications Industry Ombudsman (TIO) or, if required, the decision of a court of competent jurisdiction.

It is unlikely that visual amenity will be adversely affected by the inclusion of this amendment as this type of infrastructure is usually installed in designated areas, such as Main Distribution Frames (MDFs), cable ducts and/or risers. Clause 42 of Schedule 3 of the *Telecommunications Act 1997* provides for compensation to building owners for any financial loss resulting from use of space which could have been leased out for other purposes.

Further, it is in a carrier's commercial interest to negotiate fair terms of access with property owners. In combination with general access provisions to which carriers must comply under the Code of Practice 1997 (the Code), it is unlikely that the commercial interests of property owners will be significantly affected.

Benefits

Consumers

By facilitating carrier access to multi-tenant buildings, this Amendment will give residents and businesses greater access to the carrier of their choice and to the full range of information and telecommunications services available, consistent with the main object of the Act: that it should promote the long-term interests of end-users of carriage services or of the services provided by means of carriage services.

Carriers

This Amendment also promotes another principal objective of the Act which is to ensure the efficiency and international competitiveness of the Australian telecommunications

industry. This amendment clarifies the process for carriers to negotiate access with building owners on an equitable basis and this will be of particular commercial benefit to smaller carriers and new entrants to the telecommunications market.

E. CONSULTATION

In response to issues raised by stakeholders, the Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts, Senator the Hon Ian Campbell, requested the Department of Communications, Information Technology and the Arts (the Department) to undertake a review of the Determination in order to clarify the objectives of the Determination.

In response, the Department issued a Discussion Paper and invited stakeholder comment on the Determination's operation. The 21 submissions to the first stage of the Review addressed issues underlined in this departmental Discussion Paper or focussed specifically upon matters of local concern. Second round submissions provided useful feedback on proposed changes to the Determination and the Amendment No.1 has incorporated some of those changes.

Submissions were received from telecommunications carriers, local authorities (including councils and the Australian Local Government Association), consumer groups, State government departments, the Australian Communications Authority and public utility bodies.

In summary, a small number of submissions objected to the following:

- provisions allowing for co-location to Residential and Commercial areas on the basis that these amendments will adversely affect visual amenity;
- maintaining Commonwealth control over some undergrounding programs which should be entirely managed at the local level; and
- clarification of a process whereby carriers may negotiate access to buildings for certain types of infrastructure on the basis that the commercial interest of property owners will be adversely affected.

However, on the whole, there has been general support for the Amendment No. 1 to the Determination.

F. RECOMMENDED OPTION

Co-location in Residential and Commercial areas

Although these amendments will expand upon existing arrangements for co-location in Residential and Commercial areas, amendments 3.1 and 10 represent a reasonable balance between encouraging co-location while imposing objective limits in these more sensitive zoning areas. This amendment also clarifies the Government's policy objectives in relation to co-location and it is therefore recommended that these amendments be implemented.

Underground cabling

This amendment will facilitate carrier rollout while minimising disruption caused by undergrounding, particularly in high-density metropolitan areas. Further, it reflects findings made by the Putting Cables Underground Working Group Report and it is therefore recommended that Amendment 8 be implemented.

In-building subscriber equipment and internal equipment shelters

It is recommended that the amendments 7.1 and 7.2 be implemented, as this type of infrastructure is generally unobtrusive and brings substantial benefits to the end-user.

G. IMPLEMENTATION AND REVIEW

The potential may exist for a re-examination of the regulatory arrangements in the longer term to allow for an assessment of the implementation of the Amendment No.1 generally and in particular, Amendments 7.1, 7.2, 8 and 10.

In the interim, however, should an individual be able to demonstrate financial loss or damage as a result of carrier activity under Schedule 3 (which includes activity carried out under the Amendment No.1 to the Determination), compensation may be payable under clause 42 of Schedule 3 to the Telecommunications Act.

NOTES ON AMENDMENTS

Amendments 1 and 2

The amendments commence on their notification in the Commonwealth *Gazette*.

Amendments 3.1 to 3.5

Section 1.3 (Definitions)

Amendment 3.1: *Co-located facilities*

Although co-location is actively encouraged under the current regulatory regime (for example, see Part 5 of Schedule 1 to the Act), neither the term ‘co-location’ nor ‘co-located facility’ is specifically defined. In order to remove the ambiguity surrounding the meaning of co-location, this amendment defines *co-located facilities* for the purposes of Part 7.

This definition describes one or more facilities as ‘co-located’ with an *original facility* (defined by Amendment 3.3) if the addition to the original facility is located physically on or within the infrastructure of that original facility. Further, any addition of this type to an *original facility* constitutes co-location, irrespective of whether or not the addition is to a carrier’s own facility or the facility of another carrier. For the purposes of the Determination, a co-located facility is not a second low-impact facility located in proximity to an *original facility* or an existing low-impact facility.

Amendment 3.2: *In-building subscriber connection equipment*

This definition has been introduced to the Determination for the purposes of Amendment 7.2 and is intended to cover the range of facilities required to connect customers within a building to an existing telecommunications network. For example, such a connection may be a line from the boundary of an existing network, as defined under section 22 of the Act, connected to a Main Distribution Frame (MDF) and a second line connecting the subscriber to that MDF.

An in-building subscriber connection must be housed within an appropriate locality, as negotiated with the building owner, and be installed in accordance with provisions under Chapter 4 of the *Telecommunications Code of Practice 1997* (the Code). Accordingly, carriers requiring access to a building to connect a customer to their network must negotiate fairly the terms of that access with the building owner. It is also worth noting that clause 42 of Schedule 3 to the Act includes, if required, arrangements for compensation for activities carried out under the Determination.

Amendment 3.3: *Original facility*

This definition of *original facility* addresses problems that have arisen from the application of the existing definition of ‘facility’ (see section 7 of the Act) when co-locating facilities.

For the purposes of the Determination, *original facility* is defined as a structure used, or intended to be used, for connection to a telecommunications network. This definition also includes facilities which have received planning approval from the relevant local authority such as mobile facilities.

The concept of an ‘original facility’ is established to enable volume based limits to be placed on the colocation of facilities under the amended Part 7 of the original Determination. Reference in the definition to a ‘facility’ is intended to exclude from the concept of an original structure associated structures. For example, a mobile base station would be considered to be a single structure, rather than include related infrastructure in the vicinity such as equipment shelters or other buildings.

In order to limit sequential co-locations, an *original facility* only includes:

- any facility in place at the time this variation to the Determination takes effect; or
- any such facility installed after this variation takes effect by means other than co-location under Part 7.

Amendment 3.4: *Public utility structure*

Public utility structure has been defined to relate as closely as possible to ‘public utility’ operations as described under clause 2 of Schedule 3 to the Act. For example, the structure is one which is used specifically for the provision of the services described under this clause (such as electricity, gas, water, sewerage or drainage) and not structures providing services secondary to public utility services (such as buildings).

The concept of *public utility structure* is used in the amended Part 7 to place volume limits on facilities placed on public utility structures. Reference to a *public utility structure* is intended to place a reasonable limit upon on the construction against which the volume of colocated facilities are to be measured. The term ‘structure’ is intended to refer to single structures rather than broader infrastructure of a public utility in a single vicinity. For example, co-location of a low-impact facility on a train shelter should have its volume measured by reference to the shelter rather than the entire train-related infrastructure at that train station (such as other shelters, tracks, etc.)

Amendment 3.5: *Significant environmental disturbance*

One of the main objectives of the Determination is to ensure that rollout of certain telecommunications facilities is undertaken in an environmentally sensitive manner. The current Determination does not adequately define what constitutes disruption to an area of environmental significance.

The definition of *significant environmental disturbance*, for the purposes of subsection 2.5(5) of the Determination, both removes this ambiguity and includes other significant environmental values previously excluded. To provide certainty, those aspects of the environment highlighted by this amendment must be identified under a law of the Commonwealth, a State or a Territory.

Amendment 3.6: *Volume*

This definition makes use of the existing description of volume under Division 4 of Part 1 of Schedule 3 to the Act. The term ‘volume’ is used in item 2 of Amendment 10.

When calculating the volume of an *original facility* for the purposes of co-location, the physical volume of all visible parts located on or within that original facility must be measured. For clarity, the volume of an original facility only includes its apparent, or ‘visible’, parts and associated supporting structures and not the total area occupied by that facility. For example, when calculating the volume of a lattice tower and associated infrastructure, the total volume would be the sum of the volume of each visible panel antenna, plus the volume of the actual latticing of the headframe and tower.

Amendments 4.1 to 4.2

Section 2.5 (Areas of environmental significance)

The installation of low-impact facilities is not permitted in areas described as *areas of environmental significance*. Clarification of section 2.5 of the Determination is required in order to ensure that the emphasis of the Determination remains upon protection of those environment and heritage areas defined under Commonwealth, State and Territory laws.

Subsection 2.5(4)

Ambiguity surrounding the use of the word “*reserved*” has led to both broad and narrow interpretations of subsection 2.5(4). The purpose of this amendment is to identify land used specifically for conservation purposes and therefore exempt from the installation of low-impact facilities.

Subsection 2.5(7)

The reference to an area registered under a law relating to heritage conservation in the current Determination has been interpreted in its broadest sense to mean all areas of heritage conservation value. It is the intention of the Determination to exempt places, building or things entered on a heritage register under Commonwealth, State or Territory laws (which includes interim registers and planning schemes subordinate to those laws) from installation of low-impact facilities. This amendment clarifies this intent through specification of the meaning of the word ‘*register*’.

Subsection 2.5(8)

The Act provides carriers with no immunities from State, Territory or Commonwealth laws in relation to laws providing for the protection of places or items of significant cultural value to Aboriginal persons or Torres Strait Islanders. However, the Determination does not currently specify how to determine whether or not an area falls within this category. To provide certainty, this amendment provides a point of reference for carriers and removes ambiguity as specified in paragraphs 2.5(8)(a) and 2.5(8)(b).

Amendment 5

Ancillary facilities

Ancillary facilities are used to protect a telecommunications facility from damage, and technicians and the general public from injury, while having little or no impact upon the visual amenity of the area. These facilities may include facilities such as security fences or facility supports designed to elevate a low-impact facility above potential flood levels in rural areas.

The Code requires a carrier to protect the safety of persons and property when carrying out its operations (see Part 2 of Chapter 2 of the Code). For clarity, this amendment specifically defines ancillary facilities as low-impact if used solely for protection and/or safety purposes. The intention of this amendment is to ensure that installation of such facilities is not subject to local planning approval and that potentially dangerous situations are avoided in all zoning areas.

Amendments 6.1 and 6.3

Schedule (Part 1 – Radio Facilities)

The Determination encourages carriers to maximise technological advances in telecommunications by developing innovative network solutions using unobtrusive facilities. Given recent technological advances, items 1, 2 and 3 of Part 1 of the Schedule to the Determination have been amended to include:

- satellite subscriber connections, limited to dishes of 1.2 metres in diameter in Residential and Commercial areas; and
- yagi antenna and other like antenna (for example the TUFT antenna);

Although of limited visual impact, it is envisaged that these facilities will deliver a similar or improved level of service.

Amendment 6.4

The current wording of item 4 of Part 1 does not enable the installation of a single omnidirectional antenna as a low-impact facility. The installation of a single omnidirectional antenna is obviously of lesser environmental impact than installing a complete array and this item is amended accordingly.

For the purposes of Part 1 of the Schedule to the Determination, the words ‘protrusion’ or ‘protruding’ from a structure are intended to mean the lateral, vertical or horizontal distance between the supporting structure and the facility (ie. the length of the mounting brackets). The words are not intended to include the measurement of the low-impact facility attached to the supporting structure.

Additionally, for the purposes of consistency in this Part, the distance a radiocommunications dish is permitted to protrude under Item 5 has been described.

Amendments 6.2 and 6.5

These new items include dishes of up to 1.8 metres in diameter as low-impact facilities in Rural areas, which, depending upon geographical and environmental factors, may lead to improved service (including voice quality and cost reduction) to customers in remote areas. Use of dishes up to 1.8 metres in Industrial areas is now also permitted, given that the visual impact of telecommunications facilities in this zoning area is generally of lesser concern.

Amendment 7.1

Schedule (Part 3 – Above ground housing)

There is limited differentiation between an internal equipment shelter (an equipment shelter within a building) and an external equipment shelter (an equipment shelter not located within a building). Internal equipment shelters are often of lesser visual and environmental impact than external equipment shelters and items 4 and 5 of Part 3 of the Schedule to the Determination have been amended accordingly.

Amendment 7.2

Schedule (Part 3 – Above ground housing)

In-building subscriber connection equipment (see Amendment 3.2) is generally unobtrusive infrastructure bringing substantial benefits to the end-user and thus its installation in all zoning areas is encouraged under this amendment.

The purpose of this amendment is to benefit end-users of telecommunications services, ensuring that they are able to access the usual range of services. General terms and conditions of carrier access are described under Chapter 4 of the Code, however it is expected that carriers and building-owners will negotiate the most appropriate terms according to the type of access required.

Solar panels

Solar panels are often essential to the functioning of facilities in remote areas and they are therefore included as a low-impact facility in Rural areas, providing the base area of the panels is no more than 7.5 square metres.

Amendment 8

Schedule (Part 4 – Underground cable facilities)

The current dimensions required under this Part have been described as restrictive and imposing excessive technical difficulty when placing cables underground. Further, the Putting Cables Underground Working Group Report has noted that “in most States controls do apply and this may have the effect of inhibiting the installation of underground cables. Modifying the 150 metre limit may assist in removing this inhibition.” (p. 109).

This amendment also takes into account this Report’s findings in relation to those existing State and Territory laws or policies which promote undergrounding (see Findings 2-4) and findings in relation to co-location of underground facilities (see Findings 17-18). Accordingly, required dimensions have been broadened to facilitate both undergrounding and the co-location of underground facilities in all zoning areas where technically feasible.

Further, this amendment attempts to achieve a balance between facilitation of carrier rollout and minimisation of disruption caused by undergrounding, particularly in high-density metropolitan areas. Accordingly, this amendment also incorporates restrictions upon the length of excavations open at any one time and ensures that commercial and residential premises are not unduly inconvenienced during undergrounding. It is also recognised that suggested times reserved for undergrounding activity may differ from those imposed by local councils and this amendment therefore allows for negotiation of alternative timeframes for installation.

Item 2 of Part 7 of the Schedule to the Determination encourages location of underground cables in existing trenches, including trenches already occupied by another carrier, a local government authority or a public utility. This item has been moved from Part 7 to become item 2 of Part 4 as it relates specifically to underground cabling.

Amendment 9

Schedule (Part 5 – Public Payphones)

Current arrangements do not permit the installation of public payphones as low-impact facilities if the payphone displays advertising other than advertising related to the supply of the standard telephone service.

However, technological change and customer demand will require payphones to contain, for example, interactive multimedia payphone instruments. In order to be able to supply such services, carriers will need to secure the involvement of commercial organisations, which will require commercial advertising on display screens or on the public payphone instrument.

This amendment enables carriers to advertise on a discreet screen or static display located on the payphone instrument. Advertising of this nature must not be used for general

advertising purposes and must specifically relate to the content service of the commercial organisation.

Further, it is not considered appropriate that carriers be permitted to advertise on the actual payphone booth and therefore item 1(d) of Part 5 remains unamended. Advertising on the payphone cabinet is highly visible and would require local government approval.

Amendment 10

Schedule (Part 7 – Co-located facilities)

The intent of Part 7 is twofold; to promote competition by facilitating carrier rollout while reducing construction of new, intrusive infrastructure if similar coverage can be achieved by co-location.

It should be noted that Part 7 operates to limit the circumstances in which facilities listed under Parts 1, 5, 6 or Item 3 of Part 4 may be considered low-impact when co-located with an original facility or public utility structure. Accordingly, although this amendment allows for co-location in all zoning areas, a limit to a prescribed volume (as defined in Amendment 3.6) and noise levels is required in Residential and Commercial areas in order to minimise the environmental impact of co-location in these zoning areas.

It should also be noted that the definitions of *co-located facilities* (Amendment 3.1), *original facility* (Amendment 3.3), *public utility structure* (Amendment 3.4) and *volume* (Amendment 3.6) apply to this Part.

Facilities described under Part 2 and Part 3 of the Determination have been removed from Part 7 as the concept of co-location, as it is now defined, does not apply.

Item 2 of Part 7 has been removed from this Part for reasons described under Amendment 8.